

ARTICLE III
ADMINISTRATIVE PROCEDURE

SECTION 3.1: Planning Board

A. 1. Establishment; Composition.

There is hereby established pursuant to N.J.S.A. 40:55D-1 et seq. a planning board of nine (9) members consisting of the following four (4) classes:

Class I: the mayor or the mayor's designee in the absence of the mayor.

Class II: one (1) 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 (6) other citizens of the Borough to be appointed by the mayor.

The members of Class IV shall hold no other municipal office, except as provided in N.J.S.A. 40:55D-23, that one (1) member may be a member of the historic preservation commission and one (1) member may be a member of the board of education. If there be a municipal environmental commission, the 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 unless there be among Class IV or alternate members of the planning board both a member of the historic preservation commission and a member of the board of education, in which case the member common to the planning board and municipal environmental commission shall be deemed a Class II member of the planning board. For the purpose of this section, membership on a municipal board or commission whose function is advisory in nature, and the establishment of which is discretionary and not required by statute, shall not be considered the holding of municipal office.

2. Alternate Members.

There is hereby established pursuant to N.J.S.A. 40:55D-23.1 two (2) alternate members of the planning board, who shall be residents. Alternate members shall be appointed by the mayor, and shall meet qualifications of Class IV members. Alternate members shall be designated at the time of appointment by the mayor as "Alternate No. 1" and "Alternate No. 2." The terms of the alternate members shall be for two (2) years, except that the terms of the alternate members shall be such that the term of not more than one alternate member shall expire in any one year; provided, however, that in no instance shall the terms of the alternate members first appointed exceed two (2) years. A vacancy occurring otherwise than by expiration of term shall be filled by the mayor for the unexpired term only.

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.

B. Terms.

The term of the member composing Class I shall correspond with the mayor's official tenure, or, if the member is the mayor's designee in the absence of the mayor, the designee shall serve at the pleasure of the mayor during the mayor's official tenure. The terms of the members composing Class II and Class III shall be for one (1) year or terminate at the completion of their respective terms of office, whichever occurs first, except for a Class II member who is also a member of the environmental commission. The term of a Class II or a Class IV member who is also a member of the environmental commission shall be for three (3) years or terminate at the completion of his term of office as a member of the environmental commission, whichever comes first. 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 other body or at the completion of his Class IV term, whichever occurs first. The terms of all Class IV members first appointed shall be so determined that to the greatest practicable extent the expiration of such terms shall be evenly distributed over the first four (4) years after their appointment; provided, however, that no term of any member shall exceed four (4) years. Thereafter all Class IV members shall be appointed for terms of four (4) years except as otherwise herein provided. All terms shall run from January 1 of the year in which the appointment was made.

C. 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.

D. Organization.

The planning board shall elect a chairman and vice chairman from the members of Class IV and select a secretary, who may or may not be a member of the planning board or a municipal employee.

E. Attorney.

There is hereby created the office of planning board attorney. The planning board may annually appoint and establish the compensation of or agree upon the rate of compensation of the planning board attorney, who shall be an attorney other than the municipal attorney.

F. Experts and Staff.

The planning board may also employ or contract for the services of experts and other staff and services as it may deem necessary. The board shall not, however, exceed, exclusive of gifts or grants, the amount appropriated by the governing body for its use.

G. Powers and Duties Generally.

The Planning Board is authorized to adopt bylaws governing its procedural operation. It shall also have the following powers and duties:

1. To make, 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.
2. To administer the provisions of the land subdivision ordinance and site plan review ordinance of the borough in accordance with the provisions of said ordinances and the Municipal Land Use Law, N.J.S.A.40:55D-1, et seq.
3. To exercise, to the same extent and subject to the same restrictions, all powers of a Planning Board in accordance with the provisions of the Municipal Land Use Law, N.J.S.A.40:55D-1 et seq., but the Class I and Class III members shall not participate in the consideration of applications for development which involve relief pursuant to N.J.S.A.40:55D-70(d) 5.
4. To participate in the preparation and review of programs or plans required by state or federal law or regulations.
5. To assemble data on a continuing basis as part of a continuous planning process.
6. To annually prepare a program of municipal capital improvement projects projected over a term of six (6) years, and amendments thereto, and recommend same to the governing body.
7. To consider and make report to the governing body within thirty-five (35) days after referral as to any proposed development regulations 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 governing body, pursuant to the provisions of N.J.S.A. 40:55D-26b.
8. 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.

H. Time Limits For Decisions.

The planning board shall grant or deny development approvals within the time periods established in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

I. Procedure For Filing Applications.

Development applications shall be filed with the secretary of the planning board. The applicant shall file, at least fourteen (14) days before the date of the meeting of the board fifteen (15) copies of development applications, maps and other required documents. At the time of filing the application, but in-on event less than ten (10) days prior to the date set for hearing, the applicant shall also file all plot plans, maps and other documents required by virtue of any provisions of this chapter or any rule of the planning board. The secretary of the board shall inform the applicant of the steps to be taken to initiate applications and of the regular meeting dates of the board.

J. Citizens' Advisory Committee.

The mayor may appoint one (1) or more persons as a citizens' advisory committee to assist or collaborate with the planning board in its duties, but such person or persons shall have no power to vote or take other action required of the board. Such person or persons shall serve at the pleasure of the mayor.

K. Environmental Commission.

Whenever the environmental commission has prepared and submitted to the planning board an index of the natural resources of the municipality, the planning board shall make available to the environmental commission an informational copy of every application for development to the planning board. Failure of the planning board to make such informational copy available to the environmental commission shall not invalidate any hearing or proceeding.

L. Rules and Regulations.

The Planning Board shall adopt such rules and regulations 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:67A-1 et seq., shall apply.

M. Voting.

All actions of the Planning Board shall be taken in accordance with the voting requirements as established in N.J.S.A. 40:55D-9a. When any hearing before the Planning Board shall carry over two (2) or more meetings, a member of the Board who was absent for one (1) or more meetings shall be eligible to vote on the matter upon which the hearing was conducted, notwithstanding his absence from one (1) or more of the meetings; provided, however, that such board member has available to him a transcript or recording of the meeting from which he was absent and certifies, in writing, to the board that he has read such transcript or listened to such recording.

SECTION 3.2: RESERVED FOR FUTURE USE

SECTION 3.3: Provisions Applicable to the Planning Board

A. Conflicts of Interest.

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.

