

Chapter 95

LAND USE AND ZONING

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Addendum A

Table of Zoning Map Amendments

[Schedule of Area Requirements](#)

[HISTORY: Adopted by the Township Committee (now Township Council) of the Township of East Hanover 7-19-1979 by Ord. No. 20-1979. Amendments noted where applicable.]

GENERAL REFERENCES

Unfit buildings — See Ch. 71.
 Uniform construction codes — See Ch 75.
 Flood damage prevention — See Ch. 87.
 Gasoline filling stations — See Ch. 89.
 Private swimming pools — See Ch. 138.
 Water and Sewer Utility — See Ch. 159.
 Unfit dwellings — See Ch. 182.
 Garbage, refuse and dry fill — See Ch. 189.
 Littering — See Ch. 195.
 Individual sewage disposal systems — See Ch. 204.
 Public swimming pools — See Ch. 210.

ARTICLE I

Purpose and Scope

§ 95-1. Purpose.

The purpose and intent of this chapter is:

- A. To encourage municipal action to guide the appropriate use or development of all lands in the Township in a manner which will promote the public health, safety, morals and general welfare.
- B. To secure safety from fire, flood, panic and other natural and man-made disasters.
- C. To provide adequate light, air and open space.
- D. To ensure that the development of the Township does not conflict with the development and general welfare of neighboring municipalities, the county and the state as a whole.
- E. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, the Township and preservation of the environment.
- F. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies.
- G. To provide sufficient space in appropriate locations and regulate the use thereof for a variety of residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all Township citizens.
- H. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight.
- I. To promote a desirable visual environment through creative development techniques and good civic design and arrangements.
- J. 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.
- K. To encourage coordination of the various public and private procedures and activities shaping land development, with a view of lessening the cost of such development and to the more efficient use of land.
- L. To promote conservation of energy through the use of planning practices designed to reduce energy consumption and to provide for maximum utilization of renewable energy sources. **[Added 8-27-1981 by Ord. No. 21-1981]**

§ 95-2. Scope.

- A. It is not intended by this chapter to repeal, abrogate, annul or in any way impair or interfere with existing provisions of other laws or ordinances, except those specifically or impliedly repealed by this chapter, or any private restrictions placed upon property by covenant, deed or other private

agreement unless repugnant hereto.

- B. Where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or lot coverage or requires greater lot area or longer yards or other open spaces than are imposed or required by such existing rules, regulations or permits or by such private restrictions, the provisions of this chapter shall control.

ARTICLE II Definitions

§ 95-3. Definitions.

- A. For the purpose of this chapter, certain terms are defined as follows:

ACCESSORY BUILDING - A detached subordinate building on the same lot with a main building, occupied or devoted exclusively to an accessory use. Where a building is attached to a main building in a substantial manner by a wall or roof, such building shall be considered part of the main building.

ACCESSORY STRUCTURE - A structure or building detached from a principal building located on the same lot and customarily incidental and subordinate to the principal building or use. Where a structure is attached to a principal building by a breezeway, roof, common wall, or the like, such a structure shall be considered part of the principal building. **[Added 5-9-2005 by Ord. No. 9-2005]**

ACCESSORY USE - A use of land or of a structure or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use. **[Amended 5-9-2005 by Ord. No. 9-2005]**

ADMINISTRATIVE OFFICER - The Director of Land Use, Township Clerk or the secretaries of the respective approving authorities, municipal boards and/or agencies, unless otherwise stated or intended by this chapter. **[Amended 4-21-1983 by Ord. No. 10-1983]**

ALTERATION OF BUILDING - A change in the supporting members of a building; an addition to or diminution of a building; a conversion of a building or a part thereof; or removal of a building from one location to another.

APPLICANT - A developer submitting an application for development.

APPLICATION FOR DEVELOPMENT The application form and all accompanying documents required by ordinance for approval of a subdivision plot, site plan, conditional use or zoning variance.

