

ARTICLE I
Short Title

§ 17-0. SHORT TITLE. [Ord. No. 91-18]

This chapter shall be known and cited as the "Land Development Ordinance of the Borough of Mount Arlington."¹

Additional amendments noted where applicable.

1. Editor's Note: Chapter 17 was adopted by Ordinance No. 91-18 on December 18, 1991. Chapter 17 was updated and revised through October 6, 2015 and accepted by the Borough Council on November 10, 2015 by Ordinance No. 12-2015.

ARTICLE II
General Provisions

§ 17-1. PURPOSES.

a. The purposes of this Chapter are as follows:

- (1) To plan and guide the appropriate use or development of all land in a manner which will promote the public health, safety, morals, and general welfare;
- (2) To secure safety from fire, flood, panic and other natural and man-made disasters;
- (3) To provide adequate light, air and open space;
- (4) To ensure that land development does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole;
- (5) To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, maintenance of the character of neighborhoods, preservation of the environment and quality of life;
- (6) To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;
- (7) To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, and commercial uses and open space, both public and private, according to their respective environmental requirements; **[Ord. No. 99-9 § 2]**
- (8) To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging the location of such facilities and routes which will result in congestion or blight;
- (9) To promote a desirable visual environment through creative development techniques and good civic design and arrangements;
- (10) To promote the conservation of open space and valuable natural resources and to prevent urban sprawl and degradation of the environment through improper use of land;
- (11) To encourage planned developments which incorporate the best features of design and relate the type, design and layout of residential, commercial, and recreational development to the particular site; **[Ord. No. 99-9 § 2]**
- (12) To encourage senior citizen community housing construction;
- (13) To encourage coordination of 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;

- (14) To promote utilization of renewable energy resources;
- (15) 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;
- (16) To regulate the location of buildings and establish standards of development; to establish building lines and the location of buildings designed for residential, commercial office or other uses within such lines and to fix reasonable standards to which buildings or structures shall conform; **[Ord. No. 99-9 § 2]**
- (17) To prohibit incompatible uses; to prohibit uses, buildings or structures which are incompatible with the character of development of the permitted uses within specified zoning districts and surrounding areas;
- (18) To regulate alterations of existing buildings; to prevent such additions to, and alterations or remodeling of, existing buildings or structures as would not comply with the restrictions and limitations imposed hereunder;
- (19) To conserve the value of land and buildings throughout the Borough;
- (20) Within the community's resources, to meet the future housing needs of the citizens of the Borough and the region and to assure a full range of housing types to meet all income levels;
- (21) To minimize the increase in volume and rate of surface runoff due to development;
- (22) To reduce public expenditures for emergency operations, evacuations, and restorations;
- (23) To prevent damage to transportation and utility systems;
- (24) To maintain the useful life of natural and man-made waterways and impoundments by preventing sedimentation;
- (25) To prevent dangers to life and property from excessive water runoff and clogging of drainage structures;
- (26) To preserve the recreational use of Lake Hopatcong by preventing stagnation and retarding eutrophication;
- (27) To maintain sufficient flows in streams and rivers for recreation, health and aesthetic purposes;
- (28) To prevent hazardous materials, nitrates and pesticides from entering public water supplies and Lake Hopatcong and other bodies of water; and

- (29) To reduce public expenditures for repair of public facilities resulting from soil erosion and sedimentation.

§ 17-2. DEFINITIONS.

For the purpose of this Chapter, unless the context clearly indicates a different meaning, the term "shall" indicates a mandatory requirement, and the term "may" indicates a permissive action. The singular shall also mean the plural and person shall also mean other legal entities.

ABUTTING COUNTY ROAD — Any existing or proposed county road shown on the adopted County Master Plan or Official Map which adjoins, abuts, or lies within a lot or parcel of land submitted for subdivision or site plan approval.

ACCESSORY USE OR STRUCTURE — A use or structure subordinate to and customarily incidental to the principal use or structure on the same lot. When an accessory building is attached in a substantial manner by a wall or roof to a principal building or structure, it shall be considered a part thereof.

ADMINISTRATIVE OFFICER — Board Secretary. **[Amended by Ord. No. 12-2015]**

ADVERSE DRAINAGE CONDITION — The absence of drainage facilities, drainage easements or drainage rights-of-way leading to, along or through a street, road, drainage structure, or property, either within or exterior to a proposed subdivision or site plan of such location, size, design, construction or condition, which would provide adequately for storm drainage, or which would prevent flooding, erosion, silting or other damaging effect to a street, road, drainage structure or property, or remove the threat of such damage.

AGE-RESTRICTED HOUSING — Housing designed and occupied by at least one person 55 years of age or older per dwelling unit. **[Ord. No. 00-02A § 5]**

AGRICULTURAL USE — The use of the land for business purposes for the growing and harvesting of crops including truck farms, fruit farms, nurseries and greenhouses, keeping and raising of livestock, horses, and poultry, barns, and storage buildings use in farm operations, which lands shall contain no less than five acres, exclusive of the land upon which the farmhouse is located as provided in N.J.S.A. 54:4-23.3, 4-23.4, 4-23.5, and 4-23.11.

ALLEY — A minor way which is used primarily for vehicular service access to the back or the side of properties otherwise abutting on a street.

ANIMAL HOSPITAL — A place where animals or pets are given medical or surgical treatment. Use as a kennel shall be limited to short-term boarding and shall be accessory and incidental to such hospital use.

ANIMAL KENNEL — Any building, structure or premises in which animals are kept, boarded, bred or trained for commercial gain.

ANTENNAS — A device used to transmit and/or receive radio or electromagnetic waves between earth and/or outer space-based structures. **[Ord. No. 00-12 § 1]**

APARTMENT — See "Dwelling, Multifamily."

APPLICANT — A developer submitting an application for development.

APPLICATION FOR DEVELOPMENT — The application form and all accompanying documents required for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit pursuant to this Chapter.

APPROVED PLAN — A plan which has been granted final approval of the Planning Board [or Board of Adjustment] of the Borough.

APPROVING AUTHORITY — The Mount Arlington Planning Board unless a different agency is designated by this Chapter.

AS-BUILT PLANS — Original design documents which have been certified to reflect that actual construction conforms to the documents or modified to reflect actual construction.

ASSISTED LIVING FACILITY — Residences for the frail elderly that provide rooms, meals, personal care, and supervision of self-administered medication. They may provide other services, such as recreational activities, financial services, and transportation. Assisted living facilities shall have a Certificate of Need (CN) and a state license. **[Ord. No. 97-8 § 1]**

AUTOMOBILE SERVICE STATION — Any building, land area or other premises, or portion thereof, used for the retail dispensing or sales of vehicular fuels; servicing and repair of automobiles, and including as an accessory use the sale and installation of lubricants, tires, batteries and similar vehicle accessories.

AUTOMOTIVE REPAIR SERVICES AND GARAGES — Establishments primarily engaged in furnishing automotive repair, rental, leasing and parking services to the general public.

BASEMENT. — That portion of a building that is partly or completely below grade plane. A basement shall be considered as a story above grade plane where the finished surface of the floor above the basement is:

- (1) More than six feet above grade plane; or
- (2) More than 12 feet above the finished ground level at any point. **[Ord. No. 08-08 § 2]**

BLOCK — The area bounded by one or more streets or a municipal boundary of sufficient size to accommodate a lot or lots of the minimum size required in this Chapter.

BOARDERS — See "Roomers."

BOARDING HOUSE — See "Rooming House."

BOARDS — The Mount Arlington Planning Board and the previous Mount Arlington Zoning Board of Adjustment, as the case may be.

BOATHOUSE — Any enclosed structure over the waters of Lake Hopatcong used for the sole purpose of storing and mooring boats and boating equipment.

BOROUGH — The Borough of Mount Arlington.

BRIDGE — A structure having a clear span of more than 20 feet designed to convey vehicles and/or pedestrians over a watercourse, railroad, street, or any depression.

BUILDING — A combination of materials to form a construction adapted to permanent, temporary, or continuous occupancy and having a roof.

- (1) **BUILDING ACCESSORY** — A subordinate building on the same lot with the principal or main building occupied or devoted exclusively to an accessory use.
- (2) **BUILDING PRINCIPAL** — A building in which is conducted the principal use of the site on which it is situated.

BUILDING COVERAGE — That area of a lot or site which is occupied or proposed to be occupied by a building. (See also "Lot Coverage" and "Open Space.")

BUILDING HEIGHT — The vertical distance from grade plane to the average height of the highest roof surface. **[Ord. No. 08-08 § 2]**

BULKHEAD LINE — The highwater mark of 10.30 feet on the gauge on the dam as recorded at Lake Hopatcong State Park or the line established by the Bureau of Navigation, State Department of Environmental Protection, defining a lake's permanent shoreline.

CAPITAL IMPROVEMENT — A governmental construction project or acquisition of equipment or real property.

CAR DEALER, NEW — An establishment primarily engaged in the factory authorized retail sale of new cars; permitted accessory uses are the maintenance of a service and repair shop, the retail sale of used cars, car parts and accessories, the sale of used, of new and unused light vehicles no more than 8,000 pounds other than cars.

CAR DEALER, USED — An establishment primarily engaged in the sale of used cars.

CARPORT — A roofed structure providing space for the parking of motor vehicles and enclosed on not more than three sides.

CATWALK — Any structure extending transversely from the mainwalk.

CELLAR — A space with less than 1/2 of its floor-to-ceiling height above the average finished grade of the adjoining ground or with a floor-to-ceiling height of less than 6 1/2 feet. A cellar shall not be counted as a story.

CELLULAR TELECOMMUNICATIONS ANTENNA — An antenna that is intended for commercial transmission or reception of personal wireless telephone services communications, and including commercial mobile services communications, and common carrier wireless exchange access services, and also including 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. **[Ord. No. 00-12 § 1]**

CERTIFICATION — A signed, written statement by the appropriate officer that specific constructions, inspections, tests, or notices where required, have been performed and that such comply with this Chapter.

CHANNEL — A watercourse with a definite bed and banks which confine and conduct continuously or intermittently flowing water.

CIRCULATION — Systems, structures and physical improvements for the movement of people, goods, water, air, sewage or power by such means as streets, highways, railways, waterways, towers, airways, pipes and conduits, and the handling of people and goods by such means as terminals, stations, warehouses, and other storage buildings or transshipment points.

CLERK — The person selected by the Planning Board to act as secretary to carry out specific duties as directed by the Planning Board including the acceptance of applications of development.

CLOTHING BIN — A receptacle used or intended to be used for solicitation purposes within a municipality and within the meaning of P.L. 2007, c. 209. **[Ord. No. 06-09]**

CLUSTER — See "Residential Cluster."

COMMUNITY RESIDENCE FOR THE DEVELOPMENTALLY DISABLED — Any community residential facility licensed pursuant to P.L. 1977, c. 488 (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, half-way houses, intermediate care facilities, supervised apartment living arrangements, and hotels. Such a residence shall not be considered a health care facility within the meaning of the "Health Care Facilities Planning Act" (P.L. 1971, c. 136 (N.J.S.A. 26:2H-1 et seq.)). In the case of such a community residence housing mentally ill persons, such residence shall have been approved for a purchase of service contract or an affiliation agreement pursuant to such procedures as shall be established by regulation of the Division of Mental Health of the Department of Human Services.

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 regulation of the Department of Human Services pursuant to P.L. 1979, c. 337 (N.J.S.A. 30:14-1 et seq.) providing food, shelter, medical care, legal assistance, personal guidance, and other services to not more than 15 persons who have been victims of domestic violence, including any children of such victims, who temporarily require shelter and assistance in order to protect their physical or psychological welfare.

COMPLETE APPLICATION — An application completed as specified by this Chapter and the rules and regulations of the Boards and all accompanying documents required for approval of the application for development.

CONDITIONAL USE — A use permitted in a particular zoning district only upon 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 Chapter and upon the issuance of an authorization therefor by the Planning Board.

COUNTY MASTER PLAN — A composite of the plan elements for the physical development of Morris County, with the accompanying maps, plats, charts and

descriptive and explanatory matter adopted by the County Planning Board pursuant to N.J.S.A. 40:27-2 and N.J.S.A. 40:27-4.

COUNTY PLANNING BOARD — The Morris County Planning Board.

CRITICAL AREA — Sensitive natural lands and waters which when altered, would lead to the degradation of lands or water quality such as frequently flooded soils, water retention soils, potential prime aquifer recharge soils, slopes in excess of 15%, flood plains, wetlands, and stream corridors.

COURT — Any open, unoccupied area which is bounded by three or more building walls.

CUL-DE-SAC — The turnaround at the end of a dead-end street.

CULVERT — A structure with a clear span of 20 feet or less under a driveway, road, railroad or pedestrian walk, not incorporated in a closed system.

CUT — Portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface or excavated surface.

DAYS — Calendar days.

DEAD-END STREET — A street or portion of a street which is accessible by a single means of ingress or egress.

DEDICATION FOR STREET PURPOSES — A dedication of land for construction, reconstruction, widening, repairing, maintaining or improving a street, public or private, and for the construction, reconstruction or alteration of facilities related to the safety, convenience or carrying capacity of said street, including, but not limited to, curbing, pedestrian walkways, drainage facilities, traffic control devices and utilities in or along road rights-of-way.

DEVELOPER — The legal or beneficial owner or owners of a lot or of any land 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 or DEVELOP — The division of land into two or more parcels; lot line adjustments; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure; any mining, excavation, landfill or land disturbance or any use or extension of use of land, for which permission may be required pursuant to this Chapter. **[Ord. No. 08-08 § 2]**

DEVELOPMENT CLUSTER — See "Residential Cluster."

DEVELOPMENT, CONVENTIONAL — Development other than planned development or cluster development.

DEVELOPMENT, PLANNED — See "Planned Development."

DEVELOPMENT REGULATION — Zoning, subdivision, site plan, official map or other municipal regulation of the use and development of land or amendment thereto adopted and filed pursuant to the Municipal Land Use Law.

DEVELOPMENTALLY DISABLED PERSON — A person who is developmentally disabled as defined in Section 2 of P.L. 1977, c. 448 (N.J.S.A. 30:11B-2).

DIVERSION CHANNEL — A channel constructed across or at the bottom of a slope.

DOCK — Any structure extending lakeward of the bulkhead line for the purpose of mooring boats or for gaining access to moored boats.

DOMESTICATED ANIMALS — Animals produced or used in agriculture, including but not limited to horses, cattle, swine, sheep, goats, poultry, fowl, fur-bearing animals but excluding household pets.

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

DRIVE-IN RESTAURANT — A building or portion thereof where food and/or beverages are sold in a form ready for consumption and where all or a significant portion of the consumption of same takes place or is designed to take place outside the confines of the building in a motor vehicle or on the site.

DRIVE-IN USE — A use where all or part of the business may take place outside the confines of the principal structure with the customer remaining in a motor vehicle.

DRIVEWAY — An access way servicing a developed or undeveloped lot. For residential properties any parking areas connected to the access way shall be considered part of the driveway. **[Ord. No. 07-09]**

DWELLING, ATTACHED — A one-family dwelling attached to two or more one-family dwellings by common vertical walls.

DWELLING, DETACHED — A dwelling which is not attached to any other dwelling.

DWELLING, MULTIFAMILY — A building occupied or intended for occupancy as separate living quarters for two or more families or two or more households with direct access from the outside for each family or household or through a common hall. Further provided that separate cooking, sleeping and sanitary facilities are provided for the exclusive use of the occupants of each dwelling unit. Certain features of a multiple-family dwelling may be provided in common, such as off-street parking, yards and open space. Multiple-family dwellings may include buildings in cooperative or leasehold ownership or in condominium ownership. **[Ord. No. 07-09]**

DWELLING, PATIO HOME — A one-family dwelling on a separate lot with open space setbacks on three sides and with a court. Also known as zero lot line homes.

DWELLING, SEMI-DETACHED — A one-family dwelling attached to one other one-family dwelling by a common vertical wall.

DWELLING, SINGLE FAMILY — A building occupied or intended for occupancy exclusively by one family or one household with direct access from the outside and, further, provided with cooking, sleeping and sanitary facilities for the exclusive use of the occupants of the unit. **[Ord. No. 07-09]**

DWELLING UNIT — A single unit providing complete, independent living facilities for one or more persons living as a single family or housekeeping unit, including permanent provisions for living, sleeping, eating, cooking and sanitation. **[Ord. No.**

07-09]

EFFICIENCY APARTMENT — A single room which is occupied, or intended, arranged or designed to be occupied by one or more persons.

EMBANKMENT — A man-made or natural deposit of soil, rock or other materials. (See "Fill.")

ENCROACHMENT — Any obstruction within a delineated floodway; right-of-way or adjacent land.

ENVIRONMENTAL COMMISSION — A municipal advisory body created pursuant to N.J.S.A. 40:56A-1 et seq.

ENVIRONMENTAL IMPACT STATEMENT — A detailed analysis of the environmental consequences of a proposed development.

EROSION — The detachment, movement or wearing away of land surface, soil or rock by water, wind, ice or gravity.

ESSENTIAL SERVICES — The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies, or privately if approved by a municipal agency as part of a development plan approval, of underground gas, oil, electrical, telephone, steam, water or sewage transmission lines or systems, including water towers and underground and/or surface equipment including but not limited to: poles, wire, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, light stanchions, telephone lines, hydrants with other similar equipment and accessories therewith, reasonably necessary for the furnishing of adequate service to the zone or neighborhood where located in furtherance of the public health, safety or general welfare. "Essential services" shall also include firehouses or stations and first aid and emergency aid squad stations, and package sewage treatment plants located off-tract of a development approved by a municipal agency. Requirements for underground utilities shall be subject to requirements for underground utilities of the Public Utility Commission as well as other municipal ordinances, where appropriate.

EXCAVATION — Removal or recovery by any means whatsoever of minerals, mineral substances or organic substances, other than vegetation, from the water, land surface, or beneath the land surface, whether exposed or submerged. Normal agricultural activities shall not be considered to be excavation.

EXISTING GRADE — The vertical location of the ground surface prior to excavating or filling.

FAMILY — A group of individuals not necessarily related by blood, marriage, adoption or guardianship living together in a dwelling unit as a single intentionally structured relationship providing organization and stability. **[Ord. No. 07-09]**

FARM — An area of land which is actively devoted to agricultural or horticultural use which occupies no less than five acres, exclusive of the land upon which the farmhouse is located and such additional land as may provided in N.J.S.A. 54:4-23.3, 4-23.4, 4-23.11, except that livestock, poultry, fowl or other animals shall not be maintained on the premises for commercial gain unless incidental to the major agricultural activity.

FARM CONSERVATION PLAN — A plan which provides for use of land, within its capabilities and treatment, within practical limits, according to chosen use, to prevent further deterioration of soil and water resources.

FAST FOOD RESTAURANT — An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building or off premises.

FILL — Sand, gravel, earth or other materials of any composition whatsoever placed or deposited by any person or persons. Also embankment.

FINAL APPROVAL — The official action of the Planning Board [or Board of Adjustment] taken on a development plan which had been given preliminary approval and 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.

FLOOD or FLOODING — A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters;
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD DAMAGED POTENTIAL — The susceptibility of a specific land use at a particular location to damage by flooding and the potential of the specific land use to increase off-site flooding or flood-related damages.

FLOOD FRINGE AREA — That portion of the flood hazard area outside of the floodway based on the total area inundated during the regulatory base flood plus 25% of the regulatory base flood discharge.

FLOOD HAZARD AREA — The flood plain, consisting of the floodway and the flood fringe area.

FLOOD HAZARD DESIGN ELEVATION — The highest elevation, expressed in feet above sea level, of the level of floodwaters which delineates the flood fringe area.

FLOOD HAZARD MAP — A map which may be adopted by the Borough Council, herewith and attached hereto and made a part hereof and any amendment thereto.

FLOOD INSURANCE RATE MAP (FIRM) — The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD OF RECORD — [Deleted by Ord. No. 12-2015]

FLOOD PLAIN — The same as the "FLOOD HAZARD AREA."

FLOODWAY — The portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater and flood flow of any natural stream.

FLOOR AREA — Floor area shall include the summation of all horizontal floor areas

associated with all principal and accessory buildings and accessory structures that are intended for the sole use of the subject property. Open porches, decks or patios that do not include privacy walls or solid fencing on any one side shall not be included in the calculation.

The floor area of any buried floor level that is more than 65% buried shall be exempt and not included in the FAR calculation. Buried floor levels that are not exempt shall include the percentage of that floor level that is equivalent to the percentage of the exposed foundation walls. The calculation of the percent of exposed foundation walls shall be measured from the proposed grade located at a distance five feet off the perimeter of the buried floor level. The measurement shall be from the proposed grade to the bottom of the ceiling joists of the buried floor level. Floor levels that are less than six and one-half (6 1/2) feet high shall not be included in the calculations. **[Ord. No. 2008-08 § 2]**

FLOOR AREA RATION (FAR) — Floor area ratio shall be the ration of the floor area of all buildings and accessory structures associated with a lot to the lot area.

The calculation of floor area ratio (FAR) shall be provided by each applicant of a development plan. Applicants shall provide detailed calculations including supporting architectural plans for the determinations of the proposed FAR. A chart shall be provided establishing the floor area of each floor level of all buildings and structures that are required to be included in the calculation. **[Ord. No. 2008-08 § 2]**

FLY ASH — Particles of gas-borne matter, not including process material, arising from the combustion of solid fuel, such as coal or wood.

GARAGE — A building or structure used for the storage of one or more vehicles. If it is maintained for the resident occupant of the premises and no service is rendered to the public or any business conducted therein, it is a private garage. Any garage other than a private garage is a public garage.

GARAGED — To be stored or parked entirely within the perimeter walls of a garage, with the doors closed except for purposes of ingress and egress.

GARDEN APARTMENT — See "Dwelling, Multifamily."

GASOLINE SERVICE STATION — A place where gasoline, or other motor fuel is offered for sale to the public and deliveries are made directly into motor vehicles, and which may provide for the maintenance, service, storage, or washing of motor vehicles, or the sale of equipment and accessories.

GOVERNING BODY — The Borough Council of the Borough of Mount Arlington.

GOVERNMENT AGENCY — Any department, commission, independent agency or instrumentality of the United States and of the state of New Jersey, and any county, city, township, village, authority district or other governmental unit.

GRADE, FINISHED — The final grade or elevation of the ground surface conforming to the proposed design.

GRADE PLANE — A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6

feet from the building, between the building and a point six feet from the building. **[Ord. No. 08-08 § 1]**

GRADING — Any stripping, culling, filling, stockpiling or any combination thereof, including the land in its cut or filled condition.

GRADING PERMIT — A permit issued to authorize work to be performed under this Chapter.

GUEST HOUSE — Same as "Rooming House."

HABITABLE FLOOR AREA — Any dwelling space designed and/or used for living, sleeping, eating or cooking excluding storage, cellars and similar accessory spaces. **[Ord. No. 00-02A § 5]**

HABITABLE ROOM — Any room in a dwelling unit other than a kitchen or bathroom.

HAZARDOUS MATERIALS — Includes but is not limited to inorganic mineral acids of sulfur, fluorine, chlorine, nitrogen, chromium, phosphorous, selenium and arsenic and their common salts: lead, nickel and mercury and their inorganic salts or metallo-organic derivatives; and coal tar acids, such as phenols and cresols and their salts and all radioactive materials.

HEIGHT, STRUCTURE — See "Building Height."

HISTORIC SITE — Any building, structure, area or property that has been designated to be significant in the history, architecture, archaeology or culture of this State, its communities or the Nation pursuant to the Municipal Land Use Law.

HOME AGRICULTURE — The activity of producing principally for home use or consumptions, plants, animals or their products by man, including in a primary sense the growing, storage, preparation or where sales are incidental.

HOME ANIMAL AGRICULTURE — The activity of producing domesticated animals or their products for home use or consumption, including breeding, growing, caring, housing and product preparation where sales are incidental.

HOME OCCUPATION — Any activity carried out for gain by a resident conducted as an accessory use in his dwelling unit. Newspaper delivery shall not be considered a home occupation.

HOUSEHOLD — A family living together in one dwelling unit, on a nonseasonal basis with common access to all living areas and facilities and sharing living, sleeping, cooking and sanitary facilities on a nonprofit basis.

HOUSEKEEPING UNIT — See "Family." **[Ord. No. 07-09]**

IMPERVIOUS COVERAGE — A surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water.

LAND DISTURBANCE — Any activity involving the clearing, cutting, excavating, filling, grading and any other activity which causes land to be exposed to the danger of erosion.

LOT — A designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit.

LOT AREA — Lot area associated with the calculation for floor area ratio shall only include that portion of the lot that is available for improvements by the property owner. Land area that is restricted by State open waters, public roadways or supporting a structure that is not for the sole use of the subject property owner shall not be included in the calculation for determining floor area ratio. Land area that is occupied by an accessory structure or building that is not located on the subject property but is located adjacent to the subject property and is intended for the sole use of the owner of the subject property shall be included in the lot area. **[Ord. No. 2008-08 § 2]**

LOT, CORNER — A parcel of land either at the junction of and abutting on two or more intersecting streets, or abutting a single street at the point where the road tangents deflect by more than 45 degrees.

LOT COVERAGE — That portion of one lot or more than one lot which is improved or is proposed to be improved with buildings and structures, including but not limited to driveways, parking lots, pedestrian walkways, signs and other man-made improvements on the ground surface which are more impervious than the natural surface. (See also "Building Coverage" and "Open Space.")

LOT COVERAGE, IMPROVED — That portion of one or more than one lot which is improved or is proposed to be improved with principal and accessory buildings and structures, including driveways, parking lots, pedestrian walkways, signs and other man-made improvements on the ground surface.

LOT DEPTH — The average of the horizontal distances between the front lot line and the rear lot line, or extension thereof, measured perpendicular to the front lot line at either end and at the midpoint of the front lot line.

LOT FRONTAGE — The length of the front lot line.

LOT, INTERIOR — A parcel of land other than a corner lot.

LOT LINE — A line of record bounding a lot.

LOT LINE ADJUSTMENT — A subdivision of land where no new lot is created. **[Ord. No. 08-08 § 1]**

LOT LINE, FRONT — The lot line separating a lot from a street right-of-way.

LOT LINE, REAR — The lot line opposite the front lot line or lines, or in the case of triangular or otherwise irregularly shaped lots, a line 10 feet in length entirely within the lot, parallel to or at a maximum distance from the front lot line. On corner lots, there shall be no rear lot line.

LOT LINE, SIDE — Any lot line other than a front or rear lot line.

LOT, THROUGH — An interior lot which extends from one street to another.

LOT, WATERFRONT — Any lot adjoining a water body.

LOT WIDTH — The average distance between the side lot lines measured at the front lot line, and at the building setback line.

MAINTENANCE GUARANTEE — Any security, other than cash, which may be accepted by the Borough for the maintenance of any improvements required by this

article.

MAINWALK — Any structure extending into the lake from the shoreline, which is used for access to moored boats.

MARINA — Any public, semi-public or private facility capable of berthing or mooring five or more boats.

MASTER PLAN — A composite of one or more written or graphic proposals for the development of the Borough prepared and adopted pursuant to the Municipal Land Use Law.

MAYOR — The chief executive of the Borough of Mount Arlington.

MENTALLY ILL PERSON — A person who is afflicted with a mental illness as defined in N.J.S.A. 30:4-27.2, but shall not include a person who has been committed after having been found not guilty of a criminal offense by reason of insanity or having been found unfit to be tried on a criminal charge.

MOBILE HOME — A portable structure which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities.

MOBILE HOME PARK — A site containing spaces with required improvements and utilities for the long-term parking of mobile homes which may include services and facilities for the residents.

MULCHING — The application of suitable materials on the soil surface to conserve moisture, hold soil in place and aid in establishing plant cover.

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. **[Ord. No. 2008-16]**

MUNICIPAL LAND USE LAW — Revised New Jersey Statutes 40:55D-1 through 40:55D-163 as amended.

MUNICIPALITY — The Borough of Mount Arlington.

NATURAL GROUND SURFACE — The ground surface in its original state before any grading, excavation or filling.

NEW CONSTRUCTION — Structures for which the "start of construction" commenced on or after the effective date of this Chapter.

NONCONFORMING BUILDING — A building which does not conform to one or more of the regulations of this Chapter for the zone in which it is located.

NONCONFORMING LOT — A lot, the area, dimension or location of which was lawful prior to the adoption, revision or amendment of this Chapter, 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 STRUCTURE — A structure, the size, dimension, or location of which was lawful prior to the adoption, revision or amendment of this Chapter, but which 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 this Chapter, 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.

NUISANCE ELEMENT — A nuisance element is any smoke, solid particles or fly ash, odors, liquid wastes, solid wastes, radiation, noise, vibration, glare or heat.

NURSERY SCHOOL — A facility designed to provide daytime care, development, supervision, and instruction for six or more children under 13 years of age who are at the facility for less than 24 hours per day, and the facility is operated on a regular basis licensed by the State Department of Children and Families. (Also known as child care center.)**[Amended by Ord. No. 12-2015]**

NURSING HOME — A building providing shelter and/or supplemental health care for the elderly or infirm and meeting the standards, and licensed by the State of New Jersey, to operate as a nursing home.

OBSTRUCTION — Includes but is not limited to any structure, fill, excavation, channel modification, rock, gravel, refuse or matter in, along, across or projecting into any channel, watercourse or flood hazard area which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the flow of water might carry the same downstream to pose a danger to life or property.

OFFICIAL COUNTY MAP — The map, with changes and additions thereto, adopted and established, from time to time, by resolution of the Board of Chosen Freeholders of the County of Morris pursuant to N.J.S.A. 40:27-5.

OFFICIAL MAP — A map adopted in accordance with the Municipal Land Use Law, or any prior act authorizing such adoption, which map shall be deemed conclusive with respect to the location and width of the streets, public parks and playgrounds and drainage rights-of-way shown thereon.

OFFICIAL SOILS INTERPRETATION — The interpretations of the soils described in the Morris Soil Survey of the National Cooperative Soil Survey of the Soil Conservation Service, United States Department of Agriculture, published by the Morris County Soil Conservation District and adopted by resolution of the Morris County Planning Board.

OFFICIAL SOIL MAP — The individual map sheets that are part of the Morris County Soil Survey of the National Cooperative Soil Survey of the Soil Conservation Service, United States Department of Agriculture, published by the Morris County Soil Conservation District and adopted by resolution of the Morris County Planning Board.

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 a development application or 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.

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; provided that such area may be improved with only those buildings, structures, streets and off-street parking and other improvements that are designed to be incidental to the natural openness of the land. (See also "Building Coverage" and "Lot Coverage.")

OPEN SPACE, COMMON — An open space area within or related to a site designated as a development, and 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.

OPEN SPACE, GREEN — An area not occupied by structures or impervious surfaces.

OPEN SPACE, PUBLIC — An open space area conveyed or otherwise dedicated to the Borough or a Borough agency, board of education, state or county agency, or other public body for recreational and conservational uses.

OWNER — An individual, firm, association, syndicate, copartnership or corporation having sufficient proprietary interest to seek or authorize development of land under this Chapter.

PARKING AREA, PRIVATE — Any open area, including parking spaces, driveways and access aisles or other public way, used for the temporary storage of automobiles and other permitted vehicles for the private use of the owners or occupants of the lot on which the area is located.

PARKING AREA, PUBLIC — Any open area, including parking spaces, driveways and access aisles, other than a street or other public way, used for the temporary storage of automobiles and other permitted vehicles and available to the public, with or without compensation or as an accommodation for clients, customers and employees.

PARKING FACILITY — Any public or private parking area or garage.

PARTY IMMEDIATELY CONCERNED — For purposes of notice, any applicant for development, the owners of the subject property, and all owners of property and government agencies entitled to notice under this Chapter or the Municipal Land Use Law as amended.

PERCOLATION TEST — A test designed to determine the ability of ground to absorb water.

PERFORMANCE GUARANTEE — Any security, which may be accepted by the Township; provided that 10% of the total performance guarantee shall be in cash.

PERMIT — A certificate issued to perform work under this Chapter.

PERMITTED USE — Any use which shall be allowed, subject to the provisions of this

Chapter.

PERMITTEE — Any person to whom a permit is issued in accordance with this Chapter.

PERSON — A corporation, company, association, society, firm, partnership or joint-stock company, as well as an individual, the state and all political subdivisions of the state or any agency or instrumentality thereof.

PESTICIDE — Any substance or mixture of substances labeled, designed, intended for or capable of use in preventing, destroying, repelling, sterilizing or mitigating any insects, rodents, nematodes, predatory animals, fungi, weeds and other forms of plant or animal life or viruses, except viruses on or in persons or animals. The term "pesticide" shall also include any substance or mixture of substances labeled, designed or intended for use as a defoliant, desiccant or plant regulator.

PETS — Any domesticated animal normally maintained in or near the household of the owner thereof which does not constitute a nuisance, health or safety hazard, excluding exotic and nondomesticated animals.

PIER — A structure to moor boats to a dock or to which a deck, dock or other structure may be affixed.

PIERHEAD LINE — A line running parallel with the bulkhead line and extending not more than 50 feet from said bulkhead line as approved by the Natural Resources Council and Bureau of Navigation, State Department of Environmental Protection, beyond which no dock, pier or marina or other structure, permanent or temporary, floating or affixed to shore or lake bottom, may be located.

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

PLANNED DEVELOPMENT — Any development which is a planned unit development, planned unit residential development, residential cluster, planned commercial development or planned industrial development.

PLANNED INDUSTRIAL DEVELOPMENT — An area of a minimum contiguous size as specified by this Chapter to be developed according to a plan as a single entity containing one or more structures with appurtenant common areas to accommodate industrial uses and any other uses incidental to the predominant use as may be permitted by this Chapter.

PLANNED RESIDENTIAL DEVELOPMENT — An area with a specified minimum contiguous acreage of five acres or more to be developed as a single entity according to a plan containing one or more residential clusters, which may include appropriate commercial or public or quasi-public uses all primarily for the benefit of the residential development.

PLANNED UNIT DEVELOPMENT — An area with a specified minimum contiguous acreage of five acres or more to be developed as a single entity according to a plan, containing one or more residential clusters or planned unit residential developments and

one or more public, quasi-public, commercial or industrial areas in such ranges of ratios of nonresidential uses to residential uses as shall be specified in the zoning ordinance.

PLANNING BOARD — The Planning Board of the Borough.

PLAT — A map or maps of a subdivision or site plan.

PLAT, FINAL — The final map of all or a portion of a subdivision or site plan which is presented to the Planning Board for final approval in accordance with this Chapter.

PLAT, PRELIMINARY — The preliminary map indicating the proposed layout of the subdivision or site plan which is submitted to the Planning Board for consideration and preliminary approval.

PLAT, SKETCH — The sketch map of a subdivision or site plan of sufficient accuracy to be used for the purpose of discussion and classification.

PORTABLE SIGN — Any temporary sign not permanently attached to the ground or other permanent structure or a sign designed to be transported, including, but not limited, to signs designed to be transported by means of wheels; signs converted to A or T frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless such vehicles are used in the normal day-to-day operations of the business.**[Ord. No. 22-09]**

PRELIMINARY APPROVAL — The conferral of certain rights pursuant to this Chapter prior to final approval after specific elements of development plan have been agreed upon by the Planning Board and the applicant.

PRELIMINARY FLOOR PLANS AND ELEVATIONS — Architectural drawings prepared during early and introductory stages of the design of a project illustrating in a schematic form, its scope, scale and relationship to its site and immediate environs.

PROFESSIONAL ENGINEER — An engineer duly licensed by the State of New Jersey.

PROHIBITED USE — A use which is not permitted in a zone district.

PROPERTY LINE — See "Lot Line."**[Ord. No. 07-09]**

PUBLIC AREAS — Existing or proposed (1) public parks, playgrounds, trails, paths and other recreational areas; (2) other public open spaces; (3) scenic and historic sites; and (4) schools and other public buildings and structures.

PUBLIC DEVELOPMENT PROPOSAL — A master plan, capital improvement program or other proposal for land development adopted by the appropriate public body, or any amendment thereto.

PUBLIC DRAINAGE WAY — The land reserved or dedicated for the installation of storm water sewers or drainage ditches or required along a natural stream or watercourse for preserving the channel and providing for the flow of water to safeguard the public against flood damage, sedimentation, and erosion.

PUBLIC GARAGE — A building or structure used for the repair of motor vehicles, installation of equipment, sale of accessories, and/or storage of four or more vehicles.

QUORUM — The majority of the full authorized membership of the Board.

RAINFALL, EXCESS — The portion of rainfall which becomes direct surface runoff.

RECREATION FACILITY — A place where sports, leisure time activities and customary and usual recreational activities such as set forth in major group #79 of the Standard Industrial Classification Manual is carried out.

RECREATION, COMMERCIAL — Facilities operated as a business and open to the public for a fee.

RECREATION, PERSONAL — An accessory use located on the same lot as the principal permitted use and designed to be used primarily for the occupants of the principal use and their guests.

RECREATION, PRIVATE — Facilities operated by a nonprofit organization and open only to bona fide members and guests of such nonprofit organization.

RECREATION, PUBLIC — Facilities operated by the Borough, County, or other governmental agency.

RECREATIONAL VEHICLE — A vehicular type portable structure without permanent foundation, which can be towed, hauled or driven and primarily designed as temporary living accommodation for recreational, camping and travel use and including but not limited to travel trailers, truck campers, camping trailers, self-propelled motor homes, boats and boat trailers.

RECYCLING AREA — Space allocated for collection and storage of source-separated recyclable materials. **[Ord. No. 2008-16]**

RESIDENTIAL CLUSTER — An area to be developed as a single entity according to a plan containing residential housing units which have a common or public open space area as an appurtenance.

RESTAURANT — An establishment in which food or drink is prepared, served and consumed within the principal building.

RESUBDIVISION —

- (1) 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
- (2) 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.

RETAIL SERVICE — Establishments providing services or entertainment, as opposed to products, to the general public, including eating and drinking places, hotels and motels, finance; real estate and insurance, personal and business services, motion pictures, amusement and recreational services, miscellaneous repair services, educational, health and social services, museums, art galleries, and miscellaneous services.

RETAIL TRADE — Establishments engaged in selling goods or merchandise to the general public and rendering services incidental to the sale of such goods.

RIGHTS-OF-DISCHARGE — A legally recordable instrument granting to the

developer the right to discharge collected waters upon lands exterior to the development.

ROOMING HOUSE — Any dwelling or part thereof, in which space is let by the owner or operator to a roomer. Same as boarding house.

ROOMER — A person other than a member of a family occupying a part of any dwelling unit who, for a consideration, is furnished sleeping accommodations in such dwelling unit and may be furnished meals as part of this consideration.

SATELLITE DISH ANTENNAE — A device incorporating a reflective surface that is solid, open mesh, or bar-configured and is in the shape of a shallow dish, cone, horn, or cornucopia. Such device shall be used to receive radio or electromagnetic waves between terrestrially and/or orbitally based uses.

SCREENING — A method of visually shielding or buffering one abutting or nearby structure or use from another by fencing, walls, berms or densely planted vegetation.**[Ord. No. 10-11]**

SEDIMENT — Any solid material that is in suspension and is being or has been moved by water, ice, wind, gravity or other means.

SEDIMENTATION — The transport and depositing of sediment.

SEDIMENT BASIN — A barrier or dam built across a waterway or at other suitable locations to retain sediment.

SEDIMENT POOL — The reservoir space allotted to the accumulation of submerged sediment during the life of the structure.

SENIOR CITIZEN HOUSING — Housing designed and occupied by at least one person 55 years of age per dwelling unit and which has significant facilities and services specifically designed to meet the physical and social needs of older persons as described in § 100.306 Significant Facilities and Services Specifically Designed for Older Persons, 24 C.F.R. part 100 (Department of Housing and Urban Development - Housing for Older Persons).**[Ord. No. 97-8 § 1]**

SETBACK — The closest distance between front, side, or rear lot line and the front, side or rear line of a structure, or any projection thereof; setback is measured perpendicular to the lot line.**[Ord. No. 07-09]**

SHOPPING CENTER — Two or more retail commercial establishments located in one building or structure designated as a planned commercial development as defined herein.

SIGHT TRIANGLE — A triangular shaped portion of land established at intersections in accordance with the requirements of this Chapter in which nothing shall be erected, placed, planted or allowed to grow in such a manner as to limit or obstruct sight distance.

SIGN — Includes every sign, billboard, ground sign, wall sign, roof sign, illuminated sign and sign on awning and canopy, and shall include any announcement, declaration, demonstration, display, illustration or insignia used to advertise or promote the interests of any person, firm or corporation when the same is placed out-of-doors in view of the general public.**[Ord. No. 04-07 § 1]**

SIGN, ADVERTISING — A sign which directs attention to a business, commodity,

service or other facility conducted, sold or offered elsewhere than on the premises where the sign is located.

SIGN AREA — The area of a sign shall be computed as the total square foot content of the background upon which the lettering, illustration or display is presented. If there is no background, the sign area shall be computed as the product of the largest horizontal width and the largest vertical height of the lettering, illustration or display. This shall not be construed to include the supporting members of any sign which are used solely for such purpose. For signs with two display faces, the maximum area requirements shall be permitted on each side. Signs with more than two display faces are prohibited. **[Ord. No. 04-07 § 1]**

SIGN, BUSINESS — A sign which directs attention to a business, commodity, service or other facility conducted, sold or offered upon the premises where such sign is located or to which it is affixed.

SIGN, FLASHING — A sign in which the artificial light is not maintained constant in intensity, color or frequency at all times when such sign is in use.

SIGN, POLITICAL — Any temporary sign, notice, poster or other device calculated to convey a pre-election political message or to obtain votes for a particular candidate(s), slate of candidates, public question or political issue when the same is placed in the view of the general public. For purposes of this Chapter the term "pre-election" shall mean no more than 21 days prior to and 14 days subsequent to a scheduled primary, general, school, or special election in which the candidate(s) campaign for elective or political party offices. For purposes of this Chapter, "political issue" shall mean any issue which is the subject of debate in the local, regional, national and/or international communities for which governmental action or the conduct of public business is implicated. **[Ord. No. 04-07 § 2, Ord. No. 22-09, Ord. No. 09-10, Ord. No. 11-11]**

SIGN, PORTABLE — See "Portable Sign."

SIGN, TEMPORARY — See "Temporary Sign."

SILTATION (DETENTION OR RETENTION) BASIN — A temporary or permanent facility designed in accordance with standards of the applicable federal, state, county or municipal agencies to collect silt and eroded soil from the area of a development and/or to retain stormwater runoff.

SINGLE OWNERSHIP — Ownership by one or more persons in any form of ownership of a lot not adjacent to a lot or lots partially or entirely in the same ownership.

SITE — Any plot or parcel of land or combination of contiguous lots or parcels of land.

SITE PLAN — A development plan of one or more lots on which is shown (1) the existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, flood plains, marshes and waterways; (2) the locale of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting, screening devices; and (3) any other information that may be reasonably required in order that an informed determination may be made by the boards pursuant to this Chapter.

SLOPE — Degree of deviation of a surface from the horizontal, usually expressed in percent or degree.

SOIL — All unconsolidated mineral and organic material of whatever origin that overlies bedrock and which can be readily excavated.

SOIL CONSERVATION DISTRICT — The governmental subdivision of this State which encompasses this municipality, organized in accordance with the provisions of Chapter 23, Title 4 (N.J.S.A. 4:24-1 et seq.).

SOIL ENGINEER — A professional engineer who is qualified by education and experience to practice applied soil mechanics and foundation engineering.

SOIL EROSION AND SEDIMENT CONTROL PLAN — A plan which indicates necessary land treatment measures, including a schedule for installation, which will effectively minimize soil erosion and sedimentation. Such measures shall be at least equivalent to the standards and specifications as adopted by the Morris Soil Conservation District.

STANDARDS OF PERFORMANCE — Standards (1) adopted by this Chapter regulating noise levels, glare, earthborne or sonic vibrations, heat, electronic or atomic radiation, noxious odors, toxic matters, explosive and inflammable matter, smoke and airborne particles, waste discharge, screening of unsightly objects or conditions and such other similar matter as may be reasonably required by the Borough or (2) required by applicable Federal or State laws or municipal ordinances.

START OF CONSTRUCTION — The first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the "start of construction" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation.

STORMWATER DETENTION — Any storm drainage technique which retards or detains runoff, such as a detention or retention basin, parking lot storage, rooftop storage, porous pavement, dry wells or any combination thereof.

STORY — That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters. **[Ord. No. 08-08 § 2]**

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 four feet above the floor of such story.

STREAM ENCROACHMENT PERMIT — A permit issued by the New Jersey

Department of Environmental Protection under the provisions of N.J.S.A. 58:16A-55 and 13:1D-146.

STREET — Any street, avenue, boulevard, road, parkway, viaduct, drive or other way (1) which is an existing State, county or municipal roadway; or (2) which is shown upon a plat heretofore approved pursuant to law; or (3) which is approved by official action as provided by this act; or (4) which is shown on a plat duly filed and recorded in the office of the county recording officer prior to the appointment of a Planning Board and the grant to such board of the power to review plats; and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutter, curbs, sidewalks, parking areas and other areas within the street lines.

STREET, ARTERIAL — A higher order interregional road which conveys traffic between centers.

STREET, COLLECTOR — The principal entrance streets of a residential development and streets for circulation within such a development.

STREET, MARGINAL ACCESS — A street which is parallel to and adjacent to an arterial street and which provides access to abutting properties and protection from through traffic.

STREET, MINOR — A street which is used primarily for access to abutting properties and to discourage through traffic.

STREET, PRIMARY — A street which is used primarily for fast or heavy traffic as designated on the circulation plan map of the Master Plan of the Borough.

STREET, SECONDARY — A street which carries traffic from collector streets to the major system of primary streets.

STRIPPING — Any activity which removes or significantly disturbs the vegetative surface cover.

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 or water including, but not limited to buildings, paving, dams, walls, levees, bulkheads, dikes, jetties, embankments, wharves, piers, docks, landings, obstructions, pipelines, causeways, culverts, roads, railroads, bridges and the facilities of any authority, utility, municipality, county, state or other governmental agency.

SUBDIVISION — The division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development. The following shall not be considered subdivisions within the meaning of this Chapter if no new streets are created: (1) divisions of land found by the Planning Board to be for agricultural purposes where all resulting parcels are five acres or larger in size; (2) divisions of property by testamentary or intestate provisions; (3) divisions of property upon court order, including but not limited to judgments of foreclosure; (4) conveyances so as to combine existing lots by deed or other recorded instrument; and (5) the conveyance of one or more adjoining lots, tracts or parcels of land, owned by the same person or persons and all of which are found to conform to the requirements of this Chapter and are shown and designated as separate lots, tracts or parcels on the tax map or atlas of the

Borough. The term "subdivision" shall also include the term "resubdivision."

SUBDIVISION COMMITTEE — [Deleted by Ord. No. 12-2015]

SUBDIVISION, MAJOR — A subdivision not classified as a minor subdivision.

SUBDIVISION, MINOR — A subdivision of land resulting in not more than three lots provided that such subdivision does not involve (1) a planned development; (2) any new street or (3) the extension of any off-tract improvement, the cost of which is to be prorated pursuant to N.J.S.A. 40:55d-42.

SURFACE WATER — Water on land surface.

TEMPORARY PROTECTION — Improvement required for the stabilization of erosive or sediment-producing areas.

TEMPORARY SIGN — A sign that shall not exceed three square feet in size that may not be displayed for more than 60 days, unless otherwise specified in this Chapter. This shall include any sign, banner, pennant, flag, valance or advertising display constructed of cloth, canvas, cardboard, wallboard or other light materials, with or without frames.**[Ord. No. 04-07 § 2, Ord. No. 10-11]**

TOPSOIL — The surface soil and soil material to a depth of six inches tillage, its equivalent in cultivated soil, or the original or present "A" horizon plus "B" horizon (if in top six inches), as defined by the National Cooperative Soil Survey of the United States Department of Agriculture, before its removal or displacements for any purposes whatsoever. "Topsoil" shall be capable of supporting vegetables indigenous to the area.

TOWNHOUSE — A building designed for or occupied by no more than one household and attached to other similar buildings or structures by party or common walls extending from the foundation to the roof and providing two direct means of access from the outside and provided with separate cooking, sleeping and sanitary facilities and separate facilities for electric service, heating, electric facilities and gas service. For the purpose of this Chapter, a "townhouse" may include fee simple, condominium or cooperative ownership or any combination thereof.

TRACT — Property which is the subject of a development application.

TRAILER — A structure standing on wheels, towed or hauled by another vehicle and used for short-term human occupancy, carrying materials, goods or objects, or as a temporary office.

TRANSCRIPT — A typed or printed verbatim record of the proceedings or reproduction thereof.

UNLAWFUL SIGN — Any sign not meeting the requirements of this Chapter and which has not received legal nonconforming status.**[Ord. No. 04-07 § 2]**

USE — The specific purpose for which land or a building is designed, arranged or intended or for which it is or may be occupied or maintained.

VARIANCE — Permission to depart from the literal requirements of this Chapter.

VEGETATIVE PROTECTION — Stabilization of erosive or sediment-producing areas by covering the soil with: (1) permanent seeding, producing long-term vegetative cover;

(2) short-term seeding, producing temporary vegetative cover, or mulching; or (3) sodding, producing areas covered with a turf of perennial sod-forming grass.

VEHICULAR SALES AREA — An open area, other than a right-of-way or public parking area, used for display, sale or rental of new or used vehicles in operable condition and where no repair work is done.

WATER BODIES — Any natural or artificial collection of water, whether permanent or temporary.

WATERCOURSE — Any natural or artificial watercourse, stream, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows in a definite direction or course, either continuously or intermittently, and which has a definite channel, bed and banks, and shall include any area adjacent thereto subject to inundation by reason of overflow or floodwater.

WATER-CARRYING CAPACITY — Ability of a channel or floodway to transport flow as determined by its shape, cross-sectional area, bed slope and coefficient of hydraulic friction.

WATERWAYS, GRASSED — A natural or constructed waterway, usually broad and shallow, covered with erosion-resistant grasses used to conduct surface water from a field, diversion or other site features.

YARD — An open space which lies between the principal or accessory building or buildings and the nearest lot line, unoccupied and unobstructed from the ground upward except as permitted in this Chapter.

YARD, FRONT — A space extending the full width of the lot between any building and the front lot line, and measured perpendicular to the building at its closest point to the front lot line. Said front yard shall be unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in this Chapter.

YARD, REAR — A space extending across the full width of the lot between the principal building and the rear lot line measured perpendicular to the building at its closest point to the rear lot line. Said rear yard shall be unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in this Chapter.

YARD, SIDE — A space between the principal building and the side lot line measured perpendicular to the side lot line at its closest point to the principal building. Side yards shall extend from the front to the rear lot line on a regularly shaped lot and from the front to the opposing side lot line on a corner lot. Said side yard shall be unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in this Chapter.**[Ord. No. 07-09]**

ZONING PERMIT — A document signed by the Zoning Officer which is required by this Chapter as a condition precedent to the commencement of a use or the erection, construction, reconstruction, alteration, conversion, or installation of a structure or building; and which acknowledges that such use, structure or building complies with the provisions of this Chapter or variance therefrom.

§ 17-2A. ENFORCEMENT AND VIOLATIONS. [Ord. No. 26-09]

a. Powers and duties of Zoning Officer.

- (1) The Zoning Officer and his duly authorized assistants shall have the duty and power to inspect or examine structures and uses in the Borough of Mount Arlington and any plans for structures and uses, to determine their compliance with the provisions of this Chapter.
- (2) Violations Found. Where the Zoning Officer (or his assistants) determines that a structure, use or premises is in violation of the provisions of this Chapter, he shall order the owner in writing to remedy such condition. Said written order shall specify the nature of the violation found to exist, the remedy ordered and the time permitted for such remedy, the penalties and remedies which may be invoked by the Borough and the violator's rights of appeal, all as provided for by this Chapter and the laws of the State of New Jersey.
- (3) Issuance of Zoning Permits.
 - (a) The Zoning Officer is hereby empowered to issue zoning permits in accordance with the requirements and provisions of this Chapter certifying that the plans for a use, building or structure to be established, constructed or altered are for a use permitted by this Chapter for the zone in which it is located and that in all respects it complies with all applicable requirements and provisions of this Chapter.
 - (b) A fee of \$50 shall be charged for the issuance of a permit by the Borough of Mount Arlington Zoning Officer. **[Amended by Ord. No. 12-2015]**
- (4) Records. The Zoning Officer shall maintain a permanent record of all matters considered and all action taken by him. Such records shall form a part of the records of his office and shall be available for the use of the Governing Body and other officials of the Borough, county or state and for public inspection by appointment.
- (5) Monthly Report. The Zoning Officer shall prepare a monthly report for the Governing Body. Said report shall cite all actions taken by him, including all referrals made, all permits and certificates issued and denied and all complaints of violations received and all violations found by him and the action taken by him consequent thereon. A copy of this monthly report shall also be transmitted by the Zoning Officer to the Tax Assessor and the Planning Board at the same time it is transmitted to the Governing Body.

b. Violations.

- (1) Except as may be provided by New Jersey Statute, for each and every violation of any provision of this Chapter, the owner, contractor or other persons interested as general agent, architect, building contractor, owner, tenant or any other persons who commit or take part or assist in any violation of this Chapter or who maintain any building or premises in which any violation of this Chapter shall exist and who shall have refused to abate said violation within five days after written notice shall have been served upon him either by mail

or by personal service shall, for each and every violation, be punishable by a fine of not less than \$250 and not exceeding \$1,000 imprisonment for a term not exceeding 90 days or a period of community service not exceeding 90 days, or any combination thereof, at the discretion of the Judge before whom a conviction may be had. Each and every day that such violation continues after such notice shall be considered a separate and specific violation of this Chapter.

- (2) In addition to the powers given to the Zoning Officer as prescribed elsewhere by this Chapter, the owner of, or any person having interest in, any property in the Borough of Mount Arlington may make complaint for any violation of this chapter or any provisions or section thereof, and upon conviction, in such case, the penalties hereinbefore provided shall be imposed.
- (3) In addition to the remedies herein provided, any person, persons, company or corporation violation this Chapter or any provision or section thereof may be proceeded against by the Borough of Mount Arlington or by the Zoning Officer or by the owner of any property in the Borough of Mount Arlington by appropriate action or by proceeding in equity or otherwise to prevent and enjoin any threatened violation of this Chapter.

ARTICLE III
Land Development Administration

§ 17-3. PLANNING BOARD.

§ 17-3.1. Establishment. [Ord. No. 97-6 § 1]

The Planning Board previously established pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) is hereby continued in the Borough and shall consist of nine members consisting of the following four classes:

CLASS I — The Mayor, or the Mayor's designee in the absence of the Mayor.

CLASS II — One of the officials of the municipality other than a member of the Governing Body to be appointed by the Mayor.

CLASS III — A member of the Governing Body to be appointed by it.

CLASS IV — Six other citizens of the municipality to be appointed by the Mayor. The members of Class IV shall hold no municipal office, position or appointment except that one member may be a member of the Board of Education. A member of the Environmental Commission who is also a member of the Planning Board, as required by N.J.S.A. 40:56A-1, shall be a Class IV Planning Board member.

§ 17-3.2. Terms. [Ord. No. 97-6 § 1]

- a. The term of the member composing Class I shall correspond with his official tenure. The terms of the members composing Class II and Class III shall be for one year or terminate at the completion of their respective terms of office, whichever occurs first. The term of the Class IV member who is also a member of the Environmental Commission shall be for three years or terminate at the completion of his term of office as a member of the Environmental Commission, whichever occurs first.
- b. The term of a Class IV member who is also a member of the Board of Education shall terminate whenever he is no longer a member of such Board or at the completion of his Class IV term, whichever occurs first.
- c. The terms of all Class IV members first appointed pursuant to this Chapter shall be so determined that to the greatest practicable extent the expiration of such terms shall be distributed evenly over the first four years after their appointment as determined by resolution of the of the Governing Body; provided, however, that no term of any member shall exceed four years, and further provided that nothing herein shall affect the term of any present member of the Planning Board, all of whom shall continue in office until the completion of the terms for which they were appointed. Thereafter, all Class IV members shall be provided. All terms shall run from January 1 of the year in which the appointment is made, unless an appointment is made to fill an unexpired term.

§ 17-3.3. Vacancies.

If a vacancy of any class shall occur otherwise than by expiration of term, it shall be filled by appointment, as above provided, for the unexpired term.

§ 17-3.4. Organization.

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 of the Planning Board or a municipal employee.

§ 17-3.5. Powers and Duties. [Ord. No. 97-6 § 1]

The Planning Board shall have the following powers:

- a. To make and adopt and from time to time amend a Master Plan for the physical development of the Borough, including any areas outside its boundaries which in the Board's judgment, bear essential relation to the planning of the Borough, in accordance with the provisions of N.J.S.A. 40:55D-28.
- b. To exercise all powers granted to a Planning Board by the provisions of N.J.S.A. 40:55D-26a.
- c. To administer the provisions of this Chapter in accordance with the provisions of said ordinances and the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.).
- d. To participate in the preparation and review of programs or plans required of the Planning Board by state or federal law or regulations.
- e. To assemble data on a continuing basis as part of a continuous planning process.
- f. Upon request, to assist the Governing Body in preparation of a program of municipal capital improvement projects and amendments thereto.
- g. To consider and make reports to the Governing Body within 35 days after referral as to any proposed development regulation submitted to it pursuant to the provisions of N.J.S.A. 40:55D-26a, and also pass upon other matters specifically referred to the Planning Board by the Mayor and Borough Council, pursuant to the provisions of N.J.S.A. 40:55D-26b.
- h. To review applications for conditional use approval.
- i. To exercise, to the same extent and subject to the same restrictions, all the powers granted by law to a Zoning Board of Adjustment.
- j. To perform such other advisory duties as are assigned to it by ordinance or resolution of the Governing Body for the aid and assistance of the Governing Body or other agencies or officers.
- k. To annually prepare and adopt by resolution a report of its findings on zoning ordinance provisions which were the subject of variance requests and its

recommendations for zoning ordinance amendment or revision, if any, be sent to the Governing Body.

§ 17-3.6. (Reserved) [Advisory Committee deleted by Ord. No. 12-2015]

§ 17-3.7. Alternate Members.

- a. There may be four alternate members of the Planning Board appointed by the Mayor and meeting the qualifications of Class IV members. 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". The terms of the alternate members shall be for two years, except that the term of not more than two alternate members shall expire in any one year; and provided further that in no instance shall the terms of the alternate members first appointed exceed two years. A vacancy occurring otherwise than by expiration of term shall be filled by the appointing authority for the unexpired term only. **[Ord. No. 02-12]**
- b. No alternate member shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest. An alternate member may, after public hearing if he requests one, be removed by the Mayor and Council for cause.
- c. The alternate members may participate in discussions of the proceedings 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 shall vote.

**§ 17-3.8. Restrictions on Class I and Class III Members of the Planning Board.
[Ord. No. 97-6 § 1]**

Class I and Class III members of the Planning Board shall not participate in the consideration of any application for development which involves relief pursuant to N.J.S.A. 40:55D-70d.

§ 17-4. ZONING BOARD OF ADJUSTMENT ABOLISHED.

§ 17-4.1. Findings. [Ord. No. 97-6 § 2]

The Zoning Board of Adjustment was created by ordinance pursuant to the terms of N.J.S.A. 40:55D-69. The aforementioned statute mandates the creation of a Zoning Board of Adjustment upon the adoption of a zoning ordinance unless the municipality is eligible for, and exercises, the option of creating a nine member Planning Board to exercise all of the powers and duties of the Board of Adjustment as provided by N.J.S.A. 40:55D-25c. The Borough meets the criteria established in N.J.S.A. 40:55D-25c and has determined that it is in the public's interest to abolish the Zoning Board of Adjustment and allow the Planning Board to exercise its powers and duties.

§ 17-4.2. Abolishment of Zoning Board of Adjustment; Discharge of Members.
[Ord. No. 97-6 § 2]

- a. The Zoning Board of Adjustment is hereby abolished and all of the powers and duties granted by law to the Board are hereby transferred to the Planning Board pursuant to the authority established in N.J.S.A. 40:55D-25c.
- b. All members, officers and employees of the Zoning Board of Adjustment as of the effective date of this Chapter shall be discharged from their positions, offices or employment.

§ 17-4.3. Reference to Board of Adjustment. [Ord. No. 97-6 § 2]

All references to "Board of Adjustment" contained in this Chapter shall be deemed to be deleted or to refer to the "Planning Board" or "Board" as the case may be.

§ 17-4.4. Expiration of Variance. [Ord. No. 97-15]

Any variance from the terms of the Zoning Ordinance hereafter granted by the Planning Board permitting the erection or alteration of any structure or structures, or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variances, or unless such permitted use has actually been commenced, within 24 months from the date of publication of the notice of the judgment or determination of the Planning Board; except, however, 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 a court of competent jurisdiction until the termination in any manner of such appeal or proceeding.

§ 17-5. ADMINISTRATION.

§ 17-5.1. Conflicts of Interest. [Ord. No. 97-6 § 3]

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

§ 17-5.2. Compensation. [Ord. No. 97-6 § 3]

All members of the Planning Board shall serve without compensation.

§ 17-5.3. Attorney. [Ord. No. 97-6 § 3]

There is hereby created the office of attorney for the Planning Board. The Board may annually appoint and fix the compensation for its attorney. Such compensation shall be within the appropriation made by the Governing Body. The Planning Board attorney shall not be the Borough Attorney.

§ 17-5.4. Experts and Staff. [Ord. No. 97-6 § 3]

The Board may employ or contract for and fix the compensation of such experts and other staff and services as it may deem necessary. The Board shall not authorize expenditures which exceed, exclusive of gifts or grants, the amount appropriated by the Governing Body for its use.

§ 17-5.5. Rules and Regulations. [Ord. No. 97-6 § 3]

The Planning Board shall adopt such rules, regulations and bylaws as may be necessary to carry into effect the provisions and purposes of this Chapter. In the issuance of subpoenas, administration of oaths and taking of testimony, the provisions of the County and Municipal Investigations Law (N.J.S.A. 2A:67-1 et seq.) shall apply.

§ 17-5.6. Meetings. [Ord. No. 97-6 § 3]

- a. Meetings of the Planning Board shall be scheduled at least once a month, unless cancelled for lack of applications.
- b. Special meetings may be provided for at the call of the Chairman or on the request of any two Board members, which shall be held on notice to its members and the public in accordance with all applicable legal requirements.
- c. No action shall be taken at any meeting without a quorum being present.
- d. All actions shall be taken by majority vote of all members present except as otherwise required by any provisions of the Municipal Land Use Law.
- e. All regular meetings and all special meetings shall be open to the public. Notice of all such meetings shall be given in accordance with the requirements of the Open Public Meetings Act (N.J.S.A. 10:4-6 et seq.).
- f. A member of the Planning Board who was absent for one or more of the meetings at which a hearing was held shall be eligible to vote on the matter upon which the hearing was conducted, notwithstanding his absence from one or more of the meetings; provided, however, that such Board member has available to him the transcript or recording of all of the hearing from which he was absent, and certifies in writing to the board that he has read such transcript or listened to such recording.

§ 17-5.7. Minutes. [Ord. No. 97-6 § 3]

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 shall be charged a

fee for reproduction of the minutes for his use as provided for by ordinance.

§ 17-5.8. Fees. [Ord. No. 99-3 §§ 1-5, Ord. No. 08-08 § 3, Ord. No. 10-11 §§ 2-4]

Fees for applications or for the rendering of any service by the Board or any member of their administrative staff shall be as follows:

- a. Application Fee. All application for development, interpretation of the Land Development Chapter or to appeal a decision of the Zoning Officer, shall be accompanied by a processing fee as listed below. This is a non-refundable fee used to defray the cost of processing the application.

Residential Application Fee: \$100.

Nonresidential Application Fee: \$200.

- b. Escrow Deposit(s). In addition to the application fees required above, all applicants shall be responsible to reimburse the Borough for payments made to professionals for services rendered to the Borough related to such application, appeal or other matter. Such services shall include the review of applications for development, review and preparation of documents, inspections of improvements or other purposes under the provisions of this chapter of the Municipal Land Use Law.

- (1) Initial Development Deposit. Applications for development shall be accompanied by an initial escrow deposit as listed below:

Residential Initial Deposit: \$1,000.