B. Meetings.

1. "Meetings of the planning board shall be scheduled no less often than once a month, and any meeting so scheduled shall be held as scheduled unless canceled for lack of applications for development to process.
2. Special meetings may be Prided for at the call of the chairman or on the request of any two (2) board members, which meetings shall be held on notice to the board's members and the public in accordance with all applicable legal requirements.
3. No actions shall be taken at any meeting without a quorum being.
4. All actions shall be taken by majority vote of a quorum except as otherwise required by any provisions of the Municipal Land Use Law, N.J.S.A. 40:55D:-1 et seq.
5. All regular meetings and all special meetings shall be open to the public. Notice of all such meetings all be given in accordance with the requirements of the Open Public Meetings Law, N.J.S.A. 10:4-6 et seq.

C. Minutes.

Minutes of every regular or special meeting shall be kept and shall include the names of the persons appearing and addressing the board and of the persons appearing by attorney, the action taken by the board, the findings, if any made by it and reason therefore. The minutes shall thereafter be made available for public inspection during normal business hours at the office of the municipal clerk. Any interested party shall have the right to compel

production of the minutes for use as evidence in any legal proceeding concerning the subject matter of such minutes. Such interested party may be charged a fee for reproduction of the minutes for his use as provided for in the rules of the board.

D. Hearings.

1. Rules. The Planning board may make rules governing the conduct of hearings before such body, which rules shall not be inconsistent with the provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., or the provisions of this chapter.
2. Oaths. The officer presiding at the hearing or such person as 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.
3. 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.
4. Evidence. Technical rules of evidence shall not be applicable to the hearing, but the board may exclude irrelevant, immaterial or unduly repetitious evidence.
5. Records. The board shall provide for the verbatim recording of the proceedings by either stenographer or 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.

E. Notice Requirement For Hearing.

N.J.S.A. 40:55D Whenever a hearing is required on an application for development pursuant to N.J.S.A. 40:55D-1 et seq., the Applicant shall give notice thereof in accordance with the provisions of N.J.S.A. 40:55D-12.

F. List of Property Owners Furnished.

1. Pursuant to the provisions of N.J.S.A. 40:55D-12, the municipal tax assessor shall, within seven (7) days after receipt of a request heretofore and upon payment of a fee of \$0.25 per name, or \$10.00, whichever is greater, make and certify a list from the current tax duplicate of the names and addresses of owners to whom an Applicant is required to give notice pursuant to this chapter.

2. The Applicant shall be entitled to rely on the validity of this list for a period of one hundred twenty (120) days. Thereafter, the Applicant shall be responsible to determine if any changes in ownership have occurred which affect the validity of the list of property owners furnished by the municipal tax assessor.

G. Decisions.

1. Each decision on any application for development shall be set forth in writing as a resolution of the board, which resolution shall include findings of fact and legal conclusions based thereon.
2. A copy of the decision shall be mailed by the board within ten (10) days of the date of decision to the Applicant or, if represented, to his attorney, without separate charge.
3. 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 municipal 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.

H. Publication of Decision.

A brief notice of every final decision shall be published in the official newspaper of the municipality. The publication shall be arranged by the Applicant in event of approval or by the secretary of the planning Board in the event of a denial by the Planning Board with the charge borne by the Applicant. The notice shall be sent to the official newspaper for publication within ten (10) days of the date of any such decision.

I. 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 the board shall be conditioned upon either the assessments are delinquent on said property, any approvals or other relief granted by the 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 municipality will be adequately protected.

J. Expiration of Variance.

Any variance granted by the Planning Board pursuant to N.J.S.A. 40:55D-70d shall expire by limitation, unless such construction, alteration or use shall have been actually commenced on each and every structure permitted by said variance or unless such use has actually been commenced within twelve (12) months from the date of entry 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 the governing body or to a court of competent jurisdiction until the termination in any manner of such appeal or proceeding. Any construction commenced within the twelve (12) month period provided for in this section shall be completed within eighteen (18) months of the date of entry of the judgment of the Planning Board; except, however, that the running of the period of limitation shall be tolled from the date of the filing of the appeal from the decision of the Planning Board to the governing body or to a court of competent jurisdiction until the termination in any manner of such appeal or proceeding.

The Planning Board shall have the authority to extend the above provisions for one additional twelve (12) month period upon an applicant making application for such extension and paying an extension fee equal to fees established under this chapter.

SECTION 3.4: Fees.

A.	<u>Application for Development Permit</u>	
1.	One Hundred Dollars (Includes Fences & Signs)	\$100.00
2.	Temporary Storage/Portable Storage Unit Application Prior to placement of unit	Twenty-Five Dollars \$ 25.00
B.	<u>Grading Permit Application Individual</u>	\$150.00
	House Location Plot/Grading Plans for Fill over Ten (10) Cubic Yards or more than 200 Square Feet of Disturbance	
	One Hundred Fifty Dollars	\$150.00

Like Kind repairs and replacements under \$2,500 shall not require a development permit.

Professional review costs for grading Permit application shall be in accordance with Section 3.4.M.

C.	<u>Minor Subdivision Approval-</u>	
1.	Each Informal-Review: Three Hundred Dollars	\$300.00
2.	Application Fee: Each Preliminary Submission: Two Hundred Fifty Dollars	\$250.00

3.	Plat Review Fee: Five Hundred Dollars Per Lot	\$500.00 (per lot)
D.	<u>Major Subdivision Approval:</u>	
1.	Each Informal Review: Three Hundred Dollars	\$300.00
2.	Preliminary Application Fee: Five Hundred Dollars	\$500.00
3.	Preliminary Plat Review Fee: Five Hundred Fifty Dollars Per Lot	\$500.00 (per lot)
4.	Final Plat Application Fee: One Hundred Dollars Per Lot	\$100.00 (per lot)
5.	Final Plat Review Fee: One Hundred Fifty Dollars Per Lot	\$150.00 (per lot)
E.	<u>Minor Site Plan Approval:</u>	
1.	Each Informal Review: One Hundred Dollars	\$100.00
2.	Application Fee: Three Hundred Dollars	\$300.00
3.	Approval Review Fee: Five Hundred Dollars Per Lot	\$500.00 (per lot)
F.	<u>Major Site Plan Approval:</u>	
1.	Each Informal Review: Two Hundred Dollars	\$200.00
2.	Preliminary Application Fee: Five Hundred Dollars	\$500.00
3.	Preliminary Approval Review Fees: The sum of the applicable fees below:	
a.	Residential (including community residence, but not including sheltered care, nursing homes, or other medical/institutional uses) the sum of:	

- 1) Preliminary Approval, Major Site Plan

<u>Number of Units</u>	<u>Fee</u>	
0-10	\$2,500	
11-24	\$2,500 + \$100/Lot	
over 24	\$4,900 + \$50/Lot	

- 2) For each remodeled, reconstructed, refurbished or rehabilitated dwelling unit: Three Hundred Dollars \$ 300.00