APPROVING AUTHORITY - The Planning Board or the Board of Adjustment of the Township of East Hanover as provided for in this chapter. When appropriate, the terms "Planning Board" and "Board of Adjustment" and "approving authority" may be used interchangeably. **[Added 12-14-1982 by Ord. No. 31-1982]**

AREA, USABLE — The sum of the gross horizontal areas of a floor or several floors of a building, measured between the inside face of exterior walls or from the center line of walls separating two units, having a clear ceiling height of at least four feet, but no more than 10% of the

usable floor area shall have a ceiling height of less than the prescribed ceiling height for the type of building concerned in the Building Code;¹ no cellar, basement, attic, garage space or crawl space is to be considered as included in a “usable area.”

¹ **Editor’s Note: currently, see ch. 75, construction codes, Uniform.**

AVERAGE ALIGNMENT — A distance which is the total setback distance of all buildings within 200 feet on each side of the lot and within the same block and on the same side of the street, divided by the total number of houses included within that distance.

BASEMENT — A portion of the building partly underground but having less than one-half (1/2) its clear height below the average grade of the adjoining ground. (See “cellar.”)

BOARDER or ROOMER — A person not a member of a family as defined in this chapter, who pays for the privilege of lodging.

BUILDING — Any structure having a roof supported by columns, piers or walls or similar structural parts, used or intended to be used, for the housing, enclosure or shelter of persons, animals or property of any kind, including also tents, lunch wagons, trailers (not used as a mobile vehicle), dining cars, camp cars or other structures on wheels or other supports and any unroofed platform, terrace or porch; swimming pools. “Building” includes the word “structure.”

BUILDING AREA — The total of areas of outside dimensions on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of unroofed porches, porticos 50 square feet, paved terraces and steps attached or connected to the building. **[Amended 5-12-2014 by Ord. No. 4-2014]**

BUILDING MATERIALS — Materials that can be arranged, united or joined to support, frame, enclose, sheath or be otherwise fashioned into a building or structure. Such materials include, but are not limited to, rough or dressed lumber, millwork, roofing, shingles, wallboard, molding, plywood, Sheetrock, bricks, doors, windows, paneling or concrete block. **[Added 3-20-1997 by Ord. No. 6-1997]**

BUILDING WALL, FRONT — The front building wall of a structure which faces the street, or in the case of buildings on corner lots, that building wall which faces the street upon which the lot has the least amount of frontage.

CAPITAL IMPROVEMENT — A governmental acquisition of real property or major construction project. **[Added 8-27-1981 by Ord. No. 27-1981]**

CELLAR — A portion of the building partly underground, having one-half (1/2) or more than one-half (1/2) of the clear height below the average grade of the adjoining ground. (See “basement.”)

CESSATION — The discontinuance, stop or pause of a use or activity, either voluntary or involuntary, by the operator or owner of such use or activity. ²

2. Editor’s Note: The former definition of “COAH,” added 6-20-1995 by Ord. No. 17-1995, and which immediately followed this definition, was repealed 12-29-2009 by Ord. No. 16-2009.

COMMON FACILITIES — Includes but is not limited to facilities for the common use of two (2)

or more lots, such as roads, sidewalks, swimming pool, playgrounds, trees, greens, fairways, parking areas and utilities.

COMMON OPEN SPACE — 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. **[Amended 12-14-1982 by Ord. No. 31-1982]**

COMMON OWNERSHIP — Ownership of two (2) or more contiguous lots of real property by one (1) person or entity or by two (2) or more persons or entities owning such lots jointly as tenants by the entirety or as tenants in common.

COMPLETE APPLICATION — An application for development shall be deemed to be complete when the Planning Board or Zoning Board of Adjustment takes affirmative action to declare that all necessary requirements for submission have been met and that the necessary documentation has been provided by the applicant which is necessary for the appropriate municipal agency to review and act on the application. **[Added 5-15-1980 by Ord. No. 3-1980; amended 8-27-1981 by Ord. No. 21-1981]**

COMPOSTING — A structure or the use of any land greater in size than five thousand (5,000) square feet for the storing of vegetation or related matter for decomposing purposes. **[Added 11-8-1984 by Ord. No. 32-1984]**

CONDITIONAL USE — A use permitted in a particular zone district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in this chapter and upon the issuance of an authorization therefor by the Planning Board or authorization by the Zoning Board of Adjustment when there is an application pursuant to N.J.S.A. 40:55D-70d.