Nonresidential Initial Deposit: \$2,500.

- (2) Interpretations and Appeals. Applications for an interpretation of the Land Development Chapter or to appeal a decision of the Zoning Officer shall be accompanied by an escrow deposit of \$500 for each section or subsection of the Land Development Chapter for which interpretation is requested, if professional services are required by the Borough.

Application to appeal a decision of the Zoning Officer shall be accompanied by an escrow deposit of \$500 for each decision being appealed, if professional services are required by the Borough.

- (3) Requests to amend Master Plan, Zoning Map or Land Development Code. A request made to the Planning Board to propose an amendment to the Master Plan, Zoning Map or Land Development Chapter shall require an initial deposit in accordance with item (1) above. For requests concerning a zone change from residential to nonresidential and vice versa, the initial deposit shall be as required for nonresidential development. For requests concerning a regulation applicable to residential and nonresidential development, the initial deposit shall be as required for residential development.

- (4) Subsequent Deposits for Professional Services. In the event that the amount in the individual account for professional services should become depleted to less

than 25% of the initial deposit required by this Chapter, and if the Administrative Officer determines that additional funds are necessary to cover the cost of processing the application, the Administrative Officer shall notify the applicant immediately of such depletion. Upon receiving such notice, the applicant shall deposit additional funds as necessary to make the amount in the account not less than 50% of the initial deposit required by this Chapter for professional services.

- (5) **Failure to Maintain Deposit for Professional Services.** If the required funds for professional services are not deposited in a timely manner; the Administrative Officer shall notify the Borough agency having jurisdiction over the application, and shall send copies of the notification to the Borough Finance Officer. Upon receipt of the copy of notification, the Finance Officer shall immediately inform the Mayor and Borough Council of the notification. 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 the time for action by a Borough agency, or any extension thereof, as required by this Chapter shall expire prior to the payment of the required deposits, the reviewing agency shall have the option of dismissing the application.
- (6) **Vouchers for Payment of Professional Services.** All payments charged to a deposit required by this section shall be made pursuant to written monthly vouchers for each application from the professional(s) stating the hours spent, the hourly rate and the expenses incurred. The Borough shall render a written final accounting to the applicant on the uses to which the deposit was put.
- (7) **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 the professional shall not be greater than twice the hourly base salary of the professional. For other professionals, the charge to the deposit shall be at the same rate as all other work of the same nature by the professional for the Borough. Rates for professional services shall be in accordance with a schedule of professional fees filed annually with the Administrative Officer and maintained in the office of the Borough Clerk for public inspection.
- (8) **Procedure for Payment of Vouchers; Appeals of Charges.** The following procedure shall apply to the payment of vouchers for professional services pursuant to the section:
 - (a) Upon receipt of any vouchers for payment of professional services, the Administrative Office shall submit a copy of the voucher to the applicant.
 - (b) Within 14 days of the mailing of the voucher, the applicant may request in writing a hearing on the reasonableness of the charges contained in the vouchers. Any such hearing shall be held by the Borough agency with jurisdiction over the application.
 - (c) In the event the applicant requests such hearing, no payments shall be

made pursuant to the disputed voucher(s) until the Borough agency shall have ruled on the appeal. If the Borough agency finds in favor of the applicant, payment pursuant to the voucher(s) shall be adjusted accordingly.

- (d) All vouchers for payment of professional services pursuant to this section shall be submitted to the Borough agency for whom the services were performed. The Borough agency shall at a public hearing approve or deny payment of the vouchers. No voucher shall be denied payment without giving the professional submitting the voucher an opportunity to be heard concerning the reasonableness of the voucher.
 - (e) If no hearing is requested as outlined above, or if the Borough agency finds in favor of the professional, payment shall be made pursuant to the voucher.
 - (f) If approved by the Borough agency, the voucher shall be directed to the Borough Finance Officer who shall immediately advise the Mayor and Borough Council of his receipt of the vouchers.
- c. Special Meeting. Should the Planning Board, at the request of any applicant or applicant's authorized representative, or where the Board finds a necessity concerning any matter within the Board's jurisdiction, schedule a special meeting in respect to such matter, the person, firm, or corporation for which said meeting is scheduled shall pay a fee of five hundred (\$500) to defray the costs of scheduling and holding such special meeting. This fee shall be in addition to all other fees and charges heretofore or hereafter established.
- d. Hiring of Consultant or Specialists. In the event that the Planning Board finds it necessary to obtain the advice or testimony of specialists or consultants in connection with an application, such specialists or consultants shall be compensated by the applicant as reasonably required by the Board. Advice or testimony of such consultants shall be given at the hearing with full right of cross-examination afforded to the applicant.
- e. Administration of Deposits. Deposits received for professional services employed by the Borough to review applications for development for Borough inspection fees in accordance with this Chapter, or to satisfy the guarantee requirements of this Chapter shall be administered in accordance with the following provisions:
 - (1) Deposits to be Held in Escrow. Whenever an amount of money in excess of \$5,000 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 Chapter, shall continue to be the property of the applicant and shall be held in trust by the Borough. Deposits received pursuant to this section 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 minimum rate currently paid by the institution 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 the deposit.

- (2) Refund of Deposits; Interest. Any of the funds remaining in the deposit 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 Chapter, 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 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.
- f. Waiver of Fees. The Planning Board may waive any part or all of any fee established herein if the applicant is a charitable, philanthropic, fraternal and/or religious non-profit organization holding a tax exempt status.

§ 17-5.9. Hearings.

- a. Rules. The Board shall make rules governing the conduct of hearings, which rules shall not be inconsistent with the provisions of the Municipal Land Use Law or of this Chapter.
- b. Oaths. The officer presiding at the hearing, or such person as he 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 and the provisions of the County and Municipal Investigations Law (N.J.S.A. 2A:67A-1 et seq.) shall apply.
- c. Testimony. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer, and the right of cross examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.
- d. Evidence. Technical rules of evidence shall not be applicable to the hearing, but the Board may exclude irrelevant, immaterial or unduly repetitious evidence.
- e. Records. The Board shall provide for the verbatim recording of the proceedings by

either stenographic, mechanical or electronic means. The Board shall furnish a transcript or duplicate recording in lieu thereof on request to any interested party at his expense. The cost of said transcript shall not be in excess of the limits prescribed in N.J.S.A. 2A:11-15. Said transcript shall be certified in writing by the transcriber to be accurate.

- f. Maps and Documents. 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 Boards. The applicant may produce other documents, records, or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.

§ 17-5.10. Notice Requirements for Hearing.

- a. Public Notice. Public notice of a hearing shall be given by the applicant in the following cases:

- (1) Application for preliminary approval of a major subdivision;
- (2) Application which requires a variance, direction for issuance of a permit, or involves a conditional use;
- (3) Application for site plan approval.

- b. Public Notice Procedures.

- (1) Notice shall be given by publication in the official newspaper of the Borough at least 10 days prior to the date of the hearing.
- (2) Notice shall be given to the owners of all real property as shown on the current tax duplicate, located in the State and within 200 feet in all directions of the perimeter of the property which is the subject of such hearing; provided that this requirement shall be deemed satisfied by notice to the (1) condominium association, in the case of any unit owner whose unit has a unit above or below it, or (2) horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it. Notice shall be given by: (a) serving a copy thereof on the property owner as shown on the said current tax duplicate, or his agent in charge of the property, or (b) mailing a copy thereof by certified mail to the property owner at his address as shown on the said current tax duplicate.

Notice to a partnership owner may be made by service upon any partner. Notice to a corporate 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. 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 property which is the subject of the hearing, may be made in the same manner as to a corporation without further notice to unit owners, co-owners, or homeowners on account of such common elements or

areas.

c. Other Notices Required.

- (1) Notice of all 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, which notice shall be in addition to the notice required to be given pursuant to paragraph b(2) above to the owners of lands in such adjoining municipality which are located within 200 feet of the subject premises.
- (2) Notice shall be given by personal service or certified mail to the County Planning Board of hearings on applications for (a) development of property adjacent to an existing or proposed road shown on the Official County Map or on the County Master Plan; (b) adjoining other county land; or (c) situated within 200 feet of a municipal boundary.
- (3) Notice shall be given by personal service or certified mail to the Commissioner of Transportation of a hearing on an application for development of property adjacent to a state highway.
- (4) Notice shall be given by personal service or certified mail to the Director of the Division of State and Regional Planning in the Department of Community Affairs of a hearing on an application for development of property which exceeds 150 acres or 500 dwelling units. Such notice shall include a copy of any maps or documents required to be on file with the Borough Clerk pursuant to N.J.S.A. 40:55D-12g.
- (5) Notice of hearing on master plan, capital improvements program or official map shall be given in accordance with N.J.S.A. 40:55D-13 and N.J.S.A. 40:55D-15, respectively.
- (6) Notice pursuant to paragraphs c(1), (2), (3) and (4) shall not be required unless public notice pursuant to paragraph of this subsection is required.

d. Time for Service. All notices hereinabove specified in this subsection shall be given at least 10 days prior to the date fixed for hearing.

e. Method of Service. Any notice made by certified mail as hereinabove required shall be deemed as complete upon mailing in accordance with the provisions of N.J.S.A. 40:55D-14.

f. Form of Notice. All required notices shall state the date, time and place of the hearing, the nature of the matters to be considered and 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. The notice shall indicate the location and times at which any maps and documents for which approval is sought may be reviewed by the public. If the application for development includes consideration of a conditional use, the hearing notice shall include reference to the conditional use.

- g. List of Property Owners Furnished. Pursuant to the provision of N.J.S.A. 40:55D-12(c), the Tax Assessor or designee, within seven days after receipt of a request therefor and upon receipt of payment of a fee of \$10 or \$0.25 per name, whichever is more, shall make and certify a list 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 paragraphs b of this subsection. The applicant shall also supply to the Tax Assessor at the time of request a map showing all properties and current tax map information for the subject property. The applicant shall be entitled to rely upon the information contained in such list and failure to give notice to any owner not on the list shall not invalidate any hearing or proceeding.
- h. Material to be Filed with Board. The applicant shall file an affidavit of proof of service, form of notice, list of property owners served, and map specified in paragraph g above with the Board prior to the hearing.

§ 17-5.11. Decisions.

- a. Each decision on any application for development shall be set forth in writing as a resolution of the Board which shall include findings of fact and legal conclusions based thereon. Failure of a motion to approve an application for development to receive the number of votes required for approval shall be deemed an action denying the application.
- b. The Board may provide such written decision and findings and conclusions within 45 days of such meeting at which the Board voted to grant or deny approval, by the adoption of a resolution of memorialization setting forth the decision and the findings and conclusions of the Board thereon. An action resulting from the failure of a motion to approve an application shall be memorialized by resolution as provided above.

The adoption of a resolution of memorialization pursuant to this subsection shall not be construed to alter the applicable time period for rendering a decision on the application for development. Such resolution shall be adopted by a vote of a majority of the members of the Planning Board who voted for the action previously taken, and no other member shall vote thereon. The vote on such resolution shall be deemed to be a memorialization of an action of the Planning Board, and not to be an action of the Planning Board; except that failure to adopt such a resolution within the 45 day period shall result in the approval of the application for development, notwithstanding any prior action taken thereon.

- c. A copy of the decision shall be mailed by the Secretary of the Board within 10 days of the date of decision to the applicant or if represented, then to his attorney, without separate charge. A copy of the decision shall also be mailed to all persons who have requested it and who have paid the fee prescribed by the Board for such service. 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.

- d. **Publication of Decision.** A brief notice of every final decision shall be published in an official newspaper of the municipality. Such publication shall be arranged by the applicant. Said notice shall be sent to an official newspaper for publication within 10 days of the date of any such decision or date of resolution of memorialization.

§ 17-5.12. 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 said 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 will be adequately protected.

§ 17-5.13. Conditional Approval.

- a. In the event that a developer submits an application proposing a development that is barred or prevented, directly or indirectly, by a legal action instituted by any State agency, political subdivision or other party to protect the public health and welfare or by a directive or order issued by any State agency, political subdivision or court of competent jurisdiction to protect the public health and welfare, the Planning Board shall process such application in accordance with this Chapter and if such application complies with all Borough regulations, the Planning Board shall approve such application conditioned on removal of such legal barrier to development.
- b. In the event that, during the period of approval heretofore or hereafter granted to an application, the developer is barred or prevented, directly or indirectly, from proceeding with the development otherwise permitted under such approval by a legal action instituted by any State agency, political subdivision or court of competent jurisdiction to protect the public health or welfare and the developer is otherwise ready, willing and able to proceed with said development, the running of the period of approval under this Article shall be suspended for the period of time said legal action is pending or such directive or order is in effect.
- c. In the event that development proposed by an application requires an approval by a governmental agency other than the Planning Board, the Board shall, in appropriate instances, condition its approval upon the subsequent approval of such governmental agency. The Board shall make a decision on any application within the time period provided in this Chapter or within an extension of such period as has been agreed to by the applicant unless the Planning Board is prevented or relieved from so acting by the operation of law.

§ 17-5.14. Time Extensions.

The Board and an applicant may mutually agree to extend the time limit specified for

action. Such extension shall be indicated in the minutes of the meeting.

§ 17-5.15. Time Limit on Variances.

All construction pursuant to a variance, exception or waiver granted in connection with the approval of a site plan or subdivision, shall be commenced within the statutory time limit for said site plan or subdivision, or any extension thereof. A variance, exception or waiver which is not part of a site plan or subdivision shall be implemented within two years of the date of approval. Any variance, exception or waiver not implemented as set forth herein shall be void.

§ 17-5.16. Certificates of Approval.

- a. The prospective purchasers, prospective mortgagee, or any other person interested in any land which forms part of a subdivision, may apply in writing to the Borough Clerk, for the issuance of a certificate certifying whether or not such subdivision has been approved by the Planning Board. Such application shall contain a diagram showing the location and dimension of the land to be covered by the certificate and the name of the owner thereof.

The Administrative Officer shall make and issue such certificate within 15 days after the receipt of such written application and the fees therefor. Said officer shall keep a duplicate copy of each certificate consecutively numbered, including a statement of the fee charged, in a binder as a permanent record in his office.

Each such certificate shall be designated a "certificate as to approval of subdivision of land," and shall certify:

- (1) That there exists a duly established Planning Board and that there is an ordinance controlling subdivision of land.
- (2) Whether the subdivision, as it relates to the land shown in said application, has been approved by the Planning Board, and, if so, the date of such approval and any extensions and terms thereof, showing that subdivision of which the lands are a part is a validly existing subdivision.

The Administrative Officer shall be entitled to demand and receive for such certificate issued by him a reasonable fee not in excess of those provided in N.J.S.A. 54:5-14 and 54:5-15. The fees so collected by such official shall be paid by him to the municipality.

- b. Any person who shall acquire for a valuable consideration an interest in the lands covered by any such certificate of approval of a subdivision in reliance upon the information therein contained shall hold such interest free of any right, remedy or action which could be prosecuted or maintained by the Borough.

§ 17-5.17. Administration and Enforcement. [Amended by Ord. No. 12-2015; Ord. No. 95-5]

- a. Construction Official. The Construction Official is hereby given the duty, power

and authority to enforce the provisions of this Article. He shall be responsible for the examination of all applications for permits and the issuance of permits for the construction, alteration, enlargement and occupancy of all uses which are in accordance with the requirements of this Chapter and all nonconforming uses existing at the time of passage of this Chapter. The Construction Official shall also be responsible for recording and filing all applications for permits with accompanying plans and documents and makes such reports to the Planning Board and the Borough Council as required. The Zoning Officer shall be responsible for review of all applications for permits to determine compliance with the requirements of this Chapter.

b. Construction Permits:

- (1) Purpose. To ensure compliance with the provisions of this Chapter, no person shall erect, alter or convert any structure or building or part thereof, nor alter the use of any land, until a proper permit has been issued by the Construction Official.
- (2) Application for Permits. All such applications shall be made in accordance with the provisions of the State Uniform Construction Code.
- (3) Issuance of Permits. It shall be the duty of the Construction Official to issue the proper permit, after determination by the Zoning Officer that the structure, building, sign, parking area, proposed use and all other applicable codes and ordinances of the Borough of Mount Arlington or other governmental units having jurisdiction over the subject matter, and that all other reviews and actions, if any, called for in said codes or in this Chapter have been complied with and all necessary approvals secured therefore. All construction permits shall be issued in duplicate and one copy shall be kept conspicuously on the premises affected and shall be protected from the weather whenever construction work is being performed thereon. No owner, contractor, workman or other person shall perform any building operations of any kind, including site preparation of any kind, including clearing of trees and excavation, unless a construction permit covering such operation has been displayed as required by this Chapter, nor shall construction operations of any kind be performed after notification of the revocation of said permit.
- (4) Denial of Permits. When the Construction Official is not satisfied that the applicant's proposed development will meet the requirements of this Chapter or other codes and ordinances, he shall refuse to issue a construction permit and shall so notify the applicant, in writing, giving the reasons for denial.
- (5) Revocation of Permits. If it shall appear, at any time, to the Construction Official that the application or accompanying plan is in any respect false or misleading, or that work is being done upon the premises differing from that called for in the application filed with him under existing laws or ordinances, he may forthwith revoke the construction permit, whereupon it shall be the duty of the person holding the same to surrender it and all copies thereof to said Construction Official. After the construction permit has been revoked, the

Construction Official may, in his discretion, before issuing the new construction permit, require the applicant to file an indemnity bond in favor of the Borough of Mount Arlington with sufficient surety conditioned for compliance with this Chapter and all laws and ordinances then in force and in a sum sufficient to cover the cost of removing the building or structure if it does not so comply.

- (6) Expiration of Permits. Except as provided elsewhere, if a permit has not been acted upon by the commencement of construction within 12 months from the date of issuance, said permit and all rights created thereby shall expire.
- c. Certificate of Occupancy. No certificate of occupancy for any land or structure shall be granted until all required improvements or conditions of approval have been met, installed or completed.
 - (1) Temporary Certificate of Occupancy. A temporary certificate of occupancy may be issued in accordance with the Uniform Construction Code, N.J.A.C. 5:23-2.23(g). **[Amended by Ord. No. 12-2015]**
 - (2) Certificate of Occupancy for New Buildings, Structures or Uses.
 - (a) No building, structure or land shall be occupied or used until such time as a certificate of occupancy is issued by the Construction Official. Such certificate shall be issued upon application by the owner, prospective occupant or purchaser only after the Zoning Officer determines that the facts represented on the application are correct and that the building, structure, or use is in conformance with the provisions of this Chapter.
 - (b) For other than single-family detached houses, a certificate of occupancy shall not be issued until the Construction Official receives written confirmation from the Fire Department, Health Officer, Zoning Officer and Borough Engineer that all applicable Borough codes and ordinances administered and enforced by the above-named Department have been complied with:
 - (c) For nonresidential buildings, condominiums or townhouses, where a building is completed or sections are completed and safe for human occupancy, the Construction Official may issue a temporary certificate of occupancy for that portion of the building which is safe for human habitation while work proceeds to bring the entire building into compliance with the Borough's codes. Such temporary certificate of occupancy may contain such restrictions as may be necessary to protect the health and safety of the building's occupants subject to provisions of § 17-5.17c(1) and the applicant executing a builders agreement approved by the Governing Body.
 - (3) Certificate of Occupancy for Existing Uses. Any change of use or alteration of a building shall require first a construction permit before a certificate of occupancy shall be issued. **[Amended by Ord. No. 12-2015]**

- (a) Upon written request from the owner, tenant, occupant or purchaser under contract, the Construction Official after inspection shall issue an occupancy permit for a use legally existing at the time this Chapter is made effective certifying the extent and kind of use and whether any such existing use conforms with the provisions of this Chapter. If the Construction Official does not have sufficient information to make this determination, the applicant must file an application with the Planning Board to make a determination as to whether the use is in conformance with the Chapter.
- (b) No change or extension of use and no alterations shall be made in a nonconforming use or premises, without an occupancy permit having first been issued by the Construction Official stating, that such change, extension or alteration is in conformity with the provisions of the Chapter or that same has been permitted by action of the Planning Board.
- (c) Before any change of use in a nonresidential building, it shall be necessary to procure a certificate of occupancy from the Construction Official. This certificate shall not be issued unless the building or structure conforms to all requirements of the State Uniform Construction Code and Zoning, Article VIII of this Chapter.

d. **Zoning Permits [Ord. No. 01-14, Ord. No. 07-09]**

- (1) All applications for development that result in the construction of a structure on or under a tract of land shall require a zoning permit to be issued by the Zoning Officer.
- (2) Applications shall be based on an accurate survey prepared by a New Jersey Licensed Land Surveyor, a copy of which shall be included with the application in addition to any other documentation that may be reasonable required for the Zoning Officer to confirm compliance with the requirements of Article VIII, Zoning, of this Chapter.
- (3) A review fee of \$50 shall be paid upon submission of an application and a permit fee of \$50 shall be paid upon issuance of an approved permit.

§ 17-5.18. Violations and Penalties. [Ord. No. 99-4]

- a. **Selling Before Approval.** If, before final approval has been granted, any person transfers or sells or agrees to transfer or sell, except pursuant to an agreement expressly conditioned on final subdivision approval, as owner or agent, any land which forms a part of a subdivision for which municipal approval is required by ordinance pursuant to this Chapter, such person shall be subject to a penalty not to exceed \$1,000, and each lot disposition so made may be deemed a separate violation.

In addition to the foregoing, the Borough may institute and maintain a civil action:

- (1) For injunctive relief; and

- (2) To set aside and invalidate any conveyance made pursuant to such a contract of sale if a certificate of compliance has not been issued in accordance with § 17-5.16.

In any such action, the transferee, purchaser 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 assigns or successors, to secure the return of any deposits 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 said land or within six years, if unrecorded.

- b. Complaints of Violations. Any person may file a complaint if there is any reason to believe a violation of § 17-5.17 or this chapter exists. All such complaints must be in writing and signed by the complainant and shall be filed with the Construction Official who shall properly record such complaint and immediately investigate. **[Ord. No. 95-5 § 2]**
- c. Procedures for Abatement of Violations. **[Ord. No. 95-5 § 2]**
- (1) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this Chapter or of any ordinance or regulation made under authority conferred hereby, the Borough Council of the Borough of Mount Arlington or with its approval, the Construction Official or other proper official, in addition to other remedies may institute any appropriate legal action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct or abate such violation to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use about such premises.
- (2) A violation of any of the terms of § 17-5.17 or this chapter shall be abated within a reasonable time as may be determined by the Construction Official, after written notice has been served either by mail or personal service.
- d. Penalties. Any person, firm or corporation violating any provision of § 17-5.17 shall, upon conviction, be punished by a fine not to exceed \$1,000, or by imprisonment in the County Jail for a term not to exceed 90 days, or both, in the discretion of the Municipal Court. Each day that violation occurs or is committed shall constitute a separate violation. **[Ord. No. 95-5 § 2]**
- e. Violation of Site Plan and Subdivision Approval Conditions. Failure to comply with any condition of site plan or subdivision approval shall constitute a violation of this Chapter and shall be subject to the penalties stated in § 17-2A.

§ 17-5.19. Exceptions and Waivers.

If the applicant can clearly demonstrate that because of peculiar conditions pertaining to his land the literal enforcement of one or more of these regulations is impracticable or will exact undue hardship, the Planning Board may permit such variance or variances as may be reasonable and within the general purposes and scope of the rules, regulation and standards established by this Chapter. No such waiver shall be granted for any provision required by the State Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), or Article VIII, Zoning.

ARTICLE IV Development Procedures

§ 17-6. APPLICATION FOR DEVELOPMENT.²

§ 17-6.1. General.

Any applicant wishing to develop land within the Borough of Mount Arlington shall apply for and obtain the approval of the Planning Board in accordance with the following procedure. The applicant shall obtain all necessary forms from the Clerk of the Planning Board who shall inform the applicant of the steps to be taken to initiate applications and of the regular meeting date of the Board. The applicant or his attorney shall appear at all regular meetings of the Planning Board whenever the application is being considered. Failure to appear shall give the Planning Board the right to postpone action on the application for that particular meeting if the applicant's or his attorney's absence deprives the Planning Board of necessary information.

§ 17-6.2. Complete Application.³ [Ord. No. 08-08 § 4]

- a. A subdivision and site plan application shall be complete for purposes of commencing the applicable time period for action by the Planning Board when so certified by the Planning Board or its authorized committee or designee. In the event that the Board, committee, or designee does not certify the application to be complete within 45 days of the date of its submission, the application shall be deemed complete upon the expiration of the 45 day period for purposes of commencing the applicable time period unless (1) the application lacks information indicated on the checklist of items to be submitted as specified and provided in writing to the applicant, and (2) the Planning Board or its authorized committee or designee has notified the applicant, in writing of the deficiencies in the application within 45 days of submission of the application. The applicant may request that one or more of the submission requirements be waived, in which event the Board or its authorized committee shall grant or deny the request within 45 days of the date of its submission. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that the applicant is entitled to approval of the application. The Planning Board may subsequently require correction of any information found to be in error and submission of additional information not specified in the ordinance or any revisions in the accompanying documents, as are reasonably necessary to make an informed decision as to whether the requirements necessary for approval of the application for development have been met. The application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents so required by the Planning Board.
- b. Any applicant may appeal the decision concerning completeness of an application to the Planning Board. The Board shall have 45 days after receipt of a written

2. Editor's Note: Highlands Preservation Area, see § 17-66 and § 17-67.

3. Editor's Note: For Application Checklists, see Article V; they are also included as attachments to this chapter.

request to schedule a public hearing at which time the Board will determine if the application is complete. The Board shall affirm, modify, or reverse the decision concerning completeness.

§ 17-6.3. (Reserved) [Classification of Subdivision deleted by Ord. No. 12-2015]

§ 17-6.4. Submission of Complete Application. [Ord. No. 08-08 § 5, Amended by Ord. No. 12-2015]

After the application has been deemed complete pursuant to § 17-6.2 above, the applicant shall submit 16 copies of the application, plans, and exhibits, and any other additional supporting documentation that applicant wishes to rely upon, to the Planning Board Secretary, who shall distribute same to the Planning Board and its professional staff.

§ 17-7. MINOR SUBDIVISION.

§ 17-7.1. Notice Requirements for Minor Subdivisions. [Ord. No. 08-08 § 6]

The applicant shall not be required to provide notice of a minor subdivision application, provided the applicant does not require variances or other relief pursuant to N.J.S.A. 40:55D-70(c) or (d).

§ 17-7.2. (Reserved) [Ord. No. 08-08 § 7]

§ 17-7.3. Action.

The Planning Board shall approve, conditionally approve, or deny the minor subdivision within 45 days of submission of a complete application or within such further time as agreed to by the applicant. Failure of the Planning Board to act within the period prescribed shall constitute minor subdivision approval and a certificate of the Administrative Officer as to the failure of the Planning Board to act shall be issued on request of the applicant; and it shall be sufficient in lieu of the written endorsement or other evidence of approval, herein required, and shall be so accepted by the county recording officer for purpose of filing subdivision plats.

§ 17-7.4. Conditional Approval.

Whenever review or approval of the application by the County Planning Board is required by N.J.S.A. 40:27-6.3, the 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 County Planning Board by its failure to report thereon within the required time period.

§ 17-7.5. Filing With County Recording Officer.

Approval of a minor subdivision shall expire 190 days from the date of municipal approval unless within such period a plat in conformity with such approval and N.J.S.A.

46:23-9.9 et seq., or a deed clearly describing the approved minor subdivision is filed by the developer with the County Recording Officer, the Municipal Engineer and the Municipal Tax Assessor. Any such plat or deed accepted for such filing shall have been signed by the Chairman and Secretary of the Planning Board. In reviewing the application for development for a proposed minor subdivision, the Planning Board may be permitted by ordinance to accept a plat not in conformity with N.J.S.A. 46:23-9.9 et seq.; provided that if the developer chooses to file the minor subdivision as provided herein by plat rather than deed such plat shall conform with the provisions of the Map Filing Law.⁴

§ 17-7.6. Lands Resulting from Minor Subdivisions.

Any lands, lots or parcels resulting from a minor subdivision may not be resubmitted as a minor subdivision for a 36 month period from the date of initial approval as a minor subdivision, except if both subdivisions taken together would have constituted a minor subdivision.

§ 17-7.7. Effect of Approval.

The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor subdivision approval was 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 section.

§ 17-7.8. Municipal Distribution of Approved Minor Subdivisions.

After the approval of a minor subdivision, copies of the plat shall be distributed to the following:

- a. Borough Clerk.
- b. Borough Engineer.
- c. Construction Official.
- d. Tax Assessor (2 copies).
- e. Secretary to the Planning Board.
- f. Morris County Planning Board.

§ 17-7.9. Tax Map Revision Fee. [Ord. No. 00-14 § 17]

As a condition of final Planning Board subdivision approval, an applicant shall be required to pay a tax map revision fee of \$100 per lot, which fee shall be paid prior to the recording of a deed or plat perfecting the subdivision approval.

§ 17-8. PRELIMINARY MAJOR SUBDIVISION.

4. Editor's Note: The Map Filing Law was repealed. See New Jersey Statistics Title 46. Chapter 26A, 26B and 26C.

§ 17-8.1. (Reserved) [Ord. No. 08-08 § 8]**§ 17-8.2. (Reserved) [Ord. No. 08-08 § 9]****§ 17-8.3. (Reserved) [Ord. No. 08-08 § 10]****§ 17-8.4. Notice of Public Hearing.**

At the time of the consideration of the plat, the Planning Board shall, after a review of said plat and if said application is complete and ready for public hearing, set the date for the public hearing and shall notify the applicant of such date. The applicant shall follow the procedures established in Article III, § 17-5.10 with respect to notice of hearing.

§ 17-8.5. Revisions.

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 shall be submitted and proceeded upon, as in the case of the original application for development. The Planning Board shall, if the proposed subdivision complies with this Chapter, grant preliminary approval to the subdivision.

§ 17-8.6. Time Limit.

Upon the submission to the Planning Board of a complete application for a subdivision of 10 or fewer lots, the Planning Board shall grant or deny preliminary approval within 45 days of the date of such submission or within such further time as may be consented to by the developer. Upon the submission of a complete application for a subdivision of more than 10 lots, the Planning Board shall grant or deny preliminary approval within 95 days of the date of such submission or within such further time as may be consented to by the developer. Otherwise, the Planning Board shall be deemed to have granted preliminary approval to the subdivision.

§ 17-8.7. Other Required Approvals.

If either the Planning Board or County Planning Board disapproves a plat, the reasons for disapproval shall be returned with the plat. The reasons for disapproval shall be remedied prior to further consideration. If the Planning Board approves a plat conditioned upon County Planning Board approval, or that of any other governmental agency, and in meeting any conditions of County Planning Board or other governmental agency approval a substantial change is required in the design, access, circulation, drainage or improvements, the revised plat shall be resubmitted to the Borough Planning Board for reapproval.

- a. Before the Planning Board shall give preliminary approval to any plat wherein there is a proposed extension of any sanitary sewer system or the Planning Board requires an extension of a sanitary sewer system, the Planning Board shall first require the approval of the Borough Council of the Borough of Mount Arlington in writing, for said sewer extension.

- b. If approval is required by any other officer or public body, the same procedure as applies to submission and approval by the County Planning Board shall apply.

§ 17-8.8. Planning Board Action.

The Planning Board shall approve, conditionally approve or reject the application. Approval or conditional approval confers upon the applicant the following rights for a three year period from the date of approval or conditional approval.

- a. That the general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and off-tract improvements; except that 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. That the applicant may be submit for final approval on or before the expiration date of preliminary approval the whole or a section or sections of the preliminary subdivision plat.
- c. That 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.
- d. In the case of a subdivision of or site plan for an area of 50 acres or more, the Planning Board may grant the rights referred to in paragraphs a, b and c above for such period of time, longer than three years, as shall be determined by the Planning Board to be reasonable taking into consideration:

- (1) Extension of Approval.

- (a) The number of dwelling units and nonresidential floor area permissible under preliminary approval.
 - (b) Economic conditions.
 - (c) The comprehensiveness of the development.

- (2) Additional Extension of Approval. The applicant may apply for thereafter, and the Planning Board may thereafter grant an extension to preliminary approval for such additional period of time as shall be determined by the Planning Board to be reasonable taking into consideration:

- (a) The number of dwelling units and nonresidential floor area permissible under preliminary approval.
 - (b) The potential number of dwelling units and nonresidential floor area of the section or sections awaiting final approval.
 - (c) Economic conditions.

- (d) The comprehensiveness of the development; provided that if the design standard have been revised, such revised standards may govern.

§ 17-8.9. Signatures Required.

If the Planning Board favorably acts on a preliminary plat, the Chairman and the Secretary of the Planning Board shall affix their signatures to the plat with a notation that it has received preliminary approval and shall return same to the applicant for compliance with final approval requirements. Where conditional approval is granted, the Chairman and the Secretary of the Planning Board shall not affix their signatures to the plat until all conditions required for approval have been complied with.

§ 17-9. FINAL MAJOR SUBDIVISION.

§ 17-9.1. No Notice. [Ord. No. 08-08 § 11]

Applicants seeking final major subdivision approval are not required to provide notice of public hearing.

§ 17-9.2. (Reserved) [Ord. No. 08-08 § 12]

§ 17-9.3. (Reserved) [Ord. No. 08-08 § 13]

§ 17-9.4. Time Limit.

The Planning Board shall act within 45 days of submission of a complete application of the plat at a regular meeting or within such further time as may be mutually agreed upon. If the Planning Board approves the final plat, a notation to that effect shall be made on each plat and signed by the Chairman and Secretary of the Planning Board. Failure of the Planning Board to act within the allotted time or mutually agreed upon extension shall be deemed to be a favorable approval, and the Administrative Officer shall issue a certificate to that effect.

§ 17-9.5. Other Required Approvals.

Any plat which requires County Planning Board or other governmental agency approval, the Planning Board shall condition its approval upon approval by the County Planning Board or such other agency. If the Planning Board approves a plat conditional upon County Planning Board approval or that of any other governmental agency, and in meeting any conditions of County Planning Board or other governmental agency approval a substantial change is required in the design, access, circulation, drainage or improvements, the revised plat shall be submitted to the Borough Planning Board for reapproval.

§ 17-9.6. Recording of Final Approval.

- a. Final approval of a major subdivision shall expire 95 days from the date of signing of the plat unless within such period the plat shall have been duly filed by the

developer with the County Recording Officer. The Planning Board may for good cause shown extend the period for recording for an additional period not to exceed 190 days from the date of signing of the plat.

- b. No subdivision plat shall be accepted for filing by the County Recording Officer until it has been approved by the Planning Board as indicated on the instrument by the signature of the Chairman and Secretary of the Planning Board. The signatures of the Chairman and Secretary of the Planning Board shall not be affixed until the developer has posted the guarantees required by this Chapter. If the County records any plat without such approval, such recording shall be deemed null and void, and upon request of the municipality, the plat shall be expunged from the official records.
- c. It shall be the duty of the County Recording Officer to notify the Planning Board in writing within seven days of the filing of any plat, identifying such instrument by its title, date of filing, and official number.

§ 17-9.7. As-Built Plans.

At such times as all utilities and public improvements have been installed and constructed, reproducible as-built plans for such utilities and public improvements shall be filed with the Planning Board Engineer.

§ 17-9.8. Effect of Final Approval.

- a. The zoning requirements applicable to the preliminary approval first granted and all other rights conferred upon the developer, whether conditionally or otherwise, shall not be changed for a period of two years after the date of final approval; provided that in the case of major subdivision the rights conferred by this section shall expire if the plat has not been duly recorded within the required time period. If the developer has followed the standards prescribed for in final approval and has duly recorded the plat with the County Recording Officer, the Planning Board may extend such period of protection for extensions of one year but not to exceed three extensions. Notwithstanding any other provisions of this Chapter, the granting of final approval terminates the time period of preliminary approval pursuant to § 17-8.8 of this Article.
- b. In the case of a subdivision or site plan for a planned unit development or planned residential development or residential cluster of 50 acres or more or conventional subdivision for 150 acres or more, the Planning Board may grant the rights referred to in paragraph a of this section for such period of time, longer than two years, as shall be determined by the Planning Board to be reasonable taking into consideration:
 - (1) Extension of Approval.
 - (a) The number of dwelling units and nonresidential floor area permissible under final approval.

- (b) Economic conditions.
- (c) The comprehensiveness of the development.
- (2) Additional Extension of Approval. The developer may apply for thereafter, and the Planning Board may thereafter grant an extension to final approval for such additional period of time as shall be determined by the Planning Board to be reasonable taking into consideration:
 - (a) The number of dwelling units and nonresidential floor area permissible under final approval.
 - (b) The number of dwelling units and nonresidential floor area remaining to be developed.
 - (c) Economic conditions.
 - (d) The comprehensiveness of the development.

§ 17-9.9. (Reserved)

§ 17-9.10. Tax Map Revision Fee. [Ord. No. 00-14 § 2]

As a condition of final subdivision approval, an applicant shall be required to pay a tax map revision fee of \$100.00 per lot, which fee shall be paid prior to the recording of a plat perfecting the subdivision.

§ 17-10. SITE PLANS.

§ 17-10.1. Purposes.

The procedures and regulations relating to site plans are deemed necessary to achieve the following objectives:

- a. To provide a review and coordination procedure which clearly defines the role of public and private interests, as well as standards to be enforced.
- b. To enhance and improve the man-made and natural environment through the retention of open spaces, woodlands, waterways, wetlands, trees and other natural vegetative cover, and to prevent erosion, flooding, silting and removal or displacement of land.
- c. To encourage innovative and attractive techniques in design, technology and administration.

§ 17-10.2. Application of Requirements. [Ord. No. 10-11 § 5]

- a. Except as provided herein, no building permit shall be issued for a building or structure, or any enlargement, alteration, construction or renovation of a building or structure, unless a site plan is first submitted and approved by the Planning Board of the Borough of Mount Arlington.

- b. No certificate of occupancy shall be issued unless all construction and conditions conform to a site plan approved by the Planning Board.
- c. A site plan shall be submitted for every change of occupancy or use except where the site has previously been granted site plan approval and the proposed activity is of equal or less intensity as the approved occupancy or use. An applicant seeking such an exemption shall submit a zoning permit application to the Borough Zoning Officer who shall determine compliance of the new occupancy or use with the approved site plan.

§ 17-10.3. Exceptions. [Ord. No. 08-08 § 14]

- a. Site plan review shall not be required for single-family and two-family detached dwelling and additions thereto when used solely for residential purposes or for such accessory uses as a private garage, toolhouse, gardens and private greenhouses, swimming pools, tennis courts, and other similar uses incidental to a single-family or two-family detached dwelling and are proposed to be conforming with the requirements set forth on Schedule 1.

§ 17-10.4. Notice of Hearing.

At the time of the consideration of the site plan, the Planning Board shall, after a review of said site plan and if said application is complete and ready for public hearing, set the date for the public hearing and shall notify the applicant of such date. The applicant shall follow the procedures established in Article III, § 17-5.10 with respect to notice of hearing.

§ 17-10.5. Referral to other Agencies.

- a. In addition to referral of site plans to other agencies required by law to review site plans, the Planning Board may refer site plans to any other federal, state, county, local, private or quasi-public agencies for their recommendations within their particular fields of expertise.
- b. An application for review and approval of site plans requiring the approval of the Morris County Planning Board shall comply in all respects with the Morris County Planning Board standards, specifications and procedures.

§ 17-10.6. (Reserved) [Ord. No. 08-08 § 15]

§ 17-10.7. Planning Board Action.

- a. The Planning Board shall review the application at a public meeting after all reports have been submitted.
- b. At a public meeting of the Planning Board and within 45 days of submission of a complete application for a site plan of 10 acres or less or 95 days for a site plan of more than 10 acres, or within a mutually agreed upon time extension, the Planning Board shall approve, conditionally approve or disapprove the site plan.

- c. The reasons for disapproval or the requirements of any conditional approval shall be set forth in the written minutes of the Planning Board, and the applicant shall be notified in writing within 10 days of said action. A notice of this decision shall be advertised as provided in this Chapter.
- d. If the Planning Board required any substantial amendment in the layout or 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. If, by motion of the Planning Board, a change or changes are considered minor in nature, approval may be given subject to the submission of an amended site plan indicating the changes.
- e. Amended Site Plan Applications. Amended site plan applications shall be filed with the Planning Board no less than 10 working days before the meeting at which such application will be heard.

§ 17-10.8. Compliance With Site Plan Approval.

- a. All proposed improvements or development indicated on the approved site plan map shall meet the requirements of all applicable codes, ordinances and specifications of the Borough, county, state or federal governments and other agencies with jurisdiction over matters pertaining to site development.
- b. The Borough Engineer may authorize minor variations in the site plan caused by field conditions and shall notify the Planning Board of such variations.

§ 17-10.9. Site Plan Binding.

The site plan, as approved by the Planning Board, shall be binding upon the applicant. Any changes from the approved plan shall require resubmission and reapproval by the Planning Board except as provided in § 17-10.7d hereof. Site plan approval shall remain in effect for a period of three years from the date of approval. The Planning Board, upon request from the applicant, may, for good and sufficient reason, extend this time period in accordance with the Municipal Land Use Law. In the event a particular facility is to be constructed in stages, a site plan for each particular stage shall be required for the issuance of each building permit.

§ 17-10.10. Revocation of Construction Permit or Certificate of Occupancy.

In the event of a failure to comply with any condition of site plan approval, the Construction Official, on his own initiative, may revoke the construction permit or certificate of occupancy, as the case may be, and seek to enjoin the violation, or take such other steps as permitted by law.

§ 17-10.11. Effect of Preliminary Approval of Site Plan.

The applicant shall be entitled to all the rights set forth in the Municipal Land Use Law.

§ 17-10.12. Effect of Final Approval of Site Plan.

The applicant shall be entitled to all the rights set forth in the Municipal Land Use Law.

§ 17-11. IMPROVEMENTS - PRELIMINARY, CONDITIONAL FINAL, AND FINAL SITE PLAN APPROVAL.**§ 17-11.1. Improvements.**

- a. The Planning Board may require the installation or construction of necessary on-site and/or off-tract improvements. In the event improvements are required, the procedures, standards, inspection fees, performance guarantees and maintenance guarantees shall be governed by Articles III, VI, VII, and VIII.
- b. In the event site plan approval is conditioned upon improvements, the applicant may apply for conditional final approval and post the necessary bonds or install the improvements prior to the granting of final approval. No certificate of occupancy shall be issued until final site plan approval is granted.
- c. The Planning Board may require for final site plan approval an as-built plan.

§ 17-12. PERFORMANCE GUARANTIES.**§ 17-12.1. General.**

No application shall be granted final approval by the Board until the completion of all required improvements has been certified in writing to the Board by the Borough Engineer, unless the applicant shall have filed with the Borough a performance guaranty for those items which may be bonded as set forth in § 17-12.2. The performance guaranty shall be sufficient to cover all the costs of such improvements or incomplete portions thereof as estimated by the Borough Engineer and assuring the installation of such incomplete improvements on or before an agreed date in accordance with the time set forth in § 17-12.3 below. An additional amount of 20% of the estimate of the Engineer shall be included in the total amount of the performance guaranty to cover legal, engineering, and other costs in the event that the applicant shall fail to complete the required improvements and the Borough is required to install the improvements.

§ 17-12.2. Type of Guaranty.

At least 10% of the performance guaranty shall be in cash deposited with the Borough. Such cash shall be deposited to the credit of the Borough and may be usable at any time in the event of nonperformance by the applicant. Any interest earned by the Borough on said cash deposit shall inure to the benefit of the applicant. The remaining portion of the performance guaranty shall be issued by a bonding or surety company or other acceptable financial guarantee authorized to do business in the State of New Jersey as approved by the Borough Attorney or other acceptable financial guaranty.

§ 17-12.3. Time of Guaranty.

Performance guaranties shall run for a term not to exceed 24 months. Performance guaranties, with the consent of the principal and surety, if there is a surety, may be extended by the Governing Body by resolution.

§ 17-12.4. Borough Completion.

If the required improvements have not been installed in accordance with the standards and specifications of the Borough within the time limit or extension thereof as described in § 17-12.3 above and in the requirements of the performance guaranties, the obligor and surety shall then be liable to the Borough for all reasonable costs of the improvements not installed. Upon receipt of the proceeds, the Borough shall install such improvements and/or may use such portions of said performance guaranties as have been deposited in cash with the Borough Clerk to assure the completion of said improvements in accordance with the terms of this Article and any applicable agreement.

§ 17-12.5. Acceptance of Performance Guaranty by the Governing Body.

- a. Before accepting a performance guaranty, the Governing Body shall have the following:
 - (1) A letter from the Borough Engineer stating that the proposed guaranty covers all the items required by the Board, with a list of the items and costs. The letter should also state that the plans and specifications meet all applicable Borough ordinances.
 - (2) A letter from the Borough Attorney approving the performance guaranty as to form and amount.
- b. After approval and acceptance of the performance guaranty by the governing body, a letter stating that the fact shall be sent to the Board before the Board shall sign the final plats for filing with the County.

§ 17-12.6. Release of Performance Guaranty.

The procedures established in N.J.S.A. 40:55D-53 shall govern the release of performance guaranties. Before the Governing Body releases any guaranties or portions thereof, the following items shall be submitted to the Governing Body:

- a. Items for Submission.
 - (1) As-built plans and profiles of all utilities and roads with a certification by the applicant's engineer as to the actual location and construction.
 - (2) A statement or affidavit from the developer that there are no liens or other legal encumbrances on any of the improvements or utilities proposed to be deeded to the Borough.
 - (3) A statement from the Borough Engineer that all utilities and improvements

required by the Board have been installed and completed in accordance with applicable Borough ordinances.

- (4) A maintenance guaranty as provided in § 17-13.
- (5) Deeds, free, and clear of an encumbrances, for all streets, public easements, drainage and conservation easements, other lands dedicated to public use and any improvements to be dedicated or deeded to the Borough or other public agency.

§ 17-13. MAINTENANCE GUARANTY.

All improvements required by the Board shall, before being accepted by the Borough, be covered by a maintenance guaranty running in favor of the Borough of Mount Arlington in the amount of 15% of the estimated cost of the improvements as estimated by the Borough Engineer. Said maintenance guaranty shall run for a period of two years and provide for the proper repair and/or replacement of any such improvements during said period. The two-year period shall be from the date of the acceptance of the improvements by the Borough, and no performance guaranty shall be released by the Borough until such time as the maintenance guaranty herein required has been posted with the Borough. The maintenance guaranty shall comply with provisions under § 17-12.

§ 17-14. ACCEPTANCE OF IMPROVEMENTS.

- a. The Governing Body shall not accept any road or other improvements into the municipal road system or for municipal ownership until the maintenance guaranty has been posted and all deficiencies are corrected or repaired. The Borough may, however undertake to remove snow and perform other municipal services as may be required on the roads prior to final acceptance if the applicant presents a written request to the Governing Body and agrees in said request to hold the Borough harmless for any damages to the roads or public improvements caused by snow removal or other municipal activities.
- b. The Governing Body need to accept any roads or other improvements if the roads or other improvements will be used by the developer to complete other portions of the development.

§ 17-15. IMPROVEMENTS REQUIRED FOR BUILDING PERMIT AND CERTIFICATE OF OCCUPANCY.

§ 17-15.1. Building/Construction Permit.

- a. No building/construction permit shall be issued until a plat or site plan has received final approval and if a subdivision, has been duly filed in the County Clerk's office.
- b. In the event that the applicant proposes to install improvements prior to final subdivision or site plan approval, building/construction permits may be issued only after installation, inspection, and approval by the Borough Engineer of all:

- (1) Road base and intermediate courses of all public roads.
 - (2) Curbs and/or gutters on all public roads.
 - (3) Water mains, storm sewers, sanitary sewers and electric lines.
 - (4) For site plans, all other public improvements.
- c. The following items may be bonded:
- (1) Final subsurface road course.
 - (2) Sidewalks.
 - (3) Monuments.
 - (4) Shade trees.

§ 17-15.2. Certificate of Occupancy.

No certificate of occupancy shall be issued for any building or structure until all improvements as shown on the approved plans shall have been installed by the developer and approved by the Borough Engineer and a certificate of compliance from the Soil Conservation Service has been issued, except that a certificate of occupancy may be issued if the following conditions are met:

- a. The Borough Engineer shall certify in writing to the Construction Official that all required utility improvements, curbs and/or gutters and the intermediate course of the road have been installed, inspected and approved, and that the best interests of the Borough require a delay for engineering reasons before the developer completes the other improvements. The developer shall post a cash bond in the amount approved by the Borough Engineer for that portion of the improvements yet to be completed and for maintenance of those completed in the particular section for which certificates of occupancy have been requested.
- b. The developer shall notify each homeowner that he has deposited funds with the Borough to guarantee the completion and maintenance of the required improvements, and a copy thereof, together with proof of service, shall be filed with the Construction Official. The maintenance guaranty shall remain in effect for two years from the date of approval of the improvement by the Borough Engineer.
- c. Prior to the issuance of a certificate of occupancy for a lot or site awaiting landscaping, the developer shall have graded the land or lot to which the certificate of occupancy applies in a manner approved by the Borough Engineer to ensure proper drainage and to have installed appropriate measures to prevent soil erosion and sedimentation.
- d. In the event that a certificate of occupancy is requested for a subdivision or site plan on which improvements which will not be turned over to the Borough remain to be completed or installed, the Borough may require a cash bond be posted to assure the completion or installation of said private improvements.

§ 17-16. SNOW AND ICE REMOVAL FROM DEDICATED BUT NOT ACCEPTED STREETS.

- a. Upon the issuance of a certificate of occupancy for any building or structure on any new dedicated street or roadway which is open to the public or to which the public is invited, in a subdivision or development which is the subject of an application for development within the Borough of Mount Arlington, and prior to the acceptance of such dedication by the Borough, the developer shall be required to keep and maintain said streets or roadways free and clear of snow and ice, within six hours of daylight after the same shall have fallen or be formed thereon, and the same shall be open to public use and shall permit access to police, fire fighting, and emergency vehicles in accordance herewith.
- b. If the developer fails to keep and maintain said streets and roadways free and clear of snow and ice as set forth herein, the Borough may, at its own option and without creating any obligation to accept any dedication of any such streets or roadways, proceed to clear such streets or roadways of snow and ice by plowing, shoveling, salting, sanding, or otherwise.
- c. The costs incurred thereby shall be certified to the Mayor and Council of the Borough of Mount Arlington by the Public Works Department, which certification shall be presented to and reviewed by the Mayor and Council. Such costs shall be computed so as to defray and meet the expenses incurred by the Borough in connection herewith, including, but not limited to, the costs of labor, materials expended and the costs to repair any and all injury or damage done to the roadway or occurring to same during such snow and ice removal operations, or caused thereby. Such costs shall be charged to and paid by the developer to the Borough, in the amount so certified within 10 days of the receipt of a bill for the same.
- d. Upon a determination of the Mayor and Council that the amount is correct, the same shall be charged against such real property and the amount so charged shall, thereupon, become a lien and a tax upon such real property, and shall be added to and be a part of the taxes next to be levied and assessed thereon, and enforced and collected with interest by the same officers and in the same manner as other taxes. The imposition and collection of such charges in a civil action in the courts of the State of New Jersey, and the imposition and collection of a fine or fines or other penalties in said courts or in the Municipal Court of the Borough of Mount Arlington to collect the costs, as certified, for the removal of snow and ice in the manner herein prescribed.
- e. The Borough of Mount Arlington shall have no liability or responsibility whatsoever for any damage that may be done to catch basins, manholes, curbs, gutters, driveways, or other improvements, or to said streets or roadways, which damage may occur during said snow and ice removal, and the subdivision owner shall indemnify and hold the Borough harmless with respect thereto.

§ 17-17. OFF-SITE OR OFF-TRACT IMPROVEMENTS.

Any subdivision requiring off-site or off-tract improvements, as defined herein, shall

comply with the provisions of this section.

§ 17-17.1. Where Required.

- a. An off-site or off-tract improvement shall be required where either the existing facilities serving the geographic service area of a specific improvement are already operating at a deficient level of service, or the inclusion of a new development will make such present level of service deficient according to engineering standards utilized in determining such levels of service.
- b. The proportionate contribution of any such off-site or off-tract improvement to the applicant shall be reasonably related to the relative benefit or use of the total area so served.
- c. Under the conditions of this Chapter, off-site or off-tract improvements shall be limited to new or improved water distribution, sanitary sewage disposal distribution and stormwater and drainage distribution facilities and all necessary appurtenances thereto; and to new or improved street and right-of-way widths, traffic regulation and control devices, intersection improvements, utility relocation where not provided elsewhere and other traffic, circulation and safety factors which are directly related to the property or properties in question.

§ 17-17.2. Planning Board Determination.

- a. Each subdivision requiring Planning Board approval shall be subject to a determination by the Board of the following:
 - (1) That certain off-site or off-tract improvements are necessary to implement such subdivision.
 - (2) In such instances where off-site or off-tract improvements are required, the terms and conditions which shall be imposed upon the applicant to ensure the successful and reasonable implementation of same.
- b. The Planning Board, in its deliberation as to whether off-site or off-tract improvements are required, shall be guided by the rules and regulations of this Chapter, the Official Map, the Borough Master Plan and the County Master Plan. The Planning Board may also be guided by counsel from the Planning Board Attorney, Engineer, planning consultant and other qualified experts and municipal officials relative to the subject matter.
- c. In the event that the Planning Board determines that one or more improvements constitute an off-site or off-tract improvement, the Planning Board, by resolution, shall notify the Borough Council of same, specifying the Board's recommendation relative to the estimated cost of same, the applicant's pro rata share of the cost and possible methods of means of implementing the same, including but not limited to performance and maintenance guarantees cash contributions, development agreements and other forms of surety.
- d. The Planning Board shall not grant final approval on a subdivision until all aspects

of such conditions have been mutually agreed to by both the applicant and the Borough Council of the Borough and a written resolution to that effect by the Borough Council has been transmitted to the Planning Board.

§ 17-17.3. Methods of Implementation.

- a. Performance and Maintenance Guarantees. Where a performance or maintenance guarantee or other surety is required in connection with an off-site or off-tract improvement, the applicant shall be required to follow the same procedure and requirements as specified for on-site improvements.
- b. Development Agreement. Where a development agreement is required, governing off-site or off-tract improvements or other conditions as may be required by this Chapter or by the Planning Board, said agreement shall be approved as to form, sufficiency and execution by the Borough Council. Said agreement may specify the amount of any 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 Council.
- c. Cash Contributions, When Not Required. Cash contributions for off-site or off-tract improvements shall not be required under the following terms or conditions:
 - (1) Where other county or state agencies have jurisdiction over the subject improvement and require a cash contribution, guarantee or other surety of the applicant in lieu of such conditions imposed by the Borough Council, or
 - (2) Where a benefit assessment or other similar tax levy is imposed upon the applicant for the off-site or off-tract improvements provided, or
 - (3) Where the applicant, where legally permissible can undertake the improvements in lieu of the municipality, subject to standards and other conditions as may be imposed by the Borough Council.
- d. Cash Contributions, Method of Payment.
 - (1) Where a cash contribution is required by this Chapter, said contribution will be deposited with the Treasurer of the Borough of Mount Arlington with a copy of the applicant's transmittal letter forwarded to the Borough Council, the Borough Engineer and the Planning Board.
 - (2) 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 shall be returned to the applicant, provided that the conditions specified in § 17-5.8e hereof have not been imposed. Where such condition does exist, funds held in escrow will be returned as soon as practicable to the applicant.

§ 17-17.4. Pro Rata Formula in Determining Applicant's Share of Off-Site or Off-Tract Improvements.

Where an off-site or off-tract improvement is required, the following criteria shall be utilized in determining the proportionate share of such improvement to the applicant:

- a. Street widening, alignment, corrections, channelization of intersections, construction of barriers, new or improved traffic signalization, signs, curbs, sidewalks, trees, utility improvements not covered elsewhere, the construction of new streets and other similar street or traffic improvements. The applicant's proportionate cost shall be in the ratio of the estimated peak-hour traffic generated by the proposed property or properties to the sum of the present deficiency in peak-hour traffic capacity to the present facility and the estimated peak-hour traffic generated by the proposed development. The ratio thus calculated shall be increased by 20% for contingencies.
- b. Water distribution facilities, including the installation of new water mains, the extension of existing 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 of subsystem and the estimated daily use of water for the proposed development. The ratio thus calculated shall be increased by 20% for contingencies.
- c. 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.

ARTICLE V
Development Requirements

§ 17-18. APPLICATION SUBMISSION REQUIREMENTS.

§ 17-18.1. General. [Ord. No. 08-08 § 16]

All applications for development shall be submitted with a completed Application Checklist General Requirements All Development Applications, included as an attachment to this chapter as Schedule 2, together with the information and details required.

§ 17-18.2. Lot Line Adjustment Subdivisions. [Ord. No. 08-08 § 16]

All applications for lot line adjustment shall be submitted with a completed Application Checklist Lot Line Adjustment Subdivisions; included as an attachment to this chapter as Schedule 3, together with the information and details required.

§ 17-18.3. Minor Subdivisions. [Ord. No. 08-08 § 16]

All minor subdivision applications shall be submitted with a completed Application Checklist Minor Subdivision, included as an attachment to this chapter as Schedule 4, together with the information and details required.

§ 17-18.4. Site Plans. [Ord. No. 08-08 § 16]

All site plan applications shall be submitted with a completed Application Checklist Site Plans, included as an attachment to this chapter as Schedule 5, together with the information and details required.

§ 17-18.5. Preliminary Major Subdivisions. [Ord. No. 08-08 § 16]

All preliminary major subdivision applications shall be submitted with a completed Application Checklist Preliminary Major Subdivisions, included as an attachment to this chapter as Schedule 6, together with the information and details required.

§ 17-18.7. "C" Variances. [Ord. No. 08-08 § 16]

All applications for variances in accordance with N.J.S.A. 40:55D-70 (c) shall be submitted with a completed Application Checklist "C" Variance Application, included as an attachment to this chapter as Schedule 8, together with the information and details required.

§ 17-18.6. Final Site Plans or Final Major Subdivisions. [Ord. No. 08-08 § 16]

All final site plan or final major subdivision applications shall be submitted with a completed Application Checklist Final Site Plans or Final Major Subdivisions, included as an attachment to this chapter as Schedule 7, together with the information and details required.

§ 17-18.8. "D" Variances. [Ord. No. 08-08 § 16]

All applications for variances in accordance with N.J.S.A. 40:55D-70(d) shall be submitted with a completed Application Checklist "D" Variance Application, included as an attachment to this chapter as Schedule 9, together with the information and details required.

§ 17-18.9. Green Development Application Checklist. [Ord. No. 10-2015]

Chapter 17, Land Development, is amended to include the Green Development Application Checklist (the Checklist), included as an attachment to this chapter as Schedule 10. The completion of the Checklist by applicants is mandatory; however, compliance with the Checklist items is not a condition of approval.

ARTICLE VI Development Standards

§ 17-19. GENERAL.

- a. Prior to the granting of final approval, the applicant shall have installed improvements required by the Planning Board. The Planning Board may solicit local, county, state, federal, public or semi-public agencies and knowledgeable individuals on what improvements shall be required. Improvements recommended by the other agencies such as utilities authority and county, state or other agencies may be required by the Planning Board as condition of final approval. The Planning Board may, however, permit the posting of a performance guarantee or surety, and a development agreement to cover the cost of the following improvements: (a) top course or surface of road; (b) sidewalks; (c) landscaping; (d) monuments.
- b. 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.

§ 17-20. CONSTRUCTION STANDARDS.

The following construction standards and improvements are necessary to protect the health, safety, and welfare of the Borough. It is recognized, however, that in particular situations all of the improvements listed below may not be appropriate or needed and may be waived.

§ 17-20.1. Borough Standards.

All standards and specifications of the Borough as now or hereafter adopted, if any, shall govern the design, construction, and installation of all improvements. Failure of the applicant, his contractor or agent to conform to said specifications will be just cause for the suspension of the work being performed. No applicant shall have the right to demand or claim damages from the Borough, its officers, agency or servants by reason of said suspension.

§ 17-20.2. Other Standards.

- a. Any reference to New Jersey Department of Transportation standard qualifications shall refer to New Jersey Department of Transportation 2007 Standard Specifications for Road and Bridge Construction, as amended.
- b. Gas, electric, telephone and similar utilities shall be installed in accordance with applicable county, state and federal requirements.

§ 17-20.3. Grades.

All construction stakes and grades shall be set by a licensed land surveyor in the employ

of the applicant or his contractor, and a duplicate copy of the cut sheets made therefor shall be filed with the Borough Engineer.

§ 17-20.4. Inspection.

Prior to the start of the construction or installation of such improvements, the applicant shall advise the Borough Engineer, in writing, at least one week before the commencement of such work. No underground installation shall be covered until inspected and approved by the appropriate official. If, during the installation of any of the required improvements, the applicant fails to meet specification requirements or to correct unacceptable work, the applicant shall be notified by the Borough Engineer, in writing, by certified mail, return receipt requested, or by hand delivery, that the applicant has failed to comply with specifications or to correct unacceptable work properly, and said notice shall set forth in detail what has not been properly installed. If, within two days after receipt of such notice, the applicant has failed to institute corrective measures or has failed to contact the Borough Engineer with a view toward instituting such corrective measures, then, and in that event, the Borough Engineer shall have the authority to order immediate suspension of all work, and the Borough shall be free to proceed in such a manner as may be provided for by law.

§ 17-21. SITE CONDITIONS.

§ 17-21.1. Site Conditions.

During construction, the site shall be maintained and left each day in a safe and sanitary manner, and any condition which could lead to personal injury or property damage shall be immediately corrected by the applicant upon an order by any authorized personnel.

§ 17-21.2. Disposal of Dead Trees, Litter and Building Materials.

Developed areas shall be cleared of all stumps, litter, rubbish, brush, weeds, dead and dying trees, roots and debris, and excess or scrap building materials shall be removed or destroyed immediately upon the request of an to the satisfaction of the Construction Official prior to issuance of a certificate of occupancy. None of the same shall be buried within the Borough.

§ 17-21.3. Earth Removal and Topsoil.

- a. No topsoil shall be removed from the site or used as spoil except in accordance with an approved subdivision or site plan and in accordance with other Borough ordinances. Topsoil moved during the course of construction shall be redistributed so as to provide for at least six inches of loose cover to all areas of the subdivision and shall be stabilized by seeding or planting. Should construction stop on any portion or tract for a period of over one year, the topsoil shall be replaced over all areas in that portion from which it may have been stripped and shall be appropriately stabilized to the satisfaction of the Borough Engineer.
- b. No change shall be made in the elevation or contour of any lot or site by the removal

of earth to another lot or site other than as shown on an approved preliminary plat.

- c. Minimal changes in elevations or contours necessitated by field conditions may be made only after approval by the Borough Engineer.
- d. All said changes necessitated by field conditions shall be shown on the final plat and indicated as a change from the preliminary plat or, if final approval has been granted, said changes shall be shown on the as-built plans.

§ 17-21.4. Temporary Improvements.

During construction, the Borough Engineer may require the installation or construction of improvements to prevent or correct temporary conditions on the site which could cause personal injury, damage to property or constitute a health or safety hazard. These conditions may result from erosion and landslide, flooding, heavy construction traffic, creation of steep grades and pollution. Improvements may include grading, planting, retaining walls, culverts, pipes, guard rails, temporary roads and others appropriate to the specific conditions.

§ 17-22. SPECIFIC IMPROVEMENTS TO BE CONSTRUCTED OR INSTALLED.

§ 17-22.1. Stormwater.

- a. Provisions shall be made to collect stormwaters within the subdivision and to convey stormwaters from the subdivision to rivers and streams, drainage ditches or other stormwater conveyor capable of accommodating flows. The stormwater disposal system shall include all or some of the following: curbs, catch basins, culverts, pipes, stormwater drains, swales, drainage rights-of-way, ditches, channel improvement or combinations of all or some of the above, where appropriate. It may also include ground cover seeding, trees, shrubs, bushes and vegetation.
- b. The stormwater disposal system shall be connected with an approved system where one exists and shall be adequate for all present and future development of the subdivision or outside areas tributary thereto.
- c. In the event the water flows to a facility incapable of handling the expected flow and flooding or erosion may result, the applicant may be required to improve the stream or facility sufficiently to handle expected flows resulting from the subdivision.
- d. The stormwater disposal system for any land area in the Borough shall be devised in such a manner that:
 - (1) The rate and/or velocity of stormwater runoff from said area shall not be increased over that which occurred prior to development.
 - (2) The drainage of adjacent areas is not adversely affected.
 - (3) Soil erosion during or after development is not increased over what naturally

occurs.