- 3) For each new or additional parking space.
 - a) First twenty-five (25) spaces: Fifty Dollars (per space) \$ 50.00
 - b) Over twenty-five (25) spaces: Thirty Dollars (per space) \$ 30.00

- 4) For each reconstructed, surfaced or improved existing paved parking space: Thirty Dollars (\$30.00) per space \$ 30.00
(per space)

b. Other Uses:

The sum of \$200.00 plus:

- 1) For each full 1,000 square feet of affected lot area:
 - a) First ten thousand (10,000) square feet: Twenty-Five Dollars (\$25.00) per one thousand (1,000) square feet
 - b) Over ten thousand (10,000) square feet: Fifty Dollars (\$50.00) per one thousand (1,000) square feet

- 2) For each full 1,000 square feet of proposed new gross floor area:
 - a) First ten thousand (10,000) square feet: One Hundred Fifty Dollars (\$150.00) per one thousand (1,000) square feet
 - b) Over ten thousand (10,000) square feet: Fifty Dollars (\$50.00) per one thousand (1,000) square feet
- 3) For each proposed new or additional parking space:
 - a) First Twenty-Five (25) spaces: Forty Dollars (\$40.00) per space
 - b) Over twenty-five (25) spaces: Thirty Dollars (\$30.00) per space
- 4) For each full 1,000 square feet of remodeled existing gross floor area: Fifty Dollars (\$50.00)
- 5) For each reconstructed, resurfaced or improved existing paved parking space: Thirty Dollars (\$30.00)
- 6) For each proposed freestanding sign: Three Hundred Dollars (\$300.00)
4. Final Application Fee: Two Hundred Fifty Dollars \$ 250.00
5. Final Approval - Fifty Percent (50%) of the fees for preliminary approval enumerated above.

G. Variances:

1. Appeals
 - a. Single and/or two-family residential uses: One Hundred Fifty Dollars (\$150.00) \$150.00
 - b. Other: Three Hundred Dollars (300.00) \$300.00

2.	Interpretation of the Land Use and Development Zoning Regulations or Map: One Hundred Seventy-Five Dollars (\$175.00)	\$175.00
3.	Hardship or Bulk Variance	
a.	Single and/or two-family residential uses: One Hundred Fifty Dollars (\$150.00) Per Variance	\$150.00
b.	Other: One Hundred Fifty Dollars (\$150.00) Per Variance	\$150.00
c.	Existing non-conformity (first Seventy-Five (\$75.00) per existing Non-conformity (in excess of one)	\$ 150.00 \$ 75.00
4.	Use Variance	
a.	Proposed single and/or two-family residential uses: Five Hundred Dollars (\$500.00)	\$500.00
b.	Other than subsection F (4) (a) above uses with floor areas totaling five thousand (5,000) square feet or less: One Thousand Dollars (\$1000.00)	\$1,000.00
c.	Uses other than Subsection F (4) (a) above with floor areas totaling five thousand (5,000) square feet or more: One Thousand Five Hundred Dollars	\$1,500.00
5.	Building Permit in conflict with Official Map or Building Permit for lot not related to a street: Three Hundred Dollars	\$300.00
H.	<u>Conditional Uses:</u> Three Hundred Fifty Dollars (\$300.00) plus site plan, variance and other fees listed above	\$300.00

- I. Public Hearing: For those development applications which require a public notice or hearing pursuant to 16-3.3D Three Hundred Dollars (\$300.00) \$300.00
- J. Reproduction of Records:
1. Duplication of tape recordings:
Two Hundred Dollars per meeting \$200.00
 2. Use of tape recordings for transcript purposes, applicant to supply stenographer to make transcript:
One Hundred Dollars per meeting \$100.00
 3. Duplication of plan drawings \$ 10.00/per sheet
11" x 17" shall be Ten Dollars
(\$10.00) per sheet.
- K. Change of Master Plan or Zone District Request Application:
1. Single-Family Residential to other Single-Family Residential:
Five Hundred Dollars \$500.00
 2. Single-Family Residential to multi-family, commercial, industrial, office research or other non-single-family zone: Seven Hundred Fifty Dollars (\$750.00) \$750.00
plus Fifty dollars (\$50.00) per acre for each acre over five (5) acres \$ 50.00
- L. Environmental Impact Report (EIR): For those development applications which require review of an EIR pursuant to 16-8.13: Seven Hundred Fifty Dollars (\$750.00) \$750.00
- M. Professional Review Costs:
1. In addition to the application fees set forth above, the planning board may charge the applicant an amount equal to the fee(s) which the board pays to an attorney, professional engineer or planner to review the development application. If the board determines that it is necessary to retain the services of a professional engineer or planner to review the development application, the applicant shall be required to pay an initial deposit and such other additional deposits as may be required to

offset these special review costs incurred by the board. The applicant, shall, at the time of filing an application, be required to post the following minimum amounts:

- | | | |
|----|--|------------|
| a. | Grading Permits for Individual House Plan/Grading Plans for fill over five (5) cubic yards (One Hundred Fifty Dollars) | \$150.00 |
| b. | Minor Property Improvements | \$500.00 |
| c. | Sign Application | \$100.00 |
| d. | Coastal Wetlands Applications (Five Hundred Dollars) | \$500.00 |
| e. | Minor subdivisions application involving no variances or exceptions, including any application for a waiver of site plan approval:
Two Thousand Dollars | \$2,000.00 |
| f. | Simple bulk variances (Three Hundred Dollars) | \$300.00 |
| g. | For all other applications not listed in subsection L (l) a or L (l) b:
Four Thousand Dollars | \$4,000.00 |
| h. | Preparation of Resolution | \$125.00 |

2. In the event any development application requires more than two (2) hearings, or should an applicant request and be granted a special meeting date, the planning board shall charge the applicant a special meeting fee of \$1000.00 plus an amount equal to the fee(s) which the board pays to its attorney, secretary and other professional advisors who attend the special meeting. The cost of these services shall be charged against the initial deposit and such other additional deposits posted by the applicant.

3. These funds shall be placed in a separate account, without interest accruing to the developer, by the Borough Treasurer at the discretion of the Planning Board Secretary, and an accounting shall be kept of each applicant's deposit. All professional charges shall be paid from the account and charged to the applicant. Any moneys not expended for professional services shall be returned to the applicant upon final approval, denial or withdrawal of the application. If, any time during the procedure, the moneys posted shall have been expended, the Applicant shall be required to post such additional sums not to exceed Four Thousand Dollars (\$4,000) for major site plans and Two Thousand Dollars (\$2,000) for minor site plans as may be required by the Planning Board.
4. The applicant shall not be entitled to proceed with the application until such time as necessary moneys have been posted to guarantee payment of professional service fees.
5. At the time of the filing of the development application, the planning board shall have the applicant sign an agreement consenting to pay both the application fee and the special review costs incurred by the board. The agreement shall specifically state that in the event the fees imposed by the planning board are not paid, any development approvals granted by the planning board shall be considered null and void. In the event that additional deposits requested by the planning board remain unpaid for a period of sixty (60) days, the development application shall be deemed to be withdrawn and shall be dismissed without prejudice.

