

LAND USE ORDINANCE  
OF THE  
BOROUGH OF KENILWORTH



September 2015

This Chapter 225 of the Borough Code replaces current Chapters: 30 - Land Use Procedures; 163 - Site Plan; 169 - Stormwater; 174 - Subdivisions; 182 - Trailers Used for Storage; and 197 - Zoning.

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To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

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## PART 1 - ADMINISTRATION

### ARTICLE 1 - Title, Purpose, Scope

#### § 225-101 Short title.

This chapter shall be known as the "Land Use Ordinance of the Borough of Kenilworth" ("Borough").

#### § 225-102 Purpose.

This chapter implements the Municipal Land Use Law of the State of New Jersey (N.J.S.A. 40:55D-1 et seq.) within the Borough. It is the intent and purpose of this chapter:

- A. To guide the appropriate use or development of all lands in this Borough, in a manner which will promote the public health, safety, morals, and general welfare;
- B. To secure safety from fire, flood, panic and other natural and manmade disasters;
- C. To provide adequate light, air and open space;
- D. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;
- E. To provide sufficient space in appropriate locations for a variety of residential, recreational, and commercial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all of the Borough's citizens;
- F. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;
- G. To promote the conservation of historic sites and districts, open space, energy resources and prevent degradation of the environment through improper use of land;
- H. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;
- I. To promote utilization of renewable energy sources; and

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J. To promote the maximum practicable recovery and recycling of recyclable materials from municipal solid waste through the use of planning practices designed to incorporate the State Recycling Plan goals and to complement municipal recycling programs.

#### § 225-103 Scope.

The provisions and requirements of this chapter shall be held paramount to any corresponding or similar, but less restrictive provisions and requirements of any existing law, ordinance, rule, regulation, deed, restriction or private covenant affecting lands and premises in the Borough; provided, the Borough as an entity shall be exempt from all provisions of this chapter unless otherwise provided herein or as may be required by New Jersey law.

#### § 225-104 Definition of Terms.

As used in this Part 1, and throughout this Land Use Ordinance of the Borough of Kenilworth, the following terms shall have the meanings indicated:

##### **ABANDONMENT**

The relinquishment of property, or a cessation of the use of property, without the intention to resume by the owner or lessee without any intention of transferring rights to the property to another owner or of resuming the use of the property, in concurrence with some overt act or some franchise to act which carries the implication that the owner neither claims nor retains any interest in the subject site. While the mere non-use of a nonconforming right does not constitute abandonment, the property owner bears the burden of proof to show that the non-usage did not manifest an intent to abandon.

##### **ABOVE-GRADE STRUCTURE**

Any building, roofed structure or other structure which has a height above the ground of at least one foot. If only part of said structure is one foot or higher above the ground, then only that part shall be considered an "above-grade structure." This shall include, but is not necessarily limited to, swimming pools, hot tubs, ornamental pools, porches, decks, balconies, tanks, fireplaces and barbecue pits, roofed arbors and trellises, any or all of which are located above grade as defined herein. Notwithstanding the above, the following shall not be construed to be above-grade structures for the purposes of this chapter: fences, walls, retaining walls, flag poles, mail boxes, signs, and lawn ornaments.

##### **ABUTTING**

Touching or joining at the edge or border, adjacent, contiguous.

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### ACCESS DRIVE OR AISLE

That portion of a parking area or facility not devoted to parking spaces which permits vehicles to move from the roadway to the parking stall and includes both the portion leading to the parking spaces from the driveway as well as the aisle or space between parking stalls which permit automobile maneuvering for the purpose of parking.

### ACCESSORY BUILDING OR STRUCTURE

A building or structure occupied or devoted exclusively to an accessory use on the same lot with a subordinate purpose to a principal building or structure. More particularly, but not by way of limitation, an accessory building or structure in a residential zone shall be construed to include a deck; detached private garage; private greenhouses; private summerhouses; private sheds; gazebos; other private roofed structures; private swimming pool; and private tennis court; private racquetball, private platform tennis, private paddleball, or private handball court.

### ACCESSORY USE

A use naturally and normally incident and subordinate to the principal and primary use upon any premises. More particularly, but not by way of limitation, a residential accessory use shall be construed to include such uses as a private swimming pool, private tennis court, and private racquetball, platform tennis, paddleball or handball courts.

### ACRE

A unit of land with a surface area of 43,560 square feet.

### ADMINISTRATIVE OFFICE

An office where the primary function is dealing with other branches or divisions of the same enterprise, and where there is only minimum contact with the general public due to such primary function.

### ADMINISTRATIVE OFFICER

The government official designated by the Planning Board with administering land development regulations.

### ADULT BOOKSTORE

Any business having as a predominant part of its stock-in-trade books, magazines, photographs, pictures, films, devices, newspapers, recordings, periodicals or any other

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item or paraphernalia devoted to the presentation or exploitation of parts of the anatomy, human or animal, in an obscene manner or for obscene purposes.

## AFFORDABLE HOUSING

Housing which is affordable by persons of low or moderate income based upon the standard of income and affordability established by the regulations of the New Jersey State Council on Affordable Housing as amended from time to time, or as established in the Borough Code.

## AGE-RESTRICTED MULTIFAMILY RESIDENTIAL DEVELOPMENT

A residential development containing age-restricted dwellings and providing facilities and services specifically designed to meet the needs of older persons, consistent with the guidelines and requirements of the United States Department of Housing and Urban Development (HUD). Affordable housing units in age-restricted multifamily residential developments must meet all necessary standards and requirements for low- and moderate-income housing units in accordance with the rules and regulations of the New Jersey Council on Affordable Housing (COAH).

## AGRICULTURAL LAND

Land used for growing crops, raising or breeding dairy, poultry or other livestock, truck gardening, wood lots, nursery or greenhouse or other agricultural or horticultural purposes. Agricultural land shall also include open or wooded areas, ponds, brooks, meadows, swamps and land used for hunting, trapping, wild game preserves and noncommercial recreational purposes.

## ALTERATION

Any change in or rearrangement in the structural parts or existing facilities as applied to an existing building or structure, except such change as may be required by the Borough for safety. Also, an enlargement or addition to any building by extension of any side, or by increasing its height, or by any change in use, conversion, or removal of a building, structure or a part thereof, from one location or position to another. Alteration shall also mean to change the appearance of exterior elements of a structure, or to change the materials used. Ordinary maintenance shall not be considered an alteration within this definition.

## ALTERNATIVE TOWER STRUCTURE

Structures such as clock towers, bell steeples, light poles and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

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**AMEND or AMENDMENT**

Any repeal, modification or addition to a regulation; any new regulation; any change in the number, shape, boundary, or area of a zone; or any repeal or abolition of any map, part thereof or addition thereto.

**ANCILLARY**

Accessory or auxiliary.

**ANTENNA, EXEMPT**

An antenna of any of the following types:

- A. An antenna that is designed to receive television broadcast signals (TVBS) provided that if it is located on a mast, the mast is 12 feet or less in height;
- B. An antenna used for reception of shortwave broadcasts or for use by persons licensed as amateur radio operators by the FCC, provided that if it is located on a mast, the mast is 12 feet or less in height.

**ANTENNA, GENERAL**

A device used to transmit and/or receive radio or electromagnetic waves between earth and/or outer space based structures generally, but not including cellular communication antennas.

**APARTMENT UNIT**

One or more dwelling rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit in a building containing more than one dwelling unit on a single lot, and includes one or more such dwelling rooms above a commercial facility where such use is permissible.

**APARTMENT, GARDEN PROJECT**

A grouping or complex of buildings containing individual apartment units and characterized by their low-height and low-density design wherein a large proportion of the total project land area remains free of structures and pavement for recreational and aesthetic purposes. See also "dwelling, multiple-group."

**APARTMENT HOUSE**

See "dwelling, multifamily."

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## APPLICANT

A developer, owner, or contract purchaser with owner's consent submitting an application for development.

## APPLICATION FOR DEVELOPMENT

The application form and all accompanying documents required by this Code for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance, or for the issuance of a permit for the development of all construction on property located in the Borough.

## APPROVING AUTHORITY

The Planning Board of the municipality, unless a different agency is designated by ordinance when acting pursuant to the authority of this chapter.

## AREA

The measurement of a plan surface expressed in acres or square feet.

## ASSISTED LIVING RESIDENCE

A building or group of buildings designed as residences for the frail elderly that provide rooms, meals and personal care, and which may include assisted living facilities, nursing or convalescent homes and skilled or intermediate care nursing facilities, which are required to be licensed by the State of New Jersey pursuant to N.J.S.A. 26:2H-1 et seq.

## AT-GRADE STRUCTURE

Any structure which has a height above the ground of less than one foot.

## ATTACHED DWELLING UNITS

Dwelling units which occupy their own separate lot of land but which share a common wall with the adjacent abutting dwelling unit.

## ATTIC

The open space between the ceiling beams of the top habitable floor and the roof rafters in any building.

## AUTOMOBILE WRECKING

See "junkyard."

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## AWNING

A roof like cover made of fabric, flexible plastic or thin metal over a frame, which projects from and is supported solely by the wall of a building, the purposes for which may include the shielding of a doorway, window or sidewalk from the elements and the display of signs.

## BALCONY

An exterior structure of wood, masonry, metal, stone, asphalt or other substance, without a roof; the floor level of which is elevated above ground level more than four feet and either supported by, attached to or accessible from the principal building or structure.

## BANNER

Any sign or string of one or more signs, usually made of cloth or other lightweight material, which is used to attract attention, whether or not imprinted with words or characters, including but not limited to balloons and pennants. Flags shall not be considered banners.

## BASEMENT

A portion of the building partly underground, but having less than 1/2 of its clear height below the average grade of the adjoining ground. (See "cellar.")

## BAY WINDOW

An alcove of a room projecting from an outside wall and having its own windows, usually but not always having a shortened floor or ledge.

## BEDROOM

A room within a dwelling unit which is used for sleeping on a regular basis, usually containing a bed or similar service for sleeping and usually equipped with a door for purposes of privacy and a closet for storage.

## BED-AND-BREAKFAST

A single dwelling structure licensed by the State of New Jersey occupied by the resident owner and family or occupied by a resident manager in which bedrooms are rented and a morning meal provided to transient and temporary lodgers on a daily basis for compensation.

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**BIG-BOX RETAIL STORE**

A retail use that stocks an inventory of goods in large quantities for the purpose of selling retail from a building in which the goods are held and which utilizes warehouse stack storage technique on the sales floor area.

**BILLBOARD**

See "sign, outdoor advertising."

**BLINDNESS**

Central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20° shall be considered as having a central visual acuity of 20/200 or less.

**BLOCK**

A group of platted lots facing one side of one street between two cross streets.

**BOARD**

The Planning Board of the Borough, or the Zoning Board of Adjustment where applicable.

**BOARDINGHOUSE or ROOMING HOUSE**

A dwelling which, for compensation, lodging or meals, or both, is furnished to two or more, but not exceeding six, guests.

**BOROUGH COUNCIL**

Members of the Governing Body.

**BUILDING**

A combination of materials to form any structure or construction adapted to permanent, temporary, or continuous occupancy and equipped with a roof, whether or not supported by columns, pillars or walls.

**BUILDING COVERAGE**

That portion of a lot covered by the main or first floor of a building or buildings.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

## BUILDING, ACCESSORY

A building subordinate to, and located on the same lot with, a principal building, the use of which is clearly incidental to that of the principal building or to the use of the land and which is not attached by any part of a common wall or roof to the principal building. The setback provisions of this Part 3 shall not apply to an accessory building measuring less than 90 square feet in gross floor area and less than nine feet in height.

## BUILDING, FLOOR AREA OF

The total number of square feet of floor area in a principal building, excluding attics, cellars and crawl spaces, unenclosed or uncovered steps, terraces, patios, porches and breezeways, attached private garages, and accessory buildings as hereinbefore defined. Any space with a clear ceiling height of less than the minimum prescribed in the Borough Building Code shall not be included as part of the floor area of a building. Only those portions of a basement, as hereinbefore defined, finished off and used for living purposes, shall be considered as part of the floor area for a residential building. The floor area shall be determined by using horizontal measurements between the exterior faces of walls or between the center lines of common party walls.

## BUILDING, GROUND AREA OF

The number of square feet of horizontal surface covered by a building, including covered porches, covered wood decks, attached garages and accessory buildings. All measurements shall be made between exterior faces of walls, foundations, piers or other means of support.

## BUILDING HEIGHT

Vertical distance from the average level of the existing or natural grade along the wall or wall of the building to the highest level of a flat roof surface, the slope of which is not more than one inch vertical to one foot horizontal; for all other roofs the vertical distance measured from the existing or natural grade to the ridge of the roof. Existing or natural grade is to be measured at the foundation wall at the building corners. The building height measured will be the largest so measured.

## BUILDING LINE

The line beyond which the foundation wall and/or any enclosed or covered porch, vestibule, or other enclosed or covered portion of a building, including attached private garages, shall not project, except as hereinafter provided.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

## BUILDING PERMIT

A permit issued by the Construction Code Official prior to the start of construction, erection or alteration of any building or other structure, or part thereof, and prior to the putting into use of any lot or area of land, or part thereof, for any purpose, certifying that such building or other structure, or part thereof, or such use of any lot or area of land, or part thereof, is in accordance with all applicable requirements of the Township Building Code.

## BUILDING, PRINCIPAL

A building or buildings on a lot in which is conducted the principal use of the property.

## BULK AND LOT REGULATIONS

Regulations involving height, yard dimensions, lot area, lot width, lot frontage, lot depth, lot coverage by a building or structure, or other improvements, floor area ratio and other regulations of the dimensions of the buildings, structures, yards or lot.

## BUSINESS OR COMMERCIAL OFFICE

A business or commercial establishment which does not offer a product or merchandise for sale to the public on the premises but which provides a service to patrons as its primary function. Personal service establishments including but not limited to barber shops, or repair services such as radio and television repair shops and similar businesses shall not be included as a business or commercial office.

## BUSINESS SERVICES

Services primarily rendered to other business establishments on a fee or contract basis rather than to the general public. Such services as advertising and mailing, building maintenance, employment services, management and consulting services, protection services, equipment rental and leasing, commercial research development and testing, and photo finishing are examples of business services.

## CALIPER

American Association of Nurserymen standard for trunk measurement of nursery stock. Caliper of the trunk shall be taken six inches above the ground for and up to and including four-inch caliper size, and 12 inches above the ground for larger sizes.

## CAPITAL IMPROVEMENT PROGRAM

A proposed schedule of all future projects listed in order of construction priority together with cost estimates and the anticipated means of financing each project. Included are all

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major projects requiring the expenditure of public funds, over and above the annual local government's operating expenses, for the purchase, construction, or replacement of the physical assets for the community.

## CELLAR

A portion of the building partly underground, having 1/2 or more than 1/2 of its clear height below the average grade of the adjoining ground. (See "basement.")

## CELLULAR TELECOMMUNICATIONS ANTENNA

An antenna that is intended for commercial transmission or reception of personal wireless telephone services, including commercial mobile services communications, common carrier wireless exchange access services, and any other accessory structures and equipment necessary for such transmission or reception. A freestanding cellular telecommunications antenna is such an antenna supported by a tower, mast, pole, or similar structure designed primarily for supporting and raising the vertical elevation of such antenna. Such antenna shall also mean any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

## CERTIFICATE OF OCCUPANCY

A certificate issued by the Construction Official signifying completion of a building, structure or other improvement in accordance with applicable laws and/or ordinances, and permits the occupancy or use of the building, structure or improvement for the stated uses.

## CHANGE IN TENANCY

A discontinuance of an existing conforming use and the substitution of the same or similar conforming use in the same space without alteration.

## CHANGE IN USE

The use of a building or land which is in any manner different from the previous use by way of function, operation, extent, products sold or manufactured and the like, including a change from one permitted use to another kind of permitted use in the same zone, as well as any change in activity which changes, alters or enlarges the previous use or

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which will change, alter, enlarge or affect drainage, traffic, parking, sidewalks, paving, landscaping, fencing, sanitary disposal or other similar considerations under the site plan review requirements.

#### CHILD-CARE CENTER

Any facility which is maintained for the care, development, and supervision of six or more children who attend the facility for less than 12 hours a day and which offers such programs as child-care centers, day-care centers, drop-in centers, day nursery schools, play schools, cooperative child centers, centers for children with special needs, infant-toddler programs, employment-related centers, and/or kindergartens that are not an integral part of a private educational institution or system offering elementary education in grades kindergarten through sixth. A child-care center shall not offer programs operated by a public or private day school of elementary and/or high school grade, special activity programs for children, youth camps, and/or religious classes or centers. Child-care centers shall have a license from the Department of Human Services pursuant to P.L. 1983, c. 492 (N.J.S.A. 30:5B-1 et seq.).

#### CLASSIFICATION

Assignment to a category within a system of categories.

#### CLEARING

Any intentional or negligent act to cut down, remove all or a substantial part of, or damage a tree or other vegetation that will cause the tree or other vegetation to decline and/or die. Such acts shall include but not be limited to damage inflicted upon the root system of the vegetation by the application of toxic substances, by the operation of equipment and vehicles, by storage of materials, by the change of natural grade due to excavation or filling, or by the alteration of natural physical conditions.

#### CLINIC, ANIMAL

A facility for the treatment of animals in which there are no boarding provisions and no outdoor facilities or runs.

#### CLINIC, MEDICAL

A facility for the medical treatment of outpatients only, without boarding or overnight provisions for patients.

#### COAH

The New Jersey Council on Affordable Housing.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

## COMMERCIAL

An activity set characterized by an interchange or sale of goods or services with emphasis on profit.

## COMMON FACILITIES

Includes but is not limited to facilities for the common use of two or more dwelling units, such as roads, sidewalks, swimming pools, playgrounds, trees, greens, fairways and parking areas.

## COMMON OPEN SPACE

An open space area within or related to a site designated as a development, designed and intended for the use or enjoyment of residents and owners of the development. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the use or enjoyment of residents and owners of the development.

## COMMUNITY RESIDENCE FOR PERSONS WITH HEAD INJURIES

A community residential facility licensed pursuant to N.J.S.A. 30:11B-1 et seq. providing food, shelter and personal guidance, under such supervision as required, to not more than 15 persons with head injuries who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to: group homes, halfway houses, intermediate care facilities, supervised apartment living arrangements, and hotels.

## COMMUNITY RESIDENCE FOR THE DEVELOPMENTALLY DISABLED

Any community residential facility licensed pursuant to N.J.S.A. 30:11B-1 et seq. providing food, shelter and personal guidance, under such supervision as required, to not more than 15 developmentally disabled or mentally ill persons who require assistance, temporarily or permanently, in order to live in the community, and shall include but not be limited to group homes, halfway houses, intermediate care facilities, supervised apartment living arrangements, and hotels.

## COMMUNITY RESIDENCE FOR THE TERMINALLY ILL

Any community residential facility operated as a hospice program providing food, shelter, personal guidance and health care services, under such supervision as required, to not more than 15 terminally ill persons.

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## COMMUNITY SHELTER FOR VICTIMS OF DOMESTIC VIOLENCE

Any shelter approved for a purchase of service contract and certified pursuant to standards and procedures established by regulations of the DHS providing food, shelter, medical care, legal assistance, personal guidance, and other services for not more than 15 persons who have been victims of domestic violence and temporarily require shelter and assistance in order to protect their physical and psychological welfare.

## COMPLETE APPLICATION

An application form completed as specified by ordinance and the rules and regulations of the reviewing board, and all accompanying documents required by ordinance for approval of the application for development. An application shall be certified as complete by the administrative officer upon meeting of all requirements specified in the ordinance and in the rules and regulations of the reviewing board, and shall be deemed complete as of the day it is so certified for purpose of the commencement of the time period for action by the planning board or board of adjustment. On the day the application is so certified as complete, the time period for action on the application by the Planning Board begins.

## CONCEPT PLAN

The optional, initial development plan for subdivisions and/or site plans of sufficient accuracy and detail to be used for the purpose of informal review, evaluation and nonbinding comment by the Board and meeting the requirements of this chapter.

## CONDITIONAL USE

A use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in Part 3, Zoning, Article 11, and upon the issuance of an authorization therefor by the Planning Board.

## CONDOMINIUM

One or more buildings or structures, and the land on which it is situated, containing multiple residential dwelling uses or multiple nonresidential uses characterized by a form of ownership of real property under a master deed providing for ownership by one or more owners of units of improvements together with an undivided interest in common elements appurtenant to each unit. See N.J.S.A. 46:8B-1 et seq.

## CONSERVATION EASEMENT

A nonpossessory easement granting a right or interest in real property that is appropriate to retaining land or water areas predominately in their natural, scenic, open, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; or maintaining existing land uses, and requiring that the described land will remain in its existing natural state in perpetuity.

## CONSTRUCTION CODE OFFICIAL

The official who administers the construction codes adopted pursuant to the New Jersey Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq.

## CONSTRUCTION PERMIT

A permit which is granted by the Construction Official for the erection, alteration, extension or demolition of a building or structure.

## CONSTRUCTION SIGN

A temporary on-premise sign identifying the ongoing construction activity during the time that a building permit is active and prior to completion of the work for which the permit was issued, containing sign copy that is limited to the ongoing construction activity and identifying the contractor and/or any subcontractor engaged to perform construction activity on the site.

## CONTIGUOUS

Synonymous with abutting.

## CONTINUING CERTIFICATE OF OCCUPANCY

A certificate issued by the Construction Official signifying completion of a building, structure or other improvement in accordance with applicable laws and/or ordinances, and permits the occupancy or use of the building, structure or improvement for the stated uses.

## COOPERATIVE

A form of ownership of a building or structure containing multiple residential dwelling uses or multiple, nonresidential uses characterized by individual ownership of shares of a corporation in an amount related to the space of an occupied unit, with the corporation owning the building and land as a whole. See N.J.S.A. 46:8D-1 et seq.

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## COURT, INNER

A court enclosed on all sides by exterior faces of a building or group of buildings or by freestanding walls. The least dimension, the distance between opposite sides measured at right angles to the longest side, is controlling in design and layout of the inner court.

## COURT, OUTER

A court open on at least one side for not less than 75% of its width and extending to any yard on the lot or to a street, alley or public way. The depth of an outer court shall be the greatest horizontal dimension measured at right angles from the yard, street, alley or public way upon which such court opens to the face of the building or freestanding wall opposite thereto. The width of an outer court is its least horizontal dimension measured at right angles to the depth of such court.

## COVERAGE BY BUILDINGS AND ABOVE-GRADE STRUCTURES

The combined area of all buildings and above-grade structures on a lot, including but not limited to porches, balconies and cantilevered parts of the building at any level, but excluding, however, cornices, eaves, and other structures which are specifically excluded by this chapter. Said coverage shall be measured at the exterior surface of such buildings and structures and shall be divided by the lot area and expressed as a percentage.

## COVERAGE BY IMPROVEMENTS

The coverage by buildings and above-grade and at-grade structures on a lot as defined above plus the ground coverage of the plan projection of any structures, driveways, sidewalks, parking areas and other paved areas, divided by the lot area and expressed as percentage. This definition includes all man-made features except vegetation, organic mulch, soil and other structures which are specifically designed to be excluded by this chapter.

## CRAWL SPACE

Area of nonhabitable space with a ceiling height of less than three feet.

## CUL-DE-SAC (DEAD END)

Any street or combination of streets having only one outlet or connection to a street having more than one outlet or means of access.

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## C VARIANCE

Any variance which is not a "D" variance, relating to a deviation from the bulk or area requirement circumscribed in a particular zone as more fully set forth in N.J.S.A. 40:55D-70C(2).

## DAYS

Calendar days.

## DBH (diameter at breast height)

Tree trunk diameter measured at a height of 4.5 feet above the ground. If a tree splits into multiple trunks below 4.5 feet, the trunk is measured at its most narrow point beneath the split.

## DCA

The New Jersey Department of Community Affairs.

## DECK

A structure of wood, masonry, metal, stone, asphalt or other substance, without a roof, the floor level of which is elevated above average ground level more than one foot but not more than four feet and which is used for recreational purposes.

## DENSITY

The permitted number of dwelling units per gross acre of land to be developed.

## DESIGN WAIVER

A grant of permission by the Planning Board to deviate from the Design Standards established by law and contained in this code.

## DETACHED DWELLING UNIT

A single dwelling unit which occupies its own separate lot of land, as in a single-family house.

## DETACHED SINGLE-FAMILY RESIDENTIAL BUILDING OR STRUCTURE

A building or structure on a separate lot of land containing one dwelling unit and not attached to any adjoining dwelling unit by a common wall.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

## DEVELOPER

The legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase or other person having an enforceable proprietary interest in such land.

## DEVELOPMENT

The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or any mining, excavation or landfill; and any use or change in the use of any building or other structure or land or extension of use of land for which permission may be required.

## DEVELOPMENT FEES

Money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted under COAH's rules.

## DEVELOPMENT REGULATION

A zoning, subdivision, site plan, Official Map or other regulation of the use and development of land, or amendment thereto, adopted and filed pursuant to P.L. 1975, c. 291, (N.J.S.A. 40:55D-1 et seq.)

## DHS

The New Jersey Department of Human Services.

## DISABLED

A person who has the total and permanent inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, including blindness, and shall include, but not be limited to, any resident who is disabled pursuant to the federal Social Security Act, 42 U.S.C., or the federal Railroad Retirement Act of 1974, 45 U.S.C. § 231 et seq., or is rated as having a 60% disability or higher pursuant to any federal law administered by the United States Veterans Act.

## DISH ANTENNA (SATELLITE EARTH STATION)

A dish-shaped antenna designed to receive television broadcasts relayed by microwave signals from earth-orbiting communications satellites.

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**DISTRICT**

Synonymous with zone district, and being a division of the Borough permitting only certain categories of uses, requiring certain lot sizes or other development conditions, or a combination of both.

**DOH**

New Jersey Department of Health.

**DRAINAGE**

The removal of surface water or groundwater from land by drains, grading or other means necessary for water supply preservation or prevention or alleviation of flooding, including the control of runoff to minimize erosion and sedimentation during and after construction or development.

**DRAINAGE RIGHT-OF-WAY**

The lands required for the installation or maintenance of stormwater sewers, brook enclosure, brook channel improvements or drainage ditches, or required along a natural stream or watercourse for preserving their channel and providing for the flow of water therein to safeguard the public against flood damage in accordance with N.J.S.A. 58:1A-1 et seq.

**DRIPLINE**

A limiting line established by a series of perpendicular drop points marking the maximum radius of the crown of an existing tree but not less than six feet from the trunk, whichever is greater.

**DRIVEWAY**

An improved or delineated area on a lot landing from a street to a garage or entrance to or exit from a building or a parking area intended and designed for use by motor vehicles.

**DUPLEX**

Same as an attached dwelling unit but limited to two units.

**D VARIANCE**

Permission to depart from the literal requirements of the zoning regulations as set forth in N.J.S.A. 40:55D-70.D to permit:

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1. A use or principal structure in a district restricted against such use or principal structure;
2. An expansion of a nonconforming use;
3. Deviation from a specification or standard pertaining solely to a conditional use;
4. An increase in the permitted floor area ratio as defined in this chapter;
5. An increase in the permitted density as defined in this chapter, except as applied to the required lot area for a lot or lots for detached one- or two-dwelling unit buildings, which lot or lots are either an isolated undersized lot or lots resulting from minor subdivision; or
6. A height or principal structure which exceeds by 10 feet or 10% the maximum height permitted in the district for a principal structure.

#### **DWELLING**

A building, or portion thereof, used to provide living facilities for one or more families, but not including boardinghouse or rooming house facilities or motel and hotel facilities.

#### **DWELLING, AGE-RESTRICTED**

A housing unit that is restricted to occupancy by at least one person that is at least 55 years of age or older.

#### **DWELLING, DETACHED**

A building used to provide living facilities to one or more families and which is entirely separated from any building by spaces on all sides.

#### **DWELLING, MULTIFAMILY**

A building containing three or more dwelling units.

#### **DWELLING, MULTIPLE-GROUP**

A group of two or more multifamily dwellings occupying a parcel of land under one ownership, all joined as a unit by common open space and similar architectural styling and subject to the special regulations and provisions.

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**DWELLING, SEMIDETACHED**

A building situated astride two abutting lots and consisting of two dwellings separated by a common party wall along the dividing lot line and separated from any other building by space on all sides.

**DWELLING, TOWNHOUSE**

One of a series of three to 10 attached dwelling units separated from one another by continuous vertical walls without openings from basement (cellar) floor to roof.

**DWELLING, TWO-FAMILY**

A building containing not more than two dwelling units, arranged one above the other or side by side.

**DWELLING UNIT**

One or more rooms comprising living accommodations designed and used for occupancy by one family living together as a single housekeeping unit containing sanitary, sleeping, and kitchen and dining facilities, fixed or portable. All residential properties are limited to one kitchen per dwelling.

**EASEMENT**

The right of one party to enter upon or use the land of another party.

**EDUCATIONAL INSTITUTION, NONPUBLIC**

Any private or parochial institution which offers college, high school, junior high school, elementary, kindergarten or nursery school instruction, provided that the following requirements shall apply:

- A. The Planning Board shall review the plot plan and make recommendations thereon prior to the issuance of any building permit or certificate of occupancy.
- B. Schools or studies offering music, art or dancing instruction, or instruction in a vocational trade, shall not be classified as nonpublic educational institutions.

**ENVIRONMENTAL IMPACT STATEMENT (EIS)**

A written report, including appropriate maps and exhibits, describing a proposed development and assessing the environmental and ecological impacts of the development in order to alert the Borough and the developer to potential risks and dangers.

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## EQUALIZED ASSESSED VALUE

The value of a property determined by the Borough Tax Assessor through a process designed to ensure that all property in the Borough is assessed at the same assessment ratio or ratios required by law. Estimates at the time of issuance of a building permit may be obtained utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the Borough Tax Assessor.

## ESSENTIAL SERVICES

The erection, construction, alteration or maintenance by public utilities or by municipal or other governmental services in any street, alley, right-of-way or easement provided therefor on a subdivision plat of underground or overhead electrical and communications systems; gas, steam, or water transmission, distribution or supply systems; sewerage and other collection and disposal systems; and traffic control and police protection systems, including all equipment, accessories, and appurtenances in connection therewith, provided that "essential services" shall not be construed to include "public utility installations," as defined in this section. In the event of conflict between the two, "public utility installation" shall be deemed to apply. Essential services may not exceed 50 feet in height.

## EXCEPTION

Permission granted by formal action of the Board to depart from the design standards in Part 2, Article 10.

## EXOTIC ANIMAL

Any species of animal not considered a domestic animal or indigenous wildlife.

## FAA

The Federal Aviation Administration.

## FACADE

The exterior vertical surface of a building including ornamentation, windows, doors, or overhangs.

## FAMILY

Any number of persons whether or not related by blood, marriage or adoption, living together in a single dwelling unit as a single housekeeping unit. Employees, roomers or boarders meeting the above definition shall be included as part of the family.

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## FAMILY DAY-CARE HOME

Any private residence approved by the Division of Youth and Family Services or an organization with which the Division contracts for family day care in which child-care services are regularly provided to no less than three and no more than five children for no less than 15 hours per week. A child being cared for under the following circumstances is not included in the total number of children receiving child-care services:

- (1) The child being cared for is legally related to the provider; or
- (2) The child is being cared for as part of a cooperative agreement between parents for the care of their children by one or more of the parents, where no payment for the care is being provided.

## FCC

The Federal Communications Commission.

## FEE SIMPLE

A form of ownership of real estate where the owner or owners are entitled to the entire property with unconditional power of disposition during life and which passes to heirs upon death pursuant to the intestacy laws or if there is a will to the devisee by will.

## FENCE

An artificially construed barrier of wood, wire or metal or any other combination of materials erected for the enclosure or screening of areas of land supported by posts or other similar devices placed in the ground.

## FINAL APPROVAL

The official action of the Board taken on a preliminary approved major subdivision or site plan, or part thereof, after all conditions, engineering plans and other requirements have been completed or fulfilled and the required improvements have been installed or guarantees properly posted for their completion, or approval conditioned upon the posting of such guarantees.

## FINAL PLAT

The final map of all or a portion of the subdivision which is presented to the Borough Planning Board for final approval in accordance with regulations established by this Part 2 and which, if approved, shall be filed with the proper County Recording Officer complying with the Map Filing Law.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to [Chapter 120](#) (ordinance #2018-14, Sept. 12, 2018).

## FINE ARTS SCHOOLS

Establishments primarily engaged in offering instruction in the arts, including dance, art, drama and music, except for academic purposes, including but not limited to art (except commercial or graphic) instruction, ballet schools, ceramics instruction, conservatory of music, dance instruction, dance schools, dance studios, drama schools, handicrafts instruction, music instruction, performing arts schools, photography schools, drama schools, sculpture instructions, theater schools and voice instruction.

## FIRE ESCAPE

An emergency egress from a building used for human occupancy, constructed to meet the requirements of the Uniform Construction Code.

## FLOOD AREA

An area adjacent to a floodway as defined by the Borough Code.

## FLOODWATER DETENTION OR RETENTION BASIN

Any storm drainage control technique which retards or detains stormwater runoff from land or buildings by the use of a containment device such as a chamber or basin.

## FLOODWAY

The space contained within the banks of a stream or river as defined by NJ DEP.

## FLOOR AREA, GROSS (GFA)

The area of a floor computed by measuring the dimensions of the outside walls in a building or dwelling unit, excluding attic, basement, and cellar floors, porches, patios, terraces, breezeways, carports, verandas, garages, atria, galleries, indoor mechanical installations, interior parking and loading spaces, and guard houses, provided that such excluded areas are not utilized for work or storage space in nonresidential buildings.

## FLOOR AREA, HABITABLE

The area of that portion of a building or structure designed, intended, heated, and furnished for year around human occupancy measured on each floor from the inside of the outside walls. "Habitable floor area" shall not include unheated areas, garages or attic spaces which are inaccessible or of inadequate height or unheated. The floor area of stairwells and/or elevator shafts shall be the area of one floor of such stairwell or shaft.

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## FLOOR AREA RATIO (FAR)

The ratio of the gross floor area of a building to the total lot area.

## FRONT

The portion of a lot facing a street. On corner lots and through lots, the front shall be the street facing the front door or the majority of front doors.

## FRONTAGE

The distance measured along the street property line between the point where one side line of a lot meets the front street property line. On through-lots the property shall have frontage on both streets. On corner lots, along the front street line between the two side lines as projected.

## FRONT YARD

See "Yard, Front."

## FUNERAL HOME (MORTUARY)

An establishment whose uses shall be limited to the usual and normal funeral activities, provided that the embalming of persons shall be limited to the embalming of clients of the funeral home and shall not include embalming for other funeral homes.

## GARAGE, PRIVATE

An enclosed accessory building or portion of a principal building used for the housing of private motor vehicles and in which no occupation, business or service for profit may be carried on and which shall be a minimum of 240 square feet of surfaced floor area, but not more than 300 square feet for one-car garages and not to exceed 650 square feet for two-car garages. No more than one two-car garage shall be permitted for any one- or two-family detached dwelling. In the event that the gross floor area of a residential dwelling, exclusive of garage area, exceeds 3,000 square feet, the garage may be expanded to an amount not to exceed 25% of the gross floor area, exclusive of the garage. However, no more than three garage door openings shall be permitted. A garage may be a detached accessory building on the same lot of such dwelling or may be attached to or incorporated into such dwelling.

## GARAGE, SERVICE AND REPAIR

A building, or portion thereof, other than a motor vehicle sales establishment, used for the repair and servicing of motor vehicles and the sale of replacement parts and accessories. Heavy body and collision repair work, painting and refinishing shall be

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excluded. Such garage shall not be used for the storage of dismantled or wrecked motor vehicles or junk.

#### GARAGE, PUBLIC

A public garage is any building, structure, lot or land on or upon which a business service or industry involving the storage, maintenance, or servicing and storage in connection therewith, of motor vehicles or boats is maintained, conducted or rendered provided that it shall not include a building structure, lot or land on which a business is conducted which involves motor vehicle body repair or painting.

#### GASOLINE SERVICE STATION

Any building, structure, lot or land on or upon which a business, service or industry involving the storage, maintenance, or servicing of motor vehicles is maintained, conducted, operated or rendered, and in association therewith, motor fuel is offered for sale to the public, provided that a "gasoline service station" shall not include any building, structure, lot or land upon which a business is conducted involving motor vehicle body repair or painting.

#### GASOLINE FILLING STATION

Any area of land, including buildings and other structures thereon that are used for dispensing of motor vehicle fuels, oils and accessories at retail, where repair service is incidental, where no storage or parking space is offered for rent, and where storage of dismantled or wrecked motor vehicles or motor vehicle sales is prohibited. No gasoline filling station shall be located within 1,500 feet of a public or nonpublic educational institution, nor another gasoline filling station where such station would be located on the same street or on an intersecting street. Such distance shall be measured on a radius of 1,500 feet from any part of the lot or plot on which such station is to be located from the lot line of a public or nonpublic educational institution or another gasoline filling station.

#### GARDEN APARTMENT

A building or group of buildings situated on one lot and containing separate dwelling units for no less than three families and not exceeding two habitable floors.

#### GARDEN CENTER

A commercial establishment selling plants and garden products, seeds, fertilizer, tools and other related items primarily at retail to the public.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

## GAZEBO

A detached residential accessory structure with a roof but no walls.

## GLARE

The sensation produced by luminance within the visual field that is sufficiently greater than the luminance to which the eyes are adapted to cause annoyance, discomfort or loss in visual performance or visibility.

## GOLF COURSE

Land laid out for golf and having a minimum area of 50 or more contiguous acres to support an eighteen-hole, full-size facility, together with the necessary uses, buildings and structures, such as, but not limited to, clubhouse facilities, driving range, dining and refreshment facilities, equipment sale facilities ("pro shop"), swimming pools, tennis courts and other recreational facilities, provided that the operation of all such facilities is incidental to the operation of the golf course.

## GOVERNING BODY

The Mayor and Council of the Borough.

## GRADE

The elevation of the surface of the earth or where applicable the average elevation of land around a building or structure as measured at the foundation. Also, the percent of rise of a sloping surface.

## GRADE, FINISHED

The average ground elevation of the lot at the front building line after all proper lot grading has taken place.

## GRANDFATHERED CONDITION

Describes the status accorded certain properties, structures, uses, and activities that legally exist prior to the date of adoption of the zoning ordinance or provisions of the zoning ordinance.

## GROSS FLOOR AREA

See "Floor Area, Gross."

## HABITABLE FLOOR AREA

See "Floor Area, Habitable."

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## HEALTH CLUB

An establishment that provides facilities for any personal improvements, such as aerobic exercises, running and jogging, exercise equipment, game courts, swimming facilities and saunas, showers, massage rooms and lockers, or similar activities.

## HEIGHT OF TELECOMMUNICATION TOWER OR OTHER STRUCTURE

As referred to in Part 3, Article 9, the distance measured from the lowest finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.

## HISTORIC SITE

Any real property, man-made structure, natural object or configuration or any portion or group of the foregoing of historical, archaeological, cultural, scenic or architectural significance.

## HOTEL

A building containing hotel units, each having its only access from an interior corridor, which building has a public lobby and full-time management serving the guests, and which may concern with what contain ancillary services and facilities, such as restaurants, shops and boutiques, recreation facilities, meeting rooms and conference and convention facilities which shall be accessible from the interior of the building.

## HOME OCCUPATION

An accessory use customarily conducted for profit entirely within a dwelling and carried on by the inhabitants thereof, which use is clearly incidental to the use of the dwelling for residential purposes and does not alter the character thereof, provided that:

- (1) In connection with which there is used no display except one sign, not exceeding a total area of two square feet, affixed to the building, and if illuminated, illuminated only by a shielded indirect light source or equivalent light not offensive to surrounding residences;
- (2) In connection with which there is kept no stock-in-trade or commodity sold upon the premises;
- (3) In connection with which only a member, or members, of the resident family are employed; and
- (4) Not more than 30% of the floor area of the building is used for such accessory use.

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Such activities and uses as boardinghouse or rooming house operations, tourist homes, clinics, barbershops and beauty parlors, animal hospitals, private nursery and kindergarten schools, music studios, art or dancing schools for group instruction, repair of heavy mechanical or electrical equipment, the keeping of and use of mechanical or electrical equipment that would cause electrical or other interference with radio or television reception in nearby residences, and all other activities and uses which would cause offensive and excessive noise, light, vibration or other disturbances, or would result in excessive residential street traffic, shall not be deemed home occupations under the terms of this Code.

#### HOMESTEAD LOT

An existing lot upon which a single-family residence has been or is to be constructed.

#### HOTEL

A commercial establishment offering lodging to transients and often having restaurants, public rooms and shops for the general public. "Hotel" and "motel" are synonymous. A boardinghouse or rooming house denotes occupancy on a more permanent basis

#### HOT TUB

A plumbing fixture which can be located both inside or outside a dwelling capable of accommodating several persons at the same time and having water circulation or aerating equipment and having a water surface area when full not exceeding 100 square feet. The water surface up to a maximum of 100 square feet of any hot tub shall not count towards impervious lot cover

#### HOUSE OF WORSHIP

A building or structure, or group of buildings or structures, which by design and construction are primarily intended for use by groups or persons to conduct organized religious services and whose secondary uses are associated therewith notwithstanding the fact that such buildings or structures are called by other names by the religious denomination utilizing them. This denomination shall include, but not be limited to chapels, churches, congregations, temples, mosques, shrines and similar designations as well as rectories, parish houses, convents and such other buildings or structures intended for secondary uses located on the same lot.

#### HOUSING FOR THE ELDERLY

One or more dwelling units intended and designed to be occupied by: single individuals 55 years of age or older; married couples, at least one of whom is 55 years of age or older; two or more persons not related by blood, marriage or adoption when all such

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persons are 55 years of age or older; one person under age 55 but over age 20 years may reside in a dwelling unit with an elderly person or persons as permitted above, if the presence of said person is essential for the care or economic support of the elderly person or persons. Children 20 years or older may reside with a parent or parents as permitted above. Rental, leasing, resale or occupancy of units must comply with the age restrictions as herein set forth to qualify as housing for elderly.

## HUD

United States Department of Housing and Urban Development.

## IMPERVIOUS COVER

The sum of the areas of all impervious surfaces and structures divided by the area of the lot; impervious surfaces and structures include buildings, sidewalks, driveways, patios, decks, pools and roofed structures.

## IMPROVEMENTS

Anything placed on a lot which does not exist naturally, provided that earth, rocks, grass, shrubs, trees and other vegetative material although placed on the lot by the developer, shall not be construed as an "improvement" defined herein, and further provided that the above shall not be construed to exempt filling, excavation, grading, or landscaping from the requirement to obtain site plan approval if required by this chapter.

## INDUSTRIAL USE

A use characterized by manufacturing of products, the use of processes, the assembly of component parts of premanufactured products other than structures or other fixed improvements, and the blending of materials, usually into a tangible product.

## INTERESTED PARTY

In a criminal or quasi-criminal proceeding, any citizen of the State of New Jersey. In the case of a civil proceeding in any court or in an administrative proceeding before a Borough agency, any person, whether residing within or without of the Borough, whose right to use, acquire, or enjoy property is or may be affected by any action taken under this chapter, or whose rights to use, acquire, or enjoy property under this chapter, or under any other law of this state or of the United States have been denied, violated or infringed upon by an action or a failure to act under the Municipal Land Use Law.

## JOINT PARKING PROGRAM

A program approved by the Board pursuant to an application whereby parking facilities are shared by occupants of two or more premises.

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## JUNKYARD

Any space or area, whether inside or outside a building or structure, used or intended to be used for the storage, selling, buying, trading in, keeping, or abandonment of used or discarded or scrap metal, glass, paper, fabric, cordage or other similar material or for the dismantling, demolition or abandonment of motor vehicles, or other vehicles or machinery, appliances, equipment, fixtures, or parts thereof. It shall not apply to facilities operated by the Borough or an agency thereof as a convenience to its citizens for the purposes of disposal of organic materials or discarded household items or by a nonprofit organization on public property with the permission of the Governing Body and under its control for the purpose of recycling.

## LAND DISTURBANCE

Any activity involving the clearing, grading, transporting, filling or excavation of land which causes land to be exposed to the danger of erosion, except for normal farming practices executed for the purposes of farming.

## LIMITED MANUFACTURING

The fabrication, processing or assembly of goods and materials, or the storage of bulk goods and materials, where such activities, goods or materials create no major hazard from fire or explosion, produce no toxic or corrosive fumes, gas, smoke or odors, produce no obnoxious dust or vapors, produce no offensive noise or vibrations, glare, flashes or objectionable effluent or produce no danger from radiation.

## LOADING SPACE

An off-street space, bay or berth on the same lot with a structure, or contiguous to a group of structures and buildings, for the temporary parking of a commercial vehicle while loading and unloading merchandise or materials.

## LOT

A designated parcel, tract or area of land established by a plat or otherwise as permitted by law, to be used, developed or built upon as a unit. Adjoining parcels in common ownership which do not meet the dimensional and area requirements for building lots as set forth in Part 3, Zoning, shall be considered as a single lot for the purposes of this Part 2.

## LOT, AREA

The total square footage of any lot as measured within the lot lines.

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#### LOT, CORNER

A parcel of land at the junction of and having frontage on two or more intersecting streets or a lot at a section along a street where the street alignment has an angle more acute than 135 degrees. Front yard setback requirements shall be provided for all street frontages of a corner lot.

#### LOT, COVERAGE

See "building coverage" and/or "improvement coverage", as applicable.

#### LOT, DEPTH

The average distance between the front lot line and the rear lot line. Lot depth shall be measured along a line connecting the midpoint of the front lot line and the midpoint of the rear lot line, and along the lines drawn parallel to said line at 10 feet intervals from said line throughout the width of the lot, provided that those said lines located entirely within the lot shall be used for measuring lot depth. The average of the above measurements shall be the lot depth. In the case of corner lots, the greater of such average dimensions shall be the lot depth.

#### LOT, DOUBLE-FRONTAGE

A lot, other than a corner lot, having frontage on two streets.

#### LOT, FLAG

A lot with the following configuration: a narrow portion wide enough to accommodate a driveway or other access corridor and extending from the front lot line back to an enlarged area at the rear of the lot, with the enlarged area being wide and deep enough to accommodate a permitted use or structure.

#### LOT, FRONTAGE

The length of the front lot line. In the case of a subdivision application, when the rear lot line or side lot line of the lot sought to be divided is conterminous with the end of a street (other than a cul-de-sac), such rear or side lot line shall not be deemed lot frontage.

#### LOT, INTERIOR

Any lot which is not a corner lot or through lot.

## LOT LINE

A line of record bounding a lot which divides one lot from another or from a public or private street.

### LOT LINE, FRONT

The lot line separating a lot from a street right-of-way. On corner lots, the front lot line shall be the line to which the front door or majority of front doors face. In addition, for purposes of this definition, when the lot lines at an intersection are rounded, the front lot line shall be measured to the point of intersection of the extension of the front lot line and street side lot line.

### LOT LINE, REAR

The lot line or lines opposite and most distant from the front lot line. In the case of triangular lots, the rear lot line shall be construed to be an imaginary line that intersects the point of intersection of the side lot lines and follows the alignment of the rear lot lines of adjacent properties, the intent being to maintain the existing rear yard pattern of the neighborhood.

### LOT LINE, SIDE

The lot line other than a front or rear lot line. On corner lots, the lot line opposite the side of the principal structure shall be the side lot line.

### LOT, THROUGH

A lot which has frontage upon streets at its front and rear and by other lots at its side.

### LOT WIDTH

The shortest straight line distance between the side lot lines of any lot, measured parallel to the front line and at a distance from the front lot line equal to the minimum required front yard setback. If the front lot line is not a straight line, the lot width shall be measured parallel to the shortest line which is entirely within the lot and tangent to the front lot line, which shall be measured parallel from said at a distance equal to the minimum front yard setback.

### LOW INCOME HOUSING

Housing affordable according to HUD or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income equal to 50% or less of the median gross household

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income for households of the same size within the house region in which the housing is located, and is subject to affordability controls.

#### MAINTENANCE GUARANTEE

Any security which may be accepted by a municipality for the maintenance of any improvements required by the Municipal Land Use Law, including but not limited to surety bonds, letters of credit under the circumstances specified in N.J.S.A. 40:55D-53.5, and cash.

#### MAJOR SITE PLAN

Any site plan not classified as a minor site plan.

#### MAJOR SUBDIVISION

All subdivisions not classified as minor subdivisions.

#### MANUFACTURING

The production or assembly of articles or finished products from previously refined raw material by giving them new forms, qualities, or compositions.

#### MASTER PLAN

A composite of the mapped and written proposals recommending the physical development of the Borough, which has been duly adopted by the Planning Board in accordance with N.J.S.A. 40:55D-28.

#### MEDIAN INCOME

The level of income where 1/2 the persons having income are below that level and 1/2 the person having income are above that level.

#### MINOR SITE PLAN

A development plan of one or more lots which:

A. Is limited to the following where no new variances are required:

- (1) Freestanding sign.
- (2) Alteration of a facade of the building or structure increase or decrease in floor area (either gross or habitable) of less than 500 square feet in floor area or 10%, whichever is greater.

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- (3) Increase or decrease in floor area (either gross or habitable) of less than 500 square feet or 10% whichever is greater.
- (4) Addition of a permitted accessory building, structure or use no larger than 500 square feet in floor area or 10%, whichever is greater.
- (5) Adding no more than five parking spaces or altering a site which requires no more than five parking spaces.
- (6) Modification of utilization not involving any of the above.
- (7) Change from one commercial use to another commercial use, or one office use to another office use, for which there is no other variance required.

B. Does not involve planned development, any new street or extension of any off-tract improvement which is to be prorated pursuant to N.J.S.A. 40:55D-42; and

C. Contains the information reasonably required in order to make an informed determination as to whether the requirements established by this chapter for approval of a minor site plan have been met.

D. Requires no variances, waivers or exceptions

## MINOR SUBDIVISION

Any subdivision:

- A. Resulting in not more than three lots fronting on an existing street.
- B. Not involving any new streets or roads or the extension of Borough facilities.
- C. Not adversely affecting the development or probable development of the remainder of the parcel.
- D. Reviewed by the Borough Engineer and Borough Planner for consistency with this ordinance and classified as a minor subdivision.

## MIXED-USE DEVELOPMENT

The development of a tract of land, building or structure containing more than one principal permitted use and designed as a comprehensive, integrated development.

## MOBILE HOME

- A. A structure of vehicular, portable design, which is:

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- (1) Built on a chassis and designed to be moved from one site to another, and to be used with or without a permanent foundation;
- (2) Designed to be used, when connected to utilities, as a dwelling on a permanent or nonpermanent foundation; and
- (3) Manufactured in accordance with the standards promulgated for a manufactured home by the Secretary of the United States Department of Housing and Urban Development pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974", Pub. L. 93-383 (42 U.S.C. § 5401 et seq.) and the standards promulgated for a manufactured or mobile home by the Commissioner of the New Jersey Department of Community Affairs pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.).

B. Mobile home, for purposes of this chapter, does not include modular homes.

## MOBILE STORAGE STRUCTURES

Any assembly of materials which is so designed, constructed or reconstructed to make it portable and capable of movement from one site to another, designed to be used without a permanent foundation, designed with the purpose of storing tangible property and not for occupancy by persons, and to have one dimension exceeding 10 feet. Mobile storage structures, as defined herein, are prohibited in the Borough, except such a structure shall not be deemed a mobile storage structure for purposes of this Chapter as specifically described hereafter:

- A. The loading, unloading and/or parking of any mobile storage structure commonly known as a truck trailer which is properly registered under the laws of any State as a motor vehicle, provided the parking, loading and/or unloading of said motor vehicle complies with all other provisions of New Jersey law and this Code.
- B. The loading or unloading of mobile storage structures on industrial, commercial or residential sites so long as said activity does not exceed a 48 hour period of time.
- C. The use of mobile storage structures in industrial or commercial zones for the disposal of waste materials by a contractor licensed for such disposal services.
- D. The use of mobile storage structures at construction sites for storage and/or disposal of materials, provided that a permit is obtained from the Borough for use in excess of 48 hours, which use and placement shall be limited to a maximum of

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six months and provided that its placement satisfies all other provisions of this Code.

E. The use of mobile storage structures by the Borough, its agencies or subdivisions.

F. The use of mobile storage structures designed for human occupancy which are regulated under other provisions of this Code and/or New Jersey law.

G. The use of no more than three mobile storage structures in the nonresidential Zones only so long as the Zoning Officer determines that the mobile storage structure(s) satisfies the following criteria:

- (1) Does not exceed 40 feet in length, is not greater than 2,600 cubic feet in size, is not greater than eight feet in height from the bed of the structure, is not greater than 13 feet in height measured from the ground to the top of the structure, and is not greater than eight feet in width. At no time shall the top of any mobile storage structure exceed the height of the building behind which it is located;
- (2) Whether the mobile storage structure(s) are permitted shall be determined by rear yard coverage limitations for accessory structures contained in this Ordinance;
- (3) Mobile storage structures shall not be located in or impede the use of any parking area, loading area, aisle or driveway;
- (4) Mobile storage structures shall not be located in the public right-of-way;
- (5) Mobile storage structures shall only be located on private property and only in the rear yard of the principal structure on that property as defined in this chapter;
- (6) Mobile storage structures shall not be in violation of any bulk variance requirement of this chapter;
- (7) Mobile storage structures shall not be located in any residential zone;
- (8) Mobile storage structures shall be properly buffered so they are screened from view from any adjacent public way or residential use; and
- (9) No materials classified as high hazard by the New Jersey Uniform Construction Code may be stored in any mobile storage structure.

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## MODIFICATION OF UTILIZATION

A change in the degree of utilization of land, buildings or structures which although permitted in the particular zone district, nevertheless constitutes such a significant increase or decrease in:

- A. The number of occupants, patrons, visitors, or other persons using the land, buildings, or structures;
- B. The need for public utility or transportation services;
- C. The extent of traffic generation or parking requirements;
- D. Other similar factors, that in the opinion of the Zoning Official, site plan review and approval of the Board is required; or
- E. By way of example, but not limitation, a use involving any of the following shall be presumed to be a modification of utilization:
  - (1) An enlargement, reduction or relocation of the building, floor area or land area containing the use;
  - (2) A substantial change in the products or materials manufactured, stored, used or sold on the premises;
  - (3) A substantial change in the amount and/or nature of traffic, parking, shipping or deliveries associated with the use on the premises;
  - (4) A change in the number of dwelling units; and
  - (5) A substantial change in the hours, days or season during which the use is conducted.

## MOTOR VEHICLE

Any motor vehicle, omnibus, road tractor, trailer, truck and/or truck tractor and shall have the meaning stated and defined in N.J.S.A. 39:1-1 et seq., but shall not include "mobile storage structures" as defined elsewhere in this chapter.

## MOTOR VEHICLE BODY REPAIR SHOP

Any building structure, lot or land on or upon which a business, service or industry licensed by the State of New Jersey involving the repair and/or painting of motor vehicle bodies, and storage in connection therewith is maintained, conducted, operated or rendered.

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**MOTEL**

A building or group of buildings containing any group of two or more rooms or suites of rooms, usually having a direct entrance from the exterior of the building, for the overnight accommodation of transient guests and having adjacent, readily accessible off-street parking facilities. Said building or buildings may have full-time management and may contain restaurants and recreation facilities primarily intended to serve transient guests of the motel.

**MOTOR INN**

See "hotel."

**MOTOR VEHICLE SALES ESTABLISHMENT**

A lot, or portion thereof, and any structures thereon, including buildings, used for the storage, display and sale of new and/or used motor vehicles and where normal servicing and repair work is incidental to the principal use of such lot, or portion thereof, and structures.

**MOTOR VEHICLE SERVICE SHOPS AND MOTOR VEHICLE REPAIR SHOPS**

Any building structure, lot or land on or upon which a business, service or industry involving the mechanical repair or maintenance of motor vehicles and storage in connection therewith is maintained, conducted, operated or rendered.

**MULTIFAMILY USE**

A use where three or more separate dwelling units are permitted as the primary use on one lot.

**MUNICIPAL RESIDENT**

A person who is domiciled in the Borough.

**MUNICIPAL USE**

Any use by the Borough of any property owned or leased by it.

**NEW OR USED CAR DEALER**

Any person licensed under New Jersey law as a new or used car dealer, or any person who maintains or operates a facility where automobiles, either new or used, are stored, displayed or offered for sale or lease.

**NJDEP**

New Jersey Department of Environmental Protection.

**NJDOT**

New Jersey Department of Transportation.

**NONCONFORMING BUILDING OR STRUCTURE**

A building or structure the size, dimension or location of which was lawful prior to the adoption, revision or amendment of this chapter, or prior to any of its predecessor chapters, but fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

**NONCONFORMING LOT**

A lot of record, the area, dimension or location of which was lawful prior to the adoption, revision or amendment of this chapter, or prior to any of its predecessor chapters, but fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

**NONCONFORMING USE**

A use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

**NONPROFIT CHARTER MEMBERSHIP ORGANIZATION**

Any organization, whether incorporated or otherwise, which is not for profit and which is organized for the benefit of its members or for the public or for charitable purposes, but shall not include hospitals, clinics or outpatient clinics or dispensaries whose principal function is the providing of nursing or convalescent care, the furnishing of narcotic, drug or alcohol abuse treatment, or performance of abortions.

**NONRESIDENTIAL USE**

A use which is designed or intended for any purpose other than as a dwelling unit.

**OCCUPANCY**

The residing of a person or persons in a dwelling unit overnight or the installation, storage or use of equipment, merchandise or machinery in any commercial, public or industrial building. Also, the specific purpose for which land, building or structure is used, designed or maintained.

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## OFFICIAL MAP

A map adopted pursuant to N.J.S.A. 40:55D-32 et seq. as amended.

## OFF-SITE

Located outside the lot lines of the lot in question, but within the property of which the lot is a part, which is the subject of the development application, or within a contiguous portion of a street or right-of-way.

## OFF-TRACT

Not located on the property which is the subject of a development application, nor on a contiguous portion of a street or right-of-way.

## ON-SITE

Located on the lot in question and excluding any abutting street or right-of-way.

## ON-TRACT

Located on the property which is the subject of a development application or on a contiguous portion of a street or right-of-way.

## OPEN SPACE

Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space. "Open space" shall include the term "common open space" as herein defined. For the purpose of determining the limits of open space area, it shall include any area exclusive of buildings, paved surfaces, public rights-of-way and areas serving individual dwelling units or intended for the use of occupants of individual dwelling units, but inclusive of clubhouses, tennis courts, swimming pools and similar recreation facilities, along with accessory parking facilities.

## OPERABLE MOTOR VEHICLE

A motor vehicle which in its then existing condition can be moved under its own power from place to place on a public highway without violating any provision of Title 39 of the New Jersey statutes, by doing so.

## OUTDOOR STORAGE CONTAINERS

Portable or temporary storage units intended to be utilized upon the exterior of residential premises for the purpose of storing all types of items of personal and

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household property either for pure storage or to facilitate the moving of persons from household unit to household unit, with the understanding that such items, after a period of time (as defined in Part 3 Zoning) for loading, will be moved to a commercial storage facility.

#### OWNER

Any person, individual, firm, association, legal entity, syndicate, copartnership or corporation having sufficient proprietary interest in the land sought to be subdivided or developed to commence and maintain proceedings to subdivide or develop such property under this Part 2.

#### PARAPET

A projection of a wall of a building above the roof.

#### PARKING AREA

An open area other than a street or other public road or way used for the parking of motor vehicles, including access drives or aisles for ingress and egress thereto and therefrom.

#### PARKING, LAND-BANKED

Required parking, or portion thereof, the construction of which is permitted to be deferred until needed.

#### PARKING SPACE

A permanently surfaced off-street area of not less than 162 square feet, exclusive of interior driveways or entrance and exit driveways, either within a structure or in the open, for the parking of one automobile.

#### PATIO

A structure of wood, masonry, metal, stone, asphalt, or other substance without a roof, the floor level for which is one foot or less above average surrounding grade, used for recreational purposes and as an accessory use.

#### PERFORMANCE GUARANTEE

Any security which may be accepted in lieu of a requirement that certain improvements be made before the Board approves a final plat or site plan, including performance bonds, escrow agreements and other similar collateral or surety agreements, including cash.

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## PERSON

Any person, individual, business entity, partnership, association, corporation, company or organization of any kind or nature.

## PERSONAL SERVICES

Services involving the care of a person or his or her personal goods or apparel.

## PILOT PLANT

Part of a research facility used to test out concepts and ideas, to determine physical layouts, material flows, type of equipment required and costs and to secure other information prior to full-scale production.

## PLANNED DEVELOPMENT

Includes planned unit residential development, residential cluster, planned commercial development, or planned industrial development.

### 1. PLANNED COMMERCIAL DEVELOPMENT

An area of a minimum contiguous size, as specified by ordinance, to be developed according to plan as a single entity containing one or more structures with appurtenant common areas to accommodate commercial or office uses, or both, and any other uses incidental to the predominant use as may be permitted by this Code.

### 2. PLANNED INDUSTRIAL DEVELOPMENT

An area of a minimum contiguous size, as specified by ordinance, to be developed according to plan as a single entity containing one or more structures with appurtenant common areas to accommodate industrial, manufacturing, warehousing, warehousing, office, retail, and commercial uses and any other uses incidental to the predominant use as may be permitted by this Code.

### 3. PLANNED RESIDENTIAL DEVELOPMENT

An area of a minimum contiguous size, as specified by ordinance, to be developed according to plan as a single entity containing one or more residential clusters, which may include appropriate commercial, public, or quasi-public uses primarily for the benefit of the residential development and any other uses incidental to the predominant use as may be permitted by this Code.

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## PLANNING BOARD

The Planning Board of the Borough of Kenilworth established pursuant to N.J.S.A. 40:55D-23. The Planning Board also serves as the Borough's Zoning Board of Adjustment when 70.d use variance applications are heard.

## PLANT NURSERY

Same as a garden center except with the added feature that plants are grown on site.

## PLAT

The map or maps of a subdivision or site plan.

## PLOT PLAN

A plan submitted for review which shows the location of a building or buildings, driveways, parking areas, provisions for drainage, lighting and landscaping and whatever other information may be required.

## PORCH

A porch is an above-grade open or enclosed structure attached to or accessible from the principal building or structure, having a roof, and having more than 35 square feet in area and is considered as part of the principal building or structure.

## PREEEXISTING TOWERS AND PREEEXISTING ANTENNAS

Any tower or antenna for which a building permit or conditional use permit has been properly issued prior to the effective date of this chapter, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.

## PRELIMINARY APPROVAL

The conferral of certain rights pursuant to N.J.S.A. 40:55D-46; 40:55D-48; and 40:55D-49 prior to final approval after specific elements of a development plan have been agreed upon by the Board and the applicant.

## PRELIMINARY SUBDIVISION PLAT

The map indicating the proposed layout of a major subdivision which is submitted to the Board for consideration and for preliminary approval and meeting the requirements of the appropriate sections of this code.

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## PRELIMINARY SITE PLAN

The preliminary development plan indicating the proposed layout of the site which is submitted to the Board for consideration and preliminary approval meeting the requirements of the appropriate sections of this code.

## PREMISES

The particular lot or lots being considered including everything thereon.

## PRINCIPAL BUILDING OR STRUCTURE

One devoted to the principal use.

## PRINCIPAL USE

The primary or predominant use of any lot.

## PRIVATE OR QUASI-PUBLIC CLUB

An incorporated or unincorporated association or organization for civic, social, cultural, religious, literary, political, and recreational or like activities operated for the benefit of its members and not open to the general public.

## PROFESSIONAL OFFICE

The office or studio of a doctor or physician, but not including medical clinics; dentist, but not including dental clinics; veterinarian, but not including animal hospitals; lawyer; minister; architect; professional engineer; accountant; or teacher and such similar professions which require a comparable degree of formal education and experience. For the purposes of this definition, "teacher" shall be restricted to a person giving individual instruction in a musical instrument, in voice or art, in dancing or in academic or scientific subjects to a single pupil at a time. When conducted in a home in a residential district, a professional office shall be accessory to the principal use, shall be conducted by a member of the family residing on the premises, shall employ or engage not more than one person who is not a member of such resident family, and shall not occupy more than the equivalent of 30% of the ground or first-floor area of the principal building.

## PUBLIC AREA

Such areas include:

- A. Public parks, playgrounds, trails, paths and other recreational areas;
- B. Other public open spaces;

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- C. Scenic and historic sites; and
- D. Sites for schools and other public buildings and structures.

#### PUBLIC PARK

A lot or land owned or operated by the Borough or a department thereof or any other governmental agency, including any which is open to use by the general public, whether free of charge or otherwise, and which is primarily devoted to recreational or open space use.

#### PUBLIC UTILITY FACILITIES, RESIDENTIAL TYPE

Any use meeting the general definition of "Public Utility" as set forth in the definition section of N.J.S.A. 48:2-13 et seq. which is contained in a building no greater than 15 feet in height and if not contained in a building, involving structures no greater than 35 feet in height, and otherwise meeting the requirement for lot size, coverage setbacks, etc. provided for the zone in which it is located except where more stringent requirements are imposed herein which shall control. Notwithstanding the above, the following uses shall not be residential type public utility uses for purposes of administering this chapter:

- A. Bus or autobus, trolley railroad, street, railway, traction railway, charger bus, or special bus terminal, parking facility, storage or maintenance facility, electric substation;
- B. Natural gas transmission pumping facility or pressure reduction facility; and
- C. Any facility relating to the collection, transfer, processing, storage or disposal of solid waste or vehicles engaged in the collection of solid waste except such facilities operated by the Borough as hazardous waste site or any facility relating to the storage, transfer, processing or disposal of hazardous waste.

#### PUBLIC UTILITY FACILITY, INDUSTRIAL TYPE

Any use meeting the general definition of "public utility" as set forth in the definition section of N.J.S.A. 48:2-13 et seq., and which does not meet the definition of "residential type public utility" herein.

#### RESEARCH FACILITIES

An office or facility for carrying on research, engineering and development in the physical or biological sciences with the objective of creating end products, including the administration office associated therewith. Such activities shall be of a type that do not include any activities that create noise, dust, smoke, odor, glare flashes, vibration,

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shock waves, heat, electronic or atomic radiation, objectionable effluent, unusual risks of fire or explosion or activities otherwise prohibited by law or ordinance and shall not cause electrical, visual, or audible interference in any radio or television receivers or transmitters located off premises or cause fluctuations in line voltage off premises.

#### RESTAURANT

An establishment where customers or patrons are served food or drink for consumption within the confines of the building or structure where the business is conducted, including taverns and other places where alcoholic beverages are served on a commercial basis.

#### RESTAURANT, DRIVE-IN

A restaurant or refreshment stand, commonly called a snack bar, dairy bar, hamburger stand, hot dog stand or fast-food establishment, where customers or patrons are served food, soft drinks, ice cream and similar confections for the immediate consumption at counters, stools or bars outside the confines of the building or structure in which the business is conducted, or for consumption in automobiles parked upon the premises, whether brought to such automobile by the customer or patrons or by waiters or waitresses employed by the operator. The above shall not include refreshment stands at parks, clubs, athletic fields or other similar recreation areas, or the temporary operation of refreshment stands at properly licensed circuses, bazaars and other similar functions.

#### RESTORATION GUARANTEE

In the form of cash, a bond or other security satisfactory to the Board which can be used by the Borough to restore applicable property to a safe condition in the event that the developer abandons the project, so as to ensure that the property in its unfinished development state does not adversely affect the public safety or adversely impact the environment.