- (4) The natural drainage pattern of the area is not significantly altered.
- e. Design Details. Plans for drainage improvements shall show the full area included within the proposed drainage limits, including lands outside the tract; present and future land use and approximate average slope of the drainage basin; the profile and rate of gradient; location and size of proposed storm drain; its point of discharge into stream, lake, existing storm drain, etc.; and show all existing storm sewers indicating size, grade and elevation. The minimum design requirements for storm sewers shall be based on a sewer size of sufficient capacity to carry runoff for a storm frequency period of 50 years with the land use fully developed. The rational or the Soil Conservation Service method shall be used to determine the quantity of runoff. The gradients of the storm sewers shall be set to provide velocities of 2-FPS-minimum flowing full and 15 FPS maximum. (Use Mannings Formula) Minimum size of pipe for storm sewer and cross drains shall be 15 inches in diameter. The interval between inlets shall be in accordance with good engineering design but in no event exceed 400 feet on both sides of the street. Inlets shall be at each intersection, as directed by the Borough Engineer. Any structure for enclosing, damming, or bridging a natural stream shall be in accordance with the regulation of the State of New Jersey, Department of Environmental Protection. Relocating or improving the channel of any such stream may also require a permit from said agency.

All storm drains shall be constructed of reinforced concrete storm drain pipe conforming to the requirements of the New Jersey State D.O.T. Standard Specifications, with amendments or what may be deemed appropriate by the Borough Engineer.

All manholes, inlets and catch basins shall be constructed in accordance with the New Jersey State D.O.T. Standard Specifications, with amendments. Manholes shall be constructed at all changes in grade or direction or as directed by the Borough Engineer.

Headwalls shall be constructed in accordance with the New Jersey State D.O.T. Standard Specifications, with amendments. The backfill for all storm drain pipe and around inlets, manholes and other subsurface structures shall be thoroughly compacted in strict accordance with the New Jersey State D.O.T. Standard Specifications, with amendments.

Subbase outlet drains shall be constructed in general conformity with the requirements of underdrain type F. The pipe used in this drain shall be reinforced concrete storm drain pipe conforming to the provisions of the New Jersey State D.O.T. Standard Specifications, with amendments.

Underdrains, type F, shall be constructed to intercept side hill seepage, to drain wet sections of the roadway and to drain springs and other underground water which affect the stability of the subgrade. These shall be installed where and when directed by the Borough Engineer.

Subbase outlet drains shall be constructed to drain all subbased areas as directed by the Borough Engineer.

Pipe for underdrains and subbase outlet drains shall be porous wall concrete pipe when laid outside the street pavement, and shall be perforated bituminous coated corrugated metal pipe when laid under the street pavement. The pipe shall conform to the New Jersey State D.O.T. Standard Specifications with amendments.

Underdrains, type F, and subbase outlet drains shall be constructed in accordance with the New Jersey State D.O.T. Standard Specifications, with amendments, and shall conform to Borough details.

§ 17-22.2. Sanitary Sewage Disposal.

If required:

- a. Provisions shall be made to convey sanitary waste from each lot through laterals and interceptors of sufficient size, material and capacity to collectors and then through trunk sewers to public or private treatment facilities. The provisions of this § 17-22.2 shall apply to all areas of the Borough which are included in the approved municipal Wastewater Management Plan and designated for central sewer treatment.
- b. The applicant shall be required to install within the subdivision a complete sewer pipe system including provisions of the connection thereto at each structure. Until such time as the public sanitary sewage disposal system is capable of becoming operable, individual septic systems or other appropriate and approved waste treatment facilities shall be required.
- c. A sanitary waste disposal system shall include all or part of the following: pipes and necessary appurtenances, such as manholes, lampholes, pumping stations, drainage tiles, valves and siphons.
- d. Design Details.
 - (1) All services shall be installed to the right-of-way line for each existing or proposed lot. All sewer construction work within the street right-of-way shall be laid sufficiently in advance of the construction of curbs, pavement, sidewalk and other surface installations to allow for complete excavation.
 - (2) Where individual sewage disposal systems are used and new streets are installed in a subdivision, and dry sanitary sewer lines are required, they shall be installed with laterals extending to the right-of-way line for each existing or proposed lot. Dry sanitary sewer lines and laterals shall be tested and approved in accordance with the leakage, infiltration and other requirements of the Borough.
 - (3) The location, design, plans, materials and construction methods and operations shall be subject to the approval of the sanitary engineering consultant or Borough Engineer as designated by the Planning Board.

- (4) If an inspection of the completed sewer or any part thereof shows any manholes, pipes or joints which allow the infiltration of water in a noticeable stream or jet, the defective work or materials shall be replaced or repaired as directed.
- (5) After sewers have been laid and otherwise completed, a leakage test shall be made to demonstrate that the line will satisfactorily meet the conditions prevailing in place with leakage not in excess of 100 U.S. gallons per 24 hours per miles inch normal diameter of the pipe used. Rates of infiltration shall be determined by means of V-notch weirs or pipe spigot in an approved manner and at such times and locations as may be directed during the progress and at the completion of the work. The developer shall provide and install weir plates or other materials required and at such times and locations as may be directed. The attention of the developer is directed to the strict requirements relative to permissible rates of infiltration and to the importance of these specifications relative to tight joints required.
- (6) Sanitary sewerage systems and sewer extensions, treatment plants, pumping stations, and other related sewerage installations require a permit from the New Jersey State Department of Environmental Protection. In the event that an applicant can clearly demonstrate that because of peculiar conditions pertaining to this land he cannot secure approval from the Board of Health of the Borough and the New Jersey State Department of Environmental Protection to install a package sanitary sewer plant to service the subdivision, the Planning Board may recommend to the Mayor and Council that the applicant be permitted to install a septic tank system discharging its effluent to a suitable subsurface disposal area upon the following conditions:
 - (a) That the septic tank and subsurface disposal area be approved by the Board of Health of the Borough and the New Jersey State Department of Environmental Protection.
 - (b) That the applicant install in addition to the septic tank and subsurface disposal area a sewer line including sewer mains to accommodate sewage from the structure to and along streets fronting the subdivision to a point where same can be connected to an interceptor sewage line as determined by the Borough Engineer.
 - (c) In addition to any other fees required by this Chapter or by the Borough, the applicant shall be responsible for and pay all reasonable engineering and legal fees incurred by the Borough in conjunction with aforesaid.

§ 17-22.3. Potable Water.

- a. Provision shall be made to provide each lot with an adequate and continuous supply of potable water.
- b. Where a P.U.C. regulated public water system is reasonably accessible, said system shall be connected to each lot.

- c. In the event such a system is not reasonably accessible, an individual well shall be installed on each lot.
- d. The applicant may be required to install within the subdivision a complete water system including provisions for connection to each structure. Until such time as the system is capable of becoming operable, individual wells shall be installed.
- e. A water system shall include all or part of the following: water source, pipes, pumps, valves, pumping stations, standpipes and fire hydrants and necessary appurtenances. Fire hydrants shall be a design and type approved by the Bureau of Fire Prevention and be installed in accordance with said Bureau's recommendation.
- f. Design Details.
 - (1) All services shall be installed to the right-of-way line for each existing or proposed lot. All water construction work, within the street right-of-way shall be laid sufficiently in advance of the construction of curbs, pavement, sidewalks and other surface installations to allow for complete settlement of the trenches and other excavations.
 - (2) All required approvals and/or permits shall be obtained from all municipal, county and state agencies having jurisdiction over the project or any part thereof before the Planning Board will consider applications for final approval of any major subdivision.
 - (3) The location of each fire hydrant shall be staked and the grade set by a licensed land surveyor. All hydrants shall be precisely to grade.
 - (4) The location, design, plans, materials and construction methods shall be approved by the Borough's Water Consultant or Engineer. Water mains shall be not less than eight inches in diameter.
 - (5) All water facilities and their appurtenances shall be installed and tested under the direction and supervision of the Borough's Water Consultant or Engineer. No extension of the existing water distribution system or any new system shall be accepted by the Borough until a recommendation for such acceptance is received from the Borough Water Consultant or Engineer.

§ 17-22.4. Utilities.

- a. Utility Easements. In any major subdivision or where unusual circumstances warrant, as determined by the Planning Board, easements may be required for utility installations. Such easements shall be at least 20 feet wide and located after consultation with the utility companies or Borough agencies concerned.
- b. Underground Utilities. In all subdivisions, all utility distribution lines or mains and all services shall be installed underground. In all such subdivision, the applicant shall arrange with the serving utility for the underground installation of the utilities' distribution supply lines, in accordance with the provisions of the applicable standard terms and conditions incorporated as a part of its tariff, as the same are

then on file with the State of New Jersey Board of Public Utility Commissioners, and shall submit to the Planning Board prior to the granting of final approval a written instrument from each serving utility which shall evidence full compliance with the provisions of this section; except, however, those lots in such subdivisions which abut existing streets where overhead electric or telephone distribution supply lines have heretofore been installed on any portion of the street involved may be supplied with electric and telephone service from those overhead lines, but the service connections from the utilities' overhead lines shall be installed underground.

- (1) In any particular situation where the applicant can clearly demonstrate that, because of unusual topographic conditions or other unusual conditions having to do with the land, installation of such utilities underground is impracticable or otherwise not feasible due to such conditions, then the Planning Board, in its discretion, may waive this requirement of underground installation.
 - (2) All underground utility work which will be under the pavement of the street shall be laid sufficiently in advance to allow for complete settlement of the trenches, and in no event shall construction work be permitted over such excavation which, in the opinion of the Borough Engineer, has not properly settled.
- c. Installation of Utilities. All work in connection with the installation of underground utilities within the street shall be completed sufficiently in advance of the construction of curbs, pavement, sidewalks, and other surface installations to allow for complete settlement of compaction by approved methods of all trenches and other excavations. In no case shall any construction work be permitted over any excavation which in the opinion of the Engineer has not completely settled or been properly compacted.
- (1) All underground utility installations under the jurisdiction of the P.U.C. shall be subject to the regulations and the procedures concerning the utility having jurisdiction over the particular installation.
 - (2) All underground installations under the direct jurisdiction of the municipality such as water mains, sanitary sewer lines, storm sewers and their various appurtenances shall be subject to their various appurtenances shall be subject to inspection and approval by the Borough Engineer or the Borough's authorized representative.
 - (3) No underground installation under the direct jurisdiction of the municipality shall be covered prior to inspection and approval by the Borough Engineer, who shall be notified not less than 48 hours in advance of any proposed work or required inspection.
 - (4) Backfill operations shall be performed in accordance with the provisions of the New Jersey State D.O.T. Standard Specifications, with amendments, except as otherwise noted herein.

§ 17-22.5. Vehicular and Pedestrian Improvements.

Such improvements shall include all or part of the following: street paving, curbs, gutters, concrete sidewalks where required by the Planning Board as a condition of preliminary approval, concrete driveway aprons, street lightning, traffic control devices and guard rails and other street improvements.

a. Streets

- (1) General. The arrangement of streets shall conform to the circulation plan of the Master Plan or Official Map. 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.
- (2) Right-of-Way and Pavement Widths. The right-of-way widths shall be measured from abutting lot line to abutting lot line, and the right-of-way widths and pavement widths shall not be less than the following:
 - (a) Arterial and primary roads shall have a right-of-way width as required by state or county.
 - (b) Secondary arteries shall have a right-of-way width as required by state or county.
 - (c) Collector streets, those with average daily traffic of 3,000 or less, shall have a right-of-way width of 50 feet and a pavement width of 32 feet.
 - (d) Minor streets, those with average daily traffic of 250 or less, shall have a right-of-way width of 50 feet and a pavement width of 26 feet.
 - (e) Cul-de-sac or dead-end turnarounds shall have a minimum radius of 50 feet on the curb.
 - (f) Internal Roads. The right-of-way and pavement widths for internal roads in multifamily, commercial and industrial developments and zones shall be determined on an individual basis and shall, in all cases, be of sufficient width and design to safely accommodate the maximum traffic, parking, loading and access for fire-fighting equipment, but in no case shall the pavement be less than 24 feet in width for two-way traffic.

- b. Widening of Existing Streets. Subdivisions that include existing streets which do not conform to pavement and/or right-of-way widths as shown on the Master Plan or Official Map shall dedicate and improve to Borough specifications additional along the side or sides of said road abutting the property being subdivided. If the subdivision adjoins one side of an existing road which does not meet standards, 1/2 of the required extra width shall be dedicated and improved to Borough specifications.

c. Street Design Standards.

- (1) Subgrade. All topsoil shall be stripped from the proposed subgrade. The

subgrade when completed shall be true to the lines, grades and cross-sections given on the plan. After the subgrade has been shaped correctly it shall be brought to a firm, well compacted surface by rolling the entire area with a roller weighing not less than 10 tons. Alternate means of compaction will be permitted subject to the approval of the Borough Engineer. All soft and spongy places shall be excavated and refilled solidly with subbase, consisting of broken stopes, broken slag, gravel, suitable earth or sand as directed by the Borough Engineer. All loose rock or boulders shall be removed or broken off six inches below entirety. This shall be done before completing the rolling of the entire surface of the subgrade.

- (2) Embankments (Fills). Embankments shall be formed of suitable material placed on successive layers of not more than 18 inches in depth for the full width of the cross-section, and shall be compacted by rolling with a 10 ton roller or alternate means or as directed by the Borough Engineer. Stumps, trees, rubbish, and/or any other unsuitable materials or substance shall not be placed in the fill. The fill shall be allowed to thoroughly settle before constructing pavement upon it and must be approved by the Borough Engineer.
- (3) Subbase.
 - (a) Description. Subbase shall be placed when in the opinion of the Borough Engineer the subgrade material is unsuitable to be used as a base for pavement. Subbase shall be not less than six inches thick.
 - (b) Material. Subbase material shall consist of soil aggregate Class A, Type 1 or 2 or 2-1/2 inches quarry process stone.
 - (c) Methods of Construction. Subbase shall be of the thickness as specified by the Borough Engineer, but in no case shall it be less than six inches thick. Subbase shall not be constructed during freezing weather or with frozen material. Subbase shall be compacted in lifts, not greater than six inches. The subbase shall be rolled with a 10 ton, or alternate methods as approved by the Borough Engineer. It shall be compacted to a density of not less than 95%, at a moisture content within 2 A.S.T.M. designation D698. The subbase shall be constructed in accordance with New Jersey State D.O.T. Standard Specifications, with amendments.
- (4) Base Course. The base course shall consist of four inches compacted thickness of soil aggregate Class A, Type 1 or 2, or quarry process stone.
- (5) Intermediate Course. The intermediate course shall consist of three inches compacted thickness of bituminous concrete base and shall comply with New Jersey State D.O.T. Standard Specifications, with amendments.
- (6) Surface Course. The surface course shall be hot-mixed bituminous concrete Type FABC-1 with a compacted thickness of two inches conforming to the requirements of New Jersey State D.O.T. Standard Specifications, with

amendments.

- (7) Method of Construction. The pavement shall be constructed in accordance with New Jersey State D.O.T. Standard Specifications, with amendments.
- (8) Grades. Grades of arterial, primary and secondary roads shall be as determined by state or county. Grades of collector streets shall not exceed 10%. Grades of local streets shall not exceed 12%. No street shall have a minimum grade of less than 1/2 of 1%.
- (9) Intersections. Street intersections shall be laid out as nearly at right angles as possible and in no case shall be less than 60 degrees. The block corners at intersections shall be rounded at the curbline with a curb having a radius of not less than 35 feet.
- (10) Jogs. Street jogs with centerline offsets of less than 125 feet shall be prohibited.
- (11) Reverse Curves. A tangent at least 100 feet long shall be introduced between reverse curves.
- (12) Connecting Street Lines. When connecting street lines deflect from each other at any one point by more than 10 degrees and not more than 45 degrees, they shall be connected by a curve with a centerline radius of not less than 100 feet for minor streets and 300 feet for primary and secondary streets.
- (13) Grade Changes. All changes in grade shall be connected by vertical curves of sufficient radius to provide a smooth transition and proper sight distance in accordance with ASSHO standards.
- (14) Dead-end Streets. All dead-end streets shall have a turnaround installed and shall not be longer than 1,000 feet or provide access to more than 30 detached dwellings, whichever is more restrictive. The turnaround shall have a curb radius of 50 feet and shall be tangent wherever possible to the right side of the street. When a dead-end street terminates at an adjoining property line and where it is possible to extend the street at a future time, the turnaround right-of-way shall be considered temporary in nature, and provisions shall be made for future extension of the street and reversion of the excess right-of-way to the adjoining property or properties, the removal of such turnaround and the extension of the street to be accomplished by the future developer. Wherever a turnaround is proposed on any street, the front yard setback line shall be measured from said turnaround.
- (15) Names. Streets shall not have a name which will duplicate or so nearly duplicate as to be confused with the names of existing streets. The continuation of an existing street shall have the same name. All street names shall be approved by the Planning Board.

d. Curbs.

- (1) Curbs shall be constructed on both sides of the street pavement as well as on the perimeter of the turnarounds of culs-de-sac at a radius of not less than 50 feet from the center. Curbs may be waived by the Planning Board if not warranted for reasons of drainage, stormwater management, safety or other valid objectives. Curbs shall be constructed true to the lines, grades and dimensions shown on the plans, and shall be neat and workmanlike in appearance. Excavation and backfill shall conform to the requirements of the New Jersey State D.O.T. Standard Specifications, with amendments. The foundation for the curb, and backfilling shall be thoroughly compacted by means of flat faced mechanical tampers approved by the Borough Engineer. Curb shall not be constructed on embankments or trenches which have not completely settled unless adequately compacted. Curbs shall not be constructed until all roadway excavation has been completed.
- (2) Concrete shall not be placed when the atmospheric temperature is below 36° F, except that when the temperature is within the range of 30° F to 36° F, concrete containing an anti-freeze and mixture approved by the Borough Engineer may be placed.
- (3) Granite block curbs. The granite block shall be of the best quality medium or fine-grained granite dressed so that all faces are approximately rectangular and measuring not less than 10° from top to bottom.
- (4) The concrete to be used shall be Class B as specified in the New Jersey State D.O.T. Standard Specifications, with amendments. The granite block shall be laid in concrete with the longest dimensional wall vertical. Sufficient concrete shall be laid beneath the block to provide a total curb height of 18 inches. Concrete shall also be placed on both the front and rear of the block to provide sufficient support as shown on the Borough Details. The concrete in front, rear and underneath the block shall be placed in a monolithic pour. A form consisting of 2" × 12" plank shall be used on both sides of the curb footing to insure a uniform width and depth of the concrete. The concrete beneath the block shall be 12 inches in width.
- (5) Joints shall measure 3/8 inch to 1/2 inch in width and shall be pointed with mortar consisting of one part portland cement and two parts sand, and shall be tooled as directed by the Engineer. Pointing shall be completed before the curb is backfilled. The curb shall be constructed to show a vertical face of six inches above the finished pavement.
- (6) The curb at all driveway openings shall be depressed to a point two inches above the finished pavement.
- (7) All block shall be clean and free from mortar, bituminous materials or other substances.
- (8) The curb shall be completely backfilled in front and rear before heavy equipment of any kind shall be permitted to operate on the roadway area within four feet of the curb. Bituminous material, cement or other substance

deposited on the blocks during or after construction shall be removed by the developer by sandblasting or other approved means.

- (9) Plywood may be used for form on corners with sharp curves. When a section of existing full height curb is removed to construct a driveway entrance, it shall be completely removed, including the concrete foundation. Depressed curb shall then be constructed.
 - (10) When a section of depressed curb is not used for a driveway entrance because the driveway has been constructed at another location on the lot, the depressed curb shall be removed in its entirety and raised to full height by the construction of new curb.
 - (11) Curbs may be waived by the Planning Board if not warranted for reasons of drainage, stormwater management, safety or other valid objectives.
- e. Sidewalks. Sidewalks shall be provided on those streets within a subdivision designated as minor, collector, secondary or primary arteries as deemed necessary by the Planning Board.
- (1) Sidewalks shall be constructed a minimum distance of four feet from the curbline true to the lines, grades and dimensions shown on the plans and Borough details, and shall be neat and workmanlike in appearance.
 - (2) The sidewalk shall be paved with Portland Cement for a width of not less than four feet. Concrete shall be Class B as specified in the New Jersey State D.O.T. Standard Specifications, with amendments, and shall be air-entrained. All sidewalk pavement shall be laid parallel to the existing centerline of the street, except as otherwise directed by the Borough Engineer.
 - (3) Sidewalk pavement shall be uniformly sloped toward the established curb line at the rate of 1/4 inch per foot. The area between the sidewalk pavement and the curb or curb line shall have a uniform slope of 1/4 inch per foot toward the curb or curb line except where otherwise directed by the Borough Engineer.
 - (4) The sidewalk pavement shall have a uniform thickness of not less than four inches except at driveway crossings and driveway ramps where it shall have a uniform thickness of not less than six inches, reinforced with round steel reinforcing bars approved by the Borough Engineer. The size and placement of the bars shall be as directed by the Borough Engineer. Sidewalks shall not be constructed on embankments or newly backfilled trenches unless the subgrade has been properly compacted.
 - (5) The sidewalk pavement shall be laid on a bed of 3/4-inch broken stone having a compacted thickness of four inches. Outlet drains shall be constructed to drain the broken stone bed where directed by the Borough Engineer.
 - (6) The subgrade shall be constructed smooth and even and shall be thoroughly compacted by means of flat-faced mechanical tampers or other means approved by the Borough Engineer.

- (7) Portland Cement Concrete sidewalks shall be constructed in accordance with the provisions of the New Jersey State D.O.T. Standard Specifications, with amendments, except as otherwise specified herein.
- (8) The area between the curb and sidewalk shall be topsoiled and seeded. No trees shall be planted between the sidewalk and curb. The topsoil shall be screened and shall have a depth of not less than four inches. Topsoiling and seeding shall conform to the provisions of the New Jersey State D.O.T. Standard Specifications, with amendments, using Type A grass seed, except as otherwise specified above.
- f. Street Lighting. The subdivider shall provide or install or cause to be installed street lighting where required. Plans and specifications covering same must be submitted with subdivision plans and must be approved by the public utility supplying said service.
- g. Street Name Signs. Street name signs shall be placed at all street intersections within or abutting the subdivision. At least two street name signs shall be placed at each four-way street intersection and one at each "T" intersection. Signs shall be installed under light standards and free of visual obstruction. The design of street name signs should be consistent, of a style appropriate to the community, of a uniform size and color, and erected in accordance with the standards of the Borough of Mount Arlington. Site information signs in planned developments shall follow a design theme related and complementary to other elements of the overall site design.
- h. Driveways. Driveways constructed of concrete or bituminous concrete in accordance with the specifications of the Borough shall be installed from curb to house or garage except as required in § 17-22.5e(4).

Driveways shall be so constructed that there be a grade of 2% starting at the curb line and running for a distance of not less than 10 feet. There shall be a standing area in front of the garage a minimum of 25 feet in length with a grade not to exceed 5%.

That portion of the driveway connecting the standing area of the garage and the 2% grade from the curb line shall be constructed with smooth transitional curves and shall not exceed the grade of 15%. Where the driveway on a particular lot is to be constructed two or more feet below the grade of the surrounding terrain, said driveway shall be a minimum of 16 feet in width in order to allow for the storage of plowed snow during inclement weather. Otherwise driveways shall not be less than nine feet in width.

Driveways shall not be located where visibility is limited. Lots fronting on arterial or collector roads shall, at the discretion of the Planning Board, have driveways with turnarounds.

- i. Guide Rails. These shall be designed to prevent cars from leaving the road. They shall be installed where danger exists to the traveling public due to steep

topography, narrow roadways, location of drainage ditches or other similar conditions. Guide rails similar to those used by the New Jersey State Department of Transportation shall be installed in accordance with the standards used by the New Jersey Department of Transportation whenever, in the interest of general public safety, they shall be required by the Planning Board.

- j. **Parking Areas.** Parking areas and other areas likely to experience similar light traffic shall be paved with not less than four inches of quarry process stone, Type 5A, with a minimum two inch thick compacted wearing surface of bituminous concrete (FABC) constructed thereon in accordance with the New Jersey State Highway Department specifications and amendments thereto.

Where subbase conditions of proposed parking and loading areas are wet, springy or of such a nature that surfacing would be inadvisable without first treating the subbase, the treatment of the subbases shall be made in the following manner: The areas shall be excavated to a suitable depth below the proposed finished grade and filled with suitable subbase material as determined by the Borough Engineer. Where required by the Borough Engineer, a system of porous concrete pipe subsurface drains or an alternative solution approved by the Borough Engineer shall be constructed beneath the surface of the parking area and connected to a suitable drain. After the subbase material has been properly placed and compacted, the parking area surface material as described heretofore, shall be spread thereon.

§ 17-22.6. Natural Improvements.

These improvements shall include all or some of the following: shade trees, topsoil, earth removal, borrow and fill improvements to prevent erosion and landslides and improvements to prevent damage to adjacent property.

- a. **Shade Trees.** Not less than two shade trees shall be provided on each lot, located in accordance with Borough specifications. New trees, where required, shall be nursery-grown stock balled and burlapped, and not less than 2 1/2-inch caliper measured three feet from the root system, planted and double staked. Trees shall be of a species approved by the Planning Board for use as a shade tree.

Shade trees shall be provided on both sides of any new street. Trees shall be located within the front yard area and within five feet of the right-of-way line. The trees shall be spaced not less than 40 feet apart.

All trees shall be planted within the normal planting season; that is, from April 1 to May 15 and from October 1 to November 15. All trees shall be firmly supported with three guy wires attached to stakes. Pieces of rubber hose shall be used under the wires where they are attached to the trees.

- b. **Stormwater Basins.** Lands disturbed during the construction of stormwater retention/detention basins shall be landscaped with suitable plant materials designed to blend new construction into the existing natural environment. A landscape plan shall be prepared utilizing evergreen and deciduous trees in sufficient quantity and variety to revegetate those disturbed areas. A minimum 20

foot wide planted buffer shall be provided between the stormwater basin and abutting properties or homes. The plan shall indicate existing vegetation and the variety, quantity, size and location of all proposed landscaping.

- c. **Planted Nonwooded Areas.** In all instances, not including shade trees, where the Planning Board determines that proposed building lots are located in nonwooded areas, not less than 12 trees per acre, having a caliper of 25 inches or greater, shall be planted in such nonwooded areas. The variety and planting design shall be as approved by the Planning Board.
- d. **Compensatory Planting.** Every effort should be made to avoid removal of trees having a caliper of five inches or greater from the property in the process grading or installing improvements. Where, in the judgment of the Planning Board, such removal is unavoidable, the developer shall plant new trees in such locations and of such size, variety and quantity as the Planning Board shall direct. Notwithstanding the five inch caliper limitation, no substantial area of smaller trees or shrub cover shall be removed without the provision of comparable replacement plantings, as approved by the Planning Board.
- e. **Excavations and Fills.** No excavation shall be made with a cut face steeper in slope than two horizontal to one vertical in wooded areas, or three horizontal to one vertical in nonwooded or lightly wooded areas, except as approved by the engineer when handled under special conditions.

No fill shall be placed which creates any exposed surface steeper in slope than two horizontal to one vertical in wooded areas, or three horizontal to one vertical in nonwooded areas, except as approved by the engineer when handled under special conditions.

Fill slopes shall be stabilized as follows: Topsoil to a depth of four inches shall be spread over the entire slope and the slopes shall be seeded. Plantings or ground cover may be substituted for seeding in areas of steep slopes with the approval of the Borough Engineer. An erosion control plan must be approved by the Morris County Soil Conservation Service.

Retaining walls or cribbing shall be required where needed to prevent the surface of excavations or fills from exceeding at any point the maximum allowable slope.

Excavations shall not be made so close to property lines as to endanger adjoining property without supporting and protecting the face of the excavation.

No fill or excavation shall be made closer than five feet from a property line or proposed property line.

- f. **Retaining Walls.** No permit is required for the construction of any wall which is four feet or less in height. No retaining wall exceeding four feet in height from the lowest elevation of the finished grade to the top of the retaining wall shall be built in any zone district unless and until a site plan has been submitted to and approved by the Planning Board.

Retaining walls located parallel to each other, stepped, shall be spaced horizontally at least two times the height of the lower wall.

No retaining wall shall be closer than the height of the wall from any lot line. Retaining walls shall not be constructed within any public street right-of-way.

Retaining walls shall be constructed in accordance with good engineering practice. Excavation and backfill shall conform to the requirements of the New Jersey State D.O.T. Standard Specifications, with amendments. The methods of construction including forms, finishing, curing, etc., shall conform to the requirements of the New Jersey State D.O.T. Standard Specifications, as amended.

Fences may be required along the tops of retaining walls at the direction of the Planning Board.

- g. Drainage Easements. Where a subdivision is traversed by a watercourse, drainageway, channel or stream, there shall be provided an easement or drainage right-of-way at least 20 feet wide on each side conforming substantially with the lines of such watercourse and such further width as will be adequate for the purpose of disposing of stormwaters and for flood control. Such easements shall be deeded to the Borough prior to final subdivision approval.

§ 17-22.7. Monuments.

All lots shall require monuments of such size and shape as required by N.J.S.A. 46:23-94, as the same may be amended and supplemented, and shall be placed in accordance with said statute. When any subdivision overlaps the boundary between the Borough and any other municipality, then, and in that event, said boundary line shall be monumented in accordance with the direction of the Borough Engineer.

§ 17-22.8. Blocks.

- a. General. Block length and width or acreage within bounding roads shall be such as to accommodate size of the lot required in the area by this article and to provide adequately for sewage disposal, convenient access, circulation, control and safety of street traffic.
- b. Pedestrian Crosswalks. In blocks over 1,000 feet long, public rights-of-way through the blocks may be required in locations deemed necessary by the Planning Board. Such rights-of-way shall be at least 10 feet wide and be straight from street to street.
- c. Sizes. Block sizes for group housing, business or industrial use shall be sufficient to meet all area and yard requirements for such use.
- d. Easements. Rights-of-way and easements within blocks in commercial, business or industrial areas shall be not less than 20 feet in width.
- e. Sidewalks. Sidewalks shall be required in all major subdivisions on both sides of the street and in those minor subdivisions where the construction of sidewalks would continue an existing pattern.

§ 17-22.9. Lots.

- a. General. Lot dimensions, front, side and rear yards and total area in square feet shall not be less than required by the Borough Zoning Ordinances and Article VIII, Zoning.
- b. Side Lines. Insofar as is practical, side lot lines shall be at right angles to streets and radial to curved streets.
- c. Frontage. Each lot must front upon an approved street, and frontage shall not be less than required.
- d. Setbacks. Where land has been dedicated for a widening of existing streets, lots shall begin at such new street line as may have been established, and all setbacks shall be measured from such line.
- e. Substandard Suitability. Where there is a question of the suitability of a lot or lots for their intended use due to factors such as rock formations, flood conditions, high water table, sewage disposal, excessive topographic slope or similar circumstances, the Planning Board may, after adequate investigation, with professional assistance, if deemed necessary, withhold approval of such lots.

§ 17-22.10. Recycling. [Ord. No. 2008-16 § 2]

- a. There shall be included in any new multifamily housing development, any single-family housing development of 50 or more units, or any commercial or industrial development proposal for the utilization of 1,000 square feet or more of land (except those exempt under § 144-3B of the borough Code), that requires subdivision or site plan approval indoor and outdoor recycling areas for the collection and storage of recyclable materials.
- b. Specification, including but not limited to, dimensions, location, lighting and landscaping of recycling areas are detailed in § 17-24.9, Solid Waste and Recycling.

ARTICLE VII
Design Standards for Development

§ 17-23. GENERAL.

- a. In reviewing any application for development, the Planning Board shall consider:
- (1) Pedestrian and vehicular traffic movement within and adjacent to the site with particular emphasis on the provision and layout of parking areas, off-street loading and unloading and movement of people, goods and vehicles from access roads, within the site, between buildings, and between buildings and vehicles. The Planning Board shall ensure that all parking spaces are usable and safely and conveniently arranged and adequately marked. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the site. In site plans, the Planning Board shall determine which roads shall be public and which shall remain private. The circulation plan of each development shall reflect the Master Plan's circulation plan element.
 - (2) The design and layout of buildings and parking areas shall be reviewed so as to provide an aesthetically pleasing design and efficient arrangement. Particular attention shall be given to safety and fire protection, impact on surrounding buildings and lands and environmental and ecological consideration. Architectural design shall be compatible with the environmental and natural characteristics of the tract and the surrounding neighborhood.
 - (3) Adequate lighting shall be provided to ensure safe movement of persons and vehicles and for security purposes. Lighting standards shall be of a type approved by the Planning Board. Directional lights shall be arranged so as to minimize glare and reflection on adjacent properties.
 - (4) Buffering where required shall be located around the perimeter of the site to minimize headlights of vehicles, noise, light from structures, the movement of people and vehicles, and to shield activities from adjacent properties. Buffering may consist of fencing, evergreens shrubs, bushes, deciduous trees or combinations thereof to achieve the stated objectives. Extensive buffering shall be required where intensive land uses abut less intensive uses. Existing natural vegetation, if appropriate for the above stated purpose, shall be retained.
 - (5) Landscaping shall be provided as part of the overall site plan designed and integrated into building arrangements, topography, parking and buffering requirements. Landscaping shall include trees, bushes, shrubs, ground cover, perennials, annuals, plants, sculpture, art and the use of building and paving materials in an imaginative manner.
 - (6) Open Space. Open space shall be provided as part of any site plan and shall serve as a buffer or help integrate buildings and uses. Undeveloped open space should have as a prime objective the presentation of a tract's natural amenities.

Ponds, rock outcroppings, wooded areas, vistas, steep slopes, ravines, and stream beds are prime lands recommended for undeveloped open space.

- (7) Signs shall be designed so as to be aesthetically pleasing, harmonious with other signs on the site, and located so as to achieve their purpose without constituting hazards to vehicles and pedestrians.
- (8) Storm drainage, sanitary waste disposal, water supply shall be reviewed and considered. Particular emphasis shall be given to the adequacy of existing systems and the need for improvements, both on-site and off-site to adequately carry runoff and sewage and to maintain an adequate supply of water at sufficient pressure.
- (9) Waste storage. **[Ord. No. 2008-16 § 3]**
 - (a) Each nonresidential building shall provide at least one trash and recycling pickup location, either within the building or outside the building in the rear yard area. All outside locations shall be obscured from view from parking areas, streets and adjacent districts by a fence, wall, planting or combination of the three as approved by the Planning Board. Garbage disposal and recycling shall be reviewed to ensure frequent collection, vermin and rodent protection. All systems shall meet governmental specifications as to installation and construction.
 - (b) Any new multifamily housing development, single-family housing development of 50 or more units, or any commercial or industrial development proposal for the utilization of 1,000 square feet or more of land (except those exempt under § 144-3B of the Borough Code, the management or owner is responsible for setting up and maintaining the recycling system, including collection of recyclable materials, in accordance with guidelines or regulations established by the Borough Recycling Coordinator and § 17-24.9, Solid Waste and Recycling of the Borough of Mount Arlington's Code.
- (10) Soil erosion and sedimentation control shall meet the standards established in the Morris County Soil Conservation District.
- (11) Conformance with Master Plan or Official Map. All developments shall conform to the proposals and conditions shown upon the Master Plan or Official Map. Streets, drainage rights-of-way, school sites, public parks, and playgrounds and other public areas shown on the Master Plan or Official Map shall be shown on the plan of a proposed development in locations and sizes suitable to their intended uses. The Board may reserve the location and extent of such public areas in accordance with the requirements of N.J.S.A. 40:55D-44.

§ 17-24. SPECIFIC.

The requirements contained elsewhere in this Chapter as they relate to circulation,

performance standards, location of structures, setbacks, yards, bulk, height and coverage, shall apply to site plan approval.

The design criteria established in Article VI shall apply, where appropriate, to site plan approval.

Construction requirements for the handicapped established by the State shall apply to all site plans.

§ 17-24.1. Driveway Design Standards.

- a. **Driveway Dimensions.** Driveway dimensions shall be designed to adequately accommodate the volume and character of vehicles anticipated. The following criteria shall be utilized in determining curb return radii, locations and site distances, subject to particular requirements as to circulations design:

Land Use	Curb Return Radius (feet)
Multiple-family (less than 20 (families)	
One-way	20 min.
Two-way	30 min.
Multiple-family (more than 20 (families)	
One-way	20 min.
	30 max.
Two-way	25 min.
	35 max.
Commercial, Industrial, Office	
One-way	35 min.
Two-way	45 max.
Service stations	
One-way	20 min.
Two-way	35 max.

- b. **Minimum Sight Distances.** Any driveway providing access to a public or private street shall be so designed in profile and grading and shall be so located to permit the following minimum sight distances, measured in each direction, along the intersecting street. Measurement shall be made from the driver's seat of a vehicle standing on that portion of the exit driveway with the front of the vehicle a minimum of 10 feet behind the edge of the paved right-of-way, with the height of the eye on 3.75 feet to the top of the object 4.5

Maximum Allowable Speed on Street	Required Sight Distance
(mph)	(feet)
25	300
30	350
35	425
40	475
45	525
50	600

- c. Minimum Distances Between Driveways. In all cases, a minimum clear distance of 50 feet measured along the right-of-way line shall separate the closest of any two driveways.

§ 17-24.2. Acceleration and Deceleration Lanes.

- a. The Planning Board in its discretion, may require roadway widening or other street improvements, including acceleration and deceleration lanes. Where such determination is made, the following minimum standards shall be applicable:
- b. The area behind the taper shall be cleared of all obstructions for an appropriate distance from the center line of the road which would present a hazard to vehicles approaching the pavement taper edge.

§ 17-24.3. Off-Street Parking.

- a. Required Number by Use:

Use	Required Parking Spaces
Automotive service station	3 parking spaces for each bay plus not less than 1 for each service vehicle
Bank and savings institution	1 parking space for each 250 sq. ft. of gross floor area
Churches and other places of worship	1 for each 3 seats, or 1 for each 72 inches of seating space when benches rather than seats are used
Community building, social hall, and place of public worship	1 parking space for each 2 seats, except where a specific amount of seating is undetermined, then 1 parking space shall be required for each 75 sq. ft. of assemblage area

Use	Required Parking Spaces
Country club	1 for each 100 sq. ft. of gross floor area occupied by all principal or accessory structures except those used for parking purposes
Farm or garden produce sold on the premises	10 parking spaces
Funeral home, mortuary	10 spaces plus 1 space for 50 sq. ft. of gross floor area
Golf driving range	2 for each tee.
Industrial use [Reserved by Ord. No. 99-9 § 7]	
Laboratory and research use	1 parking space for every 500 sq. ft. of gross floor area
Medical or dental clinic or office	4 spaces for each doctor or dentist, plus 1 space for each 250 sq. ft. of gross floor area
Motel, hotel, motor lodge	1 for each rental unit, and in addition, compliance with the requirements for each particular additional use located on the property, such as restaurants, eating and drinking establishments, retail stores and meeting rooms
Nursing home	1 for each bed
Office, business or professional (other than medical or dental)	1 space for every 250 sq. ft. of gross floor area
Residential dwelling	2 parking spaces for each dwelling unit
Restaurant, eating and drinking establishment and catering hall	1 for each 2 1/2 seats
Retail store, store group, shops, etc.	1 for each 200 sq. ft. of gross floor area
Theater	1 for each 3 seats
Warehouse	1 for each 5,000 sq. ft. of gross floor area

- (1) Off-street parking requirements for a combination of uses shall be computed separately and then added together to compute the total number of required parking spaces. In all questionable or doubtful cases, or for uses not enumerated, the Planning Board shall determine the required number of spaces, utilizing as a standard the requirements for the uses which are specifically enumerated in this section.
- (2) Parking of Commercial Vehicles in Residential Areas. The parking of all

commercial vehicles in residential areas shall be prohibited except that one such vehicle may be parked in a wholly enclosed garage as an accessory use to the principal permitted use. Outdoor parking of commercial vehicles in a residential zone shall be prohibited. No commercial vehicles weighing over 10,000 pounds or over 30 feet in length shall be permitted on-site, whether garaged or not.

- b. Location of Stalls. No off-street parking or loading area shall be located in a minimum required front yard except for single-family structures. The minimum setback for parking or loading areas in the side and rear yards shall be 10 feet.
- c. Off-street parking stalls shall not block principal entrances to a building. A minimum of a 20 foot wide pedestrian drop-off island, free of vehicular parking, shall be provided to permit unencumbered pedestrian access to the principal building entrances. The circulation systems should be designed so as to provide direct access to the building without requiring pedestrians to pass between parked cars. The Planning Board, in its discretions, may require appropriate breaks in the parking bays to permit adequate pedestrian access to the building.
- d. A landscaped island having a minimum width of 12 feet shall be provided between abutting bays of parking. Furthermore, no more than 20 parking stalls may be developed in a continuous row without the introduction of a landscaped island having a minimum dimension of nine feet by 18 feet.
- e. Size of Parking Stalls. Each off-street parking space shall have an area of not less than 162 square feet at least nine feet in width by 18 feet in length and shall be of usable shape and condition. Parallel curb parking spaces shall measure eight feet in width and 24 feet in length. Except in the case of one-family and two-family dwellings, no parking area provided hereunder shall be established for less than three spaces.

f. Minimum and Maximum Grades in Parking Areas.

	Maximum Grade (percent)	Minimum Grade (percent)
Parking stalls and service aisles	6	1/2
Main approach walkways buildings	4	1
Collector or other service walkways	6	1
Principal circulation aisles	6	1/2
Driveway entrances and exits up to 25 feet from curblane	4	1/2
Driveway entrances and exits beyond 25 feet from curblane	12	1/2

Any vertical curve on a driveway connecting a street with a parking lot or area shall be designed to prevent the dragging of any vehicle's undercarriage.

- g. Access. There shall be adequate provision for ingress and egress in all parking spaces. Access drives or driveways shall be not less than 15 feet for either ingress or egress and 24 feet wide for both ingress and egress area requirements. No driveway or access drive shall be closer than 50 feet to any two intersecting streets.
- h. Size of Aisles. The width of all aisles providing direct access to individual parking stalls shall be in accordance with the requirements set forth below. Only one-way traffic shall be permitted in aisles serving parking spaces placed at an angle other than ninety degrees.

Parking Angle (degrees)	Aisle Width (feet)
0 (parallel parking)	12
30	12
45	12
60	18
90 (perpendicular parking)	24

- i. Location in Different Zones. No access drive or driveway shall be located in any residential zone to provide access to uses other than those permitted in such residential zone.
- j. Sidewalks and Curbing. Sidewalks between parking areas and principal structures, along aisles and driveways and a minimum width of four feet of passable area and shall be raised six inches or more above the parking area except when crossing streets or driveways. Guiderails and wheel stops permanently anchored to the ground shall be provided in appropriate locations. Parked vehicles shall not

overhang or extend over sidewalk areas, unless an additional sidewalk width of 2 1/2 feet is provided to accommodate such overhang.

k. Landscaping, Paving, and Drainage.

- (1) In outdoor parking lots with 10 or more spaces, not less than 10% of the parking area shall be suitably landscaped to minimize noise, glare, and other nuisance characteristics, as well as to enhance the aesthetics, environment and ecology of the site and surrounding area. Waived required parking areas which are landscaped shall not be included in the required 10%.
- (2) The landscaping shall be located at the entrance of the lots, in protected areas along walkways, center islands and at the end of bays. In narrow islands, low spreading plants, such as creeping juniper, are appropriate.
- (3) All landscaping in parking areas shall be carefully located so as not to obstruct vision.
- (4) Off-site drainage facilities and structures requiring enlargement, modification or reconstruction resulting in part from, or totally as the result of the proposed development shall be subject to off-site improvement requirements and standards as established in the Land Development Chapter.

- l. Lighting. All areas lighting shall provide for lights focused downward, translucent fixtures and shielding, or such other light orientation and shielding to prevent light spillage off the site. The light intensity provided at ground level shall be a minimum of 0.3 footcandle anywhere and shall average a maximum of 0.5 footcandle over the entire area. At no point shall the illumination over the property line exceed 0.2 footcandle. Mounting heights shall generally not exceed 20 feet. Lower heights shall be used for walkways. Greater heights, not exceeding 25 feet, may be used in large parking areas. For each fixture and lighted sign, the total quantity of light radiated above a horizontal plane passing through the light source shall not exceed 7.5% of the total quantity of light emitted from the light source. Any outdoor lighting shall be shown on the site plan in sufficient detail to allow determination of the effects at the property line and on nearby streets, driveways, residences, and overhead sky glow. The objective of these specifications is to minimize undesirable off-site effects. No light shall shine directly into windows or onto streets and driveways in such a manner as to create a nuisance or interfere with or distract driver vision. To achieve these requirements, the intensity of such light sources, light shielding, and similar characteristics shall be subject to site plan approval.
- m. Markings and Access. Parking stalls, driveways, and aisles shall be clearly marked and delineated. The Planning Board may require certain areas be maintained for fire-fighting or other emergency purposes, and these areas shall be appropriately designated.
- n. Waiver of Parking Requirements. If any applicant can clearly demonstrate to the Planning Board or if the Planning Board determines that, because of the nature of the operation or use, the parking requirements of this section are unnecessary or

excessive, the Planning Board shall have the power to approve a site plan showing less paved parking area than is required by this section; provided, however, that a landscaped area of sufficient size to meet the deficiency shall be set aside and reserved for the purposes of meeting future off-street parking requirements in the event that a change of use or operation of the premise shall make such additional off-street parking spaces necessary.

§ 17-24.4. Off-street Loading Requirements.

- a. In any zone, in connection with every building or building group or part thereof hereafter erected which is to be occupied by nonresidential uses, there shall be provided and maintained on the same lot with such building, in addition to any required vehicular parking, off-street loading and unloading space in the following ratio:
 - (1) Up to 20,000 square feet of building area: one space.
 - (2) Twenty thousand to 50,000 square feet of building area: one additional space.
 - (3) For each additional 100,000 square feet of building space: one additional space.
- b. Each such space shall be not less than 12 feet in width, 50 feet in length and 14 feet in height and shall not occupy any part of any required front or side yard; provided, however, that on lots on which the side yard abuts a limited access highway such loading space may occupy the side yard. No such space shall be located closer than five feet to any property line.
- c. Loading and unloading areas may be used only for the parking of trucks and/or trailer used solely to service the facility where located.
- d. A sign stating that all truck engines shall be turned off upon parking shall be prominently posted in all loading and unloading areas.
- e. Where an applicant can demonstrate to the Board's satisfaction that the number of off-street loading and unloading requirements are not appropriate for the applicant's proposed use, the Board may waive said requirements.

§ 17-24.5. Joint Facilities for Off-street Parking or Loading.

Off-street parking and loading facilities for separate uses may be provided jointly if the total number of spaces so provided is not less than the sum of the separate requirements for each use, provided that all regulations governing the location of accessory spaces in relation to the use served are adhered to. Further, no accessory space or portion thereof shall serve as a required space for more than one use unless otherwise approved by the Planning Board as provided herein in accordance with the purposes and procedures set forth herein.

§ 17-24.6. Maintenance of Off-street Parking and Loading Areas.

- a. Every parcel of land hereafter used as a public or private off-street parking or loading area shall be maintained in good condition, free of hazards and deterioration. All pavement areas, sidewalks, curbs, drainage facilities, lighting, bumpers, guardrails, markings, signs, landscaping and other improvements shall be maintained in workable, safe and good condition.
- b. The Borough Council may authorize repairs for such improvements, if, after proper notice, the owner fails to maintain such improvements and such conditions constitute a hazard to health and safety or where such improvements are governed by a development or other similar agreement.

§ 17-24.7. Buffer Zone Requirements.

- a. When Required. All uses, other than single-family detached dwellings when used exclusively for residential purposes, which shall abut a single-family residential zone, shall be required to install, plant and maintain a buffer zone in accordance with the provisions of this subsection.
- b. Restrictions on Buffer Zone.
 - (1) No principal or accessory structure, other than as may be provided herein, nor any off-street parking or loading areas or other use, shall be permitted within the buffer zone.
 - (2) No access or driveways, other than as may be permitted by the Planning Board shall be permitted within the buffer zone.
 - (3) In the instance where the Planning Board determines that the buffer areas shall be installed to provide a year round visual screen, the size, variety and planting design of the buffer areas shall be as approved by the Planning Board. Buffer areas shall be located completely within the site and either contain natural existing vegetation or be created by the combined use of trees, shrubs, berms, fences or walls designed to continuously limit view of the site from adjacent properties. Planting shall consist of massed evergreen and deciduous trees and shrubs, planted and maintained in such a fashion that they will produce within two growing seasons a continuous visual screen at least six feet in height. The quantity of natural screening existing on the property shall be taken into consideration.
 - (4) Underground utility easements shall be permitted, when deemed necessary or desirable by the Planning Board.
 - (5) Unless otherwise specified in this article, all buffer zones shall be a minimum of 10% of the minimum lot width or lot depth in the zone in which it is located; provided, however, that no buffer zone need be greater than 75 feet.
 - (6) The area encompassed in the buffer zone may be utilized for the purpose of computing lot coverage and yard setbacks.

§ 17-24.8. Signs. [Ord. No. 04-07 § 4]

It is the intent of these regulations to provide for attractive, coordinated, informative and efficient signing for uses in the Borough. The following signs shall be permitted only in compliance with the following provisions:

- a. Signs in Residential Districts. Only the following types of signs shall be permitted in residential districts: **[Ord. No. 04-07 § 3]**
 - (1) Nameplate and Identification Signs for Single-Family Dwellings. A sign indicating the name or address of the occupant may be permitted provided that the sign shall be no larger than two square feet. Only one sign per dwelling unit is permitted in addition to a mail box identification sign.
 - (2) Institutional Signs. Signs of schools, colleges, churches and other institutions of a similar public or semi-public nature may be erected and maintained provided that:
 - (a) The size of any freestanding sign shall not exceed 32 square feet and not more than one such sign is placed on a property, unless such property fronts upon more than one street, in which instance a sign may be erected on each frontage.
 - (b) Signs may be affixed to a maximum of two walls of a structure and the total sign area on each wall shall not exceed 5% of the area of that wall measured from ground level to the bottom of the roof eaves and from the side of the building to the other side.
 - (3) Signs Accessory to Parking Areas. Signs designating entrance or exits to or from a parking area shall be limited to one sign for each such exit or entrance, with a maximum size of four square feet for each sign. One sign per parking area designating the conditions of use or identity of such parking area and limited to a maximum size of six square feet shall be permitted. Private driveway signs indicating the private nature of a driveway shall be permitted, provided that the size of any such signs shall not exceed two square feet.
- b. Signs in the RG-5 Zone. One sign at the entrance of each development shall be permitted, provided that no such sign shall exceed 20 square feet. Conveniently located building identification and directory signs shall be permitted within such developments.
- c. Signs in the B-1 District. No sign shall be permitted which is not accessory to the business conducted on the property. Such signs may be erect on an exterior wall in accordance with the following requirements:
 - (1) Number and Size of Signs. No business establishment shall be permitted a total of more than two signs, provided, however, that no single exterior wall of any one establishment shall contain more than one of the two permitted signs. The total sign area for the sign permitted on the face of any wall shall not exceed 5% of the face of the wall area or 40 square feet, whichever is less.

- (2) Rear Wall and Side Yard Signs. No signs will be permitted on rear walls or side walls when said wall abuts a residential use or zone or any public or institutional use.
- (3) Freestanding signs. There shall be permitted a maximum of one freestanding sign advertising the business establishments and/or services located on the lot therein, provided that:
 - (a) The maximum height of the freestanding sign shall not exceed 20 feet.
 - (b) The area of said sign shall not exceed 30 square feet on each side or surface.
 - (c) The location of said sign shall not be nearer than 1/2 the setback from any abutting road right-of-way Line or property line.
 - (d) The base of said sign shall be an improved area in harmony with the overall internal road system and off-street parking layout, and shall be appropriately landscaped.
- (4) For Sale or Rent Signs. These shall be permitted under the same terms and conditions as set forth in residential zones except that the area of for sale or rent signs for developed business properties may be 20 square feet.
- d. Signs for Multi-Use Development, Shopping centers, Hotels, or Industrial Parks. Shopping centers, industrial parks, planned developments, multi-tenanted structures, or multi-structure uses shall be governed by the following regulations.
 - (1) Each such development shall submit a signing plan to the Planning Board for approval. Such signing plan shall include details on:
 - (a) Letter style and height.
 - (b) Lighting.
 - (c) Color.
 - (d) Construction and materials.
 - (e) Height of sign.
 - (f) Height above grade or below roof line.
 - (g) Locations.
 - (h) Standards.
 - (2) The signing plan shall be based on an integrated design theme to include all of the elements of (1) [a] through [h] above. All of the above elements shall be designed to be in harmony and consistent with each other, the architecture and materials of principal structure and the landscaping plan. The Planning Board, in its sole discretion, shall determine if a proposed signing plan meets the goals

and objectives of this section.

- (3) The total area of all signs affixed to a structure shall not exceed 5% of the building facade of the structure. The Planning Board may permit in total sign area up to 7% of the building facade, if, in the Planning Board's judgment, such additional area shall assist in developing a harmonious and integrated sign plan in accordance with the goals and objectives of this subsection.
- (4) Freestanding signs to be located on poles, kiosks, stanchions, or similar supports shall not project above 12 feet. Such signs shall have an area not in excess of 5% of the building face fronting on the street but in no event greater than 100 square feet. The Planning Board may permit a total sign area of up to 150 square feet if in the Planning Board's judgment, such additional area shall assist in achieving the goals and objectives of this subsection.

Only one such freestanding sign shall be permitted on any single property regardless of the number of establishments on the property except that the Planning Board may authorize an additional freestanding sign if the property has access from more than one public street. The freestanding sign shall be located a minimum of 40 feet from the right-of-way line or 1/2 the required minimum front or rear yard setbacks and comply with the side yard requirements of the zone.

- e. General Regulations Applying to Signs. The following regulations shall apply to all permitted and pre-existing nonconforming signs:

- (1) Whenever the Construction Official shall determine that a sign has become structurally unsafe or endangers the safety of the building or the public, the Construction Official shall order such sign be made safe or removed. Such order shall be complied with within 10 days of the receipt thereof by the person owning or using the sign, or the owner of the building or premises on which such unsafe sign is affixed or erected.
- (2) Unless otherwise provided in this Chapter, signs shall not be located closer than the following distances to street rights-of-way:

Area of Sign	Minimum Distance
Less than 25 square feet	20 feet
26-75 square feet	25 feet
74 or more square feet	30 feet

The Planning Board shall be authorized to waive the strict application of § 17-24.8e(2) if, because of local site conditions, strict adherence would cause inconvenience to the public or constitute a hazard. Unless otherwise specified in this Chapter or indicated on an approved site plan, the Construction Official shall approve the location of all signs.

- (3) The area surrounding ground signs shall be kept neat, clean, and landscaped.

The tenant, owner or occupant, to which the sign applies, shall be responsible for maintaining the condition of the area.

- (4) Directional signs having areas less than three square feet are exempt from area and location regulations but shall be shown on an approved site plan and further providing they do not constitute a hazard to the travelling public.
- (5) All signs shall be kept in good repair which shall include replacement or repair of broken structural elements, casings, or faces, maintenance of legibility and all lighting elements working.
- (6) Any location where business goods are no longer sold or produced or where services are no longer provided shall have 90 days to remove any remaining or derelict on-premise signs following notification by the Borough and at the expense of the owner of such property. When the written notification has been given by the Borough and compliance has not been made within the required 90 day period, the Borough may cause removal of such sign with the cost for such removal to be attached to the property.
- (7) Applicant shall also comply with all applicable county, state, and federal sign regulations.
- (8) Should a nonconforming sign be destroyed, it cannot be replaced except in a conforming manner.
- (9) Where a sign for a nonresidential use is directly adjacent to or across from a residential zone, the Planning Board may in its discretion reduce the area of the sign by not more than 10% and the Planning Board may further require additional screening, light control and buffering so as to minimize any adverse impacts such sign will have on the adjacent or abutting residential zone.
- (10) Obstruction of Access Ways. No sign or sign structure shall obstruct a fire escape, door, window, or other required access way. No sign shall be attached to a standpipe or fire escape, except those signs required by the municipal authority. **[Ord. No. 22-09]**
- (11) Obstruction of Window Surface. No sign shall project over, occupy or obstruct any window surface required for light or ventilation. **[Ord. No. 22-09]**
- (12) Signs in Rights-of-Way. No sign or any part of a sign, except publicly owned or authorized signs, shall be placed in or extend into or over any public right-of-way if same impedes traffic or obscures the ability of persons traversing the public streets and sidewalks to safely view the roadway as determined by the Police Department using NJDOT regulations regarding traffic safety. **[Ord. No. 22-09, Ord. No. 09-10]**
- (13) Signs Affixed to Certain Structures. No sign shall be affixed to any roof, tree, fence, utility pole, or other similar structure nor placed upon motor vehicles which are continually or repeatedly parked in a conspicuous location to serve as a sign; however, nothing is intended to prohibit the placement of signs not

exceeding three feet in any dimension, directing traffic or identifying various parking locations within a lot on light poles and utility poles erected therein. Signs painted on pavement surfaces shall be restricted to traffic control markings only. **[Ord. No. 22-09]**

- (14) To avoid confusion with vehicular traffic signs, no signs shall use red, yellow, or green lighting within 100 feet of a traffic signal. **[Ord. No. 22-09]**
 - (15) No illuminated signs shall be permitted where the lighting constitutes a safety hazard to vehicular traffic. **[Ord. No. 22-09]**
 - (16) No signs shall include wording that is obscene. **[Ord. No. 22-09]**
 - (17) No signs shall simulate; official, direction, or warning signs, or otherwise create confusion with those erected or maintained by the State, County, Borough, railroad, public utility or agency concerned with the protection of public health or safety. **[Ord. No. 22-09]**
 - (18) No signs shall hide, conceal or obstruct from view any traffic or street sign or signal. **[Ord. No. 22-09]**
 - (19) No sign shall distract the attention of the operator of a motor vehicle. **[Ord. No. 22-09]**
 - (20) There shall be no placement of signs that interfere or otherwise obstruct the view of the vehicular and pedestrian traveling public. **[Ord. No. 22-09]**
 - (21) All signs, unless specifically exempted, shall be placed upon private property and with the consent of the property owner. **[Ord. No. 22-09]**
- f. Temporary Signs. The following temporary signs are permitted: **[Ord. No. 04-07 § 4]**
- (1) A sign advertising a "garage sale" located on the same residential lot as the goods that are for sale. A permit for such sign shall be obtained from the Borough Zoning Officer at a cost of \$10 per sign. There shall be no more than one garage sale per year and the display of the sign shall not exceed three weeks.
 - (2) A sign advertising a "grand opening" or other special event located on the same lot as the goods, service or real estate that is for sale. The size of the sign shall not exceed six square feet. A permit for such sign shall be obtained from the Borough Zoning Officer at a cost of \$10. There shall be no more than one special event per year and the display of the sign shall not exceed three weeks. In the case of businesses located within a multi-unit development each business shall be permitted one special event per year. **[Ord. No. 10-11 § 6]**
 - (3) A sign advertising the services of a tradesman on the lot on which the service is being conducted. The sign shall be removed when the services are completed.

- (4) A sign of no more than five square feet advertising the sale or rental of real estate located upon the same lot as the real estate that is for sale or rental.
- (5) A sign of no more than 32 square feet advertising the sale or rental of developments of four or more dwellings or lots which is located on the property being developed. One sign shall be permitted on each frontage if the development fronts on more than one street. The sign shall be removed when all the dwellings or lots are sold.
- (6) A sign of no more than thirty-two square (32) feet advertising the sale or lease of land with five acres or more and 500 feet of frontage which is located upon the land being sold or leased.
- (7) Temporary sign(s) may be installed and/or placed for no more than 45 days from the date of approval of the application. **[Ord. No. 09-10]**
- (8) Temporary sign(s) must be removed at the expiration of the 45 days. **[Ord. No. 09-10]**
- (9) No temporary sign(s) shall be installed and/or placed on Borough owned property and/or rights of way of the Borough except by the Borough. **[Ord. No. 09-10]**
- (10) The owner of the temporary sign as well as any property owner allowing same to be installed and/or placed on private property shall be responsible for any violations of this section. **[Ord. No. 09-10]**
- (11) Approval of an application for a sign permit by the Borough of Mount Arlington does not constitute support, and/or approval of any message contained on any temporary sign(s) authorized by this section. **[Ord. No. 09-10]**
- (12) Temporary sign(s) installed and/or placed within the bounds of the Borough of Mount Arlington, not in accordance with this section, shall be removed by the Zoning Officer at the sign owner's expense. **[Ord. No. 09-10, amended by Ord. No. 12-2015]**
- g. Political Signs. All political signs shall be clearly marked with the name and address of the person, organization or committee responsible for removal of such sign. Political signs shall otherwise comply with the provisions of this section regarding temporary signs and the general requirements for signs, except that no fee pursuant to § 17-24.8(i) shall be required for political signs. **[Ord. No. 04-07 § 4, Ord. No. 22-09, Ord. No. 09-10]**
- h. Prohibited Signs. The following signs are prohibited in all zone districts: **[Ord. No. 04-07 § 4]**
 - (1) Signs advertising the sale of goods, services or real estate that are not located on the same lot with such goods, services or real estate.
 - (2) Signs erected on trees and utility poles.

- (3) Signs located within the right of way of any street.
- (4) Signs determined by the Borough Engineer to pose an obstruction to the visibility of vehicles on, or entering onto, a street.
- i. Sign Permit Required. Prior to the erection or placement of any sign regulated by this section, a permit shall be obtained from the Borough Zoning Officer. The following shall be provided: **[Ord. No. 04-07 § 4]**
 - (1) Ten dollar (\$10) permit fee
 - (2) A plan showing the details of the sign including its dimensions. All permanent signs shall include details of construction, including materials, supports, loads, stresses, anchorage, and illumination.
 - (3) A copy of a survey plan showing the location of the sign on the lot.
 - (4) The written consent of owner or lessee of the property upon which the sign is to be located.
- j. Unsafe and Unlawful Signs. When any sign becomes insecure, in danger of falling or otherwise unsafe, or if any sign shall be unlawfully installed, erected or maintained in violation of any of the provisions of this Article, the owner thereof or the person or firm maintaining same shall, upon written notice of the Borough Zoning Officer forthwith in the case of immediate danger, and in any case within not more than 10 days, make such sign conform to the provisions of this Article or remove it. If within 10 days the order is not complied with, the Borough Zoning Officer may remove such sign at the expense of the owner or lessee of the property. The Borough Zoning Officer, together with members of the Borough Council, Planning Board, Borough Engineer, and Borough Department of Public Works employees are authorized to immediately remove any unlawfully erected signs within the public right of way. **[Ord. No. 04-07 § 4]**
- k. Sign Enforcement Officer. The administration and enforcement of the provisions of this section relating to signs shall be the primary responsibility of the Borough Zoning Officer.

§ 17-24.9. Solid Waste and Recycling. [Ord. No. 2008-16 § 4]

- a. Provision shall be made for the indoor or enclosed outdoor storage and pickup of garbage and refuse to be approved by the Borough Engineer.
- b. There shall be included in: 1) any new multifamily housing development, 2) any single-family housing development of 50 or more units, or any commercial or industrial development proposal for the utilization of 1,000 square feet or more of land (except those exempt under § 144-3B of the Borough Code), that requires subdivision or site plan approval indoor and outdoor recycling areas for the collection and storage of recyclable materials.
 - (1) The dimension of the recycling area(s) shall be sufficient to accommodate

recycling bins or containers which are 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.