N. Inspection Fees for Major Site Plans and Subdivisions: The initial inspection fee deposit for all on-site and off-site improvements for subdivisions and site plans shall be 6 1/2% of the Estimated Cost of Construction.

O. Reproduction and Tax Map Revisions Fees: The applicant shall provide for a reproducible Mylar copy of the filed plat map or maps. A fee of Three Hundred Fifty Dollars (\$350.00) or Fifty Dollars (\$50.00) per lot, whichever is greater shall be charged for minor subdivisions and final plats or major subdivisions to cover the costs of the Borough Surveyor for revisions of the Borough Tax Maps.

P. Revised Plats: Any proposed revisions to a plat including all supporting maps and documents, previously approved by the Planning Board or Board of Adjustment, which approval is still in effect, shall require submission of a revised plat and payment of fees in accordance with the following:

1. Where changes in the plat are required by the Planning Board or Borough Engineer, no fees need to be paid and only sufficient copies of the plat incorporating the changes as may be necessary for distribution need be submitted.
2. Where there are only minor changes in the plat proposed by the applicant or required by another governmental agency, where approval was a condition of the Planning Board or Board of Adjustment approval, which do not involve any additional building or parking or significant change in the design of the site or subdivision, an application fee of twenty-five dollars (\$25.00) will be required along with sufficient copies of the plat incorporating the changes as may be necessary for distribution.
3. Where there are changes in the plat proposed by the applicant or required by another governmental agency whose approval was a condition of the Planning Board or Board of Adjustment approval, which involve additional building or parking or significant change in the design of site or subdivision, an application fee equal to one-half (1/2) the fee required for the initial submission will be required along with sufficient copies of the plat incorporating the changes as may be necessary for distribution.
4. Where the proposed changes involve a change in uses and/or major Board it shall be considered a new application and shall require the full payment of fees as set forth in this Section for new applications for development.
5. Where revisions in the plat only involve additional information required as a condition of a previous approval, no additional fees shall be required.

Q. Requests for Re Approval or Extensions of Time:

- | | | |
|----|---|----------|
| 1. | Minor subdivisions and site plans:
One Hundred Dollars | \$100.00 |
| 2. | Major subdivisions and site plans:
One Hundred Fifty Dollars | \$150.00 |
| 3. | Other applications for development:
One Hundred Dollars | \$100.00 |

R. Certificate As to Approval of Subdivision of Land:

- | | |
|---------------------|-----------|
| Two Hundred Dollars | \$ 200.00 |
|---------------------|-----------|

S. Certificate as to Non-Conforming Use: \$200.00
Two Hundred Dollars

T. The planning board shall have the authority to waive fees or special review charges of any development applications made by bona fide charitable, eleemosynary, educational, cultural or other organizations or associations which are operated on a non-profit basis. The production of a certified copy of a certificate of incorporation, issued pursuant to Title 15 of the Revised Statutes of New Jersey, shall be presumptive evidence that the applicant is a non-profit entity.

U. Mandatory Affordable Housing Development Fees.

1. Purpose.

- a. In Holmdel Builder's Ass'n v. Holmdel Borough, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the Council On Affordable Housing's (COAH) adoption of rules.
- b. Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- c. The purpose of this ordinance is to establish standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules and in accordance with P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing "low" and "moderate" income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

2. Basic Requirements.

- a. The ability to impose, collect and spend development fees is predicated on the Borough of Little Silver's participation in COAH's substantive certification process.
- b. The Borough of Little Silver shall not spend development fees until COAH has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

- c. This ordinance shall not be effective until COAH has approved, and the Borough has adopted, the ordinance pursuant to N.J.A.C. 5:96-5.1.

3. Definitions.

The following terms, as used in this ordinance, shall have the following meanings:

- a. **Affordable Housing Development** means 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 one hundred percent (100%) affordable development.
- b. **COAH or the Council** means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.
- c. **Development Fee** means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.
- d. **Developer** means 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.
- e. **Equalized Assessed Value** means 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 (C.54:1-35a through C.54:1-35c).
- f. **Green Building Strategies** means 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.

4. Residential Development.

- a. In accordance with N.J.A.C. 5:97-8.3 (c) of COAH's "Substantive Rules", all new development of principal and accessory residential buildings within the Borough of Little Silver, not exempt from the collection of development fees in accordance with the provisions specified in Subsection 3.4 U.4.c. of this ordinance hereinbelow, shall pay a fee to Little Silver Borough equal to one and one-half percent (1.5%) of the equalized assessed value of the residential construction, provided no increased density is permitted.

- b. Notwithstanding the provisions of Subsection 3.4 U.4.a. hereinabove, if a "d" variance is granted pursuant to N.J.S.A. 40:55D-70 d.(5) for more residential units than otherwise permitted by right under the existing zoning, then the additional residential units realized as a result of the "d" variance approval shall pay a bonus development fee to Little Silver Borough equal to six percent (6.0%) of the equalized assessed value of the residential development, rather than the one and one-half percent (1.5%) development fee otherwise required for the residential units permitted by right.
- (1) However, if the zoning of a site has changed during the immediate two (2) years prior to the filing of the "d" variance application, then the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two (2) year time period.
 - (2) In any case, these fees shall not apply to developments exempt from the collection of development fees in accordance with the provisions specified in Subsection 3.4 U.4.c. of this ordinance, hereinbelow.
- c. Eligible exactions, ineligible exactions and exemptions for residential development.
- (1) All affordable housing developments and developments where the developer has made a payment in lieu of constructing affordable units shall be exempt from paying development fees. All other forms of new construction shall be subject to development fees, except for developments that are subject to and comply with any "Growth Share Affordable Housing Requirements" provisions of the code of Little Silver Borough.
 - (2) Developments that have received preliminary or final site plan approval prior to May 9, 2006 shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or construction permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that building permits are issued.
 - (3) In addition to the construction of new principal and/or accessory buildings, development fees shall be imposed and collected for the construction of additions or expansions to existing buildings, for the change or conversion of an existing building to accommodate a more intense use, and/or for the demolition and replacement of an existing building, provided that:
 - (a) The development fee shall be calculated on the increase in the equalized assessed value of the improved building.