#### RESUBDIVISION

The further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law, or the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, but does not include conveyances so as to combine existing lots by deed or other instrument which is exempt from subdivision.

**RETAIL SALES**

The sale of goods or merchandise to the general public for personal or household consumption and the rendering of services to the sale of such goods.

**RETAIL SERVICES**

Establishment providing services or entertainment, as opposed to products, to the general public for personal or household use, including eating and drinking places, hotels and motels, personal service, motion pictures, amusement and recreation services, health, and educational, and social services, museums, and galleries.

**RSIS OR SIS**

New Jersey Residential Site Improvements Standards.

**SCHOOL**

Any building or structure used for educational or instructional purposes; such definition shall also include not only the physical building or structure but also the organization conducting such education or instruction therein whether public or private, profit-making or nonprofit.

**SCREENING**

A method of visually shielding or obscuring one abutting or nearby structure or use from another by fencing, walls, berms, or densely planted vegetation.

**SELF-SERVICE STORAGE FACILITY**

A structure containing separate, individual, or private storage spaces of varying sizes leased or rented on individual leases for varying periods of time.

**SENIOR CITIZEN**

A person at least 62 years of age.

**SENIOR CITIZEN HOUSING**

A building or buildings containing one or more dwelling units restricted by deed or other instrument to occupancy of each dwelling unit by a person or persons in any one of the following categories: up to two individuals, both of whom are 62 years of age or older; or a man and a wife, either one of whom is 62 years of age or older.

## SENIOR SUITE

A dwelling area similar to those sometimes called a "mother-daughter" apartment serving as a secondary living space for a relative or relatives. At least one person living in the Senior Suite shall be 55 years of age or older. The living space shall be connected with a door to the remainder of the residence and may have separate kitchen appliances installed pursuant to all applicable codes. The accessory apartment must share a common entrance and may not have a separate exterior entrance. The dwelling area shall be considered as an accessory apartment.

## SERVICE ORGANIZATION

Any nonprofit organization or institution which:

- A. Provides volunteer aid in times of disaster;
- B. Provides any emergency or religious, social, physical or benevolent services; or
- C. Is devoted entirely to the betterment of the community.

## SERVICE STATION OR GARAGE OPERATOR

Any person licensed under New Jersey law to operate a service station or automobile facility or to dispense gasoline, or any person who maintains or operates a facility to repair, maintain, service or store motor vehicles, whether operable or inoperable.

## SETBACK

The shortest straight line distance between a building or structure and the nearest property line.

## SEWERAGE AUTHORITY

The Borough of Kenilworth or the Rahway Valley Sewerage Authority.

## SHED

An accessory structure not attached to the principal building and utilized for storage, designed and intended for storage of items smaller in size than an automobile with a maximum floor area of 200 square feet and a maximum height of 12 feet. Only one shed shall be allowed per lot.

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## SHOPPING CENTER

A group of commercial establishments planned, constructed and managed as a total entity, with customer and employee parking provided on site, provision for goods delivery separated from customer access, aesthetic considerations and protection from the elements, and landscaping and signage in accordance with an approved plan.

## SIGHT TRIANGLE

A triangular-shaped portion of land established at street intersections or street and driveway intersections in which nothing is erected or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection. In the absence of any other applicable standard:

- (1) For street intersections, this triangle is created by establishing points 30 feet from the point of intersection of each of two intersecting right-of-way lines and connecting these two points with a straight line to form a triangle; and
- (2) For driveway intersections, this triangle is created by establishing points 10 feet from the point of intersection of a right-of-way line and the line established by driveway edge and connecting those two points with a straight line to form a triangle.

## SIGN

Any visible device, structure, or object or part thereof or device attached thereto or painted or represented thereon, for attracting attention and giving information, or for visual communication, which displays or includes any letter, word, model, banner, pennant, insignia, mural, picture or art work, device, representation or advertisement. It shall also include those typically affixed to trucks or other commercial vehicles for the purpose of advertising or announcing ownership, or the product or service offered by the owner or operator; and lighting devices designed to attract attention. For the purposes of this chapter, the term "sign" shall not include the flag, pennant, or insignia of any nation, group of nations, state, city or political unit standing or displayed or of any civic, charitable, religious, fraternal or similar organization.

## SIGN, ANIMATED

A sign which includes action, motion, or color changes, or the optical illusion of action, motion, or color changes, including signs set in motion by movement of the atmosphere, or made up of a series of sections that turn.

## SIGN, ANNOUNCEMENT

A sign identifying an occupant of premises and his/her/its activity.

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## SIGN AREA

The total area, as measured in square feet, of a sign surface, including all parts thereof devoted to the background, computed by bounding the exterior of the sign structure or surface with a series of straight or curved lines tangent thereto. The area of a sign painted directly on a wall or awning and signs with letters attached directly to walls or awnings shall be calculated by constructing an imaginary series of straight lines or lines formed, bounded or characterized by curves around the outside of all elements of the sign.

## SIGN, BUSINESS

A sign which calls attention to a process, service, profession, business or other activity conducted upon the premises or to a product made or commodity sold on the premises upon which the sign is located.

## SIGN, DIRECTIONAL

A noncommercial on-site sign providing direction or information to pedestrian or vehicular traffic that is related or reasonably necessary to the movement of pedestrian or vehicular traffic on the premises, and not displaying a commercial message (e.g., "entrance," "exit," "caution," "no parking," "one way only," "no trespassing," and the like).

## SIGN, EXTERIOR

Any sign located outside of a building or any sign located within a building which is both visible from outside the building and located within 12 feet of the window or door through which the sign is visible.

## SIGN, FREESTANDING

A sign supported by structures or supports that are placed on or anchored in the ground or at ground level and which are independent of any building or other structure.

## SIGN, GARAGE OR YARD SALE (GARAGE-YARD SALE SIGN)

Any on-site temporary sign pertaining to the sale of personal property in, at or upon any residentially zoned property located in the Township. Garage or yard sales shall include but not be limited to all such sales, and shall include the advertising of the holding of any such sale, or the offering to make any sale, whether made under any name such as garage sale, lawn sale, yard sale, front yard sale, back yard sale, home sale, attic sale, rummage sale, patio sale, flea market sale, or any similar designation.

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### SIGN, ILLUMINATED

Any sign or portion thereof which is illuminated by artificial light, either from an interior or exterior source, including outline, reflective or phosphorescent light, whether or not the source of light is directly affixed as part of the sign.

### SIGN, INFORMATIONAL

A sign indicating the location of, or designating, an institution or facility of a public or quasi-public nature or indicating the opening of an event of public interest, but not including signs pertaining to real estate.

### SIGN, INTERMITTENT

A sign which permits light to be turned on or off intermittently more frequently than once every 12 hours or which is operated in a way whereby light is turned on or off intermittently more frequently than once every 12 hours, including any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use, including an LED (light emitting diode) or digital sign, and which varies in intensity or color more frequently than once every 12 hours.

### SIGN, OFFICIAL

Any sign, symbol or device erected and maintained by a federal, state, county, or local government agency for the purpose of informing, guiding, or protecting the public.

### SIGN, OUTDOOR ADVERTISING

A sign which calls to attention a service, business enterprise or similar activity conducted elsewhere than on the same premises upon which the sign is located or to a product or commodity made, sold or offered elsewhere than on the same premises upon which the sign is located, but does not include informational signs as hereinbefore defined nor necessary directional signs in connection with advertising real estate.

### SIGN, POLITICAL

Any sign erected for the purpose of promoting the candidacy of a person seeking public office, or promoting a position regarding a matter of political interest, including pending legislation.

### SIGN, PORTABLE

Any sign, banner, or poster that is not permanently attached to the ground or structure. For purposes of this chapter, an inflatable sign shall be considered a portable sign.

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**SIGN, REAL ESTATE**

A sign advertising the sale, lease, rental or development of any particular premises wherein such sign is located on the premises or directing attention to the opening and location of a new subdivision or land development project where such sign is not necessarily located on the premises to which it draws attention.

**SIGN, TEMPORARY**

A sign, which may be displayed for a limited period of time, as hereinafter provided.

**SIGN, WALL**

A sign which is affixed to or painted on an exterior wall of a building or structure.

**SINGLE-FAMILY RESIDENCE**

A building consisting of only one dwelling unit within said building.

**SINGLE OWNERSHIP**

Ownership of a single lot by one person or by two or more persons owning such lot in any form of ownership. See also "common ownership."

**SIS**

See "RSIS."

**SITE**

The lot in question.

**SITE PLAN**

A development plan of one or more lots on which is shown:

- A. The existing and proposed conditions of the lot, including, but not necessarily limited to, topography, vegetation, drainage, floodplains, marshes and waterways.
- B. The locations of all existing and proposed buildings, means of ingress and egress, drives, parking spaces, walkways, landscaping, signs, lighting and screening devices and drainage facilities and utilities.
- C. Any other information that may be reasonably required in order to make an informed determination pursuant to the provisions of this Part 2 requiring review and approval of site plans.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

## SKETCH PLAT

A concept, informal map of a proposed subdivision or site plan of sufficient accuracy to be used for the purpose of discussion and classification.

## SOIL CONSERVATION DISTRICT

A governmental subdivision of the State of New Jersey, organized in accordance with the provisions of N.J.S.A. 4:24-18 et seq., for the purpose of governing the use of lands within the District in the interest of conserving soil and soil resources and preventing and controlling soil erosion. The Borough is located within the Somerset-Union Soil Conservation District.

## STORY

That portion of a building or structure, included between the surface of any one floor, exclusive of any basement, and the surface of the floor next above it, or if there is no floor above it, then that portion of the building or structure included between the surface of any floor and the ceiling next above it. In a "split level" building or structure, a story shall be considered a second story only if its floor level is six feet or more above the floor of the level next below it. A basement only shall be considered as a story when the finished surface of the floor above the basement is more than six feet above grade plane, more than six feet above the finished ground level for more than 50% of the total building perimeter, or more than 12 feet above the finished ground level at any point.

## STORY, ATTIC

An attic having, within its space, possible floor area with headroom of five feet or greater over 60% or more of the story directly beneath or when the line of intersection of the roof decking and wall face are more than three feet above the top floor level. An attic story should count as a full story.

## STORY, HALF

A partial 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 partial story; provided, however, that no such partial story may be used as a separate dwelling unit.

## STREET

Any street, avenue, boulevard, road, lane, parkway, viaduct, alley or other way which is an existing state, county or Borough roadway, or a street or way shown upon a plat heretofore approved pursuant to law or approved by official action as provided by this code, or a street or way on a map or plat duly filed and recorded in the office of the

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County Recording Officer prior to the appointment of a Planning Board, and the grant to such Board of the power to review plats. "Street" also includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, sidewalks, parking areas and other areas within the street lines. For the purpose of Part 2 of the code, the Planning Board, with the advice of the Borough Engineer, shall classify the streets as follows:

- A. ALLEYS — Minor ways which are used primarily for vehicular service access to the back or the side of properties otherwise abutting on a street.
- B. ARTERIAL STREETS — Those which are used primarily for fast or heavy traffic of considerable continuity and used primarily as a traffic artery for intercommunication among large areas.
- C. COLLECTOR STREETS — Those which carry traffic from minor streets to the major system of arterial streets and highways, including the principal entrance streets of a residential development and streets for circulation within such a development.
- D. DEAD-END STREETS — Those used primarily for access to abutting properties, having a length not to exceed 1,000 feet, with only one outlet and a turnaround at the closed end.
- E. MINOR STREETS — Those streets which are used primarily for access to the abutting properties.
- F. MARGINAL ACCESS STREETS — Those streets which are parallel to and adjacent to arterial streets and highways and which provide access to abutting properties and protection from through traffic.

#### STREET LINE

The outermost line of the whole area devoted to street purposes on either side thereof and synonymous with street right-of-way line. Front lot lines and side street lines, as hereinbefore defined, are street lines.

#### STRUCTURE

A combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above or below the surface of a parcel of land. For the purposes of interpreting this Part 3, "structure" shall not include sidewalks, driveways, street pavements, curbs and essential services, as hereinbefore defined. "Structure" includes the word "building."

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## STRUCTURE, ACCESSORY

Any structure subordinate to and located upon the same lot with the principal building, the use of which is clearly incidental to that of the principal structure or to the use of land, and which may not be attached to the principal building.

## SUBDIVISION

The division of a lot, tract or parcel of land into two or more lots, sites or other divisions of land for the purpose, whether immediate or future, of sale or development, except that the following divisions shall not be considered subdivisions, provided that no new streets or roads are involved:

- A. Divisions of land for agricultural purposes where the resulting parcels are five acres or larger in size.
- B. Division of property by testamentary or intestate provisions.
- C. Divisions of property upon court order, including but not limited to judgments of foreclosure;
- D. Consolidation of existing lots by deed or other recorded instrument;

## SUBDIVISION AND SITE PLAN COMMITTEE

A committee of at least three Planning Board members appointed by the Chairman of the Board for the purpose of reviewing subdivisions and site plans and performing such other duties relating to land subdivision and site plans as may be conferred on this Committee by the Board.

This Committee shall be appointed by the Chairman as needed to review major or complex projects.

## SWIMMING POOL

A structure located either above ground or below ground, and inside or outside of a building having a water depth at any point greater than three feet and a water surface area when full greater than 100 square feet, and designed and intended for recreational use for swimming and/or diving. A minimum of 500 square feet and a maximum of 750 square feet of any pool or 10% of total lot area, whichever is less, shall not count towards impervious lot cover.

## TOWER

Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes,

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including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures and the like and includes the structure and any support thereto.

#### TOWNHOUSE

More than two dwelling units each on separate lots arranged with a common side line and side wall of the dwelling units within the building.

#### TRACT

Lot or lots which are the subject of a development application including contiguous portions of the street right-of-way.

#### TRAILER COACH PARK; MOBILE OR MANUFACTURED HOME PARK

Any lot, parcel or tract of land used to accommodate two or more individual trailers for living purposes, including all accessory buildings, tents and other appurtenances, and regardless of whether or not a charge is made for such accommodations.

#### TRAILER (including AUTOMOTIVE TRAILER and MOBILE HOME)

Any vehicle or structure which at any time was mounted on wheels, propelled or drawn by its own or other motive power, and designed and constructed to provide living and/or sleeping quarters for one or more persons or for the conduct of a business, profession, trade or occupation or for use as a selling or advertising device.

#### TREE

Any deciduous or coniferous species which reaches a typical mature height of 10 feet or more and a typical DPM of six inches or greater. Any species not qualifying as a tree under this definition shall be considered a stem and shall not fall within the purview of this chapter.

#### TRUCK TRAILERS

A vehicle properly registered and licensed by any state as a motor vehicle, provided that the parking, loading or unloading of said vehicle complies with all provisions of New Jersey law and this Code; and is not considered a mobile storage structure.

#### TWO-FAMILY RESIDENTIAL USE

A use characterized by and limited to two dwelling units in a building on a single lot.

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**USE, ACCESSORY**

A use of a lot or building, or portion thereof, which is customarily incidental or subordinate to the principal use of the lot or building.

**USED**

Includes "arranged, designed, constructed, rented, leased, or intended to be used."

**USE, PRINCIPAL**

The main or primary purpose for which a building or lot is used or occupied. Except as specifically permitted, no lot shall contain more than one principal use.

**USDOT**

United States Department of Transportation.

**VARIANCE**

Permission to depart from the literal requirements of Part 3, Zoning, pursuant to the provisions of the Municipal Land Use Law and permission granted by formal action of the Board after a hearing to depart from said standards. There are two types of variances, "C" variances and "D" variances, as defined herein.

**VENDING MACHINE**

Any apparatus designed to directly sell goods and which receives coins, tokens, electromagnetic purchasing cards or other commodity in return for such goods, or accepts credit for such goods.

**WADING POOL**

An aboveground or in-ground structure containing less than three feet of water and intended to be used for recreational purposes.

**WAIVER, COMPLETENESS AND PROCEDURAL**

Permission granted by formal action of the Board or their designee to which such power has been delegated to depart from the requirements of this chapter with respect to the submission of required documents for completeness purposes and relief from other procedural requirements. Design waivers are defined elsewhere herein.

### WALL, FREESTANDING

An exterior, solid, upright structure which is self-supported on the ground directly below it on a foundation whose length is much greater than its thickness and intended to enclose, protect, divide, or screen a space.

### WALL, RETAINING

An exterior, solid, upright self-supporting structure having a higher ground on one side than the other and designed and intended to create a vertical or near vertical change in grade.

### WAREHOUSE

A building for the storage and redistribution of commercial or industrial products and materials, but shall not include truck terminals where products or materials are directly transferred between trucks. If direct sales to the public are made from such storage building, it shall be classified as a warehouse outlet.

### WAREHOUSE OUTLET

A combination of a storage facility for commercial or industrial products and materials and sales to the public. This shall be considered a retail use, except that retail parking requirements shall be applied to the part of the building used by salespersons and for the handling of goods for the customers, and warehouse parking requirements shall be applied to the rest of the space in the building, if any, devoted to storage of goods not for direct public sale.

### WETLANDS, FRESHWATER

An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to, and under normal circumstances does support a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the NJDEP Freshwater Wetland Protection Act regulations, N.J.A.C. 7:7A.

### WHOLESALE SALES

Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users; to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

**YARD**

A space located between a lot line and the nearest principal building or structure on said lot. For purposes of compliance with this chapter, dimensions of yards shall be measured perpendicular to the lot line.

**YARD, FRONT**

A front yard is an open, unoccupied space facing a street to which the front door, or the majority of front doors if more than one building, faces and is between the front line of the house as it is extended to the sidelines and the street line. In addition, when the lot lines at an intersection are rounded, the front lot line shall be measured to the point of intersection of the extension of the front lot line and street side lot line.

**YARD, REAR**

A space extending across the full width of any lot between the rear of any principal building or structure on said lot and the rear lot line.

**YARD, SIDE**

A space located between the front yard and the rear yard on a lot, and between the side lot line(s) and the nearest principal building on said lot. On a corner lot, there shall be one side yard and one street side yard.

**YARD, STREET SIDE**

A space on a corner lot between the front yard and rear yard on the lot, and between the property line and the nearest principal building on said lot.

**ZONE OR ZONE DISTRICT**

A geographical unit of the Borough specifically set aside for a particular use or group of uses or requiring specific lot dimensions or land area.

**ZONING APPROVAL**

Approval by the Zoning Official pursuant to an application for development or use or utilization of property on the physical dimension of the development.

**ZONING MAP**

The Zoning District Map of the Township, as set forth in this Ordinance, together with all amendments thereto subsequently adopted.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

## ZONING PERMIT

A document signed by the Zoning Officer which is required by ordinance as a condition precedent to the commencement of a use or the erection, construction, reconstruction, alteration or conversion of a structure or building and which acknowledges that such use, structure or building complies with the provisions of this Part 3 or variance therefrom, duly authorized by a municipal agency pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-60 or 40:55D-70.

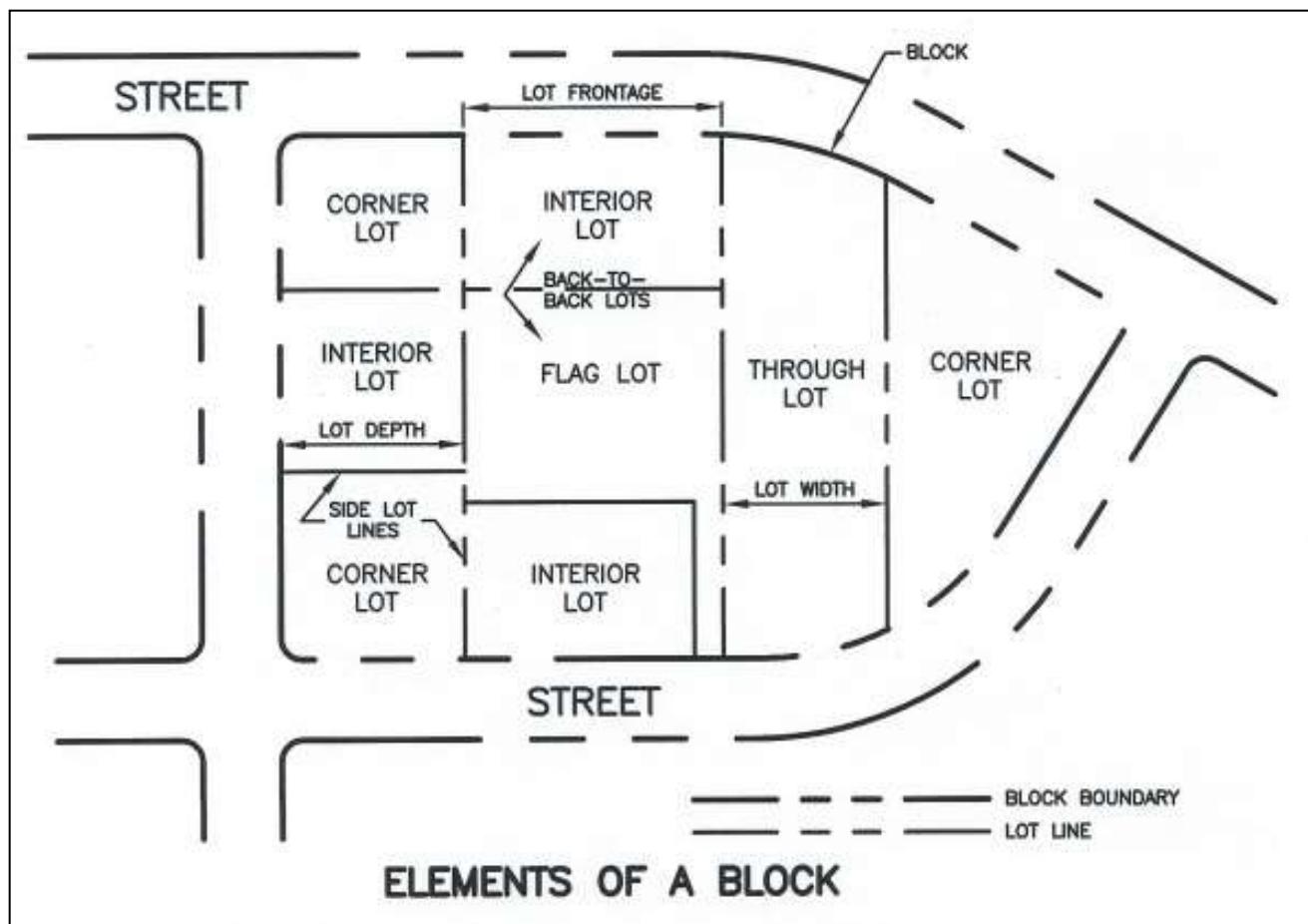
## ZONING OFFICIAL

An officer and employee of the Borough, appointed by the Mayor with the consent of Council to administer this chapter.

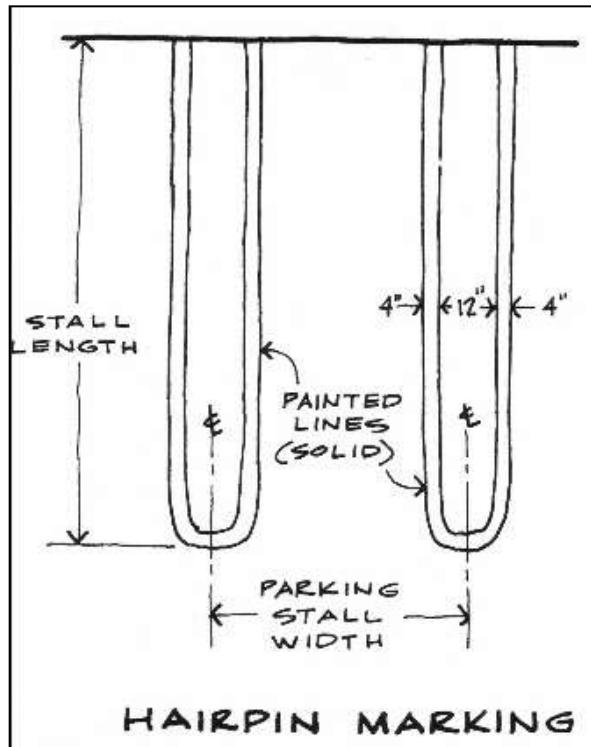
## ZONING REGULATIONS

The regulations contained in Part 3 of this code.

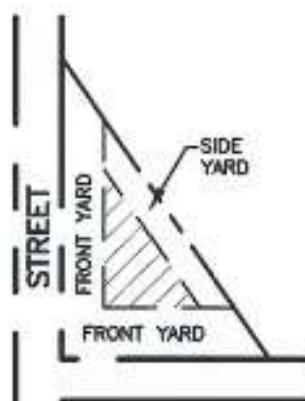
To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

§ 225-105 Illustrations.

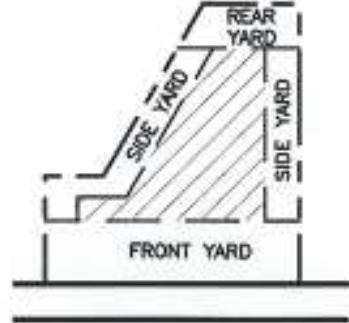
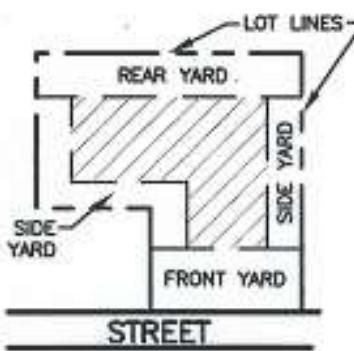
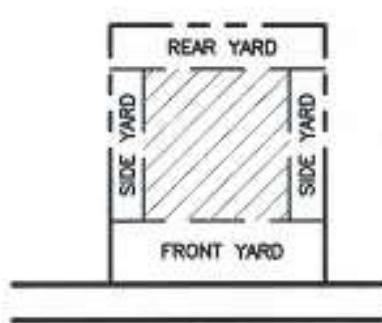
To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).



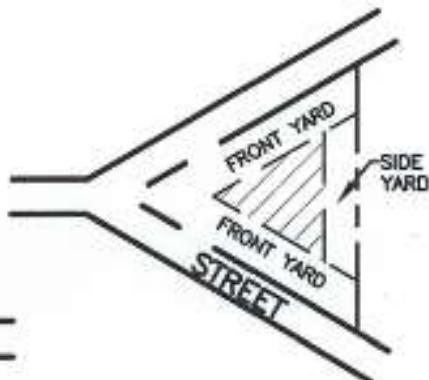
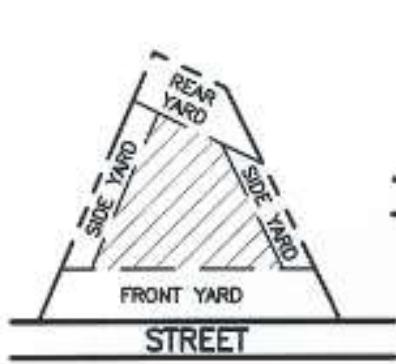
To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).



CORNER LOT EXAMPLES



INTERIOR LOT EXAMPLES

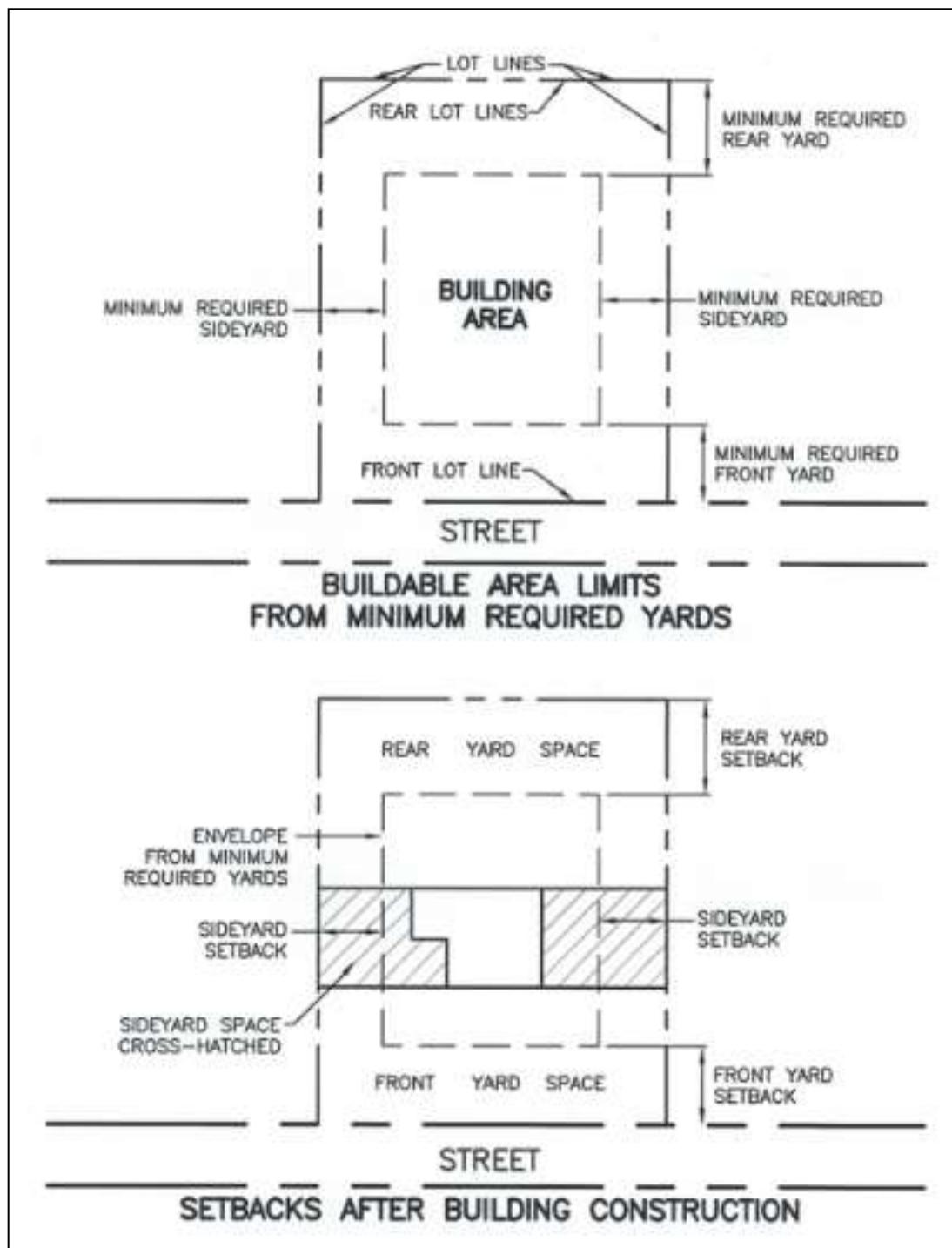


ODD-SHAPED LOT EXAMPLES

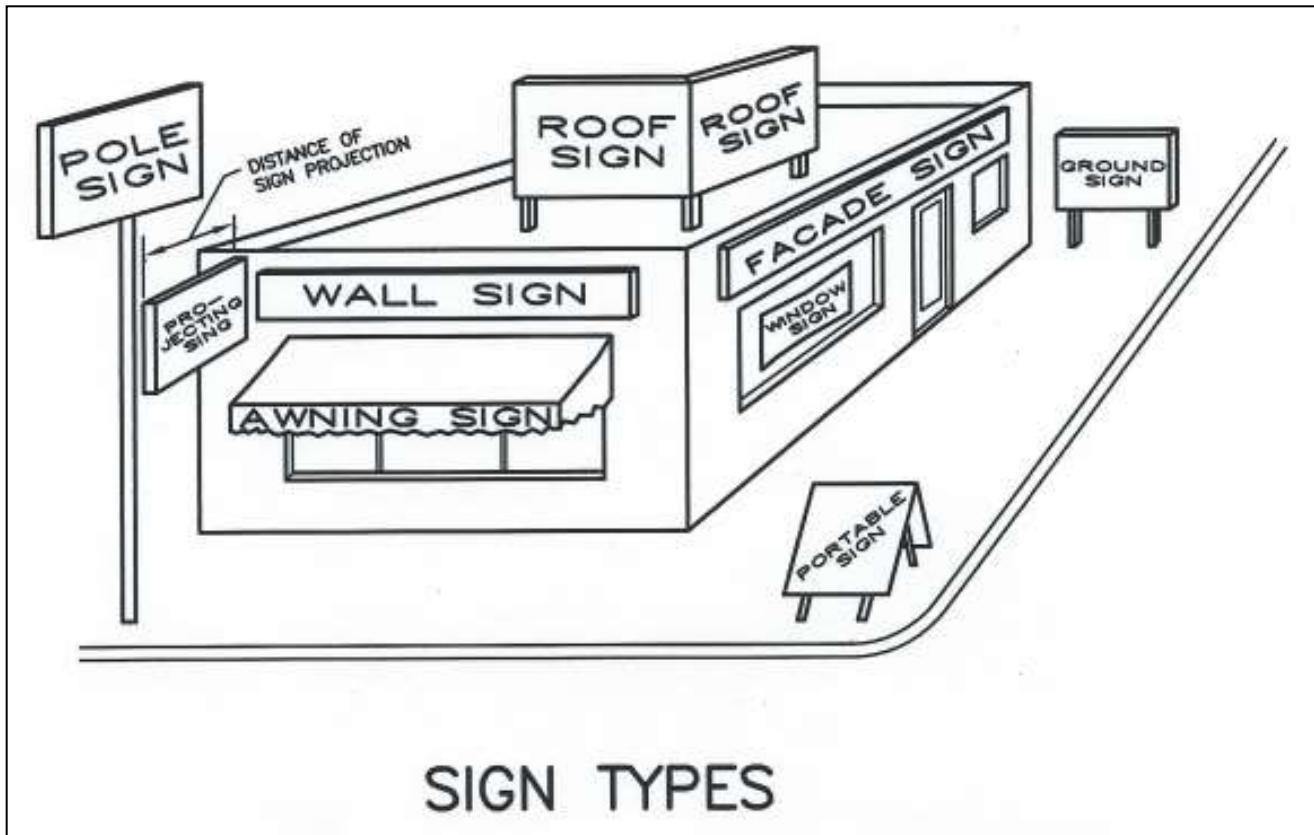
## REQUIRED YARDS

BUILDING (ZONING) ENVELOPE  
(TWO DIMENSIONAL)

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).



To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).



## ARTICLE 2 - Organization and Establishment of Planning Board

### § 225-106 Membership; appointment.

There is hereby established in the Borough a Planning Board of nine members with four alternates pursuant to the Municipal Land Use Law, as follows:

- A. Class I: The Mayor of the Borough, or the Mayor's designee in the absence of the Mayor.
- B. Class II: One of the officials of the Borough, other than a member of the Borough Council, to be appointed by the Mayor. If the Zoning Officer is appointed the Class II member, the Zoning Officer shall not participate in the consideration of appeals of the Zoning Officer for development which involve relief pursuant to N.J.S.A. 40:55D-70d.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

C. Class III: A member of the Borough Council to be appointed by the Borough Council.

D. Class IV: Six citizens of the Borough to be appointed by the Mayor.

(1) The members of Class IV shall hold no other Borough office, position or employment except that one such member may be a member of the Board of Education.

(2) For the purpose of this qualification, membership on a Borough board or commission whose function is advisory in nature, and the establishment of which is discretionary and not required by statute, shall not be considered as holding of Borough office.

(3) All members of the Board, except for the Class II member, shall be municipal residents.

E. There shall be four alternate members of the Board appointed by the Mayor who shall be municipal residents. Alternate members shall meet the qualifications of Class IV members of the Board. Alternate members shall be designated at the time of appointment by the Mayor as "Alternate No. 1," "Alternate No. 2," "Alternate No. 3," and "Alternate No. 4."

F. Neither the Class I member or his/her designated alternate, or Class III member, shall participate in the consideration of applications for development which involve relief pursuant to N.J.S.A. 40:55D-70d. As it relates to such applications, only Class II and Class IV members of the Board or alternates shall participate in such deliberations.

#### § 225-107 Length of terms of office.

The terms of office for Board members shall be as follows:

A. The term of the Class I member shall correspond to his/her official tenure in office.

B. The term of the Class II and Class III members shall be for one year or terminate at the completion of their respective terms of office, whichever occurs first.

C. The term of a Class IV member who is also a member of Board of Education shall terminate when he/she is no longer a member of such other body or at the completion of his/her Class IV term, whichever occurs first.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

- D. The term of all Class IV members shall be for four years, except as provided otherwise herein.
- E. The term of alternate members shall be for two years. The term of not more than two alternate members shall expire in any one year.
- F. All terms shall run from January 1 of the year in which the appointment is made, except as otherwise provided under Subsection H.
- G. Nothing contained herein shall affect the terms of any present members of the Board, all of whom shall continue as members until the completion of the terms for which they were appointed.
- H. Vacancies. A vacancy in any Board position, including alternate members, occurring otherwise than by expiration of the member's term shall be filled for the unexpired term only. Appointment of members to fill vacant positions shall be as provided in this Part 1.
- I. Removal of members. Any member or alternate member, other than the Class I member of the Board, after a public hearing if requested by the member, may be removed by the Governing Body for cause.

#### § 225-108 Board committees.

The Board Chair may appoint from among the members of the Board any such committees as the Chair may deem advisable in carrying out the functions of the Board.

#### § 225-109 Citizens advisory committee.

The Mayor may appoint one or more persons as a citizens' advisory committee to assist or collaborate with the Board in its duties. Such person(s) shall have no power to vote or take other action required of the Board. Such person(s) shall serve at the pleasure of the Mayor.

#### § 225-110 Powers and duties of the Board.

The Board shall follow the provisions of the Municipal Land Use Law and this chapter, and accordingly shall have authority to:

- A. Prepare, adopt, and amend a Master Plan or component part thereof;
- B. Exercise control over and review and approve or disapprove in whole or in part of subdivisions, site plans and conditional uses, including all variances and building permits;

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

- C. Exercise control over and review and approve or disapprove of all variances whether or not the development which is the subject of such variance(s) requires subdivision, site plan or conditional use approval;
- D. Exercise informal review of conceptual development plan;
- E. Recommend to the Governing Body the adoption or amendment of development regulations and an official map;
- F. Direct the issuance of building permits for buildings or structures in certain areas shown on an official map;
- G. Direct the issuance of building permits for buildings or structures on a lot not related to a street;
- H. Recommend to the Governing Body concerning the relationship of capital projects to the Master Plan.
- I. Prepare a capital improvements program, if authorized by the Governing Body.
- J. Participate in the preparation and review of programs or plans required by state or federal law or regulation;
- K. Assemble data on a continuing basis as part of a continuous planning process;
- L. Make recommendations to the Governing Body and/or any housing, parking, highway, special district or other authority, redevelopment agency, school board or other similar public agency, state, county or Borough, concerning the relationship of capital projects to the Master Plan pursuant to N.J.S.A. 40:55D-31;

§ 225-111 Transference of the Powers of the Zoning Board of Adjustment to the Planning Board.

The Planning Board of the Borough of Kenilworth shall exercise, to the same extent and subject to the same restrictions, all the powers of the former Zoning Board of Adjustment.

§ 225-112 Powers Formerly Of The Zoning Board Of Adjustment Now Transferred To The Planning Board.

The Planning Board shall have the power to:

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

A. Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, or refusal made by the Administrative Officer based on or made in enforcement of this Ordinance.

B. Hear and decide requests for interpretation of the Zoning Map or Land Development Ordinance or for decisions upon other special questions upon which the Land Use Board is authorized to pass on any Zoning Ordinance.

C. Grant a variance from the strict application of a regulation, upon an application or an appeal, so as to relieve difficulties or hardships:

(1) Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property; or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property; or by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property; or

(2) Where in an application or appeal relating to a specific piece of property the purposes of this Ordinance set forth in this Part 1 would be advanced by deviation from these Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow the departure from zoning regulations; provided, however, that no variance from those departures enumerated in Section 403D shall be granted under this section; and provided, further, that the proposed development does not require approval by the Planning Board of a subdivision, site plan, or conditional use in conjunction with which the Planning Board has power to review a request for a variance pursuant to Section

D. Grant a variance to allow a deviation from the requirements of this ordinance, in particular cases and for special reasons to permit:

- (1) A use or principal structure in a district restricted against such use or principal structure;
- (2) An expansion of a nonconforming use;
- (3) Deviation from a specification or standard pertaining solely to a conditional use;
- (4) An increase in the permitted floor area ratio;

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

(5) An increase in the permitted density except as applied to the required lot area for a lot or lots for detached one or two dwelling unit buildings which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision; or

(6) A height of a principal structure which exceeds by 10 feet or 10% the maximum height permitted in the district for a principal structure.

A variance under this subsection D shall be granted only by the affirmative vote of at least five members.

E. Report on Variances. Prepare annually a report for the Mayor and Borough Council, based upon its review of its decisions on applications and appeals for variances during the previous year. The report shall be adopted by resolution of the Board not later than March 1 of each year, and shall comment on the zoning regulations which were the subject of variance requests, and shall make recommendations for any amendments to the zoning regulations that the Board may deem appropriate based upon prior variance applications.

## ARTICLE 3 - Board Procedures

### §225 -113 Selection of officers.

The Planning Board shall elect a chairman and vice chairman from the members of Class IV, select a secretary who may or may not be a member or alternate member of the planning board or a municipal employee, and create and fill such other offices as established by ordinance. An alternate member shall not serve as chairman or vice-chairman of the planning board.

### § 225-114 Attorney, other experts and staff.

A. There is hereby created the position of Attorney for the Board. The Board may employ, or contract for, and fix the compensation of legal counsel to fill such position, provided such compensation shall not exceed the amount appropriated by the Mayor and Borough Council for use by the Board for such purpose. Such attorney shall not be the Borough Attorney.

B. The Board may also employ, or contract for, and fix the compensation of a licensed professional engineer, planning consultant or such other additional experts, staff and services as it may deem necessary, not exceeding the amount appropriated by the Mayor and the Borough Council for the Board's use.

### § 225-115 Funding of expenses.

The Mayor and Borough Council shall make provisions in their budget and appropriate funds for the expenses of the Board deemed appropriate.

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## § 225-116 Rules and regulations.

The Board shall adopt, and may amend, reasonable rules and regulations, not inconsistent with this chapter, the Municipal Land Use Law or with any applicable law, for the administration of its functions, powers and duties. A copy of the rules shall be maintained in the office of the Secretary of the Board, and shall be furnished to any person upon request. A reasonable fee may be charged for providing a copy of the rules.

## § 225-117 Optional Preapplication Meeting

### A. Preapplication Meeting conference.

(1) The applicant may request from the Administrative Officer and, if requested, shall be entitled to the holding of a preapplication conference. The purpose of this conference is to:

- (a) Acquaint the applicant with the substantive and procedural requirements of this chapter;
- (b) Provide for an exchange of information regarding the proposed development plan and applicable elements of the Master Plan, this chapter and other development requirements;
- (c) Advise the applicant of any public sources of information that may aid the applicant's prosecution of the application for development;
- (d) Otherwise identify policies and regulations that create opportunities for, or pose significant constraints on, the proposed development;
- (e) Review any proposed concept plans and consider opportunities to increase development benefits and mitigate undesirable project consequences;
- (f) Permit input into the general design of the project; and
- (g) Identify, to the extent practicable at this stage of the process, any variances, or design or submission waivers necessary for the applicant to develop the proposed development.

(2) The municipal representatives at the preapplication conference shall be designated, except as otherwise indicated, by the Director of the Department of Community Development Administrative Officer and shall include the administrative officer and may include a representative of the Mayor as designated by the Mayor, and may include:

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

- (a) The Municipal Engineer;
- (b) The Municipal Planner;
- (c) The Municipal Construction Official;
- (d) The Municipal Zoning Officer;
- (e) Designated Representative(s) from the Planning Board
- (f) Representatives from any other designated Commissions or Boards.

(3) A request for a preapplication conference shall be made in writing and shall include a project description, a tax lot and block designation of the site in question, a concept plan and such additional information as may be reasonably requested by the Administrative Officer. The Administrative Officer shall schedule a preapplication conference within 30 days of receipt of such request.

(4) The applicant shall not be required to pay a fee for the preapplication conference; provided, however, that the applicant shall post an escrow fee pursuant to this chapter to cover the costs of attendance at the preapplication conference of professional consultants not employed by the Township. If requested and paid for by the applicant, a brief written summary of the preapplication conference shall be prepared by the Administrative Officer and provided to the applicant within 15 working days after the final meeting. The fee for such summary shall be that set forth in Article 6 of this chapter.

(5) Neither the approving board, the applicant, nor any other participant in the preapplication meeting shall be bound by the determination of the preapplication process.

#### § 225-118 Concept Plan Review

(1) In addition, or as an alternative, to the preapplication meeting, at the request of the applicant, the Planning Board, or a subcommittee thereof, shall meet with the applicant for an informal review of a concept plan for development for which the applicant intends to prepare and submit an application for development to the Planning Board. The purpose of the concept plan is to provide Planning Board input in the formative stages of subdivision and site plan design.

(2) A request to meet with the Planning Board for an informal concept plan review shall be made in writing and shall include a project description, a tax lot and block designation of the site in question, the concept plan and such additional information as may be reasonably requested by the Administrative Officer.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

(3) A brief written summary of the concept plan review shall be prepared by the Administrative Officer and provided to the Planning Board members and the applicant.

(4) The applicant shall be charged the fee for concept plan review set forth in Article hereof. The amount of such fee shall be a credit towards fees or charges otherwise payable under Article for the review of the application for development.

(5) The applicant shall not be bound by any conceptual plan for which review is requested, nor shall the Planning Board, or any subcommittee thereof, be bound by any such review.

#### § 225-119 Meetings.

The following provisions shall apply to the meetings of the Board.

##### A. Schedule of meetings; special meetings.

(1) The Board shall by its rules fix the time and place for holding its regular meetings. Regular meetings of the Board shall be scheduled not less than once a month and shall be held as scheduled unless canceled for lack of applications for development to process. The schedule of meetings shall be filed with the Borough Clerk, posted upon the Borough bulletin board, and sent to two newspapers with circulation in the Borough, one which shall be the official newspaper of the Borough.

(2) The Board may provide for special meetings, at the call of the Chair, or at the request of any two of its members.

##### B. Meetings open to public; executive sessions.

(1) All regular meetings and special meetings shall be open to the public except to the extent that the public may be excluded from any such meeting or portion thereof in accordance with requirements of the Open Public Meetings Act.

(2) Meetings shall be held on notice to the Board members and the public in accordance with this chapter and the Open Public Meetings Act.

(3) Executive sessions within the meaning of the Open Public Meetings Act and for the purpose of that Act are permitted.

(4) The "executive sessions", as set forth in N.J.S.A. 40:55D-9(b) for the purpose of discussing and studying any matters to come before the Board, shall take place at an agenda meeting and shall be open to the public.

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(5) No formal action can be taken in an executive or agenda session unless formal notice has been given in accordance with the Open Public Meetings Act.

C. Quorum; conflict of interest. No action shall be taken at any meeting without a quorum being present. No regular, alternate or temporary member shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest.

D. Majority vote required. All actions shall be taken by a majority vote of the members of the Board present at the meeting, except as otherwise provided by this chapter and the Municipal Land Use Law. For actions requiring an affirmative vote of five or more, see N.J.S.A. 40:55D-70.

E. Participation of alternate members. Alternate members may participate in all matters but may not vote except in the absence or disqualification of a regular member of any class. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1, No. 2, No. 3 and No. 4 shall vote in that order. Participation of alternate members shall not be deemed to increase the size of the Board established by this chapter.

F. Minutes.

(1) Minutes of every meeting of the Board shall be kept and shall include the names of the persons appearing and addressing the Board and of the person appearing by attorney, the action taken by the Board, the findings, if any, made by it and reasons therefor, and any other resolutions or business to come before the Board. The minutes shall thereafter be available for public inspection during normal business hours in the administrative offices of the Borough after their approval by the Board.

(2) Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceedings concerning the subject matter of such minutes. Such interested party may be charged a reasonable fee for reproduction of the minutes for his or her use. All actions taken by the Board shall require a formal written resolution of memorialization which shall be part of the minutes of that meeting.

(3) A copy of all minutes shall be filed at the Kenilworth Library to facilitate public inspection during those hours when the Kenilworth Borough Hall is closed.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

G. Transcripts of hearings. Pursuant to the Municipal Land Use Law, the Board shall provide one of the following for each hearing:

- (1) An electronic recording of the hearing and any discussions relating to the application leading to a decision by the Board. This recording shall be reduced to typewritten form.
- (2) A stenographic court reporter who shall transcribe verbatim the hearing and any discussion relating to the application leading to a decision by the Board. This transcript shall not be reduced to typewritten form unless requested. The cost of producing the transcript to typewritten form shall be borne by the applicant and shall be ordered directly from the court reporter and the cost paid directly to the court reporter.

§225 -120 Advisory members.

A. The Fire Chief and the Police Chief of the Borough or their designees shall be ex officio advisory members of the Planning Board for the purposes of advising the Boards on any application that may come before them on the impact the granting of such applications may have upon the furnishing of police or fire-protection services, or any requirements that may be advisable in that regard.

B. Neither the Fire Chief nor the Police Chief shall vote on any matter coming before such Board, nor shall they be considered "regular" members of such Board as that term is used in the appropriate New Jersey statutes.

C. Both the Fire Chief and the Police Chief may, from time to time, appoint a member of their respective departments to attend any Board meeting in their place.

§ 255-121 Conflicts of interest.

No member of the Planning Board shall act on any matter in which he/she has either directly or indirectly any personal or financial interest. Whenever any such member shall disqualify himself/herself from acting on a particular matter, he/she shall not continue to sit with the Board on the hearing of such matter, nor participate in any discussion or decision relating thereto.

§ 255-122 List of property owners.

Pursuant to the provisions of N.J.S.A. 40:55D-12c, the administrative officer shall, within seven days of receipt of a request therefor and upon receipt of payment of a fee as specified in § 255-51, Development fees, provide a list certified by the Tax Assessor from the current tax duplicate of names and addresses of owners in the Borough to whom the applicant is required to give notice, pursuant to this Part 1.

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### § 255-123 Payment of taxes.

Pursuant to the provisions of N.J.S.A. 40:55D-39 and N.J.S.A. 40:55D-65, every application for development submitted to the Planning Board shall be accompanied by proof that no taxes or assessments for local improvements are due or delinquent on the property which is the subject of such application, or, if it is shown that taxes or assessments are delinquent on the property, any approvals or other relief granted by either Board shall be conditioned upon either the prompt payment of such taxes or assessments or the making of adequate provision for the payment thereof in such manner that the Borough shall be adequately protected. All other municipal fees, including application fees and escrow payments shall be paid in full prior to the certification of any Application for development as complete.

### § 255-124 Copy to be filed with County Planning Board.

Immediately upon adoption of this Land Use Ordinance, the Borough Clerk shall file a copy with the County Planning Board, as required by law. The Clerk shall also file with the County Planning Board copies of all other Borough land use ordinances.

### § 255-125 Expiration of variance.

Any variance hereafter granted by the Planning Board, permitting the erection or alteration of any structure or structures or permitting a specified use of any property, shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by the variance, or unless such permitted use has actually been commenced, within one year from the date of entry of the approval of the variance, except that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the Planning Board to the Borough Council, or to a court of competent jurisdiction, until the termination in any manner of such appeal or proceeding.

### § 225-126 Exclusive Authority of Board.

Any power expressly authorized by this chapter or the Municipal Land Use Law to the Board shall not be exercised by any other body, except as otherwise provided by the Municipal Land Use Law.

## ARTICLE 4 - Hearings

### § 225-127 Hearings; When required.

A. Public hearings by the Board shall be required for the following:

- (1) On each application for development, except when such application is specifically exempted from public hearing by this chapter.
- (2) On any adoption, revision or amendment of the Master Plan.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

- (3) On appeal from the action of the Zoning Officer or other administrative appeal within its jurisdiction.
- (4) On an application for an interpretation of the zoning regulations pursuant to Part 3, or an application for certification of a nonconforming use or structure pursuant to Part 3, Article 10.

B. The Mayor and Borough Council shall hold a hearing on any adoption, revision, or amendment of this chapter or of any development regulation.

C. The Board or Mayor and Borough Council, as applicable, shall hold a hearing on any adoption, revision or amendment of a capital improvement program.

**§ 225-128 Rules; hearing dates.**

Pursuant to N.J.S.A. 40:55D-10, the Board shall adopt rules governing its hearings. Upon the determination that an appeal or application is complete pursuant to Article 9, the Board shall schedule a hearing date in accordance with its rules.

**§ 225-129 Notice of hearing; when required.**

Pursuant to N.J.S.A. 40:55D-12, public notice as specified herein shall be given for all hearings involving the following:

- A. Any application for development which involves a request for a variance;
- B. An application for interpretation of the zoning regulations or decisions upon special questions; provided, however, that such notice shall be both published and served as set forth in Articles 4 and 5 if the application involves a specific property, and further provided, that such notice shall be limited to publication as set forth in Article 5 if the application does not involve a specific property.
- C. An application for preliminary major site plan approval;
- D. An application for preliminary major subdivision approval;
- E. An application for certification of a nonconforming use or structure;
- F. An application for conditional use approval;
- G. The adoption, revision or amendment of the Master Plan;
- H. The adoption, revision or amendment of this chapter or any other development regulation;
- I. The adoption, revision or amendment of a capital improvement program; and

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J. Appeals of determinations of administrative officers pursuant to N.J.S.A. 40:55D-70b.

**§ 225-130 Notice of hearings for development applications.**

The following provisions shall apply to public notice of hearings for development applications, as mandated by N.J.S.A. 40:55D-12, including but not limited to:

A. Content. Public notice of hearings for development applications, including variance applications, shall state the following:

- (1) The date, time and place of the hearing;
- (2) The nature of the matters to be considered, provided that when conditional use approval, variance relief or direction for the issuance of a permit pursuant to this chapter is requested, the notice shall include reference to the request for conditional use approval, variance or direction for issuance of a permit, as the case may be;
- (3) An identification of the property proposed for development by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the Tax Assessor's office; and
- (4) The location and times at which any maps and documents for which approval is sought are available for inspection in the office of the Board Secretary.

B. Service of notice; parties entitled to notice. Public notice shall be given by the applicant. Notice shall be given at least 10 days prior to the date of the hearing. The date of the hearing shall not count as one of the 10 days. Public notice shall be given by publication in the official newspaper of the Borough, if there is one, or in a newspaper of general circulation in the Borough.

- (1) Notice shall also be given to members of the public as follows:

(a) Notice of hearing shall be given to the owners, including owners of condominium units as shown on the current tax duplicates, of all real property within 200 feet in all directions of the property which is the subject of such hearing. Notice shall be given as follows:

[1] Notice shall be given by serving a copy thereof on the property owner as shown on the current tax duplicate, or his/her agent in charge of the property, or mailing a copy thereof by certified mail to the property owner at his/her address as shown on the current tax duplicate.

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[2] Notice to a partnership owner or limited liability company owner may be made upon any partner or as otherwise permitted by law.

[3] Notice to a corporate owner or professional corporation owner may be made by service upon its president, a vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation.

(2) Notice of hearings on applications for development involving property located within 200 feet of an adjoining municipality shall be given by personal service or certified mail to the Clerk of such municipality.

(3) Notice shall be given by personal service or certified mail to the Union County Planning Board ("County Planning Board") of hearings on applications for development involving property adjacent to an existing county road or proposed road shown on the official county map or on the Union County Master Plan, adjoining other county land or situated within 200 feet of a municipal boundary. Notice shall not be given for applications on a single-family house.

(4) Notice shall be given by personal service or certified mail to the Commissioner of Transportation of a hearing on an application for development involving property adjacent to a state highway.

(5) Notice shall be given by personal service or certified mail to the State Planning Commission of a hearing on an application for development of property which exceeds 150 acres or 500 dwelling units. The notice shall include a copy of any maps or documents required to be on file with the Board Secretary pursuant to Article 4.

(6) Notice of hearings on an application for development involving a major subdivision or preliminary site plan, excluding minor site plans, shall be given to a public utility, cable television company or local utility which possesses a right-of-way or easement within the Borough and which has registered with the Borough in accordance with the Municipal Land Use Law, by serving a copy of the notice on the person whose name appears on the registration form on behalf of the public utility, cable television company or local utility, or mailing a copy thereof by certified mail to the person whose name appears on the registration form at the address shown on that form.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

C. Request for certified list of property owners within 200 feet. Upon written request of an applicant, the administrative officer shall, within seven days of the date the application is deemed complete, make and certify a list from the current tax duplicates of the names and addresses of owners to whom the applicant is required to give notice. In addition, the administrative officer shall include on the list the names, addresses and positions of those persons who, not less than seven days prior to the date on which the applicant requested the list, have registered to receive notice as a public utility, cable television company or local utility. The applicant shall be entitled to rely upon the information contained in such list, and failure to give notice to any owner or to any public utility, cable television company or local utility not on the list shall not invalidate any hearing or proceeding.

D. Effect of mailing notice. Any notice made by certified mail as stipulated above shall be deemed complete upon mailing.

E. Proof of service of notice. The applicant for development shall file an affidavit of proof of service with the Board.

#### § 225-131 Notice of hearings for the Master Plan.

The following provisions shall apply to public notice of hearings for adoption, revision or amendment of the Master Plan:

A. Content. Public notice of hearings for adoption, revision or amendment of the Master Plan shall state the following:

- (1) The date, time and place of the hearing;
- (2) The nature of the matters to be considered;

B. Notice of hearings for the Master Plan. Notice shall be given by the Board at least 10 days prior to the date of the hearing. The date of the hearing shall not count as one of the 10 days. Public notice shall be given by publication in the official newspaper of the Borough, if there is one, or in a newspaper of general circulation in the Borough. Notice shall also be given to the following parties as specified below:

- (1) Notice shall be given by personal service or certified mail to the Clerk of an adjoining municipality of all hearings on adoption, revision or amendment of the Borough Master Plan involving property situated within 200 feet of such adjoining Municipality.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

(2) Notice shall be given by personal service or certified mail to the County Planning Board of all hearings on the adoption, revision or amendment of the Borough Master Plan. Such notice shall include a copy of any such proposed Master Plan, or any revision or amendment thereto.

(3) Notice shall be given by personal service or certified mail to the County Planning Board of the adoption, revision or amendment of the Borough Master Plan. Such notice shall be given not more than 30 days after the date of such adoption, revision or amendment and shall include a copy of the Master Plan, or revision or amendment thereto.

C. Effect of mailing notice. Any notice made by certified mail as stipulated above shall be deemed complete upon mailing.

**§ 225-132 Notice of hearings for development regulations or capital improvement programs.**

The following provisions shall apply to public notice of hearings for adoption, revision or amendment of this chapter, other development regulations or the capital improvement program:

A. Content. Public notice of hearings for adoption, revision or amendment of this chapter, other development regulations, or the capital improvement program shall provide the following:

- (1) A statement of the date, time and place of the hearing;
- (2) A statement of the nature of the matters to be considered;
- (3) The location and times at which any maps and documents which are the subject of said adoption, revision or amendment are available for inspection in the office of the Borough Clerk;
- (4) In the case of zone district classification or boundary changes with enhanced notice requirements pursuant to Article VIII, the notice shall also provide an identification of the affected zoning districts and proposed boundary changes, if any, by street names, common names or other identifiable landmarks, and by reference to lot and block numbers as shown on the current tax duplicates in the Tax Assessor's office; and
- (5) In the case of notice to the County Planning Board, a copy of the proposed or adopted development regulation, official map, capital improvement program, or any proposed or adopted revision or amendment thereto, as the case may be, shall be included with the notice.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

B. Service of notice; parties entitled to notice. Notice shall be given by the Governing Body at least 10 days prior to the date of the hearing. The date of the hearing shall not count as one of the 10 days. Notice shall be given to the following parties as specified below:

- (1) Notice shall be given by personal service or certified mail to the Clerk of an adjoining municipality of all hearings on adoption, revision or amendment of any development regulation involving property situated within 200 feet of such adjoining municipality.
- (2) Notice shall be given by personal service or certified mail to the County Planning Board of all hearings on the adoption, revision or amendment of any development regulation.
- (3) Notice of a hearing on an amendment to the zoning regulations, which amendment proposes a change to the classification or boundaries of a zoning district, exclusive of classification or boundary changes recommended in a periodic general reexamination of the Master Plan by the Board pursuant to N.J.S.A. 40:55D-89, shall be given in the following manner:
  - (a) Notice shall be given by serving a copy thereof on the property owner as shown on the current tax duplicate, or his or her agent in charge of the property, or mailing a copy thereof by certified mail and regular mail to the property owner at his address as shown on the said current tax duplicate.
  - (b) Notice to a partnership owner may be made by service upon any partner.
  - (c) Notice to a corporate owner, including cooperatives, may be made by service upon its president, a vice president, secretary or other person authorized by appointment or bylaw to accept service on behalf of the corporation.
  - (d) Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within 200 feet of the boundaries of the district which is the subject of the hearing, may be made in the same manner as to a corporation in addition to notice to unit owners, co-owners or homeowners on account of such common elements or areas.

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(e) The Borough Clerk shall execute affidavits of proof of service of the notices required for the hearings on zoning district classification or boundary changes, and shall keep the affidavits on file along with the proof of publication of the notice of the required public hearing on the proposed zoning regulation change. Costs of the notice provision shall be the responsibility of the proponent of the amendment.

(4) Notice shall be given by personal service or certified mail to the County Planning Board of the adoption, revision or amendment of the Borough capital improvement program or Official Map. Such notice shall be given not more than 30 days after the date of such adoption, revision or amendment.

C. Effect of mailing notice. Any notice made by certified mail as stipulated above shall be deemed complete upon mailing.

§ 225-133 Filing of maps and documents; deadline.

Any maps and documents for which approval is sought at a hearing shall be on file and available for public inspection at least 10 days before the date of the hearing, during normal business hours in the office of the Board Secretary. The applicant may produce other documents, records, or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.

Applicants are encouraged to file electronic copies of completed applications to facilitate public review.

§ 225-134 Witnesses; evidence.

The following provisions shall govern the testimony of witnesses and production of evidence at hearings conducted pursuant to this chapter:

A. The officer presiding at the hearing or such person as he/she may designate shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties. The provisions of the County and Municipal Investigations Law shall apply.

B. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer. The right of cross-examination shall be permitted to all interested parties through their attorneys, or themselves.

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C. Technical rules of evidence shall not be applicable to the hearing, but the agency may exclude irrelevant, immaterial or unduly repetitious evidence.

§ 225-135 Public comment.

In addition to receiving testimony, the Board shall afford members of the public the right to comment upon any application for development pending before the Board. Such comments may be presented in written form, as well as orally. The chair of the Board or a majority of the Board may vote to limit the time allowed for oral public comment, to be reasonably determined under the circumstances.

§ 225-136 Voting procedures.

The following voting procedures shall apply for public hearings held pursuant to this chapter. Nothing herein shall be construed to contravene any act providing for procedures for governing bodies.

A. All actions shall be taken by a majority vote of the members present at the hearing. In the case of a use variance pursuant to NJSA 40:55-D.70.d, affirmative votes are required by at least two thirds of the seven voting members.

B. A member of the Board who was absent for one or more of the meetings at which a hearing was held or was not a member of the Board at that time, shall be eligible to vote on the matter upon which the hearing was conducted, if such member has available to him/her the transcript or recording of all of the hearings from which he/she was absent or was not a member, and certified in writing to the agency that he/she has read such transcript or listened to such recording.

C. Failure of a motion to receive the number of votes required to approve an application for development shall be deemed an action denying the application. A tie vote shall be deemed a failure to receive the number of votes required.

§ 225-137 Decisions.

A. Findings of fact and conclusions. The Board shall include findings of fact and conclusions based thereon in each decision on any application for development and shall reduce the decision to writing. Failure of a motion to receive the number of votes required to approve an application for development pursuant to the exceptional vote requirements of N.J.S.A. 40:55D-34 or § 255-18D shall be deemed an action denying the application. The Board shall provide the findings and conclusions through:

(1) A resolution adopted at a meeting held within the time period provided in N.J.S.A. 40:55D for action by the Board on the application for development; or

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(2) A memorializing resolution adopted at a meeting held not later than 45 days after the date of the meeting at which the Board voted to grant or deny approval. Only the members of the Board who voted for the action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution. An action pursuant to N.J.S.A. 40:55D-9, resulting from the failure of a motion to approve an application, shall be memorialized by resolution as provided above, with those members voting against the motion for approval being the members eligible to vote on the memorializing resolution. The vote on any such resolution shall be deemed to be a memorialization of the action of the Board and not to be an action of the Board. However, the date of the adoption of the resolution shall constitute the date of the decision for purposes of the mailings, filings and publication required by N.J.S.A. 40:55D-10h and 40:55D-10i.

B. Conditional decisions; County Planning Board approval. Where required by law, N.J.S.A. 40:27-6.6, the application shall be submitted to the County Planning Board for review or approval, and, in such cases, the Borough Planning Board shall condition any approval that each grants upon timely receipt of a favorable report from the County Planning Board or upon the County Planning Board's failure to report within the required time period. Decisions may also be conditioned on approval by other governmental agencies.

C. Mailing. A copy of the decision shall be mailed by the Board within 10 days of the date of decision to the applicant or, if represented, then to his/her attorney, without separate charge. A copy of the decision shall also be mailed to all persons who request it and who have paid the prescribed fee. A copy of the decision shall also be filed in the office of the administrative officer, who shall make a copy of such filed decision available for public inspection during his/her office hours and a copy available to any interested party upon payment of a fee, calculated in the same manner as those established for copies of the other public documents in the Borough.

D. Publication. A brief notice of every final decision on an application for a variance or development shall be published in the official newspaper of the Borough. Such publication shall be arranged by and be the responsibility of the applicant. Notice shall be sent to the official newspaper for publication within 10 days of the date of any such decision. The applicant shall file an affidavit of publication with the Board making the decision on the application for development.

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E. Time for appeal. The period of time in which an appeal of the decision may be made shall run from the date of publication of the decision.

§ 225-138 Record of decisions.

The Board shall include findings of fact and conclusions based thereon in each decision on any application for development and shall reduce the decision to writing. The Board shall provide the findings and conclusions through either resolution adopted at a meeting held within the time period provided in the act for action by the Board on the application for development; or a memorializing resolution adopted at a meeting held not later than 45 days after the date of the meeting at which the Board voted to grant or deny approval. The following provisions shall apply to memorializing resolutions:

- A. Only the members of the Board who voted for the action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution. If only one member who voted for the action attends the meeting at which the resolution is presented for adoption, the resolution may be adopted upon the vote of that member.
- B. An action to deny, resulting from the failure of a motion to approve an application shall be memorialized by resolution as provided above, with those members voting against the motion for approval being the members eligible to vote on the memorializing resolution.
- C. The vote of any memorializing resolution shall be deemed to be a memorialization of the action of the Board; however, the date of the adoption of the resolution shall constitute the date of the decision for purposes of the mailings, filings and publications required by this Part1.
- D. If the Board fails to adopt a resolution or memorializing resolution as herein above specified, any interested party may apply to the Superior Court in a summary manner for an order compelling the Board to reduce its findings and conclusions to writing within a stated time and the cost of the application, including attorney's fees, shall be assessed against the Borough.

§ 225-139 Mailing, filing and publication of decisions.

Following adoption of a resolution on a development application by the Board, the resolution shall be mailed, filed and published as follows:

- A. A copy of the decision shall be mailed by the Board within 10 days of the date of decision to the applicant, or if represented to his attorney, without separate

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charge. A copy of the decision shall also be mailed to all persons who have requested it and who paid the fee prescribed by the Board for such service.