- (2) The dimensions of the recycling area(s) and the bins or containers shall be determined in consultation with the Borough Recycling Coordinator and shall be consistent with the district recycling plan adopted pursuant to Section 3 of P.L. 1987, c. 102, and any applicable requirements of the Borough Master Plan adopted pursuant to Section 6 of P.L. 1987, c. 102. See N.J.S.A. 13:1E-99.13.
- (3) The recycling area(s) shall be conveniently located for the residential disposition of source-separated recyclable materials, preferably near, but clearly separated from a refuse dumpster.
- (4) The recycling area(s) 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.
- (5) The recycling area(s) or the bins or containers placed therein shall be designed so as to provide protection against adverse environmental conditions which might render the collection of materials unmarketable. Any bins or containers which are used for the collection 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.
- (6) Signs clearly identifying the recycling area(s) and materials accepted therein shall be posted adjacent to all points of access to the recycling area. The individual bins or containers shall be equipped with signs indicating the materials to be placed therein.
- (7) Landscaping and/or fencing shall be provided around any outdoor recycling area(s) and shall be developed in an aesthetically pleasing manner.

§ 17-24.10. Aesthetic Design Standards. [Added 11-9-2021 by Ord. No. 14-2021]

- a. Aesthetic design standards shall apply to all minor, preliminary and final major site plans.

- (1) Architectural and building attributes.
 - (a) Buildings shall be designed to evoke the architectural attributes of lakeside resort architecture and/or existing architecturally significant buildings in the Borough.
 - (b) The building mass, footprint and architecture shall be designed to create an attractive visual presence at a pedestrian scale. All sides of a building

visible from a street or parking area shall be finished with architectural features.

- (c) The following photographs of buildings in the Borough, around Lake Hopatcong, and the area, represent architectural and design elements that are desired in the Borough:



- (d) Building materials and colors.

- [i] All building materials and colors used on the exterior of a building shall be compatible with its overall design. Wood clapboard, or manufactured equivalent, is recommended. Natural wood or cedar shake siding is also recommended. Natural or cultured stone is recommended as a primary accent material especially for building foundations, decorative piers and columns. Textured wood siding is recommended. Textured vinyl, cement fiber materials and brick are permitted. Aluminum siding, nondecorative concrete block and other similar materials are prohibited. Stucco or stucco-like products may be used only as an accent material and not encompass more than 40% of the wall surface.
- [ii] Building colors shall utilize historic paint color palettes, such as Sherwin-Williams Historic Paint Collection or Benjamin Moore's Historical Collection (shown below). Building colors shall include a base color, complementary trim colors, and accent colors for doors and shutters.



- [iii] Buildings with multiple storefronts shall include variations in roofline and building height to define the individual stores within a building block.
- [iv] Buildings with multiple storefronts shall be unified through the use of architecturally compatible styles, materials, colors, details, awnings, signage and lighting fixtures on all storefronts.
- [v] Changes in building material should occur at a logical place such as a change in building mass, roof or an inside corner.

- (e) Building walls.

- [i] Blank, windowless walls are discouraged. The facade shall be broken up into sections or bays to provide variety and interest. Columns, recesses and variations in the rooflines shall be used to break up the wall of the building into smaller sections. Variations in buildings, materials, patterns and colors shall also be used to differentiate the building wall. Landscaping may also be used to break up a wall area; however, building material variations should be the primary method for adding interest to the building.
 - [ii] Building facades shall provide unified design with a clearly defined building entrance. Recessed entrances are encouraged similar to those on older commercial buildings. Columns, awnings, canopies and pilasters can be used to define the entryway. Doors and window trim shall be used to highlight these features.
 - [iii] The architectural treatment of the front facade shall continue around all visible exposed sides of the building. Each facade of a building shall be consistent in style, materials, colors and details. Buildings shall have a defined base and cap. The base may align with the windowsill level of the first floor, the foundation edge, or the ground with foundation plantings. The cap of the building includes the building cornice, parapet or eaves at the top of the building wall.
- (f) Roofs and roof material.
- [i] Roofs shall be designed to reflect the style of the existing historic structures in terms of pitch and material. They shall be compatible with the building's architecture and complementary to adjoining structures. Roof offsets, dormers and gables are encouraged. Architectural embellishments, including towers, cupolas, chimneys, dormers and cross gables, can be used to break up large roof masses and add visual interest.
 - [ii] Roofs shall be designed to screen any proposed rooftop service equipment.
 - [iii] Roof materials for visible roofs shall include textured asphalt shingles, slate, slate-like tiles or wood shingles in tones compatible with the architecture of the building.
- (g) Windows.
- [i] The first-floor windows of commercial uses shall be transparent to encourage pedestrian activity. A minimum of 50% of the front facade shall be transparent. On corner lots each facade facing the street shall be 50% transparent respectively. On the upper floors a minimum of 30% of the front facade shall be transparent or glazed.
 - [ii] Windows arrangement shall be in a unified pattern with windows in the upper level vertically aligned with windows and doors on the

ground level. The window locations and rooflines shall be compatible with adjoining building bays and adjacent buildings.

(h) Building location and orientation.

- [i] The buildings shall be located to front towards and relate to public streets, both functionally and visually.
- [ii] In a multiple building development, the buildings shall be organized, to the extent possible, around features such as courtyards, quadrangles and alleys, which encourage pedestrian activity and incidental social interaction among users. Smaller, individualized groupings of buildings are encouraged.

(i) Service equipment.

- [i] All air-conditioning units, HVAC systems, exhaust pipes or stacks, elevator housing, satellite dishes and other telecommunications receiving devices shall be screened from public view using walls, roof elements or other such screening devices, designed to be architecturally compatible with the building's style, materials, colors and details.
- [ii] In buildings requiring a second means of egress, pursuant to Uniform Construction Code, internal stairs or other routes of egress are preferred. Only in exceptional circumstances shall an attached external fire escape be permitted as one of the required means of egress, and only if located on a building's rear or side elevation.

(j) Outdoor seating and displays.

- [i] Outdoor seating, where permitted, may be located on sidewalks, plazas, and courtyards, provided pedestrian circulation or access to store entrances is not impaired.
- [ii] Removable enclosures are encouraged and should be used as a way of defining the area occupied by the outdoor seating. Extended cloth or canvas awnings, colorful canopies or large umbrellas are also recommended as a way to define an outdoor seating area.
- [iii] Sidewalk displays, limited to the premises from which items are being sold, are permitted directly in front of the establishment along the sidewalk, provided at least six feet of clearance is maintained at the storefront entrance and at least four feet of sidewalk is maintained for pedestrians.

(k) Awnings.

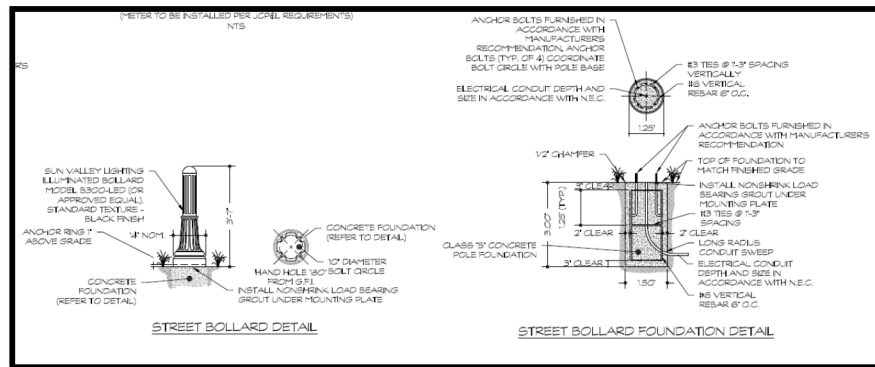
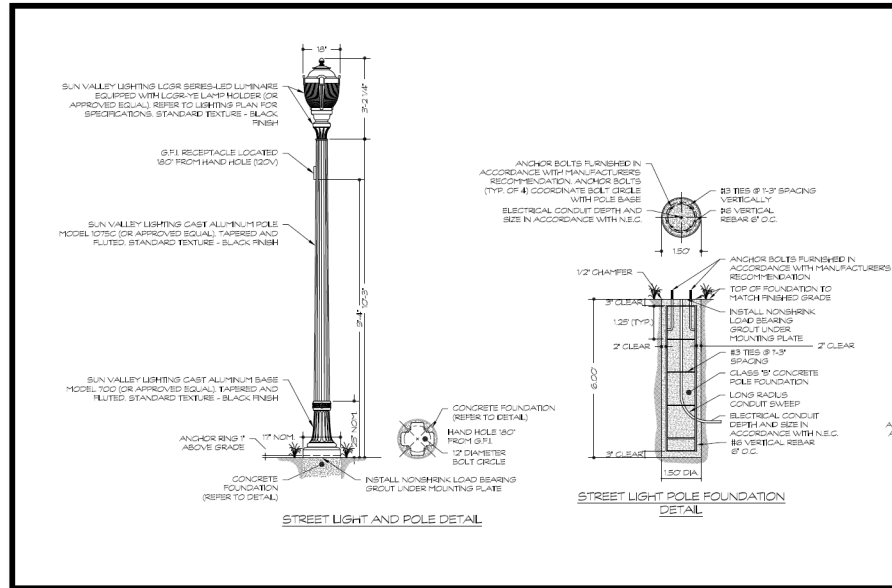
- [i] Fixed or retractable awnings are permitted at ground floor level and on upper levels where appropriate. Awnings should be compatible to the building's architectural style in terms of color, materials and

style and should not conceal architectural features on the building, such as decorative columns, pilasters, cornices or decorative details. They should be designed so as not to impair facade composition and to work within the building facade's subdivision.

- [ii] Canvas or metal awnings are preferred, although other waterproofed fabrics or materials may be considered. Solid or striped patterns are preferred. Colors of awnings shall be compatible with building and sign colors.
- [iii] In a building with multiple storefronts, compatible awnings with similar styles or colors should be used as a means of unifying the structure.

(2) Lighting.

- (a) Street lighting is required along street frontages. Street lighting and streetscape amenities shall match the standards of the Borough Code and blend with the architectural style of the community. See details below.
- (b) A lighting plan providing a maximum of 0.5 footcandle for streets, sidewalks and parking areas shall be provided, consistent with the Borough lighting standards in § 17-24.3I.
- (c) Lighting shall be shielded to prevent glare and off-site light pollution.
- (d) The use of creative lighting schemes to highlight building facades and related areas of a site is encouraged.



LUMINAIRE SCHEDULE									
SYMBOL	LABEL	QTY	CATALOG NUMBER	DESCRIPTION	LAMP	REL	LUMENS	LLF	WATT
•	B	10	SUN VALLEY LIGHTING LGRS SERIES-LED LUMINAIRE, EQUIPPED WITH LGRS-YE LAMP HOLDER (OR APPROVED EQUAL)	120 LAMP LUMENS AT 80°C	LED-CANVAS-LED-NV-100W	ABSOLUTE	0.01	2540	
①	A	8	SUN VALLEY LIGHTING ILLUMINATED BOLLARD, MODEL 700 (OR APPROVED EQUAL)	30 LED VERTICAL BOLLARD LUMENS AT 80°C	LED-CANVAS-LED-NV-100W	ABSOLUTE	0.01	50	

- (3) Landscaping. The landscaping provided should be complementary to the building and accentuate its important features. Plants shall be chosen for year-round interest, including color, flowers or other similar elements. Native plants should be used wherever possible.
- (a) Existing healthy and mature trees should be retained and incorporated into the landscape plan wherever possible.
 - (b) The landscaping shall be integrated with other site design features, such as walkways, paths, gazebos, fountains, street furniture and public art.
 - (c) The use of planters, window flower boxes and hanging baskets is encouraged to provide seasonal color.
 - (d) Street trees, a minimum of 2.5 inches caliper at the time of planting, shall

be planted along street frontages. The bottom branches shall be trimmed to a minimum of seven feet from the ground to allow pedestrian passage. Tree spacing shall be generally 35 feet to 40 feet apart with variation for driveways, lighting and other streetscape features.

- (e) Parking lots shall be suitably landscaped to provide shade and visual relief. At least one shade tree a minimum of 2.5 inches caliper in size shall be provided for every 10 parking spaces in the parking lot.
 - (f) The perimeter edge of the parking lot shall be planted with evergreen hedges, shade trees, shrubs, related ground covers. Ornamental trees should be provided throughout the development, particularly at key locations such as site entrances and along existing roadway frontages.
 - (g) Hedges, shrubs, and ground cover shall be used to define space and provide privacy. Foundation plantings should include evergreen and deciduous shrubs.
 - (h) All landscaping shall have a two-year maintenance guarantee. If any planting material dies within two years of planting, it shall be replaced the following planting season.
- (4) Buffer and screening requirements.
- (a) The applicant shall buffer or screen property lines adjacent to existing residential properties.
 - (b) The buffer shall be planted with a mix of evergreen and deciduous trees and shrubs to provide a year-round natural looking screen.
 - (c) Fences and walls shall not exceed six feet in height above ground level.
 - (d) The finished side of a fence must face adjoining properties. Fence posts that are unfinished and any other structural component of the fence must be installed facing the subject property rather than the adjoining property.
 - (e) Dumpsters must be fully screened from view with a screening fence or wall.
- (5) Pedestrian and bicycle access and circulation.
- (a) Sidewalks must be provided along all street frontages and must be a minimum of six feet wide (including a two-foot paver strip) on Howard Boulevard and a minimum of four feet wide on other street frontages to provide safe and convenient movement for pedestrians. Below is an example of pedestrian space.



- [i] Pedestrian-only walkways along building frontages must be at least six feet wide. Other sidewalk areas must be at least four feet in width to provide for the safe and convenient movement of pedestrians.
 - [ii] All building entrances must provide pedestrian access to adjacent streets and parking areas.
 - [iii] Crosswalks shall be provided to connect sidewalks and pedestrian areas. Crosswalks shall be constructed according to requirements as defined in § 17-22.8. The Land Use Board may require brick crosswalks to be installed if it deems them necessary for pedestrian safety and to improve the visual appearance of the area.
- (b) Bicycle access and parking should be considered as part of the development. At least one bike rack capable of holding at least three bicycles should be provided per parking area.
 - (c) Electric vehicle charging stations should be provided as required in parking areas to promote maximum usage while minimizing interference with parking and circulation.

§ 17-25. PERFORMANCE STANDARDS.

§ 17-25.1. General Applications.

- a. As a condition of approval and the continuance of any use, occupancy of any structure, and operation of any process or equipment, the applicant shall certify that the use of such specific types of machinery, equipment, devices, procedures or methods are required in order to assure compliance with the applicable performance standards. Permits and certificates required by other government agencies shall be submitted to the Planning Board as proof of compliance with applicable codes.
- b. For conditional uses or for use variances which must meet these performance standards, the Planning Board shall not issue a permit for any use, structure, process or equipment until it receives a report or recommendation from the Borough Engineer regarding compliance with the performance standards established herein. **[Amended by Ord. No. 12-2015]**
- c. The regulations contained in this section shall be items covered in the developer's agreement.

§ 17-25.2. (Reserved)⁵ [Temporary Certificate of Occupancy deleted by Ord. No. 12-2015]

§ 17-25.3. Regulation of Nuisance Elements.

- a. Definition of Nuisance Elements. A nuisance element is any noise, radioactivity,

5. Editor's Note: See § 17-5.17c for temporary certificate of occupancy.

vibration, glare, smoke, odor, air pollution or dust.

- b. The determination of the existence of nuisance elements shall be made at the following locations.

Nuisance Characteristics	All R Zones	All Nonresidential Zones
Smoke	VS	VS
Solid particles and fly ash	VS	VS
Odors	PL	PL
Liquid wastes	BW	PL
Solid wastes	BW	SL
Radiation	VS	VS
Noise	SL	PL
Vibration	BW	PL
Glare	BW	PL
Heat*	PL	PL

*For heat, measurement shall be made at the vent or smokestack for heated air, and at the property line for tested liquid or solid discharge.

Code:

VS = Vent or Smokestack

PL = Property Line

BW = Building Wall

SL = Required Setback Lines

- c. Continued Compliance. Continued compliance with the performance standards stated herein shall be a requirement for the continued occupancy of any structure or the operation of any process or equipment.

§ 17-25.4. Standards to be Enforced.

- a. Air Pollution.

(1) General. No substance shall be emitted into the atmosphere in quantities which are injurious to human, plant or animal life or to property, or which will interfere unreasonably with the comfortable enjoyment of life and property anywhere in the Borough. All provisions of the New Jersey Air Pollution Control Code, as amended, or the regulations contained in this section, whichever shall be the more stringent, shall be complied with.

(2) Smoke. In any nonresidential zone, no smoke, the shade or appearance of

which is darker than No. 1 on the Ringelmann Smoke Chart, shall be emitted into the open air from any fuel-burning equipment; provided, however, that smoke emitted during the clearing of a fire box or the building of a new fire, the shade or appearance of which is not darker than No. 2 on the Ringelmann Smoke Chart, may be permitted for a period or periods aggregating no more than three minutes in any 15 consecutive minutes.

(3) Solid Particles and Fly Ash.

- (a) In any zone, no discharge of solid particles through a stack, duct or vent shall be permitted that is greater than 50% of the allowable emission in pounds per hour established by Chapters 7 and 8 of the New Jersey Air Pollution Control Code.
- (b) No open bundles shall be permitted in any zone.
- (c) All incinerators shall be approved by the State Department of Environmental Protection.
- (d) Any road, parking area, driveway, truck loading or unloading station or any other exterior area having a substantial movement of vehicles or equipment shall be paved or otherwise established during construction sufficient to prevent the generation of dust from the movement of such vehicles or equipment.

(4) Odors. In any zone, no odorous material may be emitted into the atmosphere in quantities sufficient to be detected without instruments.

b. Wastes.

(1) Liquid Wastes. No liquid waste shall be discharged into any watercourse in the Borough except as herein provided. If the applicant proposes to construct facilities for the treatment of waste, he shall supply:

- (a) A statement by the New Jersey Department of Environmental Protection that such proposed facilities are in compliance with applicable state laws and regulations.
- (b) Approval by the appropriate officials of the installation of such facilities. No liquid waste shall be discharged into the public sewage collection and disposal system unless the appropriate Borough or authority officials shall have first investigated the character and volume of such wastes and shall have certified that it will accept the discharge of such waste material into the system. The applicant shall comply with any requirements of said officials, including the pretreating of such wastes, the installation of processing methods, separation or screening of wastes, control of pH and other methods of improving such wastes prior to discharge, as a condition of approval of such facilities.

(2) Solid Wastes. Each property owner shall:

- (a) Assume full responsibility for adequate and regular collection and removal of all refuse except where the Borough assumes such responsibility.
 - (b) Comply with all applicable provisions of the New Jersey Department of Environmental Protection.
 - (c) Comply with all provisions of the State Sanitary Code, Chapter 8, "Refuse Disposal," Public Health Council of the State Department of Environmental Protection.
 - (d) Permit no accumulation on the property of any solid waste, junk or other objectionable materials.
 - (e) Not engage in any sanitary landfill operation on the property except as may be permitted by other Borough codes and ordinances.
- (3) Recycling. **[Ord. No. 2008-16 § 5]**
- (a) The owner of any property shall be responsible for compliance with the Borough Recycling Ordinance, § 144-1 et seq. of the Borough Code.
 - (b) Any new multifamily housing development, single-family housing development of 50 or more units, or any commercial or industrial development proposal for the utilization of 1,000 square feet or more of land (except those under § 144-3B of the Borough Code), the management or owner is responsible for setting up and maintaining the recycling system, including collection of recyclable materials, in accordance with guidelines or regulations established by the Borough Recycling Coordinator and § 17-24.9, Solid Waste and Recycling of the Borough of Mount Arlington Code.
- c. Radiation. All use of materials, equipment or facilities which are or may be sources or radiation shall comply with all controls, standards and requirements of the Atomic Energy Act of 1954, as amended, and any codes, rules or regulations promulgated under such act, as well as the Radiation Protection Act, Chapter 116, P.L. 1958, as amended, whichever shall be more stringent.
- d. Noise.
- (1) The purpose of this section is to ensure that the environmental character of the area surrounding the proposed use, with respect to noise, shall not be altered. The standards established herein shall be interpreted in any specific case with this objective in mind.
 - (2) Measurements if required under this section shall be made at the location noted in § 17-25.3b. Measurements where required shall be made by a competent acoustical engineer using equipment meeting the United States of America Standards Institute Standard S 1.4 -1961 or the latest revision thereof and S 2.22 or the latest revision. All measurements shall be made in at least eight

frequency bands.

- (3) Ambient noise levels shall be made between the hours of 8:00 a.m. and 11:00 p.m. for periods of at least one hour and three separate occasions.
 - (4) The permitted noise level of the proposed use, measured at the measuring line, shall not exceed the ambient noise levels in each frequency band.
 - (5) In addition, noise control shall be subject to standards established by the New Jersey Department of Environmental Protection. Where standards are established and are more restrictive than contained in this article, the more restrictive standards shall be applicable.
- e. Vibration. In any zone, no vibrations discernible without instruments at the measuring point shall be permitted.
 - f. Glare. No single standard for glare is promulgated in this Chapter due to the impracticality of establishing such standards. It is the intent of these performance standards to ensure that both direct and indirect glare, to the extent possible, are eliminated or activities producing such glare are carried on within a structure. Necessary glare-producing devices such as roadway and walkway lighting shall be designed, constructed and maintained in such a manner as not to be a nuisance to surrounding uses.
 - g. Heat is thermal energy of a radiative, conductive or convective nature. In any zone, any use of process shall not produce a temperature rise discernible at the measuring point or discharge water into any watercourse which shall produce a temperature increase of greater than three degrees in that watercourse measured at a point 10 feet from the point of discharge.
 - h. Fire and Explosion Hazards. If it appears that any proposed use, structure, process or resulting product or material may constitute a fire or explosion hazard, the Planning Board may require the applicant to supply proof of:
 - (1) Approval of the use, structure, process, or resulting product or material from the State Department of Labor indicating that adequate safeguards against fire and explosion have been taken or installed.
 - (2) Approval from the Borough of Mount Arlington Fire Department that the applicant has complied with all applicable Borough fire prevention regulations.

ARTICLE VIII Zoning

§ 17-26. GENERAL INTENT.

- a. The intent of this Article is to establish a precise and detailed plan for the use of land and buildings in the Borough of Mount Arlington, based upon the Borough Master Plan, and any amendments thereto, enacted in order to promote and protect the public health, safety, morals, comfort, convenience and the general welfare of the people.
- b. The Zoning Ordinances, codified as Article VIII of Chapter 17, for the Borough of Mount Arlington shall be viewed as a permissive ordinance. In no instance after the adoption of this Chapter shall any use be permitted in the Borough which is not listed as a permitted, accessory or conditional use as specified herein.

§ 17-27. DETAILED PROVISIONS.

§ 17-27.1. Designation of Zones. [Ord. No. 1999-9, Ord. No. 2000-02A, Ord. No. 2000-10, Ord. No. 2000-12, Ord. No. 06-2014, Amended by Ord. No. 12-2015]

For the purpose of this Article, the Borough of Mount Arlington in the County of Morris is hereby divided into the following zones, differentiated according to use, area and bulk regulations, to be designated as follows:

RA-7.5	Single Family Residence
RA-15	Single Family Residence
RA-30	Single Family Residence
RA-40	Single Family Residence
RG-5	Multifamily Residence
OSGU	Open Space Government Use
B-1	Business
R-C	Resort Commercial
R-PRD	Planned Residential Development
HMC	Hotel/Motel/Conference Center
PUD	Planned Unit Development
OB	Office Building District
SRC	Special Residential Cluster
SRC-B	Special Residential Cluster — B
CTA	Cellular Telecommunications Antenna

§ 17-27.2. Zoning Map.⁶ [Ord. No. 1999-9 § 4, Ord. No. 2000-2A § 4, Ord. No. 2000-10 § 3, Ord. No. 2000-12 § 4, Ord. No. 2005-15, Reso 2005-132, Ord. No.

2009-13, Ord. No. 06-2014, Block 8 Lot 3, Landfill Redevelopment Area, adopted by Ord. No. 11-2015, Ord. No. 12-2015; 3-2-2021 by Ord. No. 02-2021]

The location and boundaries of said zones or district are hereby established on the Zoning Map of the Borough of Mount Arlington in Morris County dated August 20, 2015 prepared by CP Professional Services, which is attached hereto and hereby made a part of this Chapter. Said map and all notations, references and designations shown thereon shall be, as such, a part of this Chapter as if the same were all fully described and set forth herein, and shall supersede all prior maps and ordinances.

See Landfill Redevelopment Plan adopted by Ord. No. 11-2015 on file at the Borough Offices.

Zoning Map Amendments:

1. Ordinance No. 1999-9: § 17-27.2, Zoning Map, is amended to add the following language:

"Said map is amended to delete the "I Industrial" from the list of zones and add the OB Office Building Zone to the list and to redesignate the zone of the area south of Route 80 known as Block 70.01 Lot 1 Block 71, Lot 1 and Block 71, Lot 5 on the Official Tax Map from I Industrial to OB Office Building."
2. Ordinance No. 2000-2A: The Zoning Map is amended to rezone an area shown on the map attached to Special Residential Cluster (SRC) from RA-40.
3. Ordinance No. 2000-10: The Zoning Map is amended to rezone an area shown on the map attached to Special Residential Cluster (SRC) from RA-40.
4. Ordinance No. 2000-12: § 17-27.2, Zoning Map, is amended by identifying the following Block and Lot designations from the tax map of the Borough of Mt. Arlington as the Cellular Telecommunications Tower Overlay Zone: Block 36, Lot 1 and Block 8, Lot 3.
5. Ordinance No. 2005-15: § 17-27.2, Zoning Map, is amended to establish the Zoning Map dated May 6, 2005.
6. Ordinance No. 2009-13: § 17-27.2, Zoning Map, is amended to establish the Zoning Map dated April 2009.
7. Ordinance No. 06-2014: § 17-27.2, Zoning Map, is amended to establish the Zoning Map prepared by J. Caldwell Associates LLC bearing a date of March 11, 2014. (Map dated March 14, 2014 was attached.)
8. Ordinance No. 11-2015 adopts the Redevelopment Plan Map for Block 8, Lot 3 and can be found on file at the Borough Offices attached to Ordinance No. 11-2015 as the Mount Arlington Landfill Redevelopment Plan prepared by J. Caldwell and Associates dated September 1, 2015.

6. Editor's Note: See map which is included as an attachment to this chapter.

9. Ordinance No. 12-2015: § 17-27.2, Zoning Map, is amended to establish the Zoning Map dated August 20, 2015 prepared by CP Professional Services.
10. Ordinance No. 02-2021 adopts the "111 & 181 Howard Boulevard Redevelopment Plan" and amends the zoning map to incorporate the plan. The plan is on file in the Borough offices.

§ 17-27.3. Interpretation of Boundaries.

- a. Designation of Zone Boundaries.
 - (1) The zone boundary lines are intended generally to follow the centerlines of streets; the centerlines of railroad rights-of-way; existing lot lines; the centerlines of rivers, streams and other waterways; and municipal boundary lines.
 - (2) Where a district boundary line does not follow such a line, its position shall be shown on the Zoning Map by a specific dimension expressing its distance in feet from a street line or other boundary line as indicated.
- b. Determination of Doubtful Lines. Except as provided in paragraph c below, in cases of uncertainty or disagreement as to the true location of any zone boundary line, the determination thereof shall be with the Planning Board under the provisions of the Land Development Chapter.
- c. Boundary line to coincide with lot line.
 - (1) If a zone boundary line falls within 20 feet of a lot line existing at the time of passage of this Chapter, then the lot line shall be considered the zone boundary line.
 - (2) In the event a zone boundary line divides one or more lots, other than as provided in paragraph (1) above, then all area, bulk, yard, buffer and any other dimension requirements specified in this Chapter for that particular zone shall be met only within that zone.

§ 17-27.4. Zone Regulations.

- a. General. The restrictions and controls intended to regulate development in each zone are set forth in Schedule 1, Area, Yard and Bulk Requirements, at the end of this Chapter. These restrictions and controls are supplemented by other sections of this Land Development Chapter.
- b. Application of Regulations. Except as hereinafter otherwise provided:
 - (1) No building or structure shall be erected and no existing building or structure shall be moved, altered, added to or enlarged, nor shall any land or building be designated, used or intended to be used, for any purpose or in any manner other than as specified among the uses hereinafter listed as permitted in the zone in which such building or land is located.

- (2) No building or structure shall be erected, reconstructed or structurally altered to exceed in height the limit hereinafter designated for the zone in which such building or structure is located.
 - (3) No building or structure shall be erected, no existing buildings or structures shall be altered, enlarged or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity with the area, bulk and yard requirements and other regulations hereinafter designated for the zone in which such building or open space is located.
 - (4) No yard or other open space provided about any building for the purpose of complying with the provisions of this Article shall be considered as providing a yard or other open space on one lot shall be considered as providing a yard or open space for a building on any other lot.
 - (5) No minimum off-street parking area, loading or unloading area shall be considered as providing off-street parking, loading or unloading area for a use or structure of any other lot, except as provided herein.
 - (6) No land in a residential zone shall be used to fulfill open space, minimum area, minimum yard and setback requirements, parking or other similar requirements for uses in nonresidential zones. Vehicle access for nonresidential uses shall not traverse a single or two-family residential zone and shall be directly from a street specified as a primary, secondary or collector road category as shown in the duly adopted Master Plan of the Borough of Mount Arlington.
- c. All classes of cannabis establishments, cannabis distributors, or cannabis delivery services (as said terms are defined in Section 3 of P. L. 2021, c. 16) are prohibited uses in all of the Borough's zoning districts, but not the delivery of cannabis items and related supplies by a delivery service. **[Added 8-3-2021 by Ord. No. 10-2021]**

§ 17-28. USE REGULATIONS.

The use regulations applicable to each zone within the Borough of Mount Arlington are as follows:

§ 17-28.1. RA-40, Single Family Residence Zone.

- a. Permitted Principal Uses.
 - (1) Single-family detached dwellings
 - (2) Agricultural uses and farms as provided in § 17-31.1.
 - (3) Planned cluster residential development as provided in § 17-31.5b.
 - (4) Parks, playgrounds, firehouse, libraries and municipal buildings.
- b. Permitted Accessory Uses.

- (1) Private garages as provided in § 17-32.1.
- (2) Swimming pools as provided in § 17-32.2.
- (3) Signs as provided in § 17-24.8.
- (4) Tennis courts as provided in § 17-32.2.
- (5) Other accessory buildings such as tool sheds as provided in § 17-32.1.
- (6) Home animal agriculture as provided in § 17-32.6.
- c. Conditional Uses.
 - (1) Essential services as provided in § 17-33.6.
 - (2) Community buildings, clubs, social halls, Lodges, fraternal organizations, and similar Uses as provided in § 17-33.3.
 - (3) Nursery schools as provided in § 17-33.4.
 - (4) Nursing homes as provided in § 17-33.5.

§ 17-28.2. RA-30, Single Family Residence Zone.

- a. Permitted Principal Uses.
 - (1) Any RA-40 permitted principal use.
- b. Permitted Accessory Uses.
 - (1) Any RA-40 permitted accessory use.
- c. Conditional Uses.
 - (1) Essential services as provided in § 17-33.6.

§ 17-28.3. RA-15, Single Family Residence Zone.

- a. Permitted Principal Uses.
 - (1) Any RA-40 permitted principal use.
- b. Permitted Accessory Uses.
 - (1) Any RA-40 permitted accessory use.
- c. Conditional Uses.
 - (1) Essential services as provided in § 17-33.6.

§ 17-28.4. RA-7.5, Single Family Residence Zone.

- a. Permitted Principal Uses.

- (1) Any RA-40 permitted principal use.
- b. Permitted Accessory Uses.
 - (1) Any RA-40 permitted accessory use.
- c. Conditional Uses.
 - (1) Essential services as provided in § 17-33.6.

§ 17-28.5. (Reserved) [RA-40A, Single Family Residence Zone-Utility as Conditional Use, deleted by Ord. No. 12-2015]

§ 17-28.6. OSGU, Open Space Government Use Zone.

- a. Permitted Principal Uses.
 - (1) Single family detached dwelling.
 - (2) Agricultural uses and farms as provided in § 17-31.1.
 - (3) Planned cluster residential development as provided in § 17-31.5b.
 - (4) Parks, playgrounds, firehouses, libraries, municipal buildings and municipal landfill.
- b. Permitted Accessory Uses.
 - (1) Private garages as provided in § 17-32.1.
 - (2) Swimming pools as provided in § 17-32.2.
 - (3) Signs as provided in § 17-24.8.
 - (4) Tennis courts as provided in § 17-32.2.
 - (5) Other accessory buildings such as tool sheds as provided in § 17-32.1.
 - (6) Customary accessory uses to a municipal landfill.
- c. Conditional Uses.
 - (1) Essential services as provided in § 17-33.6.
 - (2) Churches and other places of worship, including parish houses, Sunday school buildings and other similar uses as provided in § 17-33.1.
 - (3) Community buildings, clubs, social halls, lodges, fraternal organization, and similar uses as provided in § 17-33.3.
 - (4) Nursery schools as provided in § 17-33.4.
 - (5) Nursing homes as provided in § 17-33.5.

§ 17-28.7. RG-5, Multifamily Residence Zone. [Ord. No. 2008-16 § 6]

- a. Permitted Principal Uses.
 - (1) Any RA-40 permitted principal use.
 - (2) Multiple-family dwellings.
 - (3) Town houses.
- b. Permitted Accessory Uses.
 - (1) Any RA-40 permitted accessory use.
- c. Conditional Uses.
 - (1) Essential services as provided in § 17-33.6.

§ 17-28.8. B-1, Business Zone.

- a. Permitted Principal Uses.
 - (1) All retail trade, retail service, and professional service establishments including clubs, lodges and social buildings. All such permitted uses shall be conducted entirely within an enclosed and permanent building.
 - (2) Business and professional offices.
- b. Permitted Accessory Uses.
 - (1) Off-street parking and loading facilities as provided in Article VII.
 - (2) Signs as provided in Article VII.
 - (3) Accessory storage, within a wholly enclosed permanent structure, of materials, goods and supplies intended for use on the premises.
 - (4) Clothing bins as provided in § 17-32.7. **[Ord. No. 06-09 § 3]**
- c. Conditional Uses.
 - (1) Essential services as provided in § 17-33.6.
 - (2) Churches and other places of worship including parish houses, Sunday school buildings and other similar uses as provided in § 17-33.1.
 - (3) Nursery schools as provided in § 17-33.4.
 - (4) Automotive service stations as provided in § 17-33.8.
 - (5) Animal hospitals as provided in § 17-33.2.

§ 17-28.9. R-C, Resort-Commercial Zone.

- a. Principal Permitted Uses.
 - (1) All permitted principal uses in the B-1, Business Zone.
 - (2) All permitted uses in the R-40 Zone under the same requirements as set forth in the R-30 Zone.
 - (3) Private and public beaches, picnic grounds, marinas, and guest houses.
- b. Permitted Accessory Uses.
 - (1) Off-street parking and loading facilities as provided in Article VII.
 - (2) Signs as provided in § 17-24.8.
 - (3) Accessory structures.
 - (4) Fueling, service, and sales accessory to marinas.
 - (5) Clothing bins as provided in § 17-32.7. **[Ord. No. 06-09 § 3]**
- c. Conditional Uses.
 - (1) Motels, hotels, and motor hotels as provided in § 17-33.7.
 - (2) Mobile home parks as provided in § 17-33.9.

§ 17-28.10. R-PRD, Residential - Planned Residential Development. [Ord. No. 99-16]

- a. Principal Permitted Uses:
 - (1) Single family attached dwellings.
- b. Permitted accessory uses:
 - (1) Off-street parking and loading facilities.
 - (2) Signs as provided in § 17-24.8.
 - (3) Accessory structures, including piers, docks, and boathouses and other common recreational facilities in conjunction with principal permitted and conditional uses.
 - (4) Common open space.
- c. Conditional Uses.
 - (1) Essential services as provided in § 17-33.6.
- d. Development Standards.
 - (1) Minimum Tract Size: 5 acres. However, all contiguous acreage within the R-PRD Zone shall be included as part of any development proposal. Property in

the same ownership but divided by a public street or right-of-way is contiguous acreage.

- (2) The maximum number of dwelling units shall not exceed Eighty units or Six (6.0) units per gross area, whichever is less.
- (3) Minimum Open Space and Impervious Surface. A minimum of 30% of the R-PRD site, exclusive of Lake Hopatcong water area, shall be landscaped common open space. A maximum of 50% of the site may be in impervious surface. Common open space, for purposes of this section, shall mean an open space area within or related to a site designated as a PRD, and designed and intended for the use or enjoyment of residents and owners of the development. It shall not include land adjacent to dwelling units conveyed in fee simple to the owners of the unit, parking areas, or parts of the site in impervious surface unless occupied by common recreational facilities.
- (4) Maximum Height. No structure shall exceed 40 feet and three stories. No living accommodations of any type shall be permitted above the third floor.
- (5) Minimum distance between buildings shall not be less than 25 feet.
- (6) Minimum Building Setbacks.
 - (a) The minimum building setback (including balconies and raised patios) from exterior tract property lines excluding waterline: 50 feet. At least 25 feet shall be attractively landscaped, or other suitable method as determined as part of site plan approval.
 - (b) The minimum building setback from a residential zone district and a building greater than 2-1/2 stories and/or 35 feet in height shall be 75 feet. At least 25 feet of which shall be buffered using landscaping, berms, fences or other suitable methods as determined as part of site plan approval.
- (7) Minimum Building Setback from the Waterline: 40 feet, except that any attached structures such as balconies and elevated decks may be included in the setback area, provided such attached structures shall not exceed 130 square feet in area and further provided that they may not be located within 30 feet of the lake. On-grade patios may not be located within 25 feet of the lake.
- (8) Off-Street Parking as Determined by the Residential Site Improvement Standards (RSIS).
 - (a) All spaces shall be minimum of 9' × 18'.
 - (b) The minimum parking area set back from all tract property lines shall be 25 feet. The minimum parking area setback to a public right-of-way may be reduced to 15 feet with intervening landscaping, fencing or berms.
 - (c) One garage space per dwelling shall be provided.

- (d) A minimum 10% off-street parking shall be designated for visitor parking.
- (9) Solid Waste, Boat and Recreational Storage, Utilities, Recreational Facilities and Details.
 - (a) Solid waste collection shall be provided for the development either:
 - [i] Curbside, or
 - [ii] Through solid waste/refuse storage areas conveniently scattered throughout the development designed and screened so as to minimize any detrimental effect on the character of the development or surrounding properties. They shall be kept a minimum distance of 50 feet from the lake and all exterior property lines.
 - (b) There shall be no boat or recreational vehicle storage on site or inside structures.
 - (c) All utility transmission systems and connections to the individual dwelling units shall be underground. Such transmission systems and connections shall include but shall not be limited to electrical, telephone, water, sewage, gas, oil, steam, and condensate utilities.
 - (d) Common recreational facilities shall be provided as necessary to serve the residents of the development and shall be shown on the site plan.
 - (e) A lighting and landscaping plan for the entire development and individual clusters of dwelling units shall be submitted which shall include details of fences, berms, walls, and street furniture as well as landscaping and lighting.
- (10) Building Design and Construction.
 - (a) No dwelling unit shall have a width of less than 18 feet.
 - (b) Each dwelling unit shall have not less than two exterior exposures.
 - (c) The maximum number of units in a single structure shall not exceed eight.
 - (d) A front and rear wall setback of not less than four feet shall be provided at least every 54 feet of building facade.
 - (e) Common accessory buildings and facilities shall be designed to harmonize with the overall character of the development and shall meet the building setback requirements set forth in this section.
 - (f) All roads shall meet Borough or RSIS Standards. The Planning Board, in conjunction with the applicant, shall determine which roads shall be public and which shall remain private. Lighting on roads, fire hydrants, and similar improvements shall be considered as part of site plan review. A nonbinding advisory report shall be sought from the Borough Police

Department and Fire Companies.

- (11) (Reserved)
- (12) Docks, Piers, and Slips. All docks, piers, and slips shall comply with the provisions of Article X of this Chapter 17, Land Development, of the Borough of Mount Arlington entitled "Regulations of Piers, Boat Houses, and Marinas" which are in force at the time of passage of this section.
- (13) The stormwater runoff system shall be designed in accordance with the RSIS.
- (14) Applicant shall use topographic features of site and landscaping to minimize the off-site visual impact of parking areas.
- (15) Lighting shall be designed to minimize glare on adjacent properties.
- (16) All exterior walls of each building shall be attractively finished with a suitable and durable materials.
- (17) The site plan shall be reviewed by the Borough's Landscape Architect.
- (18) Common Elements. Ownership and maintenance of all common elements shall be as regulated in N.J.S.A. 40:50D-43 (Standards for the Establishments of Open Space Organizations) of the Municipal Land Use Law. Common elements shall include all facilities, land, utilities, roads, sewers, storm water facilities, and similar elements not conveyed to the Borough or owned in fee simple by any resident of the development. Applicant shall submit for information to the Planning Board Attorney and Borough Attorney all master deeds, maintenance agreements and homeowners and/or condominium association regulations as they affect the control, maintenance and use of all common elements not deeded to the Borough. Maintenance procedures for all common element facilities not conveyed to the Borough, shall also be subject to the requirements of all applicable Borough ordinances presently in existence or hereafter adopted relative to the maintenance of such facilities.
- (19) Environmental Impact Statement(s) (EIS). An EIS as outlined in Article XI of the Land Development Chapter shall be submitted with the initial application for preliminary approval and a copy thereof shall be simultaneously served to the Lake Hopatcong Commission.

§ 17-28.11. HMC, Hotel/Motel Conference Center Zone.

- a. Principal Permitted Uses.
 - (1) Hotels, motels, and conference centers.
- b. Permitted Accessory Uses.
 - (1) Off-street parking and loading facilities as provided in Article VII.
 - (2) Signs as provided in § 17-24.8.

- (3) Accessory structures.
- (4) Clothing bins as provided in § 17-32.7. **[Ord. No. 06-09 § 3]**
- c. Conditional Uses.
 - (1) Essential services as provided in § 17-33.6.

§ 17-28.12. PUD, Planned Unit Development Zone.

- a. Principal Permitted Uses.
 - (1) Single-family detached housing as permitted in the RA-40 Zone.
 - (2) Planned unit developments as controlled and regulated in § 17-31.5.
 - (3) Multi-structure developments as controlled and regulated in § 17-31.3 of this Article.
 - (4) Townhouse developments as controlled and regulated in § 17-31.4 of this Article.
 - (5) Assisted living facility as controlled and regulated in § 17-31.8. **[Ord. No. 97-8 § 2]**
 - (6) Senior citizen housing as controlled and regulated in § 17-31.9. **[Ord. No. 97.8 § 2]**
- b. Permitted Accessory Uses.
 - (1) Off-street parking and loading facilities as provided in Article VII.
 - (2) Signs as provided in § 17-24.8.
 - (3) Accessory structures as permitted in the RA-40 Zone.
- c. Conditional Uses.
 - (1) Essential services as provided in § 17-33.6.
 - (2) Churches and other places of worship including parish houses, Sunday school buildings and other similar uses as provided in § 17-33.1.
- d. Inclusionary residential affordable low- and moderate-income housing. **[Added 12-4-2018 by Ord. No. 20-18]**
 - (1) Howard Boulevard Inclusionary Zone.
 - (a) Purpose. The purpose of the inclusionary zone is to create a realistic opportunity for the construction of low- and moderate-income housing in Mount Arlington on land that is available for development, thereby addressing the Borough's fair share housing obligation under the New Jersey Fair Housing Act⁷ and constitutional obligations to provide

affordable housing.

- (b) Location. The location of the inclusionary zone applies to Block 61.02, Lot 23.08.
- (c) Use. Residential units in the zone are subject to inclusionary affordable housing standards pursuant to "low- and moderate-income housing requirements" below and shall be permitted uses in the inclusionary zone district in addition to those uses already permitted by the underlying zone district. To permit residential development over retail, service and office uses for sites not directly fronting on Howard Boulevard as a standalone town center type of development. To require a maximum density of 15 apartment dwelling units per acre. Other residential, retail, service and office uses would follow the current zone standards.
- (d) Inclusionary residential development standards.
 - [i] The property specified in the location above may be proposed for subdivision and/or site plan for residential development over retail and service or office uses.
 - [ii] The maximum density permitted would be 15 units per acre with a 15% set aside for rentals and 20% set aside for owner-occupied units.
 - [iii] Bulk standards:
 - [a] Minimum lot size: 217,800 square feet.
 - [b] Minimum lot width: 200 feet.
 - [c] Maximum building height: four stories/50 feet.
 - [d] Minimum front yard: 25 feet.
 - [e] Minimum side yard: 10 feet.
 - [f] Minimum rear yard: 25 feet.
 - [g] Maximum lot coverage: 75%.
 - [iv] All other regulations and requirements of the zone shall remain in effect.
- (2) Valley Road Inclusionary Zone.
 - (a) Purpose. The purpose of the inclusionary zone is to create a realistic opportunity for the construction of low- and moderate-income housing in Mount Arlington on land that is available for development, thereby addressing the Borough's fair share housing obligation under the New

Jersey Fair Housing Act⁸ and constitutional obligations to provide affordable housing.

- (b) Location. The location of the inclusionary zone applies to Block 61, Lots 23.03, 23.05 and 23.06. Other properties may be added to this zone in the future.
- (c) Use. Residential units in the zone are subject to inclusionary affordable housing standards pursuant to "low- and moderate-income housing requirements" below and shall be permitted uses in the inclusionary zone district in addition to those uses already permitted by the underlying zone district. To permit residential development on the ground floor of retail, service and office uses. To require a maximum density of 13 apartment dwelling units per acre. To require a maximum density of 9.75 townhouse units per acre. Other residential, retail, service and office uses would follow the current PUD Zone standards.
- (d) Low- and moderate-income housing requirements.
 - [i] The properties specified in the location above may be proposed for subdivision and/or site plan for townhouse residential development on the ground floor of retail and service and office uses.
 - [ii] With the exception to the density and the bulk requirements specified below, all townhouse developments shall follow regulations set in § 17-28.12, Planned Unit Development Zone (PUD).
 - [iii] With the exception to the density, the bulk requirements specified below, and permitted apartments on the on the ground floor of retail, service and office uses, all residential apartment development shall follow regulations set in § 17-28.12, Planned Unit Development Zone (PUD).
 - [iv] The maximum density for residential development shall not exceed 13 dwelling units per acre for rental apartments with a minimum 15% set aside for affordable rental units and 9.75 units per acre for townhouses or owner-occupied condominium units with a minimum 20% set aside for affordable owner-occupied units.
 - [v] The minimum lot frontage or width, bulk and setback requirements shall apply to townhouse and residential mixed-use development in the inclusionary zone:
 - [a] Minimum lot size: 217,800 square feet.
 - [b] Minimum lot width: 200 feet.

8. Editor's Note: See N.J.S.A. 52:27D-301 et seq.

[c] Maximum building height: four stories/50 feet.

[d] Minimum front yard: 100 feet, no maximum.

[e] Minimum side yard: one side yard 50 feet, both side yards a total of 100 feet, no maximum.

[f] Minimum rear yard: 100 feet, no maximum.

[g] Maximum lot coverage: 50%.

[vi] All other regulations and requirements of the PUD zone shall remain in effect.

§ 17-28.13. OB, Office Building Zone. [Ord. No. 99-9 § 6]

a. Principal Permitted Uses.

(1) Business and professional offices.

(2) Research and laboratories.

b. Permitted Accessory Uses.

(1) Off-street parking and loading facilities as provided in Article VII.

(2) Signs as provided in § 17-28.8.

(3) Clothing bins as provided in § 17-32.7. **[Ord. No. 06-09 § 3]**

c. Conditional Uses.

(1) Essential services as provided by § 17-33.6.

§ 17-28.14. SRC, Special Residential Cluster Zone. [Ord. No. 00-02A]

a. Principal Permitted Uses.

(1) Multifamily dwelling units for age-restricted households.

(2) Municipal uses such as parks, playgrounds, firehouse and library.

b. Permitted Accessory Uses.

(1) Off-street parking and loading facilities.

(2) Signs as provided in § 17-24.8.

(3) Accessory structures and common recreational facilities in conjunction with the principal permitted uses.

(4) Common open space.

c. Conditional Uses.

- (1) Essential services as provided in § 17-33.6.

d. Minimum Tract Area, Yard and Bulk Requirements.

- (1) Minimum contiguous tract area. The entire tract will be developed comprehensively on not less than 30 acres.
- (2) Minimum tract lot width as measured at the narrowest point on the tract: Three hundred feet.
- (3) Maximum tract density: Four (4.0) d.u./acre rounded to the nearest whole number. The maximum number of units shall not exceed 144 units.
- (4) Setbacks.
 - (a) All structures including buildings, recreation facilities, solid waste facilities and parking lots: Fifty feet from any tract perimeter property line, except as provided in paragraphs (b) and (c) below.
 - (b) All drainage facilities such as retention and detention facilities: Twenty-five feet from any tract perimeter property line. The facility shall be attractively landscaped. If adjacent to a single family residential use, buffering shall be provided to mitigate its view.
 - (c) All buildings over 35 feet in height: One hundred feet from any tract perimeter property line abutting a single-family residential use or zone district. At least 50 feet of the 100 feet setback shall contain natural foliage, landscaping, berms, fences or other suitable methods as determined to be necessary as part of site plan review to buffer the adjacent uses or districts. The minimum setback of a building 35 feet or less in height from a single family use or zone shall be 50 feet.
- (5) Maximum building tract coverage: 10%.
- (6) Maximum impervious tract coverage: 25%.
- (7) Open space areas. It shall be the goal of the development plan to maximize the preservation of permanent undisturbed open space and to minimize clearing and regarding on the tract especially in areas of steep slopes and areas adjacent to existing residential neighborhoods in accordance with the following:
 - (a) Minimum open space areas. A minimum of 51% of the tract area shall be set aside from development and preserved as permanent open space. To the extent feasible, the maximum amount of such areas shall remain undisturbed. Lands dedicated to the municipality and/or developed for municipal use, shall be calculated towards meeting this requirement.
 - (b) Temporary disturbed areas. Up to 15% of the tract may be temporarily disturbed and set aside as open space provided such areas are restored as specified below.

- (c) Restored areas. Open space areas permitted to be temporarily cleared and regarded shall be restored to meet one or more of the following standards:
 - [i] Buffer areas. Areas adjacent to existing residential use shall be planted to provide a dense planting of evergreen trees so that within 10 years it will effectively screen the development from view from the existing neighborhood.
 - [ii] Re-forested areas. Areas replanted with trees of a size and density of plantings sufficient to achieve a complete tree canopy within 10 years.
 - [iii] Landscaped areas. Areas replanted with landscape materials other than grass, of a size and density of plantings sufficient to achieve a complete landscaped ground cover within 10 years.
 - [iv] The Planning Board may retain the services of a landscape architect to assist in the review of a restoration plan.
- e. Recreation Area. At least 10% of the site shall be developed with recreational facilities appropriate for the occupants. Recreation facilities include municipal use, and active and passive recreation uses.
- f. Multifamily Requirements.
 - (1) Maximum number of units per building is 30.
 - (2) Minimum building to building separation: 50 feet.
 - (3) Minimum distance building to street (public or private): 20 feet.
 - (4) Minimum distance building to parking: 15 feet.
 - (5) Maximum building height:
 - (a) As measured in feet: 50 feet.
 - (b) As measured in stories: 3 stories.
 - [i] No habitable floor area of any type shall be permitted above the third floor.
 - [ii] An in-building garage shall not be counted as a story.
 - (6) Off-street parking. A minimum of two spaces per unit shall be provided.
 - (a) All spaces shall be minimum of 9' × 18'.
 - (b) The minimum parking area setback shall be 25 feet. The minimum parking area setback from a single family use or zone shall be 50 feet. This 50 foot setback shall contain landscaping to visually screen vehicles and the parking area.

- (c) One garage space per dwelling shall be provided.
 - (d) Ten percent of required parking shall be set aside for visitor parking.
- g. Municipal Use. In addition to any proposed recreation and/or common use buildings and lands for the SRC residents, the site plan shall contain a community resource facility, as determined at site plan review, not to exceed three and one-half (3.5) acres in land area which shall be available for dedication for municipal use.
- h. Solid Waste, Boat and Recreational Storage, Utilities, Recreational Facilities and Details.
 - (1) Solid waste collection shall be provided for the development either:
 - (a) Curbside, or
 - (b) Through solid waste/refuse storage areas conveniently scattered throughout the development designed, and screened so as to minimize any detrimental effect on the character of the development or surrounding properties. They shall be kept a minimum distance of 50 feet from all exterior property lines.
 - (c) There shall be no boat or recreational vehicle storage on site or inside structures.
 - (d) All utility transmission systems and connections to the individual dwelling units shall be underground. Such transmission systems and connections shall include but shall not be limited to electrical, telephone, water, sewage, gas, oil, steam, and condensate utilities.
 - (e) Common recreational facilities shall be provided as necessary to serve the residents of the development and shall be shown on the site plan.
 - (f) A lightning and landscaping plan for the entire development and individual clusters of dwelling units shall be submitted which shall include details of fences, berms, walls, and street furniture as well as landscaping and lightning.
- i. Building Design and Site Improvement Standards.
 - (1) Common accessory buildings and facilities shall be designed to harmonize with the overall character of the development and shall meet the building setback requirements set forth in this section.
 - (2) All roads shall meet RSIS standards. The Planning Board, in conjunction with the applicant, shall determine which roads shall be public and which shall remain private. Lighting on roads fire hydrants, and similar improvements shall be considered as part of site plan review. A nonbinding advisory report shall be sought from the Borough Police Department and Fire Companies.
 - (3) The stormwater runoff system shall be designed in accordance with the RSIS.

- (4) Applicant shall use topographic features of the site and landscaping to minimize the off-site visual impact of buildings and parking areas.
 - (5) Lighting shall be designed to minimize glare on adjacent properties.
 - (6) All exterior walls of each building shall be attractively finished with suitable and durable materials.
- j. Common Elements. Ownership and maintenance of all common elements shall be as regulated in N.J.S.A. 40:55D-43 (Standards for the Establishments of Open Space Organizations) of the Municipal Land Use Law. Common elements shall include all facilities, land, utilities, roads, sewers, storm water facilities, and similar elements not conveyed to the Borough or owned in fee simple by any resident of the development. Applicant shall submit for information to the Planning Board Attorney and Borough Attorney all master deeds, maintenance agreements and homeowners and/or condominium association regulations as they affect the control, maintenance and use of all common elements not deeded to the Borough. Maintenance procedures for all common element facilities not conveyed to the Borough, shall also be subject to the requirements of all applicable Borough ordinances presently in existence or hereafter adopted relative to the maintenance of such facilities.
- k. Environmental Impact Statement(s) (EIS). An EIS as outlined in Article XI of the Land Development Chapter shall be submitted with the initial application for preliminary approval and a copy thereof shall be simultaneously served to the Lake Hopatcong Commission.

§ 17-28.15. SRC-B, Special Residential Cluster B Zone. [Ord. No. 00-10 § 1]

- a. Purpose. It shall be the goal of the development plan to maximize the preservation of permanent undisturbed open space and to minimize clearing and regarding on the tract specially in areas of steep slopes, critical areas and areas adjacent to existing residential neighborhoods.
- b. Principal Permitted Uses.
 - (1) Multifamily dwelling units for aged restricted households.
 - (2) Single family detached dwelling units for age restricted households.
- c. Permitted Accessory Uses.
 - (1) Off-street parking and loading facilities.
 - (2) Signs as provided in § 17-24.8.
 - (3) Accessory structures and common recreational facilities in conjunction with the principal permitted uses.
 - (4) Common open space.

d. Conditional Uses.

- (1) Essential services as provided in § 17-33.6.

e. Minimum Tract Area, Yard and Bulk Requirements.

- (1) Minimum contiguous tract area: The entire tract shall be developed comprehensively on not less than 70 acres.
- (2) Minimum tract lot width as measured at the narrowest point on the tract: 1,000 feet.
- (3) Maximum tract density: 2.5 dwelling units/acre. **[Ord. No. 21-09]**
- (4) Setbacks.
 - (a) All structures including buildings, recreation facilities, solid waste facilities and parking lots: Fifty feet from any tract perimeter property line, except as provided in paragraphs (b) and (c) below.
 - (b) All drainage facilities such as retention and detention facilities: Twenty-five feet from any tract perimeter property line.
 - (c) All buildings over 35 feet in height: 100 feet from any tract perimeter property line abutting a single-family residential use or zone district. At least 50 feet of the 100 feet setback shall contain natural foliage, landscaping, berms, fences or other suitable methods as determined to be necessary as part of site plan review to buffer the adjacent uses or districts. The minimum setback of a building 35 feet or less in height from a single family use or zone shall be 50 feet.
- (5) Maximum tract building coverage: 10%.
- (6) Maximum tract impervious coverage: 25%.
- (7) Open space area shall be addressed pursuant to the purposes of this article in accordance with the following:
 - (a) Minimum open space areas. A minimum of 51% of the tract area shall be set aside from development as permanent open space. To the extent feasible, the maximum amount of such areas shall remain undisturbed. Developed parts of recreation areas shall not be considered "open space".
 - (b) Temporary disturbed areas. Up to 15% of the tract may be temporarily disturbed and set aside as open space provided such areas are restored as specified below.
 - (c) Restored areas. Open space areas permitted to be temporarily cleared and regraded shall be restored to meet one or more of the following standards:
 - [i] Buffer areas. Areas adjacent to existing residential use shall be planted to provide a dense planting of evergreen trees so that within

10 years it will effectively screen the development from view from the existing neighborhood.

- [ii] Re-forested areas. Areas replanted with trees of a size and density of plantings sufficient to achieve a complete tree canopy within 10 years.
 - [iii] Landscaped areas. Areas replanted with landscape materials other than grass, of a size and density of plantings sufficient to achieve a complete landscaped ground cover within 10 years.
 - [iv] The Planning Board may retain the services of a landscape architect to assist in the review of a restoration plan.
- f. Recreation Areas. At least 10% of the site, shall be developed with recreational facilities appropriate for the occupants. Recreation facilities include active and passive recreation uses.
- g. Multifamily Requirements.
 - (1) Maximum number of units per building is 24.
 - (2) Minimum building to building separation: 35 feet.
 - (3) Minimum distance building to street (public or private): 20 feet.
 - (4) Minimum distance building to parking: 15 feet.
 - (5) Maximum building height:
 - (a) As measured in feet: 50 feet.
 - (b) As measured in stories: 3 stories.
 - [i] No habitable floor area of any type shall be permitted above the third floor.
 - [ii] An in-building garage shall not be counted as a story.
 - (6) Maximum percent of multifamily units shall not exceed 65% of the total dwelling units on the tract.
- h. Single Family Detached Dwelling Unit Requirements.
 - (1) Minimum distance building to street: 25 feet.
 - (2) Minimum building to building separation: 10 feet.
 - (3) Maximum height: 2-1/2 stories or 35 feet.
- i. Off-Street Parking. A minimum of two spaces per unit shall be provided.
 - (1) All spaces shall be minimum of 9' × 18'.

- (2) The minimum parking area setback shall be 25 feet from the tract perimeter. The minimum parking area setback from a single family use or zone shall be 50 feet. This 50 foot setback shall contain landscaping to visually screen vehicles and the parking area.
- (3) One garage space per dwelling shall be provided.
- (4) Ten percent of required parking shall be set aside for visitor parking.
- j. Drainage facilities such as a detention or retention basin shall be setback not less than 25 feet from a property line. The facility shall be attractively landscaped. If adjacent to a single family residential use, buffering shall be provided to mitigate its view.
- k. Solid Waste, Boat and Recreational Storage, Utilities, Recreational Facilities and Details.
 - (1) Solid waste collection shall be provided for the development either:
 - (a) Curbside, or
 - (b) Through solid waste/refuse storage areas conveniently scattered throughout the development designed, and screened so as to minimize any detrimental effect on the character of the development or surrounding properties. They shall be kept a minimum distance of 50 feet from all exterior property lines.
 - (c) There shall be no boat or recreational vehicle storage on site or inside structures.
 - (d) All utility transmission systems and connections to the individual dwelling units shall be underground. Such transmission systems and connections shall include but shall not be limited to electrical, telephone, water, sewage, gas, oil, steam, and condensate utilities.
 - (e) Common recreational facilities shall be provided as necessary to serve the residents of the development and shall be shown on the site plan.
 - (f) A lighting and landscaping plan for the entire development and individual clusters of dwelling units shall be submitted which shall include details of fences, berms, walls, and street furniture as well as landscaping and lighting.
- l. Building Design and Site Improvement Standards.
 - (1) Common accessory buildings and facilities shall be designed to harmonize with the overall character of the development and shall meet the building setback requirements set forth in this section.
 - (2) All roads shall meet RSIS standards. The Planning Board, in conjunction with the applicant, shall determine which roads shall be public and which shall

remain private. Lighting on roads, fire hydrants, and similar improvements shall be considered as part of site plan review. A nonbonding advisory report shall be sought from the Borough Police Department and Fire Companies.

- (3) The stormwater runoff system shall be designed in accordance with the RSIS.
 - (4) Applicant shall use topographic features of the site and landscaping to minimize the off-site visual impact of buildings and parking areas.
 - (5) Lighting shall be designed to minimize glare on adjacent properties.
 - (6) All exterior walls of each building shall be attractively finished with suitable and durable materials.
- m. Common Elements. Ownership and maintenance of all common elements shall be as regulated in N.J.S.A. 40:55D-43 (Standards for the Establishments of Open Space Organizations) of the Municipal Land Use Law. Common elements shall include all facilities, land, utilities, roads, sewers, storm water facilities, and similar elements not conveyed to the Borough or owned in fee simple by any resident of the development. Applicant shall submit for information to the Planning Board Attorney and Borough Attorney all master deeds, maintenance agreements and homeowners and/or condominium association regulations as they affect the control, maintenance and use of all common elements not deeded to the Borough. Maintenance procedures for all common element facilities not conveyed to the Borough, shall also be subject to the requirements of all applicable Borough ordinances presently in existence or hereafter adopted relative to the maintenance of such facilities.
- n. Environment Impact Statement(s) (EIS). An EIS as outlined in Article XI of the Land Development Ordinance shall be submitted with the initial application for preliminary approval and a copy thereof shall be simultaneously served to the Lake Hopatcong Commission.

§ 17-29. SCHEDULE OF AREA, YARD AND BULK REQUIREMENTS. [Ord. No. 93-19 § 4, Ord. No. 99-9 § 5, Ord. No. 99-16 § 3, Ord. No. 00-02A § 3, Ord. No. 06-09 § 3, Ord. No. 00-10 § 2, Ord. No. 08-08 § 20, Ord. No. 10-11 § 7, amended by Ord. No. 12-2015]

The Schedule of Area, Yard and Bulk Requirements is set forth in Schedule 1 and is included as an attachment to this chapter.

§ 17-30. SUPPLEMENTARY LOT, HEIGHT, AND YARD REGULATIONS.

§ 17-30.1. Lot Regulations.

- a. Lot Width. On regularly shaped lots, the minimum lot width of any lot shall be measured at the front property line and minimum front yard setback line as required for the zone in which it is located and shall be maintained for a distance of 40 feet to the rear of the required setback line. In cases of lots fronting on culs-de-sac,

which are turnarounds at the end of streets with a single ingress and egress, the lot frontage measured at the street right-of-way line shall not be less than 50% of the required minimum lot width or 75 feet, whichever is greater.

- b. **Corner Lots.** At all street intersections, no obstruction to vision exceeding 30 inches in height above the established grade of the street at the property line shall be erected or maintained on any lot within the area bounded by the line drawn between points along such street lot line or their extension thereof 30 feet distant from their intersection. Every yard of a corner lot which abuts a street shall be considered a front yard. The front yard setback requirements specified in § 17-29, Schedule 1, Area, Yard and Bulk Requirements, shall be complied with on every street frontage. The width requirements for corner lots specified in § 17-29, Schedule 1, Area, Yard and Bulk Requirements shall be the minimum lot width along the street the principal building faces; the minimum lot width along the other street shall comply with the Schedule 1 requirements for interior lots. The only exception to the width requirements of a corner lot shall be in the B-1 Business Zone, where the side yard shall be 1/2 of the corner front yard setback. **[Ord. No. 13-09]**
- c. **Yards of Lots Fronting on More Than One Street, Other Than Corner Lots.** Where a lot which is not a corner lot fronts on more than one street, every yard which abuts a street shall be considered a front yard, and the front yard setback requirements for the zone in which the lot is situated shall be complied with on every street frontage. In the case of a lot running through from one street to another, the frontage of such lot, for the purposes of this Article, shall be considered that frontage upon which the majority of the buildings in the same block front, but in case there has been no clearly defined frontage established, the owner may, when applying for a building permit, specify on his permit application which lot line shall be considered the front lot line.
- d. **Required Area of Space Cannot Be Reduced.** The area or dimension of any lot, yard, parking area or other space shall not be reduced to less than the minimum required by this Article; and, if already existing as less than the minimum required by this Article, said area or dimension may be continued and shall not be further reduced.
- e. **Frontage Upon a Street.** Every principal building shall be built upon a lot with the minimum required frontage on an improved and approved street in accordance with the street standards established by the Borough of Mount Arlington.