- (b) No development fee shall be collected for a demolition and replacement of a residential building resulting from a natural disaster.
- (c) No development fee shall be collected for the construction of an "accessory structure" which is not a "building" as these terms are defined in the Little Silver Borough "Land Development" ordinance.

5. Nonresidential Development.

- a. All new non-residential development within the Borough of Little Silver, not exempt from the collection of development fees in accordance with the provisions specified in Subsection 3.4 U.5.c. of this ordinance hereinbelow, shall pay a fee to Little Silver Borough equal to two and one-half percent (2.5%) of the equalized assessed value of the land and improvements for all new non-residential construction on an unimproved lot(s) or equal to two and one-half percent (2.5%) of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
- b. Development fees also shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final Certificate of Occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero (0).
- c. Eligible exactions, ineligible exactions and exemptions for non-residential development.
 - (1) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one-half percent (2.5%) development fee, unless otherwise exempted below.
 - (2) The two and one-half percent (2.5%) fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 - (3) Non-residential projects that have received a Certificate of Occupancy or general development plan approval or have entered into a developer's agreement or a redevelopment agreement, all prior to July 17, 2008 (the effective date of P.L. 2008, c.46), shall be exempt from the payment of non-residential development fees, provided that an affordable housing fee of at least 1% of the equalized assessed value of the improvements is included in the development plan, developer's agreement or redevelopment agreement.

- (4) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form, as may be amended, and listed below. Any exemption claimed by a developer shall be substantiated by that developer.
- (a) All non-residential construction of buildings or structures on property used by houses of worship, and property used for educational purposes which is tax-exempt pursuant to R.S.54:4-3.6, provided that the property continues to maintain its tax exempt status under that statute for a period of at least three (3) years from the date of the Certificate of Occupancy;
 - (b) Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development or as a stand-alone non-residential development;
 - (c) Any non-residential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers and senior centers as defined in section 35 of P.L.2008, c.46 (C.40:55D-8.4), which are developed in conjunction with or funded by a non-residential developer;
 - (d) Non-residential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility;
 - (e) Projects that are located within a specifically delineated urban transit hub, as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208);
 - (f) Projects that are located within an eligible municipality, as defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system;
 - (g) Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the New Jersey State Department of Transportation; and

(h) Commercial Farm or Use Group 'U' buildings and structures.

(5) A developer of a non-residential development exempted from the non-residential development fee above shall be subject to it at such time the basis for the exemption set forth in this subsection no longer applies, and shall make the payment of the non-residential development fee, in that event, within three (3) years after that event or after the issuance of the final Certificate of Occupancy of the non-residential development, whichever is later.

(6) If a property which was exempted from the collection of a non-residential 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 forty-five (45) days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Little Silver as a lien against the real property of the owner.

6. Collection Of Fees.

Little Silver Borough shall collect development fees for affordable housing in accordance with the following:

- a. The Planning Board Secretary of Little Silver Borough shall notify the Little Silver Borough Construction Code Official whenever either a preliminary or final approval is granted to any development which is subject to the collection of a development fee.
- b. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption", which is to be completed by the developer as per the instructions provided.
 - (1) The Borough Construction Official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF.
 - (2) The Borough Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- c. The Borough Construction Official responsible for the issuance of a building permit shall notify the Borough Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.

- d. Within ninety (90) days of receipt of that notice, the Borough Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development. The equalized assessed value and the required development fee shall be estimated by the Borough Tax Assessor prior to the issuance of the construction permit, with the understanding that the estimate of the equalized assessed value is not intended to establish the equalized assessed value for tax purposes.
- e. Developers shall pay fifty percent (50%) of the required development fee to Little Silver Borough at the time of the issuance of the construction permit.
- f. Developers shall pay the remainder of the development fee to Little Silver Borough at the time of the issuance of a Certificate of Occupancy.
 - (1) The Borough Construction Official responsible for the issuance of a final Certificate of Occupancy notifies the Borough Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
 - (2) Within ten (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 of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
 - (3) The equalized assessed value and the required development fee shall be re-estimated by the Borough Tax Assessor prior to the issuance of the Certificate of Occupancy, again with the understanding that the estimate of the equalized assessed value is not intended to establish the equalized assessed value for tax purposes. The developer shall be responsible for paying the difference between the development fee calculated at the time of the issuance of the Certificate of Occupancy and the amount paid at the time of the issuance of the construction permit.
 - (4) Should the Borough fail to determine or notify the developer of the amount of the development fee within ten (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 (C.40:55D-8.6).
 - (5) Upon tender of the remaining development fee, provided the developer is in full compliance with all other applicable laws, the Borough shall issue a final Certificate of Occupancy for the subject property.
- g. Regardless of the time of collection of the development fee, the fee shall be based upon the percentage that applies on the date that the construction permit is issued.

- h. The Construction Code Official shall forward all collected development fees to Little Silver Borough's Chief Financial Officer who shall deposit such fees into the established "Housing Trust Fund".
- i. A developer may challenge the development fees imposed by filing a challenge with the Director of the Division of Taxation for non-residential development and with the County Board of Taxation for residential development.
 - (1) Pending a review and determination by the Director or Board, as the case may be, which shall be made within forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Borough.
 - (2) Appeals from a determination of the Director or Board, as the case may be, may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within ninety (90) days after the date of such determination.
 - (3) Accrued interest earned on escrowed amounts to be returned shall also be returned to the developer.

7. Affordable Housing Trust Fund.

- a. All collected development fees and any proceeds from the sale of units with extinguished controls shall be deposited by the Chief Financial Officer of the Borough of Little Silver into a separate designated interest-bearing "Housing Trust Fund", which shall be maintained by the Borough Chief Financial Officer.
 - (1) No money shall be expended from the "Housing Trust Fund" unless the expenditure conforms to the "Spending Plan" which has been approved by COAH; and
 - (2) In establishing the "Housing Trust Fund", the Borough Council shall provide COAH with written authorization in the form of a three-party escrow agreement between the Borough, COAH and the bank in order to permit COAH to direct the disbursement of development fee funds as provided in N.J.A.C. 5:97-8.13(b) of the "Substantive Rules" of COAH. This authorization shall be submitted to COAH within seven (7) days from the opening of the "Housing Trust Fund".
- b. Additionally, the following sources of funding shall be deposited in the "Housing Trust Fund" and shall at all times be identifiable by source and amount:
 - (1) Recapture funds;
 - (2) Proceeds from the sale of affordable units;

- (3) Rental income from municipally operated units;
- (4) Payments in lieu of on-site construction of affordable units;
- (5) Affordable housing enforcement fines and application fees;
- (6) Developer contributed funds for barrier free affordable housing pursuant to N.J.A.C. 5:97-8.5;
- (7) Repayments from affordable housing program loans; and
- (8) Any other funds collected in connection with the Borough's affordable housing program.

c. All interest accrued in the "Housing Trust Fund" shall only be used on eligible affordable housing activities approved by COAH.