CONSTRUCTION SUBCODE ENFORCEMENT OFFICIAL — The individual who shall be, from time to time, charged by the Township Committee with the enforcement of construction regulations within the Township of East Hanover.³

³ **Editor's Note: See Ch. 75, Construction Codes, Uniform.**

CORNER LOT — A lot of land at the junction of and having frontage on two (2) or more intersecting streets when the interior angle of intersection does not exceed one hundred fifty degrees (150°).

CUBIC CONTENT — A determination made by multiplying the floor area of each story by the average ceiling height of that story. Basement area shall be included. Garages and open porches shall be excluded.

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

DEVELOPMENT — The division of a parcel of land into two (2) or more parcels, or the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, 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 this chapter.⁴

4. Editor's Note: The former definition of "development fees," added 6-20-1995 by Ord. No. 17-1995, and which immediately followed this definition, was repealed 12-29-2009 by Ord. No. 16-2009.

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

DISCOUNT WAREHOUSE CLUB — A type of retail use for the selling of goods in either small or large quantities to ultimate consumers for personal or household consumption and/or the bulk sale of goods to customers engaged in the business of reselling goods. Additionally, this retail use may stock an inventory of goods in large quantities for the purpose of selling retail from a building in which the goods are held and which utilizes warehouse stack storage techniques on the sales floor area. The patronage for a discount warehouse club is restricted by a membership requirement. **[Added 3-20-1997 by Ord. No. 6-1997]**

DRAINAGE RIGHT-OF-WAY — The lands required for the installation of stormwater sewers, drainage ditches or drainage swales or required along a natural stream or watercourse for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage in accordance with Chapter 1 of Title 58 of the Revised Statutes, and including lands intended as flood control basins.

DWELLING or DWELLING UNIT — A building or portion thereof which is designed or used exclusively as the living quarters for one family as defined in this chapter.

DWELLING, ONE-FAMILY — A building designed for or occupied exclusively as one dwelling unit.

EASEMENT — A use or burden placed on real estate by deed or other legal means to permit the use of land by the public, a corporation or particular persons for specific use. **[Added 12-14-1982 by Ord. No. 31-1982]⁵**

5. Editor's Note: The former definition of "equalized assessed value," added 6-20-1995 by Ord. No. 17-1995, and which immediately followed this definition, was repealed 12-29-2009 by Ord. No. 16-2009.

FAMILY — A person or any number of persons united by blood, marriage or legal adoption living together in a dwelling, with or without cooking facilities, living as a single, nonprofit housekeeping unit, or a group of not more than three persons not necessarily related by blood, marriage or legal adoption living together as a single housekeeping unit.

FARM — Land on which produce, crops or flowers are grown primarily for off-premises consumption or use, or the care or breeding of horses or fowl, but not including animal temporary boarding or medical facilities.

FINAL APPROVAL — The official action of the Planning Board taken on a preliminarily approved major subdivision or site plan after all conditions, engineering plans and other requirements have been completed or fulfilled and the required improvements have been installed or guaranties properly posted for their completion, or approval conditioned upon the posting of

such guaranties.

FINAL PLAT — The map or maps of a subdivision application for which final approval is sought or granted pursuant to this chapter.

FLOOR AREA, GROSS — The total area of all the stories of all the structures on a lot, measured from the outside faces of the exterior walls or from the exterior roof edges where a structure has no walls and including the following, although not by way of limitation: interior balconies and mezzanines, roofed areas such as porches and carports, basement space, except that which has no windows or exterior walls; but excluding roofed or enclosed floor area that is used for parking spaces required by this chapter. **[Amended 12-14-1982 by Ord. No. 31-1982]**

FLOOR AREA, NET — Usable area. **[Added 12-14-1982 by Ord. No. 31-1982]**

FLOOR AREA RATIO — The ratio of the gross floor area to the gross lot area. **[Added 12-14-1982 by Ord. No. 31-1982]**