§ 17-30.2. Height Regulations.

- a. **General Application.** No building or structure shall have a greater number of stories or greater number of feet than are permitted in the zone where such building or structure is located.
- b. **Permitted Exceptions.**
 - (1) Height limitations stipulated elsewhere in this Chapter shall not apply to churches, spires, belfries, cupolas and domes, monuments, historic edifices,

chimneys, flagpoles, private radio and TV antennas, fire towers, tanks, water towers and standpipes, all attached to the principal structure, and essential services. All freestanding exceptions shall be considered as accessory structures. Heights of radio and television antennas shall be no higher than 10 feet above the highest point of the structure.

- (2) Permitted exceptions listed under paragraph b(1) above, when freestanding and not attached to the principal structure, shall be limited to a height equal to the distance of the freestanding structure to the closest lot line.
- (3) Mechanical appurtenances such as condensers, elevator penthouses, exhaust fans, air-conditioning equipment and other similar equipment are exempt from these height restrictions, provided they do not extend more than 10 feet above the maximum height limitations, cover no more than 10% of the roof area and are properly shielded by a parapet wall.

§ 17-30.3. Yard Regulations.

a. General.

- (1) Required yards shall be open to the sky, unobstructed except for the ordinary projection of parapets, windowsills, door posts, rainwater leaders and similar ornamental or structural fixtures which may not project more than one foot into such yards or as may otherwise be permitted in this Article. Parking is permitted except where otherwise prohibited by this Article.
- (2) Cornices, eaves, bay windows, balconies, and uncovered stairways may project not more than two feet into any required yard.
- (3) Chimneys, flues, patios, or outdoor barbecues may not be erected within any minimum required front or side yard. Patios shall not be located closer than 15 feet to any rear property line.

b. Front Yard Requirements Affected by Official Map or Master Plan. Where any lot fronts on a street right-of-way which is proposed to be widened as indicated on the Official Map or Master Plan of the Borough of Mount Arlington, or Master Plan of Morris County, or by the State of New Jersey, as adopted by the appropriate agency pursuant to law, the front and rear yard of any interior lot or side yard of a corner lot in such zone shall be measured from such proposed future right-of-way line.

c. Side Yard Exceptions.

(1) Corner lot.

- (a) Any corner lot delineated by subdivision after adoption of this Chapter shall provide a side street setback line which shall be the same as the minimum front yard required on any adjoining lot fronting on the side street. Parking may be permitted within this area not closer than 10 feet to a right-of-way line.

- (b) A corner lot platted on the Borough's tax maps as the lot existed at the time of adoption of this Chapter, or any corner lot shown on any subdivision plat which received approval prior to the adoption of this Chapter, in which the application of paragraph c(1)(b) above would render said lot unbuildable, on approval of the Planning Board, may be permitted to encroach into one or both of the required side yard or front yard, as the case may be, in such a manner as the Planning Board may decide is consistent with the objectives of good planning and zoning, provided it can be done without any adverse effect on any adjacent lots.

§ 17-30.4. Lot Coverage.

- a. **Maximum Lot Coverage.** The maximum lot coverage on each lot shall not be greater than is permitted in the zone where such buildings and structures are located and shall include all porches, chimneys, extensions and accessory buildings and structures.
- b. **Maximum Improved Lot Coverage.** In all zones, in connection with every industrial business, institutional, recreational, residential or other use, the maximum permitted lot coverage of principal and accessory buildings and structures and improved areas, including off-street parking and loading areas, driveways and other impervious surfaces, shall not exceed that percentage set forth in Schedule 1, Area, Yard and Bulk Requirements, of this Article.

§ 17-30.5. Number of Buildings Restricted.

There shall not be more than one principal structure on each lot in any zone, except as permitted for development groups.

§ 17-30.6. Setback From Streams and Other Bodies of Water.

Notwithstanding any other provisions of this Chapter, no building or structure shall hereinafter be erected, moved, altered, added to or enlarged within a distance of 25 feet from the mean high-water mark of a watercourse or other body of water. In addition, an easement of not less than 15 feet along each side or edge of said watercourse or other body of water shall be provided. Unless specifically permitted elsewhere in this Chapter, no building, structure or other impervious areas shall be permitted to be constructed within said easement or restricted area.

§ 17-30.7. Exceptions to Area and Dimension Requirements.

- a. Notwithstanding any other provisions of this Chapter, a separate lot of at least 7,500 square feet with a minimum width of 50 feet existing in separate ownership at the time of passage of this Chapter may have constructed thereupon a single-family dwelling provided that all necessary approvals from the Board of Health for water and sewer have been secured. The prevailing setback in the neighborhood shall be maintained and a minimum side yard of 10 feet shall be maintained.
- b. **Nonconformity Due to Setback.** When an improved lot in a residential zone exists

as a separate, isolated lot under separate ownership and does not adjoin any vacant land or vacant lot of the same owner and which said improved lot is nonconforming due to setback the existing residential building or structure on the lot may be further improved provided that: **[Ord. No. 08-08 § 17]**

- (1) The number of dwelling units shall not exceed the number allowed in the district;
 - (2) Any existing nonconforming setbacks from streets, side lot lines or rear lot lines shall not be made more nonconforming by the improvement;
 - (3) Any improvement constructed within an applicable setback shall not exceed in footprint area 20% of the first floor of the building or structure as it exists as of the date of adoption of this Chapter and shall not be located or constructed within 50% of the applicable setback. **[Ord. No. 10-11 § 8]**
 - (4) Any improvement shall not exceed any of the requirements set forth on Schedule 1 of this Chapter (other than setback requirements).
- c. Nonconformity Due to Lot Area. When an improved lot in a residential zone exists as a separate, isolated lot under separate ownership and does not adjoin any vacant land or vacant lot of the same owner and which said improved lot is nonconforming due to lot area the existing residential building or structure on the lot may be further improved provided that: **[Ord. No. 08-08 § 17]**
- (1) The number of dwelling units shall not exceed the number allowed in the district;
 - (2) Any existing nonconforming setbacks from streets, side lot lines or rear lot lines shall not be made more nonconforming by the improvement;
 - (3) Any improvement shall not exceed any of the requirements set forth on Schedule 1 of this Chapter.

§ 17-30.8. Grading Permit. [Ord. No. 00-21]

- a. Permit Required. No land shall be cleared, graded or otherwise permanently disturbed in a manner which alters slopes and/or the flow of stormwater runoff for any purpose, including but not limited to the construction of single-family dwellings, multifamily dwellings or other buildings or structures, the mining of minerals, the removal of other natural resources, the development of golf courses and/or the construction of streets by any person or entity other than the Borough of Mount Arlington, County of Morris, State of New Jersey unless the Borough Engineer has first approved a lot grading plan for the proposed activity and has issued a grading permit allowing such activity to proceed. **[Ord. No. 10-11 § 9]**
- b. Exemptions from Requirements. **[Ord. No. 10-11 § 9]**
 - (1) Any development which has received approval from the Planning Board shall be exempt from the requirements of paragraph a of this section. This

exemption shall only apply to grading shown on the plan(s) approved by the Planning Board. All other grading activities shall not be exempted.

- (2) The Borough Engineer may at his discretion waive any requirement of this section if an applicant can demonstrate to the satisfaction of the Engineer that the requirement for which a waiver is sought is not applicable and will not result in the detriment to the public health, safety and general welfare.
- c. Grading Plan Preparation and Contents. The lot grading plan shall be prepared by a professional engineer licensed by the State of New Jersey. Two copies of the plan shall be submitted to the Borough Engineer together with two copies of an application for grading permit (which application form shall be available through the office of the Borough Engineer) and the fee required by paragraph f of this section. The lot grading plan shall contain the following information:
- (1) Date.
 - (2) Layout of proposed buildings and structures.
 - (3) North arrow, scale; block and lot number of the subject property (or properties); name and address of record owner; name, address license number and seal of the person preparing the plan.
 - (4) Complete lot boundary line information based on a current survey prepared by a New Jersey-licensed land surveyor.
 - (5) Building setback lines, lines of existing streets, easements affecting the property and any areas dedicated to public use.
 - (6) Location of existing buildings and structures, if any, including walls, fences, culverts and bridges. Spot elevations as to all such structures shall be provided. Structures to be removed shall be indicated by dashed lines.
 - (7) Location of all existing and proposed storm drainage structures.
 - (8) Existing contours at two-foot intervals where slopes are less than 10%, five-foot intervals where slopes are 10% or greater. Existing contours shall be shown by dashed lines.
 - (9) Proposed contours with similar intervals. Proposed contours shall be shown by solid lines.
 - (10) Location of existing rock outcroppings, high points, watercourses, depression, ponds, marshes, wooded areas and other significant natural features.
 - (11) Proposed use of land, buildings and other structures, including driveways, roads, curbs, sidewalks and other paved areas.
 - (12) Existing and proposed utility locations.
 - (13) Landscaping plans showing existing vegetation to remain and all areas to be seeded or planted. Size and type of proposed trees and shrubs shall be

indicated. All trees eight inches DBH or greater shall be shown.

- (14) Disturbance fencing shall be provided around the limits of all areas of disturbance.
 - (15) Split fencing and/ or hay bales shall be provided downstream of all areas for disturbance.
 - (16) Such other information as may be required by the Borough Engineer in order to determine that the requirements of this section have been met.
- d. Vegetation. The preservation of natural vegetation shall be preserved wherever practical. The regarding or stripping of vegetation on steep slopes shall comply with the following standards:
- (1) On slopes less than 10% vegetation can be stripped from the site necessary to build all buildings and ancillary paved areas as well as that part of the site not to be improved but will be regarded as approved by the Borough Engineer.
 - (2) On slopes between 10% and 15%, vegetation shall not be stripped from more than 40% of the slopes.
 - (3) On slopes between 15% and 25%, vegetation shall not be stripped from more than 30% of the slopes.
 - (4) On slopes 25% or greater, vegetation shall not be stripped from more than 15% of the slopes.
 - (5) Irrespective of the above regulations, an applicant may regrade a steep sloped area, provided that in no event shall the applicant disturb or regrade more than 200 square feet of the lot to be developed.
- e. Time for Action. The Borough Engineer shall review and approve, conditionally approve or deny the lot grading permit application within 30 days of the date on which a complete application is submitted. Otherwise, the application for grading permit shall be deemed to be approved.
- f. Review and Application Fees. **[Ord. No. 09-06, Ord. No. 10-11 § 9]**
- (1) The applicant of a grading permit shall be responsible for the payment of engineering and legal review and inspection fees. Upon submission of a grading permit application the applicant shall submit an escrow fee payable to the Borough of Mount Arlington of no less than \$500. Additional escrow fees may be required if deemed appropriate by the Borough Engineer; the amount of which shall not exceed \$200 each time a request for additional escrow is made to the applicant. Escrow fees shall be administered in accordance with § 17-5.8.
 - (2) Each application for a grading permit under this section shall require the submission of a permit fee in the amount of \$100, payable to the Borough of Mount Arlington upon issuance of an approved grading permit.

- (3) Exemptions described in paragraph b of this § 17-30.8 shall not apply to the requirement of the soil removal fee.

§ 17-31. SUPPLEMENTAL REGULATIONS GOVERNING CERTAIN PERMITTED USES.

§ 17-31.1. Agricultural Uses.

Agricultural uses, including customary farm occupations or lands which qualify as farmland as defined herein, shall be permitted in any residential zone subject to the following conditions:

- a. Buildings may be utilized for horticulture, nurseries, greenhouses and for the growing, raising, harvesting and sale of agricultural crops, provided that no building shall be nearer than 100 feet from any lot line, except residential buildings which may be located in conformity with the standards for residences within those districts in which they are located.
- b. The keeping of domesticated animals shall be limited to lots of at least five acres in area except as regulated under home agriculture use requirements under § 17-32.6.
- c. The display for sale of products grown or raised by the owner, tenant, or lessee shall only be permitted where:
 - (1) The products sold are in their natural state.
 - (2) The sale of such products are within the confines of the property upon which they have been grown or raised.
 - (3) The place of sale or storage of any such products, whether of a permanent or temporary nature, shall not be closer than 100 feet to any side or rear lot line. One farm stand not to exceed 150 square feet shall be permitted on the property.
 - (4) The sale of any such products shall not have a deleterious effect on adjoining properties by reason of nuisance or health hazard or other factors as specified herein.
 - (5) The sale of any such products shall also require that a suitable amount of off-street parking and loading space be required as provided herein.

§ 17-31.2. Clubs, Outdoor Recreation Facilities, Swimming Pools, and Arenas.

- a. In zones where permitted, no building or structure shall be located within 15 feet of any property line or closer than permitted for principal structures in the zone where located, whichever is greater.
- b. In zones where permitted, there may be included retail sales of food and products accessible to the facility.
- c. Recreational facilities not entirely enclosed in any building shall be located not less

than 25 feet from any property line and shall be effectively screened from adjoining residential uses.

- d. No public address or sound amplifier system shall be permitted except where such system shall not be audible beyond any property line.
- e. Other factors, such as lighting, drainage, parking, surfacing and signs, shall be subject to site plan review as set forth in Article VII.
- f. Outdoor recreation facilities shall include golf courses, ice-skating rinks, swimming pools, tennis courts, other court games, public beaches, marinas, and other similar facilities.

§ 17-31.3. Multi-Structure Development. [Ord. No. 2008-16 § 7]

Pursuant to the procedure hereinafter set forth, two or more structures may be erected and maintained on the same lot where permitted elsewhere herein. Additionally, in residential zones, where otherwise permitted, several lots may be combined into one special plan covering a development group. The procedure is intended to permit diversification in the location of structures and to improve circulation facilities and other site considerations while ensuring adequate standards relating to public health, safety, welfare and convenience in the use and occupancy of buildings and facilities in development groups.

a. Nonresidential Development Design Standards.

- (1) Minimum Lot Area Required. In any nonresidential zone, planned development groups may be permitted where two or more principal structures are developed on a single zone lot, subject to all minimum area, bulk, and yard requirements established in Schedule 1 of this Article and other regulations of this Chapter and the additional requirements herein.
- (2) Spacing and Orientation of Building Groups. Spacing between buildings and orientation in commercial and industrial building groups shall be as follows:
 - (a) Exterior walls of opposing or adjacent buildings shall be located no closer than 1.5 times the distance equal to the height of the taller building.
 - (b) A building group may not be so arranged that any permanently or temporarily occupied building is inaccessible to emergency vehicles.
 - (c) No structure shall exceed 35 feet in height.

b. Apartment Development Design Standards.

- (1) Two or more apartment buildings or structures on one zone lot. Under the provisions of this Chapter, apartment buildings or structures are permitted on one lot, where otherwise permitted herein, subject to all minimum area, bulk and yard requirements established in Schedule 1 and other regulations in this Chapter and the additional requirements herein.

- (2) Distances between buildings. The minimum distance between any two buildings shall not be less than as required under the following formula:

Windowless wall to windowless wall	20 ft.
Window wall to windowless wall	30 ft.
Window wall to window wall	
Front to Front	75 ft.
Front to Rear	60 ft.
Rear to Rear	50 ft.
End to End	30 ft.
Any building face to private driveway	20 ft.
Any building face to collector street curb	50 ft.
Any building face to common parking area	17 ft.

- (3) Maximum Number of Dwelling Units per Grouping.
- Each building shall be of fireproof construction and shall contain not more than 24 dwelling units, with no portion of the building below the first story used for dwelling purposes.
 - The maximum length of any apartment building shall not exceed 120 feet with an offset every 40 feet of at least 20% of the depth. The building shall be designed so as to be accessible to all emergency vehicles.
 - A maximum density of seven dwelling units per acre shall be permitted. Critical Area Development Control, Article XII shall apply in computing the maximum number of units allowed.
- (4) Courts. Where a court is provided, the minimum dimension of the court shall be 40 feet or one and one-half (1-1/2) times the height of the building, whichever is greater.
- (5) Recreation Space. There shall be provided on the site of each development an area of not less than 100 square feet of recreation space for each dwelling unit, but in no case shall there be less than 2,000 square feet devoted to the joint recreational use of the residents thereof. Such recreation space shall be appropriately located in other than a front yard and shall be required to be developed with passive and/or active recreational facilities.
- (6) Off-Street Parking Requirements. Off-street parking facilities shall be provided at the rate of two off-street spaces per dwelling unit.
- (7) General Landscaping Requirements. Any unenclosed use or area shall be landscaped as required by the Planning Board. Provision shall also be made for landscaping as required elsewhere herein.

- (8) No structure shall exceed 35 feet in height.
- (9) Recycling. Any new multifamily housing development, single-family housing development of 50 or more units, or any commercial or industrial development proposal for the utilization of 1,000 square feet or more of land (except those exempt under § 144-3B of the Borough Code), the management or owner is responsible for setting up and maintaining the recycling system, including collection of recyclable materials, in accordance with guidelines or regulations established by the Borough Recycling Coordinator and § 17-24.9, Solid Waste and Recycling of the Borough of Mount Arlington's Code.

§ 17-31.4. Town Houses.

- a. Maximum Density. Not more than six dwelling units per acre, except as may be limited by the regulations applicable to any specific zone. Critical Area Development Control, Article XII shall apply in computing the maximum number of units.
- b. Building Requirements.
 - (1) Design.
 - (a) Each dwelling unit shall have not less than two exposures.
 - (b) There shall be no more than eight dwelling units in any single group of dwelling units.
 - (c) No dwelling unit, or group of dwelling units, shall exceed 35 feet in height. No living space shall be permitted above the second floor.
 - (d) No more than two adjacent dwelling units may be constructed without providing a front wall setback of not less than four feet.
 - (e) Common accessory buildings and facilities shall be designed to harmonize with the overall character of the development.
 - (2) Siting.
 - (a) Each group of dwelling units shall not be less than 50 feet from any tract boundary line.
 - (b) Distance Between Buildings. The minimum distance between any group of dwelling units shall be the following:
 - [i] Windowless wall to windowless wall:
 - [a] Two stories: 15 feet.
 - [b] One story: 10 feet.
 - [ii] Window wall to windowless wall:

[a] Two stories: 20 feet.

[b] One story: 15 feet.

[iii] Window wall to window wall:

[a] Front to front: 65 feet.

[b] Rear to rear: 50 feet.

[c] End to end:

(i) Two stories: 30 feet.

(ii) One story: 25 feet.

(3) Construction. In addition to the specifications herein, construction of all dwelling units shall conform to the State Uniform Construction Code. **[Ord. No. 95-5 § 3]**

c. Parking Requirements. Two spaces for each dwelling unit.

d. Common Open Space. Common open space resulting from the application of standards for density, or intensity of land use shall be set aside for the use and benefit of the residents in such development. At least 25% of the total area shall be set aside as open space of which 10% shall be in formal recreation facilities. Common open space shall be subject to N.J.S.A. 40:55D-43, Standards for the Establishment of Open Space Organization. The applicant shall submit for approval to the Planning Board Attorney and Borough Attorney all master deeds, maintenance agreements and homeowners and/or condominium association regulations as they affect the control, maintenance and use of all common open space not deeded to the Borough.

e. Utilities, Facilities, and Landscaping.

(1) Refuse and source separation storage areas shall be so designed as to minimize any detrimental effect on the character of the development.

(2) All utility wiring shall be underground.

(3) An overall landscaping plan for the entire development shall be submitted.

§ 17-31.5. Planned Developments.

Prior to approval of planned developments which shall include cluster residential and planned unit development, the Planning Board shall find the following facts and conclusions:

That departures by the proposed development from zoning regulations otherwise applicable to the subject property conform to the zoning ordinance and site plan standards.

That the proposals for maintenance and conservation of the common open space are reliable, and the amount, location, and purpose of the common open space are adequate.

That provision through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light, air, recreation, quiet and visual enjoyment are adequate.

a. Planned Unit Development (PUD).

Purpose. It is in the intent of the PUD Zone regulations to provide a realistic opportunity for the construction of a variety of housing types and income levels in the Borough, including housing for low- and moderate-income households; and to encourage the development of such lower income housing and other housing by providing specific land use regulations addressing those needs. These regulations are designed to meet the mandate of Mt. Laurel II.

For purposes of this section, low-income households are those with an income no greater than 50% of the median household income of the Newark Primary Metropolitan Statistical Area (PMSA), adjusted for household size, and the moderate-income households are those with incomes no greater than 80% and no less than 50% of the median household income of the Newark Primary Metropolitan Statistical Area, adjusted for household size. These maximum household income levels for low- and moderate-income households correspond to the very-low-income and low levels designated by the U.S. Department of Housing and Urban Development (HUD) for its Section 8 Rental Assistance Program for Newark PMSA and available from its Newark Area Office.

The applicant and approving authority may mutually agree that an applicant may contribute \$10,000 for some of the low- and moderate-income units the applicant is obligated to construct in lieu of constructing the units, provided that the number of units in lieu of on-site construction cannot be greater than the indigenous need of the Borough as established by COAH.

- (1) Minimum tract size: 10 acres.
- (2) Minimum lot size: 5 acres.
- (3) Utilities Required. All such developments shall be served by public sewer and public water. The Planning Board, however, may permit nonresidential uses to be served by approved means of sewage treatment providing provision is made to connect these uses into public sewers when such sewers become available. The Planning Board may impose reasonable requirements to implement this requirement such as the installation of dry sewers.
- (4) Minimum Open Space and Buffers. A minimum of 25% of the site shall be in public open space. A minimum buffer strip as defined in Article VII of 75 feet shall be provided along all property lines.
- (5) Maximum Density and Number of Units. A PUD shall be developed in such a manner so as to limit the maximum density to eight bedrooms per gross tract

acre. Gross acre shall include all areas within the tract boundary lines except:

- (a) Land with grades in excess of 30%.
- (b) Land in floodways/flood fringe.
- (c) Existing easements.

The maximum number of dwelling units on the site shall be 591 units of which 15 shall be lower income units as defined in this Article. **[Ord. No. 93-19]**

- (6) Design. A PUD shall be designed in accordance with the standards and principles set forth in this Chapter.
- (7) Access. Principal access shall be from a collector road or higher (wider) road.
- (8) Maximum Height. No structure shall exceed 35 feet.
- (9) Permitted Types of Housing - single-family attached, detached, as provided in Section 17-31.7A, Single-Family Detached-PUD Zone, garden apartments and multi-structure as provided in Section 17-31.3, multi-structure development, and townhouses as provided in Section 17-31.4, townhouses shall be permitted except that the percentage of garden apartment units shall not exceed 25% of the total number of units and the percentage of single-family detached units shall not exceed 10% of the total number of units. Careful attention shall be given to providing appropriate and compatible land uses to that permitted in adjacent zones. **[Ord. No. 93-19]**
- (10) Commercial Facilities. No less than 35% of the gross tract area shall be developed for commercial use, which is defined as any principal or accessory use permitted in the B-1 Zone, and/or any conditional use permitted in the RA-40 Zone.
- (11) Common Open Space. Ownership and maintenance of common open space shall be regulated in N.J.S.A. 40:55D-43, Standards for the Establishment of Open Space Organization, in the Municipal Land Use Law. Applicant shall submit for approval to the Planning Board Attorney and Borough Attorney all master deeds, maintenance agreements and homeowners and/or condominium association regulations as they affect the control, maintenance, and use of all common open space not deeded to the Borough.
- (12) Attorney's Certification of Compliance with Regulations of New Jersey Council on Affordable Housing. The applicant's attorney shall certify that all master deeds, maintenance agreements and homeowners and/or condominium association regulations are in compliance with the regulations of the Council on Affordable Housing. The certification shall specify the details of said compliance.
- (13) Timing. As part of preliminary site plan approval of the entire PUD, the Planning Board shall consider and establish a timing and phasing schedule

including: (1) the number and type of dwelling units to be constructed annually; (2) timing of the construction and installation of improvements; and (3) when industrial, recreation, commercial and service uses shall be completed.

The Planning Board shall consider, in its approval of the timing and phasing schedule, the ability of the applicant to complete the work within the schedule, adequacy of municipal and private facilities needed to accommodate the residents of the PUD, and adequacy of design of each phase to stand independently of other phases at any time. As a guiding principle, nonresidential development shall proceed concurrently with residential development.

Approvals may stipulate that before building permits are issued for any subsequent phases or stages of a PUD, previously approved phases shall be complete and/or that certain improvement or recreational amenities shall be completed.

- (14) Approvals. Granting of preliminary approval shall convey to the applicant all rights set forth in N.J.S.A. 40:55D-49. Applicant shall be required to submit each phase to the Planning Board for final approval.
- (15) Improvements. The Planning Board shall approve, in the same manner as set forth in the Subdivision Section, all improvement plans.
- (16) Lower Income Housing Requirements.
 - (a) Number and type of lower income dwelling units. The development in the PUD zone shall be required to provide 10% of the total number of on-site dwelling units to be affordable for lower income households, unless the in-lieu payment option is selected for the indigenous need portion. However, in no event shall the development be required to provide more than 36 such units. A minimum of 15% of all such low- and moderate-income units shall be three-bedroom units. At least 35% of the low- and moderate-income units shall be two-bedroom units. No more than 20% of all low- and moderate-income units may be efficiency units.
 - (b) Minimum Floor Area for Dwelling Units.
 - [i] One bedroom: 550 square feet.
 - [ii] Two bedroom: 660 square feet.
 - [iii] Three bedroom: 850 square feet.
 - (c) Eligibility Standard. One half of all lower income units shall meet HUD Section 8, or other assisted housing programs eligibility requirements for very-low-income (Mt. Laurel II low income) and 1/2 shall meet HUD eligibility requirements for lower income (Mt. Laurel II moderate income).

- (d) Housing Cost Components. In computing monthly housing costs, only the following components shall be included:
 - [i] Rental units: rent, excluding utilities
 - [ii] Sales units: principal and interest, insurance, taxes, and condominium or homeowners' association fees.
- (e) Maximum Monthly Housing Costs. The maximum monthly housing cost shall be 28% of the gross annual household income based on HUD's Section 8 income limits adjusted for household size for sales units and 30% for rental units. The average price of low- and moderate-income units shall be, as best as practicable, affordable to households at 57.5% of median income as contained in N.J.A.C. 5:92-12-4.
- (f) Subsidies. Government subsidies may be used at the discretion of the said applicant to fulfill the requirements of the section. The lack of subsidies shall in no way alter or diminish the lower income requirements of this section.
- (g) Resale and Rental of Lower Income Housing.
 - [i] All low- and moderate-income dwelling units within the PUD zone shall be required to have covenants running with the land to control the resale price or sublease of for-sale units or to employ other legal mechanisms which shall be approved by the Borough Attorney and will, in his opinion, ensure that such housing will remain affordable to persons of low- and moderate-income for 30 years.
 - [ii] The owner of all rental units shall provide legal documentation, to be approved by the Borough Attorney, to assure that rental units will remain affordable to persons of low and moderate income.
 - [iii] In the event that no low- or moderate-income purchaser is found within 60 days after the unit is listed for sale with a realtor and the Borough is notified in writing of such listing, the low-income unit may be sold to a moderate-income purchaser or, if none is available, the unit shall be placed on the rental market at a rent consistent with low-income affordability. If no low income tenant is available that unit may be rented at a rent consistent with moderate-income affordability. If no tenant is found within 60 days after the unit is listed for rent, the unit may be sold to any interested purchaser. Proof of the attempt to sell and/or rent shall be submitted to and shall be satisfactory to the Housing Administrator. Resale controls shall remain in effect for any subsequent resales, leases, and subleases.
 - [iv] Initial occupancy of low- and moderate-income housing units shall be such that no more than 50% of the units are made available to income eligible households that reside in the municipality or work in the municipality and reside elsewhere. Selection procedures shall

be directed and administered by a Borough official appointed each year as the Housing Administrator by the Borough Council. The Borough Council may establish reasonable qualifications for occupants of low- and moderate-income housing and may arrange for third party administration of resale and tenant selection of low- and moderate-income housing.

[v] The developer shall formulate and implement a written affirmative marketing plan consistent with N.J.A.C. 5.92-15.2. The affirmative marketing plan shall be realistically designed to ensure that low- and moderate-income persons of all races and ethnic groups are informed of the housing opportunities in the development, feel welcome to seek or buy or rent such housing and have the opportunity to buy or rent such housing. It shall include advertising and other similar outreach activities.

[vi] Sales prices and rents may be increased in accordance with the annual Metropolitan New York Regional Consumer Price Index for Housing of the Department of Labor. For sales housing, the sales price may also be increased for documented monetary outlays for reasonable improvements previously approved by the Housing Administrator and reasonable costs incurred in selling the unit. After 30 years, all such units may be sold or rented without restrictions.

[vii] Rental units may be converted to condominium units after 15 years, but any sale of condominium units shall be restricted to persons meeting moderate-income eligibility standards. After 30 years from the date of the issuance of the initial certificate of occupancy, including both rental and condominium occupancy, all such units may be sold or rented without restriction.

(h) Phasing of Lower Income Housing.

[i] Schedule for phasing. Low- and moderate-income housing shall be phased in accordance with the following schedule:

Minimum Percentage of Low- and Moderate-Income Housing Unit Certificates of Occupancy	Percentage of Total Market Housing Unit Certificates of Occupancy
0	25
10	25+1 Unit
50	50
75	75
100	90
--	100

[ii] Any development in the PUD zone for which site plan approval has been approved shall be considered a single development for purposes of this § 17-31.5, regardless of whether parts or sections are sold or otherwise disposed of to persons or legal entities other than the one which received approval. All such approvals and conditions of approvals shall run with the land. Any tracts or parcels sold shall include documentation satisfactory to the Borough Attorney, setting forth the requirements for low- and moderate-income housing units.

(i) Waiver of Fees. Notwithstanding any ordinance requirement of the Borough of Mount Arlington, the applicable approving agency shall waive the following municipal fees for every unit designated as low- and moderate-income housing:

[i] Subdivision and site plan application fees, but not inspection fees.

[ii] Sewer application fees.

[iii] Engineering fees applicable to lower income housing.

(j) Maximum Number of Units. Upon the construction and/or rehabilitation of 36 affordable low- and moderate-income housing units, the Planning Board, in its discretion, may refuse to consider further applications for multifamily housing in the PUD Zone. Should the Planning Board consider further applications for multifamily housing in the PUD Zone after the construction and/or rehabilitation of 36 affordable units, the maximum density permitted shall be six bedrooms per gross tract area as defined in § 17-31.5a(5) of this Article.

b. Planned Cluster Residential Development Groups.

(1) In any residential zone, an applicant for a major subdivision may apply to the Planning Board for a cluster subdivision. Such application, as proposed in a letter, shall be accompanied by a sketch plat indicating in general the plan and the area to be retained in open space or used for other municipal purposes.

If in the opinion of the Planning Board, such a development will assist in achieving the objectives of the Master Plan, Official Map, or other codes and ordinances, the applicant may be permitted to submit a cluster plan. The Planning Board shall have sole authority as to whether cluster shall be permitted. If the applicant proposes that the open space shall be dedicated to the Borough, then the Planning Board, shall request approval from the Borough Council that the open space or land resulting from the application of cluster development will be accepted by the Borough. If approval is not granted within 60 days from the date of referral, and the Planning Board approves submission of a cluster plan, the applicant may submit a cluster plan providing only for ownership of common land in accordance with the provisions of N.J.S.A. 40:55D-43 (Standards for the Establishment of Open

Space Organization) of the Municipal Land Use Law.

- (2) Maximum Number of Lots. The maximum number of lots shall be determined by design of a conventional subdivision with the following areas excluded from consideration and as modified by Article XII.
 - (a) Lands with slopes in excess of 30%.
 - (b) Lands in floodways or flood fringe areas. Lots backing up to existing easements shall not have more than 40% of the lot depth within the easement.
 - (c) All other critical areas as defined in Article XII.
- (3) Criteria for Cluster Development.
 - (a) Minimum tract size. No less than 10 acres.
 - (b) Housing type. The same as permitted in the zone.
 - (c) Utilities. Public, including, but not limited to sewer and water.
- (4) Location and Use of Dedicated Lands. The Planning Board shall have full authority to approve or disapprove the locations and proposed uses of lands required to be dedicated in accordance with the foregoing and as guided in their decisions by this subsection and the following:
 - (a) Lands required to be dedicated shall be so located so as to meet the needs of open spaces, parks, playgrounds, rights-of-way protecting major streams or open drainage way, buffer areas and other environmental criteria, for agricultural purposes, or to provide additional neighborhood area for recreational purposes or school purposes. The Planning Board shall make certain that not only Borough requirements shall be satisfied, but that dedicated area be so located as to meet any possible future needs of the neighborhood or region.
 - (b) The Planning Board shall have full discretion as to the location and size of the various use need areas and their distribution. They shall not generally approve areas of less than five acres except when such a site is considered adequate for its specific use, and they shall make certain that a reasonable portion of required dedicated area shall be located so as to specifically serve the need of the development where located.
- (5) Disposition of Areas Dedicated.
 - (a) Areas dedicated to the Borough of Mount Arlington shall be free and clear of all mortgages and encumbrances.
 - (b) Areas dedicated by deed to a permanent property owners association, cooperative or condominium corporation, for their use, control and management for open space, recreational or agricultural use, shall be free

and clear of all mortgages and encumbrances, provide appropriate restrictions to assure the effectuation of the purpose of this section and provide for the maintenance and control of the area. All requirements of N.J.S.A. 40:55D-43 of the Municipal Land Use Law shall apply.

- c. **Planned Residential Development.** It is the intent of the PRD-A Zone regulations to encourage a comprehensive and appropriate development of this zone to accommodate small lot single-family detached housing of a variety of housing configurations which would provide an appropriate transition from the higher intensity developed planned unit development zone of mixed, commercial and residential components to the adjoining larger lot area single-family development. The zone standards recognize and accommodate the critical site development constraints of this area.

(1) **Intent.**

- (a) Minimum tract size: 50 acres.
- (b) Dwelling type permitted: single-family detached, patio homes, zero lot line homes, semi-detached dwellings.
- (c) Utilities. Public utilities including but not limited to sewer and water.
- (d) Maximum density - 3.0 dwelling units per gross acre as modified by Article XII.
- (e) Lot area and bulk standards:
 - [i] Minimum lot size: 7,500 square feet (interior lot).
 - [ii] Minimum lot size: 10,000 square feet (corner lot).
 - [iii] Minimum lot width: 65 feet (interior lot).
 - [iv] Minimum front yard setback: 25 feet.
 - [v] Minimum side yard setback:
 - One: 0 feet/20 feet.
 - Both: 20 feet.
 - [vi] Minimum rear yard setback: 20 feet.
 - [vii] Minimum common open space tract area: 50%.
 - [viii] Maximum impervious lot coverage (individual residential lot): 50%.
- (f) **Location and Use of Dedicated Lands.** The Planning Board shall have full authority to approve or disapprove the locations and proposed uses of lands required to be dedicated in accordance with the foregoing and as guided in their decisions by this subsection and the following:

- [i] Lands required to be dedicated shall be so located so as to meet the needs of open spaces, parks, playgrounds, rights-of-way protecting major streams or open drainage way, buffer areas and other environmental criteria, for agricultural purposes, or to provide additional neighborhood area for recreational purposes or school purposes. The Planning Board shall make certain that not only Borough requirements shall be satisfied, but that dedicated area be so located as to meet any possible future needs of the neighborhood or region.
- [ii] The Planning Board shall have full discretion as to the location and size of the various use need areas and their distribution. They shall not generally approve areas of less than five acres except when such a site is considered adequate for its specific use, and they shall make certain that a reasonable portion or required dedicated area shall be located so as to specifically serve the need of the development where located.

(g) Disposition of Areas Dedicated.

- [i] Areas dedicated to the Borough of Mount Arlington shall be free and clear of all mortgages and encumbrances.
- [ii] Areas dedicated by deed to a permanent property owners association, cooperative or condominium corporation, for their use, control and management for open space, recreational or agricultural use, shall be free and clear of all mortgages and encumbrances, provide appropriate restrictions to assure the effectuation of the purpose of this section and provide for the maintenance and control of the area. All requirements of N.J.S.A. 40:55D-43 of the Municipal Land Use Law shall apply.

§ 17-31.6. Hotels/Motels Conference Centers.

Such uses shall be permitted in the HMC Hotel/Motel Conference Center Zone under the following terms and conditions:

- a. Any motel, hotel, or conference center shall have a minimum of 100 rentable rooms.
- b. Minimum area, yard, and bulk requirements:
 - (1) Minimum lot size: 10 acres.
 - (2) Minimum width: 200 feet.
 - (3) Minimum setback from lot boundaries for all principal structures: 100 feet.
 - (4) Minimum setback from lot boundaries for all accessory structures: 25 feet or twice the structure height, whichever is greater.

- (5) Maximum percent of impervious lot coverage: 50%.
- (6) Maximum height: 5 stories, or 60 feet.
- c. Accessory buildings shall have a setback from any principal building of not less than 10 feet.
- d. Hotel/Motel Conference Center may include those uses normally accessory to the principal permitted uses. These would include eating facilities, restaurants, meeting rooms, and recreation facilities.

§ 17-31.7. Temporary Trailers.

- a. No trailer shall be permanently used for dwelling purposes or as sleeping quarters for one or more persons, nor shall any such trailer be used for storage or space for the permanent conduct of any business, profession, occupation or trade, except that such trailer facilities may be used for temporary residency, as a temporary replacement for a damaged dwelling unit, and for temporary use as a construction office or for a sales office located on a site during construction, subject to Planning Board approval.
- b. Temporary Uses of Trailers:
 - (1) "Temporary" for purposes of residential occupancy shall mean 90 days with an option to extend for one additional 90 day period.
 - (2) Temporary for use as a model home or construction office means non-24-hour occupancy during the time of construction.
 - (3) Temporary office shall be removed within 15 days of the issuance of a certificate of occupancy for the last unit or 15 days after termination of construction activity on the property.

§ 17-31.7A. Single-Family Detached - PUD Zone. [Ord. No. 93-19 § 3]

Single family detached housing in the PUD zone shall meet the following standards:

- a. Minimum area, yard, and bulk requirements:
 - (1) Minimum lot size - 5,000 square feet, but in the event that single family detached housing is sold in condominium form of ownership, this provision shall not apply.
 - (2) Minimum lot width: 50 feet, but in the event that single family detached housing is sold in condominium form of ownership, this provision shall not apply.
 - (3) Minimum distance between sides of principal structures:
 - (a) Windowless wall to windowless wall: 10 feet.
 - (b) Windowless wall to window wall: 15 feet.

- (c) Window wall to window wall: 25 feet.
- (d) Minimum distance between rear building walls: 50 feet.
- (4) Minimum front yard setback: 25 feet.
- (5) Minimum rear yard setback: 25 feet, but in the event that single-family detached housing is sold in condominium form of ownership, this provision shall not apply.
- (6) Maximum building coverage: 2,000 square feet.
- b. Access to single-family detached housing may be off private drives of not less than 24 feet.
- c. Parking requirements. Two spaces for each dwelling of two bedrooms or less and three spaces for each dwelling of more than two bedrooms, shall be provided, which for purposes of this section shall include any spaces provided in garages or on driveways but shall not include any on-street parking.

§ 17-31.8. Assisted Living Facility. [Ord. No. 97-8 § 3]

It is the intent of this section to permit the development of an assisted care facility as part of a planned unit development to provide a continuum of housing choices and to compliment the existing single-family, townhouses and condominium flats and commercial development on site. Assisted living facilities shall be permitted in the PUD Zone under the following terms and conditions:

- a. The facility shall possess a current Certificate of Need from the State of New Jersey.
- b. The facility shall possess a current license from the State of New Jersey as an assisted living facility.
- c. Minimum Area, Yard and Bulk Requirements:
 - (1) Minimum lot size: 5 acres.
 - (2) Minimum lot width: 200 feet.
 - (3) Maximum density: 20 dwelling units per acre.
 - (4) Maximum height: 40 feet or 3 stories.
 - (5) Front yard setback: 50 feet.
 - (6) Rear yard setback: 50 feet.
 - (7) Side yard setback (each): 25 feet.
 - (8) Building coverage: 35%.
 - (9) Impervious coverage: 55%.

- d. **Parking.** At least one off-street parking space for each two dwelling units.
- e. **Recreation Area.** At least 10% of the site shall be developed with recreational facilities appropriate for the occupants. The 10% may include interior facilities.
- f. **Transportation Services.** The assisted living facility shall provide as part of its basic services to residents of the assisted living facility, routine non-emergent transportation services for all residents of the assisted living facility. Such routine, non-emergent transportation services shall include, but shall not be limited to, transportation to medical care facilities, shopping, recreation, and transportation to municipal facilities and municipally sponsored events and functions. To effectuate the foregoing, the developer shall, as a condition of preliminary site plan approval, have in effect a transportation services plan subject to the review and approval of the Planning Board which shall make a permanent transportation plan a condition of final site plan approval.
- g. To maintain a balance and proper distribution of various housing types, not more than 125 assisted care units shall be permitted in the PUD Zone.

§ 17-31.9. Senior Citizen Housing. [Ord. No. 97-8 § 3]

It is the intent of this section to permit the development of qualified senior citizen housing as part of a planned unit development to provide a continuum of housing choices and to compliment the existing single-family, townhouse and condo flats and commercial development on site. Senior citizen housing shall be permitted in the PUD Zone under the following terms and conditions:

- a. Senior citizen housing shall meet the requirements of the National Housing Act and specifically 24 C.F.R. part 100 (Department of Housing and Urban Development - Housing for Older Persons).
- b. The applicant shall submit adequate proof in specific detail to the Planning Board's satisfaction that the proposed development meets the provisions of 24 C.F.R. part 100.
- c. **Minimum Area, Yard and Bulk Requirements:**
 - (1) Minimum lot size: 5 acres.
 - (2) Minimum lot width: 200 feet.
 - (3) Maximum density: 15 dwelling units per acre.
 - (4) Maximum height: 35 feet or 3 stories.
 - (5) Front yard setback: 50 feet.
 - (6) Rear yard setback: 50 feet.
 - (7) Side yard setback (each): 25 feet.
 - (8) Building coverage: 35%.

- (9) Impervious coverage: 55%.
- d. Parking. At least one and one-half (1.5) off-street parking space per dwelling unit.
- e. Recreation area. At least 15% of the site shall be developed with recreational facilities appropriate for the occupants.
- f. To maintain a balance and proper distribution of various housing types, not more than 125 senior citizen housing units shall be permitted in the PUD Zone.

§ 17-31.10. Provisions Applicable to Both Assisted Living Facility and Senior Citizen Housing. [Ord. No. 97-8 § 3]

- a. Project Coordination. Prior to granting preliminary site plan approval, the Planning Board shall require the developer to schedule such meetings as the Planning Board deems necessary, which meetings may or may not be scheduled in conjunction with a Planning Board meeting in the discretion of the Planning Board with representatives of the Governing Body, the Police Department, the Fire Department, the First Aid Squad and such other municipal agencies or officials as the Planning Board may deem appropriate to review the proposed assisted living facility or senior citizen housing so that all of the foregoing agencies may make any recommendations they deem necessary to the Planning Board as it relates to any appropriate condition of preliminary site plan approval.

§ 17-32. REGULATIONS GOVERNING PERMITTED ACCESSORY USES AND STRUCTURES.

§ 17-32.1. Accessory Structures in Residential and Nonresidential Zones. [Ord. No. 08-08 § 18]

Accessory structures may be erected within the rear yard provided that:

- a. No accessory structure shall be used for human habitation.
- b. When an accessory structure is attached to the principal building, it shall be considered as a part of the principal building, and it shall comply in all respects with the requirements of this chapter applicable to the principal building.
- c. The maximum height of any accessory building or structure shall be 12 feet. Towers, spires, steeples, cupolas and other roof structures shall be permitted an area of 3% of the overall roof area of the entire structure and shall be permitted a height of no more than three feet taller than the accessory structure to which it is attached. **[Ord. No. 08-08 § 19]**
- d. The maximum square foot area of all accessory buildings on any single residential lot shall not exceed five hundred twenty-eight (528) square feet and shall not be larger than the principal building on the same lot. **[Ord. No. 02-03 § 1]**
- e. No accessory building or structure shall be permitted in any front yard, with front yards being considered where any frontage is on a street. **[Ord. No. 02-03 § 1]**

- f. Accessory structures that are 100 square feet and less shall require a minimum rear yard setback of 10 feet and a minimum side yard setback of 10 feet. **[Ord. No. 02-03 § 1]**
- g. Accessory structures over 100 square feet must meet the setback requirements of the zone that the principal building is located in. **[Ord. No. 02-03 § 1]**
- h. In the RA-15 and RA-7.5 Zones there shall be no more than one accessory structure or accessory building per lot.

§ 17-32.2. Swimming Pools, Tennis Courts, and Similar Recreational Structures in Residential Zones.

Except for portable swimming pools less than three feet in height and less than 10 feet in length or diameter, the following regulations shall apply to permanent and portable swimming pools, tennis courts and similar recreational facilities accessory to a residential use.

- a. Said structure shall be erected on the same lot as the principal structure and shall require a construction permit.
- b. Said structure may be erected in the rear yard of such lot and shall be located no closer than 15 feet from any lot line or the setbacks as specified in Schedule 1, whichever is greater.
- c. Said structure shall be appropriately screened, fenced and used so as not to be a nuisance or adversely affect adjoining properties.
- d. On any corner lot, such use shall not be constructed within the front yard area to be provided on either street.
- e. Artificial lights used or maintained in connection with such uses shall be so located and shielded that the illumination there from is not directed upon adjacent property.
- f. Said use shall meet all applicable codes and ordinances of the Borough of Mount Arlington and any regulations of a county or state agency.
- g. Swimming pools shall be fenced with a four foot high fence. The fence is to be used as protection against unsupervised entry of children into the pool area.

§ 17-32.3. Accessory Structures in Nonresidential Zones.

- a. In any nonresidential zone, any accessory structure shall be no closer than 15 feet to any residential zone line.
- b. In any nonresidential zone, no accessory structure shall be permitted in the front yard.
- c. When an accessory structure is attached to the principal building in all nonresidential zones, it should be considered as part of the principal building and shall comply in all respects with the requirements of this Chapter applicable to the

principal building.

- d. No portion of an accessory structure in any nonresidential zone shall be used for living quarters.
- e. No accessory building shall be erected on any corner lot closer to any of the lines of the streets abutting said lot than the front yard setback lines from said streets.
- f. No accessory building shall exceed 15 feet or more than one story in height.

§ 17-32.4. Fences or Walls.

Fences or walls in excess of 24 inches in height shall be considered as accessory uses to a principal permitted use and are permitted in all zones in accordance with the standards set forth below and shall require a building permit from the Zoning Officer.

- a. Type of fence or wall. **[Ord. No. 10-11 § 10]**
 - (1) Solid fence. A solid fence shall be any fence which is less than 40% transparent.
 - (2) Transparent fence. A transparent fence shall be any fence which is 40% or more transparent.
- b. Maximum height and location. **[Ord. No. 02-03 § 2, Ord. No. 10-11 § 10]**
 - (1) A fence with a maximum height of four feet shall be permitted anywhere on the property.
 - (2) A fence with a maximum height of six feet shall be permitted anywhere on the property except within a minimum required front yard setback.
 - (3) A transparent fence may be constructed anywhere on the property.
 - (4) A solid fence may be constructed anywhere on the property except within a minimum required front yard setback and between the established front of a dwelling and public right-of-way.
- c. General Regulations on Fences and Walls. **[Ord. No. 02-03 § 2]**
 - (1) Landscaping is not defined as a fence for the purposes of this section and, therefore, does not require a permit.
 - (2) Corner Lots. On corner lots, no wall or fence shall be located closer than the required front yard setback for that zone from any street right-of-way line for that zone.
 - (3) Obstruction to Vision. No fence, wall or landscaping shall be so constructed or installed so as to constitute a hazard to traffic or safety.
 - (4) Notwithstanding any of the provisions set forth herein, a fence up to four feet in height which is at least 50% transparent may be constructed in the front yard

of any residential zone.

- (5) The Planning Board may waive site plan approval for fences in nonresidential zones.
- (6) No fence or wall shall be constructed with barbed wire, metal spikes, or other dangerous material or constructed in such a manner as to be dangerous to animals or humans.
- (7) In all instances, the most attractive side of the fence shall face the adjoining property.
- (8) Notwithstanding the provisions set forth in paragraph b above, fences shall have a minimum setback of 12 inches from any lot line or public right-of-way line. An exemption to construct a fence up to a lot line which is not a public right-of-way line may be granted by the Zoning Officer, provided that a design of the fence and footings illustrating that they will not encroach onto the neighboring property is included with the required zoning permit application. **[Ord. No. 07-09, Ord. No. 10-11]**
- (9) An as-built survey of any fence approved to be constructed closer than 12 inches to a lot line shall be provided to the Zoning Officer for review and approval following construction. If it is determined that the fence is encroaching onto a neighboring property the applicant shall be responsible to relocate or remove the fence within 14 days after which the Zoning Office shall commence enforcement actions. A revised as-built survey may be required following relocation to the fence. **[Ord. No. 10-11]**

d. Retaining Walls. **[Ord. No. 07-09]**

- (1) A retaining wall shall be any wall which retains backfill and is greater than 24 inches in height.
- (2) Retaining walls shall be designed in accordance with § 17-22.6f.
- (3) Notwithstanding any other provision set forth in this Chapter, retaining walls shall be permitted in any front, side or rear yard.

§ 17-32.5. Recreational Vehicles. [Ord. No. 02-03 § 3, Ord. No. 07-09]

Storage of recreational vehicles shall be in accordance with § 133-12, Outdoor Storage.

§ 17-32.6. Home Agriculture.

Home agriculture, including home animal agriculture, may be conducted in all residential zones so long as the care and management reasonably conforms to current recommended management practices established in Recommended Guidelines for Home Animal Agriculture in Residential Areas, published and revised by the New Jersey Cooperative Extension Service, New Jersey Agricultural Experiment Station, dated January 1983, with subsequent revisions.

- a. **Minimum Lot Size.** The minimum lot size, including dwelling site, shall be one acre. Not more than one animal unit shall be kept on the first acre, and not more than one animal unit per acre, as follows:

	Animals Per Unit
Cattle	1
Horses	1
Sheep	5
Goats	5
Swine	2

The maximum number of poultry on a property shall be not more than 32 bird units for each acre. The following poultry shall be regulated according to poultry bird units, as follows:

	"Bird Unit" Factor
Chickens	1.0
Broilers & Fryers	0.3
Ducks	2.0
Turkeys	4.0
Geese	4.0
Rooster	1.0

The maximum number of pigeons shall be 25 pigeons per acre.

The maximum number of rabbits shall be 25 rabbits per acre.

- b. Adequate outdoor space shall be provided for all animals with appropriate shelter.
- c. Poultry yard, pigeon yard and rabbit hutches shall be located no closer than 25 feet from any property line.

§ 17-32.7. Clothing Bins. [Ord. No. 06-09 § 3]

- a. Clothing bins shall be permitted as an accessory use in the B-1, OB, R-C, and HMC Zones only. In all other zones, clothing bins shall be prohibited.
- b. Clothing bins shall only be permitted in the rear yard and side yard provided that they are behind the rear building line.
- c. The placement of clothing bins shall comply with a minimum setback of 10 feet from any property line.
- d. Clothing bins shall be screened from neighboring properties by a board on board fence or landscaping with a minimum height equal to that of the bins.

- e. Clothing bins shall be placed in such locations as to provide adequate ingress/egress route in accordance with § 17-24.3.
- f. The minimum lightning intensity of 0.5 footcandle shall be provided around clothing bins.

§ 17-33. REGULATIONS GOVERNING CONDITIONAL USES.

In reviewing any conditional use, the Planning Board shall consider the following:

Impact of any additional noise, traffic, odors, air pollution and similar factors on the immediate area and neighborhood.

Accessibility of the lot in terms of transportation and circulation patterns.

Environmental factors.

Visual and aesthetic impacts.

Adequacy of existing and proposed utility and drainage systems.

The Planning Board shall not approve a conditional use unless it finds that the use meets all the requirements of this Chapter, does not substantially impair the use and enjoyment of surrounding properties, and does not substantially impair the character of the surrounding area.

§ 17-33.1. Churches and Other Places of Worship.

The Planning Board may authorize conditional uses only after determining that the proposed use meets the specifications and standards set forth in this Chapter for the use and that it will comply, now and in the future, with the conditions and standards both as to location and operation for said use.

- a. Such uses shall be conducted on a lot with a minimum area of two acres.
- b. Minimum front yard and rear yard setbacks required for principal permitted structures in the OSCU Zone shall be maintained. Minimum side yards required for principal permitted use in this zone shall be doubled for churches and other places of worship.
- c. Each property shall be appropriately landscaped, screened, and buffered. Careful consideration shall be given to developing effective screening along property lines abutting residential uses. The Planning Board may require appropriate screening depending on site requirements.
- d. No parking shall be permitted in minimum required open spaces, including side yards.
- e. Parking must be provided on the site as required by this Chapter.

§ 17-33.2. Animal Hospitals.

Animal hospitals shall be located no closer than 200 feet to any lot boundary line except 100 feet from any front yard lot line. Such facilities shall be maintained in an enclosed structure and shall be of soundproof construction and so operated as to produce no objectionable odors at the lot boundary line.

§ 17-33.3. Community Buildings, Clubs, Social Halls, Lodges, Fraternal Organizations, and Similar Uses.

All buildings shall be a minimum of 30 feet from any property line, except where greater distances are otherwise required herein.

§ 17-33.4. Nursery Schools.

- a. In addition to meeting the minimum requirements for the zone where located, any lot on which a nursery school is operated shall have a lot area of at least 2,500 square feet for each pupil enrolled in the school.
- b. No recreation area shall be located with 20 feet of any lot line.

§ 17-33.5. Nursing Homes.

- a. Development Controls. Nursing homes, where permitted, shall be subject to the area, bulk, and yard regulations of the zone as established in Schedule 1 herein.
- b. Additional Design Controls.
 - (1) Courts. Where a court is provided, it shall have a minimum dimension of twice the height of the building, or 40 feet, whichever is less.
 - (2) Recreation Space. There shall be provided on the site of such development an area or areas of not less than 2,000 square feet, plus 50 square feet per patient bed, which shall be utilized for the recreational use of the patients therein.
 - (3) Access. There shall be no less than two means of ingress and egress to any nursing home. Access to the building and circulation within the building shall also include appropriate ramps and rails for the infirmed.
 - (4) Solid Waste Disposal. Solid waste disposal shall be subject to all Borough, county, state or federal approval. No incinerator on the premise shall be permitted.
 - (5) Environmental Criteria. Nursing homes shall meet all of the environmental criteria established in this Chapter.

§ 17-33.6. Essential Services.

- a. Essential Services, Enclosed or Permanent Structures. Such uses shall include electric substations, transformers, switches and auxiliary apparatus serving a distribution area, and water pumping stations, water towers, sewage pumping

stations, and package sewage treatment plants. They shall be subject to the following regulations:

- (1) Such facility shall not be located on a residential street, unless no other site is available and shall be so located as to draw the minimum of vehicular traffic to and through such streets.
 - (2) The location, design, and operation of such facility may not adversely affect the character of the surrounding residential area.
 - (3) Adequate fences, barriers, and other safety devices shall be provided.
 - (4) Buffers, landscaping, berms, and similar measures shall be required by the Planning Board as part of site plan review.
- b. Essential Services Open. Such uses shall be limited to the erection, construction, alteration or maintenance by public utilities or Borough for other governmental agencies, or as approved by a Borough agency as part of a development plan approval, of underground gas, oil, electrical, telephone, steam, water or sewage transmission lines or systems and underground and/or surface equipment, including but not limited to poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories. Such facility shall be reasonably necessary for the furnishing of adequate service by such public utilities, Borough, other governmental agencies or private or semi-private entities if approved by a municipal agency as part of a development plan application, in furtherance of the public health, safety or general welfare.

§ 17-33.7. Motels, Hotels, and Motor Hotels.

In addition to all other zoning standards including § 17-31.6 of this Article, the following additional standards shall be applicable:

- a. Minimum Habitable Room Area. Such uses shall have a minimum area for each unit of occupancy of 200 square feet and shall include a minimum of one bedroom with a shower or bath, a sink and a toilet.
- b. Occupancy. No unit of accommodation designated as a motel, hotel, motor hotel or other similar use shall contain any permanent housekeeping facilities except the one unit may so be used by the owner or agent of the premises.
- c. Shops and Services. Shops and services accessory to motel, hotel, or motor hotel operations shall be permitted on the ground level floor; provided, however, that access to such shops and services shall be only from the interior of the motel, hotel or motor hotel.

§ 17-33.8. Automobile Service Stations Automotive Repair Service and Garages.

In addition to all other zoning standards the following additional standards shall be applicable.

- a. Location. No automobile service station, gas station, automotive repair service or garage or any vehicular access thereto shall be located within 200 feet of schools, playgrounds, churches, hospitals, public libraries and institutions for dependents or for children and senior citizen housing.
- b. Vehicular access. Vehicular access to the above uses shall not be closer to the intersection of any two street lot lines than 50 feet, nor shall any such use be located within 25 feet of any boundary line of any residential zone.

§ 17-33.9. Mobile Home Parks.

Such uses shall be permitted only in accordance with the following standards.

- a. Where Permitted. In RC Zone only.
- b. Design Standards.
 - (1) Minimum area: 5 acres.
 - (2) Maximum density: 8 units per acre.
 - (3) Minimum lot area per unit: 4,000 square feet.
 - (4) Minimum recreation space per unit: 200 square feet.
 - (5) Minimum yards:
 - Front: 15 feet from an interior street.
 - Side: 10 feet.
 - Rear: 25 feet.
- c. Utilities. Each pad shall be furnished with public water and public sewer and all electrical utilities.
- d. Buffers. A minimum of 25 feet of landscaped buffer area shall be required around the perimeter of the mobile home park.
- e. Road and Amenities.
 - (1) All internal roads shall be improved in accordance with Borough standards.
 - (2) A recreational area and facilities shall be provided in an area equal to 10% of the total area of the mobile home park.
 - (3) There shall be two parking spaces provided for each mobile home site, one of which shall be provided on the mobile home site.

§ 17-33.10. (Reserved) [Ord. No. 99-16 § 1]

§ 17-33.11. Tertiary Sewage Treatment Plant (R-PRD Zone).

A privately operated tertiary sewage treatment plant shall be permitted in the R-PRD Zone subject to the following standards:

- a. Minimum lot size: 14 acres.
- b. The requirements relative to essential services provided in § 17-33.6 and the requirements regarding sewage treatment facilities contained in the R-PRD Zone § 17-28.10.
- c. The sewage treatment plant shall service a development in the R-PRD Zone.
- d. The sewage treatment plant shall at a minimum be a tertiary treatment plant with subsurface disposal of treated effluent. This use shall not be interpreted to include community septic systems or sewage treatment plants with spray irrigation or overland flow of treated effluent.
- e. Requirements, rules, and regulations, and terms and conditions of approval by the N.J. Department of Environmental Protection approval.
- f. Approval by the Mount Arlington Board of Health.
- g. Approval by the Borough Engineer or at the option of the Borough by the Borough Sewer Consulting Engineer.
- h. Site plan approval by the Planning Board.
- i. A natural undisturbed buffer of the following distances from the sewage treatment plant structures and disposal field:
 - (1) Two hundred feet to all property lines.
 - (2) Four hundred feet to the nearest structure or closest possible structure on adjacent vacant lands as determined based upon the existing zoning of any adjacent vacant land.
- j. Subject to the Environmental Impact Statement requirements of this Chapter as well as the Borough's Zoning Ordinances and Article VIII, Zoning.

§ 17-34. OUTDOOR STORAGE AREAS.

- a. Outdoor storage in all residential zones shall be in accordance with § 133-12B and 133-12C. **[Ord. No. 07-09]**
- b. In all nonresidential zones, unless expressly prohibited, outdoor storage shall be permitted in side and rear yards only.
- c. No flammable or explosive liquids, solids or gases shall be stored above-ground in residential zones, provided, however, that such storage in nonresidential zones may be permitted but only in accordance with a site plan. Tanks or drums of fuel directly connecting with heating device or appliances located in any residential zone and on

the same premises as the tanks or drums of fuel are excluded from this provision.

- d. Outdoor storage shall be in accordance with Chapter 133, Property Maintenance, except that the requirements of § 133-12C shall not apply to a dealer of motor and recreational vehicles. Outdoor storage of motor and recreational vehicles by a dealer shall be located no less than 10 feet from a side or rear of line. No outdoor storage shall be permitted within 25 feet of a residential use or zone. Adequate screening shall be provided on any property that has outdoor storage as stipulated in § 133-12A and 133-12B. **[Ord. No. 07-07]**
- e. Outdoor storage of any kind is prohibited in the front yard.
- f. Outdoor storage of garbage trucks in any zone is specifically prohibited.

§ 17-35. SATELLITE DISH ANTENNAS.

- a. Satellite dish antennae shall be considered as accessory uses to a principal permitted use and are permitted in all zones subject to the following regulations:
 - (1) No satellite dish antenna shall be permitted in the front yard.
 - (2) Satellite dish antenna shall be set back at least 15 feet from the side and rear lot lines.
 - (3) A satellite dish antenna shall not exceed 12 feet in diameter and shall be effectively screened to the greatest extent possible without interfering with reception, with evergreen plant material to blend into the surrounding area.
 - (4) The maximum height of a ground mounted antenna shall be 15 feet.
 - (5) The color of the antenna shall be a subdued or natural color to reduce the visual impact of the antenna. Unless impractical, wire mesh type antennae are required.
 - (6) Roof-mounted antenna shall be suitably located to minimize a direct view of the antenna from the street, unless no other location is available for reception without interference. Height shall be no higher than 10 feet above the highest point on the structure.
 - (7) No lot shall have more than one satellite dish antenna. Wires and cables running between the ground-mounted antenna and any structure shall be properly installed underground in accordance with applicable building codes.

§ 17-35A. CELLULAR TELECOMMUNICATIONS ANTENNAS. [Ord. No. 00-12 § 2]

Cellular telecommunications antennas are permitted as conditional uses, subject to compliance with all other requirements in this Chapter and provided that all of the following requirements are met. Where located on municipal property, such facilities are subject to courtesy site plan review only.

§ 17-35A.1. Permitted Location: Type of Structure.

Freestanding telecommunications antennas are permitted in the Cellular Telecommunications Antenna Overlay Zone subject to FAA requirements.

§ 17-35A.2. Proof of Need and Minimum Impact.

The applicant shall be required to demonstrate that the development is the minimal necessary to provide adequate communications as may be authorized by the Federal Communications Commission. Included as part of this requirement, the applicant shall demonstrate at least, but not necessarily limited to, the following:

- a. That the technology proposed is the least visually intrusive of various suitable technologies;
- b. That the height of the antennas is the minimum necessary;
- c. That co-location of the antenna on other existing antenna structures, or that location at a less visible location, or that the use of microcells, providing more numerous antennas at lower heights, either within or outside the Borough of Mount Arlington, is either not practical in order to provide adequate communication or that the visual impact to the community on the proposed site is less than would exist at such alternative locations; and
- d. That the use of digital technology for other existing and pending antennas in the area would not eliminate the need for the proposed antenna.

§ 17-35A.3. Maximum Height.

Buildings shall be subject to the applicable height limit in the zone district. The height of antennas and related structures and equipment other than buildings, where permitted, shall be subject to the following height restrictions:

- a. Freestanding antennas in the Cellular Telecommunications Antenna Overlay Zone shall not exceed 160 feet in height. Related structures and equipment shall comply with height requirements in the underlying zone.
- b. Freestanding antennas and related structures and equipment, other than buildings, when mounted on the roof of an existing building, as permitted herein, shall not exceed the height of such roof by more than 20 feet.