8. Use Of Funds.

- a. Funds deposited in the "Housing Trust Fund" may be used for any housing activity as itemized in the spending plan and approved by COAH to address the Borough's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to:
 - (1) A rehabilitation program;
 - (2) New construction of affordable housing units and related development costs; in the case of inclusionary developments, eligible costs shall be pro-rated based on the proportion of affordable housing units included in the development;
 - (3) Accessory apartment, market to affordable, or regional affordable housing partnership programs;
 - (4) Financial assistance designed to increase affordability;
 - (5) Conversion of existing non-residential buildings to create new affordable units;
 - (6) Acquisition and/or improvement of land to be used for affordable housing;
 - (7) Purchase of existing market rate or affordable housing for the purpose of maintaining or implementing affordability controls, such as in the event of a foreclosure;

- (8) Extensions or improvements of roads and infrastructure directly serving affordable housing sites; in the case of inclusionary developments, costs shall be pro-rated based on the proportion of affordable housing units included in the development;
 - (9) Green building strategies designed to be cost-saving for low and moderate income households, either for new construction that is not funded by other sources, or as part of necessary maintenance or repair of existing units, in accordance with accepted Federal or State standards or such guidance as may be provided by the New Jersey State Department of Community Affairs or the New Jersey Housing and Mortgage Finance Agency;
 - (10) Maintenance and repair of affordable housing units;
 - (11) Repayment of municipal bonds issued to finance low and moderate income housing activity;
 - (12) To defray the costs of structural parking; in the case of inclusionary developments, eligible costs shall be pro-rated based on the proportion of affordable housing units included in the development;
 - (13) Administration necessary for implementation of the Housing Plan Element and Fair Share Plan, in accordance with Subsection 3.4 U.8.g. below; and
 - (14) Any other activity as specified in the approved spending plan and as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9.
- b. The Borough also may request authorization for expenditure of "Housing Trust Funds" on emergent affordable housing mechanisms not included in the Borough's Fair Share Plan in the form of an amendment to the spending plan. In addition to the amendment to the spending plan, the Borough shall submit the following:
- (1) A resolution to COAH that includes a certification that the affordable housing opportunity addresses COAH's criteria set forth in N.J.A.C. 5:97-6 and information regarding the proposed mechanism in a format to be provided by COAH; and
 - (2) An amendment to its Fair Share Plan to include the mechanism at the earlier of two (2) years after COAH's approval of the spending plan amendment or the next planned amendment to the Fair Share Plan resulting from the plan evaluation review pursuant to N.J.A.C. 5:96-10.
- c. Funds shall not be expended to reimburse the Borough of Little Silver for past housing activities.

- d. Payments in lieu of constructing affordable housing units on residential and mixed-use sites shall only be used to fund eligible affordable housing activities within the Borough.
- e. At least thirty percent (30%) of all development fees collected and interest earned shall be devoted to provide affordability assistance to low and moderate income households in affordable units included in the Housing Element and Fair Share Plan, provided and in accordance with the following:
 - (1) One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to very low income households.
 - (2) 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.
 - (3) Affordability assistance for very low income households may include buying down the cost of low or moderate income units in the third round Borough's Fair Share Plan to make them affordable to very low income households (earning thirty percent [30%] or less of median income). The use of development fees in this manner may entitle the Borough to bonus credits pursuant to N.J.A.C. 5:97-3.7.
 - (4) Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- f. The Borough of Little Silver may contract with a private or public entity to administer any part of its Housing Plan Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18, subject to COAH's approval.
- g. No more than twenty percent (20%) of development fee revenues collected in any given year from the development fees may be expended on administration, including, but not limited to, the salaries and benefits for Little Silver Borough employees or consultant fees necessary to develop or implement a new affordable housing program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program.
 - (1) In the case of a rehabilitation program, no more than twenty percent (20%) of the revenues collected from development fees shall be expended for such administrative expenses.

- (2) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with COAH's monitoring requirements.
- (3) Legal or other fees related to litigation opposing affordable housing sites or objecting to COAH's regulations and/or action are not eligible uses of the "Housing Trust Fund".

9. Monitoring.

The Little Silver Borough "Municipal Housing Liaison" shall coordinate with the appropriate municipal officials the completion and return to COAH of all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, and any other funds collected in connection with the Borough's housing program, and the expenditure of revenues and implementation of the plan certified by COAH.

- a. At minimum, the monitoring shall include an accounting of any "Housing Trust Fund" activity, identifying the source and amount of funds collected, the amount and purpose for which any funds have been expended, and the status of the spending plan regarding the remaining balance pursuant to N.J.A.C. 5:97-8.10(a)8.
- b. All monitoring reports shall be completed on forms designed by COAH.

10. Ongoing Collection of Development Fees And Expiration Of Ordinance.

The ability for the Borough of Little Silver to impose, collect and expend development fees shall expire with its "Substantive Certification" unless Little Silver Borough has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for "Substantive Certification", and has received COAH's approval of its development fee ordinance.

- a. If the Borough of Little Silver fails to renew its ability to impose and collect development fees prior to the date of expiration of "Substantive Certification", it may be subject to forfeiture of any or all funds remaining within its municipal trust fund.
- b. 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 (C.52:27D-320).

- c. The Borough of Little Silver shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its "Substantive Certification", nor shall the Borough of Little Silver retroactively impose a development fee on such a development.
- d. The Borough of Little Silver shall not expend development fees after the expiration of its "Substantive Certification" or judgment of compliance.

()

()

()

SECTION 3.5 ENFORCEMENT

- A. The duty of administering and enforcing the provisions of this Chapter is hereby conferred upon the Zoning Officer, who shall have such powers as are conferred upon him by the Chapter, and as reasonably may be implied. He shall be appointed as provided in the Administrative Code. In no case shall a Development Permit be granted for a subdivision or the construction of or alteration of any building or site where the proposed construction, alteration or use thereof would be in violation of any provisions of this Chapter. It shall be the duty of the Zoning Officer to cause any building, plans or premises to be inspected or examined and to order in writing the remedying of any conditions found to exist in violation of this Chapter, and he shall have the right to enter any buildings or premises during the daytime, or other normal business hours of the premises, in the course of his duties.
- B. It shall be the duty of the Borough Engineer to enforce the provisions of development, subdivision and site plan approvals.