GARAGE, PRIVATE — A fully enclosed detached accessory building, or a portion of a principal building, used primarily for the storage of vehicles owned or used by the occupant of the principal building. **[Amended 5-9-2005 by Ord. No. 9-2005]**

GARAGE, PUBLIC — Any building or part thereof or land, other than a private garage, in which or upon which a business, service or industry involving the maintenance, washing or servicing and storage in connection therewith of motor vehicles is conducted or rendered for profit, including any sale of motor vehicle accessories or where any such vehicles are kept for hire, but not including motor vehicle service stations as defined herein.

GASOLINE STATION — Any area of land, including structures thereon, that is used primarily for the sale of gasoline or other motor vehicle fuel and oil and other lubricating substances, and which may include the sale of motor vehicle accessories, and which is designed to be used for polishing, greasing, washing, spraying, dry cleaning or otherwise cleaning or servicing such motor vehicles.

GOVERNING BODY — The Township Committee of the Township of East Hanover.

HABITABLE ROOM — A room or enclosed floor space used for living, sleeping or eating purposes.

HEIGHT OF BUILDING — The vertical distance measured from the average ground elevation of the proposed finished grade at the front of the building to the highest point of the roof surface if the roof is flat, to the deck line of mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs. "Average ground elevation" shall be the average of the highest and lowest elevations along the finished grade at the front of the building.

HOME OCCUPATION — An accessory use of a service character conducted entirely within a dwelling, provided that no article is sold or offered for sale except as may be produced only by members of the immediate family residing on the premises, and which use is clearly incidental to the use of the dwelling for dwelling purposes and does not change the character thereof and which shall in no way adversely affect the safe and comfortable enjoyment of property rights of the zone in which it is located.

IMPERVIOUS SURFACE — Any material which prevents the absorption of stormwater into the ground. **[Added 12-14-1982 by Ord. No. 31-1982]**

INCINERATOR — Any device, apparatus, equipment or structure used for destroying, reducing or salvaging by fire any material or substance, including but not limited to refuse, rubbish, garbage, trade waste, debris or scrap; or a facility for cremating human or animal remains. **[Added 11-8-1984 by Ord. No. 32-1984]**

INSTITUTIONAL USES — Uses such as churches, schools, hospitals, lodges, fraternal organizations and the like.

INTERESTED PARTY — In a criminal or quasi-criminal proceeding, any citizen of the State of New Jersey; and in the case of a civil proceeding before a municipal agency, any person, whether residing within or without the township, whose right to use, acquire or enjoy property is or may be affected by any action taken under this chapter, or whose rights to use, acquire or enjoy property under this chapter or under any other law of the State of New Jersey or of the United States have been denied, violated or infringed by an action or a failure to act under this chapter.⁶

6. Editor's Note: The former definition of "judgment of repose" added 6-20-1995 by Ord. No. 17-1995, and which immediately followed this definition, was repealed 12-29-2009 by Ord. No. 16-2009.

JUNKYARD — The use of any lot or part thereof for the storage, keeping or abandonment of junk, including scrap metals or other scrap materials, or for the dismantling, demolition or abandonment of automobiles, trucks and trailers not currently registered by the State of New Jersey and construction equipment not in operative order or condition or other vehicles or machinery or parts thereof.

LOT — A piece, parcel or plot of land occupied or used by a building and its accessory buildings, including such open spaces as are to be used in connection with such buildings, separated from other parcels or portions by description, as on a subdivision of record or survey map, or by metes and bounds, for purpose of sale, lease or separate use. "Lot" includes the word "plot."

LOT AREA — The total square unit contents included within lot lines.

LOT DEPTH — A mean horizontal distance between the front and rear lot lines, measured in the general direction of its side lot lines.

LOT, INTERIOR — A lot other than a corner lot.

LOT LINE — A line of record dividing one lot from another. Any "lot line" not a rear line nor a front line shall be deemed a side line. If a plot is irregular in shape, the line which is most nearly parallel to and at the greatest average distance from the street line shall be deemed to be the rear line and all other "lot lines" excepting the street line shall be deemed to be side lot lines.