B. A copy of the decision shall also be filed in the office of the Borough Clerk, who shall make a copy of such filed decision available to any interested party upon payment of a fee calculated in the same manner as those established for copies of other public documents in the municipality.

C A brief notice of every final decision shall be published in the official newspaper of the Borough. Such publication shall be arranged by the Secretary of the Board and the applicant shall be obligated to pay for the cost of such publication. Said notice shall be sent to the official newspaper for publication within 10 days of the date of any such decision.

#### § 225-140 Record of hearings.

The Board shall provide for the verbatim recording of the proceedings by either stenographer, mechanical or electronic means. The Board shall furnish a transcript, or duplicate recording in lieu thereof, on request to any interested party at his/her expense at the actual cost of preparing the transcript or duplicate recording. Transcript shall be certified in writing by the transcriber to be accurate.

#### § 255-141 Minutes.

Minutes of every regular or special meeting shall be kept and shall include the names of the persons appearing and addressing the Board and of the persons appearing by attorney, the action taken by the Board, the findings, if any, made by it and reasons therefor. The minutes shall thereafter be made available for public inspection during normal business hours at the office of the Borough Clerk. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceeding concerning the subject matter of such minutes. Such interested party may be charged a fee for reproduction of the minutes for his/her use, as provided for in the rules of the Board.

### ARTICLE 5 - Procedures for Variance Applications, Appeals, Requests for Interpretations, or Other Special Questions

#### § 225-142 Procedures for applications for variances or for the direction of the issuance of certain permits.

A. General. It is the intent of this section to set forth the procedures for applications to the Board for variances and for the direction of the issuance of certain permits as permitted by this chapter. In addition to the procedures set

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forth in the following subsections for each type of application, the procedures set forth for processing and review of site plan and subdivision applications in this chapter shall apply, unless the context clearly indicates otherwise or unless contrary to law, including but not necessarily limited to the following:

- (1) The filing procedures in Article 5;
- (2) The procedures for filing simultaneous applications in this Part 1;
- (3) The completeness review procedures in Articles 4 and 5;
- (4) The general review procedures in Article 5;
- (5) The conditional approval provisions in this Part 1;
- (6) The provisions for extensions and tolling of approvals in this Part 1; and
- (7) The provisions for reservation of public areas, payment of taxes and assessments, disclosure of ownership and binding nature of approvals in Articles 5 and 6.

B. Review of existing nonconforming conditions in connection with applications for variances or for the direction of the issuance of certain permits. In reviewing applications for variances or for the direction of the issuance of certain permits, the Board shall determine whether any existing nonconforming conditions involving the subject property will exacerbate, intensify, alter, affect or in some way result in a significant impact on the proposed use, structure or land. If the Board finds that no substantial impact or detriment will result, the Board shall so state in its findings of fact in the resolution for the application, without the need for such existing nonconforming conditions to meet the criteria established by N.J.S.A. 40:55D-34, 36, 51a, 51b, 70c and 70d and this chapter for variances or exceptions. If the Board finds that substantial impacts or detriments will result, however, the application shall not be approved unless and until the applicant agrees to mitigate or eliminate such impacts or detriments to the maximum extent feasible. The above shall not be construed to alter the review procedures nor the criteria for granting variances or exceptions for violations proposed by the development or existing illegally on the subject property.

C. "C" Variance Applications. Subject to the provisions of N.J.S.A 40:55D-1 et seq., applications to the Board may be taken for relief from the zoning regulations, Articles 20 through 32 of this chapter. The following provisions shall apply to "C" variance applications:

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- (1) When subdivision, site plan or conditional use approval is required, the developer may elect to submit a separate application with the Board requesting approval of the variance and a subsequent application for any such other required approval. Any separate approval of the variance shall be conditioned upon grant of all required subsequent approvals by the Board.
- (2) Any application pursuant to this section shall be required to submit the information required by this chapter and shall be reviewed for completeness in accordance with the procedures set forth in Articles 4 and 5.
- (3) A public hearing shall be held in accordance with the provisions for hearings in Article 4.
- (4) The applicant shall give public notice of the hearing in the manner specified for development applications in Articles 4 and 5. Affidavits of proof of service of notice shall be submitted at least seven business days prior to the hearing.
- (5) There must be a showing by the applicant, and the Board must find, all of the following:
  - (a) Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to Article VIII of this chapter would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship;
  - (b) Where in an application or appeal relating to a specific piece of property the purposes of this act would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from regulations pursuant to Article VIII of this chapter; provided, however, that the fact that a proposed use is an inherently beneficial use shall not be dispositive of a decision

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on a variance under this subsection and provided that no variance from those departures enumerated in this Part 1 shall be granted under this section; and provided further that the proposed development does not require approval by the Board of a subdivision, site plan or conditional use, in conjunction with which the Board has power to review a request for a variance pursuant to this Part 1;

(c) The variance can be granted without substantial detriment to the public good; and

(d) The grant of the variance will not substantially impair the intent of the zone plan and zoning regulations.

(6) The Board shall render a decision not later than 120 days after the date the application is certified to be complete pursuant to Article 9, or within such further time as may be consented to by the applicant.

(7) The Board may refer an application pursuant to this section to any appropriate person or agency, for its report; provided that such reference shall not extend the period of time within which the Board shall act.

D. "D" Variance applications. Subject to the provisions of N.J.S.A. 40:55D-1 et seq. and in particular cases, applications to the Board may be taken for relief from the zoning regulations, Articles XII through XX of this chapter, involving "D" variance requests. A developer may file an application for a "D" variance with the Board without prior application to the Zoning Officer or Construction Official. The following provisions shall apply to "D" variance applications:

(1) Any application pursuant to this section shall be required to submit the information required by Articles 4 and 5, and shall be reviewed for completeness in accordance with the procedures set forth in Articles 4 and 5.

(2) A public hearing shall be held in accordance with the provisions for hearings in Article 5.

(3) The applicant shall give public notice of the hearing in the manner specified for development applications in Article 4 and 5. Affidavits of proof of service of notice shall be submitted at least seven business days prior to the hearing.

(4) In particular cases for special reasons, the Board may grant a variance to allow departure from regulations pursuant to Articles 20 through 32 of this chapter to permit:

- (a) A use or principal structure in a district restricted against such use or principal structure; an expansion of a nonconforming use; deviation from a specification or standard pursuant to N.J.S.A. 40:55D-67 pertaining solely to a conditional use; an increase in the permitted floor area ratio as defined in N.J.S.A. 40:55D-4; an increase in the permitted density as defined in N.J.S.A. 40:55D-4, except as applied to the required lot area for a lot or lots for detached one- or two-dwelling unit buildings, which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision; or a height of a principal structure which exceeds by 10 feet or 10% the maximum height permitted in the zone for a principal structure.
- (b) A variance under this section shall be granted only by affirmative vote of at least five members.
- (c) If an applicant requests one or more variances but not a variance for a purpose enumerated in this Part 1, the decision on the requested variance or variances shall be rendered under this Part 1.
- (d) No variance or other relief may be granted under the terms of this Part 1, including a variance or other relief involving an inherently beneficial use and/or special reasons, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and this chapter.
- (e) An application under this Part 1 may be referred to any appropriate person or agency for its report; provided that such reference shall not extend the period of time within which the Board shall act.

(6) The Board shall render a decision not later than 120 days after the date the application is certified to be complete pursuant to Article 5, or within such further time as may be consented to by the applicant.

E. Application for issuance of permits for areas on Official Map. Applications to the Board may be taken for relief necessary to issue a permit for any building or

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structure in the bed of any street or public drainage way, flood control basin or public area reserved on the Official Map. A developer may file an application for development with the Board under this section without prior application to the Construction Official. The following provisions shall apply to such applications:

- (1) When subdivision, site plan or conditional use approval is required, the developer may submit an application with the Board requesting direction for the issuance of a permit and a subsequent application for any such other required approval. Any such separate direction for the issuance of a permit shall be conditioned upon grant of all required subsequent approvals by the Board.
- (2) Any application pursuant to this section shall consist of a completed application form and a map showing the property in question and the location of the proposed building and/or structure in relation to the bed of the mapped street or public drainage way, flood control basin or public area reserved on the Official Map. The following number of copies shall be submitted:
  - (a) One signed original application, and 5 copies of the map and the application.
  - (b) In addition, fees required by Article VI shall be submitted, as well as proof of payment of taxes and assessments.
- (3) An application pursuant to this section shall stay all proceedings in the same manner as specified in this Part 1.
- (4) A public hearing shall be held in accordance with the provisions for a hearing set in Article 4.
- (5) The applicant shall give public notice of the hearing in the manner specified for development applications in Article 4 and 5. Affidavits of proof of service of notice shall be submitted at least seven business days prior to the hearing.
- (6) There must be a showing by the applicant, and the Board must find, that the subject property cannot yield a reasonable return to the owner unless a building permit is granted.
- (7) Any decision of the Board to direct the issuance of a permit pursuant to this section shall be by an affirmative vote of a majority of the full authorized membership of the Board and shall be in accordance with terms and conditions which will as little as practicable increase the cost of

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opening such street, or tend to cause a minimum change of the Official Map, and the Board shall impose reasonable requirements as a condition of granting the permit so as to promote the health, morals, safety and general welfare of the public.

(8) The Board shall render a decision not later than 120 days after the date the application is certified to be complete pursuant to this chapter or within such further time as may be consented to by the applicant.

(9) The Board may refer an application pursuant to this section to any appropriate person or agency, for his/her/its report; provided that such reference shall not extend the period of time within which the Board shall act.

F. Application for permits for lot not abutting a street. Applications to the Board may be taken for relief necessary to issue a permit for any building or structure on a lot which does not abut a street giving access to such building or structure. A developer may file an application for development with the Board under this section without prior application to the Construction Official. The following provisions shall apply to such applications:

(1) When subdivision, site plan or conditional use approval is required, the developer may elect to submit an application with the Board requesting direction for the issuance of a permit and a subsequent application for any such other required approvals. The separate direction for the issuance of a permit shall be conditioned upon grant of all required subsequent approvals by the Board.

(2) Any applicant pursuant to this section shall be required to submit a completed application form and a map showing the property in question and the manner by which access will be provided to the building and/or structure, including the location of the nearest street from which access may be obtained. The following number of copies shall be submitted:

(a) One signed original application and 5 copies of the map and the application.

(b) In addition, fees required by Article 6 shall be submitted as well as proof of payment of taxes and assessments.

(3) A public hearing shall be held in accordance with the provisions for hearings in Article 5.

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(4) The applicant shall give public notice of the hearing in the manner specified for development applications in Article 4 and 5. Affidavits of proof of service of notice shall be submitted at least seven business days prior to the hearing.

(5) There must be a showing by the applicant and the Board must find that the refusal to issue a permit would entail practical difficulty or hardship, or that the circumstances of the case do not require the building or structure to be related to a street.

(6) Any decision of the Board to direct the issuance of a permit pursuant to this section shall be in accordance with terms and conditions which will provide adequate access for firefighting equipment, ambulances and other emergency vehicles necessary for the protection of health and safety and that will protect any future street layout shown on the Official Map or on the circulation plan element of the Borough Master Plan.

(7) The Board shall render a decision not later than 120 days after the date the application is certified to be complete pursuant to Article 5 or within such further time as may be consented to by the applicant.

(8) The Board may refer an application pursuant to this section to any appropriate person or agency, for its report; provided that such reference shall not extend the period of time within which the Board shall act.

§ 225-143 Procedure for appeals, requests for interpretations or other special questions.

A. General. It is the intent of this section to set forth the procedure for appeals, interpretations and requests concerning special questions to the Board as permitted by this chapter. In addition to the procedures set forth in the following subsections for each type of application, the procedures set forth for processing and review of site plan and subdivision applications in this chapter shall apply, unless the context clearly indicates otherwise or unless contrary to law, including the following:

- (1) The filing procedures in this chapter;
- (2) The procedures for filing simultaneous applications in this chapter;
- (3) The completeness review procedures in Articles 4 and 5;
- (4) The general review procedures in Articles 4 and 5;
- (5) The conditional approval provisions in Articles 4 and 5;

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- (6) The default approval provisions in this chapter;
- (7) The provisions for extensions and tolling approvals in this chapter; and
- (8) The provisions for reservation of public areas, payment of taxes and assessments, disclosure of ownership and binding nature of approvals in Articles 4, 5 and 6.

B. Appeal alleging erroneous Zoning Officer decision.

Appeals to the Board may be taken by an interested party when it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by the Zoning Officer based on or made in the enforcement of the zoning regulations of this chapter. The following provisions shall apply to such appeals:

- (1) Appeals must be taken within 20 days of the decision of the Zoning Officer.
- (2) A notice of appeal shall be filed with the Zoning Officer, specifying the grounds of the appeal. The Zoning Officer shall immediately transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- (3) Fees required by Article 6 shall be submitted with the notice of appeal, as well as proof of payment of taxes and assessments.
- (4) An appeal to the Board shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made unless the Zoning Officer certifies to the Board after the notice of appeal shall have been filed with him or her, that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by an order of the Superior Court upon notice to the officer from whom the appeal is taken and on due cause shown.
- (5) A public hearing shall be held in accordance with the provisions for hearings in Article 4. The appellant shall give public notice of the hearing in the manner specified for development applications in this chapter provided that the parties entitled to notice shall be limited to those specified in Article 4. If the appeal is made by an interested party other than the owner of the property which was the subject of the decision by the Zoning Officer, notice shall also be sent to said property owner, in addition to the parties specified in Article 4. Affidavits of proof of service of

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notice shall be submitted at least seven business days prior to the hearing.

(6) The Board may reverse or affirm, wholly or in part, or may modify the action, order, requirement, decision, interpretation or determination appealed from and to that end shall have all the powers of the Zoning Officer.

(7) The Board shall render a decision not later than 120 days after the date the appeal is taken from the Zoning Officer, or within such further time as may be consented to by the applicant.

(8) The Board may refer an application pursuant to this section to any appropriate person or agency, for its report; provided that such reference shall not extend the period of time within which the Board shall act.

(9) The Zoning Officer shall not participate as a member of the Board in the consideration of the appeal, including but not limited to the deliberations and voting. Notwithstanding the foregoing sentence, nothing shall prohibit the Zoning Officer from testifying at the hearing.

#### C. Request for interpretation or other special questions.

The Board shall hear and decide requests for interpretation of the Zoning Map or zoning regulations, or for decisions upon other special questions upon which the Board is specifically authorized to pass by this chapter. The following provisions shall apply to such requests.

(1) An application form shall be completed and shall be accompanied by a specific written request which outlines that part of the Zoning Map, zoning regulations or Official Map for which an interpretation is sought, or outlines the special question that the Board is asked to consider.

(2) One signed original and 15 copies of the application form and all accompanying documentation shall be submitted to the Secretary of the Board.

(3) Fees required by Article 6 shall be submitted with the request, as well as proof of payment of taxes and assessments.

(4) A public hearing shall be held in accordance with the provisions for hearings in Article 4.

(5) The applicant shall publish notice of the hearing on the request in the official newspaper of the Borough, if there is one, or in the newspaper of

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general circulation in the Borough. If the request for interpretation or special question concerns a specific property, the applicant shall also give public notice of the hearing in the manner specified for development applications in Article 4; provided that the parties entitled to notice shall be limited to those specified. If the request is made by a person other than the owner of the specific property which is the concern of the interpretation or special question, notice shall also be sent to said property owner, in addition to the parties specified in Article 4. Affidavits of proof of service of notice shall be submitted at least seven business days prior to the hearing.

(6) The Board may refer an application pursuant to this section to any appropriate person or agency, for its report.

§ 225-144 Appeals from a final decision of the Board.

Appeals in a "D" variance case may only be made to the Superior Court of New Jersey in accordance with the provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

§ 225-145 Appeal by public utilities.

If a public utility, as defined by N.J.S.A. 48:2-13, is aggrieved by the action of a Borough agency through said agency's exercise of its powers under this chapter or the Municipal Land Use Law, with respect to any action in which the public utility has an interest, an appeal to the Board of Public Utilities of the State of New Jersey ("BPU") may be taken pursuant to N.J.S.A. 40:55D-19.

§ 225-146 Protest requiring an enhanced vote.

A protest against any proposed amendment or revision of the zoning regulations may be filed with the Borough Clerk, signed by the owners of 20% or more either of the area of the lots or land included in such proposed change, or of the lots or land extending 200 feet in all directions from there inclusive of street space, whether within or without the Borough. Such amendment or revision shall not become effective following the filing of such protest except by the favorable vote of 2/3 of all the members of the Borough Council.

§ 225-147 Completeness of application; checklist.

A. Authority. This section is adopted pursuant to the authority granted to the Borough under N.J.S.A. 40:55D-10.3.

B. Applicability. This checklist shall apply to all applications for development in all zones within the Borough.

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C. Determination of completeness; no bearing on merits. A determination of completeness, pursuant to the terms and conditions hereof, is in no way to be interpreted or understood as an evaluation of the adequacy or acceptability of the information submitted and shall not be construed as diminishing the applicant's obligation to prove in the application process that he/she is entitled to approval of the application.

D. Additional information. The approving Board may subsequently require correction of any information found to be in error and submission of any additional information not specified in this Part 1 or any other ordinance of the Borough, or any revisions thereof, as is or may be reasonably necessary to make an informed decision as to whether the requirements necessary for approval of the application for development have been met.

E. Checklist. For the purposes of determining that an application for any development within the Borough is complete, pursuant to the terms of N.J.S.A. 40:55D-10.3, an applicant shall be required to furnish the following information, documents and fees:

- (1) A completed application form, as supplied by the Secretary of the Board, containing full and complete responses and answers to all requirements and questions contained thereon.
- (2) All required fees and charges pursuant to a schedule of fees to be supplied to the applicant by the Secretary of the Board.
- (3) Certificate of Tax Collector that taxes have been paid.
- (4) An appropriate sketch plat, subdivision map or site plan, prepared in accordance with the terms and conditions of the appropriate Borough ordinances as follows:
  - (a) Subdivisions, minor and major; preliminary and final. Any application for a minor subdivision or a major subdivision, either preliminary or final, presented to the Planning Board shall comply with all of the terms and conditions of Part 2, Subdivision and Site Plan Review, and subsequent amendments thereto and, if necessary, all of the terms and conditions of Article 17, General Design Standards, and all of the terms and conditions of any other applicable ordinance of the Borough.
  - (b) Site plans, preliminary and final. Any application for a preliminary or final site plan, presented to the Planning Board, shall

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comply with all of the terms and conditions of Part 2, Subdivision and Site Plan Review, dealing with Site Plans, and amendments thereto, and all of the terms and conditions of any other applicable ordinance of the Borough.

(c) Variances; use variances; conditional uses. All applications for variances, use variances and/or conditional uses shall comply with the various and miscellaneous sections of Part 3, Zoning, and amendments thereto, as may be required, depending upon the nature of the variance, use variance or conditional use requested, and all of the terms and conditions of any other applicable ordinance of the Borough.

(d) Site plan or plan of survey. The site plan or plan of survey shall contain an area map and shall include the following:

- [1] Lot lines, with dimension.
- [2] Tax block and lot numbers.
- [3] Zoning district.
- [4] Name of road or roads on which the property fronts.
- [5] Easements, rights-of-way, if any, and zone boundaries.
- [6] Location of streams, if any.
- [7] Location of all existing buildings, if any, and of proposed structures or changes showing front, rear and side yard dimensions and distance from buildings to property lines.
- [8] Building area allowed, draw lines showing required front, rear and side yard setbacks.
- [9] Location, arrangement and dimensions of parking area, driveway, patios, etc.
- [10] Names of adjoining property owners.
- [11] Location of all buildings on all adjoining properties, including setbacks. The area map may be copied from the Tax Maps in the assessment office. It must show the applicant's plot and the properties within 200 feet in outline, including properties outside the Borough, where necessary.

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It must indicate lot and block numbers on each plot within the two-hundred-foot area within or without the Borough.

F. Additional requirements. In addition to the above, any application for development shall be subject to any rules and regulations as adopted, from time to time, by the Planning Board, copies of which shall be supplied to the applicant along with the application form.

G. Electronic Filing. In addition to the above requirements, applicants are encouraged to provide an electronic copy of the application after it has been deemed complete. This copy may be used for distribution to Board members. It may also be used for review purposes by members of the public.

## ARTICLE 6 - Fees, Deposits, Guarantees and Other Payments

### § 225-148 Filing fees for development applications.

A. All filing fees for development applications as hereinafter required shall be payable to the administrative officer at the time of filing the application. All permits, determinations, resolutions or certifications of approval are subject to the payment of all fees provided for in this section, and no approvals shall be given by the Board until proof has been submitted to it that the requisite fees have, in fact, been paid to the administrative officer. Unless otherwise specified, the zoning officer shall be the administrative officer.

B. Notwithstanding anything herein contained to the contrary in this Chapter 225, no disabled person, or a parent or sibling of a disabled person, shall be charged any fee under this Section related directly to any application for development which permits accessibility to the disabled person's own living unit.

C. For purposes of this section, a disabled person shall be as defined in §104.

### § 225-149 Schedule of fees.

There is hereby established in connection with the various applications for development and other matters which are the subject of this section the following schedule of fees. Every applicant for development shall file with his/her application a filing fee as indicated in the following schedule. Requests for more than one of the items listed below shall require the payment of separate fees for each item, the sum of which shall be the total fees to be paid. In the event a government record is requested, the fees shall be as established in the Borough Code.

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- A. All "C" variances and exceptions, taken together as a group regardless of number: single family uses - \$380; other residential and commercial uses - \$750; industrial uses - \$1750.
- B. Each "D" variance: \$750.
- C. Request for the issuance of permits for structures in areas reserved on the Official Map or for lots not fronting upon a street: \$150.
- D. Appeal of the decision of the Zoning Officer regarding zoning regulations: \$100.
- E. Interpretation of the zoning regulations, Zoning Map or Official Map: \$100.
- F. Conditional use review: \$750.
- G. Informal review of concept plan: \$100.
- H. Minor site plan: \$250.
- I. Minor subdivision: \$250.
- J. Preliminary major site plan: \$1,250.
- K. Final major site plan: \$600.
- L. Preliminary major subdivision: \$1,250.
- M. Final major subdivision: \$600, plus \$100 for each lot over two in the proposed subdivision.
- N. List of property owners within 200 feet of applicant's property from current tax duplicates: as set forth in the Borough Code.
- O. Transcripts of Board hearings: as set forth in the Borough Code.
- P. Building permits: as specified by the Uniform Construction Code, to be paid to the Borough Construction Official.
- Q. Certificates of occupancy: as specified by the Uniform Construction Code, to be paid to the Borough Construction Official.
- R. Duplicate copies of permits or certificates: as required by the Borough Code.
- S. For engineering inspection of site plans or subdivision plats submitted for approval: \$100 per hour of time spent by the Borough Engineer.

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T. Mobile storage structure permit: \$100 per permit per year. A permit shall be obtained for each mobile storage structure by application to the Zoning Officer who shall issue such permit if the mobile storage structure satisfies the requirements of this chapter, recognizing it is the intent of the Borough to prohibit all mobile storage structures, except as otherwise set forth in the definition of "mobile storage structures" in § 225-104. The fee shall be paid annually at the time an application is submitted. Should a mobile storage structure be replaced by another such structure during the year for which a permit fee has already been paid, no additional fee shall be exacted. Upon the permit's expiration, the mobile storage structure shall be removed unless a new permit is issued at least 30 days prior to the existing permit's expiration. No new permit shall be issued for more than one additional year.

U. Signs: \$100 for each commercial sign.

V. Mobile storage structures at construction sites. A permit is required for use in excess of 48 hours of each mobile storage structure at a construction site, at a charge of \$50, which use and placement shall be limited to a maximum period of six months. The permit may be extended for up to a maximum of three additional six-month extensions upon payment of an additional fee for each extension.

W. Zoning approval for change in tenancy, i.e., approval of a site plan waiver request approval: \$150.

#### § 225-150 Payment for professional and other expert services.

A. At the time of filing of an application for development, appeal, or other matters pursuant to this chapter, the applicant shall pay to the Board Secretary a deposit, in accordance with the schedule below, to be used to reimburse the Borough for said professional services. Deposits shall be placed in the Borough escrow account if required pursuant to this chapter or the Municipal Land Use Law. In the case of proposals requiring a combination of approvals, such as a subdivision, site plan and/or variance(s), the applicant shall deposit an amount equal to the sum of the deposits required for each application.

(1) The Chief Financial Officer of the Borough shall make all payments to professionals for services rendered to the Borough or the Board for review of applications for development, review and preparation of documents, inspection of improvements or other purposes under the provisions of the Municipal Land Use Law or this chapter. Such payments shall be made pursuant to "Vouchers for Charges," described below.

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(2) Notwithstanding the above, if the Board determines that professional services are not required in order to process and review the application, no deposit shall be required. Notwithstanding such determination, the Board may, at any time thereafter, determine that professional services are required and require that the applicant provide a deposit to the Board within 10 days of the date thereof.

B. Schedule of escrow deposits. The initial deposit for payment of professional services shall be as set forth on the following schedule, provided that if the Board Secretary determines that a greater initial deposit than indicated on the following schedule is necessary to reimburse the anticipated cost of professional services on a particular application, such as, but not limited to circulation-intensive sites requiring the services of a traffic engineering consultant, the applicant shall be required to deposit said greater amount. All payments from such deposits shall be made in accordance with N.J.S.A. 40:55D-53.2.

(1) Appeal for "C" variance:

- (a) If part of site plan or subdivision: none.
- (b) If not part of site plan or subdivision, or if bifurcated: \$600 for the first variance, \$100 for each additional variance.

(2) Appeal for "D" variance: one or two family residential use - \$600; other residential use - \$1,000; commercial/industrial use - \$4,000 for each variance.

(3) Request for the issuance of permits for structures in areas reserved on the Official Map or for lots not fronting upon a street:

- (a) If part of site plan or subdivision: none.
- (b) If not part of site plan or subdivision, or if bifurcated: \$2,000.

(4) Appeal of the decision of the Zoning Officer: \$1,000.

(5) Interpretation of the zoning regulations, Zoning Map or Official Map: \$1,000.

(6) Conditional use review. \$600.

(7) Informal review of concept plan: \$1000.

(8) Minor site plan: \$500.

(9) Minor subdivision: \$1,000 plus \$250 per each lot.

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- (10) Preliminary major site plans: \$1,000.
- (11) Preliminary major subdivisions: \$2,000 plus \$150 per each lot.
- (12) Final major site plans:
  - (a) If reviewed at same time as preliminary major site plan: none.
  - (b) If reviewed subsequent to preliminary major site plan: \$1,000.
- (13) Final major subdivisions: \$1,000 per lot.

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C. Depletion of deposits. If an escrow account or deposit contains insufficient funds, pursuant to N.J.S.A. 4055D-53.1 et seq., to enable the Borough or the Board to perform required application reviews or inspections of improvements, the Chief Financial Officer shall provide the applicant with a notice of the insufficient escrow or deposit balance. In order for work to continue on the development or the application, the applicant shall within a reasonable time period, not to exceed 10 days, post a deposit to the account in an amount to be determined by the Board. In the interim, any required health and safety inspections shall be made and charged back against the replenishment of funds.

D. Failure to provide or maintain adequate deposit. No application shall be deemed complete and no action shall be taken by the Board until the initial deposit required by Subsection B above has been submitted. If the funds required by Subsection B above for professional services are not deposited in a timely manner, the Board Secretary shall notify the Board. No further action shall be taken on the application unless the deposits have been made by the applicant as required above. In the event that a delay in the payment or maintenance of the required deposits results in a substantial reduction in the available time for action by the Board, or any extension thereof as provided by this chapter, the Board may, at its discretion, dismiss the application.

E. Eligible charges against deposit. All professional charges for review of an application for development, review and preparation of documents, or inspection of improvements shall be reasonable and necessary, given the status and progress of the application or construction. The following provisions shall apply:

(1) Professional charges may include the services of a duly licensed engineer, surveyor, planner, architect, landscape architect, court reporter, traffic expert (can be unlicensed), attorney, realtor, appraiser or other expert providing professional services and their staff to ensure that an application complies with the standards set forth in this chapter and other experts whose testimony is in an area of expertise introduced by any of the applicant's experts or in areas where the Board requires further information; provided that such charges shall not include time expended by the Zoning Officer.

(2) Application review and inspection charges shall be limited only to professional charges for review of applications, review and preparation of documents and inspections of developments under construction and review by outside consultants when an application is of a nature beyond the scope of the expertise of the professionals normally utilized by the Borough. The charges shall be for the following services:

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- (a) Reviews by professional personnel of applications and accompanying documents;
- (b) Issuance of reports by professional personnel to the Board setting forth recommendations;
- (c) Charges for any telephone conferences or meetings requested or initiated by the applicant, his or her attorney or any of his or her experts or by the Board or any of its professionals;
- (d) Review of documents submitted by the applicant not required by this chapter and issuance of reports relating thereto;
- (e) Review or preparation of easement documents, developer's agreements, deeds or the like;
- (f) Preparation for attendance at special meetings; and
- (g) The preparation of resolutions including without limitation resolutions pertaining to an application concerning which the resolution must contain a summary of two or more witnesses, including experts, testifying on behalf of the applicant in order for the resolution to contain adequate findings of fact and conclusions based thereon pursuant to this chapter or the Municipal Land Use Law.

(3) Professional charges may also include the costs of expert advice and/or testimony obtained by the Board for the purpose of corroborating testimony of the applicant's experts, or providing a separate review which the Board deems necessary to make an informed decision, provided that:

- (a) This provision shall not entitle the Borough to reimbursement for the cost of expert advice and/or testimony at a regularly scheduled meeting of the Board, when such advice and/or testimony is provided in the expert's capacity as a full-time or part-time Borough employee; and
- (b) The Board shall give prior notice to the applicant of its intention to obtain such additional expert advice or testimony and afford the applicant an opportunity to be heard as to the necessity for such additional advice or testimony and as to the definition of the limitations on the nature and extent thereof.

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F. Exceptions and Limitations. The following limitations shall apply to the charges for professional services:

- (1) Review fees shall be charged only in connection with an application for development presently pending before the Board, or review of compliance with conditions of approval, or review of requests for modification or amendment made by the applicant. A professional shall not review items which are subject to approval by any state governmental agency and not under Borough jurisdiction, except to the extent consultation with a state agency is necessary due to the effect of state approvals upon the subdivision or site plan.
- (2) Inspection fees shall be charged only for actual work shown on a subdivision or site plan required by an approving resolution. Professionals inspecting improvements that are reasonably necessary to check the progress and quality of the work and such inspections shall be reasonably based on the approved development plans and documents.
- (3) The only costs that shall be added to any such charges shall be actual out-of-pocket expenses of any such professionals or consultants including normal and typical expenses incurred in processing applications and inspecting improvements.
  - (a) The Borough or Board shall not bill the applicant, or charge any escrow account or deposit authorized herein for any Borough clerical or administrative functions, overhead expenses, meeting room charges, or any other Borough costs and expenses except as provided for in this section, nor shall a Borough professional add any such charges to his or her bill.
  - (b) If the Borough retains a different professional or consultant in the place of the professional originally responsible for development application review, or inspection of improvements, the Borough shall be responsible for all time and expenses of the new professional to become familiar with the application or the project, and the Borough or the Board shall not bill the applicant or charge the deposit or the escrow account for any such services.

G. Rates of payment for professional services. If the salary, staff support and overhead for a professional are provided by the Borough, the hourly rate charged to the deposit from said professional shall be at 200% of the sum of the products resulting from multiplying the hourly base salary, which shall be established annually by ordinance, of each of the professionals by the number of hours spent

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by the respective professional upon review of the application for development or inspection of the developer's improvements, as the case may be. For other professionals, the charge shall be at the same rate as all other work of the same nature by the professional for the Borough when fees are not reimbursed or otherwise imposed on applicants or developers. Rates for professional services shall be in accordance with a schedule of professional fees filed annually with the Board Secretary and maintained in the office of the Borough Clerk for public inspection.

H. Vouchers for payment of professional services. Each payment charged to a deposit for the review of applications, review and preparation of documents and inspection of improvements shall be pursuant to a voucher from the professional. The processing of vouchers shall be in accordance with the following:

- (1) The voucher shall describe the services provided, identify the personnel performing the service, and for each date the services are performed, the hours spent to one-quarter-hour increments, the hourly rate and the expenses incurred.
- (2) All professionals shall submit vouchers to the Chief Financial Officer of the Borough on a monthly basis in accordance with the schedules and procedures established by the Chief Financial Officer of the Borough.
- (3) If the services are provided by a Borough employee, the Borough employee shall prepare and submit to the Chief Financial Officer of the Borough a statement containing the same information as required on a voucher, on a monthly basis.
- (4) The professional shall send an informational copy of all vouchers or statements submitted to the Chief Financial Officer simultaneously to the applicant.
- (5) The Chief Financial Officer shall prepare and send to the applicant a statement which shall include an accounting of funds listing all deposits, interest earnings, disbursements, and the cumulative balance of the escrow account. This information shall be provided on a quarterly basis, if monthly charges are \$1,000 or less, or on a monthly basis if monthly charges exceed \$1,000.

I. Appeals of charges. An applicant shall notify in writing the Governing Body, with copies to the Chief Financial Officer, the Board and the professional, whenever the applicant disputes the charges made by a professional for services rendered to the Borough in reviewing applications for development, review and

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preparation of documents, inspection of improvements, or other charges made pursuant to the Municipal Land Use Law. The following shall apply:

- (1) An applicant shall file an appeal within 45 days from receipt of the information copy of the professional's voucher required by § 225-37H except that if the professional has not supplied the applicant with an informational copy of the voucher, then the applicant shall file his or her appeal within 60 days from receipt of the Borough statement of activity against the deposit or escrow account required by this Partv1.
- (2) The Governing Body, or its designee(s), shall within a reasonable time period attempt to mediate any disputed charges.
- (3) If the matter is not resolved to the satisfaction of the applicant, the applicant may appeal to the Union County Construction Board of Appeals established under N.J.S.A. 52:27D-127. An applicant or his or her authorized agent shall submit the appeal in writing to the County Construction Board of Appeals. The applicant or his or her authorized agent shall simultaneously send a copy of the appeal to the Borough, the Board, and any professional whose charge is the subject of the appeal. The procedures followed by the County Construction Board of Appeals shall be as set forth in N.J.S.A. 40:55D-53.2b and c.
- (4) An applicant may file an appeal for an ongoing series of charges by a professional during a period not exceeding six months to demonstrate that they represent a pattern of excessive or inaccurate charges. An applicant making use of this provision need not appeal each charge individually.
- (5) During the pendency of any appeal, the Borough or approving authority shall continue to process, hear, and decide the application for development, and to inspect the development in the normal course, and shall not withhold, delay, or deny reviews, inspections, signing of subdivision plats or site plans, the reduction or the release of performance and maintenance guarantees, the issuance of construction permits or certificates of occupancy, or any other approval or permit because an appeal has been filed or is pending under this subsection. The Chief Financial Officer may pay charges out of the appropriate escrow account or deposit for which an appeal has been filed.
- (6) If a charge is disallowed after payment, the Chief Financial Officer shall reimburse the deposit or escrow account in the amount of any such disallowed charge or refund the amount to the applicant. If a charge is disallowed after payment to a professional or consultant who is not an

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employee of the Borough, the professional or consultant shall reimburse the Borough in the amount of any such disallowed charge.

§ 225-151 Inspection fees; deposit required.

The developer shall reimburse the Borough for all reasonable inspection fees paid to the Borough Engineer for the inspection of improvements required pursuant to this chapter. Prior to the initiation of any construction approved pursuant to this chapter, the developer shall deposit with the Board Secretary sufficient funds to reimburse the Borough for inspection fees paid to the Borough Engineer. The Borough Engineer shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit. Deposits shall be as follows:

- A. The developer shall deposit for the inspection fees an amount with the Borough not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of improvements, which cost shall be determined pursuant to this chapter.
- B. For those developments for which the reasonably anticipated inspection fees are less than \$10,000, inspection fee deposits may, at the option of the developer, be paid in two installments. The initial amount deposited by a developer shall be 50% of the reasonably anticipated inspection fees. When the balance on deposit drops to 10% of the reasonable anticipated inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Borough Engineer for inspection, the developer shall deposit the remaining 50% of the anticipated inspection fees.
- C. For those developments for which the reasonably anticipated inspection fees are \$10,000 or greater, inspection fee deposits may, at the option of the developer, be paid in four installments. The initial amount deposited by a developer shall be 25% of the reasonably anticipated fees. When the balance on deposit drops to 10% of the reasonably anticipated fees because the amount deposited by the amount paid to the Borough Engineer for inspection, the developer shall make additional deposits of 25% of the reasonably anticipated fees.
- D. Appeals of the amount required to be deposited for the payment of inspection fees or the amount charged for the inspection of improvements shall follow the procedures in § 225-37I.

§ 225-152 Performance and maintenance guarantees.

- A. Before recording of final subdivision plats or as a condition of final site plan approval or as a condition to the issuance of a zoning approval pursuant to this

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chapter, the Board may require and shall accept performance and maintenance guarantees for the purpose of assuring the installation and maintenance of on tract improvements. Such performance and maintenance guarantees shall be in accordance with the following standards:

(1) Performance guarantees. The following standards shall apply to the administration of performance guarantees:

(a) Amount of performance guarantee. The performance guarantee for the installation of those improvements required shall be in favor of the Borough in an amount equal to 120% of the cost of such improvements. The cost of said improvements shall be determined by the Borough Engineer based on documented construction costs for improvements prevailing in the general area of the Borough. The Borough Engineer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee, which estimate shall be appended to each performance guarantee posted by the obligor.

(b) Appeal of disputed performance guarantee amounts. The developer may appeal the Borough Engineer's estimate of the cost of improvements for purposes of furnishing a performance guarantee. Such appeal shall be made in accordance with the procedures set forth in Part 3.

(2) Form of guarantee. At least 10% of the performance guarantee shall be in the form of cash or a certified check made payable to the Borough. The balance of the performance guarantee shall be in the form of any security issued by an institution authorized to issue such securities in the State of New Jersey and which may be accepted by the Borough and approved by the Borough Attorney, including but not limited to surety bonds, cash and letters of credit; provided that the Borough shall only accept an irrevocable letter of credit if it:

(a) Constitutes an unconditional payment obligation of the issuer running solely to the Borough for an express initial period of time of at least one year but not more than two years from the date of final approval;

(b) Is in the amount determined by the Borough Engineer or the Governing Body, as applicable, as provided herein, less the amount of any other forms of guarantee furnished;

(c) Is issued by a banking or savings institution authorized to do and doing business in the State of New Jersey; and

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- (d) Permits the Borough to draw upon the letter of credit if the obligor fails to furnish another letter of credit which complies with the provisions of this section 30 days or more in advance of the expiration date of the letter of credit or such longer period in advance thereof as is stated in the letter of credit.
- (3) Time allowed for completion of improvements. The performance guarantee shall state the time period within which all improvements are to be installed by the developer. No performance guarantee shall run for a term longer than two years, except as provided otherwise by this chapter.
- (4) Extension of time allowed for completion of improvements. The time allowed for installation of the improvements for which the performance guarantee has been provided may be extended by the Governing Body by resolution. As a condition or as part of any such extension, the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed 120% of the cost of the installation at the time of the resolution. The cost of the installation shall be determined by the Borough Engineer as provided herein for the initial cost determination.
- (5) Failure to complete improvements within time specified. If the required improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the Borough for the reasonable cost of the improvement not completed or corrected. The Borough may, either prior to or after receipt of the proceeds thereof, complete such improvements or use said funds to restore the property to a safe condition so that the subject property in its unfinished development state does not adversely affect the public safety or adversely impact the environment. Such completion or correction of improvements shall be subject to the public bidding requirements of the Local Public Contracts Law.
- (6) Release of performance guarantee. Release of performance guarantees shall be in accordance with the following procedure:

- (a) Upon substantial completion of all required street improvements (except for the top course) and appurtenant utility improvements, and the connection of same to the public system, the obligor may request of the Governing Body that the Borough Engineer prepare a list of all uncompleted or unsatisfactory completed improvements. The request to the Mayor and Council shall be made in writing by certified mail addressed to the Borough Clerk, with a copy of the request to be sent to the Borough Engineer. The request shall indicate which improvements have been

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completed and which improvements remain uncompleted in the judgment of the obligor.

- (b) Upon receiving the obligor's request, the Borough Engineer shall inspect all improvements covered by the obligor's request and shall file a detailed list and report, in writing, to the Governing Body, and shall simultaneously send a copy thereof to the obligor not later than 45 days after receipt of the obligor's request.
- (c) The detailed list prepared by the Borough Engineer shall be in accordance with the itemized cost estimate prepared by the Borough Engineer, which estimate shall have been appended to the performance guarantee as required herein. The list prepared by the Borough Engineer shall state, in detail, with respect to each improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness of each incomplete improvement or the nature and extent of, and remedy for, the unsatisfactory state of each completed improvement determined to be unsatisfactory.
- (d) The report prepared by the Borough Engineer shall identify each improvement determined to be complete and satisfactory together with a recommendation as to the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory improvement. The recommended reduction shall be in accordance with the itemized cost estimate prepared by the Borough Engineer, which cost estimate shall have been appended to the performance guarantee as required herein.
- (e) The Governing Body, by resolution, shall either approve the improvement determined to be complete and satisfactory by the Borough Engineer, or reject any or all of these improvements. The cause for any rejection shall be stated in the resolution. If any portion of the required improvements is rejected, the approving authority may require the obligor to complete or correct such improvements and, upon completion or correction, the same procedure of notification as required herein, shall be followed.
- (f) For accepted improvements, the Governing Body shall approve and authorize the amount of reduction to be made in the performance guarantee relating to the improvements accepted. Any authorized reduction shall be in accordance with itemized cost estimate prepared by the Borough Engineer, which cost estimate shall have been appended to

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the performance guarantee as required herein. The resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the Borough Engineer.

(g) Any partial reduction granted in the performance guarantee as provided shall be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee.

(7) Failure of the Borough Engineer or the Governing Body to act.

(a) If the Borough Engineer or the Governing Body fails to act on the request for release of a performance guarantee within the time required the obligor may apply to the court in the manner provided below; provided that nothing herein shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the Governing Body or the Borough Engineer.

(b) If the Borough Engineer fails to send or provide the list and report as requested by the obligor as required herein within 45 days from receipt of the request, the obligor may apply to the court in a summary manner for an order compelling the Borough Engineer to provide the list and report within a stated time. The cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.

(c) If the Governing Body fails to approve or reject the improvements determined by the Borough Engineer to be complete and satisfactory or reduce the performance guarantee for the complete and satisfactory improvements within 45 days from the receipt of the Borough Engineer's report, the obligor may apply to the court in a summary manner for an order compelling, within a stated time, approval of the complete and satisfactory improvements and approval of a reduction in the performance guarantee for the approvals complete and satisfactory improvements in accordance with the itemized cost estimate prepared by the Borough Engineer, which cost estimate shall have been appended to the performance guarantee as required herein. The cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.

B. Maintenance guarantee. After final acceptance of required improvements, a maintenance guarantee shall be required to be posted with the Borough. Except as specifically provided otherwise below, maintenance guarantee shall be

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administered in the same manner as performance guarantees as provided by this chapter.

- (1) Amount of maintenance guarantee. The maintenance guarantee shall be in favor of the Borough in an amount equal to 10% of the cost of such improvements. The cost of said improvements shall be determined by the Borough Engineer in the same manner as provided herein for performance guarantees.
- (2) Form of guarantee. The maintenance guarantee shall be in the form accepted by the Borough and approved by the Borough Attorney, including but not limited to surety bonds, cash and/or letter of credit; provided that acceptance of irrevocable letters of credit shall be subject to the same conditions as provided herein for performance guarantees.
- (3) Time required for maintenance guarantee. The maintenance guarantee shall be required to run for a period of two years after final acceptance, which shall be stated in the guarantee.

C. Exception for improvements related to other jurisdictions. In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the Borough for such utilities or improvements.

D. Final approval by stages or sections of development. In the event that final approval is by stages or sections of development as provided by this article, the provisions of this section shall be applied by stage or section of development.

**§ 225-151 Administration of deposits and escrows.**

A. Deposits received for professional services employed by the Borough to review applications for development, for Borough inspections fees in accordance with this article, or to satisfy the guarantee requirements of this article shall be administered in accordance with the following procedures:

- (1) Collection, processing and maintenance of deposits. All funds shall be collected by the Board Secretary. The Secretary of the Board shall maintain account records, process invoices, etc. for the Board. The actual escrow deposit shall be maintained by the Borough Chief Financial Officer (CFO).

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(2) Deposits to be held in escrow. Whenever an amount of money shall be deposited by an applicant with the Borough, the money, until repaid or applied to the purposes for which it is deposited, including the applicant's portion of the interest earned thereon, except as otherwise provided in this article, shall continue to be the property of the applicant and shall be held in trust by the Borough. Deposits received pursuant to this article shall be held in escrow and deposited in a banking institution or savings and loan association in New Jersey insured by an agency of the federal government, or any other fund or depository approved for such deposits by the State of New Jersey. Such deposits shall be placed in an account bearing interest at the maximum rate currently paid by the institutions or depository on time or savings deposits. The Borough shall notify the applicant in writing of the name and address of the institution or depository in which the deposit is made and the amount of deposit.

(3) Refund of deposits; interest. Any of the funds remaining in the deposit, excluding interest, upon completion of the purpose for which the deposit was made shall be returned to the applicant and the account shall be terminated. For deposits over \$5,000 placed in an interest bearing account pursuant to this article, refunds of interest shall be made as follows:

- (a) The Borough shall not be required to refund an amount of interest paid on a deposit which does not exceed \$100 for the year.
- (b) If the amount of interest exceeds \$100 for the year, that entire amount shall belong to the applicant and shall be refunded to him or her by the Borough annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be; except that the Borough may retain for administrative expenses a sum equivalent to no more than 1/3 of that entire amount, which shall be in lieu of all other administrative and custodial expenses.

§ 225-153 Payment of fees required prior to approval.

No subdivision plat or deed or site plan shall be signed, nor shall any zoning approval, building permit, certificate of occupancy or any other type of permit be issued with respect to any approval application for development until:

- A. All applicable fees have been paid;

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B. All bills for reimbursable services have been received by the Borough from professional personnel rendering services in connection with such application, and the payment of such bills has been approved by the Borough;

C. The applicant has reimbursed the Borough for the excess of all bills for professional services over the escrow amount otherwise herein provided for.

## ARTICLE 7 - Administration and Enforcement

### § 255-154 Interpretation of zoning provisions.

In interpreting and applying Part 3, Zoning, the requirements contained herein and therein are declared to be the minimum requirements for the protection of the health, safety and general welfare of the public and for the preservation and improvement of the value and aesthetics of the land.

### § 255-155 Enforcement.

A. Grant of authority, responsibility. The Administrative Officer is hereby authorized to and shall administer and enforce the provisions of this Part 1.

B. Issuance of permits and certificates. In no case shall a building permit or certificate of occupancy be issued by the Construction Code Official for any construction, erection, alteration or use of any building, other structure, lot or area of land that would be in violation of any provision of this Part 1.

C. Inspection of premises. The Construction Code Official or his/her duly authorized agent, and, in the case of excavations for or demolition of commercial properties, the Health Officer, shall have the right to enter and inspect any building, other structure, lot or area of land at all reasonable times, whether already constructed, erected, altered or put into use, or during the course of construction, erection, alteration, excavation, demolition or putting into use, for the purpose of determining whether or not the provisions of Part 3, Zoning, are being complied with.

D. Records and reports. The Construction Code Official shall keep a record of all applications for building permits and certificates of occupancy and a record of all permits issued, together with all notations of all special conditions involved. The Construction Code Official shall file and safely keep copies of all plans submitted, and the same shall form a part of the records of his/her office and shall be available for the use of the Borough Council, the Planning Board and other officials of the Borough. The Construction Code Official shall prepare a monthly report for the Borough Council summarizing for the period since his/her last

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previous report all permits issued and all complaints of violations and the action taken by him/her consequent thereon. A copy of each such report shall be filed with the Borough Tax Assessor at the same time it is filed with the Borough Council.

E. Cases of doubt. Should the Administrative Officer be in doubt as to the meaning or intent of any provision of Part 3, Zoning, as to the location of a district boundary line on the Zoning Map, or as to the propriety of issuing any permit in a particular case, he/she shall appeal the matter to the Planning Board for interpretation and decision. Any proposed use which is not clearly identified in Part 3, Zoning, as being a permitted use in a district shall be prohibited, subject to clarification by the Planning Board, and no permit shall be issued by the Administrative Officer authorizing the proposed use.

## PART 2-SUBDIVISION AND SITE PLAN REVIEW

### ARTICLE 8 GENERAL PROVISIONS

#### 225-201 Short title.

This Part 2 shall be known and may be cited as the "Land Use Ordinance of the Borough of Kenilworth."

#### § 225-202 Purpose.

- A. The purpose of this Part 2 shall be to provide rules, regulations and standards to guide land subdivision and site plan review in the Borough in order to promote the public health, safety, convenience and general welfare of the Borough.
- B. This Part 2 adopts all of the applicable mandatory provisions of the Municipal Land Use Law of 1975, N.J.S.A. 40:55D-1 et seq.
- C. This Part 2 shall be administered to ensure the orderly growth and development of the community, with emphasis on the protection and proper use of land, and to provide adequate provisions for circulation, utilities and services. The conservation of land through the preservation of trees, natural vegetative areas and appropriate landscaping will enhance soil stability and will improve water quality.

### ARTICLE 9 ADMINISTRATIVE PROCEDURES

#### 225-203 Zoning permits.

- A. Applicability. A zoning permit shall be required to be approved by the Zoning Officer prior to the commencement of any of the following:

- (1) The use or additional use or expansion of use of any land, structure or building, whether improved or unimproved, for any purpose.
- (2) The erection, construction, reconstruction, alteration, conversion or installation of any structure or building, including signs and fences.
- (3) The occupancy or use or the change of occupancy or use of any land, structure or building.

- B. Denial. If a zoning permit is denied by the Zoning Officer, an applicant may do one of the following:

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- (1) Modify the proposed use or development so that it complies with all applicable provisions of this Part 2, if possible, and reapply for zoning permit approval.
- (2) File the appropriate application for interpretation, appeal, development and/or relief, pursuant to Subsection D.
- (3) Take no action towards the commencement of the proposed use or development.

#### C. Exemptions.

- (1) All applications which involve a change of tenancy, but not a change of use, as herein defined, and/or minor alterations to the site or to one or more of the building elevations shall not be required to obtain site plan approval. The Zoning Officer shall issue a zoning permit after consultation with the Chairperson of the Planning Board and after the application has been reviewed by the planning consultant and the Township Engineer to verify and confirm that no variances are required and that the signage site improvements and/or facade changes conform to applicable Township standards.
- (2) An applicant may request an exemption upon application for a zoning permit by submitting a statement setting forth reasons for the exemption and providing sufficient plan information for the Zoning Officer to verify that the exemptions can be granted.
- (3) The applicant shall pay a fee for the exemption review in an amount established by ordinance from time to time.

#### D. Application for Development filing procedure.

- (1) Submission. The applicant shall submit to the Board Secretary the specified number of copies of the following items:
  - (a) Five copies of the completed application for development form, development plans and other documents related to the application.
  - (b) Five copies of the applicable completed application checklist.
  - (c) Five copies of any requests for waivers.
  - (d) A check payable to the Borough of Kenilworth for the appropriate application fee.

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(2) Administrative review. Upon submission of an application for development in compliance with Subsection D(1), the Secretary shall forward one copy of all submitted items to the Administrative Officer, who shall act as the duly constituted administrative officer in reviewing the application for compliance and appropriate action.

§ 225-204 Administration.

- A. Authority of Board. The provisions of this Part 2 shall be administered by the Borough Planning Board in accordance with N.J.S.A. 40:55D-1 et seq.
- B. Scope of regulations. These rules, regulations and standards established by this Part 2 shall be considered the minimum requirements for the protection of the public health, safety and welfare of the citizens of the Borough.
- C. Matters to be considered by Board. Any action taken by the Board under the terms of this Part 2 shall give primary consideration to the matters mentioned above and to the welfare of the entire community.
- D. Exceptions. If the developer can clearly demonstrate that, because of peculiar conditions pertaining to his/her land, the literal enforcement of one or more of these regulations is impracticable or will exact undue hardship, the Board may permit such exception as may be reasonable and within the general purpose and intent of the rules, regulations and standards established by this Part 2 and N.J.S.A. 40:55D-51.

§ 225-205 Transfer of land prior to final approval.

Pursuant to N.J.S.A. 40:55D-55, no person, as owner or agent, shall transfer, sell or agree to sell, except pursuant to an agreement expressly conditioned upon final subdivision approval, any land which forms a part of a subdivision on which the Planning Board is required to act before final approval has been obtained.

ARTICLE 10 MINOR SUBDIVISIONS

225-206 Application; fee.

- A. Before any minor subdivision of land takes place, an application shall be submitted and approved. The application shall be submitted to the Administrative officer in the appropriate form provided by the Board. The number and type of copies of the application form and maps shall be as specified in the application form, as prepared, approved and from time to time revised by the Planning Board. The applicant shall simultaneously apply to the County Planning Board for a review under the land development standards of the county.

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B. An application fee, as set forth in Article 6, Development Fees, shall be submitted at the time application is made.

§ 225-207 Classification; approval.

If the subdivision is classified as a minor subdivision and requires no variances or waivers, and no cause is found for review by the entire Board or for unfavorable action upon the subdivision, such finding shall be reported to the Board by the Administrative Officer. The Borough Planner and Borough Engineer shall review the application and make reasonable conditions. The Administrative Officer shall then forward the reviewed application as revised to the Board. In such event, the Board is hereby empowered, as provided for in N.J.S.A. 40:55D-47, to waive the requirements for full notice and hearing, and thereupon, such finding shall be deemed to be a favorable approval by a vote of the Board; no further approval shall be required, and the plat shall be signed by the Chairperson of the Board and the Board Secretary and returned to the developer within 45 days of the date of submission of a completed application. Should the Board deny the application the applicant may appeal that decision to the Board in a noticed public hearing.

§ 225-208 Filing of plat; expiration of approval.

- A. Approval of a minor subdivision shall expire 190 days from the date of Borough approval unless, within such period, a plat in conformity with such approval and the provisions of the "Map Filing Law," N.J.S.A. 46:23-9.9 et seq., or a deed clearly describing the approved minor subdivision is filed by the Borough Tax Assessor and the Secretary of the Planning Board. Any such plat or deed accepted for such filing shall have been signed by the Chairperson and Secretary of the Planning Board.
- B. The developer shall furnish the Borough Engineering Department a filed map, showing the date of filing and the county filing information, and
- C. An electronic copy in a form acceptable to the Borough Engineer.

§ 225-209 Change of conditions of approval.

The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor subdivision approval is granted shall not be changed for a period of two years after the date of minor subdivision approval, provided that the approved minor subdivision shall have been duly recorded as provided in this Part 2.

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## ARTICLE 11 MAJOR SUBDIVISIONS

### § 225-210 Preliminary approval.

#### A. Application; fee.

- (1) Before any major subdivision of land takes place, an application shall be submitted and approved. The application shall be submitted to the Secretary of the Board, on the appropriate form provided by the Board, with the appropriate copies of a preliminary plat of the proposed subdivision. The number and type of copies of the application form and maps shall be as specified in the procedure manual for subdivisions, as prepared, approved and from time to time revised by the Planning Board.
- (2) An application fee as set forth in Article 6, Development Fees, shall be submitted with the application.

#### B. Revision; amendment.

- (1) Following the public hearing and prior to adoption of a resolution of approval or disapproval of a subdivision application, the developer may request and the Board may grant permission to revise the preliminary plat.
- (2) The Board shall also have the discretion to permit the applicant to submit an amendment application in appropriate instances.

#### C. Action by Borough Engineer. Prior to consideration of the application by the Board, the Borough Engineer shall examine the preliminary plans for conformance with the engineering requirements of the Borough. The Borough Engineer shall submit his/her comments to the Board prior to the date set for consideration of the application by the Board.

#### D. Approval.

- (1) Notation. Where the Board acts favorably on an application, the Chairperson and the Secretary of the Board shall affix their signatures to the plat, with a notation that it has now received approval, and it shall be returned to the developer for compliance with final approval requirements.
- (2) Effect. Approval of the preliminary plat shall constitute approval of the subdivision as to form only; that is, as to the arrangement and approximate dimensions of streets, lots and other planned features.
- (3) Rights of applicant. Preliminary approval shall confer upon the applicant the following rights for a three-year period from the date of approval:

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(a) That the general terms and conditions under which the approval was granted will not be changed.

(b) That the applicant may submit, on or before the expiration date, the whole or part of the plat for final approval.

### § 225-211 Final approval.

#### A. Application; informal meeting; fee.

(1) An applicant for the subdivision of land shall submit to the Secretary of the Board an application, on the appropriate form provided by the Board, and appropriate copies of a final plat of the proposed subdivision. The number and type of copies of the application form and map shall be as specified in the application form, as prepared, approved and from time to time revised by the Planning Board.

(2) An application fee as set forth in Article 6, Development Fees, shall be submitted at the time of application.

#### B. Requirements. Before submission of the final subdivision plat, the following improvements must be installed, or bonded to the Borough, in accordance with the requirements of the Planning Board, Division of Engineering, ordinances of the Borough and conditions of preliminary subdivision approval applicable thereto:

(1) Street grading.

(2) Road subbase and road base, all required pavement courses.

(3) Gutters.

(4) Curbs.

(5) Water mains.

(6) Culverts.

(7) Storm sewers.

(8) Sanitary sewers, including lateral connections to an area beyond the roadway curb line.

(9) Drainage structures and stormwater detention facilities.

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C. Board action.

(1) The Board shall act to approve or disapprove the plat submitted for final approval with revisions, if any, within 45 days after it is submitted. The action of the County Planning Board, if any, shall be noted on the plat, and, if disapproved, a copy of the plat and the reasons for disapproval shall be returned to the applicant/developer.

(2) If the Board approves the final plat, a notation to that effect shall be made on each plat and shall be signed by the Chairperson of the Board and the Board Secretary.

D. Filing; expiration of approval. Upon final approval, copies of the final plat, signed by the Chairperson and the Secretary of the Board, shall be filed by the applicant with the County Recording Officer and the County Planning Board. If the plat has not been filed with the County Recording Officer within 95 days from the date of signing, the approval shall expire. The Board, for good cause shown, may extend this period to no more than 190 days from the date of the signing of the plat.

## ARTICLE 12 MINOR SITE PLANS

### 225-212 Purpose.

The purpose of this article is to supplement the site plan review process by the addition of a category referred to as a "minor site plan." Minor site plans accommodate inconsequential changes to an existing site, which may be permitted without a full site plan review in order to facilitate development within the Borough.

### § 225-213 Definitions.

As used in this article, the following terms shall have the meanings indicated:

#### **MINOR SITE PLAN**

A development plan of one or more lots which:

A. Is limited to the following where no new variances are required:

- (1) Freestanding sign.
- (2) Alteration of a facade of the building.
- (3) Increase or decrease in floor area (either gross or habitable) of less than 500 square feet.

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- (4) Addition of a permitted accessory building, structure or use no larger than 500 square feet in floor area
- (5) Modification of utilization not involving any of the above.
- (6) Change from one conforming use to another conforming use, or one office use to another office use, for which there is no other variance required.

B. Does not involve planned development, any new street or extension of any off-tract improvement which is to be prorated pursuant to N.J.S.A. 40:55D-42; and

C. Contains the information reasonably required in order to make an informed determination as to whether the requirements established by this chapter for approval of a minor site plan have been met.

#### § 225-214 Waiver of formal notice and public hearing requirements.

The reviewing Board shall waive formal notice and public hearing requirements for development if the reviewing Board finds that the application for development conforms to the definition of a "minor site plan" as set forth herein.

#### § 225-215 Application.

An application for approval of a minor site plan shall consist of the following:

- A. A completed minor site plan application.
- B. A key map of the site plan as originally approved showing the zone district in which the property being further developed is located and existing streets within 200 feet of the property. A marked up copy of a tax map may be suitable for this purpose.
- C. A sufficient plan based upon a current survey identifying the location and information to describe the proposed development.
- D. The application shall be in conformity with the provisions of this article (i.e., no new variances or waivers are associated with the minor site plan approval).

#### § 225-216 Review of application.

Upon receipt of the requested escrow fees, the minor site plan application shall be reviewed by one or more of the following Borough officials: Building Inspector; Zoning Officer; Borough Planner; Borough Engineer; Fire Chief; Police Chief; and/or Health Officer. Once deemed complete the application shall be forwarded to the Planning Board for review and action.

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### § 225-217 Additional requirements.

Minor site plan applications shall be approved and permits issued subject to receipt of applicable outside agency approvals and/or permits and the establishment of applicable performance guarantees and payment of inspection fees.

### § 225-218 Decision by Board.

Minor site plan applications shall be granted or denied within 45 days of the date of submission of a complete application to the Secretary of the Board or within such further time as may be consented to by the applicant. Failure of the reviewing Board to act within the prescribed time period shall constitute minor site plan approval. A public hearing is not required for a minor site plan application.

### § 225-219 Final approval.

Minor site plan approval shall be deemed to be final approval of the site plan application by the reviewing Board, provided that the Board or said subcommittee may condition such approval on terms ensuring the provision of improvements pursuant to N.J.S.A. 40:55D-38, N.J.S.A. 40:55D-39, N.J.S.A. 40:55D-41 and N.J.S.A. 40:55D-53.

## ARTICLE 13 PERFORMANCE GUARANTEES

### § 225-220 Guarantees required.

Performance guarantees shall be provided in accordance with this chapter.

In addition, ten percent thereof shall be deposited in cash or by certified check with the Borough Clerk, conditioned upon the developer providing street lighting, sidewalks, shade trees, surveyors monuments, iron pipe lot markers and such other subdivision improvements as the Borough Council and Board may find necessary or appropriate in the public interest. The deposit, or a portion thereof, in an amount as certified in writing by the Borough Engineer and approved by the Council, may be expended by the Borough if, within 30 days after written notice from the Borough Engineer, the developer shall fail to provide a stated improvement of a type necessary or appropriate for the public interest. The Borough shall be obligated to return only the unexpended portion of the deposit to the developer, which condition shall be agreed to in writing by the developer prior to consideration of the final Approval.

### § 225-221 Amount.

The amount of the performance guarantee is in accordance with Section 149.

### § 225-222 Partial release.

The Board, upon application by the developer, may recommend to the Borough Council the reduction of the amount of the performance guarantee up to 70% upon certification,

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in writing, by the Borough Engineer that certain portions of the required improvements and Planning Board conditions have been properly completed and upon the posting of proper guarantees and maintenance bonds, provided that the remaining performance guarantees and maintenance bonds are adequate to insure completion of the remaining improvements.

## ARTICLE 14 SUBDIVISION PLAT DETAILS

### § 225-223 Minor subdivisions.

The plat shall be drawn by a licensed New Jersey land surveyor and shall be based on Tax Map information or some other similarly accurate base, at a scale of not less than 40 feet to the inch. It shall comply with N.J.S.A. 46:23-9.9 et seq. and shall show or include the following information:

- A. The name of the land surveyor who has drawn the sketch plat.
- B. The location of that portion which is to be subdivided in relation to the entire tract.
- C. All existing structures and wooded areas within the portion to be subdivided and within 200 feet thereof.
- D. The name of the owner and of all adjoining property owners, as disclosed by the most recent Borough tax records.
- E. The Tax Map sheet, block and lot numbers and a key map.
- F. All streets or roads and streams within 500 feet of the subdivision, including the extent of paving of all such streets.
- G. The proposed lot layout, lot dimensions and total area of each lot.
- H. Proposed use of the requested subdivision.
- I. Location of any proposed building or buildings.
- J. Any other pertinent information deemed necessary by the appropriate Board in the consideration of the proposed subdivision.
- K. All existing storm and sanitary sewers within 200 feet of the subdivision, with all invert and surface elevations included.
- L. Sufficient elevations and contours at two-foot intervals to determine the general slope and natural drainage of land and high and low points if required by the Borough Engineer.

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M. Any portion of the site within a flood hazard area and proposed treatment of such portion under the requirements of Chapter 166, Flood Damage Control.

§ 225-224 Preliminary plat for major subdivisions.

A. Preliminary plat.

(1) The preliminary plat shall be clearly and legibly drawn or reproduced at a scale of not less than 40 feet to the inch, subject to the Borough Engineer's recommendation. The preliminary plat shall be designed and drawn by a licensed New Jersey professional land surveyor, planner or engineer and shall comply with N.J.S.A. 46:23-9.9 et seq. Plans that include civil engineering design such as grading, pavement and drainage must be drawn by a professional engineer.

(2) The plat shall be designed in compliance with the provisions of Article 11 and shall show or be accompanied by the following information:

(a) An adequate key map showing the entire subdivision and its relation to surrounding areas, lot layout, lot dimensions and lot area in square feet.

(b) The tract name, Tax Map sheet, block and lot number, date, reference meridian, graphic scale and the following names and addresses:

[1] Record owner or owners.

[2] Developer.

[3] Person who prepared map.

(c) Acreage of tract to be subdivided, to the nearest tenth of an acre.

(d) Contours, at two-foot intervals, of the land to be subdivided, both existing and proposed, together with adequate contours of any surrounding areas which, in the opinion of the Borough Engineer, may affect the development and the proposed improvements within the subdivision so as to determine the general slope and natural drainage of the land and the high and low points and center-line grades for all proposed new streets.

(e) Location of existing and proposed property lines, streets, buildings, monuments, watercourses, railroads, bridges, culverts,

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drainpipes, and any natural features, such as large trees or wooded areas and rock formations.

(f) Plans and profiles of all proposed streets within the subdivision, with complete horizontal and vertical alignment data and profiles of existing or future continuing streets a minimum distance of 200 feet beyond the subdivision boundaries.

(g) Plans of proposed utility layouts, such as sewers, storm drains, water, gas and electricity, showing feasible connections to existing or any proposed utility systems. When a private sewage disposal system is proposed, the location, dates and results of all percolation tests shall be shown.

(h) Plans and profiles of all proposed and existing sanitary sewers, storm drains, drainage ditches and streams within the subdivision, together with locations, sizes, elevations, grades and capacities of any existing sanitary sewer, storm drain, drainage ditch or stream to which the proposed facility shall be connected. Any portion of a site within a flood hazard area shall be shown, and its proposed treatment indicated, under the requirements of Chapter 166, Flood Damage Control.

(i) When the development of the subdivision or improvements within the subdivision are contingent upon information outside the boundaries of such subdivision, such information shall be supplied by the developer.

(j) Minimum building setback line on all lots and other sites.

(k) A copy of any protective covenants or deed restrictions applying to the land being subdivided shall be submitted with the preliminary plat.

(l) A statement from the applicant certifying that all proposed and existing streets, drainage rights-of-way, easements and other areas of public use are free and clear of any liens and encumbrances.

(m) With the preliminary plat, the Planning Board shall be provided, by the developer, with the topographic information and storm drainage studies on any water disposal problem in accordance with the requirements of the Borough Engineer.

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(n) A soil erosion and sediment control plan prepared by a licensed New Jersey professional engineer in accordance with specifications for soil erosion and sediment control of the Somerset-Union County Soil Conservation District, certified pursuant to N.J.S.A. 4:24-39 et seq. The Planning Board shall not give unconditional approval to the preliminary plat until receipt of the soil conservation district certification. Any fees or expenses involved in the review by the district shall be the applicant's responsibility. Upon receipt of a report from the Somerset-Union County Soil Conservation District, the Planning Board shall require incorporation of such soil erosion and sediment control measures as it deems appropriate as a condition of tentative approval of the preliminary plat.