SECTION 3.6 CERTIFICATES AND PERMITS

A. Development Permit:

1. Development Permits shall hereafter be secured from the Zoning Officer prior to filing of a subdivision or the issuance of a Building Permit for the construction, erection or alteration of any structure or sign or part of a structure or upon a change in the use of a structure or land; or prior to any use of or alteration of the natural condition of a parcel of land or the construction of any improvement above or below the ground except where such development is an exempt development as defined in Section 2.3. Where no Building Permit is required, the Development Permit shall be secured prior to the issuance of a Certificate of Occupancy.
2. Prior to issuance of a Development Permit, the applicants shall have, where applicable, secured other required permits including, but not limited to:
 - a. Stream encroachment, permit from the New Jersey Department of Environmental Protection.
 - b. Coastal Area Facilities Review Act (C.A.F.R.A.) permit from the New Jersey Department of Environmental Protection.
 - c. Wetlands permit from the New Jersey Department of Environmental Protection.

- d. Riparian construction permit from the New Jersey Department of Environmental Protection.
- e. Sewerage and/or industrial waste treatment permit from the New Jersey Department of Environmental Protection.
- f. Land Disturbance permit from the Freehold Area Soil Conservation District.
- g. Wetlands permit required by Chapter XIX of the revised general ordinances of the Borough of Little Silver.

B. Certificates as to Approval of Subdivision of Land.

1. The prospective purchaser, prospective mortgagee, or any other person interested in any land which forms part of a subdivision, or which formed part of such a subdivision three years preceding the effective date of Chapter 291, P.L. 1975, "may apply in writing to the Administrative Officer for 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 and the owner thereof.
2. The Zoning Officer shall make and issue such certificate within fifteen (15) days after the receipt of such written application and the fees therefore. 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 of his office.
3. Each such certificate shall be designated as "Certificate as to Approval of Subdivision of Land," and shall certify:
 - a. Whether there exists in the Borough a duly established Planning Board and whether there is an ordinance-controlling subdivision of land adopted under the authority of Chapter 291, P.L. 1975.
 - b. 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 the subdivision of which the lands are a part is a validly existing subdivision.

4. The Zoning Officer shall be entitled to demand and receive for such certificate issued by him a fee in the amount of \$10.00 per certificate. The fees so collected by such official shall be paid by him to the municipality.
5. 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 pursuant to the provisions of C. 40:55D-55.
6. If the Zoning Officer designated to issue any such certificate fails to issue the same within fifteen (15) days after receipt of an application and the fees therefore, any person acquiring an interest in the lands described in such application shall hold such interest free of any right, remedy or action which could be prosecuted or maintained by the Borough pursuant to C. 40:55D-55.
7. Any such application addressed to the Borough Clerk shall be deemed to be addressed to the proper designated officer and the Borough shall be bound thereby to the same extent as though the same was addressed to the designated official.

C. Building Permit:

No building or structure shall be erected, restored added to, or structurally altered until a permit therefore has been issued by the Construction Official except as set forth in Section 6.2A7. All applications for such permit shall be in accordance with the requirements of the building code. No building permit shall be issued unless the applicant shall have first completed improvements called for in the site plan approval or subdivision approval, except when said improvements are set forth to be completed according to a schedule approved by the Planning Board as part of the site plan or subdivision resolution of approval.

When a new building is to be constructed the issuance of the building permit shall be a two-step process. A foundation permit shall be issued. Upon completion of the foundation the Applicant shall present to the Borough Engineer a sealed location survey prepared by a licensed N.J. Engineer or Land Surveyor showing the foundation with elevations. At such time as the Borough Engineer approves the location and elevation, a framing permit shall be issued for the completion of the construction.

D. Certificate of Occupancy:

1. New Uses: No building, structure or land shall be occupied or used until such time as a Certificate of Occupancy is issued by the Construction Official. In addition, Certificates of Occupancy shall not be issued for any change of ownership, change of use, or new use other than one and two family homes until approval shall approvals shall be received from the Little Silver Bureau of Fire Prevention. Such certificate shall be issued upon application by the owner, prospective tenant, or purchaser only after the Construction Official determines that the facts represented on the application are correct and that the building, structure, or use is in conformance with the provisions of the Building Code and other codes and ordinances affecting construction and occupancy. A Temporary Certificate of Occupancy may be issued pursuant to the provisions of this Chapter for any structure or use for which site plan approval has been secured, but not all conditions of approval have been complied with. Such temporary certificates of occupancy shall be issued only on the approval of the Construction Official at the direction of the Planning Board.
2. Existing Uses
 - a. At the Time of Passage of this Chapter, 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.
 - b. Nonconforming Uses and Buildings: No change or extension of use and no alterations shall be made in a non-conforming structure, 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 this Chapter, or that it has been permitted by action of the Planning Board.
3. Change of Use: Whenever there occurs a change in the non-residential use of a building, structure or land, a new Certificate of Occupancy shall be applied for, to ensure compliance with this Section, "Change in Use" shall be broadly construed and shall, for example, include substitution of one type of retail trade use for another and of a particular industrial manufacturing use for another. A Certificate of Occupancy shall be obtained for each and every change or

addition of non-residential property. The Construction Official may issue such certificate if the Zoning Officer determines that the requirements of this Chapter are no more stringent than those of the previous occupancy and provided that the Applicant has met the requirements of other applicable regulations.

4. Scope of Certificate of Occupancy: The Certificate of Occupancy shall contain sufficient information as to the extent and kind of use or uses, such that any future investigation of the premises would disclose the extent to which a use was altered. It shall also contain and indicate whether such use is a permitted or non-conforming use and the extent to which the use does not conform to the provisions of this Chapter.
5. Improvement Required: No Permanent Certificate of Occupancy shall be issued until all required improvements have been installed in accordance with the provisions of this Chapter.
6. Development Permit Required: No Certificate of Occupancy shall be issued for the use or any building, structure or land unless a Development Permit shall have first been issued for the use of any building, structure or land.

E. Land Disturbance Permit.

Where required, a Land Disturbance Permit shall be obtained from the Freehold Area Soil Conservation District prior to subdivision or the erection of any structure or the alteration of the existing grade on any lot. No Land Disturbance Permit shall be issued until a Development Permit shall have first been issued for the subdivision, building, structure or use, except that the Planning Board and Borough Engineer may authorize the issuance of a Land Disturbance Permit prior to the issuance of a Development Permit as provided elsewhere in this Chapter.

SECTION 3.7 RECORDS

- A. It shall be the duty of the Zoning Officer to keep a record of all applications for and all Development Permits issued, together with a notation of all special conditions involved. He shall file and safely keep copies of all plans submitted, and the same shall be available for the use of the Borough Council and of the other officials of the Borough.