§ 17-35A.4. Required Yard Location and Minimum Setbacks.

The following required locations and minimum setbacks shall apply:

- a. Freestanding antennas shall not be located in the front yard.
- b. Antennas and related structures and equipment, when mounted on an existing building roof as permitted herein, shall be located so as to minimize any detrimental visual impact, as determined to be appropriate by the Board in the particular situation.

§ 17-35A.5. Mitigation of Visual and Secured Impact.

The base of the antenna support structure and any related structures and equipment shall be screened and secured from the street and adjacent properties in a manner acceptable to the Board. If deemed necessary by the Board to mitigate the visual impact of the antenna and related structures and equipment, the color, materials, and design of the entire antenna and related structures and equipment shall be required to be modified in appearance so as to blend in with the surrounding environment, as determined by the Board to be appropriate in the particular situation. The foregoing may include, but shall not necessarily be limited to, such modifications as special paint treatment, concealment through architectural means such as a bell tower, steeple, etc., or the use of camouflage through simulated foliage so as to appear as a tree.

§ 17-35A.6. May be Additional Principal Use on Lot.

Notwithstanding any provisions of this Chapter to the contrary, a cellular telecommunications antenna or antennas are permitted on the same lot as any other permitted principal use or structure in the permitted zones.

§ 17-35A.7. Design for Future Co-Location.

Any proposed cellular telecommunications antenna and related structures shall be designed, structurally, electrically and in all respects, to accommodate both, the applicant's antennas and comparable antennas for at least two additional users if the antenna is over 100 feet high. The antennas and related structures shall be designed for future rearrangement of antennas and to accept antennas mounted at varying heights. If the foregoing design for collocation requires additional antenna installation or beyond that permitted above, the Board, in determining the acceptable design, shall balance the benefits and probability of collocation against any detriments resulting from such additional antenna height.

The foregoing requirements shall also include a letter of commitment by the application, submitted prior to any approval by the Board, to lease excess space on the facility to other potential users at reasonable rental rates and on reasonable terms. The letter shall commit the owner of the antenna and related structures and equipment, as well as any successors in interest.

§ 17-35A.8. Abandonment: Removal.

Wireless telecommunications towers and equipment which are not operated for wireless telecommunications purposes for a continuous period of six months shall be considered abandoned and shall be removed by the owner, at the owner's expense. This removal shall occur within 90 days at the end of such six month period of inactivity. If such wireless telecommunications tower is not removed within the 90 day period, the municipality may remove the tower and its structures at the owner's expense. If the facility is to be retained, its owner shall provide proof that the facility will be reused within one year of such discontinuation. If the facility is not used within one year, a demolition permit shall be obtained and the facility removed. Upon removal, the

site shall be cleaned, cleared restored and revegetate to pre-construction conditions. To insure the removal of abandoned towers and related telecommunications facilities, the facility owner shall be responsible to post a bond at the time a construction permit is issued to cover the costs of tower removal and site restoration.

§ 17-36. AMUSEMENT ENTERPRISES.

- a. Notwithstanding any other provisions in this chapter, the following uses may be permitted only by the Borough Council.
 - (1) Temporary circuses; pony rides; animal acts; carnivals; bazaars; and educational sports, music or theatrical enterprises and displays when held out of doors in any zone, provided that the same are sponsored by a recreational, religious, charitable, social or service organization located within the Borough of Mount Arlington.
 - (2) Cultural or athletic events which are a part of a house of worship, community house or school, college or university program and which are held on the premises owned or leased by or otherwise under the control of the institution conducting or sponsoring said program.
 - (3) Bingo, raffles, or other legalized games of chance, when properly licensed in accordance with state and municipal requirements.

§ 17-37. NONCONFORMING USES AND STRUCTURES.

§ 17-37.1. Continuation of Use.

A use, building or structure, lawfully in existence at the effective day of this Chapter, which shall be made nonconforming at the passage of this Chapter or any applicable amendment thereto, may be continued except as otherwise provided in this section.

§ 17-37.2. Regulation of Nonconforming Uses.

- a. No existing building or premises devoted to a nonconforming use shall be enlarged, extended, reconstructed, substituted or structurally altered except when changed to a conforming use, or when required to do so by law and as follows:
 - (1) Restoration. Any nonconforming use or structure damaged by fire, casualty or act of God may be repaired, restored, reconstructed or used as before, provided that the area of such use, building or structure shall not exceed the area which existed prior to such damage. All repairs shall be commenced within one year after damage occurs and shall be completed within two years of such date, or such use shall not be rebuilt except as a conforming use.
 - (2) Repairs. Normal maintenance and repair of a structure containing a nonconforming use is permitted, provided it does not extend the area or volume of space occupied by the nonconforming use and does not increase the number of dwelling units.

- b. Nothing in this Chapter shall prevent the strengthening or restoring to a safe or lawful condition any part of any building or structure declared unsafe or unlawful by the Construction Official or other authorized State or Borough official.

§ 17-37.3. Termination of Nonconforming Uses.

- a. Termination. In the event that any significant changes are made to a nonconforming use, which would be indicative of an intent to abandon the nonconforming use; then the rights to the nonconforming use shall be terminated.
- b. Nonconforming buildings lawfully under construction. Any nonconforming structure or use lawfully under construction on the effective date of this Chapter pursuant to plans filed with the Construction Official, and approved by him and all other Borough boards and agencies as required under law, may be completed and may be used for the nonconforming use for which it was designed, to the same extent as if such building has been completed and was in use on the effective date of this Chapter.

§ 17-37.4. Reconstruction.

When a nonconforming structure or use is destroyed or damaged by fire or other casualty or an act of God, beyond repair, the nonconforming structure or use shall thereafter be terminated. Damage "beyond repair" for purposes of this section, shall occur when the cost of replacement exceeds 50% of the assessed value of the structure as adjusted by the County's current equalization rate immediately prior to the damage.

ARTICLE IX
Stormwater and Flood Plain Regulations

§ 17-38. PURPOSE.

It is hereby found that uncontrolled stormwater runoff and flooding endanger life and damage, public and private property, that this condition is aggravated by encroachments in the floodplain which contributes to the condition by decreasing flood storage volume and that the most appropriate method of alleviating such condition is through regulation of development and encroachments. It is therefore determined that the special and paramount public interest in the flood plain justifies the regulation of land use located in the flood plain and regulation of storm drainage for the entire municipal area as provided in this Article, which is in the exercise of the police power of the municipality for the protection of the persons and property of its inhabitants and for the preservation of the health, safety and general welfare.

§ 17-39. STORMWATER CONTROL. [Ord. No. 06-05, Ord. No. 01-06; amended in entirety 3-2-2021 by Ord. No. 03-2021]

§ 17-39.1. Scope and purpose. [Amended 3-2-2021 by Ord. No. 03-2021]

- a. Policy Statement. Flood control, groundwater recharge, and pollutant reduction shall be achieved through the use of stormwater management measures, including green infrastructure Best Management Practices (GI BMPs) and nonstructural stormwater management strategies. GI BMPs and low impact development (LID) should be utilized to meet the goal of maintaining natural hydrology to reduce stormwater runoff volume, reduce erosion, encourage infiltration and groundwater recharge, and reduce pollution. GI BMPs and LID 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. The purpose of this section is to establish minimum stormwater management requirements and controls for "major development," and "non-major development," as defined below in § 17-39.2.
- c. Applicability.
 - (1) This section shall be applicable to the following major developments:
 - (a) Non-residential major developments; and
 - (b) Aspects of residential major developments that are not pre-empted by the Residential Site Improvement Standards at N.J.A.C. 5:21.
 - (2) This section shall also be applicable to all major developments undertaken by the Borough of Mount Arlington.
 - (3) This section shall be applicable to "non-major development" that is subject to

review by the Mount Arlington Borough Land Use Board pursuant to the requirements of the New Jersey Municipal Land Use Law and activities that require a grading permit in accordance with the ordinances of the Borough. This section will apply to the developments identified in § 17-39.1c(3) as further noted herein.

- d. Compatibility with other permit and ordinance requirements. Development approvals issued pursuant to this ordinance are to be considered an integral part of development approvals and do not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated by any other applicable code, rule, act, or ordinance. In their interpretation and application, the provisions of this section shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.

This section 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 section 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.

§ 17-39.2. Definitions. [Amended 3-2-2021 by Ord. No. 03-2021]

For the purpose of this section, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this section clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. 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 CENTERS, CORES OR NODES — Those areas with boundaries incorporated by reference or revised by the Department in accordance with N.J.A.C. 7:7-13.16.

CAFRA PLANNING MAP — The map used by the Department to identify the location of Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes. The CAFRA Planning Map is available on the Department's Geographic Information System (GIS).

COMMUNITY BASIN — An infiltration system, sand filter designed to infiltrate, standard constructed wetland, or wet pond, established in accordance with N.J.A.C. 7:8-4.2(c)14, that is designed and constructed in accordance with the New Jersey Stormwater Best Management Practices Manual, or an alternate design, approved in accordance with N.J.A.C. 7:8-5.2(g), for an infiltration system, sand filter designed to infiltrate, standard constructed wetland, or wet pond and that complies with the requirements of this section.

COMPACTION — The increase in soil bulk density.

CONTRIBUTORY DRAINAGE AREA — The area from which stormwater runoff

drains to a stormwater management measure, not including the area of the stormwater management measure itself.

CORE — A pedestrian-oriented area of commercial and civic uses serving the surrounding municipality, generally including housing and access to public transportation.

COUNTY REVIEW AGENCY — 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. A county planning agency; or
- b. A county water resource association created under N.J.S.A. 58:16A-55.5, if the ordinance or resolution delegates authority to approve, conditionally approve, or disapprove municipal stormwater management plans and implementing ordinances.

DEPARTMENT — The Department of Environmental Protection.

DESIGN ENGINEER — 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.

DESIGNATED CENTER — A State Development and Redevelopment Plan Center as designated by the State Planning Commission such as urban, regional, town, village, or hamlet.

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 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, 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 land, 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.

DISTURBANCE — The placement or reconstruction of impervious surface or motor vehicle surface, or exposure and/or movement of soil or bedrock or clearing, cutting, or removing of vegetation. Milling and repaving is not considered disturbance for the purposes of this definition.

DRAINAGE AREA — A geographic area within which stormwater, sediments, or dissolved materials drain to a particular receiving waterbody or to a particular point along a receiving waterbody.

EMPOWERMENT NEIGHBORHOODS — Neighborhoods designated by the Urban Coordinating Council "in consultation and conjunction with" the New Jersey Redevelopment Authority pursuant to N.J.S.A. 55:19-69.

ENVIRONMENTALLY CONSTRAINED AREA — The following areas where the physical alteration of the land is in some way restricted, either through regulation,

easement, deed restriction or ownership such as: wetlands, floodplains, threatened and endangered species sites or designated habitats, and parks and preserves. 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.

ENVIRONMENTALLY CRITICAL AREA — An area or feature which is of significant environmental value, including but not limited to: stream corridors, natural heritage priority sites, habitats 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.

EROSION — The detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

GREEN INFRASTRUCTURE — A stormwater management measure that manages stormwater close to its source by:

- a. Treating stormwater runoff through infiltration into subsoil;
- b. Treating stormwater runoff through filtration by vegetation or soil; or
- c. Storing stormwater runoff for reuse.

HUC 14 or HYDROLOGIC UNIT CODE 14 — An area within which water drains to a particular receiving surface water body, also known as a subwatershed, which is identified by a 14-digit hydrologic unit boundary designation, delineated within New Jersey by the United States Geological Survey.

IMPERVIOUS SURFACE — A surface that has been covered with a layer of material so that it is highly resistant to infiltration by water.

INFILTRATION — The process by which water seeps into the soil from precipitation.

LEAD PLANNING AGENCY — One or more public entities having stormwater management planning authority designated by the regional stormwater management planning committee pursuant to N.J.A.C. 7:8-3.2, that serves as the primary representative of the committee.

MAJOR DEVELOPMENT — An individual "development," as well as multiple developments that individually or collectively result in:

- a. The disturbance of one or more acres of land since February 2, 2004;
- b. The creation of one-quarter acre or more of "regulated impervious surface" since February 2, 2004;
- c. The creation of one-quarter acre or more of "regulated motor vehicle surface" since March 2, 2021; or
- d. A combination of paragraphs b and c above that totals an area of one-quarter acre or more. The same surface shall not be counted twice when determining if the

combination area equals one-quarter acre or more.

Major development includes all developments that are part of a common plan of development or sale (for example, phased residential development) that collectively or individually meet any one or more of paragraphs a, b, c or d above. Projects undertaken by any government agency that otherwise meet the definition of "major development" but which do not require approval under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., are also considered "major development."

MOTOR VEHICLE — Land vehicles propelled other than by muscular power, such as automobiles, motorcycles, autocycles, and low speed vehicles. For the purposes of this definition, motor vehicle does not include farm equipment, snowmobiles, all-terrain vehicles, motorized wheelchairs, go-carts, gas buggies, golf carts, ski-slope grooming machines, or vehicles that run only on rails or tracks.

MOTOR VEHICLE SURFACE — Any pervious or impervious surface that is intended to be used by "motor vehicles" and/or aircraft, and is directly exposed to precipitation including, but not limited to, driveways, parking areas, parking garages, roads, racetracks, and runways.

MUNICIPALITY — Any city, borough, town, township, or village.

NEW JERSEY STORMWATER BEST MANAGEMENT PRACTICES (BMP) MANUAL or BMP MANUAL — The manual maintained by the Department providing, in part, design specifications, removal rates, calculation methods, and soil testing procedures approved by the Department as being capable of contributing to the achievement of the stormwater management standards specified in this chapter. The BMP Manual is periodically amended by the Department as necessary to provide design specifications on additional best management practices and new information on already included practices reflecting the best available current information regarding the particular practice and the Department's determination as to the ability of that best management practice to contribute to compliance with the standards contained in this chapter. Alternative stormwater management measures, removal rates, or calculation methods may be utilized, subject to any limitations specified in this chapter, provided the design engineer demonstrates to the municipality, in accordance with § 17-39.4f and N.J.A.C. 7:8-5.2(g), that the proposed measure and its design will contribute to achievement of the design and performance standards established by this chapter.

NODE — An area designated by the State Planning Commission concentrating facilities and activities which are not organized in a compact form.

NON-MAJOR DEVELOPMENT — Development that does not meet the definition of "major development, but is subject to review by the Mount Arlington Borough Land Use Board pursuant to the requirements of the New Jersey Municipal Land Use Law and/or activities that require a grading permit in accordance with the ordinances of the Borough only if the proposed disturbance is in excess of 500 square feet.

NUTRIENT — A chemical element or compound, such as nitrogen or phosphorus, which is essential to and promotes the development of organisms.

PERSON — Any individual, corporation, company, partnership, firm, association,

political subdivision of this State and any state, interstate or Federal agency.

POLLUTANT — 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 — The amount of water from precipitation that infiltrates into the ground and is not evapotranspired.

REGULATED IMPERVIOUS SURFACE — Any of the following, alone or in combination:

- a. A net increase of impervious surface;
- b. The total area of impervious surface collected by a new stormwater conveyance system (for the purpose of this definition, a "new stormwater conveyance system" is a stormwater conveyance system that is constructed where one did not exist immediately prior to its construction or an existing system for which a new discharge location is created);
- c. The total area of impervious surface proposed to be newly collected by an existing stormwater conveyance system; and/or
- d. The total area of impervious surface collected by an existing stormwater conveyance system where the capacity of that conveyance system is increased.

REGULATED MOTOR VEHICLE SURFACE — Any of the following, alone or in combination:

- a. The total area of motor vehicle surface that is currently receiving water;
- b. A net increase in motor vehicle surface; and/or quality treatment either by vegetation or soil, by an existing stormwater management measure, or by treatment at a wastewater treatment plant, where the water quality treatment will be modified or removed.

SEDIMENT — 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 — The lot or lots upon which a major development is to occur or has occurred.

SOIL — All unconsolidated mineral and organic material of any origin.

STATE DEVELOPMENT AND REDEVELOPMENT PLAN METROPOLITAN PLANNING AREA (PA1) — 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 — 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 — 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 MANAGEMENT BMP — An excavation or embankment and related areas designed to retain stormwater runoff. A stormwater management BMP may either be normally dry (that is, a detention basin or infiltration system), retain water in a permanent pool (a retention basin), or be planted mainly with wetland vegetation (most constructed stormwater wetlands).

STORMWATER MANAGEMENT MEASURE — Any 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.

STORMWATER MANAGEMENT PLANNING AGENCY — A public body authorized by legislation to prepare stormwater management plans.

STORMWATER MANAGEMENT PLANNING AREA — The geographic area for which a stormwater management planning agency is authorized to prepare stormwater management plans, or a specific portion of that area identified in a stormwater management plan prepared by that agency.

STORMWATER RUNOFF — Water flow on the surface of the ground or in storm sewers, resulting from precipitation.

TIDAL FLOOD HAZARD AREA — A flood hazard area in which the flood elevation resulting from the two-, ten-, or 100-year storm, as applicable, is governed by tidal flooding from the Atlantic Ocean. Flooding in a tidal flood hazard area may be contributed to, or influenced by, stormwater runoff from inland areas, but the depth of flooding generated by the tidal rise and fall of the Atlantic Ocean is greater than flooding from any fluvial sources. In some situations, depending upon the extent of the storm surge from a particular storm event, a flood hazard area may be tidal in the 100-year storm, but fluvial in more frequent storm events.

URBAN COORDINATING COUNCIL EMPOWERMENT NEIGHBORHOOD — A neighborhood given priority access to State resources through the New Jersey Redevelopment Authority.

URBAN ENTERPRISE ZONES — 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 — Previously developed portions of areas:

- a. Delineated on the State Plan Policy Map (SPPM) as the Metropolitan Planning Area (PA1), Designated Centers, Cores or Nodes;

- b. Designated as CAFRA Centers, Cores or Nodes;
- c. Designated as Urban Enterprise Zones; and
- d. Designated as Urban Coordinating Council Empowerment Neighborhoods.

WATER CONTROL STRUCTURE — A structure within, or adjacent to, a water, which intentionally or coincidentally alters the hydraulic capacity, the flood elevation resulting from the two-, ten-, or 100-year storm, flood hazard area limit, and/or floodway limit of the water. Examples of a water control structure may include a bridge, culvert, dam, embankment, ford (if above grade), retaining wall, and weir.

WATERS OF THE STATE — The ocean and its estuaries, all springs, streams, wetlands, and bodies of surface or groundwater, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

WETLANDS or WETLAND — 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.

§ 17-39.3. Design and performance standards for stormwater management measures. [Amended 3-2-2021 by Ord. No. 03-2021]

- a. Stormwater management measures for major development and applicable non-major development shall be designed to provide erosion control, groundwater recharge, stormwater runoff quantity control, and stormwater runoff quality treatment as follows:
 - (1) The minimum standards for erosion control are those established under the Soil and Sediment Control Act, N.J.S.A. 4:24-39 et seq., and implementing rules at N.J.A.C. 2:90, even if the proposed soil disturbance is less than 5,000 square feet, but larger than 500 square feet.
 - (2) The minimum standards for groundwater recharge, stormwater quality, and stormwater runoff quantity shall be met by incorporating green infrastructure.
- b. The standards in this ordinance apply only to new major development and new non-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 and new non-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.
- c. New non-major development is required to address the increased stormwater runoff associated with the proposed increased impervious surface greater than 500 square feet. The preferred methods of addressing this added stormwater runoff will be through green infrastructure systems, with secondary techniques being direct infiltration via trench type systems or dry wells. These systems shall be sized to accommodate the 1.25" two-hour rain event over an area the size the proposed new

impervious surface. The green infrastructure and infiltration practices of this section shall be followed to the extent practical and as approved by the Borough/Land Use Board Engineer. Only "clean" runoff from roofs, patios, sidewalks and vegetated areas shall be directly recharged. The stormwater quantity, quality and recharge requirement for "non-major development" will be to detain and infiltrate the noted storm event.

§ 17-39.4. Stormwater management requirements for major development and applicable non-major development. [Amended 3-2-2021 by Ord. No. 03-2021]

- a. The development shall incorporate a maintenance plan for the stormwater management measures incorporated into the design of a major development or non-major development in accordance with § 17-39.10.
- b. Stormwater management measures shall avoid adverse impacts of concentrated flow on habitat for threatened and endangered species as documented in the Department's 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* (bog turtle).
- c. The following linear development projects are exempt from the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity requirements of § 17-39.4p, q and r:
 - (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 green infrastructure, groundwater recharge, stormwater runoff quality, and stormwater runoff quantity requirements of § 17-39.4o, p, q, and r 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:
 - (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 stormwater management measures, the option selected complies with the requirements of § 17-39.4o, p, q, and r to the maximum extent practicable;
 - (3) The applicant demonstrates that, in order to meet the requirements of § 17-39.4o, p, q, and r, 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 § 17-39.4d(3) above within the upstream drainage area of the receiving stream, that would provide additional opportunities to mitigate the requirements of Section 17-39.4o, p, q, and r that were not achievable onsite.
- e. Tables 1 through 3 below summarize the ability of stormwater best management practices identified and described in the New Jersey Stormwater Best Management Practices Manual to satisfy the green infrastructure, groundwater recharge, stormwater runoff quality and stormwater runoff quantity standards specified in § 17-39.4o, p, q, and r. When designed in accordance with the most current version of the New Jersey Stormwater Best Management Practices Manual, the stormwater management measures found at N.J.A.C. 7:8-5.2(f) Tables 5-1, 5-2 and 5-3 and listed below in Tables 1, 2 and 3 are presumed to be capable of providing stormwater controls for the design and performance standards as outlined in the tables below. Upon amendments of the New Jersey Stormwater Best Management Practices to reflect additions or deletions of BMPs meeting these standards, or changes in the presumed performance of BMPs designed in accordance with the New Jersey Stormwater BMP Manual, the Department shall publish in the New Jersey Registers a notice of administrative change revising the applicable table. The most current version of the BMP Manual can be found on the Department's website at: https://njstormwater.org/bmp_manual2.htm.
- f. Where the BMP tables in the NJ Stormwater Management Rule are different due to updates or amendments with the tables in this section the BMP Tables in the Stormwater Management rule at N.J.A.C. 7:8-5.2(f) shall take precedence.

Table 1 Green Infrastructure BMPs for Groundwater Recharge, Stormwater Runoff Quality and/or Stormwater Runoff Quantity				
Best Management Practice	Stormwater Runoff Quality TSS Removal Rate (percent)	Stormwater Runoff Quantity	Groundwater Recharge	Minimum Separation from Seasonal High-Water Table (feet)
Cistern	0	Yes	No	—
Dry well ^(a)	0	No	Yes	2
Grass swale	50 or less	No	No	2 ^(e) 1 ^(f)
Green roof	0	Yes	No	—

Table 1 Green Infrastructure BMPs for Groundwater Recharge, Stormwater Runoff Quality and/or Stormwater Runoff Quantity				
Best Management Practice	Stormwater Runoff Quality TSS Removal Rate (percent)	Stormwater Runoff Quantity	Groundwater Recharge	Minimum Separation from Seasonal High-Water Table (feet)
Manufactured treatment device ^{(a)(g)}	50 or 80	No	No	Dependent upon the device
Pervious paving system ^(a)	80	Yes	Yes ^(b) No ^(c)	2 ^(b) 1 ^(c)
Small-scale bioretention basin ^(a)	80 or 90	Yes	Yes ^(b) No ^(c)	2 ^(b) 1 ^(c)
Small-scale infiltration basin ^(a)	80	Yes	Yes	2
Small-scale sand filter	80	Yes	Yes	2
Vegetative filter strip	60-80	No	No	—

(Notes corresponding to annotations ^(a)through^(g) are found after Table 3)

Table 2 Green Infrastructure BMPs for Stormwater Runoff Quantity (or for Groundwater Recharge and/or Stormwater Runoff Quality with a Waiver or Variance from N.J.A.C. 7:8-5.3)				
Best Management Practice	Stormwater Runoff Quality TSS Removal Rate (percent)	Stormwater Runoff Quantity	Groundwater Recharge	Minimum Separation from Seasonal High-Water Table (feet)
Bioretention system	80 or 90	Yes	Yes ^(b)	2 ^(b)
Infiltration basin	80	Yes	Yes	2
Sand filter ^(b)	80	Yes	Yes	2
Standard constructed wetland	90	Yes	No	N/A
Wet pond ^(d)	50-90	Yes	No	N/A

(Notes corresponding to annotations ^(b) through^(d) are found after Table 3)

Table 3 BMPs for Groundwater Recharge, Stormwater Runoff Quality, and/or Stormwater Runoff Quantity only with a Waiver or Variance from N.J.A.C. 7:8-5.3				
Best Management Practice	Stormwater Runoff Quality TSS Removal Rate (percent)	Stormwater Runoff Quantity	Groundwater Recharge	Minimum Separation from Seasonal High-Water Table (feet)
Blue roof	0	Yes	No	N/A
Extended detention basin	40-60	Yes	No	1
Manufactured treatment device ^(h)	50 or 80	No	No	Dependent upon the device

Table 3 BMPs for Groundwater Recharge, Stormwater Runoff Quality, and/or Stormwater Runoff Quantity only with a Waiver or Variance from N.J.A.C. 7:8-5.3				
Best Management Practice	Stormwater Runoff Quality TSS Removal Rate (percent)	Stormwater Runoff Quantity	Groundwater Recharge	Minimum Separation from Seasonal High-Water Table (feet)
Sand filter ^(c)	80	Yes	No	1
Subsurface gravel wetland	90	No	No	1
Wet pond	50-90	Yes	No	N/A

Notes to Tables 1, 2, and 3:

- (a) Subject to the applicable contributory drainage area limitation specified at § 17-39.4o(2);
 - (b) Designed to infiltrate into the subsoil;
 - (c) Designed with underdrains;
 - (d) Designed to maintain at least a ten-foot wide area of native vegetation along at least 50% of the shoreline and to include a stormwater runoff retention component designed to capture stormwater runoff for beneficial reuse, such as irrigation;
 - (e) Designed with a slope of less than 2%;
 - (f) Designed with a slope of equal to or greater than 2%;
 - (g) Manufactured treatment devices that meet the definition of green infrastructure at § 17-39.2;
 - (h) Manufactured treatment devices that do not meet the definition of green infrastructure at § 17-39.2.
- g. An alternative stormwater management measure, alternative removal rate, and/or alternative method to calculate the removal rate may be used if the design engineer demonstrates the capability of the proposed alternative stormwater management measure and/or the validity of the alternative rate or method to the municipality. A copy of any approved alternative stormwater management measure, alternative removal rate, and/or alternative method to calculate the removal rate shall be provided to the Department in accordance with § 17-39.6b. Alternative stormwater management measures may be used to satisfy the requirements at § 17-39.4o only if the measures meet the definition of green infrastructure at § 17-39.2. Alternative stormwater management measures that function in a similar manner to a BMP listed

at § 17-39.4o(2) are subject to the contributory drainage area limitation specified at § 17-39.4o(2) for that similarly functioning BMP. Alternative stormwater management measures approved in accordance with this subsection that do not function in a similar manner to any BMP listed at Section 17-39.4o(2) shall have a contributory drainage area less than or equal to 2.5 acres, except for alternative stormwater management measures that function similarly to cisterns, grass swales, green roofs, standard constructed wetlands, vegetative filter strips, and wet ponds, which are not subject to a contributory drainage area limitation. Alternative measures that function similarly to standard constructed wetlands or wet ponds shall not be used for compliance with the stormwater runoff quality standard unless a variance in accordance with N.J.A.C. 7:8-4.6 or a waiver from strict compliance in accordance with § 17-39.4d is granted from § 17-39.4o.

- h. Whenever the stormwater management design includes one or more BMPs that will infiltrate stormwater into subsoil, the design engineer shall assess the hydraulic impact on the groundwater 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 surficial ponding, flooding of basements, or interference with the proper operation of subsurface sewage disposal systems or other subsurface structures within the zone of influence of the groundwater mound, or interference with the proper functioning of the stormwater management measure itself.
- i. Design standards for stormwater management measures are as follows:
 - (1) Stormwater management measures shall be designed to take into account the existing site conditions, including, but not limited to, 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) 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 structure, as appropriate, and shall have parallel bars with one-inch 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 the width of the diameter of the orifice or one-third 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 § 17-39.8c;
 - (3) 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) Stormwater management BMPs shall be designed to meet the minimum safety standards for stormwater management BMPs at § 17-39.8; and
 - (5) The size of the orifice at the intake to the outlet from the stormwater management BMP shall be a minimum of 2 1/2 inches in diameter.
- j. Manufactured treatment devices may be used to meet the requirements of this subchapter, provided the pollutant removal rates are verified by the New Jersey Corporation for Advanced Technology and certified by the Department. Manufactured treatment devices that do not meet the definition of green infrastructure at § 17-39.2 may be used only under the circumstances described at § 17-39.4o(4).
- k. Any application for a new agricultural development that meets the definition of major development at § 17-39.2 shall be submitted to the Soil Conservation District for review and approval in accordance with the requirements at § 17-39.4o, p, q and r and any applicable Soil Conservation District guidelines for stormwater runoff quantity and erosion control. For purposes of this subsection, "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 manufacture of agriculturally related products.
- l. If there is more than one drainage area, the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards at § 17-39.4p, q, and r shall be met in each drainage area, unless the runoff from the drainage areas converge onsite and no adverse environmental impact would occur as a result of compliance with any one or more of the individual standards being determined utilizing a weighted average of the results achieved for that individual standard across the affected drainage areas.
- m. Any stormwater management measure authorized under the municipal stormwater management plan or ordinance shall be reflected in a deed notice recorded in the Office of the Morris County Clerk. A form of deed notice shall be submitted to the municipality for approval prior to filing. The deed notice shall contain a description of the stormwater management measure(s) used to meet the green infrastructure, groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards at § 17-39.4o, p, q, and r and shall identify the location of the stormwater management measure(s) in NAD 1983 State Plane New Jersey FIPS 2900 US Feet or Latitude and Longitude in decimal degrees. The deed notice shall also reference the maintenance plan required to be recorded upon the deed pursuant to § 17-39.10b(5). Prior to the commencement of construction, proof that the above required deed notice has been filed shall be submitted to the municipality. Proof that the required information has been recorded on the deed shall be in the form of either a copy of the complete recorded document or a receipt from the clerk or other proof of recordation provided by the recording office. However, if the initial proof provided to the municipality is not a copy of the complete recorded document, a copy of the complete recorded document shall be provided to the municipality

within 180 calendar days of the authorization granted by the municipality.

- n. A stormwater management measure approved under the municipal stormwater management plan or ordinance may be altered or replaced with the approval of the municipality, if the municipality determines that the proposed alteration or replacement meets the design and performance standards pursuant to § 17-39.4 and provides the same level of stormwater management as the previously approved stormwater management measure that is being altered or replaced. If an alteration or replacement is approved, a revised deed notice shall be submitted to the municipality for approval and subsequently recorded with the Office of the Morris County Clerk and shall contain a description and location of the stormwater management measure, as well as reference to the maintenance plan, in accordance with paragraph m above. Prior to the commencement of construction, proof that the above required deed notice has been filed shall be submitted to the municipality in accordance with m. above.
- o. Green infrastructure standards.
 - (1) This subsection specifies the types of green infrastructure BMPs that may be used to satisfy the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards.
 - (2) To satisfy the groundwater recharge and stormwater runoff quality standards at § 17-39.4p and q the design engineer shall utilize green infrastructure BMPs identified in Table 1 at § 17-39.4f and/or an alternative stormwater management measure approved in accordance with § 17-39.4g. The following green infrastructure BMPs are subject to the following maximum contributory drainage area limitations:

Best Management Practice	Maximum Contributory
Dry well	1 acre
Manufactured treatment device	2.5 acres
Pervious pavement systems	Area of additional inflow cannot exceed three times the area
Small-scale bioretention systems	2.5 acres
Small-scale infiltration basin	2.5 acres
Small-scale sand filter	2.5 acres

- (3) To satisfy the stormwater runoff quantity standards at § 17-39.4r, the design engineer shall utilize BMPs from Table 1 or from Table 2 and/or an alternative stormwater management measure approved in accordance with § 17-39.4g.
- (4) If a variance in accordance with N.J.A.C. 7:8-4.6 or a waiver from strict compliance in accordance with § 17-39.4d is granted from the requirements of this subsection, then BMPs from Table 1, 2, or 3, and/or an alternative stormwater management measure approved in accordance with § 17-39.4g,

may be used to meet the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards at § 17-39.4p, q and r.

- (5) For separate or combined storm sewer improvement projects, such as sewer separation, undertaken by a government agency or public utility (for example, a sewerage company), the requirements of this subsection shall only apply to areas owned in fee simple by the government agency or utility, and areas within a right-of-way or easement held or controlled by the government agency or utility; the entity shall not be required to obtain additional property or property rights to fully satisfy the requirements of this subsection. Regardless of the amount of area of a separate or combined storm sewer improvement project subject to the green infrastructure requirements of this subsection, each project shall fully comply with the applicable groundwater recharge, stormwater runoff quality control, and stormwater runoff quantity standards at Section 17-39.4p, q, and r, unless the project is granted a waiver from strict compliance in accordance with § 17-39.4d.

p. Groundwater recharge standards.

- (1) This subsection contains the minimum design and performance standards for groundwater recharge as follows.
- (2) The design engineer shall, using the assumptions and factors for stormwater runoff and groundwater recharge calculations at § 17-39.5, either:
 - (a) Demonstrate through hydrologic and hydraulic analysis that the site and its stormwater management measures maintain 100% 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 two-year storm is infiltrated.
- (3) This groundwater recharge requirement does not apply to projects within the "urban redevelopment area," or to projects subject to paragraph (4) below.
- (4) The following types of stormwater shall not be recharged:
 - (a) Stormwater from areas of high pollutant loading. High 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 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.

q. Stormwater runoff quality standards.

- (1) This subsection contains the minimum design and performance standards to control stormwater runoff quality impacts of major development. Stormwater runoff quality standards are applicable when the major development results in an increase of one-quarter acre or more of regulated motor vehicle surface.
- (2) Stormwater management measures shall be designed to reduce the post-construction load of total suspended solids (TSS) in stormwater runoff generated from the water quality design storm as follows:
 - (a) Eighty percent TSS removal of the anticipated load, expressed as an annual average shall be achieved for the stormwater runoff from the net increase of motor vehicle surface.
 - (b) If the surface is considered regulated motor vehicle surface because the water quality treatment for an area of motor vehicle surface that is currently receiving water quality treatment either by vegetation or soil, by an existing stormwater management measure, or by treatment at a wastewater treatment plant is to be modified or removed, the project shall maintain or increase the existing TSS removal of the anticipated load expressed as an annual average.
- (3) 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 Pollutant Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A, or in a discharge specifically exempt under a NJPDES permit from this requirement. Every major development, including any that discharge into a combined sewer system, shall comply with paragraph (2) above, unless the major development is itself subject to a NJPDES permit with a numeric effluent limitation for TSS or the NJPDES permit to which the major development is subject exempts the development from a numeric effluent limitation for TSS.
- (4) 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 4, below. The calculation of the volume of runoff may take into account the implementation of stormwater management measures.

Table 4 - Water Quality Design Storm Distribution					
Time	Cumulative		Cumulative		Cumulative
(minutes)	Rainfall	Time	Rainfall	Time	Rainfall
	(inches)	(minutes)	(inches)	(minutes)	(inches)
1	0.00166	41	0.1728	81	1.0906
2	0.00332	42	0.1796	82	1.0972
3	0.00498	43	0.1864	83	1.1038
4	0.00664	44	0.1932	84	1.1104
5	0.00830	45	0.2000	85	1.1170
6	0.00996	46	0.2117	86	1.1236
7	0.01162	47	0.2233	87	1.1302
8	0.01328	48	0.2350	88	1.1368
9	0.01494	49	0.2466	89	1.1434
10	0.01660	50	0.2583	90	1.1500
12	0.01996	52	0.2983	92	1.1600
13	0.02164	53	0.3183	93	1.1650
14	0.02332	54	0.3383	94	1.1700
15	0.02500	55	0.3583	95	1.1750
16	0.03000	56	0.4116	96	1.1800
17	0.03500	57	0.4650	97	1.1850
18	0.04000	58	0.5183	98	1.1900
19	0.04500	59	0.5717	99	1.1950
20	0.05000	60	0.6250	100	1.2000
21	0.05500	61	0.6783	101	1.2050
22	0.06000	62	0.7317	102	1.2100
23	0.06500	63	0.7850	103	1.2150
24	0.07000	64	0.8384	104	1.2200
25	0.07500	65	0.8917	105	1.2250
26	0.08000	66	0.9117	106	1.2267
27	0.08500	67	0.9317	107	1.2284
28	0.09000	68	0.9517	108	1.2300
29	0.09500	69	0.9717	109	1.2317
30	0.10000	70	0.9917	110	1.2334
31	0.10660	71	1.0034	111	1.2351

Table 4 - Water Quality Design Storm Distribution					
Time	Cumulative		Cumulative		Cumulative
(minutes)	Rainfall	Time	Rainfall	Time	Rainfall
	(inches)	(minutes)	(inches)	(minutes)	(inches)
32	0.11320	72	1.0150	112	1.2367
33	0.11980	73	1.0267	113	1.2384
34	0.12640	74	1.0383	114	1.2400
35	0.13300	75	1.0500	115	1.2417
36	0.13960	76	1.0568	116	1.2434
37	0.14620	77	1.0636	117	1.2450
38	0.15280	78	1.0704	118	1.2467
39	0.15940	79	1.0772	119	1.2483
40	0.16600	80	1.0840	120	1.2500

- (5) If more than one BMP in series is necessary to achieve the required 80% TSS reduction for a site, the applicant shall utilize the following formula to calculate TSS reduction:

$$R = A + B - (A \times B)/100$$

Where:

- R = total TSS Percent Load Removal from application of both BMPs
 A = the TSS Percent Removal Rate applicable to the first BMP
 B = the TSS Percent Removal Rate applicable to the second BMP

- (6) 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 green infrastructure BMPs that optimize nutrient removal while still achieving the performance standards in § 17-39.4p, q and r.
- (7) 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.
- (8) The Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-4.1(c)1 establish 300-foot riparian zones along Category One waters, as designated in the Surface Water Quality Standards at N.J.A.C. 7:9B, and certain upstream tributaries to Category One waters. A person shall not undertake a major development that is located within or discharges into a 300-foot riparian zone

without prior authorization from the Department under N.J.A.C. 7:13.

- (9) Pursuant to the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-11.2(j)3.i, runoff from the water quality design storm that is discharged within a 300-foot riparian zone shall be treated in accordance with this subsection to reduce the post-construction load of total suspended solids by 95% of the anticipated load from the developed site, expressed as an annual average.
 - (10) This stormwater runoff quality standards do not apply to the construction of one individual single-family dwelling, provided that it is not part of a larger development or subdivision that has received preliminary or final site plan approval prior to December 3, 2018, and that the motor vehicle surfaces are made of permeable material(s) such as gravel, dirt, and/or shells.
- r. Stormwater runoff quantity standards.
- (1) This subsection contains the minimum design and performance standards to control stormwater runoff quantity impacts of major development.
 - (2) In order to control stormwater runoff quantity impacts, the design engineer shall, using the assumptions and factors for stormwater runoff calculations at § 17-39.5, complete one of the following:
 - (a) Demonstrate through hydrologic and hydraulic analysis that for stormwater leaving the site, post-construction runoff hydrographs for the two-, ten-, and 100-year storm events do not exceed, at any point in time, the pre-construction runoff hydrographs for the same storm events;
 - (b) 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-, ten- 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;
 - (c) Design stormwater management measures so that the post-construction peak runoff rates for the two-, ten- and 100-year storm events are 50%, 75%, and 80%, 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; or
 - (d) In tidal flood hazard areas, stormwater runoff quantity analysis in accordance with paragraphs 2(a), 2(b) and 2(c) above is required unless the design engineer demonstrates through hydrologic and hydraulic analysis that the increased volume, change in timing, or increased rate of the stormwater runoff, or any combination of the three will not result in

additional flood damage below the point of discharge of the major development. No analysis is required if the stormwater is discharged directly into any ocean, bay, inlet, or the reach of any watercourse between its confluence with an ocean, bay, or inlet and downstream of the first water control structure.

- (3) The stormwater runoff quantity standards shall be applied at the site's boundary to each abutting lot, roadway, watercourse, or receiving storm sewer system.

§ 17-39.5. Calculation of stormwater runoff and groundwater recharge.
[Amended 3-2-2021 by Ord. No. 03-2021]

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 Chapters 7, 9, 10, 15 and 16 Part 630, Hydrology National Engineering Handbook, incorporated herein by reference as amended and supplemented. This methodology is additionally described in Technical Release 55 - Urban Hydrology for Small Watersheds (TR-55), dated June 1986, incorporated herein by reference as amended and supplemented. Information regarding the methodology is available from the Natural Resources Conservation Service website at: https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb10441_71.pdf or at United States Department of Agriculture Natural Resources Conservation Service, 220 Davison Avenue, Somerset, New Jersey 08873; or
- (b) The Rational Method for peak flow and the Modified Rational Method for hydrograph computations. The rational and modified rational methods are described in "Appendix A-9 Modified Rational Method" in the Standards for Soil Erosion and Sediment Control in New Jersey, January 2014. This document is available from the State Soil Conservation Committee or any of the Soil Conservation Districts listed at N.J.A.C. 2:90-1.3(a)3. The location, address, and telephone number for each Soil Conservation District is available from the State Soil Conservation Committee, PO Box 330, Trenton, New Jersey 08625. The document is also available at: <http://www.nj.gov/agriculture/divisions/anr/pdf/2014NJSoilErosionControlStandardsComplete.pdf>.

- (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 above at § 17-39.5a(1)(a) and the Rational and Modified Rational Methods at § 17-39.5a(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).

- (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 preconstruction 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 or 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: The New Jersey Geological Survey Report GSR-32, A Method for Evaluating Groundwater-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 the New Jersey Geological Survey website at: <https://www.nj.gov/dep/njgs/pricelst/gsreport/gsr32.pdf> or at New Jersey Geological and Water Survey, 29 Arctic Parkway, PO Box 420 Mail Code 29-01, Trenton, New Jersey 08625-0420.

§ 17-39.6. Sources for technical guidance. [Amended 3-2-2021 by Ord. No. 03-2021]

- a. Technical guidance for stormwater management measures can be found in the documents listed below, which are available to download from the Department's website at: http://www.nj.gov/dep/stormwater/bmp_manual2.htm.
 - (1) Guidelines for stormwater management measures are contained in the New Jersey Stormwater Best Management Practices Manual, as amended and supplemented. Information is provided on stormwater management measures such as, but not limited to, those listed in Tables 1, 2, and 3.

- (2) Additional maintenance guidance is available on the Department's website at: https://www.njstormwater.org/maintenance_guidance.htm.
- b. Submissions required for review by the Department should be mailed to: The Division of Water Quality, New Jersey Department of Environmental Protection, Mail Code 401-02B, PO Box 420, Trenton, New Jersey 08625-0420.

§ 17-39.7. Solids and floatable materials control standards. [Amended 3-2-2021 by Ord. No. 03-2021]

- a. Site design features identified under § 17-39.4f above, or alternative designs in accordance with § 17-39.4g above, to prevent discharge of trash and debris from drainage systems shall comply with the following standard to control passage of solid and 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 § 17-39a(2) below.

- (1) Design engineers shall use one 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:

- (a) 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; or
- (b) A different grate, if each individual clear space in that grate has an area of no more than seven 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 system floors used to collect stormwater from the surface into a storm drain or surface water body.

- (c) For curb-opening inlets, including curb-opening inlets in combination inlets, 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 square inches, or be no greater than two inches across the smallest dimension.
- (2) The standard in paragraph a(1) above does not apply:
 - (a) Where each individual clear space in the curb opening in existing curb-opening inlet does not have an area of more than nine square inches;

- (b) Where the municipality agrees that the standards would cause inadequate hydraulic performance that could not practicably be overcome by using additional or larger storm drain inlets;
- (c) Where flows from the water quality design storm as specified in N.J.A.C. 7:8 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:
 - [i] A rectangular space four and five-eighths inches long and 1.5 inches wide (A rectangular space four and this option does not apply for outfall netting facilities); or
 - [ii] A bar screen having a bar spacing of 0.5 inch.

Note that these exemptions do not authorize any infringement of requirements in the Residential Site Improvement Standards for bicycle safe grates in new residential development (N.J.A.C. 5:21-4.18(b)2 and 7.4(b)1).

- (d) Where flows are conveyed through a trash rack that has parallel bars with one-inch spacing between the bars, to the elevation of the Water Quality Design Storm as specified in N.J.A.C. 7:8; or
- (e) 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.

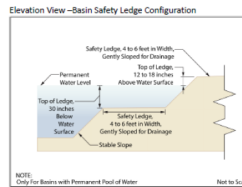
§ 17-39.8. Safety standards for stormwater management basins. [Amended 3-2-2021 by Ord. No. 03-2021]

- a. This section sets forth requirements to protect public safety through the proper design and operation of stormwater management BMPs. This section applies to any new stormwater management BMP.
- b. The provisions of this section are not intended to preempt more stringent municipal or county safety requirements for new or existing stormwater management BMPs. Municipal and county stormwater management plans and ordinances may, pursuant to their authority, require existing stormwater management BMPs to be retrofitted to meet one or more of the safety standards in §§ 17-39.8c(1), 17-39.8c(2) and 17-39.8c(3) for trash racks, overflow grates, and escape provisions at outlet structures.
- c. 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 BMP to ensure proper functioning of the BMP 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; and
 - (d) The trash rack shall be constructed of rigid, durable, and corrosion resistant material and designed to withstand a perpendicular live loading of 300 pounds per square foot.
- (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 pounds per square foot.
- (3) Stormwater management BMPs shall include escape provisions as follows:
- (a) If a stormwater management BMP has an outlet structure, escape provisions shall be incorporated in or on the structure. Escape provisions include the installation of permanent ladders, steps, rungs, or other features that provide easily accessible means of egress from stormwater management BMPs. With the prior approval of the municipality pursuant to VIII.C, a free-standing outlet structure may be exempted from this requirement;
 - (b) Safety ledges shall be constructed on the slopes of all new stormwater management BMPs having a permanent pool of water deeper than 2 1/2 feet. Safety ledges shall be comprised of two steps. Each step shall be four to six feet in width. One step shall be located approximately 2 1/2 feet below the permanent water surface, and the second step shall be located one to 1 1/2 feet above the permanent water surface. See § 17-39.8e for an illustration of safety ledges in a stormwater management BMP; and

- (c) In new stormwater management BMPs, the maximum interior slope for an earthen dam, embankment, or berm shall not be steeper than three horizontal to one vertical.
- d. Variance or exemption from safety standard. A variance or exemption from the safety standards for stormwater management BMPs may be granted only upon a written finding by the municipality that the variance or exemption will not constitute a threat to public safety.
- e. Safety ledge illustration.



§ 17-39.9. Requirements for a site development stormwater plan. [Amended 3-2-2021 by Ord. No. 03-2021]

- 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 § 17-39.9c below as part of the submission of the application for approval.
 - (2) The applicant shall demonstrate that the project meets the standards set forth in this ordinance.
 - (3) The applicant shall submit the required number of copies of the materials listed in the checklist for site development stormwater plans in accordance with § 17-39.9c.
- b. Site development stormwater plan approval. The applicant's Site Development project shall be reviewed as a part of the review process by the municipal board or official from which municipal approval is sought. That municipal board or official shall consult the municipality's review engineer 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. Submission of site development stormwater plan. 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 one inch equals 200 feet or greater, showing two-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 surroundings should be submitted. 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 plans. 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 will occur in the natural terrain and cover, including lawns and other landscaping, and seasonal high groundwater elevations. A written description of the site plan and justification for proposed changes in natural conditions shall also be provided.
- (4) Land use planning and source control plan. This plan shall provide a demonstration of how the goals and standards of §§ 17-39.3 through 17-39.5 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 disturbed, 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 predevelopment and post-development conditions for the design storms specified in § 17-39.4.
 - (b) When the proposed stormwater management control measures depend on

the hydrologic properties of soils or require certain separation from the seasonal high water table, 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. The design and planning of the stormwater management facility shall meet the maintenance requirements of § 17-39.10.
- (8) Waiver from submission requirements. The municipal official or board reviewing an application under this ordinance may, in consultation with the municipality's review engineer, waive submission of any of the requirements in § 17-39.9c(1) through § 17-39.9c(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.

§ 17-39.10. Maintenance and repair. [Amended 3-2-2021 by Ord. No. 03-2021]

- a. Applicability. Projects subject to review as in § 17-39.1c shall comply with the requirements of § 17-39.10b and 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). The plan shall contain information on BMP location, design, ownership, maintenance tasks and frequencies, and other details as specified in Chapter 8 of the NJ BMP Manual, as well as the tasks specific to the type of BMP, as described in the applicable chapter containing design specifics.
 - (3) If the maintenance plan identifies a person other than the property owner (for example, a developer, a public agency or homeowners' association) as having the responsibility for maintenance, the plan shall include documentation of such person's or entity's agreement to assume this responsibility, or of the owner's obligation to dedicate a stormwater management facility to such person under an applicable ordinance or regulation.
 - (4) 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. The individual property owner may be assigned incidental tasks, such as weeding of a green infrastructure BMP, provided the

individual agrees to assume these tasks; however, the individual cannot be legally responsible for all of the maintenance required.

- (5) If the party responsible for maintenance identified under § 17-39.10b(3) above is not a public agency, the maintenance plan and any future revisions based on § 17-39.10b below shall be recorded upon the deed of record for each property on which the maintenance described in the maintenance plan must be undertaken.
- (6) Preventative and corrective maintenance shall be performed to maintain the functional parameters (storage volume, infiltration rates, inflow/outflow capacity, etc.) of the stormwater management measure, including, but not limited to, 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.
- (7) The party responsible for maintenance identified under § 17-39.10b(3) above shall perform all of the following requirements:
 - (a) 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;
 - (b) Evaluate the effectiveness of the maintenance plan at least once per year and adjust the plan and the deed as needed; and
 - (c) 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 § 17-39.10b(6) and b(7) above.
- (8) The requirements of §§ 17-39.10b(3) and 17-39.10b(4) do not apply to stormwater management facilities that are dedicated to and accepted by the municipality or another governmental agency, subject to all applicable municipal stormwater general permit conditions, as issued by the Department.
- (9) 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 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 immediately proceed to do so and shall bill the cost thereof to the responsible person. Nonpayment of such bill may result in a lien on the property.

- c. Nothing in this subsection 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.

§ 17-40. SITE PLAN AND PERMIT REQUIREMENTS IN FLOOD PLAIN AREAS.

§ 17-40.1. Site Plan Data.

In addition to the site plan approval requirements contained in this Chapter, no building or structure shall hereafter, be erected, enlarged, expanded, externally altered or modified nor shall any paving, fill, excavation, or improvement be permitted within any floodplain area unless a site plan shall have been submitted to the Planning Board for its review and approval.

- a. Said site plan shall be drawn to a scale not less than one inch equals 50 feet and shall show, in addition to the information required under other ordinances, the following information:
 - (1) Existing and proposed buildings and structures.
 - (2) Proposed finished grade elevations at the corners of any structure or structures.
 - (3) Existing topography and proposed grading at contour intervals of at least one foot.
 - (4) The lowest elevation within any proposed structure after its completion.
 - (5) The location, type, and size of all existing and proposed drainage rights-of-way or easements and the location, size, and description of any lands to be dedicated to the municipality, county, or state.
 - (6) The location, size, and nature of all existing and proposed drainage right-of-way or easements and the location, size, and description of any lands to be dedicated to the municipality, county, or state.
 - (7) The layout and size of existing and proposed public or private streets.
 - (8) The elevation of any existing or proposed pumping facilities.
 - (9) The nature and extent of any construction alterations or repairs.
 - (10) 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.
 - (11) Proof of stream encroachment lines obtained from the New Jersey Department of Environmental Protection.
 - (12) The extent of filing of the land, if any.
 - (13) The location, type, and size of all existing and proposed erosion and siltation

control measures, such as slope protection, soil stabilization, sedimentation basins, sediment traps, headwalls, aprons, and the like.

(14) The Base Flood Elevation for all major subdivisions and site plans.

(15) The applicant shall submit proof that:

- (a) Proposed structures are designed and adequately anchored to prevent flotation, collapse or lateral movement.
- (b) Materials and utility equipment used are resistant to flood damage.
- (c) Construction utilizes methods and practices that minimize flood damage.
- (d) Subdivision proposals are consistent with the need to minimize flood damage in flood-prone areas.
- (e) All public utilities and facilities, such as sewer, gas, electrical, and water systems are designed, constructed and located to prevent, minimize or eliminate flood damage or infiltration.

(16) Any and all other information and data necessary to meet any of the requirements of this Article.

- b. In addition, where required by the Board, the developer shall furnish information relating to subsurface conditions, based on percolation tests and soil borings or probes. Test borings or probes shall be performed by a licensed professional engineer with proven competency in the field of soils engineering and shall be in accordance with acceptable engineering standards and practices. A detailed report of the test shall be submitted to the Board and Borough Engineer for review.
- c. Action by the Board may be conditioned upon any required approval by the New Jersey Department of Environmental Protection.
- d. Board disapproval shall include written findings upon any site plan element found contrary to the provisions or intent of this Article.

§ 17-40.2. Permits.

No person or persons shall engage in a permitted use within a delineated floodplain until all necessary permits have been obtained from those governmental agencies from which approval is required, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. Section Subsection 1334.

§ 17-40.3. Conditions.

The Board may impose such conditions on permitted uses as it deems appropriate to promote the public safety, health and welfare, to protect public and private property, wildlife and fisheries and to preserve, protect and enhance the natural environment of the flood plain. No certificate of occupancy shall be issued unless all conditions of approval have been complied with.

§ 17-41. SPECIFIC FLOOD PLAIN REQUIREMENTS.**§ 17-41.1. Preservation of Natural Land.**

- a. It is hereby found that natural flood plain display complex intimate relationships among streams, periodic flooding, soils, vegetation, fish and wildlife and that periodic flooding of lowland areas, marshes and swamps adjacent to stream channels produces a rich physical-chemical environment for many living organisms. It is further found that flood plains contain biological communities which are among the most productive of natural systems and perform the following functions essential to the natural environment.
 - (1) Passage and storage of storm floodwaters.
 - (2) Removal of sediment loads from streams through deposition.
 - (3) Replenishment of groundwater supplies through soil infiltration.
 - (4) Dissipation of energy of flood flows, thereby reducing downstream destruction.
 - (5) Provide areas of recreational and aesthetic pleasure.
- b. Because of the importance of the natural flood plain as cited above, all natural land within any delineated flood plain, except for land to be developed in accordance with this chapter, shall be preserved in its natural state, and where possible, developed land within the flood plain shall be restored to its natural state so as to duplicate the natural or undeveloped drainage characteristics in terms of runoff and velocity.
- c. Whenever the alteration or relocation of a watercourse is required, the applicant shall notify the Federal Insurance Administrator, New Jersey Department of Environmental Protection, County of Morris, and adjacent communities. The applicant shall assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.

§ 17-41.2. Performance Standards.

In reviewing any proposed construction or development, the Board shall be reasonably assured upon evidence submitted by the applicant that any structure, when built or altered, can be occupied without peril to the health or safety of the occupant and that the proposed land use:

- a. Has an inherent low flood-damage potential.
- b. Either acting alone or in combination with existing or future uses, does not obstruct flood flows.
- c. Does not affect adversely the water-carrying or storage capacity of any channel floodway or flood fringe area.

- d. Does not increase erosion or the rate of local runoff.
- e. Does not unduly stress or degrade the natural environment of the flood plain or degrade the quality of surface water or the quality and quantity of groundwaters.
- f. Does not require channel modification or relocation.
- g. Is set forth in Article VIII as a permitted use for that portion of the flood plain where proposed and is not a prohibited use as set forth below.

§ 17-41.3. Prohibited Uses in Channels, Floodways, and Flood Fringe Areas.

- a. Channel. Within any channel, structures shall not be erected, expanded or externally altered, and fill, excavation or other improvements or changes shall not be permitted except in connection with stream improvement or stabilization, which improvements or changes shall have the specific approval of the New Jersey Department of Environmental Protection and the Board. The Morris County Planning Board shall receive copies of all exhibits for their review and approval as required.
- b. Floodway.
 - (1) Within any floodway, structures shall not be erected, enlarged, expanded, or externally altered, and fill, excavation, or other improvements or changes shall not be permitted, except in connection with stream improvements or stabilization, which improvement or changes shall have the specific approval of the New Jersey Department of Environmental Protection and the Board. The Morris County Planning Board shall receive copies of all exhibits for their review and approval as required.
 - (2) The accepted practices of soil husbandry and farming, as well as recreational uses in the nature of parks, playgrounds, picnic areas, golf courses and boat landings shall be permitted in accordance with the issuance of a permit as provided in this Article. No material, equipment or vehicles shall be parked or stored in the floodway, even in conjunction with a permitted use.
- c. Flood Fringe Area. Within any flood fringe area, structures other than mobile homes may be constructed, erected, enlarged, expanded, externally altered or modified, and fill, excavation, and other improvements may be permitted in the flood fringe area after receiving specific approval of the Board for a use allowed in Article VIII and further subject to the conditions set forth in this Article.
- d. Upon application for such a permit, the Board shall notify the Borough Environmental Commission and the governing bodies and environmental commissions of other municipalities which may be affected by the proposed use. Such notifications shall include the name and address of the applicant, the location of the proposed use and abbreviated description of the proposed use and announcement as to where and at what times the complete application may be reviewed and to whom and by what date interested parties may communicate their positions concerning the application and any data that they may have developed in

reference to the effects of the proposed use. The Board shall view the application and all information received under this Article.

- e. In reviewing the application and arriving at findings, the Board shall consult with the Borough Engineer and other experts and consider the following criteria in addition to those set forth in this Article.
- (1) The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - (2) The danger that materials may be swept onto other land or downstream to the injury of others.
 - (3) The proposed water supply and sanitation systems and the insulation of these systems from disease, contamination, and unsanitary conditions resulting from flooding.
 - (4) The susceptibility of the proposed use to flood damage and the effects of such damage.
 - (5) The need for a waterfront location.
 - (6) The availability of the alternate locations not subject to flooding.
 - (7) The duration, rate of rise, and sediment transport of floodwaters expected at the site.
 - (8) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - (9) The extent to which the hydraulic capacity of the floodway will be disrupted.
 - (10) The degree to which the proposed use serves the general public's health, safety, and welfare.
 - (11) The degree to which any aspect of flood chain or plant, animal, fish, or human life processes are affected adversely within or beyond the proposed use area.
 - (12) The degree to which the proposed activity alters natural water flow or water temperature.
 - (13) The degree to which the proposed use provides facilities for the proper handling of litter, trash, refuse, and sanitary and industrial waste.
 - (14) The degree to which irreplaceable land types will be destroyed.
 - (15) The degree to which the natural, scenic and aesthetic values at the proposed development site can be retained.
 - (16) The degree to which materials not subject to major damage by floods are firmly anchored to prevent flotation and/or are readily removable from the area within the time available after flood warning.

- f. If the Board finds that the proposed use would violate or tend to violate the purposes and intent of this Article, the applicant shall be denied.

§ 17-41.4. Conditions of Approval for Permitted Uses.

If the application will not violate the purposed and intent of this Chapter, the Board may approve the application and impose such conditions as are necessary to promote the public safety, health and welfare, to protect public and private property, wildlife and fisheries and to preserve, protect and enhance the natural environmental of the flood plain.

- a. General Conditions. These conditions may include, but are not limited to, the following:
 - (1) Modification of waste disposal and water supply facilities.
 - (2) Imposition of operational controls, sureties, and deed restrictions.
 - (3) Requirements for construction of stormwater detention facilities, channel modifications, dikes, levees and other protective measures.
 - (4) Installation of an adequate flood-warning system.
 - (5) Postponement of development until such time as protective measures are installed or until the floodway and flood hazard area have been delineated by the Department or the Borough.
- b. Specific Conditions. The following regulations shall apply to all numbered A Zones and, in addition, to all unnumbered A Zones where, in the absence of FIA base flood elevation data. The Planning Board shall obtain, review, and utilize any base flood elevation data available from a federal, state or other source.
 - (1) Where the lowest floor of any new structure is more than two feet above the existing grade at the perimeter of said structure, the site shall be filled. Such fill shall be subject to the following conditions:
 - (a) All fill material shall be well-compacted.
 - (b) The elevation of the fill shall be not more than two feet below the base flood elevation.
 - (c) The elevation of the fill at the perimeter of the structure shall be equal to the elevation of the fill beneath the structure.
 - (d) Fill at the perimeter of the structure shall be stabilized by a retaining wall or by slopes of not greater than four to one (4:1) and shall be protected from erosion.
 - (e) Where fill is stabilized by a retaining wall, said fill shall extend beyond the perimeter of the structure a distance equal to not less than twice the height of the retaining wall or five feet, whichever is the greater.

- (2) All new residential construction, residential additions, and substantial improvements of residential structures within the flood plain shall have the lowest floor (including basement) elevated to not less than six inches above the base flood elevation. For purposes of site plan review and approval, the requirement of six inches above the base flood elevation shall not include a detached garage; nor shall it include a patio, terrace, deck or an unheated and unenclosed porch, provided that any entrance from such a structure to a main structure shall be a minimum of six inches above the base flood elevation. The floor of an attached garage may be not more than two feet below the base flood elevation, provided that the portions of all walls and partitions below the base flood elevation are floodproofed and further provided that any entrance from an attached garage to a main structure shall be a minimum of six inches above the base flood elevation.
- (3) All new nonresidential construction within the flood plain shall have the lowest floor (including basement) elevated to not less than one foot above the base flood elevation or be floodproofed. Floodproofing alone shall not be considered adequate for residences, hospitals, nursing homes, schools, day-care centers and similar uses.
- (4) Floodproofing measures shall be consistent with the base flood elevation for the particular area, flood velocities, durations, rates of rise, hydrostatic and hydrodynamic forces and other similar factors. The Board shall require the applicant to submit a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the base flood elevation and associated flood factors. Any or all of the following floodproofing measures may be required.
 - (a) Anchorage to resist flotation, collapse, and lateral movement.
 - (b) Installation of watertight doors, bulkheads and shutters or similar devices.
 - (c) Reinforced walls to resist water pressures.
 - (d) Use of paints, membranes or mortars to reduce seepage of water through walls.
 - (e) Addition of weight to structure to resist flotation.
 - (f) Installation of pumps to lower water levels in structures.
 - (g) Pumping facilities or comparable measures for the subsurface drainage systems of buildings to relieve external foundation wall and basement flood pressures.
 - (h) Construction that the resists rupture or collapse caused by water pressure or floating debris.
 - (i) Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent backup of sewage or stormwaters

into the structure. Gravity drainage of basements may be eliminated by mechanical devices.

- (j) Location of all electrical equipment, circuit and installed equipment electrical appliances in a manner which will assure they are not subject to inundation and flooding.
 - (k) Storage facilities for chemicals, explosives, buoyant materials, flammable, liquids or other toxic or hazardous materials shall be situated above the base flood elevation and shall be floodproofed to prevent flotation of storage containers or damage to storage containers which could result in the escape of toxic materials into the floodwaters.
- (5) Materials prohibited in channels, floodways, and flood fringe areas. No person shall hereafter engage in, cause or other permit persons to engage in prohibited uses within a delineated flood plain. The following uses shall be prohibited:
- (a) Placing, depositing, or dumping any solid waste, garbage, refuse, trash, rubbish, or debris.
 - (b) Dumping or discharging untreated domestic sewage or industrial wastes, either solid or liquid.
 - (c) The storage or disposal of pesticides.
 - (d) The storage or processing of materials that are, in time of flooding, buoyant, flammable or explosive.
 - (e) The storage or processing of hazardous materials that could be injurious in time of flooding to human, animal or plant life.
- (6) Pre-existing nonconforming structures and uses.
- (a) Structures or land uses in any flood plain which existing on or before the effective date of this Chapter may be permitted to continue, subject to the following conditions:
 - [i] If any pre-existing structure is destroyed by any means, including floods, to an extent of 50% or more of its replacement cost at time of destruction, it shall not be reconstructed, except in conformity with the provisions of this Chapter.
 - [ii] No pre-existing structure shall be moved, altered, expanded, changed or enlarged unless the provisions of this Chapter are complied with. This provision does not apply to routine maintenance and repair, provided that such maintenance and repair does not increase the flood damage potential of the structure.
 - [iii] In any portion of the flood plain an existing nonconforming use or structure may be altered or expansion does not increase its ground coverage or flood damage potential.