(o) All work shall be done in accordance with the requirements of the Borough Engineer.

B. Water and sewage systems. All proposed development shall be connected to public water and sanitary sewer systems.

C. Drainage. When storm drains, drainage ditches or brook channel improvements are proposed or required, the plan for such improvement must be approved by the NJDEP if such improvement is of sufficient size as to so warrant. Drainage areas tributary to all catch basins shall be clearly indicated.

D. Special escrows. Special escrows may be required by the Planning Board in connection with any subdivision that may create or contribute to a drainage problem in its immediate area or abutting properties.

§ 225-225 Final plat for major subdivisions.

The final plat shall be drawn in ink on Mylar by a New Jersey Licensed Land Surveyor at a scale of not less than one inch equals 40 feet and in compliance with N.J.S.A. 46:23-9.9 et seq., and in accordance with the terms of this Part 2. The final plat shall show or be accompanied by the following:

- A. Date, name and location of the subdivision, name of owner, graphic scale and reference meridian and a key map.
- B. Tract boundary lines, right-of-way lines of streets, street names, easements and other rights-of-way, land to be reserved or dedicated to public use, all lot lines and other site lines, all with accurate dimensions, bearings or deflection angles, and radii, arcs and central angles of all curves and all other information required by the State of New Jersey Map Filing Law, N.J.S.A. 46:23-9.9 et seq.

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C. The purpose of any easement or land reserved or dedicated to public use shall be designated, and the proposed use of sites other than residential shall be noted.

D. Each block shall be numbered, and the lots within each block shall be numbered consecutively and shall coincide with the Tax Atlas in accordance with the instructions of the Borough Engineer.

E. Minimum building setback lines on all lots and other sites.

F. Location and description of all monuments, as required by the Borough Engineer and Planning Board.

G. Names of owners of adjoining properties and those located across any existing or proposed street.

H. Certification by a licensed engineer or surveyor as to accuracy of details of plat.

I. Certification that the developer is the owner or agent of the owner of the land or that the owner has given consent under an option agreement.

J. When approval of a plat is required by any officer or body of the Borough, county or state, such approval shall be certified on the plat.

K. Certificate from the Tax Collector that all taxes are paid to date.

L All work shall be done in accordance with the requirements of the Borough Engineer.

## ARTICLE 15 - SITE PLANS

### § 225-226 Applicability.

For the purposes of this Part 2, "site development" shall consist of the construction of any building, other than a detached one-family dwelling or a detached two-family dwelling, if such is permitted by zoning ordinance or variance, involving a floor area of over 100 square feet or under 100 square feet in the case of commercial or industrial buildings. "Site development" shall also include the construction of parking areas and driveways for more than two vehicles, except in connection with a detached one- or two-family dwelling, and the regrading, removal of vegetation or displacement of soil in an area of over 5,000 feet. Repaving of existing parking areas shall not be considered site development requiring site plan approval.

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### § 225- 227 Administration.

The provisions of this Part 2 shall be administered by the Planning Board in accordance with N.J.S.A. 40:55D-37, except that the Zoning Board of Adjustment shall substitute for the Planning Board whenever the Zoning Board of Adjustment has jurisdiction over a site plan under the provisions of Part 1.

### § 225-228 Submission of preliminary site plan.

A. Application. Any owner of land within the Borough, prior to developing a site, shall submit to the Planning Board Secretary or his/her designee such number of copies, as specified in the Planning Board's application form, of a preliminary site plan and such other information as is required below in tentative form for preliminary approval. The applicant may, however, submit such site plan and accompanying information in final form and may request final approval concurrently with preliminary approval, which request may be granted by the Board if the data required for final approval under Part 1 hereunder is found to be complete and satisfactory.

B. Determination of completeness. The Administrative Officer shall review the application for development and if it is found to be incomplete, the developer shall be notified thereof within 45 days of the submission of such application, or it shall be deemed to be complete.

C. Amendments. If the Planning Board requires any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing, an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development.

### § 225-229 Approval of preliminary site plan.

The Planning Board shall, if the proposed development complies with this Part 2 and N.J.S.A. 40:55D-1 et seq., grant preliminary site plan approval. A public hearing shall be required.

### § 225-230 Approval by county.

Whenever review or approval of the application by the County Planning Board is required by N.J.S.A. 40:27-6.6, the Borough Planning Board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the Planning Board by its failure to report thereon within the required time period.

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§ 225-231 Changes to preliminary site plan; duration of approval; extensions.

A. Change of requirements. Preliminary approval of a site plan shall protect the applicant, for a three-year period from the date of the preliminary approval, from changes in the general terms and conditions on which preliminary approval was granted, including, but not limited to, use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions; off-tract improvements; and any requirements peculiar to such preliminary site plan approval. However, nothing herein shall be construed to prevent the Borough from modifying by ordinance such general terms and conditions of preliminary approval as relate to public health and safety.

B. Extensions of approval period; conditions. The applicant may apply for and the Planning Board may grant extensions on such preliminary approval for additional periods of at least one year, but not to exceed a total extension of two years, provided that if the design standards have been revised by ordinance, such revised standards may govern.

§ 225-232 Submission of final site plan.

A. Approval by whole or by section. The applicant may submit for final approval, on or before the expiration date of preliminary approval, the whole or a section or sections of the preliminary site plan.

B. Submission to Administrative Officer and Board. The final site plan shall be submitted to the Administrative Officer, in the number of copies requested by the Planning Board's application form, for forwarding to the Planning Board for final approval. The Administrative Officer shall immediately notify the Secretary of the Planning Board upon receipt of the final site plan application.

C. Public hearing. A public hearing shall not be required, except that if any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing is made or is required, the site plan shall again go through the procedure required for preliminary site plans as an amended preliminary site plan.

§ 225-233 Changes to final site plan; duration of approval; extensions.

A. Changes from approved plan. The site plan, as approved by the Planning Board, shall be binding upon the applicant. Any changes from the approved site plan shall require resubmission and reapproval by the Planning Board, with appropriate fees.

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B. Expiration of approval. The approved site plan shall remain effective for a period of two years from the date of approval, and all improvements shall be installed within that time period.

§ 225-234 Plan details.

Site plans shall be drawn on a map or maps to a scale not smaller than one inch equals 40 feet and not larger than one inch equals 10 feet and shall include and show the following information with respect to the subject property, except that preliminary site plans may be submitted without grade elevations and engineering designs and may include only preliminary architectural floor plans and typical elevations:

- A. The name and address of the applicant and the owner.
- B. The name, address and title of the person preparing the site plan, maps and accompanying data.
- C. The date of preparation and the dates of each revision, where applicable.
- D. A signature and certification by a registered engineer, land surveyor or architect, with property survey data to be based on current survey.
- E. An appropriate place for the signatures of the Chairperson and Secretary of the Planning Board or Zoning Board of Adjustment and the Borough Engineer.
- F. The lot and block number or numbers from the Borough Tax Maps.
- G. The length and bearings of the lot lines of the proposed project.
- H. A scale, North sign and key map relating the site to the streets in the surrounding area.
- I. The zone district in which the lot or lots are located and the zone district or districts of all the immediately adjoining lots.
- J. The location, size and nature of all existing and proposed rights-of-way, easements and other encumbrances which may affect the lot or lots in question.
- K. The location, size and nature of the entire lot or lots in question, and any contiguous lots owned by the applicant or in which the applicant has a direct or indirect interest, even though only a portion of the entire property is involved in the site plan for which approval is sought, provided that where it is physically impossible to show the entire lot or lots or contiguous lot or lots on one map, a key map thereof shall be submitted.

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- L. The location, names and pavement and right-of-way widths of all existing and proposed streets abutting the lot or lots in question.
- M. The property lines of all abutting properties, together with the names and addresses of the owners as disclosed on the Borough Tax Map and tax rolls as of the date of the site plan application.
- N. The location of the nearest portions of existing buildings on properties abutting the site in question.
- O. The existing and proposed principal building or structure and all accessory buildings or structures, if any, with dimensions showing present and finished grade elevations at all corners and entrances of such buildings or structures, first-floor elevations and the complete floor plans and elevation plans thereof.
- P. Present and proposed topography, based on New Jersey Geodetic Control Survey Datum, at one-foot contour intervals, including sufficient distance outside the site to show the relationship to adjoining properties.
- Q. All existing and proposed setback dimensions.
- R. Landscaped areas, trees over six-inch caliper on the part of the site affected by the proposed development, fencing, size and type of planting and plant material upon the subject lot or lots, including a planting plan drawn by a qualified landscape architect or landscape designer and signed by him/her.
- S. The location, type and size of all existing and proposed curbs, sidewalks, driveways, street pavement widenings, fences, retaining walls and parking space areas, together with the dimensions of all the foregoing, for the site and the nearest portions of properties abutting the site.
- T. The number of employees, total and maximum on one shift.
- U. The location, type and size of existing and proposed catch basins, storm drainage facilities and all utilities, both above and below ground. Drainage calculations shall be submitted to show stormwater detention in conformance with Subchapter 7, Stormwater Management (N.J.A.C. 5:21-7.1 et seq.), of the Residential Site Improvement Standards, N.J.A.C. 5:21-1.1 et seq., and the adequacy of proposed storm drainage facilities and security against flooding.
- V. Evidence of approval by the State Department of Environmental Protection, where applicable, including encroachment permits. A showing shall be made of how the requirements of Part 4, Flood Damage Control, are complied with in regard to flood protection and control of stormwater runoff.

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- W. All existing and proposed signs and their size, nature of construction and location.
- X. All existing and proposed exterior lighting, including size, nature of construction, location, height, the area and direction of illumination and the lumen power.
- Y. Soil erosion and sediment control plan, as described in this Part 2, for sites where over 5,000 square feet of ground area is being disturbed.
- Z. Cost estimates and proposed construction and maintenance bonds and construction time schedules related to building construction for any required improvements under Part 2 not proposed to be completed before the issuance of a certificate of occupancy.
- AA. Plans for any off-tract improvements, including cost estimates and calculations of the share to be borne by the developer, under the standards described in this Part 2.
- BB. Any and all other information and data necessary to meet any of the requirements of this Part 2 not listed above, and any information and data required by the county or state.

#### § 225-235 Review criteria.

In the course of its review, the Board may consider the following:

- A. The layout of the site with respect to the arrangement and widths of driveways on the site and giving access thereto.
- B. The amount of space required for automobile parking and for the loading and unloading of goods and materials; the location of such space and access thereto.
- C. The improvement of roadways and automobile parking areas by grading, surfacing and the installation of drainage structures.
- D. Lighting.
- E. The installation of waterlines and facilities for sanitary sewerage.
- F. The display of signs.
- G. The appropriateness of the site plan and of the design of the buildings in relation to the physical characteristics of the site, the character of the neighborhood and the most beneficial prospective use of land in the neighborhood.

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H. Conformance with the objectives of the Comprehensive Master Plan; Part 3, Zoning; and this Part 2.

I. The location, design and adequacy of screening and landscaping.

§ 225-236 Inspection and completion of improvements.

The installation of improvements as approved in the final site plan, other than buildings, shall be subject to inspection by the Borough Engineer. Approval shall be revoked if there is a significant deviation from the site plan as approved. Performance and maintenance bonds may be required and shall be released subject to approval by the Borough Council upon recommendation by the Borough Engineer. All improvements shall be completed in a timely manner so as not to leave the site in an unfinished or unsightly condition, as determined by the Borough Engineer. If this is not done, the final approval shall be deemed to be revoked, and the performance and maintenance bonds may be used by the Borough to restore the site to an acceptable condition.

ARTICLE 16 - IMPROVEMENTS

§ 225-237 Improvement standards.

Prior to the granting of final approval of subdivisions or site plans, the developer shall have installed all improvements specified in this Part 2 or shall have furnished performance guarantees for the ultimate installation of those improvements.

Improvements for residential uses shall conform to the Residential Site Improvements Standards (RSIS), N.J.A.C. 5:21-1.1 et seq. These standards shall be considered the minimum for all nonresidential uses, with modifications or additions as required by the Borough Engineer and Board having jurisdiction over the applications or as modified elsewhere in this Part 2.

A. Streets. All streets shall be paved from curbline to curbline.

B. Street signs. Appropriate street signs shall be installed at all street intersections and shall be of a type specified by the Borough Engineer. Street signs shall be installed prior to the issuance of certificates of occupancy, and the cost of signs and installation of same shall be borne by the developer.

C. Clear view at intersections.

(1) No fence, structure, planting or shrubbery over 30 inches in height above the level of the pavement at the center of the street, opposite the point in question, shall be erected, planted or maintained on any corner lot, in any zone, within 25 feet of the intersection formed by the projection of the two street sidelines at the corner.

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(2) No fence, structure, planting or shrubbery shall be permitted within three feet of any street sideline, on any lot, in any zone. The branches of all trees and shrubs projecting beyond such street sideline must be trimmed at all times in order to insure unobstructed vision and clearance eight feet above the ground or sidewalk level.

D. Topsoil protection. No topsoil shall be removed from the site or used as spoil unless permission is first obtained from the Borough Engineer and the Planning Board. Topsoil moved during the course of construction shall be redistributed so as to provide at least four inches of cover to all areas of the subdivision and shall be stabilized by seeding or planting.

E. Monuments. Monuments shall be of the size and shape required by N.J.S.A. 46:23-11(r) and shall be placed in accordance with such statute.

F. Catch basins. Catch basins shall be constructed as directed and located by the Borough Engineer.

G. Soil or earth moving. No change shall be made in the elevation or contour of any lot or site, except as approved by the Borough Engineer and the Planning Board. All changes in elevation and contours approved by the Borough Engineer and the Planning Board shall be shown on the preliminary and final plat and profiles.

H. Fire hydrants. Fire hydrants shall be installed in locations approved by the Fire Department.

I. Construction stakes and grades. All construction stakes and grades thereon shall be set by a licensed land surveyor in the employ of the developer or his/her contractor, and a duplicate copy of the notes made therefrom shall be filed with the Borough Engineer.

J. Commencement of site work. No site work shall commence without the Borough Engineer being properly notified. Such notice shall be given at least one week before the commencement of work.

K. Debris. All stumps, litter, rubbish, brush, weeds, dead and dying trees, roots and debris shall be removed from the site to the satisfaction of the Borough Engineer. None of the above shall be buried or covered.

L. Construction standards and specifications. The construction standards and specifications of the Borough, as now or hereafter adopted, shall govern the construction and installation of all of the above improvements. Failure of the developer or his/her contractor or agent to conform to such specifications shall

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be just cause for the suspension of the work being performed and all permits being revoked, and no person shall have the right to demand or claim damages from the Borough, its officers, agents or servants by reason of such suspension or revocation.

M. Inspection. No underground installation shall be covered until inspection has been made and is approved by the Borough Engineer.

N. As-built improvement plans. The developer shall provide and file with the Borough Engineer one complete set of as-built improvement plans and profiles showing actual construction as approved prior to the release of the performance guarantees. Same shall be submitted in both paper (signed and sealed) and electronic format in a format acceptable to the Borough Engineer.

**§ 225-238 Inspections; costs.**

All improvements, except electric, gas and waterlines, shall be installed with the inspection and approval of the Borough Engineer. The inspection costs are to be borne by the developer. Such cost shall be determined by the Borough Engineer. The estimate of the costs of the improvements shall be made by the Borough Engineer prior to final approval. (See also Article 6 fees and escrows)

**§ 225-239 Completion of required improvements; performance guarantee; maintenance bond.**

A. No final plat shall be approved by the Planning Board until the completion of all required improvements specified in this Part 2 have been certified to the Planning Board by the Borough Engineer. In addition, no final plat shall be approved by the Planning Board unless the developer or owner shall have filed with the Borough Clerk a performance guarantee sufficient in amount to cover the cost of all improvements or uncompleted portions thereof, specified in this Part 2, as estimated by the Borough Engineer, and assuring the installation of such uncompleted improvements on or before an agreed date, not to exceed three years from the date of execution of the performance guarantees. An additional amount of 20% of the estimate of the Borough Engineer shall be included in the total amount of the performance guarantee to cover legal, engineering and other costs in the event that the developer shall fail to complete the required improvements and the Borough is required to install the improvements. Such performance guarantee may be in the form of an irrevocable performance bond, which shall be issued by a bonding or surety company and approved by the Borough Council and by the Borough Attorney as to form, sufficiency and execution; or a certified check in the sum specified by the Borough Engineer, which check shall be deposited to the trust account for the

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Borough or a bank account with the bank book in Borough custody. Such money or other surety shall be returned to the depositor after full compliance. The Borough may require up to 10% of the performance guarantee to be deposited in cash.

B. The performance guarantee shall run for a period to be fixed by the Planning Board, but in no case for a term of more than three years. However, with the consent of the owner and the surety, if there is one, the Borough Council, by resolution, may extend the term of such performance guarantee for an additional period, not to exceed three years. The amount of a performance guarantee may be reduced by the Council by resolution when portions of the required improvements have been installed and accepted for maintenance.

C. If the required improvements have not been installed in accordance with the performance guarantee, the obligor and surety shall be liable thereon to the Borough for the reasonable cost of the improvements not installed or improperly installed and the expenses involved thereto. Upon receipt of the proceeds of the bond or guarantee, the Borough shall install such improvements or shall correct any such defective installations. The Borough may use such portions of the performance guarantees as have been deposited in cash with the Borough Clerk in accordance with the terms of this Part 2 and any applicable agreement to assure the completion or correction of such improvements.

D. Upon completion and approval of a portion or section, the developer shall be required to file a maintenance bond sufficient in amount to guarantee that the completed section will be maintained by the developer until completion of improvements in the remaining portions or sections of the subdivision and for a stated period of time thereafter, not to exceed three years from date of completion of all improvements.

E. The Borough Engineer shall determine the amount of the maintenance bond, and it shall be approved by the Borough Attorney as to form and sufficiency.

#### § 225-240 Off-tract improvements.

Pursuant to the provisions of N.J.S.A. 40:55D-39 and 40:55D-42, construction of, or contributions for, off-tract water, sewer, drainage and street improvements may be required in accordance with the following criteria:

A. Improvements at sole expense of applicant. In cases where reasonable and necessary need for an off-tract improvement or improvements is necessitated or required by the proposed development application, and where no other property owners receive a special benefit thereby, the Board may require the applicant, as

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a condition of subdivision or site plan approval, at the applicant's sole expense, to provide for and construct such improvements as if such were on-tract improvements, in the manner provided hereafter and as otherwise provided by law.

B. Contributions by developer.

- (1) In cases where the need for any off-tract improvement is necessitated by the proposed development application, and where the Board determines, in writing, that properties outside the development will also be benefited by the improvements, the Board shall require such contribution from the developer towards the cost of such improvement or improvements as the Board determines is fair and equitable, considering the benefit to the development and the creation in acceleration of the need by the development. The resolution or determination of the Board shall specify the off-tract improvements which are necessary and the terms and conditions which shall be imposed upon the applicant to insure the successful and reasonable implementation of same. In its deliberation as to whether off-tract improvements are required, the Board shall be guided by the rules and regulations specified in Part 3, Zoning, this Part 2 and the Borough Master Plan. The Board may also be guided by counsel from the Board Attorney, Engineer and other qualified experts and Borough officials.
- (2) In the event that the Board determines that one or more improvements constitute an off-tract improvement, the Board shall notify the Borough Council of same, specifying the Board's recommendation relative to the estimated cost, the applicant's prorated share of the cost and possible methods or means to implement same, including, but not limited to, performance and maintenance guarantees, cash contributions, development agreements and other forms of surety.
- (3) The Board shall not grant final approval of the subdivision until all aspects of such conditions have been mutually agreed to by both the applicant and the Borough Council, and a written resolution to that effect by the Council has been transmitted to the Board.

C. Methods of implementation.

- (1) Performance and maintenance guarantees. Where a performance or maintenance guarantee or other surety is required in connection with an off-tract improvement, the applicant shall be required to follow the same

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procedures and requirements as specified in this Part 2 for other improvements.

(2) Development agreement. A development agreement governing off-tract improvements or other conditions as may be required by this Part 2 or by the Board shall be approved as to form, sufficiency and execution by the Board Attorney and Borough Attorney. Such agreement shall specify the amount of cash contributions, if any, the method of payment of same, the relative timing of such payment and the obligation or obligations to be undertaken by the Borough.

(3) Cash contributions; exceptions. Cash contributions for off-tract improvements shall not be required under the following conditions:

(a) Where another county or state agency has jurisdiction over the subject improvement and requires a cash contribution, guarantee or other surety of the applicant in lieu of such conditions imposed by the Borough;

(b) Where a benefit assessment or other similar tax levy is imposed upon the applicant for the off-site improvement provided; or

(c) Where the applicant, where legally permissible, can undertake the improvements in lieu of the Borough, subject to standards and other conditions as may be imposed by the Borough.

(4) Cash contributions; payment. Where a cash contribution is required by this Part 2, such contribution shall be deposited with the Chief Financial Officer (CFO) of the Borough, with a copy of the applicant's transmittal letter forwarded to the Borough Council, the Borough Engineer and the Board. Any and all monies received by the Treasurer shall be deposited in an escrow account for the purpose of undertaking the improvements specified. Where such improvements are not undertaken or initiated for a period of 10 years, the funds may be retained by the Borough and may be used for general Borough purposes, but in such event, neither the applicant nor any of his/her heirs, successors, executors, administrators or grantees shall be liable to the Borough for any assessment for the purpose of installing any of the improvements for which such cash contribution was made.

D. Formula for determining applicant's share of off-tract improvements. Where an off-tract improvement is required, the following criteria shall be utilized in determining the proportionate share of such improvement to the applicant:

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(1) Streets and accessories: street widening, alignment, corrections, channelization of intersections, construction of barriers, new or improved traffic signalization, signs, curbs, sidewalks, trees, utility improvements not covered elsewhere and the construction of new streets and other similar street or traffic improvements. The applicant's proportionate share shall be calculated by the Borough Engineer in accordance with N.J.S.A. 40:55D-42.

(2) Water facilities: any Borough expense for water distribution facilities, including the installation of new water mains, the relocation of such facilities and the installation of other appurtenances associated therewith. The applicant's proportionate cost shall be in the ratio of the estimated daily use of water from the property or properties in gallons to the sum of the deficiency in gallons per day for the existing system or subsystem and the estimated daily use of water for the proposed development. The ratio thus calculated shall be increased by 10% for contingencies.

(3) Sewers: sanitary sewage distribution facilities, including the installation, relocation or replacement of collector and interceptor sewers and the installation, relocation or replacement of other appurtenances associated therewith. The applicant's proportionate cost shall be in the ratio of the estimated daily flow in gallons to the sum of the present deficient capacity for the existing system or subsystem and the estimated daily flow from the proposed project or development. In the case where the peak flow for the proposed development may occur during the peak-flow period for the existing system, the ratio shall be the estimated peak-flow rate from the proposed development in gallons per minute to the sum of the present peak-flow deficiency in the existing system or subsystem and the estimated peak-flow rate from the proposed development. The greater of the two ratios thus calculated shall be increased by 10% for contingencies and shall be the ratio used to determine the cost to the applicant.

(4) Drainage facilities: stormwater and drainage improvements, including installation, relocation or replacement of transmission lines, culverts, catch basins and the installation, relocation or replacement of other appurtenances associated therewith. The applicant's proportionate cost shall be in the ratio of the estimated peak surface runoff as proposed to be delivered into the existing system measured in cubic feet per second to the sum of the existing peak flow in cubic feet per second deficient for the existing system and the estimated peak flow as proposed to be delivered. The ratio thus calculated shall be increased by 10% for contingencies. The

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applicant's engineer shall compute the drainage basin area, the area of the development and the percent of the total drainage basin area occupied by the development. Where no drainage system exists which will receive the flow of surface water from the applicant's development, the applicant shall furnish all drainage rights-of-way deemed to be necessary by the Board.

(5) General considerations. In calculating the proportionate or pro rata amount of the cost of any required off-tract facilities which shall be borne by the applicant, the Board shall also determine the pro rata amount of cost to be borne by other owners of lands which will be benefited by the proposed improvements.

## ARTICLE 17 - GENERAL DESIGN STANDARDS

### § 225-241 Applicability.

This article provides design guidelines, design standards and construction specifications which shall apply to applications for site plan or subdivision approval. Notwithstanding the foregoing, the RSIS shall supersede the standards in this article according to law.

### § 225-242 Applicability of RSIS.

The RSIS are incorporated herein by reference. A copy of the standards are available for inspection in the office of the Zoning Officer. The following provisions shall govern the application of the RSIS.

- A. Any project for which preliminary subdivision or site plan approval has been given prior to June 3, 1997 shall continue to be subject to the RSIS and provisions of the applicable chapters of the Borough Code in effect prior to June 3, 1997.
- B. Any project for which application is made after June 3, 1997 shall be governed by the RSIS.
- C. The RSIS shall apply to all applications for residential subdivision and site plan approval, and shall apply to all site improvement work and appurtenant construction including streets, roads, parking facilities, sidewalks, drainage structures, grading and utilities.
- D. The RSIS shall not apply to driveways on private property held in fee-simple as individual residential lots outside of the public right-of-way, including common driveways established by easements shared by more than one dwelling unit on private property.

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E. Where both residential and commercial development are planned in a mixed-use development, the RSIS shall apply to the residential part or parts of such development where such residential part or parts are discrete and separate from planned commercial parts as evidenced by, for example, separate building(s), separate parking, and separate access features.

F. The RSIS shall supersede and replace all technical requirements of this article with regard to streets, parking, water supply, sanitary sewers and stormwater management in residential development.

G. The RSIS shall not supersede, and shall not replace, standards in this article or in any other article, concerning:

(1) Layout, arrangement, and location of improvements, shade trees, landscaping, or reservation of areas for public use, pursuant to N.J.S.A. 40:55D-38.

(2) Preservation of existing natural resources; arrangement of physical elements for safe and efficient vehicular and pedestrian circulation, by, for example, traffic calming measures, parking and loading; screening, landscaping, and location of structures; or conservation of energy and use of renewable resources; pursuant to N.J.S.A. 40:55D-41; or

(3) Use, bulk, height, number of stories, orientation and size of buildings and other structures; the percentage of lot or development area that may be occupied by structures, lot sizes and dimensions, floor area ratios, or other measures to control development intensity; or the provision of adequate light and air pursuant to N.J.S.A. 40:55D-65.

H. Choice among options contained in the RSIS shall be the applicant's unless otherwise specified in the RSIS.

I. Administration, approval, waivers and exceptions, enforcement and violations concerning the RSIS shall be as set forth in N.J.A.C. 5:21.

J. Those provisions of this chapter containing standards which may be superseded by the RSIS are designated with the letters "SIS" at the end of the provision. The final determination of applicability shall be made by the Zoning Officer.

## § 225-243 Design Principles.

A. All site plans, plot plans and subdivision plats shall conform to design standards that will encourage desirable development patterns within the Borough.

(1) Where either or both an Official Map or Master Plan have been adopted, the plot, site and subdivision plans shall conform to the proposals and conditions shown thereon.

(2) The streets, drainage rights-of-way, school sites, public parks and playgrounds and other municipal facilities shown on an adopted Master Plan or Official Map shall be considered in the review of plot, site and subdivision plans.

(3) Where no Master Plan or Official Map exists, or makes no provisions therefor, streets and drainage rights-of-way shall be shown on the final plat in accordance with N.J.S.A. 40:55D-38 and shall be such as to lend themselves to the harmonious development of the Borough and the enhancement of the public welfare.

B. Within the criteria established by and subject to the review and approval of the reviewing agency, all design of a plot, site or subdivision plan is the responsibility of the developer, and he shall be responsible for and bear the entire cost of any and all investigations, tests, reports, surveys, samples, calculations, environmental assessments, designs, researches or any other activity necessary to the completion of the design.

(1) The standards set forth in this article shall be taken to be the minimum necessary to meet its purposes as set forth elsewhere herein.

(2) The responsibility of the reviewing agency shall be to see that these minimum standards are followed and, in those cases not covered by these standards, sufficient precautions are taken to assure that the eventual design is conducive to the implementation of the purposes of this Part 4 and the Borough Master Plan.

(3) The reviewing agency may employ professionals in various disciplines to advise and assist it in its determinations.

(4) Any decisions of the reviewing agency regarding the suitability or sufficiency of any design proposal, taken upon advice of its professionals and subject to the provisions of this Part 2, shall be deemed conclusive.

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C. When a developer determines that it will be necessary to utilize design standards in addition to or other than those minimum requirements established herein, he is advised to consult with the Borough Engineer prior to beginning his detailed design, for review and approval of his proposed design standards.

- (1) Standards utilized should generally be nationally recognized and in common use in this area.
- (2) Design standards may not be utilized if they do not have the approval of the Borough Engineer.
- (3) The design standard change shall be approved by the reviewing agency upon a report from the Borough Engineer.

D. It is recognized that, in certain instances, preexisting conditions or the uniqueness of a particular proposal may require the waiver of some of the standards presented herein.

- (1) The reviewing agency may consider and, for cause shown, may waive strict conformance with such of these detailed design standards as it sees fit.
- (2) Any developer desiring such action shall present with his application for development a listing of all such waivers desired, together with the reasons therefor.

#### § 225-244 General improvement standards.

A. All improvements shall be installed in complete accordance with the standards of this Part 2, with other particular specifications approved by the reviewing agency and Borough Engineer, and with all other applicable municipal, county, state and federal regulations, including the Residential Site Improvement Standards (N.J.A.C. 5:21).

- (1) Should improvements be required which are not provided for within the particular sections of this Part 2, they shall be designed and constructed in accordance with good engineering practice and recognized design standards.
- (2) The developer (or his engineer) shall submit calculations and construction specifications in each instance.
- (3) Prior to initiation of such specialized design, the particular standards to be utilized shall be submitted for review by the reviewing agency and Borough Engineer.

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B. The Standard Specifications for Road and Bridge Construction of the New Jersey Department of Transportation (latest edition), including all addenda, and the Standard Construction Details of the New Jersey Department of Transportation (latest revision), as modified, supplemented, amended or superseded by the requirements of this Part 2, by the approved final plat, by particular agreement among the reviewing agency, Borough Council and subdivider or by other applicable Borough, county, state or federal regulations, shall govern the completion of the required improvements. Such Standard Specifications and Standard Construction Details (Standards) are made a part of this Part 2 by reference and will not be repeated herein. The requirements of this Part 2 of an approved final plat or of particular agreements and conditions of approval and of applicable Borough, county, state or federal regulations shall govern and prevail in the case of conflict between them and the Standard Specifications or Standard Construction Details. Should the Borough adopt, subsequent to the effective date of this Part 2, particular and specific Standard Construction Details for the Borough, they shall govern and prevail over the Standard Construction Details of the New Jersey Department of Transportation previously referred to.

#### § 225-245 Building site design standards.

A. The following standards and guidelines contained herein shall apply to all development applications submitted for approval containing proposed new buildings and structures or alterations or modifications to existing structures.

B. These building design objectives are intended to assist the reviewing agency in the review of specific development proposals:

(1) All buildings should be located with proper consideration of their orientation and relationship to other buildings, both existing and proposed, in terms of light, air and usable open space; access to public rights-of-way and off-street parking; height and bulk; drainage and existing topography; trees and vegetation; watercourses; solar access and energy conservation.

(2) Groups of related buildings shall be designed to present a harmonious appearance in terms of architectural style and exterior materials.

(3) Buildings should be designed to be attractive from all vantage points, including fences, storage areas and rear entrances.

(4) Building setbacks should be varied to the extent practicable in order to provide an interesting interplay of buildings and open spaces.

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(5) Accessory buildings and structures should be architecturally treated in the same manner as principal structures.

(6) All exterior storage and service yards, loading docks and ramps, electrical and mechanical equipment and enclosures, storage tanks and the like shall be screened from the public view, within and from the outside of the development, by a fence, wall or mature landscape materials, consistent with the exterior design of the building within the development.

(7) Colors, materials and finishes shall be coordinated in all exterior elevations of buildings to achieve continuity of expression. All roof and wall projections, such as gutters, flues, louvers, utility boxes, vents, grills, downspouts, exposed flashing and overhead doors, shall be painted or installed with an anodized or acrylic finish, in a color to match adjacent surfaces.

(8) Buildings of a traditional design should have steeper roofs. Overhangs should be consistent in the front and rear.

(9) All openings in the wall of a structure, such as windows and doors, should relate to each other on each elevation, vertically and horizontally, in a clearly defined order, and should take into account orientation to the sun, in terms of architectural elements for sun shading and consideration of the efficiencies of heat loss and gain through such openings.

(10) Buildings and parking areas should be designed to relate to existing grade conditions. Exposed basement walls are not acceptable as an architectural treatment. All exposed basement walls must be covered to relate properly to the side of the building.

(11) Landscape elements shall relate to architectural design elements and shall be considered a strong unifying component of the overall site design, reflecting the natural and man-made (architectural and aesthetic) qualities of the development.

C. These residential design standards and guidelines are intended to assist in the review of specific proposals:

(1) Residential design should create the appearance of individuality of housing units and avoid the appearance of a large, undifferentiated project.

(2) Dwelling units should have adequate interior living space, using low-maintenance, high-quality and aesthetically attractive materials.

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- (3) Easy access to outdoor space and parking from all residential units should be provided.
- (4) The design should provide a safe, well-lighted residential environment, free of through traffic and congestion.

D. Dwelling units in a development which are designed for the possible use by physically handicapped persons shall meet or exceed the New Jersey Uniform Construction Code minimum property standards and the additional requirements contained in N.J.A.C. 5:23-1 et seq., pertaining to barrier-free regulations.

E. The commercial office and industrial design standards contained below are intended to assist in the review of specific proposals:

- (1) Exterior materials may include brick, stone, anodized aluminum and baked enamel metal panels, precast concrete and similar materials, with appropriate texture and trim to prevent large, undifferentiated facade of the same material.
- (2) All roof planes or caps meeting the exterior facade shall have overhangs or appropriate cornice and trim details.
- (3) All major entrances to buildings shall be properly identified with architectural elements, such as recessed entranceways, projected overhangs and porticos.
- (4) Flat roof canopies on metal pipe columns shall not be used on commercial buildings.
- (5) Window and door openings shall include appropriate trim and either recesses or overhangs to promote a harmonious variety of light and shade on the facade of the building.
- (6) Buildings and structures used for functional purposes, such as warehouses, indoor sports facilities and manufacturing facilities, shall include appropriate landscaping adjacent to boundary facades in the public view.

#### § 225-246 Clearing and grading.

A. All grading, excavation or embankment construction shall be in accordance with the approved final plat and shall provide for the disposal of all stormwater runoff and such groundwater seepage as may be encountered. All clearing, excavation and embankment construction shall be in accordance with the applicable requirements of the New Jersey Department of Transportation

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Standard Specifications. No excavated material may be removed from the site, except in accordance with an approved final plat, nor without the prior approval of the Borough Engineer. The stockpile or removal of soil from a site, except in relationship to an approved plan, shall not be permitted except as provided by other ordinances of the Borough. Where borrow excavation materials from off-site sources are required to complete the necessary grading, such material shall meet the requirements of the Standard Specifications for Borrow Excavation, Zone 3, and shall be subject to the approval of the Borough Engineer. All trees to be saved must have a snow fence erected at the dripline of the tree.

B. Material which the Borough Engineer judges unsuitable for use in roadway embankments may be used for grading outside the roadway right-of-way or in building areas with the permission of the Borough Engineer and the Construction Code Official (for building areas). Any unsuitable material which cannot be satisfactorily utilized on the site shall be removed from the site and disposed of at places to be provided by the developer.

C. No slopes shall be constructed which exceed a slope of one foot vertical per three feet horizontal. The minimum slope shall be 1%.

D. Such slopes shall be suitably planted with perennial grasses or other ground cover plantings in accordance with the plans approved by the reviewing agency.

E. In areas where excavations or embankments would extend significantly beyond road rights-of-way, thereby causing disruption to the natural environment of the development, the reviewing agency may, upon the application of the developer, consider or may, upon its own initiative, direct the use of terraces, retaining walls, crib walls or other means of maintaining roadway slopes.

(1) In any event, the entire roadway right-of-way shall be fully graded, and any retaining walls, crib walls or terraces shall be located outside of the roadway right-of-way, and their maintenance shall be the responsibility of the owner of the property on which they are constructed.

(2) The developer shall make suitable provisions in the instrument transferring title to any property containing such terraces, retaining walls or crib walls and shall provide a copy thereof to the reviewing agency and the Borough Clerk.

(3) All graded areas within or outside of the roadway right-of-way shall be neatly graded, topsoiled, fertilized and seeded to establish a stand of perennial grasses.

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F. The tops of slopes in excavations and the toe of slopes in embankment areas shall not extend beyond the right-of-way line or, where provided on the plan, to the limit of grading as shown on the final plan. Sidewalk and easement areas shall slope at 2% to the top of the curb elevation, and sidewalk construction shall conform to this slope.

G. Lot grading. Lots shall be graded to secure proper drainage and to prevent the collection of stormwater. The grading shall be performed in a manner which will minimize the damage to or destruction of trees growing on the land. Topsoil shall be provided and/or redistributed on the surface as cover and shall be stabilized by seeding or planting. Grading plans shall have been submitted with the preliminary and final plats, and any departure from these plans must be approved in accordance with the requirements of this Part 4 for the modification of improvements. Grading shall be designed to prevent or minimize drainage to structures or improvements when major storms, exceeding the design basis of the storm drainage system, occur.

(1) Wherever possible, the land shall be graded so that the stormwater from each lot shall drain directly to the street. If it is impossible to drain directly to the street, it shall be drained to a system of interior yard drainage designed in accordance with the standards for drainage facilities, and suitable drainage easements shall be provided.

(2) Unless otherwise required by the Standard Specifications, all tree stumps, masonry and other obstructions shall be removed to a depth of two feet below finished grade.

(3) The minimum slope for lawns shall be 2%, and, for smooth, hard-finished surfaces, other than roadways, 3/4 of 1%.

(4) The maximum grade for lawns within five feet of a building shall be 5%. The maximum slope within 10 feet of a property line shall be 5%. No lawn areas shall exceed 30% in slope. Further, when there exists a vertical grade differential that exceeds two feet between first-floor elevations of structures on adjacent properties, the reviews may require the use of retaining walls, terracing or other features to minimize the impact, visual and otherwise, on the adjoining property.

(5) Retaining walls installed in slope control areas shall be constructed of heavy treated timber or logs, reinforced concrete, other reinforced masonry or of other construction acceptable to the Borough Engineer and adequately designed and detailed on the final plat to carry all earth pressures, including any surcharges. The height of retaining walls shall

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not exceed 1/3 of the horizontal distance from the foundation wall of any building to the face of the retaining wall. Should the Borough adopt, subsequently to this Part 2, standard details for such construction, the same shall govern.

(6) The developer shall take all necessary precautions to prevent any siltation of streams during construction. Such provisions may include, but are not limited to, construction and maintenance of siltation basins or holding ponds and division berms through the course of construction.

#### § 225-247 Streets and Street Design

A. All major and minor arterial, collector, local collector, local and marginal access streets shall be designed in accordance with the proposals contained in the Master Plan of the Borough and in accordance with this section.

(1) Upon receipt by the reviewing agency of any subdivisions or site plans calling for the installation of new streets or the extension of old streets, the plats shall be referred to the Borough Engineer, Police Department and Fire Department for review.

(a) They shall make recommendations as to the acceptable minimum widths of each street and shall base the recommendations upon such factors as the location, proposed use and intensity of traffic, with an emphasis upon safety considerations of a fire, first aid and police nature.

(b) These recommendations shall be submitted to the Borough Engineer to be considered in conjunction with such studies and statistics and other data which the Engineer shall have assembled as a basis for determining minimum street widths within the Borough.

(2) The enumerated standards are to be construed as minimum standards and may be increased where, because of high traffic volumes, steep grades or other such reasons, the municipal agency determines that such action is necessary.

(3) In residential subdivisions, the minimum street width required shall be in accordance with the Residential Site Improvement Standards (N.J.A.C. 5:21).

B. The arrangement of streets not shown on the Master Plan or Official Map shall be such as to provide for the appropriate extension and/or realignment of existing

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streets, except that local and collector streets should only be extended when such extension is necessary, and the municipal agency concurs that such extension will promote safety and conform to the street standards contained elsewhere in this Part 2.

C. Where developments abut existing roadways, sufficient right-of-way shall be reserved for the functional classification of the street in question.

(1) If the subdivision or site plan is along one side only, 1/2 of the required extra width shall be dedicated.

(2) The new cross section for the existing road shall be constructed so as to provide a cross section constructed to the satisfaction of the Borough Engineer.

D. Local streets shall be designed in accordance with the schedule of street design standards and the requirements contained herein:

(1) No street or road shall be designed which has an elevation at the center line lower than the one-hundred-year-flood elevation of the area as shown on the Flood Insurance Rate Map.

(2) Local streets shall be arranged to discourage through traffic.

(3) Cul-de-sacs (dead-end streets) should have a center-line length, from the intersecting street center line to the center point of the turnaround of the cul-de-sac, of not less than 100 feet nor longer than 2,000 feet and should not provide access to more than 25 lots or as applicable within the design criteria of specific zones in Part 3, Zoning.

(a) They shall provide an end turnaround with a pavement radius of not less than 40 feet and a property line radius of not less than 50 feet and tangent whenever possible to the right side of the street, when viewed toward the closed end.

(b) In the event that it is contemplated that a dead-end street shall be extended in the future, a temporary turnaround, meeting the aforementioned design criteria, shall be required, and provisions shall be made for future extension of the street and reversion of the excess right-of-way to the adjoining properties.

(4) Loop streets should provide access to not more than 45 lots:

(a) Except that, where access is provided by a combination of a short loop street and cul-de-sac, the maximum shall be 60 lots,

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provided that the length of the loop street will not exceed 3,000 feet.

(b) Loop streets shall have both of their termini located on the same street.

(5) P-loops, which are loop streets with a single access point, should have an entrance not exceeding 700 feet in distance from the loop intersection.

(a) There should also be provided an emergency vehicular and pedestrian right-of-way of 15 feet in width from the loop providing access to a street which is not a part of the P-loop.

(b) The loop of a P-loop should have a street length not exceeding 3,000 feet.

(c) P-loops should provide access to no more than 45 lots, and the entrance street should be designed in accordance with the design standards for collector streets.

E. In any development, it shall be the duty of the reviewing agency to approve classification of proposed streets according to their use and in accordance with the Residential Site Improvement Standards. In making decisions, the reviewing agency shall refer to the Master Plan and the Union County Planning Board classification of roadways and shall consider conditions within the development and the surrounding areas and shall use as a guide the street classification and criteria contained herein:

(1) A "local street" is a street serving only single-family residences and, where feasible, should be either a cul-de-sac or a loop street meeting the requirements hereinabove set forth.

(a) A street which serves traffic having origins and destinations other than within the lots which abut the street shall not be considered a local street.

(b) The traffic normally expected on a local street shall be 400 vehicles per day.

(c) The design speed for local streets shall be 25 miles per hour.

(2) A "collector street" is generally a street gathering traffic from local streets and feeding it into a system of arterial highways.

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- (a) Even if laid out as a local street, a street should be considered a collector street if it provides access or could provide access to more than 150 lots, or would be utilized by traffic other than residential in nature.
- (b) Collector streets should generally be expected to carry traffic volumes of approximately 3,000 vehicles per day.
- (c) The design speed of collector streets, for alignment and sight distance purposes, should be 50 miles per hour.

(3) "Arterials" are any federal, state or county highways intended to carry traffic between other arterials and from the Borough to destinations outside the Borough.

(4) Street classifications will be approved by the municipal agency in accordance with the foregoing definitions, in accordance with the provisions of the Master Plan and Official Map, if such is adopted, in accordance with the provisions of applicable county and state regulations or plans or, in the absence of specific information from the above, in accordance with its own best judgment concerning the use to which the various streets in any development will be put.

F. All lots abutting collector streets should be provided with suitable driveways for two cars with turnarounds eliminating any necessity for vehicles to back into the collector street.

G. Other means of providing a satisfactory buffer separating through and local traffic shall be provided as may be deemed proper by the municipal agency.

H. Dwellings on corner lots shall have their driveway access on the roadway designed and intended to carry the lesser amount of traffic.

I. Street intersections shall be designed according to the standards contained herein:

- (1) No more than two streets shall cross the same point. Street intersections shall be right angles wherever possible, and intersections of less than 60° (measured at the center line of streets) shall not be permitted.
- (2) Local streets should not enter the same side of collector streets at intervals of less than 500 feet or arterials at intervals of less than 1,200 feet.

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(3) Street jogs with center-line offsets of less than 125 feet shall be avoided. Streets which enter collectors or arterials from opposite sides shall be directly opposite to each other or must be separated by at least 300 feet between their center lines, measured along the center line of an intersected collector; or 500 feet along the center line of an arterial.

(4) Four-way (cross) intersections involving minor or collector streets shall be avoided.

J. Street layouts shall be in accordance with the provisions contained herein:

(1) Curved local streets are preferred to discourage speed and monotony. The maximum tangent distance between curves shall not exceed 1,000 feet.

(2) The municipal agency in all cases may require provisions for continuing circulation patterns onto adjacent properties and, for this purpose, may require the provision of stub streets (street extensions) abutting adjacent properties.

(3) Residential development areas containing more than 100 lots or housing units should have two access points from collector streets or arterial highways.

(4) A tangent at least 100 feet long shall be introduced between reverse curves on arterial and collector streets.

K. Street names and development names shall not duplicate, nearly duplicate or be phonetically similar to the names of any existing streets or developments in the Borough or contiguous areas of other communities. Any continuation of an existing street shall have the same street name.

New streets shall be named by the Special Street Naming Committee, established by appointment from the office of Mayor. The Committee shall be advisory in nature and shall be appointed by the Mayor when street naming services are needed. The Special Street Naming Committee shall consist of five members. The Mayor shall appoint one member from the administration, one member from the Kenilworth Historical Society, one member from the Borough Council and two members from the Kenilworth Central Veterans Committee. The Committee shall function until its duties are complete. The Special Street Naming Committee shall select proper street names as set forth below:

(1) All new streets to be established in the Borough shall be named after a Borough resident who died in combat in the service of the United States

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until such names shall have been exhausted, unless the Special Street Naming Committee believes the street shall be named in accordance with Subsection (2) below. A list of such residents shall be prepared and updated by the Kenilworth Central Veterans Committee and placed on file with the Borough Clerk.

(2) All new streets shall be named after a historical figure or family of the Borough when the proposed new street is to be constructed upon their property, or which had been owned by such historical figure or family.

(3) Any new street not falling into either category shall be named in the discretion of the Special Street Naming Committee.

(4) All street names selected by the Special Street Naming Committee must then be approved by the Borough Council and submitted to the Planning Board for final approval in accordance with the terms of this Subsection.

L. The developer shall complete all improvements to the limits of the development, unless other provisions have been made and approved by the municipal agency.

(1) In those instances where completion of certain improvements would not be possible until the development of adjacent land takes place, alternate temporary improvements may be constructed, subject to the approval of the municipal agency.

(2) Cash or a certified check representing the difference between the value of the temporary improvements and the required improvements may be accepted by the Borough Council to be credited toward the completion of such improvements at such time as the adjacent land develops.

M. The right-of-way width shall be measured from lot line to lot line and shall not be less than the following:

(1) Arterial streets: 80 feet.

(2) Collector streets: 60 feet.

(3) Minor streets: 50 feet.

(4) The right-of-way width for internal roads and alleys in multifamily, commercial and industrial developments shall be determined on an individual basis, and in all cases shall be of sufficient width and design to

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safely accommodate the maximum traffic, parking and loading needs and maximum access for fire-fighting equipment.

N. There shall be no reserve strips or areas controlling access to streets except where control and disposal of the land comprising such strips or areas have been placed under jurisdiction of the Borough Council under conditions approved by the municipal agency.

§ 225-248 Subdivisions abutting public rights-of-way.

Subdivisions abutting public rights-of-way shall not be exempt from the requirements of this code.

§ 225-249 Roadway construction.

A. Roadways and all appurtenances, including subgrade, subbase, base courses and pavements, shall be constructed in accordance with the applicable requirements of the Standard Specifications as modified herein. All subsurface utilities, including service connections (terminating at least two feet behind the sidewalk), to each lot and all storm drains shall be installed in all roadway areas prior to the construction of final pavement surfaces.

B. All roadways shall be constructed with either a bituminous concrete flexible pavement structure or a portland cement concrete rigid pavement structure. Only one type of pavement shall be utilized throughout any development.

C. The pavement structure design for each particular development utilizing either a flexible or rigid pavement type must be approved by the Borough Engineer.

(1) The pavement design shall be based upon traffic-loading projections and field sampling and laboratory analysis of the subgrade soils to be encountered in roadway areas in the development and shall follow current design recommendations of the Asphalt Institute, the Portland Cement Concrete Association or such other generally recognized standards as may be acceptable to the Borough Engineer.

(a) As minimum requirements, rigid portland cement paving shall be expansion-joint-type paving utilizing joints similar to Type A expansion joints, according to the Standard Construction Details of the New Jersey Department of Transportation.

(b) Such paving shall be reinforced, constructed with Class B air-entrained concrete and shall have a minimum thickness of 6 1/2 inches for local, local collector and minor collector streets and eight inches for other classifications.

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(2) Pavement on local, local collector and minor collector streets shall be a four-inch dense aggregate subbase, four-inch compacted thickness of bituminous stabilized base course (Mix I-2), with two-inch compacted thickness of bituminous concrete surface course (FABC, Mix I-5). On all other streets, not county or state maintained, the pavement should be a six-inch dense aggregate base course, six-inch compacted thickness of bituminous stabilized base course (Mix I-2), with a two-inch compacted thickness of bituminous concrete surface course (Mix I-5).

D. All subgrade shall be prepared in accordance with the applicable requirements of the Standard Specifications for bituminous concrete and reinforced concrete pavements.

E. Where granular subbase courses are included in the pavement design section proposed by the developer, they shall be constructed in accordance with the applicable requirements of the Standard Specifications.

(1) Bituminous concrete pavements and stabilized bases may be constructed on subgrade without subbase or aggregate base courses, provided that the subgrade can be satisfactorily prepared as hereinbefore described.

(2) Dense graded aggregate base courses shall comply with the requirements of the Standard Specifications.

(3) Portland cement concrete pavements must be constructed with a minimum of six inches of a granular-type subbase meeting the requirements of the Standard Specifications.

(4) Any subbase course of aggregate base course to be utilized with any type of pavement shall have a minimum thickness of four inches.

F. Bituminous base course for use with bituminous concrete pavements shall consist of plant-mixed bituminous stabilized base course (stone mix or gravel mix) in accordance with the requirements of the Standard Specifications, except that the requirements for the construction of the base course shall be amended to allow the laying of the base course with a single-lift maximum thickness not exceeding four inches. Prior to placement of any bituminous stabilized base course, the finished surface of any underlying subbase or aggregate base shall receive a prime coat in accordance with the requirements of the Standard Specifications.

G. Bituminous pavements shall consist of a bituminous concrete surface course Type FABC-1, in accordance with the requirements of the Standard Specifications.

(1) The bituminous pavement wearing surface should generally not be installed until just prior to the time the streets are prepared for final acceptance.

(a) Prior to the installation of a bituminous concrete surface, the bituminous base course shall be inspected by the Borough Engineer.

(b) Any areas of the base course in need of repair shall be removed and replaced at the direction of the Borough Engineer.

(c) If the Borough Engineer directs, a leveling course of FABC (Mix I-5) material shall be placed on any uneven or below-grade base courses prior to the placement of finished pavement.

(2) No pavement surfaces shall be placed unless permission to do so has been granted by the Borough Engineer.

H. Concrete pavements shall be constructed in accordance with the requirements of the Standard Specifications.

I. In areas where alternate pavement types are proposed or desired, either for decorative purposes, because of physical restrictions or existing conditions or because of limitations or shortages in certain types of construction materials, a detail of the type and/or location of alternate pavement type proposed shall be submitted for approval with the preliminary and/or final plat.

(1) The use of alternate pavement types may only be permitted if the applicant submits for review and approval details and specifications concerning the equipment, materials and methods proposed for use and if the Borough Engineer has inspected the installation of and tested and approved of a suitable sample section of such pavement.

(2) In the event that the Borough Engineer does not approve the sample section of pavement, the developer shall remove the same section and replace it with a type of pavement permitted by this Part 2 or such other alternate as may be approved by the reviewing agency.

§ 225-250 Concrete requirements.

A. All concrete used in any subdivision or site improvement shall be prepared in accordance with the requirements of the Standard Specifications for the various classes of concrete used, except that the twenty-eight-day compressive strength of the concrete used shall not be less than the following:

Type of Concrete	Strength (pounds per square inch)
Class A	5,000
Class B	4,500
Class C	4,000
Class D	3,500

B. Unless specific written permission is obtained from the Borough Engineer to the contrary, only concrete obtained from dry-batched, redi-mixed trucks shall be allowed.

C. Concrete shall be cured with a compound in accordance with the following methods or materials:

(1) Methods of application. The compound shall be applied in a continuous uniform film by means of power-operated pressure-spraying or distributing equipment at the rate directed by the Engineer, but not less than one gallon per 200 square feet of surface. The equipment for applying the compound shall provide for adequate agitation of the compound during application and must be approved by the Engineer before work is started. If the compound becomes too thick for satisfactory application during cold weather, the material may be warmed in a water bath at a temperature not over 100° F. Thinning with solvents will not be permitted. Should the method of applying the compound produce a nonuniform film, its use shall be discontinued, and the curing shall be done by another method approved by the Engineer that will conform to the requirements for curing concrete.

(2) Materials for curing: liquid compound, clear or translucent. Clear or translucent liquid-curing compound shall consist of a blend of resins and other suitable materials held in solution in a volatile solvent. It shall not separate on standing, shall be nontoxic and shall become dry to the touch within four hours after being applied to the concrete under ordinary

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conditions. Acceptance for continued use also will be based upon satisfactory field performance.

(3) Consistency. The consistency of the compound shall be such that it can be applied to the concrete in the amount specified as a fine spray by means of an atomizing nozzle.

(4) Character of film. The compound shall adhere to damp, vertical or horizontal concrete surfaces forming a continuous coherent film when applied at the specified rate. When dry, the film shall not be tacky or track off the concrete when walked upon, nor impact a slippery condition to the surface.

(5) Color. The compound shall produce no darkening or changing of the color of the concrete to which it is applied. It shall, however, be of such a nature or so treated that the film will be distinctively visible for at least four hours after application. Any coloring matter added to the compound shall be a fugitive organic dye of a color approved by the Engineer. All trace of this color shall be indistinct 30 days after application.

(6) Reaction with concrete. The compound shall not react deleteriously with the wet course and shall form a superficial layer over the surface thereof.

(7) Moisture retention. When tested in accordance with current ASTM Designation C 156, the moisture loss shall be not more than 0.055 gram per square centimeter of the mortar specimen surface, based on the amount of water in the mortar at the time the curing material is applied.

#### § 225-251 Curbs and gutters.

Curbing shall be constructed on both sides of all streets shown on all major and minor subdivisions and shall be required for all plot and site plans in accordance with municipal standards. Unless otherwise noted, all parking areas and driveways on site plans shall be curbed. Concrete stops, unless part of a planned stormwater management plan, shall not be permitted.

A. Layout. The arrangement of streets not shown on the Master Plan or Official Map shall be such as to provide for the appropriate extension of existing streets and, where necessary in order to promote orderly flow of traffic, safety and welfare of the public, shall be such as to provide for appropriate extension to adjoining properties for future streets.

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B. Minor streets. Minor streets shall be so designed as to discourage through traffic.

C. Arterial streets; service roads; buffers. Subdivisions abutting arterial streets shall provide a marginal service road or reserve frontage with a buffer strip for planting, or some other means of separation of through and local traffic as the Planning Board may determine appropriate.

D. Width. The right-of-way width shall be measured from lot line to lot line and shall not be less than the following:

(1) Arterial streets: 80 feet.

(2) Collector streets: 60 feet.

(3) Minor streets: 50 feet.

(4) The right-of-way width for internal roads and alleys in multifamily, commercial and industrial developments shall be determined on an individual basis, and in all cases shall be of sufficient width and design to safely accommodate the maximum traffic, parking and loading needs and maximum access for fire-fighting equipment.

E. Reserve strips. No subdivision showing reserve strips controlling access to streets shall be approved except where the control and disposal of land comprising such strips has been placed in the Borough Council under conditions recommended by the Planning Board.

F. Street grades. Grades of arterial and collector streets shall not exceed 4% unless, because of local conditions, the Borough Engineer may approve another percentage. Grades on other streets shall not exceed 10%. No street shall have a minimum grade of less than 0.5%.

G. Intersections. Street intersections shall be as nearly at right angles as is possible. In no case shall they be less than 60°, nor more than 120°. The block corners at intersections shall be rounded at the curbline with a curve having a radius of not less than 20 feet.

H. Street jogs. Street jogs with center-line offsets of less than 125 feet shall be prohibited.

I. Reverse curves. A tangent at least 100 feet long shall be introduced between reverse curves on arterial and collector streets.

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J. Connecting curves. When connecting street lines deflect from each other at any one point by more than 10° and not more than 45°, they shall be connected by a curve with a radius of 300 feet.

K. Vertical curves. All changes in grades in excess of 1 1/2% shall be connected by vertical curves of sufficient length to provide a smooth transaction and proper sight distance.

L. Dead-end streets. Dead-end streets and cul-de-sacs shall not be longer than 1,000 feet from the nearest intersection and shall provide a turnaround at the end with a radius of not less than 50 feet to the base of the curb and tangent, whenever possible, to the right side of the street. If a dead-end street is of a temporary nature, a similar turnaround shall be provided and provisions made for future extension of the street and reversion of the excess right-of-way to the adjoining properties. Wherever a temporary or permanent turnaround is proposed on any street, the front yard setback line shall be measured from the turnaround.

M. Street names. All new streets to be established in the Borough shall be named by the Special Street Naming Committee, established by appointment from the office of Mayor. The Committee shall be advisory in nature and shall be appointed by the Mayor when street naming services are needed. The Special Street Naming Committee shall consist of five members. The Mayor shall appoint one member from the administration, one member from the Kenilworth Historical Society, one member from the Borough Council and two members from the Kenilworth Central Veterans Committee. The Committee shall function until its duties are complete. The Special Street Naming Committee shall select proper street names as set forth below:

- (1) All new streets to be established in the Borough shall be named after a Borough resident who died in combat in the service of the United States until such names shall have been exhausted, unless the Special Street Naming Committee believes the street shall be named in accordance with Subsection M(2) below. A list of such residents shall be prepared and updated by the Kenilworth Central Veterans Committee and placed on file with the Borough Clerk.
- (2) All new streets shall be named after a historical figure or family of the Borough when the proposed new street is to be constructed upon their property, or which had been owned by such historical figure or family.
- (3) Any new street not falling into either category shall be named in the discretion of the Special Street Naming Committee.

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(4) All street names selected by the Special Street Naming Committee must then be approved by the Borough Council and submitted to the Planning Board for final approval in accordance with the terms of this Subsection M.

N. Off-street parking. Off-street parking shall be required. Parking layouts shall be subject to the approval of the Planning Board and shall normally include turnarounds. Residential lots shall be so arranged that there is no backing out into the street.

O. Street construction permit. Before any street dedicated to public use in an existing subdivision may be constructed or reconstructed hereafter, the owners of abutting properties, the developer or other parties in interest shall make application, in writing, for a permit to the Borough Council and Planning Board, specifying the nature and location of the improvement to be made, and shall furnish the Borough Council a certificate from the Planning Board showing that the proposed street construction or reconstruction conforms to the provisions of this Part 2. The Borough Engineer shall inspect the proposed improvement and report to the Borough Council before the issuance of the permit.

P. Vacation of streets. Vacation ordinances shall be referred to the Planning Board for recommendation prior to final approval by the Borough Council.

#### § 225-252 Sidewalks and aprons.

A. Sidewalk construction shall be required on both sides of all streets within a development and entirely around the perimeter of all cul-de-sacs. Where the development abuts an existing street, the sidewalk shall be constructed only on that side or as approved by the reviewing agency. Sidewalks shall also be constructed at any other places, such as pedestrian walkways or access points to open space, as shown on or required at the approval of the final plat.

(1) Installation of sidewalks may be waived by the reviewing agency, with the written permission of the Borough Council, at the request of the developer or on its own initiative, provided that, upon granting such a waiver, the developer shall be required to pay the Borough of Kenilworth an amount equal to the reasonable cost of installing said sidewalks, said amount to be determined by the Borough Engineer upon submission and consideration of various estimates and other documentation from the developer, other interested parties and the office of the Borough Engineer itself.

(2) All funds collected by the Borough from developers as a result of waivers granted in accordance with this section shall be maintained in a sidewalk construction account, the proceeds of which shall be available to install sidewalks throughout the Borough where and as authorized by the Borough Council.

(3) Nothing contained herein shall affect the right of the Borough to enact ordinances requiring assessments for sidewalks from property owners as authorized under N.J.S.A. 40:65-2 or other statutory rights granted to municipalities.

B. Sidewalks within a street right-of-way shall generally be located with the sidewalk edge farthest from the roadway, placed one foot from the property line. Sidewalks not within street rights-of-way shall be located to provide for the most likely routes of pedestrian travel. In cases where the topography dictates or a proposed development provides for the extension of an existing street or abuts an existing street, where sidewalks have already been installed in a location other than as specified above or where such variations in sidewalk locations are needed to preserve trees or natural features, the municipal agency may approve alternate sidewalk locations in order to provide for preservation of physical features or the continuation of the existing sidewalks. Where appropriate, sidewalks shall be designed to discharge stormwater away from connecting paved surfaces and toward neighboring lawns where feasible to disconnect these impervious surfaces.

C. Sidewalks shall be four feet wide and four inches thick of Class B, air-entrained portland cement concrete. Joints shall be cut in the sidewalk at intervals equal to the width of the sidewalk. Preformed cellular bituminous expansion joint filler shall be placed at joints not more than 20 feet on centers.

D. Curb ramps for the physically handicapped shall be provided at all curb returns on the side(s) of the street where the sidewalk either exists or is proposed and in all curblines intersected by sidewalk. Details of the proposed ramps shall be shown on the preliminary plans of the proposed development.

#### § 225-253 Guardrails.

A. Guardrails, pipe railing or other appropriate barricades, as required by the reviewing agency, shall be designed and placed at drainage structures, streams, embankment limits, curries and other required locations.

B. Guardrails shall be standard steel-beam type with galvanized steel posts in accordance with the Standard Specification details. Alternate design of guardrails

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and barricades may be used and shall be submitted for approval as part of the final plat submission. The use of cables, lines or chains shall not be permitted.

#### § 225-254 Blocks.

- A. Size. Block length and width, or acreage within bounding roads, shall be such as to accommodate the size of lot required in the area by Part 3, Zoning, and to provide adequately for sewage disposal, convenient access, circulation control and safety of street traffic.
- B. Minimum length and width. Blocks shall not be more than 600 feet in length, nor a lesser number of feet in width than is necessary to comply with the Borough zoning requirements, except where the Planning Board may deem that existing or future conditions warrant a variation from such requirements.
- C. Commercial block size. For business, commercial or industrial use, block size shall be sufficient to meet all area and yard requirements for such use.
- D. Internal roads. Alleys or road easements within blocks in commercial, business or industrial areas may provide for access from at least two streets and shall have a suitable width as determined by the Planning Board.

#### § 225-255 Lots.

A. Unless otherwise provided in this Part 2, lot area and dimensions shall not be less than the requirements of the respective zoning districts as set forth in Part 3, Zoning.

- (1) The reviewing agency may require larger lots where additional area will partially or completely eliminate the necessity of changes in grade, which, in the opinion of the Board, would cause unreasonable destruction of the topography or environment or would create drainage or erosion problems.
- (2) The reviewing agency may require larger lots adjacent to collector or arterial streets where, in the opinion of the Board, the larger lots would promote the health, safety and general welfare of the public and the residents of the development.
- (3) The reviewing agency may require larger lots where such lots are plotted on a tract or tracts containing tidal or freshwater wetlands, steep slopes in excess of 8%, lakes and ponds, stream corridors, floodways and floodplains. Where such conditions exist, the Board may require that each lot contain an area unencumbered by the aforementioned conditions equal to the minimum area requirements of the respective zone district.

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B. Insofar as is practical, side lot lines shall be at right angles to straight streets and radial to curved streets.

C. Lot line on widened street. Where extra width is to be provided for the widening of existing streets, lot measurements shall begin at the proposed right-of-way line, and all setbacks shall be measured from such lines unless otherwise provided by this Part 2.

D. Unsuitable lots. All lots shall be suitable for the purpose for which they are intended to be used. To prevent the use of lots which are not suitable because of adverse topography, flood conditions, shallow depth to water table or similar circumstances:

(1) The reviewing agency may withhold approval of such lots or require revisions in a layout of the subdivision to provide that the area of the unsuitable lot is included in other lots by increasing the size of the remaining lots.

(2) Unsuitable lots may be included in an area to be deeded to the Borough or other public or quasi-public body and will be held in their natural state for conservation and/or recreation purposes.

(3) Some other suitable arrangement could be derived to alleviate the condition.

E. A minimum of five substantially different front elevations with varied setbacks, as approved by the reviewing agency, shall be used for dwellings in each subdivision.

F. Only those trees shall be removed as shall be necessary to permit construction of streets, driveways, lawns and dwellings and other authorized structures.

G. In accordance with the Tax Map specifications of the State of New Jersey, dated May 1975, prepared by the State of New Jersey, Department of the Treasury, as amended, subdivided lots and blocks shall generally bear the original numbers, with a decimal and a number added as a subscript. Lot and block numbers shall be assigned by the Borough Engineer.

H. House numbers shall be assigned to each lot prior to final plat approval by the reviewing agency.

I. Lot frontage. Each lot shall front on an approved street accepted or to be accepted by the Borough.

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J. All structures shall be accessible by means of an approved driveway. The driveway shall be not less than 10 feet wide and shall have a center-line grade of not less than 0.5% and not greater than 10%. For all non-single-family uses, driveways must provide turnarounds to eliminate the necessity of any vehicle backing onto any street.

§ 225-256 Lots.

- A. Lot dimensions, front, side and rear yards, and total area shall not be less than the requirements of Part 3, Zoning.
- B. Each lot must front upon an approved street at least 50 feet in width at the street line, except lots fronting on streets described in § 225-251D(4).
- C. Where extra width has been dedicated for widening of existing streets, lots shall begin at such extra width lines, and all setbacks shall be measured from such lines.
- D. Where there is a question as to the suitability of a lot or lots for their intended use due to factors such as rock formations, flood conditions, sewage disposal or similar circumstances, the Planning Board may, after adequate investigation, with professional assistance, if deemed necessary, withhold approval of such lots.

§ 225-257 Public open space and common open space.

- A. Public open space or common open space shall be proposed to be provided in conjunction with applications for development for subdivisions or site plans in accordance with requirements contained herein.
- B. Natural features, such as trees, brooks, hilltops and views, shall be preserved whenever possible in designing any subdivision containing such features.
- C. If the Master Plan or the Official Map provides for the reservation of designated streets, public drainageways, flood-control basins or public areas within the proposed development, before approving a subdivision or site plan, the reviewing agency may further require that such streets, ways, basins or areas be shown on the plat in locations and sizes suitable to their intended uses.
  - (1) Any land shown on the Master Plan as proposed for park, playground, school site or other public use shall be designated and reserved for such use.
- D. Where it is considered appropriate by the reviewing agency, portions of proposed open spaces may be designated for passive and/or active recreational activities.