LOT WIDTH — The mean width of the lot measured at right angles to its depth.

LUMBERYARD — An open area where finished lumber is stored.

MAINTENANCE GUARANTY — Any security, other than cash, which may be accepted by the Township for the maintenance of any improvements required by this chapter.

MAJOR SUBDIVISION — All subdivisions not classified as minor subdivisions.

MASSAGE PARLOR — A place where persons pay either a membership fee or an admission fee or any other fee and where the activity on the premises includes touching, massaging or rubbing of certain anatomical areas or by which specified sexual activities are permitted or encouraged. In addition, any place which offers to massage or touch the anatomy of another in any fashion, in return for compensation, except under the direct supervision of a medical, osteopathic or chiropractic physician or a physical therapist who is licensed to practice in the State of New Jersey and whose license is in good standing. **[Added 11-9-1995 by Ord. No. 31-1995; amended 7-15-2002 by Ord. No. 7-2002; 3-8-2004 by Ord. No. 10-2004]**

MASTER PLAN — A composite of one or more written or graphic proposals for the development of the municipality as set forth in and adopted pursuant to P.L. 1975,c. 291 (N.J.S.A. 40:55D-1 et seq.).

MAY — Permissive action. **[Added 8-27-1981 by Ord. No. 21-1981]**

MINOR SITE PLAN **[Added 5-15-1980 by Ord. No. 3-1980]** — A conventional site plan of a single lot limited to the following types of development:

- (1) A change in use involving no building construction other than interior modification or interior structure alteration and no additional off-street parking.
- (2) Minor structural changes such as entry enclosures, porticos and other structural appurtenances, including roof appurtenances.
- (3) Building additions and accessory structures not exceeding 100 square feet in ground coverage and not involving any additional off-street parking or any land disturbance beyond the immediate area around the structure.
- (4) The subject change in use shall not involve any variance, conditional use, planned development, any new street or any extension of any off-tract improvement which is to be prorated pursuant to Section 30 of the Municipal Land Use Act (N.J.S.A. 40:55D-42).

MINOR SUBDIVISION — Any subdivision containing not more than three lots fronting on an existing accepted street, not involving any new street or the extension of any municipal facilities or the extension of any off-tract improvement, the cost of which is to be prorated pursuant to Section 30 of the Municipal Land Use Act (N.J.S.A. 40:55D-42) and which is in conformance with the Zoning Ordinances and the Master Plan of the Township of East Hanover. **[Amended 5-15-1980 by Ord. No. 3-1980; 8-27-1981 by Ord. No. 21-1981]**

MOTOR VEHICLE SERVICE STATION — A building or premises in which or upon which is conducted a business involving the retail sale and direct delivery to motor vehicles of gasoline and lubricating oil regardless of any other business on the premises, which business may or may not include facilities for lubricating, washing or otherwise servicing motor vehicles, but not including facilities for body repair work or painting.

MUNICIPAL AGENCY — The Planning Board, the Board of Adjustment or the Mayor and Township Committee of the Township of East Hanover.

NONCONFORMING BUILDING — A building which in its design or location upon a lot does not conform to the specifications of this chapter for the zone in which it is located.

NONCONFORMING LOT — A lot of record existing at the date of the passage of this chapter which does not have the minimum width or contain the minimum area for the zone in which it is located.

NONCONFORMING USE — Use of a building or of land that does not conform to the regulations of the zone in which it is located.

OCCUPIED — Includes the word “designed” and the phrase “intended to be occupied.”

OFFICIAL MAP — A map adopted by ordinance of the governing body pursuant to N.J.S.A. 40:55D-62 et seq. showing the location and width of streets and drainage rights-of-way and the location and extent of public parks and playgrounds, whether existing or proposed.