- (b) If actual construction of a structure is underway on or before the effective date of this Chapter, then such construction may be completed. "Actual construction" is hereby defined to include the placing of construction materials in a permanent position and fastened in a permanent manner. The provisions of § 17-41.4b(6)(a) above shall apply to such structures upon completion of construction.
- (c) Structures in the floodway abandoned for six consecutive months or longer and structures abandoned for 12 consecutive months or longer in the flood fringe area after the effective date of this chapter shall not qualify as pre-existing uses.
- (7) Flood map. The Board, after proper investigation, survey and public hearing, may recommend amendments to the Department of Housing and Urban Development Flood Map.

§ 17-42. VARIANCES.

a. Variances for Flood Plain Areas.

- (1) The issuance of a variance is for flood plain management purposes only and is subject to applicable state and federal laws and regulations. The Board, after examining the applicant's hardships, shall approve or disapprove a variance request.
- (2) The Federal Insurance Administrator may review the Board's findings justifying the granting of variances, and if that review indicates a pattern inconsistent with the objectives of sound flood plain management, the Federal Insurance Administrator may take appropriate action as set forth in Section 1909.24, Paragraph (b), of Federal Register, Volume 41, No. 207, dated Tuesday, October 26, 1976.
- (3) Variances may be issued by the Board for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places without regard to the procedures set forth in this section.
- (4) Procedures for the granting of variances by the Board are as follows:
 - (a) Variances shall not be issued by the Board within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - (b) Variances may be issued by the Board only for the replacement or reconstruction of existing nonconforming structures and for additions of not more than 150 square feet to existing residential structures on lots of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, in conformance with the procedures of this section.

- (c) Variances shall only be issued by the Board upon:
 - [i] A showing of good and sufficient cause by the applicant.
 - [ii] A determination that failure to grant the variance would result in exceptional hardship to the applicant.
 - [iii] A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (d) Variances shall only be issued after public hearing as required upon determination that the variance is the minimum necessary to afford relief considering the flood hazard.
- (e) The Board shall notify the applicant in writing that:
 - [i] The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage.
 - [ii] Such construction below the base flood elevation increase risks to life and property. Such notification shall be maintained with a record of all variance actions.
- (f) The Board shall:
 - [i] Maintain a record of all variance actions, including justification for their issuance.
 - [ii] Report such variances issued in its annual report submitted to the Federal Insurance Administrator.
- (g) The burden of proof to establish all of the elements required for the issuance of a variance shall be upon the applicant, who shall prove these elements by expert testimony and documentation.

§ 17-43. APPEALS.

If any person shall be aggrieved by the action of the Board, Construction Official or Borough Engineer, an appeal in writing to the Governing Body may be taken within 10 days after the date of such action. The Governing Body shall fix and notify the appellant of a time and place for a public hearing to be published in the official newspaper of the Borough at least 10 days prior to the hearing. All parties in interest shall be afforded an opportunity to be heard there. After such hearing, the Governing Body shall affirm or reverse the action of the Board, Construction Official or Borough Engineer, stating its findings and reasons for its action, and a written copy of such action shall be given to the appellant.

§ 17-44. ADMINISTRATION AND ENFORCEMENT.

- a. Administration and Enforcement of Stormwater and Flood Plain Regulations.
- (1) The administration and enforcement of the provisions of this Article relating to the construction, erection, maintenance and continued operation at design capacity of stormwater detention facilities and other facilities, structures, devices, and techniques required to carry out the objectives of this Article shall be the responsibility of the Borough Engineer.
 - (2) Failure to maintain any stormwater detention facility, structure or device at design capacity or to carry out required procedures or techniques shall be considered a violation of this Article.
 - (3) The Borough Engineer shall obtain, maintain, review and reasonably utilize any base flood elevation data available from any federal, state, or other source, until such other data has been provided by the Federal Insurance Administrator.
 - (4) The Borough Engineer shall maintain a permanent record of on-site water detention facilities in the Borough of Mount Arlington and shall make periodic inspections to determine that these facilities are being maintained at design capacities.
 - (5) The permanent record maintained by the Borough Engineer shall include the following information: elevation in feet above sea level of the lowest habitable floor and basement of all new construction and substantial improvements; and elevation to which a structure has been floodproofed. These records shall be made available for public inspection and be supplied upon request for the purpose of determining flood insurance premium rates.
 - (6) The Borough Engineer shall serve notice on the owner or occupant to correct any violation of this Article within 30 days. Upon failure of said owner or occupant to correct such violation, the Borough shall prosecute a complaint to correct such violation before the Municipal Judge.

ARTICLE X
Regulations of Piers, Boathouses, and Marinas⁹

§ 17-45. PURPOSE.

The purpose of these provisions is to provide for the reasonable control over the development of piers, boathouses, and marines so that the interest of individual waterfront property owners are balanced with the interests of the State, the community and the general public and to insure reasonable safe and unobstructed movement of water traffic as well as the most appropriate utilization of water resources and to secure safety and promote health, morals, and the general welfare of the Borough.

§ 17-46. GENERAL REQUIREMENTS APPLICABLE TO ALL PIERS, BOATHOUSES, AND MARINAS.

a. Requirements for Piers, Boathouses and Marinas.

- (1) No dock, pier, boathouse, or marina shall be constructed, enlarged or extended unless and until the owner secures from the Construction Official a building permit as provided under the Construction Code. Normal maintenance and repair shall not require a permit.
- (2) Prior to the issuance of a permit for a marina, the Planning Board shall review and approve a site plan showing, among other things, water and land traffic circulation, parking, moorings, landscaping, signs, and such other data as required in Article VI to permit a competent and thorough review.
- (3) Permit applications shall be referred to the Marine Police for any comments and suggestions as part of site plan review.
- (4) No pier, dock, or marina shall extend into any waterway beyond the pierhead line or more than 15% of the width of the waterway measured on a line perpendicular to the closest opposite shore, whichever is less. In no event shall any pier, dock, or marina extend into any dredged channel or waterway.
- (5) For the purpose of determining the exterior limits of piers, docks, and mainwalks, any structure (including pilings driven independently of another structure) used for the mooring of boats shall be considered to be a part of the pier itself.
- (6) The top of any pier, dock, or catwalk shall not be less than 14 inches from the highwater elevation.
- (7) It shall be the responsibility of the owner of a pier, boathouse, or marina to maintain said facility in good condition, free of litter or refuse. If said facility is in danger of becoming a hazard to residents, visitors, swimmers or boats, or could adversely affect navigation by reason of structural members extending or floating into waterways, then the Construction Official shall notify and

9. Editor's Note: See also the Mount Arlington Borough Code Chapter 70, Docks, Piers and Bulkheads.

require the owner to undertake repairs.

- (8) Nothing in this section shall be construed to waive the jurisdiction or remedies of the Planning Board, where applicable; and additionally, any pier, dock, boathouse or marina proposed to be extended beyond the pierhead line or beyond 15% of the width of the waterway shall also be approved by the State Department of Environmental Protection.

§ 17-47. DEVELOPMENT CONTROLS FOR PRIVATE PIERS AND DOCKS.

- a. No piers or docks shall be constructed, enlarged, or extended and no building permit shall be issued therefor except in compliance with the following requirements:
 - (1) Private piers and docks shall be permitted in all zones where lots have water frontage.
 - (2) No dock or pier shall be located within 10 feet of a side property line.
 - (3) The length of a pier shall not exceed the width of the lot at the mean waterline but in no event shall a pier extend beyond the pierhead line.
 - (4) No combination of docks and boathouses shall occupy more than 15% of the water lot area within the pierhead line.
 - (5) No dock, mainwalk, or pier shall have a width of less than four feet, exclusive of pilings or other structural members.
 - (6) There shall be not more than one doc, pier, or mainwalk for each lot or for each 100 feet of frontage.
 - (7) The distance between piers shall be a minimum of 21 feet.
 - (8) No dock, pier, or mainwalk shall provide permanent mooring facilities for more than four boats.
 - (9) In cases where docks or piers are covered, the requirements shall be the same as those required for boathouses.

§ 17-48. DEVELOPMENT CONTROLS FOR BOATHOUSES.

- a. No boathouse shall be constructed, enlarged, or extended and no construction permit shall be issued therefor except in compliance with the following requirements:
 - (1) Boathouses shall be permitted in all zones where lots have water frontage.
 - (2) No boathouse shall be located within 14 feet of a side property line.
 - (3) No boathouse shall be closer than 28 feet from a neighboring pier or boathouse.

- (4) Any combination of piers, docks, mainwalks, and boathouses shall not occupy more than 15% of the water lot area within the pierhead line. In no case shall a boathouse slope exceed 10% of the water lot area within the pierhead line.
- (5) There shall not be more than one boathouse for each lot.
- (6) Boathouses shall be located over the water and shall abut the lake shoreline.
- (7) Ingress and egress for boats shall be perpendicular to the shoreline.
- (8) There shall be no living or sleeping accommodations for cooking or toilet facilities provided in any boathouse.

§ 17-49. DEVELOPMENT CONTROLS FOR MARINAS.

- a. No marina shall be constructed, enlarged or extended and no construction permit shall be issued therefor except in compliance with the following requirements.
 - (1) Marinas shall be permitted only in those zones wherein said use is a permitted use.
 - (2) No docks, pier, or mainwalk (as part of a marina) shall be located within 16 feet of a side property line, nor shall a pier within a marina be located closer than 30 feet from a private pier.
 - (3) No marina shall occupy more than 25% of the water lot area within the pierhead line.
 - (4) No mainwalks shall be less than eight feet in width and no catwalks shall be less than two feet in width.
 - (5) More than one mainwalk or pier is permitted providing:
 - (a) The channel to open water shall not be less than four times the width of the widest boat moored in the marina.
 - (b) The clearance in berthing and maneuvering areas within the marina shall not be less than twice the length of the longest boat moored in the marina.
 - (6) In cases where piers are covered, the maximum height shall not exceed 16 feet above the high water mark.

§ 17-50. OTHER REQUIREMENTS APPLYING TO ALL WATERFRONT DEVELOPMENT.

- a. Additional Requirements for Waterfront Development.
 - (1) The maximum width of private docks shall be no more than five feet except upon authorization of the Planning Board under site plan approval where it can be demonstrated that additional width is required to assure structural stability. In any event, the overall width shall not exceed 10 feet.

- (2) The maximum width of catwalks shall be no more than four feet.
- (3) No solid structures shall be permitted which lowers or adversely affects the capacity of the lake or water flow except by permission of the Department of Environmental Protection.
- (4) Crib structures may be allowed providing their length does not exceed the width of the dock or pier.
- (5) Crib structures shall not exceed one-half of the span between adjacent piling bents.
- (6) Design of any structure must provide for free flow of water.

ARTICLE XI
Environmental Impact and Environmental Impact Statement

§ 17-51. ENVIRONMENTAL APPRAISAL.

a. Applications.

- (1) No application for development shall be approved unless it has been affirmatively determined, after an environmental appraisal, that the proposed project:
 - (a) Will not result in a significant adverse impact on the environment.
 - (b) Has been conceived and designed in such a manner that it will not significantly impair natural processes.
 - (c) Will not place a disproportionate or excessive demand upon the total resources available to the project site and to the impact area.
- (2) To facilitate the environmental appraisal, all applications for development not specifically exempted by the Planning Board must include 10 copies of an environmental impact statement (EIS) or an application for a waiver of the EIS requirement.

§ 17-52. WAIVERS.

The Planning Board may waive the requirements for an environmental impact statement, in whole or in part, if sufficient evidence is submitted by the developer, in an environmental impact report, to support a conclusion that the proposed project will have a negligible environmental impact or that a complete environmental impact statement need not be prepared in order to adequately evaluate the environmental impact. Notwithstanding the aforesaid, waivers shall not be granted for any proposed development in a PUD zone, developments located adjacent to Lake Hopatcong or which have a substantial impact on Lake Hopatcong and in areas having slopes exceeding 15%.

§ 17-53. CONTENTS OF ENVIRONMENTAL IMPACT STATEMENT.

Applicant shall discuss and analyze in the environmental impact statement those factors required for the particular project and any other factors pertinent to the proposed project.

§ 17-54. DATA REQUIRED.

The environmental impact statement shall consider, where pertinent to the project or required in § 17-55, the following items:

§ 17-54.1. The Proposed Project.

Describe, with suitable sketches and plans, the proposed project. This item shall summarize, rather than duplicate, the site plan and building plan.

§ 17-54.2. Existing Conditions of the Site and Affected Off-site Areas.

- a. The applicant will survey and describe the environmental features of the property recommended as the location of the proposed project. The applicant may utilize resource information available from the Borough, Morris County Soil Conservation District, and other official agencies. Generally, an inventory will consider the air quality, topography, surface water bodies, surface water quality, aquatic biota, soils, geology, groundwater, vegetation, wildlife, endangered species, archaeological and historical features. Forest vegetation is to be classified by type and age class. The distribution of types and classes will be indicated on a map, the scale of which will be one inch equals 100 feet or such other convenient scale. The location, species and diameter at 4 1/2 feet above the ground of all isolated trees eight inches, or dogwoods two inches, or more in diameter are to be shown on the same or on a separate map. On lots with large numbers of trees, tree masses may be shown. Current land use of the project property and adjacent properties within 500 feet will be indicated on a separate map. If the proposal is for residential or institutional use, ambient levels of noise throughout the anticipated area affected shall be determined.
- b. Any applicant for industrial and commercial enterprises must show that after construction and during normal operation the enterprise will not exceed the State of New Jersey regulations controlling industrial and commercial stationary sources (N.J.A.C. 7:29-1.1 et seq.).

§ 17-54.3. Wastewater Management.

- a. Estimate the expected flow of sewage, process water and/or other wastewater expected from the proposed development.
 - (1) If on-site disposal is proposed, indicate topography, soils and underlying geology, including water table, aquifer recharge areas and all wells within 500 feet of the disposal area and include results of required percolation tests and soil logs.
 - (2) If disposal is to an existing or new private or public facility, identify owner and location of the plant or facility, and location of existing collection point to which the proposed project would be connected. Applicant shall document that the expected flows from the proposed development will be accepted and can be treated adequately.
- b. Compliance with all applicable state and municipal health regulations and with all groundwater standards of the New Jersey Department of Environmental Protection.

§ 17-54.4. Water Supply.

- a. If the water is to be supplied from the site and a flow of 100,000 gallons per day or less is required, the applicant shall substantiate and explain the anticipated demand, present proof that aquifer can yield the desired amount of water, demonstrate that wells proposed for installation will meet acceptable standards and assess the effect

of proposed withdrawals on existing and proposed wells and surface water bodies within the predicted measurable cone of depression. If the plan includes 50 or more dwelling units, certification of the adequacy of the proposed water supply (and sewage) facilities shall be obtained from the New Jersey Department of Environmental Protection and included in the environmental impact statement.

- b. If the water is to be supplied from the site or other new sources and the total project demand for water supply is in excess of 100,000 gallons per day, the applicant shall obtain a diversion permit from the New Jersey Department of Environmental Protection. Preliminary development approval shall be contingent upon the granting of a diversion grant. The applicant shall assess the effect of any proposed wells and surface water bodies within the predicted measurable cone of depression in the environmental impact statement. The applicant will supply copies of all resources information provided to the New Jersey Water Policy and Supply Council in support of his application for a diversion grant.
- c. If the water is to be supplied from any existing private or public facility, the identification, owner and location of the facility and the location of existing distribution point to which the proposed project would be connected shall be provided. The applicant will submit documentary proof that the facility has the available excess capacity in terms of its allowable diversion and equipment to supply the proposed project and is willing to do so.

§ 17-54.5. Surface Drainage.

The applicant shall submit data establishing the rate and volume of stormwater runoff and identify the receiving body or bodies for such runoff from the site under original natural conditions and from the site during and after construction if the proposed project were implemented. Indicate plans for on-site retention or other techniques that are proposed for use to minimize peak storm flows and resultant downstream flooding. The boundaries of the flood plain shall be shown on one map which illustrates the existing condition of the site where the proposed project is to be implemented. Applicant shall submit evidence of compliance with Article IX, Stormwater and Floodplain Regulations.

§ 17-54.6. Stream Encroachments.

- a. Any proposed stream diversion or encroachment shall require approval of the New Jersey Department of Environmental Protection, and development approval shall be contingent upon this approval. Consultation with the Planning Board in early planning stages is recommended if such actions are contemplated.
- b. A certified copy of the encroachment application to the Division of Water Resources, New Jersey Department of Environmental Protection, shall accompany the environmental impact statement for any plan for which such permit is required by state law. The applicant shall supply copies of all resource information provided to the Division of Water Resources in support of his application for an encroachment permit.

§ 17-54.7. Solid Waste Disposal.

Estimate the volume of solid wastes, by type, expected to be generated from the proposed project during construction and operation and describe plans for collection, transportation and disposal of these materials. Identify the location(s), type(s) and owner(s) of the facility (facilities) which will receive such sold wastes. If the facility is a landfill, submit proof that it is registered with the Division of Environmental Quality, New Jersey Department of Environmental Protection, and is operated in compliance with the New Jersey Sanitation. Code and that it is legally empowered to accept type and quantity of waste.

§ 17-54.8. Air Quality.

Describe each source, its location, the quantity and nature of materials to be emitted from any furnace or other device in which coal, fuel, oil, gasoline, diesel fuel, kerosene, wood or other combustible material will be burned, or if any other source of air pollutants, including automobiles attracted by the facility, will be present on the site during or after construction. If a state or federal emission permit is required, a copy of the permit and all resource data submitted with the application for the permit shall accompany the environmental impact statement.

§ 17-54.9. Historical.

The applicant shall indicate any historical or archaeological features associated with the site. These shall include any significant architecture, evidence of historical settlements such as Indian burial grounds or camps, evidence of historical activities which may have taken place on the site or in the area such as Revolutionary War battles or encampments, and similar activities, structures, artifacts or features. Applicant shall indicate sources and references used in the investigation and if any historical or archaeological features are uncovered, what steps are proposed to preserve, transfer, or maintain the features.

§ 17-54.10. Traffic.

Describe the number of cars to be expected and the traffic pattern, including peak traffic, and how it relates to existing traffic patterns on adjacent roadways.

§ 17-54.11. Environmental Protective Measures.

The environmental impact statement shall contain a listing of all environmental protective measures which will be used should the proposed project be implemented. These are measures which will avoid or minimize adverse effects on the natural and man-made environment of the site and region during the construction and operation of the facility.

§ 17-54.12. Adverse Impacts Which Cannot Be Avoided.

The environmental impact statement shall contain a summary list, without discussion, of the potential adverse environmental impacts which cannot be avoided should the proposed project be implemented. Short-term impacts should be distinguished from

long-term impacts. Reversible impacts should be distinguished from irreversible impacts. Any impacts on critical areas, which include but are not limited to streams, floodways, wetlands, slopes of 20% or greater, highly acid or highly erodible soils, areas of high water table, aquifer recharge areas and mature stands of native vegetation, should specify the type of criteria involved and the extent of similar areas which will not be affected.

§ 17-54.13. Summary Environmental Assessment.

The environmental impact statement shall contain a concise summary of the environmental impact assessment for the proposed project. This summary will evaluate the adverse and positive environmental effects of the project should it be implemented and the public benefits expected to derive from the project, if any.

§ 17-54.14. Alternatives.

The EIS shall discuss and evaluate alternative solutions to the development proposal, including the no-build alternative.

§ 17-55. ENVIRONMENTAL IMPACT STATEMENT REQUIREMENTS.

The environmental impact statement shall include the following items for the proposed project as indicated:

See the following page for the Environment Impact Statement Requirements.

ENVIRONMENTAL IMPACT STATEMENT	Residential			Nonresidential	
	1-3 Dwelling Units	4-9 Dwelling Units	10 or more Dwelling Units	Accessory Buildings	Commercial, Industrial, Office & Retail
The proposed project	X	X	X	X	X
Existing conditions of the site and affected off-site areas (includes groundwater, surface geology, subsurface geology, soils, ground cover, flora, fauna, drainage, land use, vegetation, wildlife and archaeological and historical features)	X	X	X		X
Wastewater management	X	X	X		X
Water supply	X	X	X		X
Surface drainage		X	X		X
Stream encroachment	X	X	X	X	X
Solid waste disposal.			X	X	X
Air quality.		X	X		X
Noise quality		X	X		X
Traffic		X	X		X
Environmental protective measures	X	X	X	X	X
Adverse impacts which cannot be avoided	X	X	X	X	X

ENVIRONMENTAL IMPACT STATEMENT	Residential			Nonresidential	
	1-3 Dwelling Units	4-9 Dwelling Units	10 or more Dwelling Units	Accessory Buildings	Commercial, Industrial, Office & Retail
Summary environmental assessment		X	X	X	X
Alternatives	X	X	X		X

ARTICLE XII Critical Area Development Control

§ 17-56. SHORT TITLE.

This Article XII of the Land Development Chapter shall be known and may be cited as the Mount Arlington Critical Areas Development Control Article.

§ 17-57. PURPOSE.

It is the purpose of this Article to protect the health, safety and welfare of people and property within the Borough of Mount Arlington from improper construction, building and development on steep slope and hillside areas in the Borough and more particularly, but without limitation, to reduce the peculiar hazards which exist in hillside areas by reason of erosion, siltation, flooding, soil slippage, surface water runoff pollution of potable water supplies from nonpoint sources, and destruction of unique and predominant views. It is a further purpose of the Article to encourage appropriate planning design and development sites within hillside areas which preserve and maximize the best use of the natural terrain and maintain ridgelines and skylines intact.

§ 17-58. APPLICABILITY.

a. Applicability to Major Projects.

- (1) This Article shall apply to all applications for major developments in the Borough of Mount Arlington.
- (2) The Planning Board shall approve all plans submitted under this Article as part of any application for major site plan approval or major subdivision approval.
- (3) The Borough Engineer, after referral to and recommendation by the Planning Board in appropriate cases, shall approve all applications for building permits for compliance with this Article.

§ 17-59. INITIAL PROCEDURE.

a. Applications and Applicability.

- (1) Applicants for site plan approval, subdivision approval or a building permit shall submit to the Planning Board Clerk all information and documents (exhibits) required by this Article.
- (2) The Planning Board Clerk shall process all exhibits submitted under this Article in the same manner as applicators for subdivision approval or site plan approval. The Planning Board may refer exhibits to qualified experts for review including but not limited to the Soil Conservation Service and/or the Borough Engineer.
- (3) If the application for a building permit involves land where development is proposed only on slopes of 15% or less, the Planning Board may waive

application of this Article.

§ 17-60. INFORMATION REQUIRED.

a. Submissions.

- (1) For all sketch plats, sketch site plans and applications for building permits, the following exhibits shall be submitted.
 - (a) Topography map at a scale not less than 1" = 50' showing existing contours at two foot intervals.
 - (b) Areas clearly identified showing the following: (1) slopes as measured between contour lines: Area 1, 30% or higher; Area 2, 21%-29%; Area 3, 16%-20%; Area 4, 0%-15%; (2) flood hazard areas based on Department of Environmental Protection or other reliable source; (3) wetlands based on National Wetlands Inventory or survey by qualified expert; (4) bodies of water.
 - (c) Calculations, in square footage and acres, of amount of area in the various categories listed above.
- (2) Only where a major development is proposed on slopes greater than 15%, as part of preliminary subdivision approval or preliminary site plan approval the following additional exhibits, prepared by a qualified individual or firm, as determined by the Planning Board, may be required to be submitted.
 - (a) Extent and erodibility potential of exposed soils.
 - (b) Length, steepness and surface roughness of exposed slopes.
 - (c) Resistance of soil to compaction and stability of soil aggregates.
 - (d) High-water table, water infiltration capacity and capacity of soil profile.
 - (e) Chemical, physical and biological nature of subsurface soils.
 - (f) Type and location of construction activity, including the amount of site grading.
 - (g) The time period of exposure of erodible soils during construction.
 - (h) The area and density of woodlands and forests, within the construction site and on contiguous lands for a distance of 500 feet. All significant tree specimens, eight inches in diameter, measured four and one-half (4-1/2) feet above the ground; dogwoods, two inches in diameter, within the work area shall be indicated on development plans as well as physically marked on the construction site.
 - (i) The extent of impervious surface to be constructed.
 - (j) Location of construction access roads.

- (k) Calculation of amount of site grading, to include a cut-and-fill balance sheet, including cross-sections, and indicating, where applicable, the volume of a source of off-site fill.

§ 17-61. STANDARDS OF APPROVAL.

a. Standards for Development Plans and Improvements.

- (1) The Planning Board or Borough Engineer, as the case may be, shall review and approve only those applications where development plans and necessary improvements accomplish the following:
 - (a) Control velocity and rate of runoff so that such velocity and rate are no greater after construction and development than before and all other provisions of the Mt. Arlington Stormwater and Flood Plain Regulations Article have been complied with.
 - (b) Minimize stream turbidity and changes in flow.
 - (c) Stabilize exposed soils both during and after construction and development.
 - (d) Prevent soil slippage.
 - (e) Minimize number and extent of cuts to prevent groundwater discharge areas.
 - (f) Preserve maximum number of trees and other vegetation on the site and avoid the critical upland forest areas.
 - (g) Avoid disturbance of critical areas.
- (2) The Planning Board or the Borough Engineer, as the case may be, may impose such conditions upon any approval as said Board or Engineer deems necessary to achieve the above-stated goals. All permanent improvements necessary to achieve the above criteria shall be bonded in the same manner as set forth in Article IV, Development Procedures, for subdivisions and site plans.
- (3) Any approval may be subject to the condition that the applicant provide and adhere to a detailed construction schedule, copies of which shall be supplied to the Borough Engineer and the Borough Construction Official for the purpose of monitoring the progress of the work and compliance with the construction schedule. Said approval may be further conditioned upon submission of periodic certifications by the applicant as to compliance with the construction schedule, and, in the event of noncompliance, written assurance as to the nature and time when steps will be taken to achieve compliance with the construction schedule.
- (4) If the applicant becomes unwilling or unable to comply with the construction schedule or any other requirement or conditions attached to the approval of the Construction Official certifies such unwillingness or inability to the Planning

Board, the Planning Board may thereupon revoke approval of the application, after notice and hearing to the applicant, and no further work may be performed on such site with the exception of temporary measures necessary to stabilize the soil and to protect the site from stormwater damage or other hazards created by construction activity on the site.

§ 17-62. DENSITY COMPUTATIONS.

a. Modification of Standards.

- (1) To meet the purposes, goals and standards set forth in this Article, the applicable provisions of Article VIII, Zoning, relating to lot sizes and density of development shall be modified in areas of slopes greater than 15%, flood hazard areas, wetlands, and bodies of water.
- (a) The modification shall be determined by multiplying the total land area in the various categories by the following factors. Where categories overlap, the more restrictive factor shall be used.

CRITICAL AREA CATEGORY	
	Factor
Flood Hazard Areas	0.0
Wetlands	0.0
Bodies of Water	0.0
Slopes	
30 or greater	0.0
21-29	0.2
16-20	0.5
0-15	1.0

Land within the Borough will be classified into the following slope areas:

0 - 14.9	0% to 15%
15 - 19.9	16% to 20%
20 - 29.9	21% to 29%
30 and over	30% or greater

- (b) For classification purposes, slope areas shall be computed for the various slope categories between two foot contours. The percent of slope, rise in 100 foot run, shall be established by measurement of run perpendicular to the contours.
- (c) Density Modification Formula. The maximum number of dwelling units

or nonresidential floor area allowed on any tract shall be computed as follows:

(Acreage of land with 30% or more slopes \times 0.0)	= _____
+(Acreage of land with 21%-29% slopes \times 0.2)	= _____
+(Acreage of land with 16% to 20% slopes \times 0.5)	= _____
+(Acreage of land with 0% to 15% slopes \times 1.0)	= _____
(Acreage of Flood Hazard Areas \times 0.0)	= _____
(Wetlands \times 0.0)	= _____
(Bodies of Water \times 0.0)	= _____
=Total Acreage available for development (TLD)	= _____

- (d) For residential development the following formula shall be used:

TLD

Minimum lot area required/d.u. = Total number of dwelling units on tract

- (e) For nonresidential development, the following formula should be used:

TLD \times FAR = Maximum permitted floor area

- (2) Within any area containing slopes of 30% or greater, no subdivision shall be created or site plan approved except in conformance with the following regulations:

- (a) All slopes of 30% or greater located on a tract of land shall be protected from disturbance and preserved in a natural state, except as provided hereafter.
- (b) All areas of a tract of land containing slopes of 30% or greater shall be delineated on a plan showing the proposed site plan or subdivision. Slope delineation shall be in accordance with this Chapter.
- (c) Roadways shall be designed to follow natural terrain. Natural slopes of 30% or greater shall not be disturbed for road construction.
- (d) At the Planning Board's discretion, slopes 30% or greater may be disturbed provided that the slope of 30% or greater is man-made or represents an isolated topographic condition, the disturbance of which will not result in significant modification to the drainage capabilities or visual character of the property.
- (e) Development shall be designed in accordance with the following standards:

[i] Structures shall be located in areas that do not include the top of

ridge lines.

- [ii] Structures shall be located on the edges of fields and in wooded areas to minimize the visual impact of development.
 - [iii] Building envelopes shall not include wetlands, transition areas and flood plains.
 - [iv] Not more than 50% of the building envelope shall contain slopes 30% or greater.
- (3) Applicants shall be encouraged to concentrate development on lesser slopes. The Planning Board, in appropriate cases and with adequate safeguards, may authorize development on lots smaller than permitted in the zone, in accordance with the provisions of the Zoning Sections in Article VIII regulating cluster developments, provided the total number of dwelling units does not exceed the maximum allowed after application of the density modification formula.

All land required to be maintained as permanent open space shall be indicated as such on any approved plans.

ARTICLE XIII
Validity

§ 17-63. VALIDITY.

If any section, sentence, clause or phrase of this Chapter is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this article.

ARTICLE XIV
Repealer

§ 17-64. REPEALER.

This Chapter 17, Land Development, as adopted by Ordinance No. 91-18, specifically repeals existing Chapter 15, Land Subdivision, and Chapter 16, Zoning, of the Code of the Borough of Mount Arlington. In addition, all ordinances and parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

ARTICLE XV
Effective Date

**§ 17-65. EFFECTIVE DATE. [Chapter 17 adopted 12-18-91 by Ord. No. 91-18,
Chapter 17 accepted as revised and supplemented by Ord. No. 12-2015]**

This Chapter shall take effect immediately after passage, publication, and filing in a manner provided by law.

ARTICLE XVI
Highlands Preservation Area

§ 17-66. HIGHLANDS AREA DEVELOPMENT APPLICATION.

§ 17-66.1. Applicability.¹⁰ [Ord. No. 08-2015 § 1]

This Section 17-66 shall apply to any Application for Development involving lands located within (or partially within) the Borough Highlands Area (as illustrated in Exhibit 1, "Borough of Mount Arlington Highlands Preservation Area," and included as an attachment to this chapter) that seeks approval of a site plan, subdivision, or change in use, where approval of such application would:

- a. For residential development, create three or more dwelling units;
- b. For nonresidential development:
 - (1) Result in the ultimate disturbance of one acre or more of land;
 - (2) Produce a cumulative impervious surface area of 1/4 acre, or more; or
 - (3) Introduce or expand on any of the following land uses/facilities:
 - (a) Landfills;
 - (b) Permanent storage or disposal of hazardous wastes, industrial or municipal sludge or radioactive materials, including solid waste landfills;
 - (c) Collection and transfer facilities for hazardous wastes, solid wastes that contain hazardous materials, and radioactive materials;
 - (d) Industrial treatment facility lagoons; or
 - (e) Any Major or Minor Potential Contaminant Source (as identified in Appendix A and Appendix B of this Section 17-66, respectively, and included as attachments to this chapter) on lands located within 200 feet of the wellhead of any public community well or public non-community well, as these are defined at subsection 17-66.6 below.

All thresholds in paragraphs a and b above, shall be interpreted to apply cumulatively over time, beginning as of the effective date of this Section 17-66. If or when any one of the thresholds is reached, this Section 17-66 shall apply to any and all development in excess of that threshold. Where an application proposes a mixed use, the thresholds in paragraph b., for nonresidential development shall apply to the whole of the project, while that in paragraph a., shall apply to the residential component. For purposes of this Section 17-66, the phrases "Application for Development," "Highlands Area," "residential development," "ultimate disturbance," and "cumulative impervious surface area" shall be defined

10. Editor's Note: Section 17-66 was adopted 10/6/15 by Ordinance No. 08-2015.

as provided at subsection 17-66.6 below.

§ 17-66.2. Administrative Completeness. [Ord. No. 08-2015 § 2]

- a. Consistency Determinations Required. No Application for Development included in subsection 17-66.1 above, shall be deemed complete or considered for review by the applicable Land Use Board until and unless the applicant has obtained and provided a copy of:
 1. A Consistency Determination from the Highlands Council indicating that the application is consistent with the Highlands Regional Master Plan; or
 2. A Consistency Determination from the Highlands Council indicating that the application is not consistent with the Highlands Regional Master Plan, accompanied by a certification, as detailed in paragraph b below.
- b. Findings of Inconsistency. Where a Highlands Council Consistency Determination indicates that an Application for Development is inconsistent with the Highlands Regional Master Plan, no such application shall be deemed complete or considered for review by the applicable Land Use Board, until or unless the applicant has obtained from the professional(s) responsible for preparation of the applicant's plans, a certification indicating that to the best of the knowledge and abilities of such professional(s), the application has, since review by the Highlands Council, been revised to achieve consistency with the Highlands Regional Master Plan, and specifically describing the revisions made to achieve such consistency.
- c. Checklist Waiver. The Borough may issue a waiver from the provisions of this subsection 17-66.2 where it can be established by the applicant and can be verified by the designated representative(s) of the Borough that:
 1. The activity, improvement or development proposed by the subject Application for Development has not yet been formally determined to be exempt from the Highlands Act (see subsection 17-66.5b, below), but eligibility for an exemption has been sufficiently established by the applicant; or
 2. The activity, improvement or development proposed in the Application for Development will neither encroach upon a Highlands Resource or Highlands Resource Area, nor be of detrimental impact to any Highlands resource or Highlands Resource Area as these are identified and delineated in the Highlands Regional Master Plan. The applicant's professional(s) responsible for preparation of the applicant's plan shall establish compliance of the above through a formal certification specifically addressing the Highlands Resources and Resource Areas and related policies and objectives as identified in Chapter 4 of the Highlands Regional Master Plan.
- d. Highlands Council Call-Up. All municipal waivers or findings of application completeness issued pursuant to this subsection 17-66.2 shall be issued in writing, inclusive of a statement indicating the rationale for the determination. All such

determinations shall be subject to Highlands Council call-up review, and shall include conditions requiring same consistent with this paragraph. The municipality shall within five calendar days of issuance of all such determinations, provide a copy of the decision to the applicant and to the Highlands Council. The Highlands Council call-up review period shall expire 15 calendar days following its receipt of same. Upon determining to exercise this authority for call-up review, the Highlands Council shall transmit notice to the applicant and the municipality. Absent any such notification from the Highlands Council within that timeframe, the application shall be considered complete, with the date of the waiver or finding of application completeness to be as of the date of first issuance by the municipality.

§ 17-66.3. Notice Requirements. [Ord. No. 08-2015 § 3]

The provisions of this subsection 17-66.3 shall apply in addition to all requirements concerning public notice for Applications for Development as provided under the MLUL and required pursuant to the underlying municipal land use ordinances.

- a. Notice to Highlands Council of Application. The applicant for any Application for Development shall provide notice to the Highlands Council at least 10 days prior to the date on which the application is scheduled for consideration by the local Board. A copy of the complete application shall accompany such notice regarding any Application for Development involving the potential disturbance of two acres, or more, or a cumulative increase in impervious coverage of one acre, or more. The applicant shall provide copies of any subsequent revisions to such applications to the Highlands Council at the same time these are provided to the reviewing Board. If such plans or plats have been prepared in digital form, they shall be provided to the Highlands Council in a digital format that meets Highlands Council standards for such submissions.
- b. Notice of Decision Required. The reviewing Board shall provide a certified copy of the fully-executed resolution memorializing its final decision regarding any Application for Development to the Highlands Council within 10 days of its adoption. This provision shall apply in all cases, whether the Board approves the Application for Development, denies it, or approves it with conditions.

§ 17-66.4. Highlands Council Call-Up Provisions. [Ord. No. 08-2015 § 4]

All Board decisions pertaining to Applications for Development involving the ultimate disturbance of two acres or more of land or a cumulative increase in impervious surface by one acre or more, are subject to call-up and subsequent review by the Highlands Council in accordance with procedural requirements and timeframes established pursuant to the Highlands Act. The Highlands Council may, on notice to the applicant within 15 calendar days of receipt of the memorializing resolution of the reviewing Board, review and require a public hearing on the application. In that case, subsequent to the hearing the Highlands Council may approve the Application for Development, deny it, or issue an approval with conditions.

The following conditions of approval shall be attached to any Application for

Development approved pursuant to the MLUL which involves lands within or partially within the Highlands Preservation Area.

- a. No Land Disturbance. No land disturbance approved in connection with an Application for Development involving the ultimate disturbance of two acres or more of land or a cumulative increase in impervious surface by one acre or more, shall occur until and unless, either:
 - (1) The Highlands Council call-up period has expired without issuance of a notice seeking review of the application by the Highlands Council; or
 - (2) The Highlands Council has issued notice, and has reviewed the approval pursuant to N.J.S.A. 13:20-17(a)1 and has determined not to deny or modify the approval.
- b. Amendments. In the event that Highlands Council review of an approved Application for Development pursuant to this subsection 17-66.4 results in a finding that the plans must be modified, the applicant shall amend the application accordingly and submit the amended application to the reviewing Board for approval. Such submissions shall include the written findings and notice of decision of the Highlands Council and any subsequent approval by the Land Use Board shall incorporate any conditions imposed by the Highlands Council.
- c. Approvals Conditioned on State Approvals. All approvals shall be subject to the approval of any and all State agencies or other authorities having jurisdiction over any aspect or aspects of the approved Application for Development.
- d. As-Built Surveys Required. Prior to issuance of any final Certificate of Occupancy or Approval, or to the release of any performance bonding held in relation to the approved Application for Development, the applicant shall provide an "as-built" survey depicting the final site conditions.
- e. Submission of Final Plans/Plats to Highlands Council. The applicant shall provide a copy of any final site plan or subdivision plat to the Highlands Council. If such plans or plats have been prepared in digital form, they shall be provided to the Highlands Council in a digital format that meets Highlands Council standards for such submissions in lieu of copies printed on paper.

§ 17-66.5. Exclusions and Exemptions. [Ord. No. 08-2015 § 5]

- a. Exclusions. The following specific improvements and related applications shall be excluded from the provisions of this Section 17-66:
 - (1) The reconstruction, within the same footprint, of any building or other structure lawfully existing as of the effective date of this Section 17-66, in the event of its destruction or partial destruction by fire, storm, natural disaster, or any other unintended circumstance.
 - (2) Any improvement or alteration to a building or other structure lawfully existing as of the effective date of this Section 17-66, where such improvement

or alteration is necessary for compliance with the provisions of the Americans with Disabilities Act, or to otherwise provide accessibility to the disabled.

- (3) Any Agricultural or Horticultural Use or Development that would not result in either:
 - (a) An increase, since the date of enactment of the Highlands Act (August 10, 2004), either individually or cumulatively, of new agricultural impervious cover of greater than 3% to the total land area of a Farm Management Unit. Solar panels shall not be included in any calculation of agricultural impervious cover (all terms as defined in subsection 17-66.6, below); or
 - (b) Construction of three or more residential dwelling units (including accessory dwelling units) served by individual on-site septic system(s).
- b. Exemptions. Any activity, improvement or development project listed and demonstrated to constitute a Highlands Act exemption shall be exempt from the provisions of this Section 17-66. Formal demonstration of a Highlands Act exemption for an Application for Development involving lands located (or partially located) in the Preservation Area shall consist of one of the following:
 - (1) State Agency Determination. State Agency Determinations shall consist of a Highlands Applicability Determination (HAD) issued by the NJDEP indicating that the proposal qualifies as a Highlands Act Exemption.
 - (2) Municipal Determination. Pursuant to Borough Ordinance #09-15, entitled "Borough of Mount Arlington Highlands Area Exemption Ordinance," effective as of October 6, 2015 and codified as Section 17-67, for any application under this Section 17-66 involving Highlands Act Exemptions #4, #6, #7, or #8, the applicant may request and shall be deemed to have satisfied the evidentiary requirement by obtaining a Municipal Exemption Determination issued by the Municipal Exemption Designee, provided such Determination indicates that the proposal qualifies as a Highlands Act Exemption. The applicant may rely upon the findings of a Municipal Exemption Determination to the same extent and with the same protections as would apply in the case of a HAD issued by the NJDEP.

§ 17-66.6. Definitions. [Ord. No. 08-2015 § 6]

For the purpose of this Section 17-66, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Section 17-66 clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

AGRICULTURAL OR HORTICULTURAL DEVELOPMENT — Means construction for the purposes of supporting common farm site activities, including but not limited to,

the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

AGRICULTURAL OR HORTICULTURAL USE — Means the use of land for common farm site activities, including but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

AGRICULTURAL IMPERVIOUS COVER — Means agricultural or horticultural buildings, structures or facilities with or without flooring, residential buildings and paved areas, but not meaning temporary coverings.

APPLICANT — Means a developer submitting an Application for Development.

APPLICATION FOR DEVELOPMENT — Means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance, or direction of the issuance of a permits pursuant to section 25 or section 27 of P.L. 1975, c. 291 (C. 40:55D-34 or C. 40:55D-36).

DISTURBANCE — Means the placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation.

DISTURBANCE, ULTIMATE — Means the total existing or proposed area of disturbance of a lot, parcel, or other legally designated (or otherwise legally recognized) tract or subdivision of land, for the purpose of, and in connection with, any human activity, property improvement, or development, including the surface area of all buildings and structures, all impervious surfaces, and all associated land disturbances such as excavated, filled, and graded areas, and all lawn and landscape areas. Ultimate disturbance shall not include areas of prior land disturbance which at the time of evaluation: a) contain no known man-made structures (whether above or below the surface of the ground) other than such features as old stone rows or farm field fencing; and b) consist of exposed rock outcroppings, or areas which, through exposure to natural processes (such as weathering, erosion, siltation, deposition, fire, flood, growth of trees or other vegetation) are no longer impervious or visually obvious, or ecologically restored areas which will henceforth be preserved as natural areas under conservation restrictions.

FARM MANAGEMENT UNIT — Means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

HIGHLANDS COUNCIL — Means the New Jersey Highlands Water Protection and Planning Council.

HIGHLANDS ACT — Means the Highlands Water Protection and Planning Act, P.L.

2004, c. 120, as amended, codified in part at N.J.S.A. 13:20-1 et seq.

HIGHLANDS APPLICABILITY DETERMINATION (HAD) — Means the determination made by the NJDEP of whether a project proposed for the Preservation Area is a major Highlands development, whether any such major Highlands development is exempt from the Highlands Act, and whether the project is consistent with the applicable Areawide Water Quality Management Plan.

HIGHLANDS AREA — Means that portion of the municipality for which the land use planning and regulation are in conformance with, or are intended or proposed to be in conformance with, the Highlands Regional Master Plan, specifically in the context of this Section 17-66, the Borough of Mount Arlington Highlands Preservation Area.

HIGHLANDS REGION — Means all that area within the boundaries of the municipalities listed in subsection a of section 7 of the Highlands Act.

IMPERVIOUS SURFACE — Means any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, including, but not limited to, porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

IMPERVIOUS SURFACES, CUMULATIVE — Means the total area of all existing or proposed impervious surfaces situated or proposed to be situated within the boundary lines of a lot, parcel, or other legally recognized subdivision of land, expressed either as a measure of land area such as acreage, or square feet, or as a percentage of the total lot or parcel area.

MAJOR POTENTIAL CONTAMINANT SOURCES (PCS) — Means land uses and activities determined by the Highlands Council to pose a major risk of ground water contamination (see Appendix A included as an attachment to this chapter).

MINOR POTENTIAL CONTAMINANT SOURCES (PCS) — Means land uses and activities determined by the Highlands Council to pose a minor risk of ground water contamination (see Appendix B included as an attachment to this chapter).

MUNICIPAL LAND USE LAW (MLUL) — Means the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

NJDEP — New Jersey Department of Environmental Protection.

NJDEP PRESERVATION AREA RULES — Means the regulations established by the NJDEP to implement requirements of the Highlands Act, titled "Highlands Water Protection and Planning Act Rules," and codified at N.J.A.C. 7:38-1 et seq.

PLANNING AREA — Means lands within the Highlands Region not within the Preservation Area (N.J.S.A. 13:20-7).

PLAN CONFORMANCE — Means the process by which a municipality revises the master plan, development regulations and other regulations related to the development and use of land to conform them with the goals, requirements, and provisions of the Regional Master Plan in accordance with the Highlands Plan Conformance Guidelines.

PRESERVATION AREA — Means that portion of the Highlands Region so designated by subsection b of section 7 of the Highlands Act.

PUBLIC COMMUNITY WELL — Means a well that provides water to a public water system serving at least 15 service connections used by year-round residents or regularly serving at least 25 year-round residents.

PUBLIC NON-COMMUNITY WELL — Means a well that is not a public community well and that provides water to a public water system regularly serving at least 25 individuals for at least 60 days in any given calendar year.

REGIONAL MASTER PLAN (RMP) — Means the Highlands Regional Master Plan or any revision thereof adopted by the Highlands Council pursuant to N.J.S.A. 13:20-8.

SOLAR PANEL — Means an elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array. (As defined by the Highlands Act, N.J.S.A. 13:20-1 et seq, as amended.)

STRUCTURE — Means 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.

§ 17-67. HIGHLANDS PRESERVATION AREA EXEMPTION ORDINANCE.

§ 17-67.1. Title, Purpose, Scope.¹¹ [Ord. No. 09-2015 Article 1]

a. Title.

This Section 17-67 shall be known and cited as the "Borough of Mount Arlington Highlands Area Exemption Ordinance."

b. Purpose.

The purpose of this Section 17-67 is to set forth the procedural and substantive requirements by which the municipality will issue Highlands Act Exemption Determinations. Such determinations pertain only to Highlands Act Exemptions 1, 2, 4, 5, 6, 7, and 8. Highlands Act Exemption Determinations indicate whether proposed activities, improvements or development projects affecting lands located within the Borough's Highlands Area are exempt from the Highlands Water Protection and Planning Act ("Highlands Act," N.J.S.A. 13:20-1 et seq.), and are therefore exempt from the Highlands Water Protection and Planning Council's ("Highlands Council") Regional Master Plan, the New Jersey Department of Environmental Protection's (NJDEP) Highlands Water Protection and Planning Act Rules ("Preservation Area Rules," N.J.A.C. 7:38-1 et seq.), and from any amendments to the Borough's master plan, development regulations, or other regulations adopted pursuant to the approval of the Borough's Petition for Plan Conformance by the Highlands Council.

c. Scope/Applicability.

11. Editor's Note: Section 17-67 was adopted 10/6/15 by Ordinance No. 09-2015.

The provisions of this Section 17-67 pertain to activities, improvements and development projects involving lands located within the Borough's Highlands Area. The Highlands Area comprises that portion of the municipality for which the applicable provisions of the Borough Master Plan, land use ordinances and other pertinent regulations have been deemed by the Highlands Council to be in conformance with the Highlands Regional Master Plan (RMP) (see subsection 17-67.3a(1)). The provisions of this Section 17-67 shall not be construed to alleviate any person or entity from the provisions and requirements of any other applicable ordinances, rules, or regulations of the municipality, or from any other applicable law, regulation, or requirement of any county, state, or federal authority having jurisdiction. Nor shall the provisions of this Section 17-67 deprive any person or entity from seeking a Highlands exemption determination from the NJDEP or the Highlands Council.

d. Statutory Authority.

This Section 17-67 is adopted under the authority of the Highlands Act and the New Jersey Municipal Land Use Law ("MLUL", N.J.S.A. 40:55D-1 et seq.). In the Highlands Act, the Legislature identified numerous categories of activities that are exempt from the Act, the RMP, the Preservation Area Rules, and any amendments to a master plan, development regulations, or other regulations adopted by a local government to conform them to the RMP. See N.J.S.A. 13:20-28. The Legislature granted the Highlands Council the authority to administer the plan conformance process and to approve, reject, or approve with conditions municipal plan conformance petitions. See N.J.S.A. 13:20-14, -15. The Legislature, through the MLUL, granted authority to New Jersey municipalities to govern land use and development within their borders and, through the Highlands Act, established requirements for Highlands municipalities to conform their land use and development regulations with the RMP. In a July 19, 2012 Memorandum of Understanding (MOU) between the Highlands Council and the NJDEP, the Council and the NJDEP recognized the circumstances in which it would be appropriate for conforming, Highlands Council-certified municipalities to make determinations regarding specified Highlands Act exemptions.

e. Severability.

If any section, sentence, clause or phrase of this Section 17-67 is held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall in no way affect the validity of the ordinance as a whole, or of any other portion thereof.

f. Effective Date.

This Section 17-67 shall take effect after final passage and publication in the manner required by law.

§ 17-67.2. Definitions. [Ord. No. 09-2015 Article 2]

a. Word Usage.

Terms used in the body of this Section 17-67 which are defined by the Highlands Act (N.J.S.A. 13:20-3) are intended to have the same definitions as provided in the Highlands Act. Unless expressly stated to the contrary or alternately defined herein, terms which are defined by the MLUL are intended to have the same meaning as set forth in the MLUL. For purposes of this Section 17-67, the terms "shall" and "must" are indicative of a mandatory action or requirement while the word "may" is permissive.

b. Definitions.

For purposes of this Section 17-67, the following definitions shall apply:

AGRICULTURAL OR HORTICULTURAL DEVELOPMENT — Construction for the purposes of supporting common farmsite activities, including but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing (N.J.S.A. 13:20-3.)

AGRICULTURAL OR HORTICULTURAL USE — The use of land for common farmsite activities, including but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing. (N.J.S.A. 13:20-3.)

AGRICULTURAL IMPERVIOUS COVER — Agricultural or horticultural buildings, structures or facilities with or without flooring, residential buildings and paved areas, but not meaning temporary coverings. (N.J.S.A. 13:20-3.)

APPLICANT — Any entity applying to the Board of Health, Planning Board, Zoning Board of Adjustment, Zoning Officer, Construction Official or other applicable authority of the municipality for permission or approval to engage in an activity that is regulated by the provisions of this Section 17-67.

APPLICATION FOR DEVELOPMENT — The application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance, or direction of the issuance of a permit pursuant to section 25 or section 27 of P.L. 1975, c. 291 (C. 40:55D-34 or C. 40:55D-36).

BUILDING PERMIT — Used interchangeably with the term "Construction Permit;" see definition below.

CONSTRUCTION PERMIT — A permit issued pursuant to the New Jersey Uniform Construction Code, Chapter 23 of Title 5 of the New Jersey Administrative Code (N.J.A.C. 5:23-1 et seq.), providing authorization to begin work subject to the conditions and requirements established under the provisions

therein.

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 of 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 pursuant to the MLUL. (N.J.S.A. 13:20-3; N.J.S.A. 40:55D-4.)

DISTURBANCE — The placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation. (N.J.S.A. 13:20-3.)

DISTURBANCE, ULTIMATE — The total existing or proposed area of disturbance of a lot, parcel, or other legally designated (or otherwise legally recognized) tract or subdivision of land, for the purpose of, and in connection with, any human activity, property improvement, or development, including the surface area of all buildings and structures, all impervious surfaces, and all associated land disturbances such as excavated, filled, and graded areas, and all lawn and landscape areas. Ultimate disturbance shall not include areas of prior land disturbance which at the time of evaluation: a) contain no known man-made structures (whether above or below the surface of the ground) other than such features as old stone rows or farm field fencing; and b) consist of exposed rock outcroppings, or areas which, through exposure to natural processes (such as weathering, erosion, siltation, deposition, fire, flood, growth of trees or other vegetation) are no longer impervious or visually obvious, or ecologically restored areas which will henceforth be preserved as natural areas under conservation restrictions.

ENVIRONMENTAL LAND USE OR WATER PERMIT — A permit, approval, or other authorization issued by the Department of Environmental Protection pursuant to the "Freshwater Wetlands Protection Act," P.L. 1987, c. 156 (C. 13:9B-1 et seq.), the "Water Supply Management Act," P.L. 1981, c. 262 (C. 58:1A-1 et seq.), the "Water Pollution Control Act," P.L. 1977, c. 74 (C. 58:10A-1 et seq.), "The Realty Improvement Sewerage and Facilities Act (1954)," P.L. 1954, c. 199 (C. 58:11-23 et seq.), the "Water Quality Planning Act," P.L. 1977, c. 75 (C. 58:11A-1 et seq.), the "Safe Drinking Water Act," P.L. 1977, c. 224 (C. 58:12A-1 et seq.), or the "Flood Hazard Area Control Act," P.L. 1962, c. 19 (C. 58:16A-50 et seq.) (N.J.S.A. 13:20-3).

FARM MANAGEMENT UNIT — A parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise. (N.J.S.A. 13:20-3.)

FOREST MANAGEMENT PLAN — A written guidance document describing the forest resources present on a property, the landowner's management goals and objectives, and the recommended practices or activities to be carried out over time on the land. This tool is used to evaluate a forest land's current state and provide a management process which, over time, meets the landowner's objectives, while maintaining health and vigor of the resource. Forest Management Plans are

typically written for a 10 year period. (RMP, Glossary.)

FARMSITE — A Farm Management Unit as defined above.

HIGHLANDS APPLICABILITY DETERMINATION — A determination made by the NJDEP (pursuant to N.J.A.C. 7:38-2.4) indicating whether a project proposed for the Preservation Area is a major Highlands development, whether any such major Highlands development is exempt from the Highlands Act, and whether the project is consistent with the applicable Areawide Water Quality Management Plan.

HIGHLANDS AREA — That portion of the municipality for which the land use planning and regulation are in conformance with, or are intended or proposed to be in conformance with, the Highlands RMP.

HIGHLANDS PRESERVATION AREA APPROVAL (HPAA) — An approval issued by the NJDEP pursuant to 7:38-6 pertinent to a regulated activity in the Highlands Preservation Area, and including an HPAA that contains a waiver pursuant to N.J.S.A. 13:20-33b.

IMMEDIATE FAMILY MEMBER — A spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, or half sister, whether the individual is related by blood, marriage, or adoption. (N.J.S.A. 13:20-3.)

IMPERVIOUS SURFACE — Any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, including, but not limited to, porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements. (N.J.S.A. 13:20-3.)

IMPERVIOUS SURFACES, CUMULATIVE — The total area of all existing or proposed impervious surfaces situated or proposed to be situated within the boundary lines of a lot, parcel, or other legally recognized subdivision of land, expressed either as a measure of land area such as acreage, or square feet, or as a percentage of the total lot or parcel area.

MAJOR HIGHLANDS DEVELOPMENT — Except as otherwise provided pursuant to subsection a of section 30 of the Highlands Act ("Exemptions"): (1) any nonresidential development in the Preservation Area; (2) any residential development in the Preservation Area that requires an environmental land use or water permit [from the NJDEP, see definition above], or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more; (3) any activity undertaken or engaged in the Preservation Area that is not a development but results in the ultimate disturbance of one-quarter acre or more of forested area or that results in a cumulative increase in impervious surface by one-quarter acre or more on a lot; or (4) any capital or other project of a State entity or local government unit in the Preservation Area that requires an environmental land use or water permit [from the NJDEP, see definition above], or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter

acre or more. Major Highlands Development shall not include any agricultural or horticultural development or agricultural or horticultural use. Solar panels shall not be included in any calculation of impervious surface. (As defined by the Highlands Act, N.J.S.A. 13:20-1 et seq., as amended.)

MASTER PLAN — For purposes of this Section 17-67, all references to the "Borough Master Plan," "master plan," or "Master Plan," refer to the municipal master plan, as defined in the MLUL (N.J.S.A. 40:55D-5), as adopted by the Borough Planning Board.

MASTER PLAN, HIGHLANDS REGIONAL (RMP) — For purposes of this Section 17-67, all references to the Highlands Regional Master Plan (RMP), shall be by use of the words "Highlands Regional Master Plan," "Highlands RMP," "Regional Master Plan," or "RMP."

MUNICIPAL LAND USE LAW (MLUL) — The New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

NJDEP — New Jersey Department of Environmental Protection.

NJDEP PRESERVATION AREA RULES — The regulations established by the NJDEP to implement requirements of the Highlands Act, titled "Highlands Water Protection and Planning Act Rules," and codified at N.J.A.C. 7:38-1 et seq.

PLANNING AREA — Lands within the Highlands Region that are not located in that portion designated by the Highlands Act as the "Preservation Area" (see metes and bounds description at N.J.S.A. 13:20-7b).

PRESERVATION AREA — Lands within the Highlands Region that are located in that portion designated by the Highlands Act as the "Preservation Area" (see metes and bounds description at N.J.S.A. 13:20-7b).

SOLAR PANEL — An elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array. (N.J.S.A. 13:20-3.)

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.

§ 17-67.3. Geographic Area of Applicability. [Ord. No. 09-2015 Article 3]

a. Highlands Planning Area and Preservation Area.

The Highlands Act establishes the Preservation Area and Planning Area of the Highlands Region. It describes the varied attributes of each and sets forth the major land use planning goals that pertain to the lands located within each. The Act defines the geographic extent of the Highlands Region to include the aggregated land area making up its constituent municipalities (N.J.S.A. 13:20-7a). It provides a physical delineation of the Preservation Area by use of a specific metes and bounds description (N.J.S.A. 13:20-7b), designating all remaining lands within the

Highlands Region as the Planning Area.

(1) Highlands Area.

The Borough Master Plan incorporates the Highlands Preservation Area, inclusive of the goals applicable to it, as an integral component of the planning and land use policies of the municipality. For purposes of this Section 17-67, this Area is designated as the Borough's Highlands Area. A map of the Borough's Highlands Area appears in Exhibit 1 included as an attachment to this chapter.

(2) Applicability Specified.

This Section 17-67 applies specifically and solely to lands designated as the Borough's Highlands Area, as delineated in Exhibit 1.

§ 17-67.4. Highlands Act Exemption Determinations. [Ord. No. 09-2015 Article 4]

a. Highlands Act Exemptions.

Section 30 of the Highlands Act identifies as exempt, specific activities, improvements and development projects affecting lands within the Highlands Region. Such activities, improvements and projects may be proposed as a component of any type of land use application submitted to the municipality for approval, including but not limited to zoning permit applications, building permit applications, and Applications for Development (as defined at subsection 17-67.2b). Any such qualifying activity, improvement or development project is exempt, with regard specifically to that activity, improvement or development project, from the requirements of the Highlands Act, the Highlands RMP, the NJDEP Preservation Area Rules, and any amendments to the Borough's master plan, development regulations, or other regulations adopted pursuant to the approval of Borough's Petition for Plan Conformance by the Highlands Council. Such an exemption specifically applies to any Highlands Area land use ordinance adopted by the Borough pursuant to the Highlands Council's approval of Borough's Petition for Plan Conformance.

Where any application submitted to the municipality for approval proposes to rely upon a Highlands Act Exemption, the applicant must, as a condition of application completeness, and prior to review or approval of the application by the applicable municipal authority, provide sufficient evidence that the proposed activity, improvement, or development project in fact qualifies as a Highlands Act Exemption. Such evidence shall consist of either a State Agency Exemption Determination or a Municipal Exemption Determination (see paragraphs a(1) or a(2) below) indicating that the proposed activity, improvement, or development project qualifies for a Highlands Act Exemption.

(1) State Agency Exemption Determination.

State Agency Exemption Determinations shall consist of either, a Highlands Applicability Determination issued by the NJDEP for a Preservation Area

proposal, or a Highlands Exemption Determination issued by the Highlands Council for a Planning Area proposal. State Agency Determinations may be requested with regard to any Highlands Act Exemption, however for applications involving any exemption not identified at paragraph b below, a State Agency Exemption Determination is required. Any applicant seeking a formal exemption determination for a capital or other project of any State entity or local government unit, or for any other publicly-owned or controlled land or facility, also must request a State Agency Exemption Determination.

(2) Municipal Exemption Determination.

For an application involving any of the specific exemptions listed in paragraph b below, the applicant may request a Municipal Exemption Determination. The applicant may rely upon the findings of a Municipal Exemption Determination to the same extent as would apply to an exemption determination issued by the Highlands Council or the NJDEP.

b. Highlands Act Exemptions Eligible for Municipal Determination.

Effective as of the date on which the municipality receives written authorization from the Highlands Council to proceed, an applicant may seek a Municipal Exemption Determination for the Highlands Act Exemptions listed hereunder.

- (1) Exemption 1. The construction of a single family dwelling, for an individual's own use or the use of an immediate family member, on a lot owned by the individual on the date of enactment of the Highlands Act (August 10, 2004) or on a lot for which the individual entered into a binding contract of sale to purchase on or before May 17, 2004.
- (2) Exemption 2. The construction of a single family dwelling on a lot in existence on the date of enactment of the Highlands Act (August 10, 2004), provided that the construction does not result in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter (1/4) acre or more.
 - (a) A Municipal Exemption Determination indicating that an applicant qualifies under Highlands Act Exemption 2 shall require approval and filing of a Deed Notice along with a site plan delineating the total exempt area and the extent of the disturbance recognized in the Municipal Exemption Determination (see paragraph d below). Municipal Exemption Determinations in such instances shall not take effect until the applicant has provided proof of filing of the approved Deed Notice.
- (3) Exemption 4. The reconstruction of any building or structure for any reason within 125% of the footprint of the lawfully existing impervious surfaces on the site, provided that the reconstruction does not increase the lawfully existing impervious surface by one-quarter (1/4) acre or more. This exemption shall not apply to the reconstruction of any agricultural or horticultural building or structure for a non-agricultural or non-horticultural use.

- (a) For purposes of this Section 17-67, this exemption shall not be construed to permit multiple 125% footprint expansions, but rather, to permit one or more reconstruction activities cumulatively resulting in a maximum 125% increase in the footprint of the impervious surfaces lawfully existing on the site, provided they do not cumulatively exceed the one-quarter (1/4) acre limitation. Any determination of whether the expansion of impervious cover meets the statutory criteria for the exemption must account for the preexisting impervious cover, and such expansion must be contiguous to the location of the existing impervious cover. See *In re August 16, 2007 Determination of NJDEP ex rel. Christ Church*, 414 N.J. Super. 592 (App. Div. 2010), certif. denied, 205 N.J. 16 (2010).
- (b) For Preservation Area determinations, the applicable date of lawful existence shall be August 10, 2004, the date of enactment of the Highlands Act. For Planning Area determinations, the date of lawful existence shall coincide with the effective date of the municipally-adopted Highlands Area Checklist Ordinance.
- (4) Exemption 5. Any improvement to a single family dwelling in existence on the date of enactment of the Highlands Act (August 10, 2004), including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool or septic system.
- (5) Exemption 6. Any improvement, for nonresidential purposes, to a place of worship owned by a nonprofit entity, society or association, or association organized primarily for religious purposes, or a public or private school, or a hospital, in existence on the date of enactment of the Highlands Act (August 10, 2004), including but not limited to new structures, an addition to an existing building or structure, a site improvement, or a sanitary facility.
- (6) Exemption 7. An activity conducted in accordance with an approved woodland management plan pursuant to section 3 of the "Farmland Assessment Act," P.L. 1964, c. 48 (C. 54:4-23.3) or a forest stewardship plan approved pursuant to section 3 of P.L. 2009, c. 256 (C. 13:1L-31), or the normal harvesting of forest products in accordance with a forest management plan or forest stewardship plan approved by the State Forester.
- (7) Exemption 8. The construction or extension of trails with non-impervious surfaces on publicly owned lands or on privately owned lands where a conservation or recreational use easement has been established.
- c. Exemption Designee(s).