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- (1) Passive recreational activities may include, but are not limited to, pedestrian paths, bicycle paths, sitting areas and naturally preserved areas.
- (2) Active recreation activities may include, but are not limited to, swimming pools, tennis courts and ball fields.
- (3) The location and shape of any land to be designated for recreational activities shall be approved by the reviewing agency based on, but not limited to, the standards contained herein:
  - (a) The reviewing agency shall consider the natural topography and shall attempt to preserve the same to the greatest extent possible.
  - (b) The reviewing agency shall attempt to tailor the location and shape of recreational areas to harmonize with the shape of the entire development.
  - (c) The reviewing agency shall consider the extent to which specific recreational areas shall be used for passive or active recreational purposes.
  - (d) The reviewing agency shall consider the sequence of development.

E. Within open space areas, the reviewing agency may require a developer to make certain site preparation improvements, which may include, but are not limited to, those contained herein:

- (1) Removal of dead or diseased trees.
- (2) Thinning of trees or other growth to encourage more desirable growth.
- (3) Removal of trees in areas planned for ponds, lakes, active recreational facilities or pathways.
- (4) Grading and seeding.

F. Open space areas shall be subject to these requirements:

- (1) Open space areas should not be less than 50 feet in width at any location, except, where such open space is to be utilized primarily for walkway access from a public street to the open space at the rear of building lots, it may have a minimum width of 20 feet for a length not to exceed 250 feet.

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(2) Where possible, certain land areas and features as follows shall be preserved as open space:

- (a) Floodway and flood hazard areas.
- (b) Areas containing a significant number of trees 12 inches or greater in diameter.
- (c) Existing watercourses or ponds.
- (d) Land with a seasonal high-water table of less than two feet.
- (e) Wetlands, as defined by the New Jersey Wetlands Act of 1970 Editor's Note: See N.J.S.A. 13:9A-1 et seq. and delineated on wetlands maps prepared by the New Jersey Department of Environmental Protection.

G. The type of ownership of land dedicated for open space purposes shall be selected by the owner, developer or subdivider, subject to the approval of the reviewing agency.

(1) These shall include:

- (a) The Borough of Kenilworth, subject to acceptance of the Borough Council.
- (b) Other public jurisdictions or agencies, subject to their acceptance.
- (c) Quasi-public organizations, subject to their acceptance.
- (d) Homeowners' or condominium associations or organizations.
- (e) Shared, undivided interest by all property owners in the development.

(2) Any lands dedicated for open space purposes shall contain appropriate covenants and deed restrictions approved by the reviewing agency, which ensure that:

- (a) The open space area will not be further subdivided in the future.
- (b) The use of the open space areas will continue in perpetuity for the purpose specified.

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(c) Appropriate provisions are made for the maintenance of the open space areas.

(3) No final approval of a subdivision or site plan containing open space created pursuant to this article shall be granted until the developer has submitted, and the reviewing agency has approved, the master deed for such open space and the bylaws of the organization established pursuant to this Part 2.

H. The Borough or other governmental agency may, at any time and from time to time, accept the dedication of land or any interest therein for public use and maintenance, but the reviewing agency shall not require, as a condition of approval, that land proposed to be set aside for common open space be dedicated or made available to public use.

(1) The developer shall provide for an organization for the ownership and maintenance of any open space for the benefit of owners or residents of the development if the open space is not dedicated to the Borough or other governmental agency.

(a) Such organization shall not be dissolved and shall not dispose of any open space, by sale or otherwise, except to an organization conceived and established to own and maintain the open space for the benefit of such development.

(b) Thereafter, such organization shall not be dissolved or dispose of any of its open space without first offering to dedicate the same to the Borough.

(2) In the event that such organization shall fail to maintain the open space in reasonable order and condition, the administrative officer may serve written notice upon such organization or upon the owners of the development setting forth the manner in which the organization has failed to maintain the open space in reasonable condition.

(a) The notice shall include a demand that such deficiencies of maintenance be cured within 35 days thereof and shall state the date and place of a hearing thereon which shall be held within 15 days of the notice.

(b) At such hearing, the administrative officer may modify the terms of the original notice as to deficiencies and may give a reasonable

extension of time, not to exceed 65 days, within which they shall be cured.

(c) If the deficiencies set forth in the original notice or in the modification thereof shall not be cured within 35 days or any permitted extension thereof, the Borough, in order to preserve the open space and maintain the same for a period of one year, may enter upon and maintain such land. The entry and maintenance shall not vest in the public any rights to use the open space by the owners.

[1] Before the expiration of the year, the administrative officer shall, upon his initiative or upon the request of the organization theretofore responsible for the maintenance of the open space, call a public hearing upon 15 days' written notice to such organization and to the owners of the development to be held by the administrative officer (Zoning Officer), at which hearing such organization and the owners of the development shall show cause why such maintenance by the Borough shall not, at the election of the Borough, continue for a succeeding year.

[2] If the administrative officer shall determine that such organization is ready and able to maintain the open space in reasonable condition, the Borough shall cease to maintain the open space at the end of the year.

[3] If the administrative officer shall determine that such organization is not ready and able to maintain the open space in a reasonable condition, the Borough may, in its discretion, continue to maintain the open space during the next succeeding year, subject to a similar hearing and determination in each year thereafter.

[4] The decision of the administrative officer in any such case shall constitute a final administrative decision subject to judicial review.

(d) The cost of such maintenance by the Borough shall be assessed pro rata against the properties within the development that have a right of enjoyment of the open space in accordance with assessed value at the time of imposition of the lien and shall become a lien and tax on the properties and be added to and be a

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part of the taxes to be levied and assessed thereon and enforced and collected with interest by the same officers and in the same manner as other taxes.

#### § 225-258 Recreation areas.

Where recreation areas and facilities are required or provided, the regulations and standards contained herein shall apply, along with appropriate sections of this Part 2:

A. Sufficient outdoor play and activity equipment shall be installed in accordance with standards of the National Recreation and Parks Association for the expected number of residents in the development.

(1) It should be located in an area which will not be detrimental to adjacent properties or uses.

(2) The provision and location of such equipment shall be subject to reviewing agency approval.

B. Private swimming pools in residential areas shall have a gross area of water and deck designated for the needs of the residents of the development.

(1) All swimming pools shall be fully enclosed by a chain-link or other fully approved fence equipped with gates and locks in compliance with all applicable building codes.

(2) All swimming pools shall have adequate lifesaving equipment in compliance with all applicable building codes.

(3) Within accessory building(s), all such pools shall have adequate lavatory facilities, plus, under lock and key, storage facilities wherein shall be kept all pool chemicals and equipment.

#### § 225-259 Easements.

A. Drainage easements.

(1) If the property on which a proposed development is to be located is or is proposed to be traversed by a drainage facility of any kind, including a pipe, channel, stream or swale, the reviewing agency may require that a stormwater and drainage easement or right-of-way along said facility shall be provided by the developer, conforming substantially with the lines of such facility.

(2) If existing land drainage structures, such as french drains, are encountered during the course of construction of any development, such

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drainage structures shall either be removed entirely or a revised final plat showing the location of such drainage structures and accompanied with detailed cross sections thereof shall be filed with the Borough Engineer for consideration by the reviewing agency. The reviewing agency, after consulting its Engineer and other appropriate agencies, shall either require a drainage easement, require that the structure be removed in part or in its entirety or recommend such other action to the governing body as it deems appropriate.

(3) All easements shall be shown on the final plat or site plan with a notation as to the purpose and restrictions of the easement. Easement lines of a final plan shall be shown with accurate dimensions and bearings unless the easement lines are parallel or concentric with lot lines.

(4) The land which is the subject of an easement or right-of-way shall, in the case of storm drains or constructed channels, be of a suitable width meeting the requirements for design of drainage facilities, or be a strip which conforms substantially to the floodplain of any watercourse along both sides of the watercourse to a width of 35 feet in each direction from the center line of the watercourse, whichever is the greater; except, however, that if the location of such watercourse is at or near the boundary of the subdivision, the dimensions of the easements and right-of-way shall be modified to retain it within the confines of the development.

(5) The easement and right-of-way shall include provisions assuring the following:

- (a) Preservation of the channel of the watercourse.
- (b) Except in the course of an authorized drainage improvement, prohibition of alteration of the contour, topography or composition of the land within the easement and right-of-way.
- (c) Prohibition of construction within the boundaries of the easement and right-of-way which will obstruct or interfere with the natural flow of the watercourse.
- (d) Reservation of a public right of entry for the purpose of maintaining the storm drain, drainage channel or the natural flow or drainage through the watercourse, of maintaining any and all structures related to the exercise of the easement and right-of-way and of installing and maintaining a storm or sanitary sewer system or other public utility.

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B. Conservation easements.

- (1) Conservation easements may be required along all drainage and stormwater rights-of-way in the development and may be required also along ponds, marshes, swamps and streams or other watercourses along which drainage rights-of-way are not required. Such easements are intended to help prevent the siltation of streams and other courses and adjacent lands.
- (2) The land subjected to a conservation easement shall be a strip at least 25 feet but more than 100 feet in width, independently located or running adjacent to each side of any required drainage or stormwater right-of-way.
- (3) Such conservation easement shall contain provisions to restrict the removal of trees and ground cover, except for the following purposes: removal of dead or diseased trees; thinning of trees and other growth to encourage a more desirable growth; removal of trees to allow for structures designed to impound water; and removal of trees in areas to be flooded for the creation of ponds or lakes.
- (4) The easements shall also prohibit filling or grading of the lands or the disposal of refuse or waste material of any type within the limits of the easement.
- (5) The easement shall be indicated on the plat and shall be marked on the land by iron stakes wherever the lines of such easement change direction or intersect lot lines.

C. Sight triangle easements.

- (1) In addition to right-of-way widths required for the full design of all streets and the wider intersections as specified, sight triangle easements may be required on all corners at all street intersections.
- (2) Such easements shall include provisions to restrict the planting of trees or other plantings or the location of structures exceeding 30 inches in height that would obstruct the clear sight across the area of the easements and a reservation to the public right of entry for the purpose of removing any object, natural or otherwise, that obstructs the clear sight.
- (3) Such easements shall include the area of each street corner that is bounded by Borough street right-of-way lines and a straight line connecting points on each right-of-way line 50 feet from the intersection of the right-of-way lines with points on the intersecting right-of-way line,

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which points are the following distances from the intersection of the right-of-way lines, or of their prolongations:

- (a) On local streets: 50 feet.
- (b) On collector streets: 100 feet.
- (c) On arterial streets: 200 feet.

(4) Where intersections occur on highways or roadways under the jurisdiction of the State of New Jersey or County of Union, the sight triangle easements required by the state or the County of Union shall be substituted in lieu of the requirements above.

#### § 225-260 Garages.

A. Underground garages or garages under structures shall be properly lighted.

- (1) Roofs of garages may be landscaped or utilized for approved recreation uses, such as but not limited to tennis courts.
- (2) The garage shall be designed to be properly drained.

B. A garage which is within the building line of a principal building shall contain not more than 50 parking spaces.

- (1) Private garages which are an integral part of an individual dwelling unit shall not contain more than two parking spaces each, and each parking space shall contain a minimum of 240 square feet of floor area.
- (2) A private garage for an individual dwelling unit shall not have access thereto from another dwelling unit or garage.

C. An accessory commercial or industrial building garage shall be fully enclosed and have a full roof covering all parking spaces.

- (1) Such garage shall contain at least four parking spaces.
- (2) No portion of more than one level shall be above ground.
- (3) All levels shall be lighted and properly ventilated, and any underground levels shall meet all the requirements set forth above for an underground garage.

D. No freestanding commercial garage or parking structure shall be placed nearer than 100 feet to a side or rear property line. In no case shall a garage or accessory building be permitted between a street frontage and building.

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- (1) Garages, whether attached or detached, shall be arranged to open to the side or rear of the lot, except fully detached garages located entirely to the rear of the principal building.
- (2) Attached garages shall have a joint capacity of not more than 10 vehicles arranged in a row, and there shall be a minimum distance of 20 feet between such structures.
- (3) Garages and other accessory buildings shall be no more than one story in height.
- (4) The architectural design and materials used in the construction thereof shall conform to the design and building materials used in the construction of the main structures.
- (5) No part of any garage or other accessory building shall be used for living purposes.

E. All public garages shall have adequate security provisions.

F. Only passenger vehicles, small vans, pickup trucks and similar vehicles, whether such carry passenger or commercial plates, may be parked in any parking space for extended periods.

G. Garages and parking areas shall be used as automobile parking units only, with no sales, dead storage, dismantling or servicing of any kind permitted.

#### § 225-261 Monuments and iron stakes.

Monuments shall be of a size and shape required by N.J.S.A. 46:23-9.11, and amendments and supplements thereto, and the New Jersey State Board of Professional Engineers and Land Surveyors and shall be placed in accordance with the statute. In addition to the required monuments after the grading is finished, the developer shall install a solid steel stake one inch in diameter and 30 inches in length on lot corners, lot line angle points or other changes in direction not marked by monuments and at all angle points or discontinuities in easement lines where such easements are not parallel to property lines.

#### § 225-262 Streetlighting.

A. For all major subdivisions which require site plan approval, the developer shall arrange with the serving public utility to provide streetlighting service upon the appropriate tariff and prevailing government rules and regulations. The reviewing agency may alter the streetlighting requirements as it deems appropriate due to

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special circumstances, including but not limited to intersections, curves, cul-de-sacs and collector or arterial roadways.

B. The serving public utility shall install wiring in addition to that on the approved streetlighting plan where the additional wiring is required to accommodate the full plan in accordance with the utility's filed tariff and approved procedure at the time.

C. The cost of this additional wiring shall be the responsibility of the subdivider.

D. Streetlighting shall be installed, as directed by and subject to approval by the reviewing agency, prior to the certificates of occupancy being issued.

E. The cost of the additional wiring and electricity for streetlighting for all streets within the development shall be paid for the owner or subdivider until streets are accepted by the Borough, all certificates of occupancy have been issued and the Borough Council has authorized the release of all performance bonds upon completion of all improvements for the development.

F. No major subdivision plat shall receive final approval unless the suggested streetlighting plan of the electric utility is shown thereon.

G. No subdivision plat shall receive final approval unless the suggested streetlighting plan of the electric utility is shown thereon.

H. After final acceptance, operation and maintenance costs of the streetlighting shall be the responsibility of the Borough.

I. All wiring shall be underground.

#### § 225-263 Street signs.

A. Street signs shall be appropriate metal street signs of a type and size approved by resolution of the Borough Council in accordance with all state regulations and shall be properly installed at each street intersection.

B. Street signs shall be placed, two per intersection, on the near right-hand corner as viewed from both directions on the street which is expected to carry the greatest traffic through the intersection at locations approved by the Borough Engineer.

C. Mountings shall be in accordance with the standard procedures of the Borough or with requirements adopted by the Borough Council.

D. Street signs shall be placed before any certificate of occupancy for houses on the subject street is issued.

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§ 225-264 Street trees.

A. Any person erecting or constructing any new buildings or residences within the Borough which require site plan or subdivision approval shall plant pollution-resistant shade trees on the property owner's side of the sidewalk adjacent thereto.

(1) In each subdivision of land, the developer shall plant between the sidewalk and the right-of-way line proper shade and/or decorative trees of a type approved by the municipal agency in consultation with the Shade Tree Commission.

(2) Planting sites shall be indicated on the preliminary plat.

B. Street trees shall be planted on the property owner's side of the sidewalk, not to lie closer than five feet to existing or future sidewalks.

(1) In all cases, said trees shall be planted in a place which shall not interfere with utilities.

(2) Trees shall be of pollution-resistant varieties selected from among species determined by the Shade Tree Commission or Borough Planner or Borough Engineer.

(3) The municipal agency, in consultation with the Shade Tree Commission or Borough Planner or Borough Engineer, may reduce or waive such plantings if there are approved varieties of trees growing along such right-of-way or on the property abutting the street line. A developer shall make a donation to the Shade Tree Fund in lieu of the required plantings.

C. The subdivider or developer shall be required to plant such number of trees as shall be necessary, when taking into consideration existing trees, to provide at least one tree in every 30 feet of front yard.

(1) Pollution-resistant shade trees shall be planted along all private streets, undedicated roads, drives and parking areas at intervals of not more than 30 feet of curbing or edge of pavement.

(2) No tree shall be planted less than 25 feet from an existing or proposed streetlight or street intersection.

D. Pollution-resistant trees referred to above shall be selected from among species determined by the Department of Public Works, the Borough Engineer or

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the Borough Planner. Suitable trees shall be selected on the basis of specific site conditions.

E. All shade trees to be hereafter planted in accordance with this Part 2 shall be nursery grown or of substantially uniform size and shape and shall have straight trunks.

(1) Ornamental trees need not have straight trunks but must conform in all other respects to the provisions for trees and tree plantings outlined in this Part 2.

(2) All trees shall be of Grade A nursery stock, with a minimum caliper of two to 2 1/2 inches measured one foot from the butt.

## § 225-265 Buffers and Landscaping

### A. Buffering and Screening Design and Standards

#### (1) Guidelines

The following guidelines shall be used to prepare and review buffering and screening for any development plan. The provision of buffer areas and screening within such areas shall take into account the opportunities and constraints of existing conditions on the site, such as existing vegetation to be preserved, critical views into and out of the site, the days and hours of operation, intensity of use of the proposed development, potential off-site impacts and other such issues.

#### (2) General Standards

The following standards shall be used to prepare and review screening devices required in this article:

(a) Evergreen trees or hedges. Where an evergreen screen is utilized, such plantings shall be sufficiently dense so as to provide a minimum of 75% of the required screening at time of planting. Arrangement of plantings shall be in a continuous row and may be overlapped or staggered within such row. Placement of such plantings shall provide maximum protection to existing vegetation to be preserved located in the buffer area and on adjacent properties.

(b) Walls and fences. Where a masonry wall or solid wooden fence is utilized, the design of such shall be architecturally compatible

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with the style, materials, colors and details of the building(s) on the site. Where such wall or fence fronts toward or is visible from a public right-of-way, foundation plantings shall be planted along the base of all visible portions of the wall or fence.

(c) Earth berms. Where an earth berm is utilized, it shall be designed to have a maximum side slope of one increment high to two increments wide or a ratio of one high to two wide (1 to 2). The minimum width of the top of a berm shall be four feet. Berms shall be composed of a soil type sufficient to sustain the growth of plantings it will support. Berms shall be landscaped with combinations of evergreen and deciduous trees and shrubs and ground cover.

### (3) Specific Standards

The following standards shall be used to prepare buffering and screening for any development plan:

(a) Residential uses and districts. Any residential use and district shall be suitably buffered and screened from all uses other than single- and two-family dwellings in order to minimize the impacts of noise, glare, vibration, vehicular traffic, pedestrian activity and other potential nuisances. The width of buffering and height of screening shall be provided based on the type of use that is being buffered and the district in which it is located as follows:

Type of Use or Location	Buffer Width (ft)
Screening Height (ft)	
Conditional uses in Residential Districts	10
6	
Permitted Multi-Family Residential Uses	5
6	
Permitted non-Residential Uses	10
6	
Permitted Light Industrial Uses	15
6	
All Non-Conforming Uses - in a design to be determined by the Planning Board	

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(b) Driveways and parking lots. All driveways and parking lots shall be suitably buffered and screened to minimize the impacts of noise, lighting and glare, exhaust fumes, views of parked vehicles and other nuisances. Buffering and screening shall minimize such impacts both within the site itself, as well as from adjacent and nearby properties and public rights-of-way as follows:

[1] Buffering shall consist of a minimum five-foot-wide area surrounding all sides of a parking lot exposed to view. Where such parking area is located on a tract adjacent to a residential use or district, such buffering shall consist of a minimum ten-foot-wide area surrounding all sides of a parking lot exposed to view.

[2] Screening shall consist of a minimum four-foot-high visually impervious screen to be located within the buffering area. Where such parking area is located on a tract adjacent to a residential use or district, such screening shall consist of a minimum six-foot-high visually impervious screen. The height of any required screen shall decrease to a maximum of three feet in height where driveways approach sidewalks or walkways, in order to provide adequate visibility of pedestrians from motor vehicles.

(c) Loading areas. All loading areas, including loading dock areas of buildings and driveways providing access to the same, shall be suitably buffered and screened to minimize the impacts of noise, loading and unloading activities, lighting and glare, exhaust fumes, views of loading and unloading vehicles and other nuisances. Buffering and screening shall minimize such impacts both within the site itself, as well as from adjacent and nearby properties and public rights-of-way, as follows:

[1] Buffering shall consist of a minimum ten-foot-wide area surrounding all sides of a loading area exposed to view. Where such loading area is located on a tract adjacent to a residential use or district, such buffering shall consist of a minimum twenty-five-foot-wide area surrounding all sides of a parking lot exposed to view.

[2] Screening shall consist of a minimum ten-foot-high visually impervious screen. If such screen consists of a wall or fence, the buffer area between the wall or fence and the lot line shall be a minimum of 10 feet in width and shall also be extensively planted with both deciduous and evergreen trees.

(d) Disposal and collection areas. All areas used for solid waste disposal and recyclable collection facilities shall be suitably buffered and screened to minimize the impacts of noise, odors, disposal and collection activities and views of collection bins and dumpsters. Buffering and screening shall minimize such impacts both within the site itself, as well as from adjacent and nearby properties and public rights-of-way.

[1] Buffering shall consist of a minimum four-foot-wide area surrounding all sides of such facility exposed to view. If such facility is located on a site adjacent to a residential use or district, such buffering shall consist of a minimum ten-foot-wide area surrounding all sides of such facility exposed to view.

[2] Screening shall consist of a minimum six-foot-high masonry wall, solid wooden fence or accessory building with gates or doors and ramped access to facilitate the movement of bins or dumpsters. The base of such screen shall be planted with a minimum four-foot-high evergreen hedge along the sides and rear of same.

(e) HVAC equipment and utility service boxes. All ground level HVAC equipment and utility service boxes shall be suitably buffered and screened to minimize views of the same from both within the site itself, as well as from adjacent and nearby properties and public rights-of-way, as follows:

[1]. Buffering shall consist of a minimum three-foot-wide area surrounding all sides of HVAC equipment and utility storage boxes exposed to view.

[2]. Screening shall consist of a minimum four-foot-high evergreen hedge along all sides of the same.

(f) Screening for wireless communications facilities. Such facilities shall be screened from view from all adjacent properties and public rights-of-way in order that a six-foot tall person, with an eye level from grade of approximately 5 1/2 feet, is not able to see the lowest 20% of the total antenna height from a distance of 25 feet from the lot line containing such antenna. In no instance, however, shall such screening be less than six feet in height; however, any fence greater than six feet in height shall require a variance from the provisions of this subsection. Such screening may utilize a solid wooden fence, earth berms, closely spaced evergreen plantings or some combination of those devices. If evergreen plantings are utilized, such shall be sufficiently dense as to achieve 75% of the required screening at planting.

## B. Landscaping Design Guidelines and Standards

(1) The following guidelines shall be used to prepare and review landscaping for any development plan. The landscaping plan shall be prepared by a New Jersey certified landscape architect.

(a). Landscaping. The entire development shall be extensively landscaped in accordance with a plan conceived as a complete pattern and style throughout the total site. All areas of the site not occupied by buildings and other improvements shall be intensively planted with trees, shrubs, hedges, ground cover and perennials and annuals. Landscaping shall be provided to achieve the following:

[1] Preservation and enhancement, to the greatest extent possible, of existing natural features on the site, including vegetation, land forms and bodies of water.

[2] Assistance in adapting a site to its proposed development.

[3] Mitigation and control of environmental and community impacts from a development.

[4] Creation of an attractive appearance for the development, as viewed from both within the site itself and the surrounding area.

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- [5] Enhancement of the habitability of a development.
- [6] Definition of yard areas and other open space.
- [7] Energy conservation and micro-climatic control.
- [8] Maintenance of a desirable ecological balance on a developed site.

(b) Other site design elements. The development plan shall incorporate landscaping with other functional and ornamental site design elements, where appropriate, such as the following:

- [1] Courtyards, plazas, alleys and similar public and semipublic open spaces.
- [2] Active recreation areas and facilities.
- [3] Ground paving materials.
- [4] Paths and walkways.
- [5] Berms and other earth forms.
- [6] Ponds, fountains and other water features.
- [7] Trellises, pergolas, gazebos and other accessory structures.
- [8] Fences, walls and other screens.
- [9] Street or site furniture.
- [10] Art and sculpture.

(2) General standards. The following general standards shall be used to prepare and review landscaping for any development plan:

(a) Plant species. The selection of plant species to be used shall be appropriate in terms of function and size and shall be hardy for the climatic zone in which the Borough is located. Consideration shall be given to soil conditions, availability of water, exposure to sunlight and other existing conditions. Plantings shall be selected from the recommended Borough plant list.

(b) Planting sizes. Deciduous trees shall have a minimum caliper of three inches at time of planting. Evergreen trees shall be a minimum of six feet in height at time of planting. Low-growing evergreen shrubs shall be a minimum of 2 1/2 feet in height at time of planting. Size of other plantings shall depend on setting and type of plant material.

(c) Planting specifications. Only nursery-grown plant material shall be utilized. All trees, shrubs and ground cover shall be planted according to accepted horticultural standards and the Borough's approved planting specifications. All grass shall be planted in accordance with the New Jersey State Soil Conservation Committee's Standards for Soil Erosion and Sedimentation Control in New Jersey, current edition.

(e) Mulch. Trees and other vegetation that have been removed may be reduced to chips and used as mulch in landscaped areas.

(f). Maintenance. Plantings shall be watered regularly and in a manner appropriate for the specific plant material through the first growing season. All landscaped areas shall be well maintained and kept free of all debris, rubbish, weeds, tall grass, other overgrown conditions and the storage of any equipment or materials.

(g) Replacement of dead plantings. The developer shall be required to replace dead or dying plant material for a period of two years from the date of issuance of a final zoning permit for occupancy and shall post a maintenance guaranty for such pursuant to Article 58 of this chapter. If plant material is dead or dying during a planting season, it shall be replaced that same season. If plant material is dead or dying during a nonplanting season, it shall be replaced as soon as is reasonably possible at the start of the next planting season.

### (3) Specific Standards

The following standards shall be used to prepare and review landscaping on any development plan:

(a) Parking lots. The interior area of all parking lots shall be landscaped to provide visual relief from the undesirable and monotonous appearance of extensive parking areas and to provide shading that will reduce solar heat gain to both the surface of the parking lot and vehicles parked thereon. Such landscaped areas shall be provided in protected planting islands or peninsulas within the perimeter of the parking lot and shall be placed so as not to obstruct the vision of motorists. The area and types of plantings

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shall be provided based on the number of parking spaces in the lot, as follows:

[1] For parking lots with 10 spaces or less, no such interior landscaping shall be required if the Board determines there is adequate landscaping directly surrounding the perimeter of the parking lot. If the Board finds that such landscaping is inadequate, then the requirements of Subsection A(2) below shall apply.

[2] For parking lots with 11 or more spaces, a minimum of 5% of the interior area of the parking lot shall be landscaped with a minimum of one deciduous tree planted for every five parking spaces. The remainder of any such interior planting areas not containing trees shall be planted with low-growing evergreen shrubs. If all of the above required trees can not all be located within such interior planting areas, then such remaining trees shall be planted in locations directly surrounding the perimeter of the parking lot.

(b) Foundation plantings. The base of all sides of a building shall be planted with foundation plantings consisting of evergreen and/or semi-evergreen shrubs and trees. Such plantings shall be a minimum of two feet high at time of planting and spaced an average of three feet on center.

(c) Slope plantings. All cut and fill areas, terraces, earth berms and roadway embankments with slopes steeper than one increment vertical to three increments horizontal (1 to 3) shall be sufficiently landscaped to prevent erosion.

(d) Drainage facilities. Detention basins, headwalls, outlet structures, concrete flow channels, riprap channels and other drainage facilities shall be suitably planted with shrubs and trees. Detention basin embankments shall be extensively landscaped with wet-site-tolerant plantings.

(e) Energy conservation. Landscaping shall be designed to conserve energy, such as the planting of evergreen windbreaks to provide shielding from northwesterly winds during the winter and

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deciduous shade trees to reduce solar heat gain during the summer.

(f) Street or site furniture. Benches, trash receptacles, kiosks, phone booths and other street or site furniture shall be located and sized in accordance with the functional need of such. Selection of such furniture shall take into consideration issues of durability, maintenance and vandalism. All such furniture shall be architecturally compatible with the style, materials, colors and details of buildings on the site.

§ 225-266 Public use and service areas.

A. Utility easement. In large-scale developments, easements along rear property lines or elsewhere for utility installation may be required. Such easements shall be at least 20 feet wide and located in consultation with the companies or Borough departments concerned.

B. Drainage easement. Where a subdivision is traversed by a watercourse, drainage way channel or stream, there shall be provided a stormwater easement or drainage right-of-way at least 15 feet wide, conforming substantially with the lines of such watercourse, and such further width or construction, or both, as will be adequate for the purpose of disposing of stormwater and for flood control. The developer shall deed areas deemed necessary for flood control by the Planning Board to the Borough.

C. Preservation of natural features. Natural features such as trees, brooks, hilltops and views shall be preserved in designing any subdivision containing such features, except that dead, dying and diseased trees shall be removed.

§ 225-267 Bulk storage.

A. In zoning districts where bulk storage is a permitted accessory use, the following minimum requirements shall apply:

(1) No bulk storage of material or equipment shall be permitted in any required front yard area or within 50 feet of any public street, whichever is greater.

(2) No bulk storage of materials or equipment shall be permitted between any side or rear lot line and the required side or rear setback line.

(3) All bulk storage areas shall be screened from public view by means of suitable fencing and/or evergreen plantings as required by the reviewing agency. Where the property is adjacent to a residential zone or use, the screening shall

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meet the minimum requirements in this Part 2, and a six-foot chain-link fence or equivalent shall be provided.

B. No fence used to screen a bulk storage area shall be placed closer to any property line than the distance constituting the required front, side or rear setbacks, and all setback areas shall be landscaped in accordance with the requirements in this Part 2.

C. All service roads, driveways and bulk storage areas shall be paved with bituminous concrete or other surfacing material, as required by the reviewing agency, which shall be of sufficient strength to handle the anticipated use.

D. In no instance shall on-site bulk storage of material exceed the height of 10 feet.

E. No heavy equipment shall be operated or parked closer to the front property line than the required front setback, plus 20 feet, except as the same may be in transit to or from the site.

#### § 225-268 Fire hydrants.

A. A certificate of occupancy shall not be issued for a new residential structure which is the subject of a major subdivision or site plan, located in an area serviced by Elizabethtown Water Company, unless the distance from the midpoint of the frontage of such premises to a functioning fire hydrant which has been tested and approved, as measured down to the center line of connecting public streets, is 600 feet or less.

B. Final subdivision plats shall not be approved by the reviewing agency unless fire hydrants are indicated on the final plat in accordance with the requirements herein contained as to location of and distance between fire hydrants.

C. Fire hydrants shall not be placed at the closed end of the turnaround of a cul-de-sac unless the distance between the open end and the closed end is greater than 400 feet, in which event, the fire hydrants shall be placed at both the open end and the closed end of the cul-de-sac.

D. The installation of fire hydrants, with respect to any subdivision, shall not be considered a subdivision improvement to be included in the bonding requirements of this Part 2, but rather the proper installation of fire hydrants shall be a condition of the issuance of the certificate of occupancy; however, all costs shall be borne by the developer.

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E. All fire hydrants shall be painted in accordance with the standards of Kenilworth Borough.

§ 225-269 Sewage disposal.

A. Prior to the approval of any final plat, the full approval of any sanitary sewage disposal system must have been obtained from the Raritan Valley Sewerage Authority and filed with the municipal agency, or the final approval will be conditioned upon full approval of the Raritan Valley Sewerage Authority.

B. The public sewage disposal system shall be installed in accordance with the rules and regulations of the New Jersey Board of Public Utility Commissioners and in accordance with other requirements of law and subject to the approval of the Raritan Valley Sewerage Authority.

§ 225-270 Soil erosion and sediment control.

A. All developments shall protect streams, lakes and ponds from sedimentation and shall control erosion in accordance with the standards for soil erosion and sediment control in New Jersey, set forth in the Soil Erosion and Sediment Control Act, Chapter 251, Laws of 1975, as amended and supplemented.

B. Certification of the soil erosion and sediment control plan shall be required from the Somerset/Union Soil Conservation District, unless:

(1) Land disturbance is associated with the construction of a single-family dwelling unit, unless such unit is a part of a subdivision, site plan, zoning variance or building permit application involving two or more such single-family dwelling units.

(2) Land disturbance is 5,000 square feet or less of the surface area of land for the accommodation of construction for which the Standard Building Code of the State of New Jersey would require a building permit.

(3) Land disturbance associated with agricultural use of lands when operated in accordance with a farm conservation plan approved by the Somerset/Union Soil Conservation District or where the soil district has determined that such use will not cause excessive erosion and sedimentation.

(4) Land disturbance associated with gardening primarily for home consumption.

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§ 225-271 Solid waste storage.

- A. Solid wastes from all uses other than single- or two-family homes, if stored outdoors, shall be placed in metal receptacles within a screened refuse area.
- B. The screened refuse area shall not be located within any front yard area.
- C. The refuse storage area shall be surrounded on three sides by a solid uniform fence or wall not less than feet nor more than eight feet in height. Such fence shall be exempt from the provisions of any ordinance of the Borough regulating the height of fences and requiring permits therefor.
- D. A five-foot minimum width landscaping area shall be provided along the fence or wall enclosing the refuse storage area. The landscaping to be provided shall be shown on the site plan submitted for municipal agency approval.
- E. The opening in the enclosed refuse area should be provided with a solid gate not less than five feet in height to permit access to the refuse enclosure and screening from adjoining properties and public streets.
- F. If located within or adjacent to a parking area or access drive, the enclosed refuse area shall be separated from such parking area or access drive by curbing.
- G. The enclosed refuse area shall not be located so as to interfere with traffic circulation or the parking of vehicles.
- H. All refuse shall be deposited in containers maintained within the refuse area. No containers shall be maintained anywhere on a site except in a refuse area meeting these requirements.
- I. If outdoor storage of solid waste is not proposed, the site plan submission shall detail the methods proposed for accommodating solid waste within the structure. The municipal agency may require that a suitable area be set aside, but not improved, for a future solid waste storage area meeting these requirements, even if indoor accommodations for solid waste are proposed.

§ 225-272 Storm drainage facilities.

Stormwater management in all proposed subdivisions and residential developments and all business, commercial and industrial developments shall be in accordance with the Residential Site Improvement Standards (N.J.A.C. 5:21-7), as modified by the NJDEP Stormwater Management Rules (N.J.A.C. 7:8).

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§ 225-273 Storm drainage calculation criteria.

A. The minimum design storm frequencies for drainage calculations shall be two, 10 and 100 years. Detention and retention basin calculations shall include an analysis to show that a one-hundred-year design storm will not overtop the basin wall.

B. Velocity restrictions. In general, velocities in closed conduits at design flow should be at least 2.5 feet per second, but not more than the velocity which will cause erosion damage to the conduit, and velocities in open channels at design flow shall not be less than 1.5 feet per second and not greater than that velocity which will begin to cause erosion or scouring of the channel.

(1) For unlined earth channels, the maximum velocity allowed will be two feet per second.

(2) At transitions between closed conduits and open channels or different types of open channels, suitable provisions must be made to accommodate the velocity transitions.

C. All encroachments of natural waterways must be referred to the New Jersey Department of Environmental Protection, Land Use Regulation Program, for approval in accordance with statute.

D. Storm drainage facilities.

(1) In all proposed subdivisions and residential developments and all business, commercial and industrial developments, the peak runoff after development shall be in accordance with peak rate reduction factors as per the Residential Site Improvement Standards (N.J.A.C. 5:21-7).

E. Runoff calculation criteria.

(1) Peak runoff after development shall be no greater than the applicable percentage of the peak runoff prior to development computed for the one-, two-, ten-, and one-hundred-year design storm as stated in the Residential Site Improvement Standards.

(2) "Design storm" is defined as a twenty-four-hour storm using Type III rainfall distribution recommended by the United States Soil Conservation Service when using United States SCS procedures as outlined in TR-55.

(3) For the purposes of computing existing runoff, a site shall be assumed to be in good condition if the lands are pastures, lawns or parks, with good cover (if the lands are woods), or with conservation treatment (if the land

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is cultivated), regardless of actual conditions existing at the time of computation.

(4) Time of concentration and travel time computations, for the purpose of computing site runoff, shall be estimated utilizing the methodologies as outlined in the Soil Conservation Service TR-55.

(5) Water quality control.

(a) The one-year, twenty-four-hour, Type III storm or a storm of 1 1/4 inches of rainfall in two hours shall be retained and released to allow ninety-percent volumetric release in 18 hours (residential) and 36 hours (other).

(b) Minimum orifice diameter shall be three inches.

(c) Infiltration measures may be used to accomplish water quality requirements, but the lowest point in the basin must be a minimum of four feet above the seasonal high groundwater for residential developments. For other development, infiltration measures may be used on a case-by-case basis only, to avoid pollution of groundwater. Complete infiltration must occur within 72 hours.

(d) In retention ponds, the water quality requirements shall be satisfied if the volume of the permanent pond is at least three times the volume of runoff produced by the water quality design storm.

#### F. Design criteria for detention facilities.

(1) Bottoms. To promote complete emptying and prevent standing water or soggy surfaces, vegetated bottoms shall be required.

(a) Four-foot-wide, V-shaped, concrete low-flow channels shall be constructed with a minimum slope of 1/2 of 1% from all influent pipes to the discharge structure.

(b) The lowest point in the pond bottom shall be at least four feet above the seasonally high groundwater level or bedrock unless adequate subsurface drains are provided.

(c) Subsurface drains connected to low-flow channels, principal outlet structures or other downstream discharge points are encouraged to promote quick and thorough drying of the facility bottom.

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(2) Embankments and side slopes.

- (a) For safe movement of personnel and safe operation of equipment, side slopes greater than five feet in height shall be no steeper than four horizontal to one vertical. Side slopes less than five feet high should not exceed three horizontal to one vertical.
- (b) The minimum top width of the embankment shall be 10 feet.
- (c) The minimum elevation to the top of the settled embankment shall be one foot above the water surface in the detention basin with the emergency spillway at the maximum design flow or a minimum of two feet above the crest of the emergency spillway, whichever is higher.

(3) Outlet structures.

- (a) Multiple-level outlets or other fully automatic outlets shall be designed so that discharge rates from the development for all design storms will not be increased over existing conditions.
- (b) The discharged water shall not cause erosion or other damage.
- (c) Outlets shall be designed to function without manual, electric or mechanical controls.
- (d) Outlet orifice and weir plates should be constructed from aluminum or other lightweight, noncorrodible materials. The plates should be fastened to the structure with noncorrodible, removable fasteners. A gasket of neoprene or similar material should be placed between the plate and the structure wall. The opening in the structure wall, over which the plate is bolted, should have at least twice the area of the outlet orifice or weir.
- (e) To facilitate access and movement by maintenance personnel, principal outlet structures should have a minimum horizontal interior dimension of four feet.
- (f) To facilitate cleaning, trash racks should be comprised primarily of sloping bars aligned longitudinally (in the direction of flow). Perpendicular bars, aligned transverse to the direction of flow, should be added for strength and rigidity. In general, longitudinal bars shall be spaced a distance equal to 1/2 the diameter of the outlet orifice or 1/2 the width or height (whichever is less) of the

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outlet weir. Minimum and maximum spacings of two inches and six inches on center, respectively, are recommended. Transverse bars should be spaced as necessary for strength and rigidity.

(g) Trash racks should be hinged or attached with noncorrodible, removable fasteners to allow access to the outlet orifice or weir by maintenance personnel.

G. Storm sewer design and calculation criteria.

(1) Storm sewers shall be designed utilizing the Rational Method. The minimum design storm frequency shall be 25 years.

(2) Velocity restrictions. Velocities in closed conduits, at design flow, should be at least 2.5 feet per second, but not more than the velocity which will cause erosion damage to the conduit. Velocities in open channels, at design flow, shall not be less than 1.5 feet per second and not greater than two feet per second for unlined earth channels.

(3) At transitions between closed conduits and open channels or different types of open channels, suitable provisions must be made to accommodate the velocity transitions.

§ 225-274 Traffic control devices.

A. The developer shall, prior to final acceptance, install all traffic control devices required within any development or, with the consent of the Borough Council, may pay to the Borough Treasurer a nonrefundable sum, in cash or certified check, in the amount set by the Borough Engineer equal to the cost of all necessary traffic control devices not installed by the developer.

B. Traffic control devices shall include, but are not limited to, signs, traffic lines, lights, reflectors and channelizing markers.

(1) The number, type, legend, placement and size of all traffic control devices shall be in accordance with the Manual on Uniform Traffic Control Devices by the United States Department of Transportation and the requirements of municipal, county and state regulations.

(2) Proposed devices shall be according to an approved plan submitted at the time of final plat approval.

C. Construction details of all proposed traffic control devices shall be in accordance with standards prepared by the Borough Engineer and approved by the Borough Council.

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## § 225-275 Utilities.

A. All utility lines and necessary appurtenances, including but not limited to electric transmission and electric and gas distribution, communications, streetlighting and cable television, shall be installed underground within easements or dedicated public rights-of-way in accordance with the Typical Utility Layout and Typical Road Section or in such other configuration as set forth by the approving body, Borough Engineer and utility companies where necessary and appropriately coordinated.

- (1) The installation of all underground utilities shall conform to the regulations of the New Jersey State Board of Public Utilities.
- (2) Installation of all utilities shall conform to the construction standards of the appropriate utility.

B. Utilities may be required to be located along the rear property lines or elsewhere with easements as provided in this Part 2.

- (1) All utility installations shall be connected with a public utility system and shall be adequate for all present and probable future development of the subdivision.
- (2) Wherever the utility is not installed in the public right-of-way, an appropriate utility easement not less than 25 feet in width shall be provided and located in consultation with the utility companies and/or Borough departments concerned.

C. For all major subdivisions, the developer shall arrange with the serving utility for the underground installation of the utility's distribution supply lines and service connections in accordance with the provisions of the applicable standard terms and conditions incorporated as part of its tariff as the same are then on file with the State of New Jersey Board of Public Utilities and shall submit to the municipal agency, prior to the granting of final approval, a written instrument from each serving utility which shall evidence full compliance with the provisions of this article; provided, however, that lots in such subdivisions which abut existing streets or public rights-of-way where overhead utility distribution supply lines have theretofore been installed on a portion of the streets involved may be supplied with service from such overhead lines or extensions thereof, but the service connections from the overhead lines shall be installed underground.

D. In any event, new building service connections for all multifamily developments and for any industrial, commercial or office developments containing a floor area of 10,000 square feet or more shall be installed

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underground. All other new service connections shall also be installed underground unless a specific waiver is granted by the municipal agency.

E. Where a state permit is required for utilities, the applicant shall submit said permit prior to any final approval or issuance of a building permit as determined by the Planning Board.

F. Meters may be mounted on exterior walls. All meters shall be screened so that they are not visible from any internal or public streets, and access satisfactory to the supplying utility is maintained.

#### § 225-276 Water supply.

Prior to the approval of any final plat, the full approval of any public water system must have been obtained and filed with the municipal agency, or the final approval will be continued upon full approval from the appropriate utility.

### ARTICLE 18 - RECYCLING AREAS IN MULTIFAMILY HOUSING DEVELOPMENTS

#### § 225-277 Definitions.

As used in this article, the following terms shall have the meanings indicated:

##### **MULTIFAMILY HOUSING DEVELOPMENT**

A building containing three or more dwelling units occupied or intended to be occupied by persons living independently of each other, or a group of such buildings.

##### **RECYCLING AREA**

Space allocated for collection and storage of source-separated recyclable materials.

#### § 225-278 Recycling area required; dimensional standards.

There shall be included in any new multifamily housing development that requires subdivision or site plan approval an indoor or outdoor recycling area for the collection and storage of residentially generated recyclable materials. The dimensions of the recycling area shall be sufficient to accommodate recycling bins or containers which are of adequate size and number and which are consistent with anticipated usage and with current methods of collection in the area in which the project is located. The dimensions of the recycling area and the bins or containers shall be determined in consultation with the Municipal Recycling Coordinator and shall be consistent with the district recycling plan, adopted pursuant to N.J.S.A. 13:1E-99.13, and any applicable requirements of the

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Municipal Master Plan, adopted pursuant to Section 26 of P.L. 1987, c. 102. Editor's Note: See N.J.S.A. 40:55D-28.

§ 225-279 Location; lighting; signs; landscaping and fencing.

- A. The recycling area shall be conveniently located for the residential disposition of recyclable materials in accordance with applicable Borough law, preferably near, but clearly separated from, a refuse dumpster.
- B. The recycling area shall be well lit and shall be safely and easily accessible by recycling personnel and vehicles. Collection vehicles shall be able to access the recycling area without interference from parked cars or other obstacles. Reasonable measures shall be taken to protect the recycling area, and the bins or containers placed therein, against theft of recyclable materials, bins or containers.
- C. The recycling area or the bins or containers placed therein shall be designed so as to provide protection against adverse environmental conditions which might render collected materials unmarketable. Any bins or containers which are used for the collection of recyclable paper or cardboard and which are located in an outdoor recycling area shall be equipped with a lid, or otherwise covered, so as to keep the paper or cardboard dry.
- D. Signs clearly identifying the recycling area and the materials accepted therein shall be posted adjacent to all points of access to the recycling area. Individual bins or containers shall be equipped with signs indicating the materials to be placed therein.
- E. Landscaping and/or fencing shall be provided around any outdoor recycling area and shall be developed in an aesthetically pleasing manner.

ARTICLE 19 - VIOLATIONS AND PENALTIES

§ 225-280 Subdivision violations.

- A. Penalties. If, before favorable referral and final subdivision approval has been obtained, any person transfers or sells or agrees to sell, as owner or agent, except pursuant to an agreement expressly conditioned on final subdivision approval, any land which forms part of a subdivision on which, by ordinance, the Planning Board is required to act, such person shall be subject to a fine not to exceed \$1,000, and each parcel, plot or lot so disposed of shall be deemed a separate violation in accordance with the provisions of N.J.S.A. 40:55D-55.
- B. Civil remedies. In addition to the foregoing, the Borough may institute and maintain a civil action:

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- (1) For injunctive relief.
- (2) To set aside and invalidate any conveyance made pursuant to such contract of sale, if a certificate of compliance has not been issued in accordance with the provisions of N.J.S.A. 40:55D-56.

C. Lien. In any such action, the transferee, purchasers or grantee shall be entitled to a lien upon the portion of the land from which the subdivision was made that remains in the possession of the developer or his/her assigns or successors to secure the return of any deposit made or purchase price paid, and also a reasonable search fee, survey expense and title closing expense, if any. Any such action must be brought within two years after the date of the recording of the instrument of transfer, sale or conveyance of such land, or within six years if unrecorded.

#### § 225-281 Site plan violations.

Failure to comply with any of the conditions of site plan approval subsequent to the receipt of a building permit or certificate of occupancy, as the case may be, shall be construed to be a violation of this Part 2 and shall be grounds for the revocation of any building permit or certificate of occupancy, as the case may be. Written notice of revocation, sent by certified mail by the Construction Code Official, requiring compliance with the conditions of site plan approval within a period of time of not less than five days shall effectively revoke any building permit or certificate of occupancy, as the case may be, if compliance shall not be made within the time limit set.

#### § 225-282 Other violations; violations and penalties.

- A. In addition to the penalties set forth above, and for any other violation of the provisions of this Part 2, the provisions of Chapter 1, Article 7, shall apply.
- B. All actions to enforce any lien set forth in this article or to revoke any permit shall follow the procedures set forth in this Code.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

## PART 3 - ZONING

### ARTICLE 20 PURPOSE

#### § 225-300 Purpose

This Part 3 is enacted in accordance with the Master Plan of the Borough of Kenilworth, as amended, and is enacted for the following purposes:

- A. To guide the appropriate use and development of land in a manner which will promote the public health, safety, morals and general welfare.
- B. To secure safety from fire, flood, panic and other natural and man-made disasters.
- C. To provide adequate light, air and open space.
- D. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons and neighborhoods and preservation of the environment.
- E. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight.
- F. To promote a desirable visual environment through creative development techniques and good civic design and arrangements.
- G. To protect and preserve the unique character, identity and historic heritage of historical districts and historical sites.
- H. To comport with such other purposes as set forth in N.J.S.A. 40:55D-2.

#### § 225-301 Conformance to regulations required.

No land or premises shall be used and no building or structure shall be erected, raised, moved, extended, enlarged, altered or used for any purpose other than a purpose permitted herein for the zone district in which it is located, and all construction shall be in conformity with the regulations provided for the zone in which such building or premises is located.

#### § 225-302 Applicability.

- A. For purposes of this chapter, the terms in this article shall have the meaning attributed to them herein except as may be specifically provided otherwise in this chapter, or unless the context clearly indicates a different meaning.

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B. In case of conflict in the application of the RSIS, the terms used herein shall have the meaning attributed to them in said standards.

C. When a term is not defined herein, then the meaning shall be as defined by applicable statute. If a term is not defined herein or by applicable statute, then the meaning attributed by the Zoning Official shall be binding unless reversed on appeal to the Board pursuant to N.J.S.A. 40:55D-70(a). The Zoning Officer and Board may be guided by the definitions in The Complete Illustrated Book of Development Definitions, Moskowitz and Lindbloom, Center for Urban Policy Research, New Brunswick, 2015 or the latest edition of such manual.

**§ 225-303 Word usage.**

In the construction of this chapter, the usage of words shall be as follows, unless the context, other provisions of this chapter, the application of law, or plain sense indicate otherwise:

- A. The present tense shall include the future tense;
- B. The singular number or word shall include the plural, and the plural, the singular;
- C. The word "shall" indicates a mandatory requirement, and the term "may" indicates a permissive action; and
- D. The word "used" includes the words "arranged, designed or intended to be used."

**§ 225-304 Statute citations.**

The following statutes, with their citations, are referenced in this chapter:

- A. Child Care Center Licensing Act. N.J.S.A 30:5B-1 et seq.
- B. Clean Air Act. 42 U.S.C. 7401 et seq.
- C. Code of Criminal Justice. N.J.S.A. 2C:34-6.
- D. Community Affairs. N.J.A.C. 5:21.
- E. Conservation and Development Solid Waste Management. N.J.S.A. 13:1E-99.13a et seq.
- F. Cooperatives. N.J.S.A. 46:8D-1 et seq.
- G. County and Municipal Investigation Law. N.J.S.A. 2A:67A-1 et seq.

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- H. County Planning Act. N.J.S.A. 40:27-1 et seq.
- I. Environmental Protection ACT. N.J.A.C. 7:7A et seq. and 7:27-1-1 et seq.
- J. Family Day Care Provider Registration Act. N.J.S.A. 30:5B-16 et seq.
- K. Freshwater Wetlands Protection Act. N.J.S.A. 13:9B-1 et seq.
- L. Institutions and Agencies. N.J.S.A. 30:11B-1 et seq.
- M. Law and Public Safety. N.J.A.C. 13:27, 13:40 & 13:41
- N. Local Public Contracts Law. N.J.S.A. 40A:11-1 et seq.
- O. Map Filing Law. N.J.S.A. 46:23-9.9 et seq.
- P. Municipal and Counties Local Bond Law. N.J.S.A. 40A:2-22.
- Q. Municipal Land Use Law. N.J.S.A. 40:55D-1 et seq.
- R. Motor Vehicle and Traffic Laws. N.J.S.A. 39:1-1 et seq.
- S. Open Public Meetings Law. N.J.S.A. 10:4-6 et seq.
- T. Penalty Enforcement Law. N.J.S.A. 2A:58-1 et seq. Editor's Note: N.J.S.A. 2A:58-1 et seq. was repealed by L. 1999, c. 274. See now N.J.S.A. 2A:58-10 et seq.
- U. Pollution Control Law. N.J.S.A. 26:2C-1 et seq.
- V. Property and Public Records. N.J.S.A. 46:8B-1 et seq.
- W. Public Utility Commissions. N.J.S.A. 48:2-13 et seq.
- X. Radiation Protection Act. N.J.S.A. 26:2D-1 et seq. and N.J.A.C. 7:28-1.1 et seq.
- Y. Residential Site Improvement Standards. N.J.A.C. 5:21 et seq.
- Z. Soil Conservation Act. N.J.S.A. 4:24-18 et seq.
- AA. Soil Erosion and Sediment Control Act. N.J.S.A. 4:24-39 et seq.
- BB. Tax Sale Law. N.J.S.A. 54:5-14 et seq.
- CC. Uniform Construction Code. N.J.A.C. 5:23 et seq.
- DD. Uniform Construction Code Act. N.J.S.A. 52:27D-119 et seq.

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EE. Water and Water Supply. N.J.S.A. 58:1A-1 et seq.

**§ 225-305 Existing Uses and Non-Conforming Uses, Structures or Lots**

Any non-conforming use or structure lawfully existing at the time of passage of the ordinance which made such use or structure non-conforming may be continued upon the lot or in the structure so occupied and any such structure may be restored or repaired in the event of partial destruction thereof. The applicant for any application for development shall have the burden of proof.

Maintenance may be made to a non-conforming use, structure, or lot provided the maintenance work does not change the use, expand the building or the functional use of the building, increase the area of a lot used for a non-conforming purpose, or increase the nonconformity in any manner.

Any existing structure with a permitted use located on either a conforming or non-conforming lot, but which building is situated on the lot so as to violate one or more yard requirements, may have additions to the principal building and/or construct an accessory building without an appeal for a variance, provided the floor area ratio, total permitted building or lot coverage is not exceeded, the accessory building and/or the addition to the principal building do not violate any setback or other requirements of this Ordinance.

An existing lot whose area and/or dimensions are sufficient to permit a subdivision, but where a structure exists on the lot with one or more setback violations, may nevertheless be subdivided without an appeal for a variance provided the subdivision itself does not create any new zoning violations and does not increase the severity of the existing setback violations.

Notwithstanding the protections provided in this section, the Planning Board will review any application for development by applying the purposes of zoning and the purposes of the Municipal Land Use Act N.J.S.A. 40:55-D in reviewing said applications. The Planning Board will encourage each applicant to reduce, to the greatest extent possible, the degree of non-conformity with each new application for development.

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## ARTICLE 21 ESTABLISHMENT OF ZONING DISTRICTS

### § 225-306 Designation of zoning districts.

For the purpose of this Part 3, the Borough is hereby divided into 15 classes of land use districts, including overlay zones, as follows:

- A. R-6 Low Density Single Family Residential Zone District
- B. R-5 Medium Density Single Family Residential Zone District
- C. R-5A High Density One and Two Family Residential Zone District
- D. BD Boulevard Downtown Zone District
- E. AC Area Commercial Zone District
- F. C Commercial Zone District
- G. OR Office Research Zone District
- H. I Industrial Zone District
- I. G Government Zone District
- J. P Park Zone District
- K. CE Cemetery Zone District
- L. CS Community Serving Zone District
- M. SLO Senior Living Overlay Zone District
- N. GO Gateway Overlay Zone District
- O. Boulevard Downtown Residential Overlay

### § 225-307 Zoning Map.

The location and boundaries of districts established herein are shown on the current Zoning Map, as amended, which map accompanies and is declared to be part of this Part 3. The Zoning Map is on file in the office of the Admin Officer and the Borough Engineer and is hereby incorporated in and made a part of this Part 3 as though appended thereto.

### § 225-308 District boundaries.

Where uncertainty exists as to the boundaries of any of the districts established, as shown on the Zoning District Map, the following rules shall apply:

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- A. District boundary lines are intended to follow the center line of streets, alleys, and watercourses, parkway and railroad rights-of-way, or lots and parcels as they exist on plots of record at the time of the enactment of this Part 3.
- B. Where such a district boundary line does not coincide with such center lines, right-of-way lines or lot or parcel lines, or where it is not shown by dimensions or otherwise clearly indicated, its location shall be determined by the scale of the map.
- C. Where a boundary line dividing two or more districts divides a lot or parcel of record, the district covering the greatest portion of the frontage of such lot or parcel shall be considered as extending to the entire lot or parcel, providing that such extension shall be within 50 feet of the dividing boundary line and shall include the entire lot or parcel.
- D. Where not resolved, the exact location of a district boundary line shall be determined by the Zoning Board, as provided in Article 5.

## ARTICLE 22 GENERAL REGULATIONS, EXCEPTIONS AND MODIFICATIONS

### § 225-309 Compliance required.

Except as otherwise provided, the following provisions of this article shall apply.

### § 225-310 Use regulations.

- A. No land or premises may be used and no building or structure may be erected, raised, moved, extended, enlarged, altered or used for any purpose other than a purpose permitted by this chapter for the zone district in which the land, premises, building or structure is located, and all uses and construction shall be in conformity with the regulations provided for the zone district in which such land, premises, building or structure is located, and in conformity with the Uniform Construction Code.
- B. In applying the provisions of this chapter, a departure from the literal requirements shall not be considered a violation if, in the opinion of the Zoning Officer, the departure is de minimus. For purposes of administering this provision, "de minimus" is intended to mean that the departure from the literal requirements of this chapter is inappreciable and does not impair the intent and purpose of the zone plan and this chapter. Any interested party may appeal a

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determination of the Zoning Officer in this regard in accordance with the procedures set forth in Article 5.

C. No development shall be permitted without first obtaining zoning approval, a construction permit, demolition permit, or certificate of occupancy, as applicable, unless specifically exempted by this chapter or other law. No zoning approval, construction permit, demolition permit or certificate of occupancy shall be issued by the Construction Official or Zoning Officer except upon application and approval in accordance with the procedures set forth in Article 9 and in conformity with the provisions of this chapter.

D. The control and regulation of the uses of buildings and structures by this chapter shall apply equally to the nature and extent of the uses of the lot or lots upon which they are erected.

E. Every principal building shall be erected upon a lot as hereinbefore defined, and, except as hereinafter provided, there shall not be more than one one-family detached dwelling on one lot.

F. The following uses and activities are specifically prohibited in any district:

(1) All outdoor advertising signs, whether freestanding or attached to a structure or painted or otherwise represented on the surface of any structure, which are not expressly related to the business being conducted on the premises.

(2) Permanent outdoor commercial amusements.

(3) Trailers, trailer coach parks and trailer sales.

(a) Exception. Where, as the result of an emergency caused by fire, flood or other disastrous circumstances, the Admin Officer determines it to be necessary and appropriate to permit residents, property owners or commercial enterprises to utilize a trailer as a temporary place of residency or business during any period of reconstruction of damages to premises, then, upon application by the property owner, the Admin Officer Construction Code Official may issue a permit for the use of the trailer on a temporary basis for a period not to exceed six months. The issuance of such permit shall be conditioned upon the applicant's compliance with all relevant health and sanitation codes.

(b) Fee. Upon application for such a permit, the applicant shall pay to the Borough a permit fee as set forth in Article 6, Development Fees, of this chapter.

(4) Junkyards.

(5) Privately owned and operated dumps for disposal of garbage, trash, refuse, junk or debris of any kind.

(6) No halfway house, reformatory facility, jail, penal institution, house of remediation, or any other such facility wherein convicted criminals are housed while serving sentences imposed by the court shall be permitted to be established in any zone within the Borough. "Halfway houses" shall be defined so as to include those places housing not only convicted criminals but also any individuals embarked voluntarily or involuntarily on drug rehabilitation programs, mental health programs and the like, and the foregoing uses are expressly prohibited.

(7) Massage, body art and somatic therapy establishments except those allowed by Chapter 129 of the Borough Code and located in nonresidential zones.

#### § 225-311 Dangerous conditions.

No building permit or zoning approval shall be granted for a building, structure or use if the design or construction of said building or structure involves exceptional risks of traffic congestion or public safety. If the Construction Official or Zoning Officer, as applicable, finds either of the above to be the case, he/she shall refuse to issue a permit and refer the application to the Board.

#### § 225-312 Outdoor Storage Container

Outdoor storage containers, sometimes called PODS (portable on demand storage) are portable and temporary storage units intended to be utilized upon the exterior of residential premises for the purpose of storing items of personal and household property either as general temporary storage or to facilitate the moving of persons from household unit to another household unit, with the understanding that such items, after a period of time (as defined herein) for loading, will be removed from the site.

(A). Time limit.

Except in the case of a State of Emergency declared by Federal, State or Municipal authorities, the outdoor storage container shall not be located on residential premises for a total of more than 90 days. If more than one outdoor

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storage container is utilized, the ninety-day period shall commence at the time the first outdoor storage container is physically situated on the real estate. A permit for each such outdoor storage container under this paragraph shall be obtained from the Construction Office before placement. The fee for said permit will be \$50.00 for each storage container per 30 days, or portion thereon.

(B) Placement.

Outdoor storage containers may be placed only on driveways, backyards, or side yards behind the front house line. The final placement of the container(s) is subject to the approval of the Administrative Official.

(C). Miscellaneous Additional Requirements.

The following requirements shall be met by the owner or occupier of the residential premises with respect to outdoor storage containers:

- (1) The outdoor storage container situated on residential property shall only be used for the storage of personal property, furniture and household items normally located on or in a residential dwelling or premises.
- (2) All outdoor storage containers shall:
  - (a) Not have a height in excess of seven feet nor a length of more than ten feet nor a width of more than eight feet.
  - (b) All access doors shall be secured by locks.

(D) Violations and Penalties.

Any person who violates any provision of this chapter shall, upon conviction thereof in the Municipal Court, be punished by a fine not exceeding \$1,000. A separate offense may be deemed committed for each day during or on which a violation occurs or continues.

§ 225-313 Animals and birds.

The keeping of fowl, chickens, ducks, pigeons, horses, ponies, or other domestic equine animals, pigs, goats, sheep or cattle or other kinds of livestock or exotic animals is prohibited in all zones.

§ 225-314 Flag lots.

Flag lots, as defined in the Borough Code, are prohibited in all zones.

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§ 225-315 Structures adjacent to gas transmission lines.

- A. No building or structure shall be permitted to be constructed within 50 feet of any distribution, gathering or transmission line.
- B. No building or structure, or part thereof, which is used for the manufacturing, processing, generation or storage of corrosive, highly toxic, oxidizing, pyrophoric, water reactive, highly combustible, flammable, or explosive materials that constitute a high fire, explosion, or health hazard, including loose, combustible fibers, dust and unstable material, shall be constructed within 125 feet of any distribution, gathering, or transmission line.
- C. Notwithstanding anything herein contained in this section to the contrary, this section shall not apply to the construction of any structure required to provide access to certain real property when no other reasonable means of access is available; to provide utility service to certain real property; or, to perform any work to a pipeline by or on behalf of the owner or operator of such pipeline.

§ 225-316 Height regulations.

- A. General limitation; accessory structures. No structure shall be erected or altered to exceed in height the limit hereinafter designated for the district in which such structure is located, except as otherwise specifically provided. Wherever in this Part 3 a height limit is designated in feet or in number of stories, such designation, in combination, shall be considered as the maximum permitted height. Unless otherwise specified as exempted or excluded from height controls, no accessory building or structure shall exceed a height of 15 feet, except for antennas or aerials, the height of which shall be governed by the provisions set forth below.
- B. Structures excluded from height controls. The height limits set forth in this Part 3 shall not apply to church spires, belfries, cupolas, penthouses or roof structures for the housing of elevators, ventilating fans, air-conditioning equipment or similar equipment required to operate and maintain the building, utility poles, and television or radio antennas or aerials less than 60 inches in height and/or 30 inches in diameter, water storage towers and tanks, chimneys and smokestacks, fire and parapet walls, or similar features, and necessary mechanical appurtenances usually carried above the roof level. Such features, however, shall be erected only to such height as is necessary to accomplish the purposes they are to serve. Nothing in this subsection shall be deemed to permit signs of any kind to exceed the height limits for any district as prescribed in this Part 3. No roof structure shall have an area greater than 20% of the roof area of the principal structure.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

C Public and quasi-public buildings. Public buildings, subsidized senior housing, churches and church schools may exceed the height limitations of this Part 3, provided that the minimum front, rear and side yards shall be increased one foot for each foot by which such building exceeds the height limit herein established for such district in which such building is erected, and provided further that in no case shall any such building have a height greater than 50 feet.

D. Antennas and aerials.

- (1) For the purposes of this section, all antennas and aerials in excess of 60 inches in height and/or 30 inches in diameter shall require the same permits as required for accessory buildings.
- (2) Television or radio antennas, or aerials greater than 60 inches in height and/or 30 inches in diameter, shall be erected only after receiving the approval of the Administrative Officer and upon meeting the conditions set forth below:
  - (a) No antennas more than 60 inches in height and/or 30 inches in diameter may be mounted on a roof. Antennas larger than 60 inches in height and/or 30 inches in diameter shall be ground-mounted in such a manner as to be suitable to maintain stability under all conditions, and the plans for same shall be subject to the approval of the Borough Engineer.
  - (b) No antennas greater than 10 feet in height and/or eight feet in diameter may be located in any zone.
- (3) No television or radio antenna or aerial shall be located in the front yard or required side yard. Rear yard distance requirements shall be the same as those set forth in this Part 3 for accessory buildings in the zone where such antenna or aerial is proposed.
- (4) The antenna or aerial shall be located and screened to minimize visibility from the street and adjacent properties. In considering such uses, the Administrative Officer may require additional buffering or screening so as to accomplish the objective of this section.
- (5) Antennas or aerials recommended to be installed on the ground by the manufacturer shall be so located. A copy of the manufacturer's installation recommendations shall be submitted to the Administrative Officer for his/her review before issuing any permit if the installation is contemplated other than in the manner recommended by the manufacturer.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

§ 225-317 Area and yard provisions.

## A. General yard and open spaces provisions.

- (1) No building or structure shall be erected or altered to encroach upon or reduce in any manner the required yard dimensions, areas or open spaces hereinafter designated for the district in which such building is located, except as otherwise specifically provided.
- (2) No yard or other open spaces provided about any building for the purpose of complying with the provisions of this Part 3 shall be considered as a yard or open space for any other building, and no yard or other open space of a building on one lot shall be considered as a yard or open space for a building on any other lot.
- (3) All yards and courts required by this Part 3 shall be open and unobstructed to the sky, except as provided herein.
- (4) No lot shall be reduced in area so as to make any yard or other open space less than the minimum required by this Part 3.

## B. Undersized lots.

- (1) On any undersized lot in single ownership, where the owner of which owns no adjoining lots, the combined total side yard requirements for the district in which such lot is located may be reduced by six inches for each foot a lot is less than the required minimum lot frontage at the building line prescribed for such district, where necessary to permit construction thereon of a building having a minimum floor area prescribed for such district. However, no principal building shall be placed any nearer than five feet to any side lot line, except where specifically permitted by this Part 3, and provided further that no principal building shall be placed any nearer than 15 feet to any principal building on an adjoining lot.
- (2) Where the owner of an undersized lot owns adjoining lots upon which there are not any principal structures situated, and where the composite of the lots, or a portion thereof under single ownership, meets the minimum area requirements for the district in which the composite of lots is located, such composite, or portion thereof, shall be considered as one single lot, and the area and yard provisions of this Part 3 shall apply:

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

C. Corner lots.

(1) Front yards. All yards facing upon a public street shall conform to the minimum front yard requirements for the particular district, except that:

For any corner lot of record that is not of sufficient width to permit the adherence to the minimum requirements for a front yard in a particular district, the front yard abutting the side street line may be reduced by not more than 1/3 of the required depth for a front yard, with a minimum of fifteen (15) feet. Nothing in this subsection shall permit the reduction in width or depth of the other required yards of such corner lots.