- B. The Zoning Officer shall prepare a monthly report for the Borough Council, summarizing for the period since his last previous report, all Development Permits issued and all complaints of violations and the action taken by him consequent thereon. A copy of each such report shall be filed with the Borough Tax Assessor at the same time it is filed with the Borough Council.

SECTION 3.8 INTERPRETATION

In the application and interpretation of this Chapter, all provisions hereof shall be held to be a minimum standards or requirements adopted for the promotion of the public health, safety, convenience and general welfare of the Borough. Whenever the requirements of this Chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern.

SECTION 3.9 CONFLICT WITH OTHER LAWS

Chapter XVII (Zoning), Chapter XVI (Land Subdivision), Chapter XX (Land Use Procedures) and Chapter XXI (Interim Zoning) of the Revised General Ordinance of the Borough of Little Silver are hereby repealed in their entirety and any portions of other ordinances which contain provisions inconsistent with Article IV are hereby repealed to the extent of such inconsistency, except that any Building Permit, variance, Special Use Permit, Occupancy Permit or other permit validly issued pursuant to any such ordinance shall remain valid and effective and shall continue to be governed by the terms and conditions of such ordinance.

SECTION 3.10 VIOLATIONS AND PENALTIES

- A. For any and every violation of the provisions of this Chapter the owner, general agent, or contractor of a building or premises where such violation has been committed or shall exist, and the lessee or tenant of an entire building or entire premises where such violations have been committed or shall exist, and the owner/general agent, contractor, lessee or tenant of any part of a building or premises in which part such violation has been committed or shall exist, and the general agent, architect, building contractor or any other person who commits, takes part or assists in such violation or who maintains any building or premises in which any such violation shall exist, shall, for each and every day that such violation continues, be subject to a fine of not less than Fifty (\$50.00) Dollars for the first offense

and not less than One Hundred (\$100.00) Dollars for each subsequent offense, nor more than One Thousand (\$1,000.00) Dollars or be imprisoned for a term not exceeding ninety (90) days, or both.

- B. If, before final subdivision 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 this Chapter pursuant to Chapter 291, P.L. 1975, such person shall be subject to a penalty not to exceed one thousand (\$1,000.00), and each lot disposition so made may be deemed a separate violation.

In addition to the foregoing, the municipality 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 Section 101-3.7, B of this Chapter.

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 (2) years after the date of the recording of the instrument of transfer, sale or conveyance of said land or within six (6) years, if unrecorded.

- C. If, after final approval it is discovered that there was any misrepresentation of any statements or proofs contained in any plat or in any application for approval or in any representations made to induce approval, the Planning Board or the Borough Council may, in addition to such other sanctions as are available in the law, revoke the approval of any plat and proceed as if final approval had not been obtained.
- D. If the developer or agent of the developer shall, after notification by certified mail from the Borough Engineer to cease the construction of improvements, cease the use of certain construction methods and procedures or cease the

use of or lack of use of site maintenance methods and procedures which may result in hazards to life, health or property, continue to carry on the activities specifically included in cessation order(s) from the Borough Engineer, then any such developer or agent of such developer shall be subject to a fine not to exceed one thousand (\$1,000.00) dollars, or to imprisonment for not more than ninety (90) days. Each and every day that a developer or agent of a developer operates in violation of this Chapter after issuance of a cessation order by the Borough Engineer shall be considered a separate and specific violation.

- E. Failure to obtain a permit for the use of a temporary temporary/portable storage structure for the temporary outdoor storage of materials in violation of this Chapter shall be subject to a penalty of one hundred seventy five dollars (\$175.00) for each and every day that such violation continues.

SECTION-3.11 AMENDMENTS

All amendments to this Chapter and to the Zoning Map, which forms a part hereof, shall be adopted in accordance with the provisions of Chapter 291, P.L. 1975, as amended and supplemented.

SECTION-3.12 VALIDITY OF ORDINANCE

If any section, paragraph, subdivision, clause or provision of this Chapter shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision clause or provision so adjudged, and the remainder of this Chapter shall be deemed valid and effective.

SECTION-3.13 EFFECT ON PENDING AND NEW APPLICATIONS

- A. After the effective date of this Chapter all new Applications for Development shall be subject to the provisions of this Chapter. Within forty-five (45) days of submission of such Application for Development the Zoning Officer shall notify the developer in writing if an Application for Development is found to be incomplete or it shall be deemed to be properly submitted and constitute a complete application forty-five (45) days after the date of submission. If a developer is notified that an Application for Development is incomplete the Zoning Officer shall further notify the developer within forty-five (45) days of submission of all the additional plans and supporting documentation requested if an Application for Development is still found to be incomplete or it shall be deemed to be properly submitted and constitute a complete application forty-five (45) days after submission of all the additional plans and supporting documentation requested.

B. All Applications for Development filed prior to the effective date of this Chapter may be continued, subject to the following:

1. The time limits for approval by the municipal agency set forth within this Chapter shall not apply unless the developer shall notify the municipal agency in writing that he desires the application to be considered within such time limits. Such letter of notification from the developer shall constitute the filing of a new Application for Development subject to the provisions of subsection "A" of this Section and all other provisions of this Chapter.
2. If the developer does not notify the municipal agency that he desires the Application for Development to be considered within the time limits set forth in this Chapter, such Application for Development shall be processed and acted upon pursuant to the procedures heretofore in effect at the time of such application.
3. All approvals granted after the effective date of this Chapter shall confer upon the applicant all the rights set forth in this Chapter.

SECTION -3.14 COPY TO BE FILED WITH COUNTY PLANNING BOARD

Upon adoption of this Chapter the Borough Clerk shall file a copy of this Chapter with the Monmouth County Planning Board as required by C. 40:55D-16.

SECTION 3.15: APPEALS:

A. All Other Decisions Of Planning Board.

All other decisions of the planning board shall be deemed final and shall not be appealable to the Borough Council.

SECTION 3.16: MISCELLANEOUS PROVISIONS

A. Definitions.

Whenever a term is used in this chapter which is defined in N.J.S.A.40:55D-1 et seq., such terms is intended to have the meaning set forth in the definition of such term found in said statute, unless a contrary intention is clearly expressed from the context of this chapter.

B. Repealer.

All sections of the land subdivision ordinance, zoning ordinances, site plan review ordinance or any other ordinance of the municipality which contain provisions contrary to the provisions of this chapter shall be and are hereby repealed but only to the extent of such inconsistency. If any part or parts of this ordinance are for any reason held to be invalid, such adjudication shall not affect the validity of the remaining portions of this Ordinance.