Municipal Exemption Determinations regarding Highlands Act Exemptions shall be issued by the Borough Planner or Borough Engineer. The Exemption Designee(s) shall be authorized to issue Municipal Exemption Determinations on behalf of the municipality, and shall only begin to do so, after satisfactory completion of a Highlands Council training class for which the individual(s) has/ have received formal certification from the Highlands Council.

(1) Updates to Training Certification.

In the event of programmatic changes, updated information, or modifications to procedures, updated training certification may be required of Exemption Designees in order to maintain qualifications for providing Municipal Exemption Determinations. The Highlands Council will provide training modules on an as-needed basis, to provide base training to new employees, and/or to further the expertise of already-certified individuals. Exemption Designees and the municipalities they serve will be advised of any need for upgraded training, which will be provided and funded by the Highlands Council.

(2) Interim Determinations.

For the duration of any period during which the municipality is without a qualified Exemption Designee(s) due to changes in personnel or other extenuating circumstances, applicants seeking Highlands Act Exemption Determinations shall be referred to the NJDEP or the Highlands Council, for a State Agency Determination pursuant to paragraph a(1), above.

d. Application Procedures.

(1) Municipal Exemption Applications.

Requests for Municipal Exemption Determination shall be submitted on forms provided by the Construction Department and shall be accompanied by sufficient information and documentary evidence to demonstrate whether the proposed activity, improvement or development project qualifies for the applicable exemption. Required submission materials applicable to each exemption, appear at paragraph g., below.

(2) Completeness Determination.

The Exemption Designee shall review the application and all accompanying materials to determine whether sufficient information has been submitted to make a determination on the application. In the event of a finding that the application is incomplete, the Exemption Designee shall, within 10 calendar days of receipt, issue such findings in writing to the applicant, indicating what information is required to properly consider the application.

(3) Time for Determination.

The Exemption Designee shall issue Municipal Exemption Determinations within 15 calendar days of receipt of a complete application. The Exemption Designee may consult with the Executive Director (or applicable designee) of the Highlands Council as needed in making any exemption determination, however, in such circumstance, the Exemption Designee shall seek such assistance within the 15 day period and shall issue the determination within at least 10 calendar days of receiving the requested guidance. In no case shall failure to meet this date constitute approval of the exemption.

(4) Determinations.

All Municipal Exemption Determinations shall be provided in writing, shall certify to the applicability or inapplicability of the exemption, and shall include a statement of the rationale for the decision. Any Municipal Exemption Determination certifying to the applicability of Highlands Act Exemptions #2 shall be contingent upon submission of proof of filing of the required Deed Notice, as set forth at paragraph d(6), below.

(5) Notice of Determination Required.

The Exemption Designee shall provide copies of all Municipal Exemption Determinations including a copy of the full application, to the Highlands Council and for decisions regarding lands in the Highlands Preservation Area, to the NJDEP, in either case, within 10 business days of issuance.

(6) Deed Notice for Exemption #2.

Any Municipal Exemption Determination that certifies to the applicability of Highlands Act Exemption #2 (paragraph b above), shall be issued conditionally, pending fulfillment of the requirement that a deed notice be recorded in the office of the County Clerk or Register, as applicable, indicating the extent of the exemption that has been consumed. The deed notice shall incorporate each of the components listed below and the applicant shall provide a copy of the filed Deed Notice to the Highlands Council within five business days of filing.

- (a) Clear identification of the name(s) and address(es) of the owner(s) in fee of the property;
- (b) Designated tax block and lot number(s), street address(es), municipality and county of location of the property;
- (c) Reference to the Municipal Exemption Determination (by date, numbering if applicable) issued and under which the deed notice is being filed;
- (d) Description of the approved area of ultimate disturbance and the impervious surface area, with verification that these remain below the statutory limits;
- (e) For properties of one acre or more in area, metes and bounds delineation indicating the portion of the property for which the ultimate disturbance has been authorized;
- (f) Agreement to abide by the ultimate disturbance and impervious surface limits imposed, any furtherance thereof rendering the Municipal Exemption Determination null and void; and
- (g) Notice that the owner(s) and subsequent owner(s) and lessees shall cause all leases, grants, and other written transfers of interest in the property to

contain provisions expressly requiring all holders thereof to take the property subject to the limitations therein set forth.

e. Appeal of Municipal Exemption Determination.

A Municipal Exemption Determination may be appealed by any affected person/entity by filing a notice of appeal within 20 calendar days of issuance or receipt of said determination, whichever is later, specifying the grounds therefor. Appeals must be filed with the NJDEP in the case of any Preservation Area Exemption, and with the Highlands Council, in the case of any Planning Area Exemption. All appeals shall be copied to the Exemption Designee, who shall immediately transmit to the NJDEP or the Highlands Council, as applicable, copies of the notice of appeal, the Municipal Exemption Determination Application, and all supplemental materials constituting the record that the Exemption Designee relied upon in issuing the Municipal Exemption Determination. Where the Municipal Exemption Determination deems an activity, improvement or development project exempt, the filing of an appeal to the NJDEP or the Highlands Council shall stay all proceedings in furtherance of its approval by the municipality.

f. Effect of Certified Exemption.

Issuance of a Municipal Exemption Determination that certifies to the applicability of a Highlands Act exemption shall recognize the applicant's exemption from the provisions of the RMP, NJDEP Preservation Area Rules, and any municipal ordinances and requirements adopted under the authority of the Highlands Act to achieve Highlands Plan Conformance. The exemption is restricted solely to the extent of the specified activity, improvement, or development project as described in the language of the Highlands Act exemption, or to any lesser activity, improvement, or development project as proposed and certified through a Municipal Exemption Determination Application. Any activity, improvement, or development project, or any part thereof, that is not specifically listed as an exemption or exceeds the limits of an exemption, remains subject to all of the above regulatory programs to the full extent of the respective applicability of each. Issuance of a Highlands Exemption Determination shall not relieve the applicant from securing all other required federal, state, or local approvals.

g. Application Fees.

The fee for Municipal Exemption Determination shall be \$100 non-refundable application fee. If deemed necessary by the Borough's construction code official, engineer or planner, an appropriate escrow fee may be required from the applicant to address any expenses that might be incurred in the review of the application.

h. Submission Requirements.

All applications shall be accompanied by the Municipal Exemption Determination Application Form, the applicable fees, and the information listed below, as applicable to the particular exemption or exemption(s) being sought by the applicant. All references to professional preparers indicated herein shall be

construed to include any and all qualified individuals licensed, certified, or otherwise eligible and authorized to complete such work, in accordance with the applicable laws and legal requirements of the State of New Jersey including but not limited to the MLUL (N.J.S.A. 40:55D-1 et seq.) and Title 13 of the New Jersey Administrative Code, Law and Public Safety. Where the Exemption Designee finds that any submission item is not necessary to address the evidentiary requirements that must be satisfied for issuance of an Exemption Determination, either because alternate items have been provided by the applicant, or the relevant information is readily available through records, maps, or any other documents on file in the offices of the municipality, the Exemption Designee may waive the applicant's obligation to submit such information.

(1) Exemption 1.

- (a) A copy of a deed, closing or settlement statement, title policy, tax record, mortgage statement or any other official document showing that the lot was legally owned by the applicant on or before August 10, 2004 and indicating the lot and block as designated by the municipal tax mapping, the municipality and county in which the lot is located, and the street address;
- (b) If the applicant did not own the lot, a copy of the binding contract of sale executed by the seller and the applicant on or before May 17, 2004 for the lot on which the house is to be constructed; and
- (c) A certification by the applicant stating that the single family dwelling proposed for construction on the lot specified and described therein by tax lot and block, municipality and county of location, and street address, is intended for the applicant's own use or the use of an immediate family member as identified therein by name and relationship to the applicant.

(2) Exemption 2.

- (a) A copy of the recorded deed or plat showing that the lot was created on or before August 10, 2004 or proof of subdivision approval on or before August 10, 2004;
- (b) A property survey certified by a licensed New Jersey Professional Land Surveyor indicating the property boundary lines and overall lot size, and showing what structures currently exist on the lot, if any;
- (c) A parcel plan certified by a licensed New Jersey Professional Engineer showing all existing and proposed development, including all structures, grading, clearing, impervious surface and disturbance, and including the calculations supporting the claim that impervious surfaces and areas of disturbance are within the limits necessary for Exemption 2; and
- (d) A metes and bounds description of the area of the lot to be disturbed, limited to less than one acre and a draft conservation restriction or deed notice (pursuant to paragraph d(5), above) to cover the balance of the lot.

(3) Exemption 4.

- (a) A parcel plan certified by a licensed New Jersey Professional Engineer depicting:
 - [i] All existing property improvements, including all structures, grading, clearing, impervious surfaces and limits of disturbance, lawfully existing on the site as of August 10, 2004 for Preservation Area projects and as of the effective date of the municipal Highlands Area Checklist Ordinance or Highlands Area Land Use Ordinance, whichever is earlier; and
 - [ii] All proposed development including all structures, impervious surfaces, clearing limits, and limits of disturbance, including grading; and
- (b) A copy of any official documentation of the original date of construction of the building or otherwise establishing the lawfulness of existing impervious surfaces.

(4) Exemption 5.

- (a) A copy of any official documentation proving the single family dwelling was in existence on August 10, 2004;
- (b) A description of the proposed improvement; and
- (c) A certification from the applicant that the property and all improvements will continue to be used for single family dwelling purposes.

(5) Exemption 6.

- (a) A copy of any official documentation indicating that the place of worship, public or private school or hospital was in existence on August 10, 2004;
- (b) For improvements to a place of worship, documentation showing that the entity, society or association, or association organized primarily for religious purposes has non-profit status;
- (c) A site plan certified by a licensed New Jersey Professional Engineer depicting:
 - [i] All existing property improvements including all structures, grading, clearing, impervious surfaces and limits of disturbance, existing on the site on August 10, 2004; and
 - [ii] All proposed development including all structures, impervious surfaces, clearing limits, and limits of disturbance, including grading.

(6) Exemption 7.

- (a) For a private landowner with an approved woodland management plan or forest stewardship plan:
 - [i] A copy of the applicant's tax bill showing that the site has farmland assessment tax status under the New Jersey Farmland Assessment Act, N.J.S.A. 54:4-23.1 et seq., if applicable;
 - [ii] A brief description of the total area of woodlands that is the subject of the approved woodland management plan or forest stewardship plan;
 - [iii] A brief description of the length of time that the area to be managed has been in use for woodland management or forest stewardship plan; and
 - [iv] A copy of the approved woodland management plan or forest stewardship plan.
- (b) For the normal harvesting of forest products in accordance with a forest management plan or forest stewardship plan approved by the State Forester:
 - [i] A brief description of the total area where the normal harvesting of forest products occurs;
 - [ii] A brief description of the length of time that the area to be managed has been in use for normal harvesting of forest products; and
 - [iii] A copy of a forest management plan or forest stewardship plan approved by the State Forester.
- (7) Exemption 8.
 - (a) A site plan certified by a licensed New Jersey Professional Engineer showing the proposed trail construction with details including the location, and width of existing and proposed trails and those off-site trails to which they connect, if any;
 - (b) A written description of the non-impervious materials to be used; and
 - (c) For privately owned property, a copy of a deed for the property and the conservation or recreational use easement on the property.

ARTICLE XVII
Affordable Housing Obligations
[Added 12-4-2018 by Ord. No. 21-18]

§ 17-68. MONITORING AND REPORTING REQUIREMENTS.

The Borough of Mount Arlington shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its court-approved Housing Element and Fair Share Plan:

- a. Beginning on February 8, 2020, one year from the court's approval of the Borough's Spending Plan, and on every anniversary of that date through July 1, 2025, the Borough agrees to provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing (COAH), or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs (NJDCOA), Council on Affordable Housing (COAH), or Local Government Services (NJLGS). The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
- b. Beginning on February 8, 2020, and on every anniversary of that date through February 8, 2025, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.
- c. By July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
- d. By March 1, 2020, and every third year thereafter, as required by N.J.S.A. 52:27D-329.1, the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very-low-income requirements, including its family very-low-income requirements. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very-low-income and family very-low-income housing obligations.

§ 17-69. DEFINITIONS.

The following terms when used in this article shall have the meanings given in this section:

ACT — The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

ADAPTABLE — Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.¹²

ADMINISTRATIVE AGENT — The entity designated by the Borough who is responsible for administering the affordability controls of the units in the affordable housing program for the Borough to ensure that the restricted units under administration are affirmatively marketed and sold or rented, as applicable, only to low- and moderate-income households in accordance with this article, N.J.A.C. 5:93,¹³ and UHAC (N.J.A.C. 5:80-26).

AFFIRMATIVE MARKETING — A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

AFFORDABILITY AVERAGE — The average percentage of median income at which new restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE — A sales price or rent level that is within the means of a low- or moderate-income household as defined within N.J.A.C. 5:93-7.4,¹⁴ and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

AFFORDABLE HOUSING DEVELOPMENT — A development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable housing development.

AFFORDABLE HOUSING PROGRAM(S) — Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE UNIT — A housing unit proposed or created pursuant to the Act¹⁵ and approved for crediting by the court, Council on Affordable Housing (COAH) and/or funded through an affordable housing trust fund.

AGE-RESTRICTED UNIT — A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that:

12. Editor's Note: See now N.J.A.C. 5:23-3.14(b).

13. Editor's Note: In accordance with N.J.S.A. 52:14B — 5.1b, Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, expired on 10-16-2016.

14. Editor's Note: In accordance with N.J.S.A. 52:14B — 5.1b, Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, expired on 10-16-2016.

15. Editor's Note: See N.J.S.A. 52:27D-301 et seq.

1) all the residents of the development wherein the unit is situated are 62 years of age or older; or 2) at least 80% of the units are occupied by one person who is 55 years of age or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

AGENCY — The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

ALTERNATIVE LIVING ARRANGEMENT — A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

ASSISTED LIVING RESIDENCE — A facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

CERTIFIED HOUSEHOLD — A household that has been certified by an administrative agent as a low-income household or moderate-income household.

COAH — The Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

DCA — The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT — A housing unit with health and safety code violations that requires the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load-bearing structural systems.

DEVELOPER — Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land included in a proposed development including the holder of an option to 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 use or change in the use of any building or other structure, or of 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 pursuant to N.J.S.A. 40:55D-1 et seq.

INCLUSIONARY DEVELOPMENT — A development containing both affordable

units and market-rate units. This term includes, but is not limited to: new construction, the conversion of a nonresidential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

LOW-INCOME HOUSEHOLD — A household with a total gross annual household income equal to 50% or less of the regional median household income by household size.

LOW-INCOME UNIT — A restricted unit that is affordable to a low-income household.

MAJOR SYSTEM — The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and load-bearing structural systems.

MARKET-RATE UNIT — Housing not restricted to low- and moderate-income households that may sell or rent at any price.

MEDIAN INCOME — The median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the Council on Affordable Housing (COAH).

MODERATE-INCOME HOUSEHOLD — A household with a total gross annual household income in excess of 50% but less than 80% of the regional median household income by household size.

MODERATE-INCOME UNIT — A restricted unit that is affordable to a moderate-income household.

MUNICIPAL HOUSING LIAISON — The employee charged with the responsibility for oversight and administration of the affordable housing program.

NONEXEMPT SALE — Any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a Class A beneficiary and the transfer of ownership by court order.

RANDOM SELECTION PROCESS — A process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

REGIONAL ASSET LIMIT — The maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

REHABILITATION — The repair, renovation, alteration or reconstruction of any

building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

RENT — The gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

RESTRICTED UNIT — A dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit financed under UHROP or MONI.

UHAC — The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

VERY-LOW-INCOME HOUSEHOLD — A household with a total gross annual household income equal to 30% or less of the regional median household income by household size.

VERY-LOW-INCOME UNIT — A restricted unit that is affordable to a very-low-income household.

WEATHERIZATION — Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

§ 17-70. APPLICABILITY.

- a. The provisions of this article shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Mount Arlington pursuant to the Borough's 2018 Third Round Housing Element and Fair Share Plan.
- b. Moreover, the provisions of this article shall apply to all developments that contain very-low-, low- and moderate-income housing units, including any currently unanticipated future developments that will provide very-low-, low- and moderate-income housing units, and also including projects that may be funded with Low Income Housing Tax Credit financing, which shall comply with the income and bedroom distribution requirements of this article.
- c. Any property in the Borough of Mount Arlington that is currently zoned for nonresidential uses and subsequently receives a zoning change or use variance or approval of a redevelopment plan to permit multifamily residential development, or that is currently zoned for residential uses and receives a zoning change or density variance or approval of a redevelopment plan to permit multifamily residential development, which multifamily residential development will be constructed at a density of six or more units per acre and yielding five or more new dwelling units, shall provide an affordable housing set-aside of 15% if the affordable units will be for rent and 20% if the affordable units will be for sale. This provision does not affect residential development on sites that are zoned for inclusionary residential development as part of the Borough's Housing Element and Fair Share Plan, which

are subject to the affordable housing set-aside requirements set forth in the applicable zoning. This requirement does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of the Borough of Mount Arlington to grant such rezoning, variance or other relief. A property shall not be permitted to be subdivided so as to avoid compliance with this requirement. All affordable units created pursuant to this subsection shall be governed by the provisions of this article.

§ 17-71. ALTERNATIVE LIVING ARRANGEMENTS.

- a. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8¹⁶ and UHAC, with the following exceptions:
 - (1) Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the court;
 - (2) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
- b. With the exception of units established with capital funding through a twenty-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least thirty-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the court.
- c. The service provider for the alternative living arrangement shall act as the administrative agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

§ 17-72. PHASING SCHEDULE FOR INCLUSIONARY ZONING.

In inclusionary developments the following schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
25	0
25+1	10
50	50
75	75
90	100

§ 17-73. NEW CONSTRUCTION.

- a. Low/moderate split and bedroom distribution of affordable housing units:

16. Editor's Note: In accordance with N.J.S.A. 52:14B — 5.1b, Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, expired on 10-16-2016.

- (1) The fair share obligation shall be divided equally between very-low-, low- or moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least 13% of all restricted rental units shall be very-low-income units (affordable to a household earning 30% or less of regional median income by household size). The very-low-income units shall be counted as part of the required number of low-income units within the development.
 - (2) In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be very-low- or low-income units.
 - (3) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - (a) The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total very-low-, low- or moderate-income units;
 - (b) At least 30% of all very-low-, low- or moderate-income units shall be two-bedroom units;
 - (c) At least 20% of all very-low-, low- or moderate-income units shall be three-bedroom units; and
 - (d) The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
 - (4) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted very-low-, low- or moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.
- b. Accessibility requirements:
- (1) The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7¹⁷ and the following.
 - (2) All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor; and
 - (b) An adaptable kitchen on the first floor; and
 - (c) An interior accessible route of travel on the first floor; and
 - (d) An adaptable room that can be used as a bedroom, with a door or the

17. Editor's Note: See now N.J.A.C. 5:23-3.14(b).

casing for the installation of a door, on the first floor; and

- (e) If not all of the foregoing requirements in Subsection b(2)(a) through (d) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of Subsection b(2)(a) through (d) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
- (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.), and the Barrier Free Subcode, N.J.A.C. 5:23-7,¹⁸ or evidence that Mount Arlington has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
 - [i] Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - [ii] To this end, the builder of restricted units shall deposit funds within the Borough of Mount Arlington's Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - [iii] The funds deposited under Subsection b(2)(f)[ii] above shall be used by the Borough of Mount Arlington for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - [iv] The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Borough of Mount Arlington for the conversion of adaptable to accessible entrances.
 - [v] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7,¹⁹ and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's Affordable Housing Trust Fund in care of the Borough Treasurer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
- (3) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier

18. Editor's Note: See now N.J.A.C. 5:23-3.14(b).

19. Editor's Note: See now N.J.A.C. 5:23-3.14(b).

Free Subcode, N.J.A.C. 5:23-7.²⁰

c. Design:

- (1) In inclusionary developments, to the extent possible, very-low-, low- or moderate-income units shall be integrated with the market units.
- (2) In inclusionary developments, very-low-, low- or moderate-income units shall have access to all of the same common elements and facilities as the market units.

d. Maximum rents and sales prices:

- (1) In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and the calculation procedures set forth in the Consent Order entered on December 16, 2016, by the Honorable Douglas K. Wolfson, JSC, in In the Matter of the Township of East Brunswick for a Judgment of Compliance of its Third Round Housing Element and Fair Share Plan, Docket No. MID-L-004013-15.
- (2) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52% of median income.
- (3) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13% of all low- and moderate-income rental units shall be affordable to very-low-income households, which very-low-income units shall be part of the low-income requirement.
- (4) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.
- (5) In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
 - (a) A studio shall be affordable to a one-person household;

20. Editor's Note: See now N.J.A.C. 5:23-3.14(b).

- (b) A one-bedroom unit shall be affordable to a one-and-one-half-person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four-and-one-half-person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
- (6) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
- (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one-and-one-half-person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- (7) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowners' association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (8) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate size household, including an allowance for tenant-paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (9) The price of owner-occupied very-low-, low- or moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
- (10) The rents of very-low-, low- or moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Northeast Urban Area. This increase shall not exceed 9% in any one year. Rent increases for units constructed pursuant to low-income

housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

§ 17-74. UTILITIES.

- a. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- b. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by HUD for the Section 8 program.

§ 17-75. OCCUPANCY STANDARDS.

In referring certified households to specific restricted units, the administrative agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:

- a. Provide an occupant for each bedroom;
- b. Provide children of different sexes with separate bedrooms;
- c. Provide separate bedrooms for parents and children; and
- d. Prevent more than two persons from occupying a single bedroom.

§ 17-76. CONTROL PERIODS FOR RESTRICTED OWNERSHIP UNITS AND ENFORCEMENT MECHANISMS.

- a. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this article for a period of at least 30 years, until Mount Arlington takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- b. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- c. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- d. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the administrative agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first nonexempt sale after the unit's release from the restrictions set forth in this article, an amount equal to the difference between the unit's non-restricted fair market value and its

restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

- e. The affordability controls set forth in this article shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- f. A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

§ 17-77. PRICE RESTRICTIONS FOR RESTRICTED OWNERSHIP UNITS, HOMEOWNER'S ASSOCIATION FEES AND RESALE PRICES.

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- a. The initial purchase price for a restricted ownership unit shall be approved by the administrative agent.
- b. The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- c. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner's association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.
- d. The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See § 17-80.

§ 17-78. BUYER INCOME ELIGIBILITY.

- a. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
- b. Notwithstanding the foregoing, the administrative agent may, upon approval by the Borough Council, and subject to the court and/or Council on Affordable Housing (COAH)'s approval, permit a moderate-income purchaser to buy a low-income unit if and only if the administrative agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-

income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.

- c. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the administrative agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year. Violations of this provision shall be subject to the applicable enforcement provisions of § 17-87 of this article.
- d. The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowners' association fees, as applicable) does not exceed 33% of the household's eligible monthly income.

§ 17-79. LIMITATIONS ON INDEBTEDNESS SECURED BY OWNERSHIP UNIT; SUBORDINATION.

- a. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the administrative agent for a determination in writing that the proposed indebtedness complies with the provisions of this section, and the administrative agent shall issue such determination prior to the owner incurring such indebtedness.
- b. With the exception of first purchase money mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of the unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.6(b).

§ 17-80. CAPITAL IMPROVEMENTS TO OWNERSHIP UNITS.

- a. The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- b. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the administrative agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the

unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to ten-year, straight-line depreciation, has been approved by the administrative agent. Unless otherwise approved by the administrative agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

§ 17-81. CONTROL PERIODS FOR RESTRICTED RENTAL UNITS.

- a. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this article for a period of at least 30 years, until Mount Arlington takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- b. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Morris. A copy of the filed document shall be provided to the administrative agent within 30 days of the receipt of a certificate of occupancy.
- c. A restricted rental unit shall remain subject to the affordability controls of this article despite the occurrence of any of the following events:
 - (1) Sublease or assignment of the lease of the unit;
 - (2) Sale or other voluntary transfer of the ownership of the unit; or
 - (3) The entry and enforcement of any judgment of foreclosure on the property containing the unit.

§ 17-82. RENT RESTRICTIONS FOR RENTAL UNITS; LEASES.

- a. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the administrative agent.
- b. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the administrative agent.
- c. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls applicable to the unit as set forth in this article.

- d. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least 15% of the total number of dwelling units are restricted rental units in compliance with this article.

§ 17-83. TENANT INCOME ELIGIBILITY.

- a. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - (1) Very-low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of the regional median household income by household size.
 - (2) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of the regional median household income by household size.
 - (3) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of the regional median household income by household size.
- b. The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - (1) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - (2) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - (3) The household is currently in substandard or overcrowded living conditions;
 - (4) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (5) The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the administrative agent and the owner of the unit.
- c. The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsection B(1) through (5) above with the administrative agent, who shall counsel the household on budgeting.

§ 17-84. MUNICIPAL HOUSING LIAISON.

- a. The Borough shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for administering the Borough's affordable housing program, including overseeing the administration of affordability controls on the affordable units and the affirmative marketing of available affordable units in accordance with the Borough's Affirmative Marketing Plan; fulfilling monitoring and reporting requirements; and supervising any administrative agent(s). A resolution appointing the person to fulfill the position of Municipal Housing Liaison should be adopted at the reorganization meeting or as soon thereafter as possible. The Municipal Housing Liaison shall be appointed by the Mayor and may be a full- or part-time municipal employee. The Municipal Housing Liaison is subject to the approval of the Council on Affordable Housing (COAH) and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey before assuming the duties of Municipal Housing Liaison.
- b. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Mount Arlington, including the following responsibilities which also may be contracted out to the administrative agent:
 - (1) Serving as Mount Arlington's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents and interested households;
 - (2) Monitoring the status of all restricted units in Mount Arlington's Fair Share Plan;
 - (3) Compiling, verifying, submitting and posting all monitoring and/or annual reports as required by the Council on Affordable Housing (COAH) and by this article;
 - (4) Coordinating meetings with affordable housing providers and administrative agents, as needed; and
 - (5) Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.
- c. The Mayor shall designate one or more administrative agent(s) to administer and to affirmatively market the affordable units constructed in the Borough in accordance with UHAC and this article. An operating manual for each affordable housing program shall be provided by the administrative agent(s) to be adopted by resolution of the governing body and subject to approval of the Council on Affordable Housing (COAH). The operating manual(s) shall be available for public inspection in the office of the Borough Clerk; in the office of the Municipal Housing Liaison; and in the office(s) of the administrative agent(s). The Municipal Housing Liaison shall supervise the work of the administrative agent(s).

- d. Compensation. Compensation shall be fixed by the Borough in its Salary Ordinance.

§ 17-85. ADMINISTRATIVE AGENT.

An administrative agent shall be an independent entity serving under contract to and reporting to the municipality. The fees of the administrative agent shall be paid by the owners of the affordable units for which the services of the administrative agent are required. The administrative agent shall perform the duties and responsibilities of an administrative agent as set forth in UHAC, including those set forth in N.J.S.A. 5:80-26.14, 5:80-26.16 and 5:80-26.18 thereof, which includes:

- a. Affirmative marketing:
 - (1) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Mount Arlington and the provisions of N.J.A.C. 5:80-26.15; and
 - (2) Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- b. Household certification:
 - (1) Soliciting, scheduling, conducting and following up on interviews with interested households;
 - (2) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
 - (3) Providing written notification to each applicant as to the determination of eligibility or noneligibility;
 - (4) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
 - (5) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located;
 - (6) Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Mount Arlington when referring households for certification to affordable units; and
 - (7) Notifying the following entities of the availability of affordable housing units in the Borough of Mount Arlington: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Morris County NAACP, Newark NAACP, East Orange NAACP, Housing Partnership for Morris County, Community Access Unlimited, Inc., Northwest

New Jersey Community Action Program, Inc. (NORWESCAP), Homeless Solutions of Morristown, and the Supportive Housing Association.

c. Affordability controls:

- (1) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
- (2) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
- (3) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Morris County Register of Deeds or Morris County Clerk's office after the termination of the affordability controls for each restricted unit;
- (4) Communicating with lenders and the Borough Attorney regarding foreclosures; and
- (5) Ensuring the issuance of continuing certificates of occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

d. Resales and rentals:

- (1) Instituting and maintaining an effective means of communicating information between owners, the administrative agent and the Borough Attorney regarding the availability of restricted units for resale or rental; and
- (2) Instituting and maintaining an effective means of communicating information to low- (or very-low-) and moderate-income households regarding the availability of restricted units for resale or rental.

e. Processing requests from unit owners:

- (1) Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this article;
- (2) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air-conditioning systems;
- (3) Notifying the municipality of an owner's intent to sell a restricted unit; and
- (4) Processing requests and making determinations on requests by owners of restricted units for hardship waivers.

f. Enforcement:

- (1) Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
- (2) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the administrative agent;
- (3) Posting annually, in all rental properties (including two-family homes), a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent or other charges can be made;
- (4) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
- (5) Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
- (6) Creating and publishing a written operating manual for each affordable housing program administered by the administrative agent, to be approved by the Borough Council and the Council on Affordable Housing (COAH), setting forth procedures for administering the affordability controls.
- (7) Providing annual reports to COAH as required.

g. Additional responsibilities:

- (1) The administrative agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
- (2) The administrative agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet the Council on Affordable Housing (COAH) approved monitoring and reporting requirements in accordance with the deadlines set forth in this article.
- (3) Records received, retained, retrieved, or transmitted in performance of these administrative duties may constitute public records of the Borough as defined by N.J.S.A. 47:3-16, and are legal property of the Borough. The administrative agent named in this article must agree to administer and dispose of such records in compliance with the state's public records laws and associated administrative rules.
 - (a) The Borough has identified the following as public records, subject to the above-cited provisions:

Affordable Housing Project File
 Affordable Housing Project File-Approved
 Affordable Housing Project File-Denied/Withdrawn
 Affordable Housing Project File-Referral List
 Affordable Housing Application File-Individual
 Affordable Housing Application File-Certification Denied or Expired
 Affordable Housing Unit File
 Affordable Housing Unit File-Mailing Notification of Responsibilities
 Affordable Housing Unit Inventory
 Affordable Housing Trust Fund and/or Regional Contribution
 Agreement (RCA) Bank Account
 Enforcement File-Projects and Units
 Monitoring Reports-Annual Submission
 Operations Manual

- (b) Although the state has used its best efforts to identify all records which qualify as public records, the state reserves the right to amend the above list from time to time as warranted.
- (4) The administrative agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

§ 17-86. AFFIRMATIVE MARKETING REQUIREMENTS.

- a. The Borough of Mount Arlington shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Council on Affordable Housing (COAH), that is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- b. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs marketing activities toward Housing Region 2 and is required to be followed throughout the period of restriction.
- c. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 2, comprised of Morris, Essex, Union and Warren Counties.

- d. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and rerentals. The administrative agent designated by the Borough of Mount Arlington shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- e. In implementing the Affirmative Marketing Plan, the administrative agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- f. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the administrative agent shall consider the use of language translations where appropriate.
- g. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- h. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request.
- i. In addition to other affirmative marketing strategies, the administrative agent shall provide specific notice of the availability of affordable housing units in Mount Arlington, and copies of the application forms, to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Morris County NAACP, Newark NAACP, East Orange NAACP, Housing Partnership for Morris County, Community Access Unlimited, Inc., Northwest New Jersey Community Action Program, Inc. (NORWESCAP), Homeless Solutions of Morristown, and the Supportive Housing Association.
- j. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

§ 17-87. ENFORCEMENT OF AFFORDABLE HOUSING REGULATIONS.

- a. Upon the occurrence of a breach of any of the regulations governing an affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

- b. After providing written notice of a violation to an owner, developer or tenant of a low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action(s) against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
- (1) The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the owner, developer or tenant is adjudged by the court to have violated any provision of the regulations governing affordable housing units, the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - (a) A fine of not more than \$500 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
 - (b) In the case of an owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Mount Arlington Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (c) In the case of an owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
 - (2) The municipality may file a court action in the Superior Court seeking a judgment that would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.
 - (a) The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the very-low-, low- or moderate-income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage, any prior liens held by the municipality, and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees, as long as that amount is not more than the maximum allowable restricted sales price at the time of foreclosure pursuant to N.J.A.C. 5:80-26.1 et seq. The violating owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.
 - (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the very-low-,

low- or moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.

- (c) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the very-low-, low- or moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. An owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the very-low-, low- or moderate-income unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the very-low-, low- or moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (e) Failure of the very-low-, low- or moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the very-low-, low- or moderate-income unit as permitted by the regulations governing

affordable housing units.

- (f) The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.

§ 17-88. APPEALS.

Appeals from all decisions of an administrative agent appointed pursuant to this article shall be filed in writing with the court.

§ 17-89. AFFIRMATIVE MARKETING PLAN.

- a. All affordable housing units in the Borough of Mount Arlington shall be marketed in accordance with the provisions herein, unless otherwise provided by law or regulation of the State of New Jersey.
- b. The Borough of Mount Arlington has a Prior Round obligation that it has fulfilled and a Third Round obligation covering the years from 1999 to 2025. This Affirmative Marketing Plan shall apply to all developments that contain or will contain very-low-, low- and moderate-income units, including those that are part of the Borough's prior round Fair Share Plan and its current Fair Share Plan and those that may be constructed in future developments not yet anticipated by the Fair Share Plan. This Affirmative Marketing Plan shall also apply to any rehabilitated rental units that are vacated and rerented during the applicable period of controls for rehabilitated rental units.
- c. The Affirmative Marketing Plan shall be implemented by the administrative agent(s) designated by and/or under contract with the Borough of Mount Arlington. All of the costs of advertising and affirmatively marketing affordable housing units shall be borne by the developers/sellers/owners of affordable unit(s), and all such advertising and affirmative marketing shall be subject to approval and oversight by the designated administrative agent.
- d. In implementing the Affirmative Marketing Plan, the administrative agent, acting on behalf of the Borough of Mount Arlington, shall undertake, at the minimum, all of the following strategies:
 - (1) Publication of newspaper advertisements as provided in Subsection f(1) below.
 - (2) Broadcasting of advertisements by a radio or television station broadcasting throughout the housing region.
 - (3) At least one additional regional marketing strategy using the other sources provided for by this Affirmative Marketing Plan.
- e. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or

sexual orientation, disability, age or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. The Affirmative Marketing Plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward the COAH Housing Region in which the municipality is located. The Borough of Mount Arlington is located in COAH Housing Region 2, consisting of Morris, Essex, Union and Warren Counties.

- f. The Affirmative Marketing Plan is a continuing program that shall be followed at every change in ownership or occupancy of a restricted affordable unit throughout the entire period of time that the unit is restricted as an affordable unit. The Affirmative Marketing Plan shall meet the following requirements:
 - (1) All newspaper articles, announcements and requests for applications for very-low-, low- and moderate-income units shall appear in the Star Ledger, the Daily Record and the Express Times.
 - (2) The primary marketing shall take the form of at least one press release and a paid display advertisement in the above newspapers once a week for four consecutive weeks. Additional advertising and publicity shall be on an "as needed" basis. The developer/owner shall disseminate all public service announcements and pay for display advertisements. The developer/owner shall provide proof of all publications to the administrative agent. All press releases and advertisements shall be approved in advance by the administrative agent.
 - (3) The advertisement shall include a description of the:
 - (a) Location of the units;
 - (b) Directions to the units;
 - (c) Range of prices for the units;
 - (d) Size, as measured in bedrooms, of units;
 - (e) Maximum income permitted to qualify for the units;
 - (f) Location of applications;
 - (g) Business hours when interested households may obtain an application; and
 - (h) Application fees.
 - (4) Newspaper articles, announcements and information on where to request applications for very-low-, low- and moderate-income housing shall appear at least once a week for four consecutive weeks in at least three locally oriented newspapers serving the housing region, one of which shall be circulated primarily in Morris County and the other two of which shall be circulated primarily outside of Morris County but within the housing region.

- (5) The following regional cable television stations or regional radio stations shall be used during the first month of advertising. The developer must provide satisfactory proof of public dissemination:
 - (a) Cablevision of Morris.
 - (b) Comcast of New Jersey.
 - (c) Comcast of Northwest New Jersey.
 - (d) WBLS (107.5).
 - (e) WCAA (105.9).
 - (f) WPRB (103.3).
- g. Program information to be made available.
 - (1) Applications, brochure(s), sign(s) and/or poster(s) used as part of the affirmative marketing program shall be available/posted in the following locations:
 - (a) Mount Arlington Borough Hall.
 - (b) Mount Arlington Borough website.
 - (c) Developer's sales/rental offices.
 - (d) Morris, Essex, Union and Warren County administration buildings.
 - (e) Morris, Essex, Union and Warren County libraries (all branches).
 - (f) Other public buildings and agencies as deemed appropriate by the administrative agent.
 - (2) Applications shall be mailed by the administrative agent and Municipal Housing Liaison to prospective applicants upon request. Also, applications shall be available at the developer's sales/rental office and multiple copies of application forms shall be mailed to Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Morris County NAACP, Newark NAACP, East Orange NAACP, Housing Partnership for Morris County, Community Access Unlimited, Inc., Northwest New Jersey Community Action Program, Inc. (NORWESCAP), Homeless Solutions of Morristown, and the Supportive Housing Association for dissemination to their respective constituents. In addition, the foregoing entities shall be notified directly whenever an affordable housing unit(s) becomes available in Mount Arlington.
- h. The administrative agent shall develop, maintain and update a list of community contact person(s) and/or organization(s) in Morris, Essex, Union and Warren Counties, including those entities listed in Subsection g(6) above that will aid in the affirmative marketing program with particular emphasis on those contacts that are

able to reach out to groups that are least likely to apply for housing within the region, including major regional employers identified in Attachment A, Part III, Marketing, Section 3d of COAH's Affirmative Fair Housing Marketing Plan for Affordable Housing in Region 2 (attached to and hereby made part of this resolution²¹ as well as the following entities:

- (1) Quarterly informational flyers and applications shall be sent to the Morris, Essex, Union and Warren County Boards of Realtors for publication in their journals and for circulation among their members.
- (2) Quarterly informational circulars and applications shall be sent to the administrators of each of the following agencies within the municipalities and counties of Morris, Essex, Union and Warren:

Welfare or Social Service Board (via the Director)

Rental Assistance Office (local office of DCA)

Office on Aging

Housing Authority (municipal or county)

Community Action Agencies

Community Development Departments

- (3) Quarterly informational circulars and applications shall be sent to the chief personnel administrators of all of the major employers within the region, as listed on Attachment A, Part III, Marketing, Section 3d.²²
- i. The following is a listing of community contact person(s) and/or organizations in Morris, Essex, Union and Warren Counties that will aid in the affirmative marketing program and provide guidance and counseling services to prospective occupants of very-low-, low- and moderate-income units:
 - (1) Housing Partnership for Morris County, 2 East Blackwell Street, Dover, NJ 07801.
 - (2) Community Access Unlimited, Inc., 80 West Grand Street, Elizabeth, NJ 07202.
 - (3) Northwest New Jersey Community Action Program, Inc. (NORWESCAP), 350 Marshall Street, Phillipsburg, NJ 08865.
 - j. A random selection method to select occupants of very-low-, low- and moderate-income housing will be used by the administrative agent, in conformance with N.J.A.C. 5:80-26.16(1). The Affirmative Marketing Plan shall provide a regional preference for very-low-, low- and moderate-income households that live and/or work in COAH Housing Region 2, comprised of Morris, Essex, Union and Warren Counties. Pursuant to the New Jersey Fair Housing Act (N.J.S.A. 52:27D-311), a

21. Editor's Note: Said attachment is on file in the Borough offices.

22. Editor's Note: Said attachment is on file in the Borough offices.

preference for very-low-, low- and moderate- income veterans duly qualified under N.J.A.C. 54:4-8.10 may also be exercised, provided an agreement to this effect has been executed between the developer or landlord and the Borough prior to the affirmative marketing of the units.

- k. The administrative agent shall administer the Affirmative Marketing Plan. The administrative agent has the responsibility to income qualify very-low-, low- and moderate-income households; to place income eligible households in very-low-, low- and moderate-income units upon initial occupancy; to provide for the initial occupancy of very-low-, low- and moderate-income units with income qualified households; to continue to qualify households for reoccupancy of units as they become vacant during the period of affordability controls; to assist with outreach to very-low-, low- and moderate-income households; and to enforce the terms of the deed restriction and mortgage loan as per N.J.A.C. 5:80-26.1 et seq.
- l. The administrative agent shall provide or direct qualified very-low-, low- and moderate-income applicants to counseling services on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord/tenant law and shall develop, maintain and update a list of entities and lenders willing and able to perform such services. In addition, it shall be the responsibility of the administrative agent to inform owners of affordable units and prospective occupants of affordable units of the Borough's affordability assistance programs and to assist with the implementation of such programs.
- m. All developers/owners of very-low-, low- and moderate-income housing units shall be required to undertake and pay the costs of the marketing of the affordable units in their respective developments, subject to the direction and supervision of the administrative agent.
- n. The implementation of the Affirmative Marketing Plan for a development that includes affordable housing shall commence at least 120 days before the issuance of either a temporary or permanent certificate of occupancy. The implementation of the Affirmative Marketing Plan shall continue until all very-low-, low- and moderate-income housing units are initially occupied and thereafter upon the resale or rental of an affordable unit for as long as an affordable unit remains deed restricted.
- o. The administrative agent shall provide the Affordable Housing Liaison with the information required to comply with monitoring and reporting requirements pursuant to the Borough's adopted Affordable Housing Ordinance.

ARTICLE XVIII
Development Fees
[Added 4-3-2018 by Ord. No. 01-18]

§ 17-90. PROVISIONS ADOPTED.

The following provisions are hereby adopted regulating the collection and disposition of mandatory development fees to be used in connection with the Borough's affordable housing programs, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1²³ et seq., as amended and supplemented, N.J.A.C. 5:80-26.1 et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985.²⁴

§ 17-91. PURPOSE.

This article establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with COAH's regulations developed in response to P.L. 2008, c. 46, Sections 8 and 32 to 38 (N.J.S.A. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7). Fees collected pursuant to this article shall be used for the sole purpose of providing very-low-, low-and moderate-income housing in accordance with a court-approved spending plan.

§ 17-92. BASIC REQUIREMENTS.

- a. This article shall not be effective until approved by the court.
- b. The Borough of Mount Arlington shall not spend development fees until the court has approved a plan for spending such fees (spending plan).

§ 17-93. DEFINITIONS.

The following terms, as used in this article, shall have the following meanings:

AFFORDABLE HOUSING DEVELOPMENT — A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable housing development.

COAH or THE COUNCIL — The New Jersey Council on Affordable Housing established under the Fair Housing Act.²⁵

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.

23. Editor's Note: In accordance with N.J.S.A. 52:14B — 5.1b, Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, expired on 10-16-2016.

24. Editor's Note: See N.J.S.A. 52:27D-301 et seq.

25. Editor's Note: See N.J.S.A. 52:27D-301 et seq.

DEVELOPMENT FEE — Money paid by a developer for the improvement of property as authorized by *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and regulated by applicable COAH rules.

EQUALIZED ASSESSED VALUE — The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with Sections 1, 5, and 6 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through 54:1-35c).

GREEN BUILDING STRATEGIES — Those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

§ 17-94. RESIDENTIAL DEVELOPMENT FEES.

a. Imposition of Fees.

- (1) Within the Borough of Mount Arlington, all residential developers, except for developers of the types of developments specifically exempted in Subsection b below and developers of developments that include affordable housing, shall pay a fee of 1.5% of the equalized assessed value for all new residential development provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
- (2) When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a "bonus" development fee of 6.0% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

b. Eligible Exactions, Ineligible Exactions and Exemptions for Residential Developments.

- (1) Affordable housing developments and/or developments where the developer is providing for the construction of the requisite number of affordable housing units elsewhere within the municipality, and developments where the developer has made a payment in lieu of on-site construction of the required number of affordable units, if permitted by an ordinance approved by the court as part of a judgment of compliance and repose, shall be exempt from the payment of development fees.

- (2) Developments that have received preliminary or final site plan approval prior to the adoption of this article shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where site plan approval is not applicable, the issuance of a zoning permit and/or construction permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the Development Fee Ordinance in effect on the date that the construction permit is issued.
- (3) Improvements or additions to existing one- and two-family dwellings on individual lots shall not be required to pay a development fee, but a development fee shall be charged for any new dwelling constructed as a replacement for a previously existing dwelling on the same lot that was or will be demolished, unless the owner resided in the previous dwelling for a period of one year or more prior to obtaining a demolition permit. Where a development fee is charged for a replacement dwelling, the development fee shall be calculated on the increase in the equalized assessed value of the new structure as compared to the previous structure.
- (4) Homes replaced as a result of a natural disaster (such as a fire or flood) shall be exempt from the payment of a development fee.

§ 17-95. NONRESIDENTIAL DEVELOPMENT FEES.

a. Imposition of Fees.

- (1) Within all zoning districts, nonresidential developers, except for developers of the types of developments specifically exempted below, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.
- (2) Within all zoning districts, nonresidential developers, except for developers of the types of developments specifically exempted below, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- (3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvements and the equalized assessed value of the newly improved structure, i.e., land and improvements, and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

b. Eligible Exactions, Ineligible Exactions and Exemptions for Nonresidential Development.

- (1) The nonresidential portion of a mixed-use inclusionary or market-rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.
- (2) The 2.5% development fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing footprint, reconstruction, renovations and repairs.
- (3) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.
- (4) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy for the nonresidential development, whichever is later.
- (5) If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Borough of Mount Arlington as a lien against the real property of the owner.

§ 17-96. COLLECTION PROCEDURES.

- a. Upon the granting of a preliminary, final or other applicable approval for a development, the approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a construction permit.
- b. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- c. The Construction Official responsible for the issuance of a construction permit shall notify the Borough Tax Assessor of the issuance of the first construction permit for

a development which is subject to a development fee.

- d. Within 90 days of receipt of such notification, the Borough Tax Assessor shall prepare an estimate of the equalized assessed value of the development based on the plans filed.
- e. The Construction Official responsible for the issuance of a final certificate of occupancy shall notify the Borough Tax Assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.
- f. Within 10 business days of a request for the scheduling of a final inspection, the Borough Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- g. Should the Borough of Mount Arlington fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b of Section 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).
- h. Except as provided in § 17-95a3 hereinabove, 50% of the initially calculated development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of the certificate of occupancy.
- i. Appeal of Development Fees.
 - (1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough of Mount Arlington. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
 - (2) A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Borough of Mount Arlington. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

§ 17-97. AFFORDABLE HOUSING TRUST FUND.

- a. There is hereby created a separate, interest-bearing Affordable Housing Trust Fund to be maintained by the Chief Financial Officer of the Borough of Mount Arlington for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.
- b. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (1) Payments in lieu of on-site construction of a fraction of an affordable unit, where permitted by an ordinance approved by the court as part of a judgment of compliance and repose;
 - (2) Funds contributed by developers to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
 - (3) Rental income from municipally operated units;
 - (4) Repayments from affordable housing program loans;
 - (5) Recapture funds;
 - (6) Proceeds from the sale of affordable units; and
 - (7) Any other funds collected in connection with Mount Arlington's Affordable Housing Program.
- c. In the event of a failure by the Borough of Mount Arlington to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved spending plan and to expend funds within the applicable required time period as set forth in *In re Tp. of Monroe*, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the court; or for other good cause demonstrating the unapproved use(s) of funds, the court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of Mount Arlington, or, if not practicable, then within the County or the Housing Region.
 - (1) Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the noncompliant condition(s), and upon a finding of continuing and deliberate noncompliance, determine to authorize LGS to direct the expenditure of funds in the trust fund. The Court may also impose such other

remedies as may be reasonable and appropriate to the circumstances.

- d. Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the court.

§ 17-98. USE OF FUNDS.

- a. The expenditure of all funds shall conform to a spending plan approved by the court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the court to address the Borough of Mount Arlington's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market to affordable program; Regional Housing Partnership programs; conversion of existing nonresidential buildings to create new affordable units; green building strategies designed to be cost saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by the court and specified in the approved spending plan.
- b. Funds shall not be expended to reimburse the Borough of Mount Arlington for past housing activities.
- c. At least 30% of all development fees collected, and interest earned on such fees, shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of the median income for Housing Region 2, in which Mount Arlington is located.
 - (1) Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the spending plan.
 - (2) Affordability assistance to households earning 30% or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income. The specific programs to be used for very-low-income affordability assistance shall be identified and described within the spending plan.
 - (3) Payments in lieu of constructing affordable housing units on site, if permitted

by ordinance or by agreement with the Borough of Mount Arlington, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

- d. The Borough of Mount Arlington may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance.
- e. No more than 20% of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program or a rehabilitation program.
 - (1) In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20% of collected development fees that may be expended on administration.
 - (2) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the court are not eligible uses of the Affordable Housing Trust Fund.

§ 17-99. MONITORING.

The Borough of Mount Arlington shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, Council on Affordable Housing or Local Government Services or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and nonresidential developers, payments in lieu of constructing affordable units on site (if permitted by ordinance or by agreement with the Borough), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Borough-owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with Mount Arlington's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the spending plan approved by the court.

§ 17-100. ONGOING COLLECTION OF FEES.

- a. The ability for the Borough of Mount Arlington to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its judgment of compliance unless the Borough of Mount Arlington has first filed

an adopted Housing Element and Fair Share Plan with the court or with a designated state administrative agency, has petitioned for a judgment of compliance from the court or for substantive certification or its equivalent from a state administrative agency authorized to approve and administer municipal affordable housing compliance and has received approval of its Development Fee Ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.

- b. If the Borough of Mount Arlington fails to renew its ability to impose and collect development fees prior to the expiration of its judgment of compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to Section 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320).
- c. The Borough of Mount Arlington shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its judgment of compliance, nor shall the Borough of Mount Arlington retroactively impose a development fee on such a development. The Borough of Mount Arlington also shall not expend any of its collected development fees after the expiration of its judgment of compliance.

LAND DEVELOPMENT

17 Attachment 1

APPENDIX A. MAJOR POTENTIAL CONTAMINANT SOURCES

Land uses and activities determined by the Highlands Council (based on New Jersey Safe Drinking Water Act regulations at N.J.A.C. 7:10 and NJDEP regulations) to be Major Potential Contaminant Sources include those listed below.

1. Underground fuel and chemical storage and oil tanks regulated by NJDEP under provisions of the Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.).
2. Above-ground storage facility for a hazardous substance or waste with a cumulative capacity greater than 2,000 gallons.
3. Automotive service center (repair & maintenance).
4. Dry cleaning processing facility.
5. Road salt storage facility.
6. Cemetery.
7. Highway maintenance yard.
8. Truck, bus, locomotive maintenance yard.
9. Site for storage and maintenance of heavy construction equipment and materials.
10. Site for storage and maintenance of equipment and materials for landscaping, excluding household storage and maintenance of such equipment.
11. Livestock operation containing 300 or more Animal Units (AU) [1 AU= 1,000 pounds of live animal weight] as defined by the NJ Department of Agriculture in its Criteria and Standards for Animal Waste Management, at N.J.A.C. 2:91.
12. Quarrying and/or mining facility.
13. Asphalt and/or concrete manufacturing facility.
14. Junkyard/auto recycling and scrap metal facility.
15. Residential or agricultural motor fuel in NJDEP exempted underground storage tanks (i.e., under 1,000 gallons).
[Ord. No. 08-2015 Appendix A]

LAND DEVELOPMENT

17 Attachment 2

Borough of Mount Arlington

APPENDIX B. MINOR POTENTIAL CONTAMINANT SOURCES

Land uses and activities determined by the Highlands Council (based on New Jersey Safe Drinking Water Act regulations at N.J.A.C. 7:10 and NJDEP regulations) to be Minor Potential Contaminant Sources include the following:

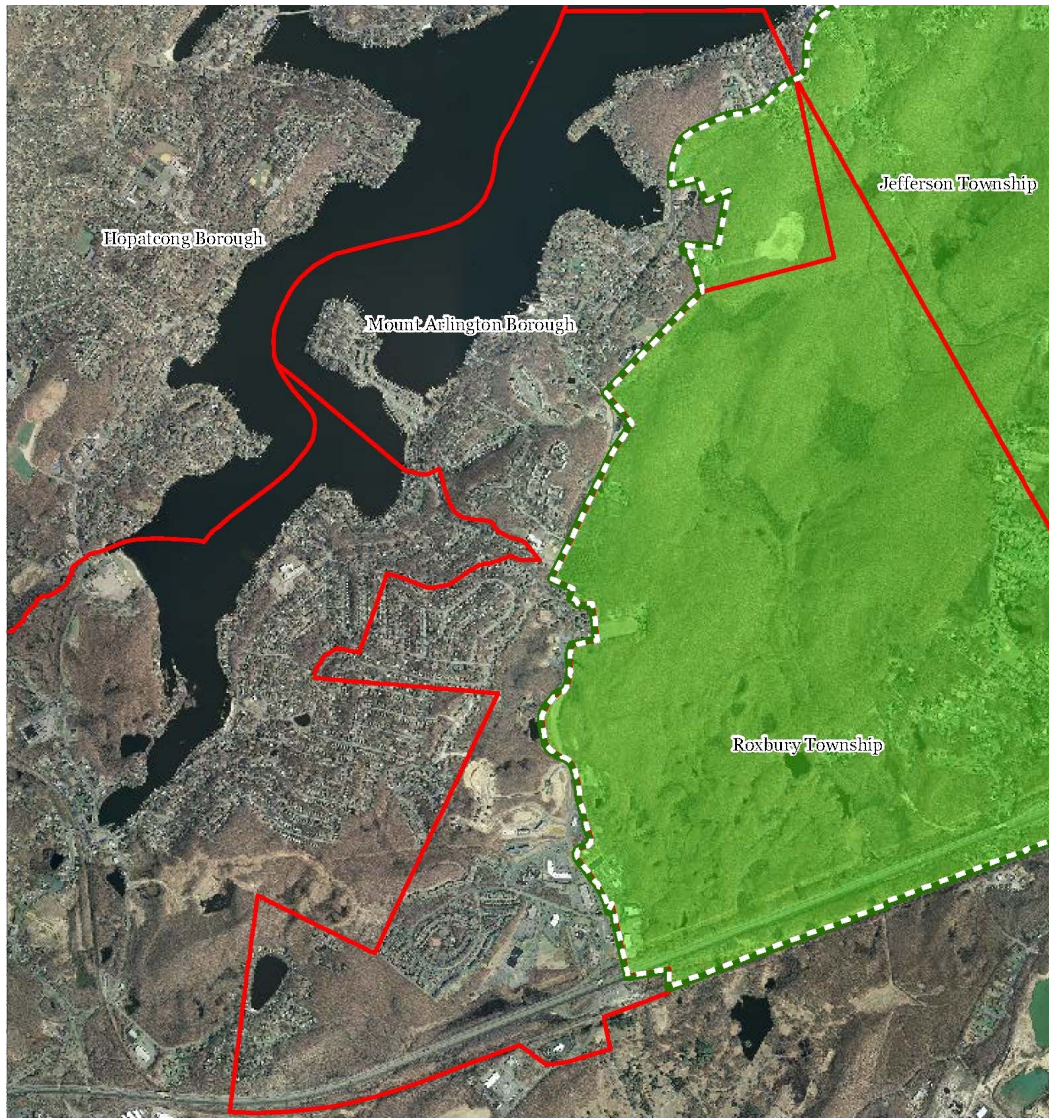
1. Underground storage of hazardous substance or waste of less than 50 gallons.
2. Underground heating oil storage tank with a capacity of less than 2,000 gallons.
3. Sewage treatment facility regulated by a NJPDES permit granted under N.J.A.C. 7:14A.
4. Industrial waste line.
5. Septic system disposal field.
6. Facility requiring a ground water discharge permit issued by the NJDEP pursuant to N.J.A.C. 7:14A et seq.
7. Stormwater retention-recharge basin on an industrial property receiving runoff from surfaces other than roof areas.
8. Dry well on an industrial property receiving runoff from surfaces other than roof areas.
9. Waste oil collection, storage and recycling facility.
10. Agricultural chemical bulk storage and mixing or loading facility including crop dusting facilities.
11. Above-ground storage of hazardous substance or waste in quantities of less than 2,000 gallons.
12. Livestock operation containing 8 or more Animal Units (AU) [1 AU= 1,000 pounds of live animal weight] or those receiving 142 or more tons of animal waste per year as defined by the NJ Department of Agriculture pursuant to its Criteria and Standards for Animal Waste Management, at N.J.A.C. 2:91.

[Ord. No. 08-2015 Appendix B]

LAND DEVELOPMENT

17 Attachment 4

Exhibit 1: Borough of Mount Arlington Highlands Preservation Area [Ord. No. 09-2015 Exhibit 1]



Mount Arlington Borough



1 inch = 0.416 miles



December 2011

LAND DEVELOPMENT

17 Attachment 6

SCHEDULE 1 SCHEDULE OF AREA, YARD AND BULK REQUIREMENTS (Section 17-29)

ZONE	Minimum Size of Lot				Minimum Required Yard Areas						Floor Area Ratio	Maximum Percent Of Impervious Lot Coverage	Maximum Height		Notes
	Interior Lots		Corner Lots		For Principal Buildings			For Accessory Buildings		In Stories			In Feet		
	Area in Square Feet	Width In Feet	Area in Square Feet	Width In Feet	Front Yard	One Side Yard	Total of Two Side Yards	Rear Yards	Side Yard					Rear Yard	
RA-40	40,000	175	46,000	200	50	20	50	50	Same as Principal	20	18	20	2 ½	35	#1
RA-30	30,000	125	36,000	150	40	12	25	25	“	15	18	25	2 ½	35	#2
RA-15	15,000	100	18,750	125	35	12	25	25	“	15	28	35	2 ½	35	
RA-7.5	7,500	50	10,000	75	25	10	20	20	“	15	30	50	2 ½	35	
OSGU	80,000	225	89,000	250	60	30	75	50	“	20		10	2 ½	35	
RG-5	200,000	200	200,000	300	40	50	100	50	“	50		50	2 ½	35	
B-1	20,000	100	25,000	125	40	10	25	25	“	25		60	2 ½	35	#4
R-C	20,000	100	25,000	125	25	10	25	25	“	25		60	2 ½	35	#4
R-PRD	----- -40,000	----- 175	----- 46,000-	----- 2,000	----	See		Notes----	-----	-----		----- 15	----- 2 1/2	----- 35	See 17-28.10
HMC	10 ac.	200	10 ac.	200	100	100	200	100	25 or 2x Height			50	5	60	See 17-31.6, #4
PUD	217,800 (5 ac.)	200	217,800 (5 ac.)	300	100	50	100	100	“	100		50	2 ½	35	See 17-31.5a #3
OB	40,000	200	45,000	225	50	20	50	50	“	50		60	3	50	#4

1. In R-40 zones, minimum lot area may be reduced to 30,000 square feet and 135 minimum frontage with public water or public sewer.
2. In R-30 zones, minimum lot area may be reduced to 20,000 square feet and 100 minimum frontage with public water or public sewer.
3. Reserved. [Ord. No. 93-19 § 4]
4. In the B-1, OB, R-C and HMC Zones, clothing bins shall be permitted in the rear yard and side yard provided they are behind the rear building line. The placement of clothing bins must comply with a minimum setback of 10 feet from any property line. (See Section 17-32.7) [Ord. No. 06-09 § 3]

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17 Attachment 15

SCHEDULE 10

BOROUGH OF MOUNT ARLINGTON GREEN DEVELOPMENT APPLICATION CHECKLIST [Adopted by Ord. No. 10-2015]

Overview

The Borough of Mount Arlington requires completion of this Green Development Checklist as part of any application for site plan or subdivision approval. While completion of this checklist is mandatory, it is for informational purposes only, and provides the Borough with important information regarding the use of various sustainable development practices within the municipality.

The Green Development Checklist is divided into three (3) sections, each weighing the potential impacts of the proposed development:

- (1) The first section addresses the proposed development site within its regional and local context, examining its physical location, development capacity and connectivity to infrastructure;
- (2) The second section addresses development of the site itself; and
- (3) The third section addresses green building practices for structures on the site.

Instructions

For each question, please check "YES" or "NO" and provide a brief explanation of how the development will address this practice or why the practice is not used or otherwise inapplicable.

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Green Development Checklist

Applicant Name: _____ Date of Application: _____

Location of Proposed Development: _____

Section 1: Regional and Local Context

Question	Yes	No	Comments
Is the site a redevelopment, brownfield or infill location?			
Is the site served by public transit, pedestrian and bicycle networks?			
Is there train service within 1/4 mile or bus service within 1/4 mile?			
Are the roads within the development designed as "Complete Streets?"			
Does the development include historic preservation or adaptive reuse of existing facilities?			
Does the site's location, scale or use support any historic building conditions off site within its context?			
Does the development provide or increase the following:			
<ul style="list-style-type: none">• A mix of land use types? Please list.			
<ul style="list-style-type: none">• Housing diversity by type and income?			
<ul style="list-style-type: none">• Civic and public spaces (or have proximity to them)?			
<ul style="list-style-type: none">• Recreation facilities and green space/parks (or have proximity to them) and is it part of an integrated ecological network?			
<ul style="list-style-type: none">• Alternative parking designs such as reduced parking ratios, a percentage of compact stalls, banked parking, shared parking, priority parking for low emission vehicles and provisions for bicycle storage?			
<ul style="list-style-type: none">• Open space?			
<ul style="list-style-type: none">• Natural features?			

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Section 2: Site Development

Question	Yes	No	Comments
Does the design provide for the following:			
<ul style="list-style-type: none"> Minimum site disturbance during construction? 			
<ul style="list-style-type: none"> Low Impact Design features? 			
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Bio-swales? 			
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Rain gardens ? 			
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Green Roofs ? 			
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Pervious pavements? 			
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Green Walls? 			
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Trees ? 			
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Indigenous species (non-invasive species, low maintenance landscaping)? 			
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Does the site provide for onsite management of vegetative waste? 			
<ul style="list-style-type: none"> Regenerative Design? 			
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Does the site design for habitat, wetlands or water body conservation? 			
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Does the site design include restoration of habitat, wetlands or water bodies? 			
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Does the project include long-term conservation management of habitat, wetlands or water bodies? 			
Does the site minimize heat island effects through reduced paving, landscaping or other methods?			
Does the site provide alternatives to single occupancy vehicles such as van spaces, bike storage and changing facilities, and alternative energy vehicle parking?			
Does the site include Light Pollution Reduction and energy efficient site lighting and controls?			
Does the site consider landscape and stormwater maintenance specifications that employ integrated pest management post-bond to assure implementation for five years after occupancy?			

MOUNT ARLINGTON CODE

Section 3: Green Building

Question	Yes	No	Comments
Does the building(s) meet the criteria for a Certified Green Building?			
Is the building oriented to maximize benefits of daylighting, viewsheds and energy and to minimize detrimental impacts on surrounding sites?			
Water Reduction			
Does the building provide a 20% or greater reduction beyond minimum water efficiency standards set by the EPA or local government, whichever is greater?			
Does the building employ water conservation features — including low-flow fixtures, waterless urinals, sensor-controlled faucets?			
Does the building incorporate rainwater, gray water + storm water capture and reuse?			
Is wastewater treated on site and recharged to the ground?			
Energy			
Does the building reduce energy usage through efficient heating and cooling, geothermal technology, enhanced daylighting, efficient lighting, occupant controls and an efficient building envelope?			
Does the project incorporate Energy Star-labeled building products?			
Does the building include onsite energy generation?			
What is the anticipated energy savings?			
What are the anticipated carbon emission reductions?			
Indoor Air Quality			
Is natural ventilation and efficient use of outdoor air during heating and cooling periods utilized?			
Are other measures being used to improve indoor air quality? Please describe.			
Materials			
Is an existing building being reused? 100%, 75%, 50%?			
Are there construction waste management plans in place?			
Are there solid waste management plans in place?			
Are building materials reused?			
Do building materials contain recycled content?			
Are building materials sourced within the region (within 500 mile radius)?			