(2) Side yards. All side yards not abutting and facing upon a public street shall conform to the minimum side yard requirements for the particular district, except that the side yard of a corner lot which adjoins the required front yard abutting the side street line shall conform to the minimum rear yard requirements for the adjoining interior lots.

(3) Rear yards (nonexistent). For the purposes of applying the provisions of this Part 3, a corner lot shall be deemed to have two front yards.

D. Front yards.

(1) Corner lots. Front yards required on corner lots shall be subject to the provisions of Subsection C (1) above.

(2) Double-frontage lots. Yards facing upon public streets shall be considered as front yards and shall conform to the minimum front yard requirements for the particular district. The building line of any principal structure or building erected or constructed upon such lots shall not be established in excess of 15 feet of the average front yard depth of adjoining lots on either side.

(5) Accessory buildings. Unless otherwise provided, no accessory buildings shall be permitted in any required front yard.

(6) Extensions and projections. The following portions of, or attachments to, a principal building may extend and project into a required yard:

(a) Steps and uncovered stoops, terraces, patios and porches.

(b) Bay windows, vestibules, entrances and balconies, but not more than three feet into any minimum front yard.

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- (c) Cornices, sills, fire escapes, outside stairways and chimneys, ornamental or architectural features.
- (d) Show windows in commercial districts, but not more than 18 inches into any front yard.
- (e) Awnings and similar appurtenances.

F. Front yard setback for flagpoles. In all zones wherein the owner of the property seeks to erect a flagpole in accord with the terms hereof, the front yard setback for said flagpole shall be a distance equal to 50% of the front yard setback required for the erection of a principal structure in said zone.

§ 225-318 Vision clearance at intersections.

In all districts where front yards are required on corner lots, all walls, fences, ornamental structures, hedges, shrubbery or other plantings, other fixtures and structures, and ground elevation located within a triangular area having two thirty foot sides measured along the front lot line and side street line from the intersection point of such lines shall be limited in height so as to prevent the impairment of vision at such street intersection. Such height shall not be in excess of three feet above the established curb elevation of the nearest curb, except that retaining walls shall be permitted where changes in street grade, width, or alignment have made such structures necessary. In the case of trees within this triangular area, all branches shall be trimmed away to a height of nine feet above the curb level where vision is measurably impaired or obstructed.

§ 225-319 Fences and walls.

- A. Fences and walls shall be exempt from the yard requirements of this Part 3.
- B. Fences and walls shall not be allowed within any required front yard setback. Any fence in a front yard shall be no greater than 4 feet in height.
- C. Where any fence or wall is situated on a corner lot, the provisions of § 225-318 shall apply with respect to the height limitations for visibility clearance at street intersections.
- D. No fence or wall hereafter erected, constructed or added to that is situated between two abutting residential properties shall be any greater in height than 6 feet, measured from the finished grade elevation along the length of such wall or fence, except fences located in the front yard shall comply with section B above.
- E. In the case of a residential corner lot, a fence or wall of not greater than 6 feet in height may be permitted to extend along the right-of-way where such wall or

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fence screens the rear yard of a home located on the corner lot, providing the provisions of § 225-318 are also met.

F. Nothing in this section shall apply to shrubbery, hedges or other plantings located between such properties.

G. Open security fences up to eight feet high shall be permitted in any industrial zone upon proper application to the Construction Code Official.

H. The face, or finished side, of a fence or wall shall face the adjacent property.

I. No fence or wall shall be constructed with barbed wire, metal spikes or other such dangerous material or constructed in such a manner as to be dangerous to animals or humans. Electrified fences shall be prohibited.

J. Solid fences shall not be permitted to be constructed in the front yard of any residential property, and any such fence shall be required to be open. Fences required for pools may be solid but shall not be any closer than the required front yard setback and may be 52" high to meet Construction Code requirements.

K. Industrial and commercial property fences shall be of a solid construction, such as board on board, or nine gauge chain link fence with privacy slats.

L. Prior to the installation of a fence or wall in the Borough, a permit shall be obtained from the Building Department. Permit applications for retaining walls in excess of 4 feet shall require structural calculations per Section 225-320.

#### § 225-320 Retaining Walls.

The following regulations apply to retaining walls:

A. Retaining wall shall mean a structure that is constructed between lands of different elevations to stabilize the surfaces, prevent erosion, and/or protect structures.

(1) Retaining walls shall be permitted in front, side and rear yards.

(2) Construction permits shall be required for new or substantial replacement of retaining walls over three (3) feet high conforming with the height limits for same as set forth in this Section. Permit applications for retaining walls in excess of 4 feet shall require structural calculations.

(3) Retaining walls shall not exceed four (4) feet in height in the front yard or six (6) feet in height in the side and rear yards. In the event a guard rail or other restraining device is provided at the top of the wall,

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the wall height shall be measured to the top of said restraining device. For purposes of administering this subsection, terraced retaining walls involving more than one (1) section of wall above or below each other shall be construed as one (1) wall unless the base of the upper wall is separated from the face of the lower wall by at least four (4) feet, measured horizontally.

(4) In the event a retaining wall is permitted by variance to exceed four (4) feet in height in the front yard or six (6) feet in height in the side and rear yards, the approving authority granting the variance may require an appropriate guard rail or other restraining device in order to protect persons from falling off the edge of the wall.

(5) Retaining walls which may present a danger or hazard to the public welfare, including but not limited to retaining walls which are electrified, contain broken glass, razor wire or barbed wire, or other sharp edges, are prohibited.

(6) Approval by the Township Engineer shall be required for the erection, relocation, alteration or other construction involving any retaining wall located within a street right-of-way, public drainage or sewer easement or other public land or easement under the control or jurisdiction of the Township.

#### § 225-321 Essential services exemption.

Essential services shall be exempt from the provisions of this Part 3.

#### § 225-322 Performance standards.

##### A. Smoke Control.

No smoke shall be emitted from any chimney or other source as visible gray greater than permitted by the most current standards enforced by NJDEP, and the New Jersey Air Pollution Control Act (NJAC 7:27, NJAC 7:27A, NJAC 7:27B).

##### B. Dust, Dirt, Fly Ash, Fumes, Vapors and Gasses.

(1). No emission shall be made which can cause any danger to health, to animals, or vegetation or other forms of property or which can cause excessive soiling at any point.

(2). No emission of liquid or solid particles from any chimney or device shall exceed the most current standards enforced by NJDEP, and the New Jersey Air Pollution Control Act as amended (NJAC 7:27, NJAC 7:27A, NJAC 7:27B).

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### C. Odors.

There shall be no emission of odorous matter in such quantities as to be offensive. Any process which may involve the creation or emission of any odors shall be provided with a secondary safeguard system so that control will be maintained. As a guide in determining offensive odors, the most current standards, enforced by NJDEP and/or the Union County Health Department shall prevail.

### D. Glare or Heat.

Any operation producing intense glare or heat shall be performed within an enclosed building or behind a solid fence in such a manner as to be completely imperceptible from any point beyond the lot line.

### E. Vibration.

No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at or beyond the lot line, nor shall any vibration produced exceed 0.002 g peak, measured at or beyond the lot line using either seismic or electronic vibration measuring equipment.

### F. Radioactivity or Electrical Disturbance.

There shall be no activities which emit dangerous or harmful radioactivity. There shall be no disturbance adversely affecting the operation of any equipment located beyond the property line of the creator of such disturbance.

### G. Outdoor Storage and Waste Disposal.

(1) No flammable or explosive liquids, solids, or gasses shall be stored in bulk above ground; however, tanks or drums of fuel directly connecting with energy devices, heating devices, or appliances located on the same lot as tanks or drums of fuel are excluded from this provision.

(2) All outdoor storage facilities or fuel, raw materials and products stored outdoors shall be enclosed by a fence adequate to conceal the facilities from any adjacent properties.

(3) Materials or wastes shall not be deposited upon a lot in such form and manner that they may be transferred off the lot by natural causes or forces.

(4) All material or wastes which may cause fumes or dust or which constitute a fire hazard or which may be edible or otherwise attractive to rodents or insects shall be stored outdoors only in closed containers.

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(5) Compliance with the New Jersey Solid Waste Management, as amended shall be required (NJSA 13:1E et seq.).

H. Industrial Waste or Sewage. No use shall be conducted in such a way as to discharge any treated or untreated sewage or industrial waste into treatment and disposal facilities except as shall be approved by the health officer and city engineer.

I. Provisions and Use of Water. All water requirements shall be stated in the permit application.

J. Noise.

(1) In residential and commercial districts, when measured at the lot line, and industrial districts, when measured at any point on the boundary of the nearest residential or office district, the sound-pressure level radiated continuously from a facility between the hours of 9:00 p.m. and 7:00 a.m. shall not exceed the following in any active band of frequency:

Frequency Band (cycles per second)	Sound-Pressure Level (decibels re 0.0002 microbar)
20 to 75	69
75 to 150	54
150 to 300	47
300 to 600	45
600 to 1,200	41
1,200 to 2,400	34
2,400 to 4,800	31
4,800 to 10,000	28

(2) If the noise is not smooth and continuous and is not radiated between the hours of 9:00 p.m. and 7:00 a.m., one or more of the following corrections shall be added to or subtracted from each of the decibel levels given above:

Type of Operation/Character of Noise	Correction in Decibels
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To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

Type of Operation/Character of Noise	Correction in Decibels
Daytime operation only	+5
Noise source operated less than 20% of the time	+5*
Noise source operated less than 5% of the time	+10*
Noise source operated less than 1% of the time	+15*
Noise of impulsive character (hammering, etc.)	-5
Noise of periodic character (hum, screech)	-5

NOTES:

\* Applying one of these corrections only.

The sound-pressure level shall be measured with a sound-level meter and an octave bank analyzer that conforms to the latest specifications published by the American Standard Association, New York, New York.

§ 225-323 Aboveground outside storage tanks.

Any outdoor aboveground storage tank in any zone district within the Borough of Kenilworth shall be enclosed by a solid wall no higher than eight feet in height and constructed of noncombustible materials. Such tanks shall meet all maximum setbacks applicable for mechanical devices such as generators, air conditioning units and compressors and accessory structures.

ARTICLE 23 ZONE DISTRICT REGULATIONS

23A. RESIDENTIAL ZONES

§ 225-324 R-6 Low Density Single Family Residential Zone District

Purpose. Since the Borough is an established suburban residential community, it is the intent of this Ordinance to preserve and protect the established character of its neighborhoods and to encourage a compatible relationship between new and expanded

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to Chapter 120 (ordinance #2018-14, Sept. 12, 2018).

houses and traditional neighboring structures that reflect the best of local character, particularly in terms of scale, siting, design features and orientation on site.

The purpose of this district is to preserve the quality of life and individuality of the existing detached one family homes and to discourage subdivision. The district is intended to protect the character of the streets and neighborhoods from inappropriate intrusions.

A. Principal uses and structures. The following principal uses and structures shall be permitted in the R-6 Zone District:

- (1) Single-family residential uses in detached single-family residential structures;
- (2) Public parks and playgrounds; and,
- (3) Community residences for the developmentally disabled, as regulated in N.J.S.A. 40:55D-66.1 and 66.2.

B. Accessory uses and structures. The following accessory uses and structures shall be permitted in the R-6 zone:

- (1) Parking and parking facilities as regulated in Article 27;
- (2) Signs as regulated in Article 31;
- (3) Home occupations as regulated in Article 25;
- (4) Family day-care homes as regulated in N.J.S.A. 40:55D-66.5b;
- (5) Antennas, as regulated in Article 28; and,
- (6) Private swimming pools enclosed in a yard by a fence not less than four feet high, as regulated in Article 24.
- (7) Accessory uses and structures customarily subordinated and incidental to permitted principal uses and accessory uses and structures customarily subordinate and incidental to permitted conditional uses.
- (8) Reference is made to Article 24 as that section relates to residential accessory uses and structures.
- (9) Senior Suites

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

C. Conditional uses and structures. The following conditional uses and structures shall be permitted only if they comply with the appropriate regulations for such uses or structures in Article 30:

- (1) Residential public utility facilities excluding wireless telecommunications facilities;
- (2) Community shelters for victims of domestic violence, community residences for the terminally ill, and community residences for persons with head injuries, either of the foregoing which house less than 16 persons, excluding resident staff; as regulated in N.J.S.A. 40:55D-66.1 and 66.2.
- (3) Renewable energy facilities which must comply with all bulk standards of the zone. Facilities may be attached to the primary residence provided no new variances are created.

D. Prohibited uses and structures. Any use or structure other than those uses or structures permitted in Subsection A, B, or C above are prohibited.

E. Bulk and lot regulations. The following bulk and lot regulations shall apply to all development within the R-6 Zone District:

- (1) Minimum lot size. Every lot shall contain a minimum lot area of 6,000 square feet.
- (2) Minimum lot width. There shall be a minimum lot width of 60 feet.
- (3) Minimum lot frontage. There shall be a minimum lot frontage of 60 feet for all lots.
- (4) Minimum front yard. There shall be a front yard setback of not less than 25 feet to the ground floor and 23 feet to the second floor.
- (5) Minimum side yard. Except as provided below for corner lots, there shall be two side yards totaling 25% or more of lot width. Each side yard shall be a minimum of eight feet. For corner lots, the required side yard shall be regulated by Article 23. Notwithstanding the foregoing, patios accessory to and additions and decks attached to a principal building in existence as of the effective date of this subsection may have an eight-foot side yard setback, excluding corner lots, so long as the addition, deck or patio is erected in such a manner that its side lines continue in a straight line or are a distance from the side lot line no greater than the side of the principal building.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

- (6) Minimum rear yard. There shall be a rear yard of at least 20 feet in depth.
- (7) Maximum building height. No principal building shall exceed the maximum of two and one half habitable floors, exclusive of basement, and 35 feet. The height of a proposed addition may match the existing nonconforming height of the principal dwelling.
- (8) Maximum building coverage. No more than 50% of the area of any lot shall be covered by above-grade buildings and/or structures. Decks and patios, as defined herein, shall not be considered as a building or structure for purposes of computing this coverage.
- (9) Maximum impervious coverage. No more than 75% of the area of any lot shall be covered by physical improvements, including but not limited to any above-grade buildings and/or structures, as well as at-grade structures, including but not limited to ingress/egress platforms, sidewalks, parking areas, patios, driveways, swimming pools, etc.; and including aboveground decks. It is the intention of this provision that each lot shall have at least 25% of its lot area without any improvements dedicated to vegetation.
- (10) Floor Area Ratio. FAR shall be limited to .75.

F. Other regulations. In addition to the above requirements, any development in the R-6 Zone District must comply with all applicable regulations of this chapter.

#### § 225-325 R-5 Medium Density Single Family Residential Zone District

Purpose. Since the Borough is an established suburban residential community, it is the intent of this Ordinance to preserve and protect the established character of its neighborhoods and to encourage a compatible relationship between new and expanded houses and traditional neighboring structures that reflect the best of local character, particularly in terms of scale, siting, design features and orientation on site.

The purpose of this district is to preserve the quality of life and individuality of the existing detached one family homes and to discourage subdivision. The district is intended to protect the character of the streets and neighborhoods from inappropriate intrusions.

A. Principal uses and structures. The following principal uses and structures shall be permitted in the R-5 Zone District:

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

- (1) Single-family residential uses in detached single-family residential structures;
- (2) Public parks and playgrounds; and,
- (3) Community residences for the developmentally disabled, as regulated in N.J.S.A. 40:55D-66.1 and 66.2.

B. Accessory uses and structures. The following accessory uses and structures shall be permitted in the R-5 zone:

- (1) Parking and parking facilities as regulated in Article 27;
- (2) Signs as regulated in Article 31;
- (3) Home occupations as regulated in Article 25;
- (4) Family day-care homes as regulated in N.J.S.A. 40:55D-66.5b;
- (5) Antennas, as regulated in Article 28; and,
- (6) Private swimming pools enclosed in a yard by a fence not less than four feet high, as regulated in Article 24.
- (7) Accessory uses and structures customarily subordinate and incidental to permitted principal uses and accessory uses and structures customarily subordinate and incidental to permitted conditional uses.
- (8) Reference is made to Article 24 as that section relates to residential accessory uses and structures.
- (9) Senior suites

C. Conditional uses and structures. The following conditional uses and structures shall be permitted only if they comply with the appropriate regulations for such uses or structures in Article 30:

- (1) Residential public utility facilities excluding wireless telecommunications facilities;
- (2) Community shelters for victims of domestic violence, community residences for the terminally ill, and community residences for persons with head injuries, either of the foregoing which house less than 16 persons, excluding resident staff; as regulated in N.J.S.A. 40:55D-66.1 and 66.2.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

(3) Renewable energy facilities which must comply with all bulk standards of the zone. Facilities may be attached to the primary residence provided no new variances are created.

D. Prohibited uses and structures. Any use or structure other than those uses or structures permitted in Subsection A, B, or C above are prohibited.

E. Bulk and lot regulations. The following bulk and lot regulations shall apply to all development within the R-6 Zone District:

(1) Minimum lot size. Every lot shall contain a minimum lot area of 5,000 square feet.

(2) Minimum lot width. There shall be a minimum lot width of 50 feet.

(3) Minimum lot frontage. There shall be a minimum lot frontage of 50 feet for all lots.

(4) Minimum front yard. There shall be a front yard setback of not less than 25 feet to the ground floor and 23 feet to the second floor.

(5) Minimum side yard. Except as provided below for corner lots, there shall be two side yards totaling 20% or more of lot width. Each side yard shall be a minimum of five feet. For corner lots, the required side yard shall be regulated by Article 23. Notwithstanding the foregoing, patios accessory to and additions and decks attached to a principal building in existence as of the effective date of this subsection may have an five-foot side yard setback, excluding corner lots, so long as the addition, deck or patio is erected in such a manner that its sides continue in a straight line or are a distance from the side lot line greater than the side of the principal building.

(6) Minimum rear yard. There shall be a rear yard of at least 20 feet in depth.

(7) Maximum building height. No principal building shall exceed the maximum of two and one half habitable floors, exclusive of basement, and 35 feet. The height of a proposed addition may match the existing nonconforming height of the principal dwelling.

(8) Maximum building coverage. No more than 50% of the area of any lot shall be covered by above-grade buildings and/or structures. Decks and patios, as defined herein, shall not be considered as a building or structure for purposes of computing this coverage.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

(9) Maximum improvement coverage. No more than 75% of the area of any lot shall be covered by physical improvements, including but not limited to any above-grade buildings and/or structures, as well as at-grade structures, including but not limited to ingress/egress platforms, sidewalks, parking areas, patios, driveways, swimming pools, etc.; but including aboveground decks. It is the intention of this provision that each lot shall have at least 25% of its lot area without any improvements except vegetation.

(10) Floor Area Ratio. FAR shall be limited to .75.

F. Other regulations. In addition to the above requirements, any development in the R-5 Zone District must comply with all applicable regulations of this chapter.

#### § 225-326 R-5A High Density One and Two Family Residential Zone District

Purpose. Since the Borough is an established suburban residential community, it is the intent of this Ordinance to preserve and protect the established character of its neighborhoods and to encourage a compatible relationship between new and expanded houses and traditional neighboring structures that reflect the best of local character, particularly in terms of scale, siting, design features and orientation on site.

The purpose of this district is to preserve the quality of life and individuality of the existing detached one family homes and attached two family homes and to discourage subdivision. The district is intended to protect the character of the streets and neighborhoods from inappropriate intrusions.

A. Principal uses and structures. The following principal uses and structures shall be permitted in the R-5A Zone District:

- (1) Single-family residential uses in detached single-family residential structures;
- (2) Two family residential uses in attached residential structures.
- (3) Public parks and playgrounds; and,
- (4) Community residences for the developmentally disabled, as regulated in N.J.S.A. 40:55D-66.1 and 66.2.

B. Accessory uses and structures. The following accessory uses and structures shall be permitted in the R-5A zone:

- (1) Parking and parking facilities as regulated in Article 27;
- (2) Signs as regulated in Article 31;

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

- (3) Home occupations as regulated in Article 25;
- (4) Family day-care homes as regulated in N.J.S.A. 40:55D-66.5b;
- (5) Antennas, as regulated in Article 28; and,
- (6) Private swimming pools enclosed in a yard by a fence not less than four feet high, as regulated in Article 24.
- (7) Accessory uses and structures customarily subordinated and incidental to permitted principal uses and accessory uses and structures customarily subordinate and incidental to permitted conditional uses.
- (8) Reference is made to Article 24 as that section relates to residential accessory uses and structures.
- (9) Senior suites

C. Conditional uses and structures. The following conditional uses and structures shall be permitted only if they comply with the appropriate regulations for such uses or structures in Article 30:

- (1) Residential public utility facilities excluding wireless telecommunications facilities;
- (2) Community shelters for victims of domestic violence, community residences for the terminally ill, and community residences for persons with head injuries, either of the foregoing which house less than 16 persons, excluding resident staff; as regulated in N.J.S.A. 40:55D-66.1 and 66.2.
- (3) Renewable energy facilities which must comply with all bulk standards of the zone. Facilities may be attached to the primary residence provided no new variances are created.

D. Prohibited uses and structures. Any use or structure other than those uses or structures permitted in Subsection A, B, or C above are prohibited.

E. Bulk and lot regulations. The following bulk and lot regulations shall apply to all development within the R-5A Zone District:

- (1) Minimum lot size. Every single family lot shall contain a minimum lot area of 5,000 square feet.
  - (1)(a) The minimum lot size for all new two family residences shall be 7,500 square feet.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

- (2) Minimum lot width. There shall be a minimum lot width of 50 feet.
- (3) Minimum lot frontage. There shall be a minimum lot frontage of 50 feet for all lots.
- (4) Minimum front yard. There shall be a front yard setback of not less than 25 feet to the ground floor and 23 feet to the second floor.
- (5) Minimum side yard. Except as provided below for corner lots, there shall be two side yards totaling 20% or more of lot width. Each side yard shall be a minimum of five feet. For corner lots, the required side yard shall be regulated by Article 23. Notwithstanding the foregoing, patios accessory to and additions and decks attached to a principal building in existence as of the effective date of this subsection may have an— five feet side yard setback, excluding corner lots, so long as the addition, deck or patio is erected in such a manner that its sides continue in a straight line or are a distance from the side lot line greater than the side of the principal building.
- (6) Minimum rear yard. There shall be a rear yard of at least 20 feet in depth.
- (7) Maximum building height. No principal building shall exceed the maximum of two and one half habitable floors, exclusive of basement and 35 feet. The height of a proposed addition may match the existing nonconforming height of the principal dwelling.
- (8) Maximum building coverage. No more than 50% of the area of any lot shall be covered by above-grade buildings and/or structures. Decks and patios, as defined herein, shall not be considered as a building or structure for purposes of computing this coverage.
- (9) Maximum improvement coverage. No more than 75% of the area of any lot shall be covered by physical improvements, including but not limited to any above-grade buildings and/or structures, as well as at-grade structures, including but not limited to ingress/egress platforms, sidewalks, parking areas, patios, driveways, swimming pools, etc.; but including aboveground decks. It is the intention of this provision that each lot shall have at least 25% of its lot area without any improvements except vegetation.
- (10) Floor Area Ratio. FAR shall be limited to .75.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

F. Other regulations. In addition to the above requirements, any development in the R-5A Zone District must comply with all applicable regulations of this chapter.

#### 4B. COMMERCIAL ZONE REGULATIONS

##### § 225-327 BD - Boulevard Downtown Zone District

###### A. Purpose of the district.

The downtown should be a place with many diverse retail shops and restaurants where the community can gather on nights and weekends, conduct business, buy personal and household needs and be a part of Borough life. The Boulevard Downtown District has been created to replace the current Local Commercial Zone along the Boulevard between 18th Street and near Market Street. The BD Zone District is intended to encourage retail sales and personal services oriented to pedestrian shopping on the ground floor and other commercial activity on the upper floors.

B. Principal uses and structures. The BD Zone District is intended to encourage retail sales and personal services oriented to pedestrian shopping on the ground floor, and other commercial activity on the upper floors. The following principal uses and structures shall be permitted in the BD Zone District. Principal uses which are substantially similar to the listed principal uses shall be permitted uses.

- (1) Business establishments devoted primarily to the retail sales of goods and personal services on the premises, including restaurants and food establishments intended for food consumption on the premises or for takeout of food; and taverns;
- (2) Banks and other financial institutions engaged in the business of accepting deposits from the public and/or extending credit to the public in the form of loans. Such business must be conducted on the premises, and must be the principal activity of the use on the premises;
- (3) General, administrative, executive and professional offices.
- (4) Medical offices.
- (5) Veterinary Offices.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

- (6) Museums, art galleries and indoor motion picture theaters, and theaters for conducting live entertainment or cultural performances;
- (7) Municipal parking facilities
- (8) Offices on the second or third floors of a building.
- (9) Child-care centers;
- (10) Funeral homes;
- (11) Indoor commercial recreational facilities and schools of martial arts, yoga, and dance instruction.
- (12) Any other use, in the opinion of the approving authority, substantially similar to those identified in this subsection.

C. Accessory uses and structures. The following accessory uses and structures shall be permitted in the B-D Zone District:

- (1) Parking and parking facilities as regulated in Article 27.
- (2) Signs, pursuant to the provisions of Article 31, for the uses for which signs are permitted.
- (3) Antennas, as regulated in Article 28.
- (4) Outdoor seating in conjunction with a permitted restaurant or eating and drinking establishment. Subject to the following:
  - a. The consumption of food by the public at tables located within that portion of the sidewalk which lies between the public street and the building's principal façade excepting therefrom, an unobstructed area at least four feet in width to permit the passage of pedestrians.
  - b. Containing readily removable tables, chairs and other such temporary railings, furniture and structures.
  - c. Unenclosed by fixed walls, ceilings or fences, except for retractable awnings, removable barriers, umbrellas or other nonpermanent enclosures.
- (5) Other accessory uses and structures customarily subordinate and incidental to permitted principal uses and permitted conditional uses.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

(6) Reference is made to Article 24 as it relates to accessory uses and structures in nonresidential zones.

D. Conditional uses and structures. The following conditional uses and structures shall be permitted only if they comply with the appropriate regulations for such uses or structures in Article 30.

- (1) Nonprofit chartered membership organizations;
- (2) Residential-type public utility facilities; and
- (3) Certain telecommunications antennas as set forth in Article 28.
- (3) Gasoline and automotive service stations presently existing;
- (5) Private commercial parking lots as a principal use.
- (6) Public utility facilities

E. Prohibited uses and structures. Any uses and structures other than those uses or structures permitted in Subsections A, B, or C above are prohibited.

F. Bulk and lot regulations. The following bulk and lot regulations shall apply to all uses permitted in the BD Zone District, unless more stringent requirements are provided by this chapter:

- (1) Minimum lot area. Every lot shall contain a minimum lot area of 2,500 square feet.
- (2) Minimum lot width. Every lot shall have a minimum lot width of 25 feet.
- (3) Minimum lot frontage. There shall be a minimum lot frontage of 25 feet for all lots.
- (4) Minimum lot depth. There shall be a minimum of 100 feet of depth.
- (5) Setbacks
  - (a) Front. No front yard setback is required.
  - (b) Rear. Ten feet or 10% of the lot depth, whichever is greater.
  - (c) Side. No side yard will be required unless the side property line is adjacent to a residential zone, where a minimum side yard of five feet, which is to be heavily landscaped, is required.
- (6) Maximum building height. No principal building shall exceed the maximum of three habitable floors, exclusive of basement, but not more than 35 feet in height.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

- (7) Maximum building coverage shall not exceed 80%.
- (8) Maximum impervious cover shall not exceed 90%.
- (9) Minimum open space ratio. The minimum area of the lot that shall be provided as landscaped open space shall be 10% of the total lot area. Such landscaped area shall be planted with lawn, shrubs, hedges, flowering plants or trees.
- (10) Maximum floor area ratio. The total habitable floor area with all buildings or structures on any lot shall not be more than 250% of the total lot area.

G.. Other regulations. In addition to the above requirements, any development in the BD Zone District must comply with all applicable regulations of this chapter.

#### § 225-328 AC - Area Commercial Zone District

A. Purpose of district. The purpose of the AC - Area Commercial District is to encourage retail and wholesale sales, personal and business services, as well as business, administrative and professional offices. Well-planned, larger-scale commercial developments designed in a comprehensive manner, integrating the needs of pedestrians, employees and vehicles are also encouraged.

B. Permitted uses. In the AC District, only the following uses shall be permitted, except as provided in Subsections C and D. Principal uses which are substantially similar to the listed principal uses shall be permitted uses.

- (1) Retail establishments.
- (2) Personal and consumer service uses.
- (3) Supermarkets.
- (4) Restaurants and eating and drinking establishments.
- (5) Taverns
- (6) Banks and financial institutions, including drive-through banks.
- (7) Art, music and dance studios.
- (8) Motor inns and hotels.
- (9) Banquet and catering facilities.
- (10) General, administrative, executive and professional offices.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

- (11) Medical offices.
- (12) Veterinary offices.
- (13) Computer and data processing centers.
- (14) Indoor commercial recreational facilities.
- (15) Museums, art galleries and indoor motion picture theaters, and theaters for conducting live entertainment or cultural performances;
- (16) Child-care centers;
- (17) Municipal parking facilities;
- (18) Wholesale commercial establishments;
- (19) Dry cleaner;
- (20) Fine arts schools;
- (21) Automobile gasoline and service stations;
- (22) Car wash;
- (23) Funeral homes.
- (24) Any other use, in the opinion of the approving authority, substantially similar to those identified in this subsection.

C. Accessory uses and structures. Accessory uses and structures in the AC Zone District shall be subject to the following requirements:

- (1) Parking and parking facilities as regulated in Article 27;
- (2) Signs as regulated in Article 31;
- (3) Antennas, as regulated in Article 28;
- (4) Mobile storage structures are prohibited except to the extent they are regulated by the definition of "mobile storage structures" in Article 26;
- (5) Outdoor seating in conjunction with a permitted restaurant or eating and drinking establishment, Subject to the following:
  - (a) The consumption of food by the public at tables located within that portion of the sidewalk which lies between the public street and the building's principal façade excepting therefrom, an unobstructed area at least four feet in width to permit the passage of pedestrians.
  - (b) Containing readily removable tables, chairs and other such temporary railings, furniture and structures.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

(c) Unenclosed by fixed walls, ceilings or fences, except for retractable awnings, removable barriers, umbrellas or other nonpermanent enclosures.

(6) Day-care center.

(7) Storage areas.

(8) Other accessory uses and structures customarily subordinate and incidental to permitted principal and/or permitted conditional uses.

(9) Reference is made to Article 24 as it relates to accessory uses and structures in nonresidential zones.

D. Conditional uses and structures. The following uses and structures shall be permitted in the AC Zone District only if they comply with the appropriate regulations for such uses or structures in this chapter:

(1) Public utility facilities;

(2) Nonprofit chartered membership organizations.

(3) Certain telecommunications antennas as set forth in Article 28.

(4) Private commercial parking lots as a principal use.

E. Prohibited uses and structures. Any use or structure other than those uses or structures permitted in Subsection A, B, C or D above are prohibited.

F. Bulk and lot regulations. The following bulk and lot regulations shall apply to all uses permitted in the BD Zone District, unless more stringent requirements are provided by this chapter:

(1) Minimum lot area. Every lot shall contain a minimum lot area of 40,000 square feet.

(2) Minimum lot width. Every lot shall have a minimum lot width of 100 feet.

(3) Minimum lot frontage. There shall be a minimum lot frontage of 100 feet for all lots.

(4) Minimum lot depth. There shall be a minimum of 200 feet of lot depth.

(5) Setbacks

(a) Front. A fifty foot front yard setback is required.

- (1) A corner lot shall have a fifty foot front yard which is parallel to the street with the larger right of way. The front yard on a street with a lesser right of way may be reduced to thirty feet. For corner lots facing two streets with equal rights of way, a fifty foot front yard setback is required.
- (b) Rear. A thirty foot rear setback is required.
- (c) Side. Minimum side yard shall be fifteen feet with a total of forty feet for both side yards. If the side property line is adjacent to a residential zone a minimum of five feet is required to be heavily landscaped.
- (6) Maximum building height. No principal building shall exceed the maximum of three habitable floors, exclusive of basement, but not more than 40 feet in height.
- (7) Maximum building coverage shall not exceed 40%.
- (8) Maximum impervious cover shall not exceed 80%.
- (9) Minimum open space ratio. The minimum area of the lot that shall be provided as landscaped open space shall be 20% of the total lot area. Such landscaped area shall be planted with lawn, shrubs, hedges, flowering plants or trees. Walkways provided in such a landscaped area may be included in the minimum open space area, provided they do not exceed 5% of the total lot area.
- (10) Maximum floor area ratio. The total habitable floor area of all buildings or structures on any lot shall not be more than 100% of the total lot area.

#### § 225-329 C Commercial Zone District

A. Purpose of district. The purpose of the C - Commercial District is to encourage retail and wholesale sales, personal and business services, as well as business, administrative and professional offices. Well-planned, larger-scale commercial developments designed in a comprehensive manner, integrating the needs of pedestrians, employees and vehicles are also encouraged. Multifamily residential buildings are also encouraged as a transitional use. This zone is

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intended to function as a transition zone between residential and industrial zones.

B. Permitted uses. In the C District, only the following uses shall be permitted, except as provided in Subsections C, and D. Principal uses which are substantially similar to the listed principal uses shall be permitted uses.

- (1) Retail establishments.
- (2) Personal and consumer service uses.
- (3) Restaurants and eating and drinking establishments.
- (4) Taverns
- (5) Banks and financial institutions, including drive-through banks.
- (6) Art, music and dance studios.
- (7) Motor inns and hotels.
- (8) Banquet and catering facilities.
- (9) General, administrative, executive and professional offices.
- (10) Medical offices.
- (11) Veterinary offices.
- (12) Computer and data processing centers.
- (13) Indoor commercial recreational facilities.
- (14) Museums, art galleries and indoor motion picture theaters, and theaters for conducting live entertainment or cultural performances;
- (15) Child-care centers;
- (16) Municipal parking facilities;
- (17) Wholesale commercial establishments;
- (18) Dry cleaner;
- (19) Fine arts schools;
- (20) Private Schools
- (21) Automobile gasoline and service stations;
- (22) Car wash;
- (23) Funeral homes;
- (24) Storage warehouse;

(25) Any other use, in the opinion of the approving authority, substantially similar to those identified in this subsection.

C. Accessory uses and structures. Accessory uses and structures in the AC Zone District shall be subject to the following requirements:

- (1) Parking and parking facilities as regulated in Article 27;
- (2) Signs as regulated in Article 31;
- (3) Antennas, as regulated in Article 28;
- (4) Mobile storage structures are prohibited except to the extent they are regulated by the definition of "mobile storage structures" in Article 26;
- (5) Outdoor seating in conjunction with a permitted restaurant or eating and drinking establishment.
- (6) Day-care center.
- (7) Storage areas.
- (8) Other accessory uses and structures customarily subordinate and incidental to permitted principal and/or permitted conditional uses.
- (9) Reference is made to Article 24 as it relates to accessory uses and structures in nonresidential zones.

D. Conditional uses and structures. The following uses and structures shall be permitted in the AC Zone District only if they comply with the appropriate regulations for such uses or structures in this chapter:

- (1) Public utility facilities;
- (2) Nonprofit chartered membership organizations.
- (3) Certain telecommunications antennas as set forth in Article 28.
- (4) Private commercial parking lots as a principal use.
- (5) Multifamily apartment buildings with a density of less than 26 units per acre.

E. Prohibited uses and structures. Any use or structure other than those uses or structures permitted in Subsection A, B, C or D above are prohibited.

F. Bulk and lot regulations. The following bulk and lot regulations shall apply to all uses permitted in the C Zone District, unless more stringent requirements are provided by this chapter:

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

- (1) Minimum lot area. Every lot shall contain a minimum lot area of 20,000 square feet.
- (2) Minimum lot width. Every lot shall have a minimum lot width of 100 feet.
- (3) Minimum lot frontage. There shall be a minimum lot frontage of 100 feet.
- (4) Minimum lot depth. There shall be a minimum of 100 feet of lot depth.
- (5) Setbacks
  - (a) Front. A ten foot front yard setback is required.
    - (1) A corner lot shall have a twenty five foot front yard which is parallel to the street with the larger right of way. The front yard on a street with a lesser right of way may be reduced to fifteen feet. For corner lots facing two streets with equal rights of way, a twenty five foot front yard setback is required.
  - (b) Rear. A ten foot rear setback is required.
  - (c) Side. Minimum side yard shall be five feet with a total of fifteen feet for both side yards. If the side property line is adjacent to a residential zone a minimum of five feet is required to be heavily landscaped.
- (5) Maximum building height. No principal building shall exceed the maximum of three habitable floors, exclusive of basement, but not more than 35 feet in height.
- (6) Maximum building coverage shall not exceed 50%.
- (7) Maximum impervious cover shall not exceed 80%.
- (8) Minimum open space ratio. The minimum area of the lot that shall be provided as landscaped open space shall be 20% of the total lot area. Such landscaped area shall be planted with lawn, shrubs, hedges, flowering plants or trees. Walkways provided in such a landscaped area may be included in the minimum open space area, provided they do not exceed 5% of the total lot area.
- (9) Maximum floor area ratio. The total habitable floor area of all buildings or structures on any lot shall not be more than 125% of the total lot area.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

## § 225-330 OR - Office Research Zone District

A. Purpose. The purpose of the OR - Office Research Zone is to provide for the expansion and development of land uses for research, engineering, product development, manufacturing and related executive and administrative offices in the Borough, to provide for a compatible relationship with abutting land uses, and to provide for the safe and efficient flow of vehicles to and from the office-research areas.

B. Permitted uses. In the OR District, only the following uses shall be permitted, except as provided in Subsections C, and D. Principal uses which are substantially similar to the listed principal uses shall be permitted uses.

- (1) Research laboratories.
- (2) Pilot manufacturing plants.
- (3) Manufacturing facilities
- (4) General, administrative, executive and business offices.
- (5) Any other use, in the opinion of the approving authority, substantially similar to those identified in this subsection.

C. Permitted accessory uses and structures. The following accessory uses and structures shall be permitted provided they meet the lot, height and yard requirements for principal uses in the zone:

- (1) Parking garages, parking structures and surface parking.
- (2) Gatehouses and security structures.
- (3) Services and facilities for the exclusive use of employees, including indoor and outdoor recreational facilities, cafeterias and outdoor seating areas, health care centers, credit unions, and laundry and dry-cleaning facilities.
- (4) Day-care centers primarily for the use of employees.
- (5) Helistops.
- (6) Equipment used for transmitters and receiving radio and electromagnetic waves, including parabolic antennas.
- (7) Generators.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

(8) Warehousing and storage of materials associated with the above principal uses.

(9) Signs as regulated in Article 31;

(10) Other accessory uses and structures customarily subordinate and incidental to permitted principal and/or permitted conditional uses.

- a. Fences no more than eight feet high which may be topped by no more than two feet of barbed wire.

D. Conditional uses. The following uses and structures shall be permitted in the OR Zone District only if they comply with the appropriate regulations for such uses or structures in this chapter:

(1) Public utility facilities;

(2) Certain telecommunications antennas as set forth in Article 28.

E. Prohibited uses and structures. Any use or structure other than those uses or structures permitted in Subsection A, B, C or D above are prohibited. The following uses are specifically prohibited in the OR zone:

(1) All residential uses, except that sleeping quarters for custodial or security personnel may be provided for.

(2) All retail uses, except those provided for the exclusive use of employees and their guests, as provided for herein.

F. Area, yard and building dimensions. In the OR Zone District, the following dimensional requirements shall apply:

(1) Minimum lot dimensions:

(a) Area: 10,000 square feet.

(b) Frontage: 100 feet.

(2) Minimum yard setbacks:

(a) Front: 40 feet.

(b) Rear: 25 feet.

(c) Side: 15 feet. If the side property line is adjacent to a residential zone a minimum of 15 feet is required to be heavily landscaped.

(3) Maximum building dimensions:

(a) Building height: 40 feet and three stories, except as allowed in § 225-316.

(b) Lot coverage:

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

- [1] Twenty-five percent for buildings.
- [2] Seventy-five percent for impervious cover.
- [3] Twenty-five percent for open space, landscaping and buffer. Landscaped areas shall be planted with lawn, shrubs, hedges, flowering plants or trees.
- [4] Maximum floor area ratio. The total habitable floor area of all buildings or structures on any lot shall not be more than 125% of the total lot area.

#### § 225-331 I - Industrial Zone District

A. Purpose. This zone is designed to protect and concentrate those commercial and industrial/manufacturing uses that are currently viable and those sites for which industrial/commercial reuse is feasible and probable. It is also designed for those industrial and commercial uses which have a minimum of environmental impacts but have vehicular traffic, or utilitarian or operational requirements that make them more appropriately located adjacent to major arterials and compatible land uses, rather than residential uses.

B. Permitted uses. In the I District, only the following uses shall be permitted, under the performance standards in Section 225-322 except as provided in Subsections C, and D. Principal uses which are substantially similar to the listed principal uses shall be permitted uses.

- (1) Activities of an industrial nature and associated office and clerical activities, provided that they do not cause a nuisance or hazard due to fire, toxic or corrosive fumes, gas, smoke, odors, flashes or objectionable effluent.
- (2) Public utility and public service activities of an industrial character.
- (3) Public garages, automotive repair shops, and new motor vehicle sales and used motor vehicle sales in conjunction therewith, all fully enclosed in a building.
- (4) Storage warehouses, lumber and building material sales and storage and contractor storage yards.
- (5) Processing, assembling, finishing, packaging and storing of goods and materials.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

- (6) Packaging and bottling establishment
- (7) Metal working and welding activities, excluding the use of heavy machinery of a nuisance-producing character.
- (8) Household appliance repairs, reupholstering and furniture repairs.
- (9) Research laboratories.
- (10) Animal hospitals and kennels.
- (11) Automotive service stations at which motor fuel and oil are dispensed; lubrication, maintenance and minor repair services are performed; tires, batteries and other automobile accessories are sold and vehicles are washed, provided that they are not within 500 feet of another station, whether said station is inside or outside the Borough limits.
- (12) Telecommunications towers, antennas and appurtenant facilities; all such uses shall comply with the provisions of Article 28. Clustering or grouping of multiple towers is disfavored in the Borough; collocation of antennae on existing towers is encouraged.
- (13) Retail establishments.
- (14) Personal and consumer service uses.
- (15) Restaurants and eating and drinking establishments.
- (16) Taverns
- (17) Banks and financial institutions, including drive-through banks.
- (18) Art, music and dance studios.
- (19) General, administrative, executive and professional offices.
- (20) Medical offices.
- (21) Veterinary offices.
- (22) Computer and data processing centers.
- (23) Indoor commercial recreational facilities.
- (24) Child-care centers;
- (25) Wholesale commercial establishments;
- (26) Dry cleaner;
- (27) Fine arts schools;
- (28) Private Schools

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

- (29) Automobile gasoline and service stations;
- (30) Car wash;

C. Accessory uses and structures. Accessory uses and structures in the I Zone District shall be subject to the following requirements:

- (1) Parking and parking facilities as regulated in Article 27;
- (2) Signs as regulated in Article 31;
- (3) Antennas, as regulated in Article 28;
- (4) Mobile storage structures are prohibited except to the extent they are regulated by the definition of "mobile storage structures" in Article 26;
- (5) Outdoor seating in conjunction with a permitted restaurant or eating and drinking establishment.
- (6) Storage areas and buildings as accessory uses shall preferably be confined to enclosed buildings, but may be permitted in outdoor areas or compounds, providing that such an area or compound shall be screened on all sides by a solid masonry wall, solid fence or dense evergreen planting not less than six feet in height. Such accessory storage shall not exceed 10% of the lot area and shall be so arranged at the rear of the building as to be minimally visible from a street. No unscreened outdoor storage areas shall be permitted.
- (7) Other accessory uses and structures customarily subordinate and incidental to permitted principal and/or permitted conditional uses.
- (8) Reference is made to Article 24 as it relates to accessory uses and structures in nonresidential zones.

D. Prohibited uses and structures. Any use or structure other than those uses or structures permitted in Subsection A, B, or C above is prohibited.

E. Bulk and lot regulations. The following bulk and lot regulations shall apply to all uses permitted in the I Zone District, unless more stringent requirements are provided by this chapter:

- (1) Minimum lot area. Every lot shall contain a minimum lot area of 20,000 square feet.

- (2) Minimum lot width. Every lot shall have a minimum lot width of 100 feet.
- (3) Minimum lot frontage. There shall be a minimum lot frontage of 100 feet.
- (4) Minimum lot depth. There shall be a minimum of 100 feet of lot depth.
- (5) Setbacks
  - (a) Front. A ten foot front yard setback is required.
    - (1) A corner lot shall have a fifteen five foot front yard which is parallel to the street with the larger right of way. The front yard on a street with a lesser right of way may be reduced to ten feet. For corner lots facing two streets with equal rights of way, a fifteen foot front yard setback is required.
    - (b) Rear. A ten foot rear setback is required.
    - (c) Side. Minimum side yard shall be five feet with a total of fifteen feet for both side yards. If the side property line is adjacent to a residential zone a minimum of five feet is required to be heavily landscaped.
  - (6) Maximum building height. No principal building shall exceed three stories and 40 feet in height.
  - (7) Maximum building coverage shall not exceed 50%.
  - (8) Maximum impervious cover shall not exceed 80%.
  - (9) Minimum open space ratio. The minimum area of the lot that shall be provided as landscaped open space shall be 20% of the total lot area. Such landscaped area shall be planted with lawn, shrubs, hedges, flowering plants or trees.
  - (10) Maximum floor area ratio. The total habitable floor area of all buildings or structures on any lot shall not be more than 125% of the total lot area.

F. Design and site requirements.

- (1) Landscaping.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

(a) All portions of a lot not covered by buildings and outdoor storage enclosures and pedestrian and vehicular surfaces shall be landscaped and thereafter maintained in good condition. "Landscaping" shall mean the planting of grass, shrubs, trees and other comparable ground cover. Appropriate foundation plantings along the front building line shall be provided.

(b) When the lot, or portion thereof, on which parking or loading spaces are located abuts the rear line or sideline of, or is across the street from, any land in a residential district, a solid wall, solid fence or compact evergreen planting no less than four feet in height shall be provided and maintained in good condition. Such screen shall be located adjacent to parking or loading areas rather than on the periphery of the lot.

(c) No luminaries on off-street parking areas shall be more than 15 feet above ground level and shall be arranged and designed so as not to cause offensive light or glare in abutting or nearby residential properties.

(2) Architectural appearance. No permit shall be granted in an I District for a building or use if the design or construction of the building is so markedly incongruous with the character of the neighborhood as to be seriously detrimental to the value of adjacent or nearby property. For this purpose, the Planning Board shall review all plans.

## 4C NONCOMMERCIAL AND NONRESIDENTIAL ZONE DISTRICTS

### § 225-332 G - Government Zone District

#### A. Purpose of District.

The purpose of the G zone district is to accommodate all government buildings in the Borough, occupied by the Borough, county, state, or federal government, or agencies thereof, on a permanent basis, for public purposes.

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

Examples of Government zoned parcels include, but are not limited to: Borough Hall complex; Public Schools; Public Works; Rescue Squad, Library; Fire Dept. and Post Office.

- B. Principal uses and structures. The G Zone District shall permit public buildings and uses, subject to the performance standards in Section 225-322.
- C. Bulk and lot regulations: None.

#### § 225-333 P - Park Zone District

- A. Purpose of District.

The purpose of the P-Park Zone District is to provide parks and open space for passive and active recreation. Services provided by the Borough include maintenance of parkland and linear parkway sites, improved multi-use trails, facilities, and recreational programs for the Borough's children, adults, and senior citizens.

Community and neighborhood parks provide both passive and active recreational opportunities throughout the Borough. The parks provide playing fields/courts for tennis, basketball, volleyball, soccer, baseball, softball and football, many of which are used by local sports organizations to serve area youth. The parks also offer picnic and playground areas, skateboarding, and roller hockey amenities.

Examples of Park zoned parcels include, but are not limited to: Lenape Park; Black Brook Park; Galloping Hill Park; and Di Mario Park.

- B. Principal uses and structures. The P Zone District shall permit parks, playgrounds, and open space, subject to the performance standards in Section 225-322.
- C. Accessory uses and structures. The P Zone District shall permit: off street parking; recreation, entertainment and educational programs; and signs.
- D. Bulk and lot regulations: None.

#### § 225-334 CE - Cemetery Zone District

- A. Purpose of District.

The purpose of the CE zone district is to allow more control over the placement of cemetery activities within the Borough and ensures the compatibility of the

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cemetery with the surrounding land uses, thereby protecting the health, safety and general welfare of the Borough residents.

B. Principal uses and structures: cemeteries; and mausoleums. Any building and land may be used for the permanent interment of one (1) or more dead human bodies or cremated remains, in addition to any accessory buildings and uses customarily incidental to the operation and maintenance of a cemetery

C. Accessory uses and structures: off street parking; and signs.

D. Bulk and lot regulations: Maximum height for mausoleums – thirty feet; minimum setback of mausoleums and graves from property line – thirty feet.

#### § 225-335 CS - Community Serving Zone District

A. Purpose of District.

The purpose of the Community Services (CS) Zone District is to establish and preserve areas for community services which are needed to serve the residents of the Borough. The Community Serving District shall include those lands currently occupied by uses that serve the community while owned by non-governmental organizations, such as the following;

1. Churches, Synagogues and Mosques.
2. Public and Private Educational institutions and services (other than state education facilities), including public, private and religious schools;
3. Veteran's Organizations
4. Community Groups;

B. Principal uses and structures: Houses of Worship; parochial schools; nonprofit chartered membership organizations; religious, recreational, social, educational and cultural purposes, subject to the performance standards in Section 225-322.

C. Accessory uses and structures: off street parking; and signs.

D. Bulk and lot regulations: none. Reasonable standards shall be applied by the approving authority during site plan review.

#### 4D KENILWORTH OVERLAY ZONES

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### § 225-336 Boulevard Downtown Residential Overlay

While residential uses have not been allowed on the Boulevard in quite some time, there is a pocket of pre-existing nonconforming second floor apartments within the LC Local Commercial District between 20th Street and 24th Street. Over twenty apartments exist in this area of the Boulevard. Rather than continue the nonconforming status of those properties, the Board Borough believes it to be in the public interest to recognize the existing land use pattern and to bring as many properties as possible into conformity with the Land Use Ordinance. The Boulevard Downtown Residential Overlay shall be limited to the area described herein. The Board recommends that this area, and only this area, be placed in the Residential Overlay zone with a minimum of two bedrooms per apartment.

Residential dwelling units shall be limited to the second or third floor of a building. Each unit shall consist of at least two bedrooms and be a minimum of 650 square feet in size.

### § 225-337 SLO - Senior Living Overlay Zone District

#### A. Purpose

The current Industrial area between North 10th Street and North 12th Street between Washington and Monroe Avenues should be an overlay Senior Citizens Housing Zone. This would allow any age restricted (55+) and disabled housing in the overlay zone. A minimum of ten percent of the senior housing shall meet affordable housing guidelines. All forms of senior living are encouraged. Density shall be no more than 24 units per acre and parking shall be provided in accordance with the Land Use Ordinance. Recreational facilities shall be included as part of any senior complex and will include outdoor and indoor recreational areas.

#### B. Accessory Uses and Structures.

The following accessory uses and structures shall be permitted in the SLO zone:

- (1)Parking and parking facilities as regulated in Section 27;
- (2) Signs as regulated in Section 31;
- (3) Antennas, as regulated in Section 28,
- (4) Accessory uses and structures customarily subordinate and incidental to permitted principal uses and accessory uses and structures customarily subordinate and incidental to permitted conditional uses. For the purposes of administering this provision, recreational facilities such as swimming

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pools, tennis courts and racquetball courts shall not be considered to be a use customarily incidental to senior citizens housing.

#### C. Conditional Uses and Structures

The following conditional uses and structures shall be permitted in the SLO Senior Living Overlay Zone only if they comply with the appropriate regulations for such uses or structures identified in Article 30:

1. Residential type public utility facilities;
2. Certain cellular telecommunications antennas as set forth in Article 28;
3. Uses in the flood plain which are also permitted principal, accessory or conditional uses in other Residential Zones.

#### D. Prohibited Uses and Structures

Any use or structure other than those uses or structures permitted in subsection A, B or C above are prohibited.

Bulk and lot regulations. The following bulk and lot regulations shall apply to all uses permitted in the Senior Living Overlay District:

- (1) Minimum lot area. Every lot shall contain a minimum lot area of 3 acres.
- (2) Minimum lot width. Every lot shall have a minimum lot width of 400 feet.
- (3) Minimum lot frontage. There shall be a minimum lot frontage of 400 feet.
- (4) Minimum lot depth. There shall be a minimum of 300 feet of lot depth.
- (5) Setbacks
  - (a) Front. Thirty five feet or the height of the principal building, whichever is greater.
  - (b) Rear. A thirty five foot rear setback is required.
  - (c) Side. Minimum side yard shall be thirty five feet. If the side property line is adjacent to a residential zone a minimum of five feet is required to be heavily landscaped.
- (6) Maximum building height. No principal building shall exceed four stories and 45 feet in height.
- (7) Maximum building coverage shall not exceed 50%.
- (8) Maximum impervious cover shall not exceed 80%.
- (9) Minimum open space ratio. The minimum area of the lot that shall be provided as landscaped open space shall be 20% of the total lot area. Such landscaped area shall be planted with lawn, shrubs, hedges, flowering plants or trees.
- (10) Minimum floor area per dwelling unit. Every building shall contain a

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minimum habitable floor area per dwelling unit that complies with the following schedule:

Efficiency	400 square feet
1 Bedroom	550 square feet
2 Bedroom	700 square feet

E. Other regulations applicable to senior citizens housing in the Senior Living Overlay District.

1. Compatible architecture - The design of accessory buildings and structures, including the nature of building materials used, shall be substantially the same as used in the construction of principal buildings on the same site designed to be used for multifamily residential use.

2. Use of accessory buildings, basements and attics  
No part of any accessory building or structure, basement or attic shall be used for living purposes.

3. Screening

Any premises in the SLO - Senior Living Overlay District that is used for senior citizens housing shall be effectively screened on any side which abuts any premises that is used exclusively as a single family detached or two family dwelling or underlying industrial use. The required screening shall meet the conditions imposed by the Planning Board for this purpose.

F. Other regulations

In addition to the above requirements, any development in the SLO district must comply with all applicable regulations of this ordinance, including but not limited to the following:

1. the general provisions of Section 225-337 and,
2. the off - street parking provisions of Article 27.

**§ 225-338 GO - Gateway Overlay Zone District**

The nonresidential zoned Gateway areas at the entrance to the Borough should be placed in an overlay Gateway Zone that will visually identify, in a formal and attractive way, the entrance into the Borough. This can be accomplished by adding identifiable features such as banners, specialized sidewalks, specialized paving and enhanced landscaping requirements. The Gateway area shall include: North Michigan Avenue from Route 22 to Black Brook Park; Springfield Road from Route 22 to Black Brook Park; and, Kenilworth Boulevard starting at the Garden State Parkway and extending approximately 1,000 feet west to Market Street.

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#### A. Purpose

The purpose of the Gateway Zone is to provide a community entry experience which can be accomplished with limited gateway corridors. The Gateway is the entrance into the Borough of Kenilworth and the gateway corridors are the defined travel routes that extend from these entrances into primary destination areas of the Borough.

Gateways are intended to identify primary entrances into the Borough of Kenilworth. The incorporation of “gateway scenes” at the defined gateways will function as a visual anchor to clearly identify the area as a gateway. “Gateway scenes” should be composed of specific elements that serve to provide a sense of arrival, reaffirm direction, and reinforce the identity and character of Kenilworth. The Primary Gateways are defined as the following:

- A. North Michigan Avenue from Route 22 to Black Brook Park; including Lot Nos. 1, 3, 4, 5, 6, 8, 9 and 10 in Block No. 1, Lot Nos. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 in Block No. 2 and Lot Nos. 1 and 2 in Block No.3
- B. Springfield Road from Route 22 to Black Brook Park; including Lot Nos. 10, 11, 12, 13, 14, 15, 16, 18 and 19 in Block 3
- C. Kenilworth Boulevard starting at the Garden State Parkway and extending approximately 1,000 feet west to Market Street; including Lot Nos. 1 in Block 184, Lot No. 2.01 in Block No. 184.1 , Lot 10 in Block No. 183, Lot Nos. 1 and 7.01 in Block 179 and Lot No. 1 in Block 128.

#### B. Recommended Features to be Included

Gateways should announce entry into Kenilworth by incorporating specific elements that create a “gateway scene”. The composition should function as a visual anchor and provide a sense of arrival, reaffirm direction, and reinforce the identity of Kenilworth.

The specific elements proposed for the “gateway scene” should reflect the history and spirit of Kenilworth and include gateway monumentation, fencing, decorative planting, and seasonal interest plants. The design for each of the defined gateways may vary, although the elements comprising the “gateway scene” should be repeated to reinforce the concept of entry.

#### C. Signage

Gateway Monumentation should be incorporated into the design of the “gateway scene” at the primary gateways. Gateway signage will need to be addressed in greater detail in a signage plan and coordinated with the Planning Board, Borough Planner and Borough Engineer incorporation into the primary gateways. The design for the monuments may vary at each gateway, but should use the same design vocabulary, color scheme, and graphics. The monuments should be reflective of the character of the gateway, appropriately scaled, and legible to motorists.

#### D. Fencing

Fencing should be an integral part of the “gateway scene” for both the primary gateways. Fencing will help to define the gateways, providing a backdrop that reflects the design vocabulary and reinforces Kenilworth’s identity.

The proposed fence design for the primary gateways may vary but should incorporate forms, materials, and colors associated with a formalized setting in wrought iron or similar materials that are similar to fencing used in the region but unique enough to establish an unquestionable identity.

#### E. Brick Pavers

Brick masonry and paving is an element that is often visually associated with the downtown historic buildings and the Borough core. Incorporation of brick pavers in the design for the primary gateways will reinforce their connection to downtown and help orient the traveler.

#### F. Decorative Planting

Landscape provides an opportunity to reinforce Kenilworth’s support of attractive features and the beauty of the Borough, a feature that should be enforced and encouraged throughout the Borough. Variations of the planting scheme will ultimately extend throughout the Borough. Plant material, color, and forms should be used to reinforce the unique character of each gateway. Each gateway should be somewhat structured and formal. Plant material proposed for the primary gateways should be selected to reflect seasonal change. Ornamental shrubs, annuals, and perennials should be introduced to emphasize entry, introduce the character of the corridor, and reinforce Kenilworth’s appreciation of the beauty of the landscape.

#### G. Public Art

Gateways are the front door to the Borough and are prime locations for public art because of the visual exposure they provide. Public art helps to define gateways and the character of the Borough by providing an image that travelers associate with. Public art should be incorporated into the primary gateways either as part of the design for the gateway monuments or in separate piece of work.

### ARTICLE 24 ACCESSORY USES, BUILDINGS AND STRUCTURES

#### § 225-339 Requirements for residential accessory uses and structures.

Except as may be specifically provided otherwise in this chapter, the following provisions shall apply to the specific accessory buildings, uses and/or structures for all

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residences in all residential and nonresidential zones; provided, however, that except for improvement coverage requirements herein, this article shall not apply to parking, signs and other accessory structures regulated elsewhere in this chapter when such regulations expressly or by clear implication supersede those in this article:

A. No detached private garage shall be closer than three feet from the rear or side property line, except where the detached private garage is on a street side yard, in which case it shall be no closer to the side property line than half of the established front yard depth pursuant to this Part 3.

(1) No detached private garage shall be closer than three feet from the rear or side property line, except where the detached private garage is on a street side yard in which case it shall be no closer than half of the established front yard depth pursuant to this Part 3.

(2) Detached private garages shall be limited to one story and shall have a peaked roof with a maximum pitch of no greater than one on one and shall not be larger than 500 square feet in the floor area. No premises shall have more than one detached garage, regardless of its size.

B. Sheds. Sheds, as defined in Article 1, shall comply with the following:

(1) Sheds shall be permitted only in the rear yard.

(2) Sheds shall not be larger than 100 square feet in the floor area, nor greater than 10 feet in height and no premises shall have more than one shed, regardless of its size.

(3) No shed shall be closer than three feet from the rear or side property line, except where the shed is on a street side yard in which case it shall be no closer than half of the established front yard depth pursuant to Part 3.

C. Gazebos. Gazebos are accessory structures and are subject to the provisions of this article. Gazebos shall comply with the following:

(1) Yard location. Gazebos shall be permitted only in the rear yard or in the side yard for corner lots.

(2) Gazebos shall not be larger than 100 square feet in the floor area, nor greater than 12 feet in height and no premises shall have more than one gazebo, regardless of its size.

(3) No gazebo shall be closer than 10 feet from any side or rear property line, except where the gazebo is on a side street yard, in which case it

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shall be no closer than half of the established front yard depth pursuant to Part 3.

D. Decks and patios. Decks and patios are accessory structures and are subject to the provisions of this article. The following specific requirements shall apply to decks and patios in all residential zones and accessory to any residential use in a nonresidential zone:

- (1) Yard location. Decks shall be permitted only in the rear yard.
- (2) Setback requirements. Decks and patios shall be set back from the side lot lines a distance equal to or greater than the distance required for principal buildings and shall be set back a distance equal to or greater than the distance required for principal buildings.
- (3) Lighting. Artificial lighting shall be permitted; provided that any lighting shall be placed so as to eliminate the transmission of glare to adjoining properties or to adjoining streets and provided further that such lighting shall not be located higher than six feet above the elevation of the deck floor.
- (4) Subfloor areas. The space between the floor of the deck and the ground shall be screened with appropriate plantings or shrubbery or shall be covered with a skirt of lattice or other material so that open space between the deck and the ground, if any, is not visible. Skirts, lattices or appropriate screening shall have at least one inch and no more than three inches of ground clearance and shall provide a method of human access under the deck or raised patio.

E. Private swimming pools. Private swimming pools shall comply with the following:

- (1) Use. Private swimming pools shall be designed and intended only for the private use of the occupants of the premises and their guests as a swimming pool.
- (2) Where permitted. Private swimming pools are permitted only in the residential zone districts.
- (3) Location. Swimming pools shall be permitted only in the rear yard. The swimming pool shall not be closer than 5 feet from any side or rear property line. On corner lots, the swimming pool shall be set back from the side street line a distance at least equal to the street side yard setback requirement for a principal building.

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(4) Lighting. Artificial lighting shall be permitted below the surface of the water and/or at a height not to exceed six feet above grade level and any lighting above grade level shall be placed so as to eliminate the transmission of glare to adjoining properties or to adjoining streets.

(5) Other provisions of law. All other provisions of state law and Borough Code with respect to swimming pools shall be satisfied.

(6) Exclusions. Hot tubs, wading pools, landscape pools and fish pools are not swimming pools and are not required to meet the specific requirements of this subsection, but are considered to be accessory uses and must meet all other applicable requirements of this article.

F. Hot Tubs. Hot tubs are required to meet all the general requirements for accessory uses as set forth in this section, provided the following additional requirements shall be satisfied:

(1) Location. Hot tubs shall be permitted only in the rear yard. The hot tub shall not be closer than 5 feet from any side or rear property line. On corner lots, the hot tub shall be set back from the side street line a distance at least equal to the street side yard setback requirement for a principal building.

(2) In the event a hot tub is located within or adjacent to a deck, the hot tub shall be required to comply with the requirements for decks.

(3) In the event a hot tub is constructed as a freestanding structure, the hot tub shall be subject to the same setback requirements applicable to swimming pools.

(4) Hot tubs installed outside a building shall have a hard permanent lockable cover which must be kept closed and locked when not in use.

G. Game courts. Game courts involving a ball in play, such as but not limited to private tennis courts, racquetball courts, paddleball courts, platform tennis courts, handball courts, basketball courts and similar recreational facilities are conditional uses and shall be subject to the following:

(1) Location. the recreational facilities included in this subsection shall be permitted only in the rear yard.

(2) Coverage by recreational facilities. Except as may be otherwise provided in this chapter, the total coverage by accessory buildings and above-grade structures in the rear yard shall not exceed 25% of the area

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of the rear yard. The foregoing coverage restriction shall not be construed as permitting the total coverage by buildings and above-grade structures or the total coverage by improvements on the lot to exceed the total coverage by improvements on the lot to exceed the maximum coverage permitted in the particular zone district or for the particular use, as applicable, or as excluding such coverage in the rear yard from the calculation of total coverage by buildings and above-grade structures on the lot, or as excluding such coverage from the calculation of total coverage by improvements on the lot.

(3) Setback. The recreational facility shall not be closer than 15 feet from any side or rear property line. On corner lots, the recreational facility shall be set back from the side street line a distance equal to or greater than the street side yard setback requirement for a principal building.

(4) Enclosures. The height of the recreational facility enclosure, if there be one, shall not exceed 15 feet. In the event the enclosure is greater than six feet high, the enclosure shall comply with the setbacks applicable to recreational facilities in Subsection G(3) above. Enclosures shall be of open chain link construction, shall not include slats or coverings, and shall include a top rail.

(5) Lighting. No artificial lighting is permitted.

H. Antennas. Antennas are permitted and regulated as set forth in Article 28.

I. Other miscellaneous residential accessory uses and structures. The following regulations shall apply as specified:

(1) Wading pools, sandboxes, trellises, seasonal temporary tents, dog houses, kennel enclosures, patios, grape arbors, permanent barbecue facilities, and other structures or uses customarily associated with residential uses shall all be set back from any property line at least five feet and shall not be located in the front or side yards; provided, however, that patios may be located in any side yard. Notwithstanding anything to the contrary set forth herein, temporary structures for religious services may be located in the front, side and/or rear yards.

(2) Bocci courts shall not be located in the front or side yards and shall be at least five feet from any property line.

(3) Playground equipment shall not be located in the front or side yard, shall be no higher than 15 feet above the ground, and shall be at least five feet from any property line.

(4) Air conditioners and heat pumps, or portions thereof, which are not mounted in the window or walls of a building or structure but are placed upon the ground or on a ground-based platform outside of a structure or building may not be located in the front yard. Such structures shall be at least five feet from any property line. Any ground level air conditioner, compressor, and/or heat pump shall be screened.

(5) Generators shall be set back from the side lot lines a distance equal to or greater than the distance required for principal buildings. Any ground level generator shall be screened by an attractive and appropriate wall, fence or planting of appropriate height and density to obscure the generator from view of adjacent properties, which screening shall be subject to the approval of the Zoning Officer. Generators shall not be located in the front or front side yard on corner properties.

(6) Basketball backboards may be fastened to the house. Movable backboards shall not be positioned in such a manner to interfere with either pedestrian or vehicular traffic. No basketball backboards shall be located anywhere but on the individual owner's property and not in the public right-of-way.

(7) Mailboxes; artwork, gate posts; portable barbecues and planters shall be exempt from the provisions of this article and any other provision of this chapter.

(8) Skateboard ramps. Any structure or ramp designed for use with skateboards, whether on a temporary or permanent foundation, is prohibited in all residential zone districts.

(9) Other uses and structures. The Zoning Officer shall determine the applicability of this chapter to accessory uses and structures for residential use which are not specifically regulated herein.

#### § 225-340 Bulk storage of flammable or hazardous chemicals.

All aboveground and underground bulk storage of liquefied petroleum gases, gasoline, diesel fuel, kerosene, No. 2 fuel, fuel oil, chemicals or similar hazardous, flammable or combustible liquids in any amount is prohibited in all zone districts. Underground or basement storage of up to 530 gallons of kerosene or No. 2 heating fuel used exclusively for heating purposes on the premises is exempted from the above prohibition. Furthermore, and notwithstanding the above prohibition, aboveground and

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underground bulk storage of the following materials is permitted at public garages, gasoline service stations, gasoline filling stations and automobile sales operations, if the use of such materials is accessory to the principal use on the site:

- A. Gasoline, diesel fuel and other approved fuels for motor vehicles, stored in accordance with all applicable state and federal regulations, and intended to be dispensed from pumps to motor vehicles operated by the general public;
- B. Up to 275 gallons of motor oil, transmission fluid or other similar automotive fluids, all of which must be stored above ground in approved storage tanks; provided, however, that outdoor storage of such materials in 55 gallon drums shall not be permitted and further provided that only such fluids with a flash point at or above 200° F. shall be permitted to be stored above ground in bulk; and
- C. Up to 350 gallons of waste motor oil, waste transmission fluid or other similar automotive waste fluids, all of which must be stored above ground in approved storage tanks; provided, however, that outdoor storage of such materials in 55 gallon drums shall not be permitted and further provided that only such waste fluids with a flash point at or above 200° F. shall be permitted to be stored above ground in bulk.
- D. Notwithstanding anything herein contained to the contrary, this section is not intended to conflict with Uniform Construction Code, but to govern the land use nature of the bulk storage of such chemicals, and in the event of a conflict, the Uniform Construction Code shall prevail.

**§ 225-341 Storage and dispensing of liquefied petroleum gas.**

The above-ground storage of liquefied petroleum gas shall be prohibited in all zone districts except the I-Industrial Zone District. In the I Zone District, the following regulations shall apply to such storage and dispensing:

- A. Any such storage tank shall not exceed 1,100 gallons water capacity.
- B. Any such storage of liquefied petroleum gas shall only be used to refill liquefied petroleum gas tanks of less than 50 pounds.
- C. The plans for the installation of any such tank shall be approved by the New Jersey Department of Labor and Industry ("DOLI") prior to installation.

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## ARTICLE 25 HOME OCCUPATIONS

### § 225-342 Home occupations permitted.

Except as may be otherwise prohibited in this article, home occupations are permitted, subject to the requirements and limitations set forth in this article.

### § 225-343 Requirements applicable to home occupations.

The following requirements shall apply to home occupations:

- A. Must be accessory to dwelling unit and subordinate to the home occupation. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants.
- B. Maximum portion of dwelling unit that may be used. Not more than 30% of the habitable floor area of the dwelling unit shall be used in the conduct of the home occupation.
- C. Outside appearance. Dwelling units that contain a home occupation shall retain the appearance of a residence. There shall be no change in the outside appearance of the building or property, or other visible evidence of the conduct of such home occupation. The public display of goods visible from the street or abutting properties and any visible advertising on the premises shall be prohibited, except for a single sign, not larger than 18 square inches, which may identify the name of the business and shall be no higher than six feet from entrance level and attached to the building on the front facade. This sign is permitted for the purpose of facilitating the identification of the home occupation for visitors and deliveries.
- D. Sales to the public prohibited. There shall be no sale to the general public of goods displayed on the premises.
- E. Truck parking. No more than one truck of the size permitted in Article 27 and used in the home occupation shall be permitted to be parked on the premises unless such additional vehicle or vehicles are parked inside a garage.
- F. Storage. Except for the parking of motor vehicles as permitted in this section, outdoor storage related to a home occupation shall be governed by the provisions of Articles 25 and 26.
- G. Equipment and process limitation. No equipment or process shall be used in any home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses at the property line if the occupation is conducted in a single-family detached dwelling, or outside the dwelling unit if the occupation is conducted in a two-family or duplex dwelling. No

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equipment or process shall be used in any home occupation which causes electrical, visual or audible interference in any radio or television receiver located off the premises or causes fluctuations in line voltage off the premises.

H. Nuisance. There shall be no noise, dust, smoke, fumes, odor, glare, flashes, vibrations, shock waves, heat, electronic or atomic radiation, objectionable effluent, unusual risks of fire, explosion or activity otherwise prohibited by law or chapter in connection with such home occupation.

**§ 225-344 Prohibited uses.**

The following shall not be deemed to be home occupations and are prohibited in all residential zones and in all dwelling units located in nonresidential zones.

A. Any medical, nursing, convalescent, or treatment facilities including but not limited to:

- (1) operation of clinics, hospitals, alcohol rehabilitation facilities and outpatient dispensaries;
- (2) The services of a doctor, dentist, veterinarian, psychiatrist, psychologist or other health services any of which involve patient or client visitation to the premises;
- (3) The providing of nursing or convalescent care;
- (4) The furnishing of narcotic, drug or alcohol abuse treatment; and
- (5) The performing of abortions.

B. Embalming, undertaking, funeral parlors or funeral homes;

C. Barber shops, beauty parlors, massage parlors, tanning salons, tattoo parlors, the provision of pedicures, manicures, electrolysis or any similar personal services;

D. Pet care/grooming, kennels, animal hospitals or animal recuperation or rehabilitation services, or any similar services for animals;

E. The furnishing of home care services for more than five children at any one time in a dwelling unit for a monetary consideration;

F. Music or dancing schools other than for individual instruction of one pupil at a time, with no more than two pupils waiting;

G. The dispensing of food for consumption on the premises;

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- H. Tea rooms, or tourist homes, or bed and breakfasts.
- I. The operation of a taxi service, or the operation of a limousine service having more than two limousines parked on the premises.
- J. The operation of a business which results in the storage or maintenance of construction equipment such as, but not limited to, backhoes, dump trucks, flatbed trucks, equipment trailers, tractors, compressors, cement mixers and similar equipment on the residential premises;
- K. The storage, maintenance, repair or sale of motor powered equipment such as, but not limited to, automobiles, trucks, motorcycles, motor bikes or lawn mowers, provided, however, that such activities if otherwise lawful may be conducted by residents of the property in connection with motorized equipment owned by such residents for their own personal use;
- L. The assembly or storage of motor vehicles for shipment;
- M. Sales at retail to the public; and
- N. Public warehouse.
- O. Psychic or other paranormal services.

## ARTICLE 26 OUTDOOR STORAGE

### § 225-345 Outdoor storage permitted.

Storage of certain items outside of buildings or structures and parking of certain vehicles outside buildings and structures is permitted in all zones subject to the limitations and restrictions of this article. Notwithstanding any provision of this chapter to the contrary, the storage of materials which are deemed to be flammable, explosive, radioactive or otherwise detrimental to the public health, safety or welfare by the Zoning Officer, Construction Official, Board of Health or Fire Department is prohibited in or outside a structure or a vehicle regulated by this article, except for the following:

- A. Up to 15 gallons of Class I flammable liquids may be stored or carried. Class I flammable liquids are defined as having a flash point below 100° F. Examples include gasoline, gas/oil mixtures, propane, acetylene, varsol, turpentine, most organic paint thinners, and similar flammable liquids.
- B. Flammable liquids shall be stored in containers of a type approved by the Fire Sub Code Official or Fire Official, and the container shall have the name of the liquid displayed conspicuously.

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§ 225-346 Certain motor vehicle parking in all zones.

The parking of motor vehicles used exclusively for personal private transportation of the occupant of the premises thereof or other members of the occupant's household may be parked outside of a building in a permitted parking space on the premises in question at all times in all zones without limitation except as provided in the Borough Code for regulation of inoperable motor vehicles.

§ 225-347 Parking of motor vehicles not for the personal private use of the occupant in residential zones.

Certain motor vehicles and other vehicles as set forth below may be parked outside a building in a permitted parking space on any premises devoted primarily to a residential use; provided, however, that the vehicle is owned or operated by the occupant of said residence, and subject to the conditions and limitations specified below.

- A. Number and type of vehicles permitted. Only the number and type of vehicle permitted in one of the following subsections may be parked on a residential premises. The parking of a vehicle from more than one of these categories such as a vehicle from Subsection B and/or Subsection C shall be prohibited.
- B. Trucks and vans. One truck or van used for commercial purposes with a load carrying capacity of 1.5 tons or less may be parked on a permitted parking space on the residential premises of the owner or operator thereof. The truck or van length shall not exceed 18 feet in length, nor 10 feet in height above the ground.
- C. Self-propelled recreational vehicles. One self-propelled recreational vehicle may be parked on grass in the rear yard of the residential premises of the owner or operator thereof. Such vehicles shall not exceed 18 feet in length or 10 feet in height as measured from the surface of the ground. This section shall also apply to campers, removable or otherwise mounted on a truck.
- D. Buses. One vehicle designed and licensed to transport up to 10 people excluding the driver may be parked on the premises of the owner or operator thereof.
- E. Limousines. Two licensed limousines may be parked on the residential premises of the owner or operator thereof. No limousine parked on a residential premises shall exceed 25 feet in length. Any such limousine may have a sign or signs affixed thereto if required by law, but in no event shall the sign be more than two square feet in origin.
- F. Taxicabs. One licensed taxicab may be parked on the premises of the owner or operator thereof. Such taxicab may have a sign affixed thereto if required by

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law, but in no event shall the taxicab contain more than two such signs. The display area of any such sign shall not exceed two square feet in origin. Such sign(s) shall not be mounted on the roof of the taxicab.

G. Boats. One boat may be parked or stored on the residential premises of the owner or operator thereof. The boat, including any trailer upon which the boat is parked or stored, shall not exceed a height of 10 feet above the ground, nor shall the boat or trailer exceed a length of 18 feet. The boat shall be parked or stored in the rear yard.

H. Trailers. One trailer, including but not limited to trailers used for carrying equipment, motor vehicles or materials, and trailer campers, all of which are designed and intended to be pulled behind a motor vehicle may be parked or stored outside a building on the residential premises of the owner or operator thereof, subject to the following requirements:

- (1) The trailer shall be properly licensed for road use.
- (2) The trailer shall not be used in any commercial enterprise.
- (3) The trailer shall not exceed 18 feet in length or 10 feet in height above the ground.
- (4) The trailer shall be stored in the rear yard, behind the principal structure and shall be screened from adjacent properties.

I. Motorized landscape equipment or construction equipment. No motorized landscape equipment shall be parked or stored on any residential premises except as set forth below:

- (1) Landscape equipment such as mowers and tractors used exclusively on the premises where they are parked or stored.
- (2) Landscape equipment of landscape contractors performing landscape services on the premises, but only so long as it is necessary to perform such work and such work is being actively performed.

J. Motorized construction equipment. No motorized construction equipment shall be parked or stored on a residential premises except as needed to perform work on that premises and only so long as it is necessary to perform such work and while such work is being actively performed.

K. Equipment and materials stored in vehicles. Equipment and materials may be stored in or on a motor vehicle regulated by this section, subject to the following:

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- (1) The equipment or materials shall not be visible from outside the motor vehicle. In the case of equipment or materials stored in the open bed of a truck and similar cases, this provision shall be deemed to be complied with if the equipment and materials are completely covered by a solid opaque tarp. Exposed ladders shall not be permitted to remain on a vehicle overnight, but shall be required to be removed and stored out of view.
- (2) The storage of materials which gives off offensive odors, such as but not limited to decaying vegetation, manure, etc., is prohibited.
- (3) The storage of pesticides, herbicides, fertilizer and similar materials shall comply with applicable regulations of the NJDEP.

§ 225-348 Prohibited outdoor storage in all residential zones and on all residential property.

- A. The following outdoor storage is prohibited in all residential zones.
  - (1) Construction materials, paving materials and landscaping materials except those being used for a current, active construction or landscaping project on the premises and for which a valid building permit or zoning approval, as applicable, is in effect;
  - (2) Tires, wheels, other motor vehicle parts or truck caps;
  - (3) Appliances and machinery, such as but not limited to: refrigerators, freezers, washing machines, dryers, dishwashers, water heaters, and plumbing fixtures;
  - (4) Furniture, except furniture designed and intended to be used outdoors on the premises;
  - (5) More than one extension ladder.
  - (6) Snowplows; and
  - (7) Garbage, waste material or debris of any kind, except for typical household trash or recyclables generated on the premises and stored in approved containers for pickup, and except for temporary storage, stockpiling or composting of leaves and grass clippings generated on the premises and more than two cords of firewood unless screened by a solid fence or shrubbery.
  - (8) Unlicensed and uninsured motor vehicles of any kind.

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### § 184-349 Outdoor storage in nonresidential zones.

The following regulations shall apply to outdoor storage in all nonresidential zone districts; provided, however, that outdoor storage of garbage, rubbish, debris and recyclables intended for periodic removal and stored in approved containers for pickup shall be permitted in all nonresidential zone districts:

A. In the Nonresidential Zones no outdoor storage shall be permitted except operable motor vehicles actually used in the business conducted on the premises, except that on premises where the principal use is residential, the outdoor storage permitted for residential zones shall also be permitted for that premises. On premises containing a mixed residential/nonresidential development, outdoor storage for the residential use shall be limited to customary and ancillary storage of typical household waste and recyclables for pickup.

B. In the I – Industrial Zone the following outdoor storage is permitted; provided, however that on premises in these zones where the principal use is residential, the outdoor storage permitted for residential zones shall also be permitted for that premises:

- (1) Operable motor vehicles actually used in the business conducted on the premises.
- (2) Motor vehicles held for sale, rental or repair subject to the conditions imposed by this chapter for particular conditional uses.
- (3) Mobile storage structures subject to the conditions imposed by the definition of "mobile storage structures" in Articles 1 and 26.

C. On premises containing a mixed residential/nonresidential development, outdoor storage for the residential use shall be limited to customary and ancillary storage of typical household waste and recyclables for pickup.

## ARTICLE 27 OFF STREET PARKING

### § 225-350 Policy.

To facilitate the smooth flow of traffic, reduce traffic hazards and provide for maximum security of life and property, it is the policy of the Borough that off-street parking shall be provided for all premises to the maximum extent possible.

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### § 225-351 General Design Considerations.

Off-street parking, loading, circulation and access improvements shall be designed to:

- A. Provide adequate on-site space in appropriate locations for vehicles of employees, patrons, and visitors and for shipping and delivery vehicles, including future space needs;
- B. Be compatible with the internal circulation system of a site and avoid unusual risks of traffic congestion, public safety or hazards;
- C. Avoid substantial negative impacts to adjacent properties;
- D. Discourage illegal and improper parking of vehicles;
- E. Provide only the minimum area of pavement necessary to meet site needs, and to break up large areas of pavement with landscaping;
- F. Ensure proper drainage;
- G. Provide for access by disabled persons that is suitably located and designed to meet current State and Federal ADA requirements.;
- H. Enable appropriate property maintenance and security; and
- I. In the case of residential development, comply with the RSIS.

J Provide a parking area that meets minimum lighting requirements to ensure security and safety.

### § 225-352 General provisions.

Parking spaces, off-street parking areas or off-street loading spaces shall be provided for any principal building or other structure erected or constructed upon a lot or for any lot or area of land put into use after the date of the enactment of this Part 3 in accordance with the following provisions:

- A. General design standards.
  - (1) All single-family detached homes shall contain a garage.
  - (2) Each parking space, as hereinbefore defined, shall have the minimum dimensions of nine feet by 18 feet. Tandem stalls shall not be permitted.
  - (3) For the purpose of determining the land requirement of an off-street parking area, as hereinbefore defined, each parking space to be provided in accordance with the parking schedule in Article 27, or as recommended

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by the Planning Board, pursuant to Parts 1 and 2, shall be allotted not less than 350 square feet of area, which shall be sufficient to include the area or the parking space plus area to be devoted to interior drives, backup areas or turning areas. In addition, sufficient entrance and exit driveways shall be provided.

(4) All off-street parking areas shall be separated from sidewalks, streets or alleys by curbing, except at entrances and exits, and all such sidewalks, streets or alleys shall be protected from vehicular overhang by wheel bumpers, curbs, planted strips, walls, fences or other appropriate method where the yard depth for accessory uses is not sufficient to accomplish this purpose. Curbing may be designed as flush curbing when being incorporated into a stormwater management scheme utilizing natural vegetation or grassed swales.

(5) Entrance and exit driveways to and from all off-street parking areas shall be at least 12 feet in width to allow for free one-way movement, and at least 22 feet in width for two-way movement, provided that two-way entrances and exits shall be no wider than 28 feet in width. Parking aisles shall be at least 24 feet in width for two way traffic except that, for retail business and personal service uses, the minimum dimensions shall be 25 feet. Whenever possible, one-way movement should be provided for all entrance and exit driveways, as well as interior driveways.

(6) Wherever practicable and not prohibited in this Part 3, access to off-street parking areas shall be gained from local streets or service streets rather than from streets designated on the Comprehensive Master Plan as arterial streets.

(7) No required off-street parking shall be encroached upon by buildings, other structures, open storage areas or other uses.

(8) No layout of an off-street parking area shall be acceptable if such layout would require vehicles to back out onto a street to exit from such off-street parking or loading area.

(9) When any land or building is used for two or more purposes, the number of parking spaces required shall be the sum of the requirements for the various individual uses, computed separately in accordance with this article. Parking spaces for one use shall not be considered as providing the required parking spaces for any other use.

(10) Requirements for the provision of parking facilities with respect to two or more property uses of the same or different types may be satisfied by the permanent allocation of the requisite number of spaces for each use in a common off-street parking area, cooperatively established and operated, provided that the total number of spaces designated is not less than the sum of the individual requirements.

(11) All public garages or roof space allocated for the parking of vehicles shall be considered part of the required off-street parking area.

(12) When off-street parking areas shall be used at night, they shall be adequately lighted. Such lighting shall be installed and maintained in a manner not to reflect or cause glare into abutting or facing residential properties.

(13) All parking areas and loading areas shall be paved with hard, durable asphaltic paving in accordance with Borough standards except that alternate designs utilizing permeable material such as pavers, porous concrete, a combination of 45% concrete and 55% holes filled with grass distributed uniformly (commonly known as grasscrete) may be used, subject to the approval of the Borough Engineer.

(14) Required off-street parking spaces may be provided on a nearby lot, provided that the distance between the parking lot and the entrance to the use it serves shall not exceed 200 feet.

(15) In residential zones, off-street parking shall be prohibited for all commercially registered vehicles whose empty gross weight, as defined in §225-104, exceeds 6,500 pounds and for all commercially registered vehicles whose loaded gross weight, as defined in §225-104, exceeds 8,000 pounds, other than those vehicles temporarily parked for the purpose of making deliveries.

#### § 225-353 Off-street parking schedule.

All developments shall be required to provide at least the minimum number of off-street parking and loading spaces required by this section, unless greater number of parking and loading spaces are required by other provisions of this chapter.

A. General. In calculating the number of off-street parking and loading spaces required or provided, the following general provisions shall apply;

(1) Change of use. A change of use or modification of utilization shall be subject to the required number of parking spaces for the new use or utilization. Anything in this chapter to the contrary notwithstanding,

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approval shall be valid only for the particular utilization for which it was granted.

(2) More than one utilization. When one or more utilizations are proposed on one lot, the minimum number of parking spaces shall be the aggregate of the number of parking spaces required for each utilization, computed separately for each utilization and summed, unless specified otherwise herein.

(3) Primary and minor utilizations. If the primary utilization includes minor elements of other types of utilizations (e.g. as with home occupations or as with an office associated with a nursing home), the entire parking required shall be calculated based on the requirements from the primary utilization.

(4) Basement space. If basement space is used as part of the primary utilization of the building either as a result of being a permitted use, or by variance or by meeting the requirements of a preexisting nonconforming use, such basement space shall be included in determining the number of parking spaces to be provided based on the aforesaid requirements. Basement space which is vacant, used to contain utility equipment serving the building or for storage alone shall not be included in the calculation of basement space being used.

(5) Fractions of spaces. Requirements for a fraction of a parking or loading space shall be rounded down if the fraction is 1/2 space or less, and rounded up if the fraction is greater than 1/2 space.

(6) Garage parking. Parking spaces located inside garages shall be counted toward the number of required parking spaces only if they are included as such on a parking plan. Garaging as an accessory use capable of storing motor vehicles shall not be designed or used to store more than two motor vehicles on a single lot in any residential zone district.

B. Minimum number of parking spaces required for each utilization. Each utilization of land shall provide off-street parking in accordance with the following requirements, unless more stringent requirements are provided in other articles of this chapter.

(1) Residential uses.

(a) Single-family or two-family dwellings:

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- [1] Two-bedroom unit: 1.5 spaces.
- [2] Three-bedroom unit: 2.0 spaces.
- [3] Four-bedroom unit: 2.5 spaces.
- [4] Five-bedroom unit: 3.0 spaces.

(b) Townhouse dwellings/condominium:

- [1] One-bedroom unit: 1.8 spaces.
- [2] Two-bedroom unit: 2.3 spaces.
- [3] Three-bedroom unit: 2.4 spaces.

(c) Community shelters and residences:

- [1] One off-street parking space for each employee during the shift employing the largest number of persons plus one off-street parking space for each other five persons or fraction thereof residing on the site.

(d) Dwellings units in the same building as a nonresidential use:

- [1] One parking space for each dwelling unit, in addition to the parking spaces required for the nonresidential use.

(2) Lodging and Assembly.

(a) Hotel/Motel:

- [1] One space/guest room, plus one space/employee on maximum shift, plus one space per four fixed seats in any meeting rooms or one space for each 100 S.F. GFA, in any meeting rooms without fixed seats.

(b) Private clubs, lodges:

- [1] One space per 100 S.F. GFA.

(c) Public theater, auditorium with fixed seats:

- [1] One space per three seats, plus one space/meeting hall with fixed employee seats.

(d) Public theater, auditorium without fixed seats;

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[1] One space per 100 S.F. GFA or meeting hall without fixed seats.

(3) Educational or religious uses.

(a) House of worship:

[1] One space per three fixed seats, or one space per 90 S.F. GFA of all buildings on the property, whichever is greater, provided that the calculation of parking spaces shall be based upon the maximum floor area or seats, as applicable, which may reasonably be occupied at any one time in the foreseeable future, as determined by the Board.

(b) Preschool, day care or nursery school:

[1] One space/each staff or employee.

Note:

In considering an application for development approval for a nonresidential development that is to include a child care center that is located on the business premises, is owned or operated by employers or landlords for the benefit of their employees, their tenants' employees, or employees in the area surrounding the development, and is required to be licensed by the Department of Human Services pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.), an approving authority may exclude the floor area to be occupied in any building or structure by the child care center in calculating the density of that building or structure for the purposes of determining whether or not the density is allowable under any applicable municipal zoning ordinance. N.J.A.C. 40:55D-66.7.

(c) Elementary/middle junior high/senior high school:

[1] One parking space for each staff member or employee for schools containing grades under the 10th grade. For schools containing grades 10th and/or 11th and/or 12th, off-street parking, in addition to that required for staff or employees, shall be provided at the rate of one space for

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each four students. The Board may require additional parking if, in its opinion, the parking spaces prescribed above are not sufficient to insure that the use will not cause parking in a public street during the course of normal education programs.

(4) Industrial or warehouse uses.

(a) Light industry, assembly:

[1] One space per 400 S.F. GFA or one space/employee on maximum shift, whichever is greater.

(b) Warehouse, storage:

[1] One space per 1,000 S.F. GFA, or one space/employee maximum shift, whichever is greater.

(5) Office uses.

(a) Medical office:

[1] Four spaces/doctor present at one time plus one space/employee other than doctor, or one space per 175 S.F. GFA, whichever is greater.

(b) Other professional office: One space per 200 S.F. GFA.

(c) Business/Administrative:

[1] One space per 250 S.F. GFA (under 50,000 S.F. office GFA) or one space per 300 S.F. GFA (50,000 S.F. GFA or greater).

(d) Research offices: One space per 350 S.F. GFA.

(6) Health related uses.

(a) Veterinary hospitals:

[1] Three spaces/examination room or doctor present at one time, or one space for each 200 S.F. GFA (but not including kennel space) whichever is greater.

(b) Nursing/convalescent home/assisted living:

[1] One space per three beds.

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## (7) Retail/wholesale sales and services

## (a) General retail sales/service:

[1] One space per 300 S.F. GFA.

## (b) Auto/truck sales:

[1] One space per 30 S.F. GFA of all buildings or two spaces/employee, whichever is greater.

## (c) Bank:

[1] One space per 250 S.F. GFA.

## (d) Bar/tavern: One space per two seats

## (e) Barber/beauty shop:

[1] Three spaces/barber or beautician present at one time.

## (f) Funeral homes: One space per 100 S.F. GFA.

## (g) Furniture store: One space per 800 S.F. GFA.

## (h) Gasoline filling station and/or public garage:

[1] One space per two pumps plus five spaces/service bay, if applicable.

## (i) Supermarkets (greater than 10,000 S.F. GFA): One space per 250 S.F. GFA.

## (j) Hardware store: One space per 300 S.F. GFA.

## (k) Laundromat: One space per four washing machines plus one space per four dryers.

## (l) Liquor store: One space per 300 S.F. GFA.

## (m) Lumber and building supply: One space per 400 S.F. GFA supply store space.

## (n) Miniwarehouse/commercial storage:

[1] Two spaces/manager plus one space per 10 storage units, plus one visitor space per 25 storage units

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(o) Plant, nursery garden store: One space per 400 S.F. sales area center.

(p) Restaurant, predominantly seating, full service: One space per three seats.

(q) Restaurant, all others:

[1] One space per 75 S.F. GFA or one space per three seats, whichever is greater.

(r) Shopping center or strip mall:

[1] One space per 225 S.F. GFA or the parking store center with required by computing the total retail stores required spaces using the standard herein for each individual occupant, whichever is greater.

(8) Recreation, cultural uses.

(a) Health/sports club: One space per 250 S.F. of nonstorage floor area.

(9) Utilization not specified above. The minimum parking requirement for any utilization not otherwise specified shall be as determined by the Board.

C. Minimum number of barrier-free spaces. Provisions are to be made for the disabled for any parking facility as required by law. In any parking lot designed to accommodate the public, the minimum number of designated parking spaces accessible to disabled persons shall be provided as required by the provisions of the Americans with Disabilities Act or the New Jersey Barrier-Free Subcode.

D Shared parking. Subject to the provision of §225-356 and 357 below (location of parking), which shall control, any owners of property in the nonresidential zone districts may provide the required number of parking spaces by participating in a joint parking program involving two or more business uses, provided the plans for such a joint program shall have been approved by the Board.

E. Nonresidential properties in the BD Boulevard Downtown District between 18th and 24th Streets, inclusive, shall provide one half of the required parking spaces per this Ordinance. This measure has been adopted as an economic development policy and shall remain in effect until the Borough Mayor and Council choose to reinstate the normal standards.

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F. If it can be shown that a particular applicant can demonstrate that fewer spaces would be required and that an area can be set aside for additional spaces if necessary, the number of spaces required herein can be reduced by up to 20% of the required spaces.

G. Should a proposed use not have a matching parking requirement listed herein, the applicant shall provide a parking analysis based on accepted industry standards, such as the Institute of Traffic Engineers or other published standard satisfactory to the Zoning Officer.

§ 255-354 Off-street loading.

A. An off-street loading space shall have minimum dimensions of 12 feet by 25 feet for standard two-axle commercial vehicles and 14 feet by 50 feet for standard three-or-more-axle vehicles. A minimum clear height of 14 feet shall be required.

B. Off-street loading spaces for commercial and industrial uses shall be provided in accordance with the following:

Floor Area Devoted to Use (square feet)	Number of Spaces Required
<5,000	none
5,000 to 30,000	1
30,000 to 70,000	2
70,000 to 120,000	3
Each additional 60,000	1

§ 225-355 Screening requirements.

A. All off-street parking areas with provision for more than five vehicles, or establishments with more than two loading bays or spaces for the temporary parking of commercial vehicles, shall be effectively screened on each side which adjoins or faces a residential district or an institutional premises, except that such screening shall not be required where the parking or loading area is already effectively screened by a natural terrain feature or a street classified in the major street portion of the Master Plan as a major arterial street requiring a right-of-way of 80 feet or more.

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B. Such screening shall be a solid wall or a solid fence, not less than five feet in height, together with a three-foot planting strip on the outside of such wall or fence, planted in shrubs and evergreens. In lieu of such wall, fence and planting strip, a compact evergreen hedge of not less than three feet in height at the time of planting may be used. The fence, wall, planting strip or hedge shall be maintained in good condition, and no advertising shall be placed thereon. Where appropriate, native vegetation shall be favored over types of ground cover that may require fertilizers to sustain a hearty life.

C. The screening shall be so designed that vehicle sight distance shall not be affected by entrances, exits and street intersections. Where an off-street parking area abuts or adjoins another, a five-foot-wide planting strip, maintained in good condition, may be used in lieu of the required screening. Separation in impervious areas with the use of vegetative strips of land is encouraged to minimize runoff and to enhance water quality.

#### § 225-356 Street access regulations.

- A. Any portion of any entrance or exit driveway shall not be any closer than 20 feet to the curbline of an intersecting street.
- B. Any two driveways leading from a street to a single lot shall not be within 30 feet of each other at their intersections with the front lot line for an interior lot and 40 feet for a corner lot.
- C. No lot shall have more than two driveway entrances or exits along the same street. Not more than one such driveway shall be provided unless traffic circulation on the site and to and from the street will be facilitated.

(D) All signs and traffic control devices required hereunder shall be in accord with and shall be of a design and construction as provided for in the Manual on Uniform Traffic Control Devices, current edition, which is incorporated herein by reference.

#### § 225-357 Waiver or modification of requirements.

- A. Off-street parking or loading requirements for uses other than those cited above shall be determined in consultation with the Planning Board.
- B. The Planning Board may waive the requirements of Article 27 or may require additional spaces if the particular use so warrants.

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§ 225-358 Plot plan review by Planning Board.

- A. No application for a building permit or certificate of occupancy for a building or use in any district shall be approved unless there is a plot plan for such building or use provided showing the required space designated for off-street parking or loading purposes to be provided as accessory uses to such building or use and in accordance with the provisions of this article.
- B. The design and layout of any off-street parking area, hereinbefore defined as having spaces for five or more automobiles, and loading areas in which two or more spaces are required shall be reviewed by the Planning Board with respect to the adequacy of such areas to serve the principal use of the lot and the layout and design of exits and entrances to such areas with respect to the ease of traffic movement in and out of such off-street areas. The plot plan of the lot shall show in detail the location and extent of such off-street areas; the locations and types of screening provided; the layout of parking and loading spaces, driveways and other maneuvering areas; and other requirements of this Part 3.
- C. The Planning Board may recommend a reasonable number of parking spaces for those uses not listed in the parking schedule above, in accordance with the standards set forth in Subsection B above.

ARTICLE 28 WIRELESS TELECOMMUNICATIONS FACILITIES§ 225-359 Definitions.

As used in this article, the following terms shall have the meanings indicated:

**ALTERNATIVE TOWER STRUCTURE**

Man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

**ANTENNA**

Any exterior apparatus designed for telephonic, radio or television communications through the sending and/or receiving of electromagnetic waves.

**FAA**

The Federal Aviation Administration.

**FCC**

The Federal Communications Commission.

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## GOVERNING AUTHORITY

The governing body of the Borough of Kenilworth.

## HEIGHT

When referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if the highest point is an antenna.

## PREEXISTING TOWERS AND ANTENNAS

The meaning set forth in § 225-360 below.

## TOWER

Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

### § 225-360 Wireless telecommunications towers and antennas.

A. Purpose. The purpose of this section is to establish guidelines for the siting of wireless communications towers and antennas.

B. Goals. The Borough shall give due consideration to the Master Plan, Zoning Map, existing land uses and environmentally sensitive areas in approving sites for the location of towers and antennas in order to effectuate the following goals:

- (1) Protect residential areas and land uses from potential adverse impacts of towers and antennas;
- (2) Encourage the location of towers in nonresidential zones;
- (3) Minimize the total number of towers throughout the Borough;
- (4) Strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single use towers;
- (5) Encourage users of towers and antenna to locate them, to the extent possible, in areas where the adverse impact on the Borough is minimal;
- (6) Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques;

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- (7) Enhance the ability of the providers of telecommunications services to provide such services to the Borough quickly, effectively, and efficiently;
- (8) Consider the public health and safety of communication towers; and
- (9) Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

#### C. Applicability.

- (1) New Towers and Antennas. All new towers or antennas in the Borough shall be subject to this section except as provided in § 225-360 C (2) through (4) and except for those antennas, etc. governed by § 225-360 C (5).
- (2) Amateur radio station operators/receive only antennas. This section shall not govern any tower, or the installation of any antenna, that is under 70 feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive only antennas.
- (3) Preexisting towers or antennas. Preexisting towers and preexisting antennas shall not be required to meet the requirements of this section, absent any enlargement or structural modification or the addition of any structures.
- (4) AM array. For purposes of implementing this section, an AM array, consisting of one or more tower units and supporting ground system which functions as one AM Broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.
- (5) Satellite dish antennas. This section shall not govern any satellite dish antennas.
- (6) All towers and antennae shall be required to receive site plan approval and a conditional use permit from the Planning Board.

#### D. General requirements.

- (1) Principal or accessory use. Antennas and towers may be considered either principal or accessory uses. Notwithstanding any other section of this chapter, a different existing structure on the same lot shall not

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preclude the installation of an antenna or tower on such lot. If a tower and its appurtenant structures constitute the sole use of the lot, the tower shall be deemed to be the principal use.

(2) Lot size. For the purposes of determining whether the installation of a tower or antenna complies with this chapter, including but not limited to setback requirements, lot coverage requirements and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.

(3) Inventory of existing sites. Each applicant for an antenna and/or tower shall provide to the Zoning Officer an inventory of its existing towers, antennas, or sites approved for tower or antennas, that are either within the jurisdiction of the Borough or within three miles of the borders thereof, including specific information about the location, height and design of each tower. The Zoning Officer may share such information with other applicants applying for administrative approvals or permits under this section or other organizations seeking to locate antennas within the jurisdiction of the Borough; provided, however, that the Zoning Office is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

(4) Aesthetics. Towers and antennas shall meet the following requirements:

(a) Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.

(b) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.

(c) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

(e) Under no circumstances shall a wireless telecommunications tower, antenna, or any appurtenance be situated so that the same

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is 200 feet and facing the front door of any residence on property adjacent to the proposed telecommunications facility.

(5) Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.

(6) State or federal requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this section shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

(7) Building codes: safety standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association as amended from time to time. If, upon inspection, the Borough concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said 30 days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

(8) Not essential services. Towers and antennas shall be regulated and permitted pursuant to this section and shall not be regulated or permitted as essential services, public utilities or private utilities.

(9) Franchises. Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in the Borough have been

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obtained and shall file a copy of all required franchises with the appropriate Zoning Officer.

(10) Public notice. For purposes of this section, any conditional use request, variance request or appeal of an administratively approved use or conditional use shall require public notice to all abutting property owners and all property owners of properties that are located within 200 feet, in addition to any notice otherwise required by this chapter.

(11) No signs, except for identification and warning signs, shall be allowed on an antenna or tower.

(12) Buildings and support equipment. Buildings and support equipment associated with antennas or towers shall comply with the requirements of Article 28.

(13) Multiple antenna/tower plan. The Borough encourages and mandates the users of towers and antennas to collocate antennas. Applications for approval of collocation sites shall be given priority in the review process.

(14) Municipal emergency services communications equipment. Any telecommunications tower constructed or erected in the Borough must be able to accommodate Borough emergency services, including but not limited to police, fire and rescue squad, antennas. Adjacent space to accommodate supporting equipment shall also be provided. Any costs associated with such accommodation shall be borne by the owner of such tower. Notwithstanding the foregoing, such requirement may be waived by the Borough if such accommodation is not needed by the Borough emergency services departments.

#### E. Permitted uses.

(1) General. The uses listed hereafter are deemed to be permitted uses and shall not require administrative approval or a conditional use permit.

(2) Permitted uses. The following use is specifically permitted: Antennas or towers located on property owned, leased, or otherwise controlled by the Borough, provided a license or lease authorizing such antenna or tower has been approved by the Borough. Notwithstanding the foregoing, telecommunications towers shall not be permitted at any Borough park. However, the Borough may as a condition of such lease, require site plan approval. The decision to extend such lease(s) to an applicant shall be vested solely with the Borough and shall not be governed by this section.

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F. Conditional use permits.

(1) List of conditional uses. The following uses may be approved by the Board as conditional uses and a conditional use permit issued:

(a) Antennas on existing structures or towers consistent with the terms of Subsections F (1) (a) [1] [a] and [b] below;

[1] Antennas on existing structures. Any antenna which is not attached to a tower may be attached to any existing business, industrial, office or institutional structure not located in a residential zone provided:

[a] The antenna does not extend more than the maximum building height for the zone wherein the structure is located.

[b] The antenna complies with all applicable FCC and FAA regulations; and

[c] The antenna complies with the Uniform Construction Code and the Fire Safety Code.

(2) Antennas on existing towers. An antenna may be attached to an existing tower in a nonresidential zone and, to minimize adverse visual impacts associated with the proliferation and clustering of towers, collocation of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such collocation is accomplished in a manner consistent with the following:

(a) A tower which is modified or reconstructed to accommodate the collocation of an additional antenna shall be of the same tower type as the existing towers.

(b) Height.

[1] An existing tower may be modified or rebuilt to a taller height, not to exceed the maximum tower height established by this section.

[2] The height change referred to in Subsection F (2) (b) [1] may only occur one time per communication tower.

[3] The additional height referred to in Subsection F (2) (b) [1] shall not require an additional distance separation as set

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forth in Article 28. The tower's premodification height shall be used to calculate such distance separations.

(c) Onsite location.

[1] A tower which is being rebuilt to accommodate the collocation of an additional antenna may be moved on site within 50 feet of its existing location.

[2] After the tower is rebuilt to accommodate collocation, only one tower may remain on the site.

[3] A relocated on-site tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to § 225 - 359 F (5). The relocation of a tower hereunder shall in no way be deemed to cause a violation of § 225 - 360 F (5).

(d) New Towers.

[1] New towers may be constructed to hold antennas. In addition to any information required for applications for conditional use permits pursuant to this chapter, applicants for a conditional use permit for a tower shall submit the following information:

[a] A sealed site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), Master Plan classification of the site and all properties within the applicable separation distances set forth in § 225 - 360 F(5), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, and other information deemed by the Zoning Officer to be necessary to assess compliance with this section.

[b] Legal description of the entire tract and leased parcel (if applicable).

[c] The setback distance between the proposed tower and the nearest residential unit, platted residentially

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zoned properties and unplatted residentially zoned properties.

[d] The separation distance from other towers described in the inventory of existing sites submitted pursuant to § 225-359D (3) shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.

[e] A landscape plan showing specific landscape materials.

[f] Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.

[g] A description of compliance with §§ 225-359 D(3) through (7), (10), (12), and (13) and §§ 225-359 F(4) and (5) and all applicable federal, state and local laws.

[h] A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.

[i] Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the Borough.

[j] A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.

[k] A description of the feasible location(s) of future towers or antennas within the Borough based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.

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[l] A visual study depicting where, within a three mile radius, any portion of the proposed tower could be seen.

[m] A statement of intent on whether excess space will be leased.

(3) Factors considered in granting conditional use permits for towers. In addition to any standards for consideration of conditional use permit applications pursuant to this chapter, the Board shall consider the following factors in determining whether to issue a conditional use permit.

- (a) Height of the proposed tower;
- (b) Proximity of the tower to residential structures and residential district boundaries;
- (c) Nature of uses on adjacent and nearby properties;
- (d) Surrounding topography;
- (e) Surrounding tree coverage and foliage;
- (f) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- (g) Proposed ingress and egress; and
- (h) Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures as discussed in §225-360F(3).
- (i) Availability of proposed tower to other potential users.

(4) Availability of suitable existing towers, other structures, or alternative technology. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Board that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Board related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's

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proposed antenna may consist of any of the following (although meeting one, some, or all of the following shall entitle the applicant to approval):

- (a) No existing towers or structures are located within the geographic area which meet applicant's engineering requirements.
- (b) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
- (c) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
- (d) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing tower or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
- (e) The fees, costs or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
- (f) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
- (g) The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable micro cell network using multiple low powered transmitters/receivers attached to a wire line system, is suitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

(5) Setbacks. The following minimum setback requirements shall apply to all towers for which a conditional use permit is required:

- (a) Towers must be set back a distance equal to at least 100% of the height of the tower from any adjoining lot line and all nonappurtenant buildings.
- (b) Guys and accessory buildings must satisfy the minimum zoning district setback requirements.

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- (c) No tower shall exist within required buffer areas, if adjacent to residential zones and as prescribed elsewhere in this chapter.
- (b) Towers located in nonresidential districts adjacent to residential districts shall be set back from all residential lot lines by a minimum distance equal to 1 1/2 times the height of the tower, including all antennas and attachments, or a five-hundred-foot minimum setback, whichever is more.
- (c) Towers shall not be located between a principal structure and a public street. An improved driveway shall be provided for access to each tower site from the nearest open public street.
- (d) A tower's setback may be reduced or its location in relation to the public street varied, at the sole discretion of the Board, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light standard, power line support device, or similar structure.
- (e) Towers shall meet all buffer and landscaping requirements of the underlying zone district.
- (f) Telecommunications towers or antennas shall not be located on any dwelling.

(7) Security fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device.

(8) Landscaping. The following requirements shall govern the landscaping surrounding towers for which a conditional use permit is required.

- (a) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences or planned residences. The standard buffer shall consist of a landscaped strip at least four feet wide outside the perimeter of the compound.
- (b) In locations where the visual impact of the tower is minimal, the landscaping requirement may be reduced.
- (c) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases,

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such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

(d) Height. The maximum height of a new tower shall be:

- [1] For single user, up to 90 feet in height;
- [2] For two users, up to 120 feet in height;
- [3] For three or more users up to 150 in height.

(9) General requirements. The following provisions shall govern the issuance of conditional use permits for towers or antennas by the Board:

- (a) If the tower or antenna is not a permitted use under § 225-360 E, then a conditional use permit shall be required for the construction of a tower or the placement of an antenna in designated zoning districts.
- (b) Applications for conditional use permits under this section shall be subject to the procedures and requirements contained elsewhere in this chapter, except as modified by this section.
- (c) In granting a conditional use permit, the Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.
- (d) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.
- (e) An applicant for a conditional use permit shall submit the information described in this section and a nonrefundable application fee and an escrow deposit as required by this chapter for conditional use applications.
- (f) Locating a tower or antenna, including the placement of additional buildings or other supporting equipment used in connection with said tower or antenna are permitted as conditional uses only in the industrial zone and the P Public zone.
- (h) An application fee and escrows shall be paid as required by the Borough.

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G. Buildings or other equipment storage.

(1) Antennas mounted on structures or rooftops. The equipment cabinet or structure used in association with antennas shall comply with the following:

- (a) The cabinet or structure shall not contain more than 200 square feet of gross floor area or be more than 10 feet in height. In addition, for buildings and structures which are less than 40 feet in height, the related unmanned equipment structure, shall be located on the ground and shall not be located on the roof of the structure.
- (b) Equipment storage buildings or cabinets shall comply with all applicable building codes.

(2) Antennas mounted on utility poles or light poles. The equipment cabinet or structure used in association with antennas shall be located in accordance with the following:

- (a) In a front or side yard provided the cabinet or structure is no greater than six feet in height or 100 square feet of gross floor area and the cabinet/structure is located a minimum of 75 feet from all lot lines. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of at least 42 inches to 48 inches and a planted height of at least 36 inches.
- (b) In a rear yard, provided the cabinet or structure is no greater than eight feet in height or 120 square feet in gross floor area. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of eight feet and planted height of at least 48 inches.

(3) Antennas located on utility poles and towers. The related unmanned equipment structure shall not contain more than 200 square feet of gross floor area or be more than 10 feet in height, and shall be located in accordance with the minimum yard requirements of the zoning district in which located.

(4) Structures or cabinets shall be screened from view of all residential properties which abut or are directly across the street from the structure or cabinet by an evergreen hedge with an ultimate height of eight feet and a planted height of at least six feet.

H. Removal of abandoned antennas and towers. Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned,

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and the owner of such antenna or tower shall remove the same within 90 days of receipt of notice from the Borough notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within said 90 days shall be grounds to remove the tower or antenna at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower. The Borough may condition the issuance of any permit to demolish or remove a tower or antenna on the posting of an appropriate performance bond or other suitable guarantee in a face amount of not less than 120% of the cost (as determined by the Borough Engineer) of such removal, grading and restoration to a state required under the Borough Code, including but not limited to the Borough Property Maintenance Code.

I. Rebuilding damaged or destroyed nonconforming towers and antennas. Nonconforming towers or antennas that are damaged or destroyed may not be rebuilt without first obtaining a conditional use permit. The type, height and location of the tower onsite shall be of the same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned.

#### § 225 – 361 Antennas, earth stations, satellite dishes and similar equipment.

Radio and television antennas, including satellite dish antennas, accessory to a permitted principal structure on the same premises may be installed, erected and maintained within all districts, but only in accordance with the provisions of this section. Cellular telecommunications antennas are regulated as a conditional use in Article 28 and shall be exempt from the provisions of this section, and governed by the provisions of § 225-360.

A. Review and approval procedure. All antennas shall be subject to the review and approval of the Zoning Officer. Applications shall be subject to the following procedure:

(1) Each application shall be accompanied by a report prepared by the installer of the antenna explaining why the proposed location was selected over other locations and the reasons, with supporting data, for any requested deviation from the requirements of this section as to location or screening.

(2) When deemed necessary by the Zoning Officer, the Town may consult, at the applicant's expense, with an expert in the field of antenna installations for guidance in evaluating an applicant's report when a

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deviation from the requirements of this section is requested. The applicant shall post a fee calculated by the Zoning Officer, but not to exceed \$500, to cover such expense, in the form of cash or a certified check, and against which such review expenses shall be charged. All sums not actually so expended shall be returned to the applicant at the time the permit is either issued or denied.

(3) The Zoning Officer may permit deviations from the requirements of this section when it is demonstrated by the applicant that such deviations are necessary to enable proper antenna reception.

B. General regulations. The following general regulations shall apply to antennas in residential or nonresidential districts.

(1) No portion of an antenna array shall extend beyond the property lines or into any front yard area. Guy wires shall not be anchored within any front yard area but may be attached to the building.

(2) Ground-mounted antennas shall be any antenna with its base mounted directly in the ground, even if such antenna is supported or attached to the wall of a building. Fixed-guyed antenna tower shall be fascia-mounted or guyed according to approved standards. Wire antennas that are not self-supporting shall be supported by objects within the property lines but not within any front yard areas.

(3) The antenna, including guy wires, supporting structures and accessory equipment, shall be located and designed so as to minimize to the greatest extent possible the visual impact on surrounding properties and from public streets. Antennas shall be screened from view through the addition of anti-climb fencing and architectural features or evergreen landscaping that harmonize with the elements and characteristics of the property; provided, however, that no screening shall be required which would inhibit adequate reception. Screening by fencing or plantings may be waived if natural terrain and landscaping provide adequate screening. The materials used in constructing the antenna shall not be unnecessarily bright, shiny, garnish or reflective, and all antennas shall blend with the surrounding environment.

(4) Antennas shall meet all manufacturers specifications. The mast or tower shall be of noncombustible and noncorrosive hardware, such as brackets, turn buckles, clips and similar type equipment subject to rust or corrosion, and shall be protected with a zinc or cadmium coating by either galvanizing or a similar process after forming. These finishes are selected

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to guard against corrosion and to protect the element against electrolytic action due to the use of adjoining dissimilar metals.

(5) Power control and signal cables to or from the antenna shall be by underground conduit.

(6) All antennas shall be located, designed, constructed, treated and maintained in compliance with the requirements of the Uniform Construction Code and the requirements set forth below. The requirements below have been designed with the intent of advancing and achieving health, safety and aesthetic interests and objectives and are further intended to operate so as not to impose unreasonable limitations on, or prevent, reception of satellite delivered signals or to impose costs on the users which are excessive in light of the cost of purchase and installation.

(7) No antenna or antenna structure located in the Borough regardless of when it was erected, shall be used as a sign or as a supporting structure for any sign or lettering.

C. Antennas in residential districts. Antennas in the residential districts shall be subject to the following additional regulations:

(1) No lot shall contain more than two antennas, not more than one of which may be a satellite dish antenna.

(2) Antennas shall be located in the rear yard only and shall be located at least 10 feet from any property line.

(3) Roof-mounted antennas of any type shall not extend higher than 5 feet above the highest point of the roof, provided the satellite dish antennas shall not be permitted on the roof unless necessary for reception. In such instances, no roof-mounted satellite dish antenna shall exceed three feet in diameter nor extend higher than 6 feet above the highest point of the roof. A roof-mounted satellite dish antenna shall be of mesh construction. Such satellite dish antenna shall be located, if reception is possible at such location, on roofs when the satellite dish is shielded from view from the street or by other portions of the roof or structure.

(4) Ground-mounted accessory antennas of any type shall not extend higher than 50 feet above adjacent ground level, except that ground-mounted, satellite dish antennas shall not exceed 3 feet in diameter nor 5 feet in height.

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D. Antennas in nonresidential districts. Antennas in the nonresidential districts shall be subject to the following additional regulations.

- (1) Antennas shall be located in the rear yard and shall be located at least 10 feet from any property line.
- (2) An antenna may be erected on the roof of a building, provided that the building, including the antenna, falls within the height limits established for the district, provided that satellite dish antennas subject to this article shall not be permitted on the roof.
- (3) Ground-mounted antennas shall not exceed five feet in height, provided that no ground-mounted dish antenna shall exceed a diameter of 16 feet nor extend above the ground more than 18 feet.

## ARTICLE 29 NONCONFORMING USES, LOTS, BUILDINGS AND STRUCTURES

### § 225-362 Nonconforming Lots

No lot, yard, parking area or other open space which is already less than the minimum required under this chapter shall be further reduced in area or dimension.

### § 225-363 Continuance of nonconforming uses, buildings or structures.

Any nonconforming use, building or structure which lawfully existed at the time of the passage of this chapter may be continued and any such existing nonconforming building or structure may be reconstructed or structurally altered provided it shall meet the requirements of this article.

### § 225-364 Alteration, extension or enlargement of nonconforming uses, buildings or structures.

Nonconforming uses, buildings or structures in all zone districts shall conform to the following requirements.

- A. Any building, structure or use of land which is nonconforming because of use shall not be enlarged, extended or changed to another nonconforming use in any manner whatsoever.
- B. There shall be no structural alterations made to any nonconforming building or structure that is nonconforming because of use. Structural alterations may be made in a building or structure which is nonconforming because it fails to comply with height, area, yard, off-street parking or other like requirements of this

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chapter, so long as the structural alteration does not extend or enlarge the nonconformance.

C. In the event that there shall be a cessation of operation of any nonconforming use for a period of 12 consecutive calendar months, the same shall be presumed an abandonment of such nonconforming use. Any subsequent attempt to rely upon, exercise or reinstate such abandoned nonconforming use, notwithstanding anything contained in this chapter, shall be a violation of the terms of this chapter.

D. Nothing in this chapter shall require any change in plans, construction or designated use of a structure or building for which a building permit has been heretofore validly issued if construction has been started and diligently prosecuted at the time of the adoption of this chapter.

E. Nothing in this chapter shall be construed as authorization for or approval of the continuance of the use of a building, structure or lot in violation of this chapter and/or, rules or regulations in effect immediately preceding the time of the effective date of this chapter.

F. A nonconforming use changed or altered to a conforming use may not thereafter be changed back to a nonconforming use. Nothing hereinbefore stated shall prevent the strengthening or restoring to a safe and lawful condition part of any building or structure declared unsafe by the Construction Official or the Borough Engineer.

§ 225-365 Restoration of existing buildings or structures which are nonconforming because of use.

Nothing in this chapter shall prevent the restoration or continuance of a nonconforming building or structure which is nonconforming because of its use and which is partially destroyed by fire, explosion, act of God, or of any public enemy, or the like, if the extent of the destruction be not more than 50% of either the true value or cubical contents of the whole building or structure at the time of the partial destruction, provided that all required repairs or restoration shall be commenced within two years after the damages occur and shall be completed within four years of such date of the damage occurring. Failure to comply within these time limits shall require the rebuilding and use to be conforming in all respects. If, however, any such building or structure shall be destroyed in the manner aforesaid to an extent exceeding 50% of either the true value or cubical contents of the whole building or structure at the time of such destruction, then the same may only be reconstructed and thereafter used in such a manner as to conform to all the requirements, terms and conditions of this chapter.

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§ 225-366 Restoration of existing buildings or structures which are nonconforming because of reasons other than use.

Nothing in this chapter shall prevent the restoration or continuance of a nonconforming building or structure which is nonconforming because it fails to comply with any height, area, yard, off-street parking or other like requirements of this chapter, and which is partially destroyed by fire, explosion, act of God, or of any public enemy, or the like (less than 50% of total structure); provided, however, that any restoration of any such building or structure shall not enlarge the previously existing nonconformance.

§ 225-367 Certificate that a nonconforming use, building or structure may be certified.

The prospective purchaser, prospective mortgagee, or any other person interested in any land upon which a nonconforming use or structure exists may apply in writing for the issuance of a certificate certifying that the use or structure existing before the adoption of the chapter or any portion thereof which rendered the use or structure nonconforming. The applicant shall have the burden of proof. Application pursuant hereto may be made to the Zoning Official within one year of the adoption of the chapter or any portion thereof which rendered the use or structure nonconforming or at any time to the Board of Adjustment. Denial by the Zoning Official shall be appealable to the Board. N.J.S.A. 40:55D-72 to N.J.S.A. 40:55D-75 shall apply to applications or appeals.

## ARTICLE 30 CONDITIONAL USES

§ 225-368 Authority.

The Planning Board shall have the authority to receive applications for conditional uses and to approve such applications where the considerations and conditions are met as hereinafter outlined in this article.

§ 225-369 Purpose

Recognizing that certain uses, activities and structures may be necessary to serve the needs and convenience of the Borough and its residents, and at the same time recognizing that such uses may be or become detrimental to the public health, safety and general welfare if located and operated without proper consideration being given to existing conditions and the character of the surrounding area, such uses are hereby designated as conditional uses. The conditional uses indicated in this section shall be permitted only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in this article, and only upon the issuance of an authorization therefor by the Board.

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### § 225-370 Criteria for Approval

The following criteria shall be considered by the Planning Board in reviewing applications for conditional uses:

- A. The type and location of the proposed use in relation to the needs and growth pattern of the Borough.
- B. The adequacy of the site area for the use proposed.
- C. The arrangement of buildings and structures, driveways, parking and loading areas and other site plan features, with respect to compatibility with adjoining present and prospective uses as permitted by this Part 3.

### § 225-371 Conditions of approval.

The approval of a conditional use may be subject to conditions, which may include or relate to, but are not limited to, design of buildings, aesthetics and appearance, plantings and their maintenance as screens between dissimilar uses, other landscaping features, hours of operation of the proposed use, lighting, density or extent of use, nuisance factors and public health measures.

### § 225-372 List of conditional uses, zones where permitted.

The conditional uses indicated below shall be permitted only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in this article, and only upon the issuance of an authorization therefor by the Board. The conditional uses and the zones in which they are permitted are limited to the following:

1. Residential public utility facilities excluding wireless telecommunications facilities in Residential zones.
2. Community shelters for victims of domestic violence, community residences for the terminally ill, and community residences for persons with head injuries, either of the foregoing which house less than 16 persons, excluding resident staff; as regulated in N.J.S.A. 40:55D-66.1 and 66.2, in residential zones.
3. Renewable energy facilities which must comply with all bulk standards of the zone. Facilities may be attached to the primary residence provided no new variances are created, in residential zones.
4. Nonprofit chartered membership organizations, in nonresidential zones.
5. Residential-type public utility facilities, in nonresidential zones.
6. Gasoline and automotive service stations presently existing, in nonresidential zones.
7. Private commercial parking lots as a principal use, in nonresidential zones.

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8. Multifamily apartment buildings with a density of less than 26 units per acre, in the C-Commercial zone district.

§ 225-373 Nonprofit chartered membership organizations.

Buildings operated by chartered membership organizations for the benefit of the public and not for profit, and the office or offices of charitable organizations are permitted only in nonresidential zone districts and only if all of the following requirements are complied with.

A. Certificate of incorporation. The application shall be accompanied by the existing or proposed certificate of incorporation and bylaws of the organization and such material as may be required to guarantee to the satisfaction of the Planning Board, the following:

- (1) The organization is, or will be, a bonafide nonprofit group organized solely for charitable purposes or for the benefit and enjoyment of its members who shall be primarily residents of the Borough and the surrounding communities.
- (2) The organization will not engage in sales of products or materials to the general public or otherwise engage in activities normally carried on as a business or commercial activity, except that:
  - (a) The premises may be made available on a rental basis for meetings of other groups, private social functions and the like.
  - (b) The organization may conduct intermittent commercial activities open to the general public designed solely to raise funds to support the purposes of the organization or for related or affiliated organizations with charitable, educational or religious purposes, provided such activities are conducted inside of a building or structure. Such activities shall also be permitted outside of a building or structure under the authority of a special license granted by the Governing Body, which shall contain such conditions as are considered necessary for the public health, safety and welfare. This subsection shall not prevent the organization from hiring or otherwise engaging profit-making organizations to conduct fund-raising activities, even though a portion of the funds raised is taken by such profit-making organization as a fee.
  - (c) Sale of items, products, or materials related to or accessory to the primary function or activities of the organization conducted on the premises, such as, but not limited to, food or alcoholic beverages (if the organization holds a license for the sale of same), athletic equipment, and

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the like, are permitted on a continuous basis, provided such sales are conducted inside the building or structure.

- (3) Overnight accommodations shall not be provided.
- (4) The hours of use are fixed in a manner in which the property rights of nearby property owners will not be adversely affected.
- (5) Activities of the organization will be carried on primarily within an enclosed building or structure.

§ 225-374 Additional motor vehicle and service station requirements.

A. In addition to any other requirements for certain specific motor vehicle uses contained in this chapter, all motor vehicle uses shall comply with the following requirements:

- (1) All outdoor fuel pumps and lubricating and other devices, if provided, shall be located at least 25 feet from any property line.
- (2) All fuel, oil, gasoline or similar substances shall be stored underground and at least 12 feet from any and all property lines. Such facilities shall be installed and maintained in accordance with the standards of the National Board of Fire Underwriters.
- (3) All dismantled automobiles, trucks, tractors, trailers and similar equipment and parts and accessories thereof shall be stored within a building or behind a solid screen fence no less than six feet high.
- (4) Adequate receptacles shall be provided for the deposit of all motor vehicle waste material. There shall be adequate provision for disposal of trash and refuse left on the premises relating to such motor vehicle use.
- (5) Adequate space shall be provided on the site for all the elements of the motor vehicle use to be incorporated on the site, including provision for off-street parking for the maximum number of motor vehicles, and off-street loading and unloading. No loading shall occur across curbs and sidewalks. Adequate access and egress with appropriate turning radii to the site shall be provided as well as adequate queuing and turnaround space on the site so that at no time is street traffic disrupted or blocked by vehicles entering or leaving the site. Queuing of vehicles on the street or shoulder waiting to enter the site shall not be permitted. All service and repair work shall be performed within enclosed buildings.

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(6) All loading and parking areas for motor vehicles shall be paved, curbed and drained in accordance with the Borough Code.

(8) Curbs shall be constructed so as to channelize all traffic to permitted curb cuts. There shall be no more than two curb cuts on any street frontage.

(9) A fence of at least six feet shall be provided along all property boundary lines except along public street frontage.

(10) When located adjacent to a residential district or use, a dense planting of evergreen bushes or trees to a width of at least 10 feet in addition to a fence shall be provided, to block headlight glare and muffle noise from motor vehicles.

(11) All service, storage and trash areas, and such facilities as packer units, RPZ valves, LP tanks, transformers and condensers shall be completely screened from view from any public street or adjacent property.

(12) Display lighting shall be shielded and shall be so located and maintained as not to constitute a hazard or nuisance to the traveling public or neighbors.

#### B. Automobile service stations.

(1) A motor vehicle service station shall have all of its pumps, tank and other facilities and space for the serving of motor vehicles located entirely upon private property. No facilities shall be installed for the servicing of motor vehicles standing upon a public street, and the fuel pumps shall not be located less than 20 feet from any property lines.

(4) Outdoor storage and display of accessories and outdoor servicing, except for the filling of tires with compressed air and the dispensing of fuel, motor oil or other fluids while the vehicle is being refueled, shall be prohibited at all times.

(8) When the lot upon which a motor vehicle service station is located is within 100 feet of a lot that is used, intended or suitable for use as, or zoned for use as, a residence, the filling station or service station shall not be permitted to operate or to be open to the public between the public between the hours of 11:00 p.m. and 6:00 a.m. on any day.

### § 225-375 Residential type public utility facilities.

Residential type public utility facilities and uses are permitted in residential zones only if they comply with the following requirements:

- A. Proof of need. Proof shall be furnished that the proposed installation in the specific location is necessary for the proper functioning of the public utility system and for the satisfactory and convenient provision of service to the neighborhood in which the facility is to be located.
- B. Maximum height of structures. Buildings shall not exceed 15 feet in height. Other structures or equipment shall not exceed 35 feet in height.
- C. Minimum front yard. There shall be a minimum front yard equal to the front yard required in the zone in which the site is located.
- D. Minimum side yard. There shall be a minimum side yard equal to the height of the building or above-grade structure or equipment, or 15 feet, whichever is greater.
- E. Minimum rear yard. There shall be a minimum rear yard equal to the height of the building or above-grade structure or equipment, or the rear yard required in the zone in which the site is located, whichever is greater.
- F. Trip generation. The proposed use, structure or equipment shall not generate more than 10 trips per day for any purpose, including but not limited to the operation, maintenance servicing or monitoring of any improvements on the site.

### § 225-376 Community Shelters and Residences.

Community Shelters for victims of domestic violence, and community residences for persons with head injuries, any of which house less than 16 persons, excluding resident staff, are permitted in residential zone districts and shall satisfy all of the requirements of the zone. The term "community shelters and residences" as used in this section shall mean community residence for persons with head injuries or community shelter for victims of domestic violence pursuant to N.J.S.A. 40:55D-66.1 et seq.

- A. Basement utilization. Basement areas shall not be utilized to house persons but may be used for recreation areas.
- B. Proof of licensing. Each community residence shall submit proof of licensing by the New Jersey DHS.
- C. Exterior appearance. The exterior appearance of any building or site utilized as a community residence shall be constructed or altered so as to be harmonious

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with the residential character of adjacent structures in the residential zone. Fire escapes are permitted by must be located in the rear of the structure.

## ARTICLE 31 SIGNS

### § 225-377 Compliance Required.

No sign, shall be hung, placed or painted in any district except as hereinafter provided.

### § 225-378 Permit requirements.

All signs, except for temporary signs, shall require a permit. Applications for permits shall be submitted in triplicate to the Construction Code Official. Each application shall be accompanied by a description of the sign and/or a sketch or plan showing the size, location and other pertinent data required by the Construction Code Official.

### § 225-379 Unsafe signs.

Any sign in a sight triangle shall not create any unsafe condition for vehicular traffic. Whenever a freestanding, overhanging or attached sign becomes structurally unsafe, the Construction Code Official shall order that such sign be made safe or removed. Such order shall be complied with within 10 days of receipt thereof by the person, corporation or other body owning the sign or owning the building or structure to which it is attached.

### § 225-380 Existing signs.

Any sign erected, hung or otherwise displayed prior to the adoption of this article which does not conform to these provisions shall not be altered by changing the overall dimensions. If deteriorated or damaged to the extent of 1/2 of its replacement value, such sign shall not be rebuilt and shall be removed within 60 days following notice to do so by the Construction Code Official; provided, however, that nothing contained herein shall prevent maintenance, repainting or posting of such signs.

### § 225-381 Illumination of signs.

A. In all cases where illumination of signs is necessary and is permitted under the terms of this article, such sign shall not be illuminated by other than a shielded or otherwise indirect, nonflashing light, preferably a white light, or a light from the interior of a sign with a translucent face.

B. In no event will red or green illumination be permitted, whether flashing or not, on any sign located in the same line of vision as a traffic control signal. The Borough shall have the authority to compel the removal or correction of such sign

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within 60 days of notification of its decision, whether or not such sign existed at the time of enactment of this Part 3.

C. In no event will any illumination of any sign be so arranged as to produce undue glare or offensive light annoying to residents in the surrounding area. The Borough shall have the authority to compel the removal or correction of such sign within 60 days of notification of its decision, whether or not such sign existed at the time of enactment of this Part 3.

#### § 225-382 Temporary signs.

A "temporary sign" is one which shall remain standing for a period not to exceed six months provided that, in the case where such a sign advertises an event or occurrence, including political campaigns, charitable drives, rental of apartments, sale of homes and like activities, such signs shall be removed within 15 days of the closing of the event or occurrence advertised thereon. Any temporary sign that remains in place for twelve months or more shall not be deemed a temporary sign.

#### § 225-383 Determination of sign area.

A. For a sign, either freestanding or attached, the area shall be considered to include all lettering, wording and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed, but not including any supporting framework and bracing which are incidental to the display itself.

B. For a sign painted upon or applied to a building, the area shall be considered to include all lettering, wording and accompanying designs or symbols, together with any backing of a different color than the finished material of the building face.

C. Where the sign consists of individual letters or symbols attached to or painted on a surface, building, wall or window, the area shall be considered to be that of the smallest quadrangle which encompasses all of the letters and symbols.

#### § 225-384 Setback and height requirements.

A. In the case of a sign attached flat against the face of a building or other structure, such signs shall not extend or project beyond the face of such building or other structure located in any residential district a distance of more than six inches, and in no event shall such projection be any greater than 18 inches in any other district where signs are permitted.

B. No freestanding sign in excess of ten square feet shall be located within five feet of any lot line.

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### § 225-385 Exempted signs.

Nothing herein shall be construed to affect in any way any directional, informational or street name signs erected by any municipal, county, state or federal government agency or utility in connection with street identifications, public buildings, railroad crossings, electric utility lines and installations and other like uses, buildings or activities or any nonilluminated nameplate or plaque of less than two square feet in area, or any directional signs on premises, less than one square foot in area indicating traffic movements, exits and entrances.

### § 225-386 Obstruction prohibited.

No sign shall be located so as to obstruct any door, fire escape, stairway or opening intended to provide light, air, ingress or egress for any building or structure. No sign shall be permitted where such sign would obstruct vision at a street intersection or at any curve in any street. Such signs where they exist are subject to action by the Borough and must be corrected or removed within 60 days of the notification to do so.

### § 225-387 Number of signs permitted.

Unless otherwise provided, no more than one ground sign on any street frontage shall be permitted on any premises in a residential, commercial or industrial district. This section shall not apply to signs indicating the entrance to or exit from a premises, or any such similar permitted signs. For properties on corner lots, one sign may be permitted on each street frontage, providing that the aggregate area of signs is not greater than 1 1/2 times the area of a single sign as hereinafter specified. In addition to any permanent ground sign one temporary sign up to ten square feet shall be permitted on each frontage.

### § 225-388 Prohibited signs.

The following types of signs shall not be permitted in any zone:

- A. A flashing, fluttering, animated, moving, vibrating, sequential, tracer, electronic or rotating sign.
- B. Signs with any lighting or control mechanism that may cause radio or television interference.
- C. Any sign so erected, constructed or maintained as to obstruct or be attached to any fire escape, window, door or opening used as a means of egress or ingress or for fire-fighting purposes or placed so as to interfere with any opening required for legal ventilation.
- D. Any sign which is of such a form, character or shape as to confuse or dangerously distract the attention of the operator of a motor vehicle, including but

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not limited to signs visible from the street using the word "stop" or "danger" or any other word, phrase, symbol or character with the effect of simulating a public safety warning or traffic sign.

E. Any advertisement which uses a series of two or more signs or units placed in a line parallel to the highway, or in similar fashion, all carrying a single advertising message, part of which is contained on each sign.

F. Signs which in any way simulate official, directional or warning signs erected or maintained by the State of New Jersey, a county or municipality thereof, or by any railroad or public utility or similar agency concerned with the protection of the public health or safety.

G. Billboard and/or outdoor display structures not associated with a business on the same lot.

H. Roof signs and signs on the side of any structure extending above the edge of the roof

I. Signs on railroad or vehicular overpasses.

J. Any use of flags or similar displays, not otherwise referenced in this section, to attract attention, except in connection with a particular holiday or season of the year.

K. Any use of pennants or similar displays, not otherwise referenced in this section, to attract attention.

L. Any commercial exterior use of outdoor icicle or string lighting.

Notwithstanding the foregoing, icicle or string lighting is permitted when such lights are used to illuminate merchandise on display or for purposes of indicating that a commercial establishment is open, subject to the following:

(1) Such lights are to be small, white and unblinking.

(2) No such lights may be used when the exterior of the building is floodlit, "floodlit" being defined as a strong beam of light that is used to illuminate a substantial portion of a building exterior or grounds.

(3) All such lights must be turned off at the close of business for an establishment using such lights.

M. Signs tacked, pasted, painted or otherwise attached to or inserted into public buildings, poles, posts, trees, fences, sidewalks or curbs.

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- N. Signs which obstruct driving vision, traffic signals, sight triangles and traffic direction and identification signs.
- O. Ionized inert gas sign lighting where the light source tubing is directly exposed to view, except neon "open" signs as permitted by § 225-389 B 9.
- P. Banner-type signs, except in celebration of a public event or to call attention to holidays of public significance and, in such cases, only when erected by the Borough itself or authorized by the Mayor and Council.
- Q. The term "internally illuminated sign" shall include awnings and vending machine displays which are translucent or transparent and which meet the definition of signs as contained herein which are illuminated from the rear so that such awning or vending machine display acts as an internally illuminated sign.
- R. Signs projected by light on to the facade of a building.
- S. Banner-type signs, except in celebration of a public event or to call attention to holidays of public significance and, in such cases, only when erected by the Borough itself or authorized by the Mayor and Council and to announce a "grand opening" of a business provided that the banner is affixed to the building of the business celebrating its "grand opening", the banner is erected for a period not to exceed 30 days, and the banner is no more than two feet high and no longer than 3/4 of the width of the side of the building to which it is affixed.
- T. Any sign advertising a use or business that is no longer in existence at that location shall be removed within thirty (30) days of the close of the business.
- U. Any sign indicating commercial property is for rent or for sale shall conform to the size limitations as if it were a permanent sign.
- V. Any type of sign not specifically permitted is hereby prohibited.

#### § 225-389 Permitted signs.

- A. Residential districts.
  - (1) Signs advertising a premises for sale or rent, provided that such sign shall not exceed ten square feet in area. No permit fee shall be required.
  - (2) One temporary sign, not exceeding 16 square feet, identifying a project, provided such sign shall be removed promptly after completion of the project and shall be set back at least 5 feet. No permit fee shall be required.

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- (3) One sign or bulletin board for a permitted nonresidential use, provided that such sign shall not exceed 16 square feet and shall be set back at least 1/2 the required front yard depth.
- (4) One sign identifying a permitted accessory professional office or home occupation, provided that such sign shall not exceed two square feet.
- (5) Decorative, nonilluminated signs showing the name and/or address of the house or family, not to exceed two square feet in area and shall be attached to the dwelling. Not more than one such sign shall be erected for each dwelling unit, up to a total of two for any one lot.
- (6) A sign indicating parking lot usage and tow company information of no less than 9 SF and no more than 12 square feet are allowed in any residential zone at each entry to any parking area.
- (7) One sign announcing the sale of an individual's personal property. Such signs shall not exceed twelve square feet and shall not be displayed for a period exceeding 31 days in any calendar year.
- (9) Any sign not expressly permitted above is prohibited.

#### B. Nonresidential Zone Districts.

- (1) Any sign permitted in residential districts
- (2) One sign advertising services offered or goods sold or produced on the premises. Such sign shall not exceed 10% of the area of the facade of the building on which the sign is located, up to a maximum of 200 square feet.
- (3) No roof signs shall be permitted.
- (4) Freestanding signs shall only be permitted for the purpose of identifying automobile filling stations or integrated shopping units consisting of four or more individual shops or offices. Such signs shall not have an area of more than 24 square feet; for automobile filling stations, a height in excess of 20 feet; and for integrated units, a height of greater than 10 feet.
- (5) One temporary sign, not exceeding 16 square feet, identifying a project, provided such sign shall be removed promptly after completion of the project and shall be set back at least 5 feet. No permit fee shall be required.
- (6) A permanent sign or rigid awning sign shall be mounted above the front entrance. Such sign must indicate the trade name of the establishment. Office buildings may include a directory of all tenants. Businesses must have a

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street number on the front of the building visible from the street. A sign mounted above the front entrance shall not exceed a height of 36 inches nor an area equal to 1.5 square feet per linear foot of building width, with a maximum of 50 square feet. No sign mounted above the front entrance shall be closer than 2 1/2 feet to the end of the front wall to which it is attached. A rigid awning may extend the entire front of the building, but no signage on the awning shall be within 2 1/2 feet of each end of the awning or 20 feet, whichever shall be the lesser.

(7) In addition to a sign or rigid awning sign on the front facade of a building, a sign on each other side of a building visible from a public street is permitted. Such sign shall not be larger than 8 square feet, unless there is an entrance accessible from a rear parking lot, in which case such sign shall comply with the requirements of § 225-389B.6.

(8) A sign centered above the rear entrance door is permitted on any building with an entrance accessible from a rear parking lot intended for patron parking. Such sign shall not be larger than 4 square feet.

(9) One nonflashing sign of neon tubing stating only the word "open" is permitted in a window near the principal entrance. The word "open" may be enclosed in a border of neon tubing. Such sign, including any border, shall not exceed six inches high by 12 inches wide.

(10) Any office building is permitted to display a directory sign visible from the road way listing the names and/or types of business of all tenants. Each sign shall be no larger than 8 square feet and each listing shall be not more than six inches high.

(11) A directory sign bearing the name and/or type of business of the principal tenants renting space in the rear or the upper floors of the building may be located at the principal entrance of such rented areas. The area of such sign devoted to each such tenant shall not exceed four square feet.

(12) Credit card signs and trading stamp signs may be displayed on windows, provided that the total area of all such signs shall not exceed two square feet in area.

(13) Signs required by law to be exhibited by the occupant of the premises may be displayed, provided that the same do not exceed six square feet in total area.

(14) Special signs indicating public conveniences, such as "notary public," "public telephone," "public rest rooms" or words or directions of similar import may be displayed, provided that each such sign does not exceed 72 square inches in total area and only one sign of each type is displayed.

(15) Nonilluminated signs displayed on the interior of windows to give notice of sales or special functions shall be permitted. No more 25% of the total area of window on which such signs are displayed shall be covered. Such temporary signs shall be removed after 30 days.

(16) On parking lots or parking facilities which are not adjacent to the business or commercial buildings or structures which they serve, a freestanding sign for the entrance to the separate parking lot or parking facility, which shall not exceed eight square feet in area. In no case shall the base of such sign be less than eight feet from ground level, and in no case shall the top of such sign be greater than 11 feet from ground level. The purpose of this sign shall be to show that the parking lot or parking facility is available for use by the patrons or employees of the business or commercial enterprise so identified.

(17) A sign indicating parking lot usage and tow company information of no less more than 9 SF and no more than 12 square feet are allowed in any zone at each entrance to the parking area..

(18) Gasoline stations. A gasoline station may have one freestanding, stationary sign identifying only the company name or brand name of the gasoline sold, including any associated insignia or emblem, provided that such sign shall not exceed 45 square feet in area, that the top of such sign shall not be more than 20 feet above the ground surface. Such sign may be two-sided. Signs affixed to the exterior surfaces of gasoline pumps shall be permitted, limited to identification of the company name or brand name of the gasoline sold, including any associated insignia or emblem, gasoline type and/or grade and such other information as may be required by law. Such signs shall not extend or project beyond the surfaces on which affixed more than 15 inches. In addition, price indicator signs not exceeding 150 square inches in area may be attached to, supported by or suspended from each gasoline pump.

(19) Painted window signs. Signs may be permanently painted on windows so long as the letters are not painted on any background and no more than 25% of the window surface consists of the painted sign.

(21) Any sign not expressly permitted above is prohibited.

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(22) Any sign advertising a use that is no longer in existence shall be removed within thirty (30) days.

(23) Signage may be replaced on a one for one basis without site plan or other relief required. Any change to a sign in size, shape, illumination or style shall require a Commercial Sign permit and any other relief necessary.

#### § 225-390 Fees.

A. Each application filed with the Construction Code Official for a sign permit shall be accompanied by a fee payable to the Borough in accordance with the schedule of fees set forth in Article 6.

B. There shall be no fee charged for permits for temporary signs advertising school board elections, municipal elections, and charitable functions or activities; provided, however, that such signs shall only be permitted to be posted for a period 15 days prior to and seven days after the date of the election, event or occurrence advertised thereon.

### ARTICLE 32: CLOTHING BINS

#### § 225-391 Clothing Bins

The placement of Clothing Bins within the Borough of Kenilworth shall be limited to only the following locations and only if properly maintained and signed. Clothing Bins may be placed at churches, schools, non-profit facilities, religious institutions. The total number of bins at any location may not exceed three.

Notwithstanding any other provision to the contrary, no person shall place, use or employ a donation clothing bin, for solicitation purposes, unless all of the following requirements are met:

A. The donation clothing bin is owned or leased by a charitable organization registered with the Attorney General of the State of New Jersey pursuant to P.L. 1994, c.16 or any person; and

B. The registered charitable organization or the person has obtained a permit valid for a period of one year, from the Zoning Officer in accordance with the following:

(1) In applying for such a permit, the registered charitable organization shall include:

a) The size of the bin (not larger than 6 feet by 6 feet by 6 feet) and the location where the bin would be situated as precisely as possible with an

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informal sketch of where the bin will be located in relationship buildings and lot lines;

- b) The manner in which the charitable organization or person anticipates any clothing or other donations collected via the bin would be used, sold or dispersed, and the method by which the proceeds of collected donations would be allocated or spent;
- c) The name, address, and telephone number of the bona fide office of the applicant and of any entity which may share or profit from any clothing or other donations collected via the bin;
- d) The schedule of pick-ups removing the articles from the bins, which can be no less often than once per week, and the name and telephone number of the person to be notified if the bin is overflowing prior to the scheduled date of pick-up; and
- e) The Clothing Bin is clearly labeled on three of the four sides with the name, address and telephone number of the charitable organization seeking to have people donate used clothing; and
- f) Written consent from the property owner, or the owner's authorized representative, to place the bin on his/her property.

2. The Zoning Officer shall not grant an application for a permit to place, use, or employ a donation clothing bin if he/she determines that the placement of the bin is either in the front yard setback or could constitute a safety hazard. Such hazards may include, but are not limited to, the placement of a donation clothing bin in parking spaces, in any area that interferes with pedestrian or vehicular traffic, or any place which stores large amounts of, or sells, fuel or other flammable liquids or gases.

3. The fee for such application for the zoning permit shall be \$150.00.

4. An expiring permit for a donation clothing bin may be renewed by a charitable organization or person upon payment of the \$100.00 renewal fee and by application that shall include the following information:

- a) The location where the bin is situated, as precisely as possible, and, if applicant intends to move it, the new location where the bin would be situated after the renewal is granted;

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- b) The manner in which the person has used, sold or dispersed any clothing or other donations collected via the bin, the method by which the proceeds of collected donations have been allocated or spent, and any changes the person anticipates it may make in these processes during the period covered by the renewal;
- c) The name, address and telephone number of the bona fide office of the applicant and any entity which shared or profited from any clothing or other donations collected via the bin, and of any entities which may do so during the period covered by the renewal;
- d) The schedule of pick-ups removing the articles from the bins, which can be no less often than once per week, and the name and telephone number of the person to be notified if the bin is overflowing prior to the date of pick-up; and
- e) Written consent from the property owner, or the owner's authorized representative, to place the bin on his/her property;

5. The following information shall be clearly and conspicuously written in either paint or permanent marker on the exterior of the donation clothing bin:

- a) The name and address of the registered charitable organization or person that owns the bin, and of any other entity which may share or profit from any clothing or other donations collected via the bin.
- b) The telephone number of the organization's bona fide office and, if applicable, the telephone number of the bona fide office of any other entity which may share or profit from any clothing or other donations collected via the bin. The telephone number of an answering machine or service unrelated to the charitable organization does not satisfy this requirement.
- c) The charitable organization's registration number, permit number and its date of expiration.
- d) In cases when any entity other than the person who owns the bin may share or profit from any clothing or other donations collected via the bin, a notice, written in a clear and easily understandable manner, indicating that clothing or other donations collected via the bin, their proceeds, or both, may be shared, or given entirely to, an entity other than the person who owns the bin, and identifying all such entities which may share or profit

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from such donations.

- e) A statement, indicating the manner in which the charitable organization or person anticipates any clothing or other donations collected via the bin would be used, sold or dispersed, and the method by which the proceeds of collected donations would be allocated or spent.

6. Any clothing bin permitted hereunder shall be properly painted and maintained, and shall be free of material defects.

7. The Zoning Officer or his designee shall receive and investigate, within 45 days, any complaints from the public about the bin.

- a. Whenever it appears to the Zoning Officer or his designee that an organization or a person has engaged in or is engaging in any act or practice in violation of this ordinance, the organization or person who placed the bin shall be issued a warning, stating that if the violation is not rectified or an appeal taken within 15 days, then the bin, any clothing or other donations collected via the bin will be sold at public auction. In addition to any other means used to notify the person who placed the bin, a warning shall be affixed to the exterior of the bin itself.
- b. In the event that the person who placed the bin does not rectify the violation or request a hearing within 15 days of the posting of the warning, the Borough may seize the bin, remove it or have it removed, at the expense of the person who placed the bin, and sell it at public auction or otherwise dispose of any clothing or other donations collected via the bin. Any proceeds from the sale of the donations collected via the bin shall be paid to the Borough.
- c. In addition to any other penalties or remedies under this ordinance, any person who violates any provision which results in the seizure of the donation clothing bin shall be subject to a penalty for each violation as specified pursuant to Article 7.

8. Any existing Clothing Bin within the Borough shall be permitted a grace period of 45 days from the publication of this ordinance to come into compliance or be removed.

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## § 225-392 Residential Zone Bulk Standards Charts.

## RESIDENTIAL ZONES BULK STANDARDS

STANDARD	R - 5	R - 5A	R - 6
Minimum lot size	5,000 SF	5,000 SF <sup>1</sup> 7,500 SF <sup>2</sup>	6,000 SF
Minimum lot width	50'	50'	60'
Front yard setback	25' <sup>3</sup> 23' <sup>4</sup>	25' 23'	25' 23'
One side yard setback	5'	5'	8'
Two side yard setbacks	20% of width	20% of width	25% of width
Rear yard setback	20'	20'	20'
Maximum height	35' 2.5 stories	35' 2.5 stories	35' 2.5 stories
Maximum building cover	50%	50%	50%
Maximum impervious cover	75%	75%	75%
Floor area ratio	.75	.75	.75

## NOTES

<sup>1</sup> Single family homes<sup>2</sup> Two family homes<sup>3</sup> First floor<sup>4</sup> Second floor

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## § 225-393 Commercial Zone Bulk Standards Chart

COMMERCIAL ZONES BULK STANDARDS					
STANDARD	B - D	A - C	C	O - R	I
Minimum lot area	2500 SF	40,000 SF	20,000 SF	10,000 SF	20,000 SF
Minimum lot width	25'	100'	100'	100'	100'
Minimum lot frontage	25'	100'	100'	100'	100'
Minimum lot depth	100'	200'	100'	100'	100'
Front yard setback	0'	50'	10'	40'	10'
One side yard setback	0' 5' <sup>1</sup>	15'	5'	15'	5'
Two side yard setbacks	0'	40'	15'	30'	15'
Rear yard setback	10' or 10% <sup>2</sup>	30'	10'	25'	10'
Maximum height	35'	40' 3 stories	35' 3 stories	40' 3 stories	40' 3 stories
Maximum building cover	80%	40%	50%	25%	50%
Maximum impervious cover	90%	80%	80%	75%	80%
Floor area ratio	250%	100%	125%	125%	125%
Open space ratio	10%	20%	20%	25%	20%

B - D = Boulevard Downtown Zone  
 A - C = Area Commercial Zone  
 C = Commercial Zone  
 O - R = Office Research Zone  
 I = Industrial Zone

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<sup>1</sup> To residential zone  
<sup>2</sup> Whichever is greater

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## PART 4 STORMWATER CONTROL

### 255-401: Scope and Purpose

#### A. Policy Statement

Flood control, groundwater recharge, and pollutant reduction through nonstructural or low impact techniques shall be explored before relying on structural BMPs. Structural BMPs should be integrated with nonstructural stormwater management strategies and proper maintenance plans. Nonstructural strategies include both environmentally sensitive site design and source controls that prevent pollutants from being placed on the site or from being exposed to stormwater. Source control plans should be developed based upon physical site conditions and the origin, nature, and the anticipated quantity or amount of potential pollutants. Multiple stormwater management BMPs may be necessary to achieve the established performance standards for water quality, quantity, and groundwater recharge.

#### B. Purpose

It is the purpose of this ordinance to establish minimum stormwater management requirements and controls for "major development," as defined in §255-402.

#### C. Applicability

(1) This ordinance shall be applicable to all site plans and subdivisions for the following

major developments that require preliminary or final site plan or subdivision review:

(a) Non-residential major developments; and

(b) Aspects of residential major developments that are not preempted by the Residential Site Improvement Standards at N.J.A.C. 5:21.

(2) This ordinance shall also be applicable to all major developments undertaken by the Borough of Kenilworth.

#### D. Compatibility with Other Permit and Ordinance Requirements

Development approvals issued for subdivisions and site plans pursuant to this ordinance are to be considered an integral part of development approvals under the subdivision and site plan review process and do not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated

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by any other applicable code, rule, act, or ordinance. in their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. This ordinance is not intended to interfere with, abrogate, or annul any other ordinances, rule or regulation, statute, or other provision of law except that, where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, the more restrictive provisions or higher standards shall control.

#### 255-402: Definitions Unique to This Section

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application. The definitions below are the same as or based on the corresponding definitions in the Stormwater Management Rules at N.J.A.C. 7:8-1.2.

"CAFRA Planning Map" means the geographic depiction of the boundaries for Coastal Planning Areas, CAFRA Centers, CAFRA Cores and CAFRA Nodes pursuant to N.J.A.C. 7:7E-5B.3.

"CAFRA Centers, Cores or Nodes" means those areas within boundaries accepted by the Department pursuant to N.J.A.C. 7:8E-5B.

"Compaction" means the increase in soil bulk density.

"Core" means a pedestrian-oriented area of commercial and civic uses serving the surrounding municipality, generally including housing and access to public transportation.

"County review agency" means an agency designated by the County Board of Chosen Freeholders to review municipal stormwater management plans and implementing ordinance(s). The county review agency may either be:

A county planning agency; or

A county water resource association created under N.J.S.A 58:16A-55.5, if the ordinance or

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resolution delegates authority to approve, conditionally approve, or disapprove municipal stormwater management plans and implementing ordinances.

"Department" means the New Jersey Department of Environmental Protection.

"Designated Center" means a State Development and Redevelopment Plan Center as designated by the State Planning Commission such as urban, regional, town, village, or hamlet.

"Design engineer" means a person professionally qualified and duly licensed in New Jersey to perform engineering services that may include, but not necessarily be limited to, development of project requirements, creation and development of project design and preparation of drawings and specifications.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure, any mining excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, by any person, for which permission is required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. In the case of development of agricultural lands, development means: any activity that requires a State permit; any activity reviewed by the County Agricultural Board (CAB) and the State Agricultural Development Committee (SADC), and municipal review of any activity not exempted by the Right to Farm Act , N.J.S.A 4:1C-1 et seq.

"Drainage area" means a geographic area within which stormwater, sediments, or dissolved materials drain to a particular receiving water body or to a particular point along a receiving water body.

"Environmentally critical areas" means an area or feature which is of significant environmental value, including but not limited to: stream corridors; natural heritage priority sites; habitat of endangered or threatened species; large areas of contiguous open space or upland forest; steep slopes; and well head protection and groundwater recharge areas. Habitats of endangered or threatened species are identified using the Department's Landscape Project as approved by the Department's Endangered and Nongame Species Program.

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"Empowerment Neighborhood" means a neighborhood designated by the Urban Coordinating Council "in consultation and conjunction with" the New Jersey Redevelopment Authority pursuant to N.J.S.A 55:1969.

"Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice or gravity.

"Impervious surface" means a surface that has been covered with a layer of material so that it is highly resistant to infiltration by water.

"Infiltration" is the process by which water seeps into the soil from precipitation.

"Major development" means any "development" that provides for ultimately disturbing one or more acres of land. Disturbance for the purpose of this rule is the placement of impervious surface or exposure and/or movement of soil or bedrock or clearing, cutting, or removing of vegetation.

"Municipality" means any city, borough, town, township, or village.

"Node" means an area designated by the State Planning Commission concentrating facilities and activities which are not organized in a compact form.

"Nutrient" means a chemical element or compound, such as nitrogen or phosphorus, which is essential to and promotes the development of organisms.

"Person" means any individual, corporation, company, partnership, firm, association, The Municipality, or political subdivision of this State subject to municipal jurisdiction pursuant to the Municipal Land Use Law , N.J.S.A. 40:55D-1 et seq.

"Pollutant" means any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, medical wastes, radioactive substance (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, agricultural, and construction waste or runoff, or other residue discharged directly or indirectly to the land, ground waters or surface waters of the State, or to a domestic treatment works. "Pollutant" includes both hazardous and nonhazardous pollutants.

"Recharge" means the amount of water from precipitation that infiltrates into the ground and is not evapotranspired.

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"Sediment" means solid material, mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water or gravity as a product of erosion.

"Site" means the lot or lots upon which a major development is to occur or has occurred. "Soil" means all unconsolidated mineral and organic material of any origin.

"State Development and Redevelopment Plan Metropolitan Planning Area (PA1)" means an area delineated on the State Plan Policy Map and adopted by the State Planning Commission that is intended to be the focus for much of the state's future redevelopment and revitalization efforts.

"State Plan Policy Map" is defined as the geographic application of the State Development and Redevelopment Plan's goals and statewide policies, and the official map of these goals and policies.

"Stormwater" means water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface, or is captured by separate storm sewers or other sewage or drainage facilities, or conveyed by snow removal equipment.

"Stormwater runoff" means water flow on the surface of the ground or in storm sewers, resulting from precipitation.

"Stormwater management basin" means an excavation or embankment and related areas designed to retain stormwater runoff. A stormwater management basin may either be normally dry (that is, a detention basin or infiltration basin), retain water in a permanent pool (a retention basin), or be planted mainly with wetland vegetation (most constructed stormwater wetlands).

"Stormwater management measure" means any structural or nonstructural strategy, practice, technology, process, program, or other method intended to control or reduce stormwater runoff and associated pollutants, or to induce or control the infiltration or groundwater recharge of stormwater or to eliminate illicit or illegal non-stormwater discharges into stormwater conveyances.

"Tidal Flood Hazard Area" means a flood hazard area, which may be influenced by stormwater runoff from inland areas, but which is primarily caused by the Atlantic Ocean.

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"Urban Coordinating Council Empowerment Neighborhood" means a neighborhood given priority access to State resources through the New Jersey Redevelopment Authority.

"Urban Enterprise Zones" means a zone designated by the New Jersey Enterprise Zone Authority pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et. seq.

"Urban Redevelopment Area" is defined as previously developed portions of areas:

- (1) Delineated on the State Plan Policy Map (SPPM) as the Metropolitan Planning Area (PA1), Designated Centers, Cores or Nodes;
- (2) Designated as CAFRA Centers, Cores or Nodes;
- (3) Designated as Urban Enterprise Zones; and
- (4) Designated as Urban Coordinating Council Empowerment Neighborhoods.

"Waters of the State" means the ocean and its estuaries, all springs, streams, wetlands, and bodies of surface or ground water, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

"Wetlands" or "wetland" means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

## 255-403: General Standards

### A. Design and Performance Standards for Stormwater Management Measures

- (1) Stormwater management measures for major development shall be developed to meet the erosion control, groundwater recharge, stormwater runoff quantity, and stormwater runoff quality standards in §255-44. To the maximum extent practicable, these standards shall be met by incorporating nonstructural stormwater management strategies into the design. If these strategies alone are not sufficient to meet these standards, structural stormwater management measures necessary to meet these standards shall be incorporated into the design.

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(2) The standards in this ordinance apply only to new major development and are intended to minimize the impact of stormwater runoff on water quality and water quantity in receiving water bodies and maintain groundwater recharge. The standards do not apply to new major development to the extent that alternative design and performance standards are applicable under a regional stormwater management plan or Water Quality Management Plan adopted in accordance with Department rules.

**255-404: Stormwater Management Requirements for Major Development**

A. The development shall incorporate a maintenance plan for the stormwater management measures incorporated into the design of a major development in accordance with §255-410.

B. Stormwater management measures shall avoid adverse impacts of concentrated flow on habitat

for threatened and endangered species as documented in the Department' Landscape Project or Natural Heritage Database established under N.J.S.A. 13:1B-15.147 through 15.150, particularly Helonias bullata (swamp pink) and/or Clemmys muhlenbergi (hog turtle).

C. The following linear development projects are exempt from the groundwater recharge, stormwater runoff quantity, and stormwater runoff quality requirements of §255-404.F and §255-404.G:

- (1) The construction of an underground utility line provided that the disturbed areas are revegetated upon completion;
- (2) The construction of an aboveground utility line provided that the existing conditions are maintained to the maximum extent practicable; and
- (3) The construction of a public pedestrian access, such as a sidewalk or trail with a maximum width of 14 feet, provided that the access is made of permeable material.

D. A waiver from strict compliance from the groundwater recharge, stormwater runoff quantity, and stormwater runoff quality requirements of §255-404.F and §255-404.G may be obtained for the enlargement of an existing public roadway or railroad; or the construction or enlargement of a public pedestrian access, provided that the following conditions are met:

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- (1) The applicant demonstrates that there is a public need for the project that cannot be accomplished by any other means;
- (2) The applicant demonstrates through an alternatives analysis, that through the use of nonstructural and structural stormwater management strategies and measures, the option selected complies with the requirements of §255-404.F and §255-404.G to the maximum extent practicable;
- (3) The applicant demonstrates that, in order to meet the requirements of § 255-404.F and §255-404.G, existing structures currently in use, such as homes and buildings, would need to be condemned; and
- (4) The applicant demonstrates that it does not own or have other rights to areas, including the potential to obtain through condemnation lands not falling under D.3 above within the upstream drainage area of the receiving stream, that would provide additional opportunities to mitigate the requirements of §255-404.F and §255-404.G that were not achievable on-site.

#### E. Nonstructural Stormwater Management Strategies

- (1) To the maximum extent practicable, the standards in §255-404.F and §255-404.G shall be met by incorporating nonstructural stormwater management strategies set forth at §255-404.E into the design. The applicant shall identify the nonstructural measures incorporated into the design of the project. If the applicant contends that it is not feasible for engineering, environmental, or safety reasons to incorporate any nonstructural stormwater management measures identified in Paragraph 2 below into the design of a particular project, the applicant shall identify the strategy considered and provide a basis for the contention.
- (2) Nonstructural stormwater management strategies incorporated into site design shall:

  - (a) Protect areas that provide water quality benefits or areas particularly susceptible to erosion and sediment loss;
  - (b) Minimize impervious surfaces and break up or disconnect the flow of runoff over impervious surfaces;
  - (c) Maximize the protection of natural drainage features and vegetation:

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(d) Minimize the decrease in the "time of concentration" from pre-construction to post construction. "Time of concentration" is defined as the time it takes for runoff to travel from the hydraulically most distant point of the watershed to the point of interest within a watershed;

(e) Minimize land disturbance including clearing and grading;

(f) Minimize soil compaction;

(g) Provide low-maintenance landscaping that encourages retention and planting of native vegetation and minimizes the use of lawns, fertilizers and pesticides;

(h) Provide vegetated open-channel conveyance systems discharging into and through stable vegetated areas;

(i) Provide other source controls to prevent or minimize the use or exposure of pollutants at the site, in order to prevent or minimize the release of those pollutants into stormwater runoff. Such source controls include, but are not limited to:

- [1] Site design features that help to prevent accumulation of trash and debris in drainage systems, including features that satisfy § 255-404.E.3. below;
- [2] Site design features that help to prevent discharge of trash and debris from drainage systems;
- [3] Site design features that help to prevent and/or contain spills or other harmful accumulations of pollutants at industrial or commercial developments; and
- [4] When establishing vegetation after land disturbance, applying fertilizer in accordance with the requirements established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., and implementing rules.

(3) Site design features identified under §255-404.E.2.i.(2) above shall comply with the following standard to control passage of solid and

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floatable materials through storm drain inlets. For purposes of this paragraph, "solid and floatable materials" means sediment, debris, trash, and other floating, suspended, or settleable solids. For exemptions to this standard see §255-404.E.3.c below.

(a) Design engineers shall use either of the following grates whenever they use a

grate in pavement or another ground surface to collect stormwater from that surface into a storm drain or surface water body under that grate:

[1] The New Jersey Department of Transportation (NJDOT) bicycle safe

grate, which is described in Chapter 2.4 of the NJDOT Bicycle Compatible Roadways and Bikeways Planning and Design Guidelines (April 1996); or

[2] A different grate, if each individual clear space in that grate has an area of no more than seven (7.0) square inches, or is no greater than 0.5 inches across the smallest dimension.

Examples of grates subject to this standard include grates in grate inlets, the grate portion (non-curb-opening portion) of combination inlets, grates on storm sewer manholes, ditch grates, trench grates, and grates of spacer bars in slotted drains. Examples of ground surfaces include surfaces of roads (including bridges), driveways, parking areas, bikeways, plazas, sidewalks, lawns, fields, open channels, and stormwater basin floors.

(b) Whenever design engineers use a curb-opening inlet, the clear space in that curb opening (or each individual clear space, if the curb opening has two or more clear spaces) shall have an area of no more than seven (7.0) square inches, or be no greater than two (2.0) inches across the smallest dimension.

(c) This standard does not apply:

[1] Where the review agency determines that this standard would cause inadequate hydraulic performance that could

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not practicably be overcome by using additional or larger storm drain inlets that meet these standards;

[2] Where flows from the water quality design storm as specified in §255-404.4.G. I are conveyed through any device (e.g., end of pipe netting facility, manufactured treatment device, or a catch basin hood) that is designed, at a minimum, to prevent delivery of all solid and floatable materials that could not pass through one of the following:

- [a] A rectangular space four and five-eighths inches long and one and one-half inches wide (this option does not apply for outfall netting facilities); or
- [b] A bar screen having a bar spacing of 0.5 inches.

(4) Where flows are conveyed through a trash rack that has parallel bars with one-inch (1") spacing between the bars, to the elevation of the water quality design storm as specified in §255-404.G.1; or

(5) Where the New Jersey Department of Environmental Protection determines, pursuant to the New Jersey Register of Historic Places Rules at N.J.A.C. 7:4-7.2(c), that action to meet this standard is an undertaking that constitutes an encroachment or will damage or destroy the New Jersey Register listed historic property.

(a) Any land area used as a nonstructural stormwater management measure to meet the performance standards in §255-404.F and §255-404.G shall be dedicated to a government agency, subjected to a conservation restriction filed with the appropriate County Clerk's office, or subject to an approved equivalent restriction that ensures that measure or an equivalent stormwater management measure approved by the reviewing agency is maintained in perpetuity.

(b) Guidance for nonstructural stormwater management strategies is available in the New Jersey Stormwater Best Management Practices Manual. The BMP Manual may be obtained from the address identified in §255-407, or found on the Department's website at [www.njstormwater.org](http://www.njstormwater.org).

## F. Erosion Control, Groundwater Recharge and Runoff Quantity Standards

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

(1) This subsection contains minimum design and performance standards to control erosion, encourage and control infiltration and groundwater recharge, and control stormwater runoff quantity impacts of major development.

(a) The minimum design and performance standards for erosion control are those established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. and implementing rules.

(b) The minimum design and performance standards for groundwater recharge are as follows:

[1] The design engineer shall, using the assumptions and factors for stormwater runoff and groundwater recharge calculations at §255-405, either:

[a] Demonstrate through hydrologic and hydraulic analysis that the site and its stormwater management measures maintain 100 percent of the average annual pre-construction groundwater recharge volume for the site; or

[b] Demonstrate through hydrologic and hydraulic analysis that the increase of stormwater runoff volume from pre-construction to post-construction for the 2-year storm is infiltrated.

[2] This groundwater recharge requirement does not apply to projects within the "urban redevelopment area," or to projects subject to (3) below.

[3] The following types of stormwater shall not be recharged:

[a] Stormwater from areas of high pollutant loading. I light pollutant loading areas are areas in industrial and commercial developments where solvents and/or petroleum products are loaded/unloaded, stored, or applied, areas where pesticides are loaded/unloaded or stored; areas where hazardous materials are expected to be present in greater than "reportable

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quantities" as defined by the United States Environmental Protection Agency (EPA) at 40 CFR 302.4; areas where recharge would be inconsistent with Department approved remedial action work plan or landfill closure plan and areas with high risks for spills of toxic materials, such as gas stations and vehicle maintenance facilities; and

[b] Industrial stormwater exposed to "source material." "Source material" means any material(s) or machinery, located at an industrial facility that is directly or indirectly related to process, manufacturing or other industrial activities, which could be a source of pollutants in any industrial stormwater discharge to groundwater. Source materials include, but are not limited to, raw materials; intermediate products; Final products; waste materials; by-products; industrial machinery and fuels, and lubricants, solvents, and detergents that are related to process, manufacturing, or other industrial activities that are exposed to stormwater.

[4]The design engineer shall assess the hydraulic impact on the ground water table and design the site so as to avoid adverse hydraulic impacts. Potential adverse hydraulic impacts include, but are not limited to, exacerbating a naturally or seasonally high water table so as to cause surface ponding, flooding of basements, or interference with the proper operation of subsurface sewage disposal systems and other subsurface structures in the vicinity or downgradient of the groundwater recharge area.

(c) In order to control stormwater runoff quantity impacts, the design engineer shall, using the assumptions and factors for stormwater runoff calculations at §255-405, complete one of the following:

[1] Demonstrate through hydrologic and hydraulic analysis that for stormwater leaving the site, post-construction runoff hydrographs for the two, 10, and 100-year storm events do not exceed, at any point in time, the pre-construction runoff hydrographs for the same storm events;

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[2] Demonstrate through hydrologic and hydraulic analysis that there is no increase, as compared to the pre-construction condition, in the peak runoff rates of stormwater leaving the site for the two, 10, and 100-year storm events and that the increased volume or change in timing of stormwater runoff will not increase flood damage at or downstream of the site. This analysis shall include the analysis of impacts of existing land uses and projected land uses assuming full development under existing zoning and land use ordinances in the drainage area;

[3] Design stormwater management measures so that the post-construction peak runoff rates for the 2, 10 and 100 year storm events are 50, 75 and 80 percent, respectively, of the pre-construction peak runoff rates. The percentages apply only to the post-construction stormwater runoff that is attributable to the portion of the site on which the proposed development or project is to be constructed. The percentages shall not be applied to post-construction stormwater runoff into tidal flood hazard areas if the increased volume of stormwater runoff will not increase flood damages below the point of discharge; or

[4] In tidal flood hazard areas, stormwater runoff quantity analysis in accordance with (1), (2) and (3) above shall only be applied if the increased volume of stormwater runoff could increase flood damages below the point of discharge.

(2) Any application for a new agricultural development that meets the definition of major development at §255-402 et seq. shall be submitted to the appropriate Soil Conservation District for review and approval in accordance with the requirements of this section and any applicable Soil Conservation District guidelines for stormwater runoff quantity and erosion control. For the purposes of this section, "agricultural development" means land uses normally associated with the production of food, fiber and livestock for sale. Such uses do not include the development of land for the processing or sale of food and the manufacturing of agriculturally related products.

## G. Stormwater Runoff Quality Standards

To maintain the alphabetical organization of the Borough Code, this Chapter has been renumbered to **Chapter 120** (ordinance #2018-14, Sept. 12, 2018).

(1) Stormwater management measures shall be designed to reduce the post-construction load of total suspended solids (TSS) in stormwater runoff by 80 percent of the anticipated load from the developed site, expressed as an annual average. Stormwater management measures shall only be required for water quality control if an additional 1/4 acre of impervious surface is being proposed on a development site. The requirement to reduce TSS does not apply to any stormwater runoff in a discharge regulated under a numeric effluent limitation for TSS imposed under the New Jersey Pollution Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A, or in a discharge specifically exempt under a NJPDES permit from this requirement. The water quality design storm is 1.25 inches of rainfall in two hours. Water quality calculations shall take into account the distribution of rain from the water quality design storm, as reflected in Table 1. The calculation of the volume of runoff may take into account the implementation of nonstructural and structural stormwater management measures.

**Table 1: Water Quality Design Storm Distribution**

Time(minutes)	Cumulative Rainfall (inches)	Time (Minutes)	Cumulative Rainfall (inches)
0	0.0000	65	0.8917
5	0.0083	70	0.9917
10	0.0166	75	1.0500
15	0.0250	80	1.0840
20	0.0500	85	1.1170
25	0.0750	90	1.1500
30	0.1000	95	1.1750
35	0.1330	100	1.2000
40	0.1660	105	1.2250
45	0.2000	110	1.2334
50	0.2583	115	1.2417
55	0.3583	120	1.2500
60	0.6250		

**Table 2: TSS Removal Rates for BMPs**

Best Management Practice	TSS Percent Removal Rate
Bioretention systems	90
Constructed stormwater wetland	90
Infiltration structure	40 to 60
Extended detention basin	80
Manufactured treatment device	See § 255-406C

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Sand filter	80
Vegetative filter strip	60 to 80
Wet pond	50 to 90

$$R = A + B - (AXB)/100$$

Where:

R = total TSS percent load removal from application of both BMPs, and

A = the TSS percent removal rate applicable to the first BMP

B = the TSS percent removal rate applicable to the second BMP

(2) If there is more than one onsite drainage area, the 80 percent TSS removal rate shall apply to each drainage area, unless the runoff from the subareas converge on site in which case the removal rate can be demonstrated through a calculation using a weighted average.

(3) Stormwater management measures shall also be designed to reduce, to the maximum extent feasible, the post-construction nutrient load of the anticipated load from the developed site in stormwater runoff generated from the water quality design storm. In achieving reduction of nutrients to the maximum extent feasible, the design of the site shall include nonstructural strategies and structural measures that optimize nutrient removal while still achieving the performance standards in §255-404.F and §255-404.G.

(4) Additional information and examples are contained in the New Jersey Stormwater Best Management Practices Manual, which may be obtained from the address identified in §255-407.

(5) In accordance with the definition of FW1 at N.J.A.C. 7:9B-1.4, stormwater management measures shall be designed to prevent any increase in stormwater runoff to waters classified as FW1.

(6) Special water resource protection areas shall be established along all waters designated Category One at N.J.A.C. 7:9B, and perennial or intermittent streams that drain into or upstream of the Category One waters as shown on the USGS Quadrangle Maps or in the County Soil Surveys, within the associated HUCI4 drainage area. These areas shall

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be established for the protection of water quality, aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, and exceptional fisheries significance of those established Category One waters. These areas shall be designated and protected as follows:

(a) The applicant shall preserve and maintain a special water resource protection area in accordance with one of the following:

[1] A 300-foot special water resource protection area shall be provided on each side of the waterway, measured perpendicular to the waterway from the top of the bank outwards or from the centerline of the waterway where the bank is not defined, consisting of existing vegetation or vegetation allowed to follow natural succession is provided.

[2] Encroachment within the designated special water resource protection area under Subsection (1) above shall only be allowed where previous development or disturbance has occurred (for example, active agricultural use, parking area or maintained lawn area). The encroachment shall only be allowed where applicant demonstrates that the functional value and overall condition of the special water resource protection area will be maintained to the maximum extent practicable. In no case shall the remaining special water resource protection area be reduced to less than 150 feet as measured perpendicular to the top of bank of the waterway or centerline of the waterway where the bank is undefined. All encroachments proposed under this subparagraph shall be subject to review and approval by the Department.

(b) All stormwater shall be discharged outside of and flow through the special water resource protection area and shall comply with the Standard for Off-Site Stability in the "Standards For Soil Erosion and Sediment Control in New Jersey," established under the Soil Erosion and Sediment Control Act , N.J.S.A. 4:24-39 et seq.

(c) If stormwater discharged outside of and flowing through the special water resource protection area cannot comply with the Standard For Off-Site Stability in the "Standards for Soil Erosion and Sediment Control in New Jersey," established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., then

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the stabilization measures in accordance with the requirements of the above standards may be placed within the special water resource protection area, provided that:

- [1] Stabilization measures shall not be placed within 150 feet of the Category One waterway;
- [2] Stormwater associated with discharges allowed by this section shall achieve a 95 percent TSS post-construction removal rate;
- [3] Temperature shall be addressed to ensure no impact on the receiving waterway;
- [4] The encroachment shall only be allowed where the applicant demonstrates that the functional value and overall condition of the special water resource protection area will be maintained to the maximum extent practicable;
- [5] A conceptual project design meeting shall be held with the appropriate Department staff and Soil Conservation District staff to identify necessary stabilization measures; and
- [6] All encroachments proposed under this section shall be subject to review and approval by the Department.

(d) A stream corridor protection plan may be developed by a regional stormwater management planning committee as an element of a regional stormwater management plan, or by a municipality through an adopted municipal stormwater management plan. If a stream corridor protection plan for a waterway subject to §255-404.G.8 has been approved by the Department of Environmental Protection, then the provisions of the plan shall be the applicable special water resource protection area requirements for that waterway. A stream corridor protection plan for a waterway subject to §255-404.G.8 shall maintain or enhance the current functional value and overall condition of the special water resource protection area as defined in §255-404.G.8.a above. In no case shall a stream corridor protection plan allow the reduction of the Special Water Resource Protection Area to less

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than 150 feet as measured perpendicular to the waterway subject to this subsection.

(e) Paragraph G.8 does not apply to the construction of one individual single family dwelling that is not part of a larger development on a lot receiving preliminary or final subdivision approval on or before February 2, 2004, provided that the construction begins on or before February 2, 2009.

255-405: Calculation of Stormwater Runoff and Groundwater Recharge

A. Stormwater runoff shall be calculated in accordance with the following:

(1) The design engineer shall calculate runoff using one of the following methods:

(a) The USDA Natural Resources Conservation Service (NRCS) methodology, including the NRCS Runoff Equation and Dimensionless Unit Hydrograph, as described in the NRCS National Engineering Handbook Section 4 — Hydrology and Technical Release 55 — Urban Hydrology for Small Watersheds; or

(b) The Rational Method for peak flow and the Modified Rational Method for hydrograph computations.

(2) For the purpose of calculating runoff coefficients and groundwater recharge, there is a presumption that the pre-construction condition of a site or portion thereof is a wooded land use with good hydrologic condition. The term "runoff coefficient" applies to both the NRCS methodology at §255-405.A.1.a and the Rational and Modified Rational Methods at §255-405.A. 1.b. A runoff coefficient or a groundwater recharge land cover for an existing condition may be used on all or a portion of the site if the design engineer verifies that the hydrologic condition has existed on the site or portion of the site for at least five years without interruption prior to the time of application. If more than one land cover have existed on the site during the five years immediately prior to the time of application, the land cover with the lowest runoff potential shall be used for the computations. In addition, there is the presumption that the site is in good hydrologic condition (if the land use type is pasture, lawn, or park), with good cover (if the land use type is woods), or with good hydrologic condition and conservation treatment (if the land use type is cultivation).

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(3) In computing pre-construction stormwater runoff, the design engineer shall account for all significant land features and structures, such as ponds, wetlands, depressions, hedgerows, or culverts that may reduce pre-construction stormwater runoff rates and volumes.

(4) In computing stormwater runoff from all design storms, the design engineer shall consider the relative stormwater runoff rates and/or volumes of pervious and impervious surfaces separately to accurately compute the rates and volume of stormwater runoff from the site. To calculate runoff from unconnected impervious cover, urban impervious area modifications as described in the NRCS Technical Release 55 — Urban Hydrology for Small Watersheds and other methods may be employed.

(5) If the invert of the outlet structure of a stormwater management measure is below the flood hazard design flood elevation as defined at N.J.A.C. 7:13, the design engineer shall take into account the effects of tailwater in the design of structural stormwater management measures.

B. Groundwater recharge may be calculated in accordance with the following:

(1) The New Jersey Geological Survey Report GSR-32 A Method for Evaluating Ground-Water Recharge Areas in New Jersey, incorporated herein by reference as amended and supplemented. Information regarding the methodology is available from the New Jersey Stormwater Best Management Practices Manual; at <http://www.state.nj.us/depnjgs/>; or at New Jersey Geological Survey, 29 Arctic Parkway, P.O. Box 427 Trenton, New Jersey 08625-0427; (609) 984-6587.

#### 255-406: Standards for Structural Stormwater Management Measures

A. Standards for structural stormwater management measures are as follows:

(1) Structural stormwater management measures shall be designed to take into account the existing site conditions, including, for example, environmentally critical areas, wetlands; flood-prone areas; slopes; depth to seasonal high water table; soil type, permeability and texture; drainage area and drainage patterns; and the presence of solution-prone carbonate rocks (limestone).

(2) Structural stormwater management measures shall be designed to minimize maintenance, facilitate maintenance and repairs, and ensure proper functioning. Trash racks shall be installed at the intake to the outlet

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structure as appropriate, and shall have parallel bars with one-inch (1") spacing between the bars to the elevation of the water quality design storm. For elevations higher than the water quality design storm, the parallel bars at the outlet structure shall be spaced no greater than one-third (1/3) the width of the diameter of the orifice or one-third (1/3) the width of the weir, with a minimum spacing between bars of one-inch and a maximum spacing between bars of six inches. In addition, the design of trash racks must comply with the requirements of §255-408.D.

(3) Structural stormwater management measures shall be designed, constructed, and installed to be strong, durable, and corrosion resistant. Measures that are consistent with the relevant portions of the Residential Site Improvement Standards at N.J.A.C. 5:21-7.3, 7.4, and 7.5 shall be deemed to meet this requirement.

(4) At the intake to the outlet from the stormwater management basin, the orifice size shall be a minimum of two and one-half inches in diameter.

(5) Stormwater management basins shall be designed to meet the minimum safety standards for stormwater management basins at §255-408.

B. Stormwater management measure guidelines are available in the New Jersey Stormwater Best Management Practices Manual. Other stormwater management measures may be utilized provided the design engineer demonstrates that the proposed measure and its design will accomplish the required water quantity, groundwater recharge and water quality design and performance standards established by §255-404 of this ordinance.

C. Manufactured treatment devices may be used to meet the requirements of §255-404 of this ordinance, provided the pollutant removal rates are verified by the New Jersey Corporation for Advanced Technology and certified by the Department.

#### 255-407: Sources for Technical Guidance

A. Technical guidance for stormwater management measures can be found in the documents listed at 1 and 2 below, which are available from Maps and Publications, New Jersey Department of Environmental Protection, 428 East State Street, P.O. Box 420, Trenton, New Jersey, 08625; telephone (609) 777-1038.

(1) Guidelines for stormwater management measures are contained in

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the New Jersey Stormwater Best Management Practices Manual, as amended. Information is provided on stormwater management measures such as: bioretention systems, constructed stormwater wetlands, dry wells, extended detention basins, infiltration structures, manufactured treatment devices, pervious paving, sand filters, vegetative filter strips, and wet ponds.

(2) The New Jersey Department of Environmental Protection Stormwater Management Facilities Maintenance Manual, as amended.

B. Additional technical guidance for stormwater management measures can be obtained from the following:

- (1) The "Standards for Soil Erosion and Sediment Control in New Jersey" promulgated by the State Soil Conservation Committee and incorporated into N.J.A.C. 2:90. Copies of these standards may be obtained by contacting the State Soil Conservation Committee or any of the Soil Conservation Districts listed in N.J.A.C. 2:90-1.3(a)4. The location, address, and telephone number of each Soil Conservation District may be obtained from the State Soil Conservation Committee, P.O. Box 330, Trenton, New Jersey 08625; (609) 292-5540;
- (2) The Rutgers Cooperative Extension Service, 732-932-9306; and
- (3) The Soil Conservation Districts listed in N.J.A.C. 2:90-1.3(a)4. The location, address, and telephone number of each Soil Conservation District may be obtained from the State Soil Conservation Committee, P.O. Box 330, Trenton, New Jersey, 08625, (609) 2925540.

#### 255-408: Safety Standards for Stormwater Management Basins

A. This section sets forth requirements to protect public safety through the proper design and operation of stormwater management basins. This section applies to any new stormwater management basin.

Note to the Applicant: The provisions of this section are not intended to preempt more stringent municipal or county safety requirements for new or existing stormwater management basins. Municipal and county stormwater management plans and ordinances may, pursuant to their authority, require existing stormwater management basins to be retrofitted to meet one or more of the safety standards in Sections 8.13.1, 8.B.2, and 8.B.3 for trash racks, overflow grates, and escape provisions at outlet structures.

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## B. Requirements for Trash Racks, Overflow Grates and Escape Provisions

(1) A trash rack is a device designed to catch trash and debris and prevent the clogging of outlet structures. Trash racks shall be installed at the intake to the outlet from the stormwater management basin to ensure proper functioning of the basin outlets in accordance with the following:

- (a) The trash rack shall have parallel bars, with no greater than six inch spacing between the bars.
- (b) The trash rack shall be designed so as not to adversely affect the hydraulic performance of the outlet pipe or structure.
- (c) The average velocity of flow through a clean trash rack is not to exceed 2.5 feet per second under the full range of stage and discharge. Velocity is to be computed on the basis of the net area of opening through the rack.
- (d) The trash rack shall be constructed and installed to be rigid, durable, and corrosion resistant, and shall be designed to withstand a perpendicular live loading of 300 lbs./ft sq.

(2) An overflow grate is designed to prevent obstruction of the overflow structure. If an outlet structure has an overflow grate, such grate shall meet the following requirements:

- (a) The overflow grate shall be secured to the outlet structure but removable for emergencies and maintenance.
- (b) The overflow grate spacing shall be no less than two inches across the smallest dimension.
- (c) The overflow grate shall be constructed and installed to be rigid, durable, and corrosion resistant, and shall be designed to withstand a perpendicular live loading of 300 lbs./ft sq.

(3) For purposes of this paragraph 3, escape provisions means the permanent installation of ladders, steps, rungs, or other features that provide easily accessible means of egress from stormwater management basins. Stormwater management basins shall include escape provisions as follows:

- (a) If a stormwater management basin has an outlet structure, escape provisions shall be incorporated in or on the structure. With the prior approval of the reviewing agency identified in §255-407 a

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free-standing outlet structure may be exempted from this requirement.

(b) Safety ledges shall be constructed on the slopes of all new stormwater management basins having a permanent pool of water deeper than two and one-half feet. Such safety ledges shall be comprised of two steps. Each step shall be four to six feet in width. One step shall be located approximately two and one-half feet below the permanent water surface, and the second step shall be located one to one and one-half feet above the permanent water surface.

(c) In new stormwater management basins, the maximum interior slope for an earthen dam, embankment, or berm shall not be steeper than 3 horizontal to 1 vertical. C. Variance or Exemption from Safety Standards

[1].A variance or exemption from the safety standards for stormwater management basins may be granted only upon a written finding by the appropriate reviewing agency (municipality, county or Department) that the variance or exemption will not constitute a threat to public safety

## 255-409: Requirements for a Site Development Stormwater Plan

### A. Submission of Site Development Stormwater Plan

- (1) Whenever an applicant seeks municipal approval of a development subject to this ordinance, the applicant shall submit all of the required components of the Checklist for the Site Development Stormwater Plan at §255-409.C below as part of the submission of the applicant's application for subdivision or site plan approval.
- (2) The applicant shall demonstrate that the project meets the standards set forth in this ordinance.
- (3) The applicant shall submit [specify number] copies of the materials listed in the checklist for site development stormwater plans in accordance with §255-409.C of this ordinance.

### B. Site Development Stormwater Plan Approval

The applicant's Site Development project shall be reviewed as a part of the subdivision or site plan review process by the municipal board or official from

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whom municipal approval is sought. That municipal board or official shall consult the engineer retained by the Planning and/or Zoning Board (as appropriate) to determine if all of the checklist requirements have been satisfied and to determine if the project meets the standards set forth in this ordinance.

### C. Checklist Requirements

The following information shall be required:

#### (1) Topographic Base Map

The reviewing engineer may require upstream tributary drainage system information as necessary. It is recommended that the topographic base map of the site be submitted which extends a minimum of 200 feet beyond the limits of the proposed development, at a scale of 1"=200' or greater, showing 2-foot contour intervals. The map as appropriate may indicate the following: existing surface water drainage, shorelines, steep slopes, soils, erodible soils, perennial or intermittent streams that drain into or upstream of the Category One waters, wetlands and flood plains along with their appropriate buffer strips, marshlands and other wetlands, pervious or vegetative surfaces, existing man-made structures, roads, bearing and distances of property lines, and significant natural and manmade features not otherwise shown.

#### (2) Environmental Site Analysis

A written and graphic description of the natural and man-made features of the site and its environs. This description should include a discussion of soil conditions, slopes, wetlands, waterways and vegetation on the site. Particular attention should be given to unique, unusual, or environmentally sensitive features and to those that provide particular opportunities or constraints for development.

#### (3) Project Description and Site Plan(s)

A map (or maps) at the scale of the topographical base map indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural facilities for stormwater management and sediment control, and other permanent structures. The map(s) shall also clearly show areas where alterations occur in the natural terrain and cover, including lawns and other landscaping, and seasonal high ground water elevations.

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A written description of the site plan and justification of proposed changes in natural conditions may also be provided.

#### (4) Land Use Planning and Source Control Plan

This plan shall provide a demonstration of how the goals and standards of Sections 3 through 6 are being met. The focus of this plan shall be to describe how the site is being developed to meet the objective of controlling groundwater recharge, stormwater quality and stormwater quantity problems at the source by land management and source controls whenever possible.

#### (5) Stormwater Management Facilities Map

The following information, illustrated on a map of the same scale as the topographic base map, shall be included:

- (a) Total area to be paved or built upon, proposed surface contours, land area to be occupied by the stormwater management facilities and the type of vegetation thereon, and details of the proposed plan to control and dispose of stormwater.
- (b) Details of all stormwater management facility designs, during and after construction, including discharge provisions, discharge capacity for each outlet at different levels of detention and emergency spillway provisions with maximum discharge capacity of each spillway.

#### (6) Calculations

- (a) Comprehensive hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms specified in §255-404 of this ordinance.
- (b) When the proposed stormwater management control measures (e.g., infiltration basins) depends on the hydrologic properties of soils, then a soils report shall be submitted. The soils report shall be based on onsite boring logs or soil pit profiles. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soils present at the location of the control measure.

#### (7) Maintenance and Repair Plan

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The design and planning of the stormwater management facility shall meet the maintenance requirements of §255-410.

(8) Waiver from Submission Requirements

The municipal official or board reviewing an application under this ordinance may, in consultation with the Borough Engineer, waive submission of any of the requirements in §255-409.C.1 through §255-409.C.6 of this ordinance when it can be demonstrated that the information requested is impossible to obtain or it would create a hardship on the applicant to obtain and its absence will not materially affect the review process.

255-410: Maintenance and Repair

A. Applicability

(1) Projects subject to review as in §255-401 et seq. of this ordinance shall comply with the requirements of §255-410.B and §255-410.C.

B. General Maintenance

(1) The design engineer shall prepare a maintenance plan for the stormwater management measures incorporated into the design of a major development.

(2) The maintenance plan shall contain specific preventative maintenance tasks and schedules; cost estimates, including estimated cost of sediment, debris, or trash removal; and the name, address, and telephone number of the person or persons responsible for preventative and corrective maintenance (including replacement). Maintenance guidelines for stormwater management measures are available in the New Jersey Stormwater Best Management Practices Manual. If the maintenance plan identifies a person other than the developer (for example, a public agency or homeowners' association) as having the responsibility for maintenance, the plan shall include documentation of such person's agreement to assume this responsibility, or of the developer's obligation to dedicate a stormwater management facility to such person under an applicable ordinance or regulation.

(3) Responsibility for maintenance shall not be assigned or transferred to the owner or tenant of an individual property in a residential development or project, unless such owner or tenant owns or leases the entire residential development or project.

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(4) If the person responsible for maintenance identified under §255-410.B above is not a public agency, the maintenance plan and any future revisions based on §255-410.B.7 below shall be recorded upon the deed of record for each property on which the maintenance described in the maintenance plan must be undertaken.

(5) Preventative and corrective maintenance shall be performed to maintain the function of the stormwater management measure, including repairs or replacement to the structure; removal of sediment, debris, or trash; restoration of eroded areas; snow and ice removal; fence repair or replacement; restoration of vegetation; and repair or replacement of nonvegetated linings.

(6) The person responsible for maintenance identified under §255-410.B.2 above shall maintain a detailed log of all preventative and corrective maintenance for the structural stormwater management measures incorporated into the design of the development, including a record of all inspections and copies of all maintenance-related work orders.

(7) The person responsible for maintenance identified under §255-410.B.2 above shall evaluate the effectiveness of the maintenance plan at least once per year and adjust the plan and the deed as needed.

(8) The person responsible for maintenance identified under §255-410.B.2 above shall retain and make available, upon request by any public entity with administrative, health, environmental, or safety authority over the site, the maintenance plan and the documentation required by §255-410.B.6 and §255-410.B.7 above.

(9) The requirements of §255-410.B.3 and §255-410.B.4 do not apply to stormwater management facilities that are dedicated to and accepted by the municipality or another governmental agency.

(10) In the event that the stormwater management facility becomes a danger to public safety or public health, or if it is in need of maintenance or repair, the municipality shall so notify the responsible person in writing. Upon receipt of that notice, the responsible person shall have fourteen (14) days to effect maintenance and repair of the facility in a manner that is approved by the municipal engineer or his designee. The municipality, in its discretion, may extend the time allowed for effecting maintenance and repair for good cause. If the responsible person fails or refuses to perform such maintenance and repair, the municipality or County may

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immediately proceed to do so and shall bill the cost thereof to the responsible person.

(11) A two year maintenance guarantee in accordance with N.J.S.A. 40:55D-53 shall be posted for the maintenance of the stormwater facilities.

(12) Guidelines for developing a maintenance and inspection program are provided in the New Jersey Stormwater Best Management Practices Manual and the NJDEP Ocean County Demonstration Study, Stormwater Management Facilities Maintenance Manual, dated June 1989 available from the NJDEP, Watershed Management Program.

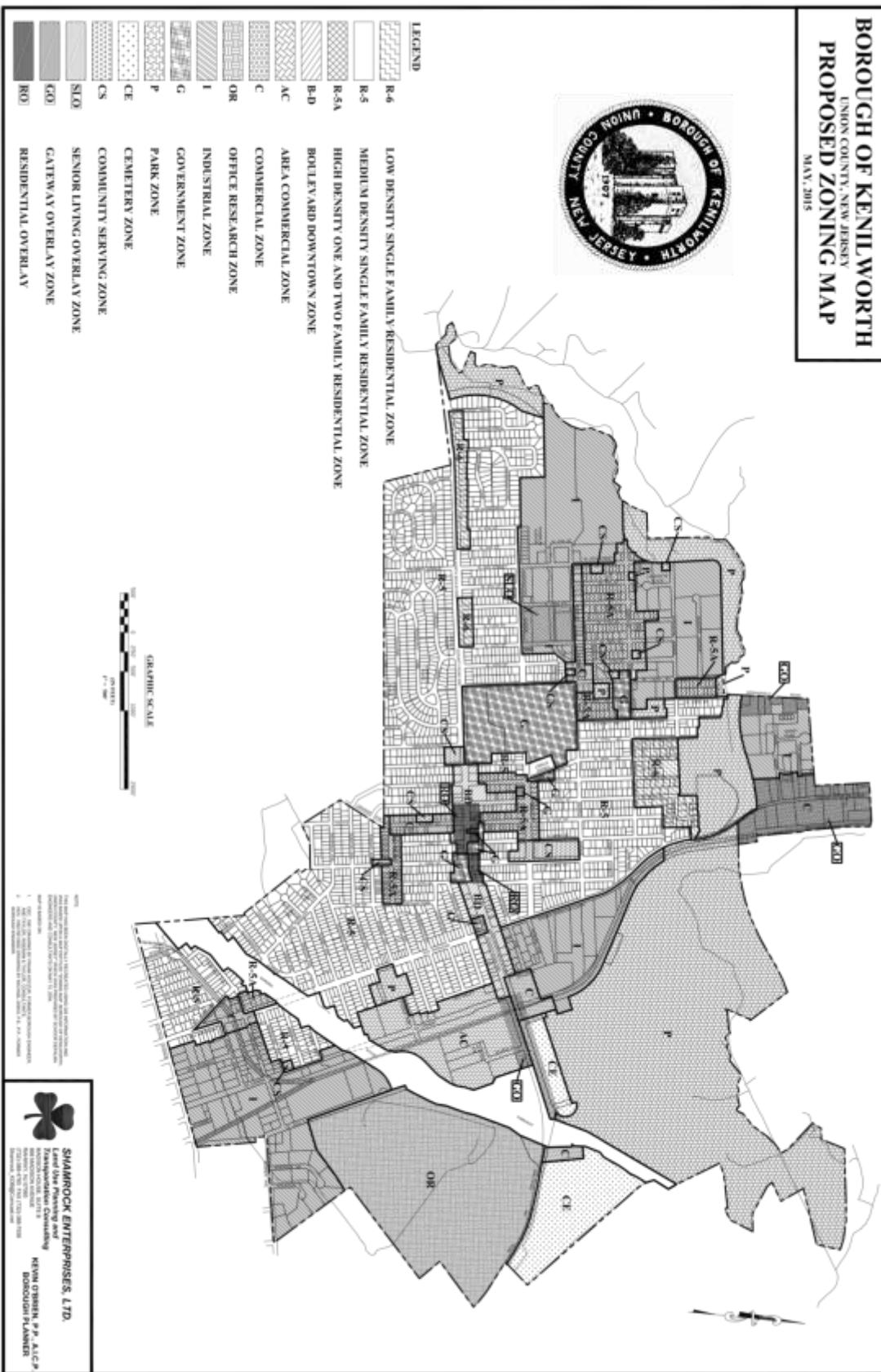
C . Nothing in this section shall preclude the municipality in which the major development is located from requiring the posting of a performance or maintenance guarantee in accordance with N.J.S.A. 40:55D-53.

#### 255-411: Penalties

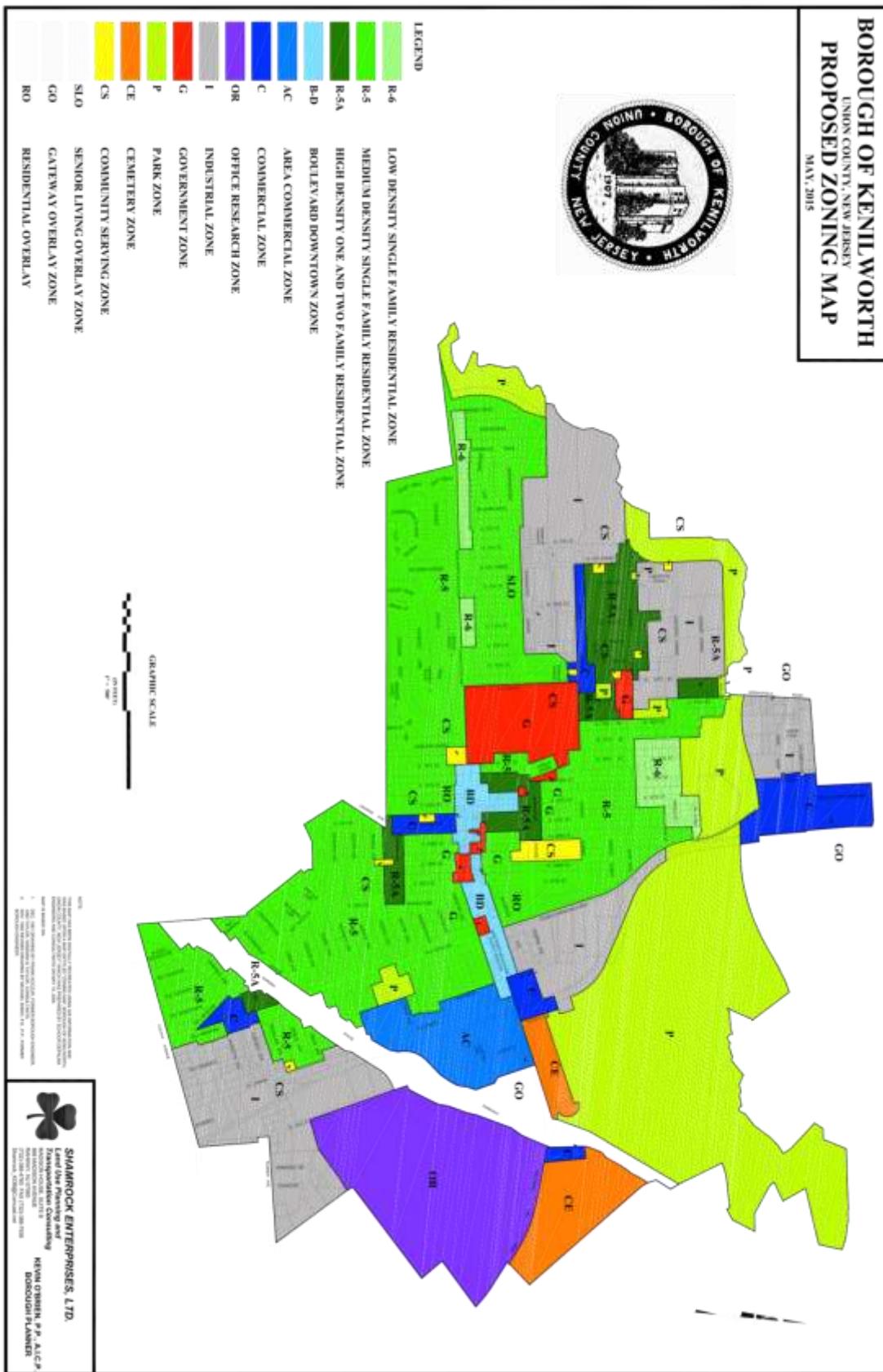
Any person who erects, constructs, alters, repairs, converts, maintains, or uses any building, structure or land in violation of this ordinance shall be subject to the following penalties: A fine of up to \$1500.00, or imprisonment of up to 90 days, or both; each day that a violation continues shall be deemed a separate violation.

**BOROUGH OF KENILWORTH**  
UNION COUNTY, NEW JERSEY  
**PROPOSED ZONING MAP**

CHINESE



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