OFF-TRACT IMPROVEMENT — An improvement which is not located on the property which is the subject of an application for development nor on a contiguous portion of a street or right-of-way and includes any of the following:

- (1) All improvements of the types required for on-tract installation where the need for the providing of such improvements off-tract is, in whole or in part, made necessary by the proposed application of the applicant and where the making of such improvements will confer a benefit upon the applicant’s lands which are the subject of the application.
- (2) Any improvement or facility the installation of which is required in the public interest and the public need for which would not arise but for the improvement of the lands which are the subject of the applicant’s application and the installation of which would confer a benefit upon the applicant’s lands which are the subject to the application. In addition to improvements of the type referred to above, improvements required to maintain a safe flow of vehicular and pedestrian traffic are specifically declared to be necessary in the public interest.
- (3) Installation of new improvements and extensions and modifications of existing improvements.

ON-TRACT IMPROVEMENT — Any improvement the installation of which may be required as part of an application for development and which is to be located on the property which is the subject of an application for development or on a contiguous 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.

PARKING AREA — An open area, other than a street or other public way, used for the parking of motor vehicles and available for public use whether for a fee or as a service or privilege for clients, customers, suppliers or residents.

PARKING SPACE — An accommodation for the off-street parking of a motor vehicle, which space shall have an area of not less than two hundred (200) square feet per vehicle exclusive of access drives or aisles appurtenant thereto and shall be a minimum of ten (10) feet in width and twenty (20) feet long measured perpendicular to the axis of the length, with adequate provision for

ingress and egress.

PERFORMANCE GUARANTY — A security which may be accepted in lieu of a requirement that certain improvements be made before the Planning Board or other municipal agency approves a subdivision plat or site plan.

PLANNING BOARD — The Planning Board of the Township of East Hanover.

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

PORTICO — A structure consisting of a roof supported by columns or piers or pillars, attached to a building on the exterior as a porch or to cover a walkway or an entrance to a building. If the construction or installation of a portico(s) on a residential property violates the front yard setback requirement, a variance will not be required, provided that the total square footage of the proposed portico is 50 square feet or less, covered by a roof with a minimum of two posts, is open on three sides and the encroachment of the minimum front yard setback is no greater than five feet. The area beneath a portico, up to 50 square feet, is excluded from building area for the purpose of calculating building coverage. **[Added 5-12-2014 by Ord. No. 4-2014]**

PRELIMINARY APPROVAL — The conferral of certain rights pursuant to § 95-35C(3) of this chapter prior to final approval after specific elements of a development plan have been agreed upon by the Planning Board.

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.

PRELIMINARY PLAT OR SITE PLAN — The preliminary map indicating the proposed layout of a subdivision or site plan which is submitted to the proper township official for Planning Board or Zoning Board of Adjustment consideration and preliminary approval.

PRINCIPAL USE — The primary or predominant use of the premises.

PROFESSIONAL OFFICE — The office of a member of a recognized profession. A “professional office,” when conducted in a residential zone, shall be incidental to the use of the dwelling for dwelling purposes and shall be conducted by a member of the immediate family residing on the premises and entirely within the residential building. Such “professional office” shall include the office of a doctor or physician, dentist, lawyer, minister, architect, artist, author, optometrist, professional engineer, licensed land surveyor, city planner, teacher (with musical instruction being limited to a single pupil at a time), certified public accountant and such other similar professional occupations as may be so designated by the Zoning Board upon finding by such Board that such occupation is truly professional in character by virtue of the need for similar training and experience as a condition for the practice thereof and that the practice of such occupation shall in no way adversely affect the safe and comfortable enjoyment of property rights in any zone in which it is located to a greater extent than for the professional activities listed herein. The issuance or nonissuance of a state or local license for regulation of any gainful occupation need not be deemed indicative of a recognized profession. A “professional office” in a residential zone shall be subject to a site plan review by the Planning Board. **[Amended 8-27-81 by Ord. No. 21-1981]**

PUBLIC OPEN SPACE — An open space area conveyed or otherwise dedicated to a municipality, municipal agency, board of education, state or county agency or other public body for recreational

or conservational uses.

PUBLIC USE — Any municipal, county, state, federal or other governmental use.

PUBLIC UTILITY INSTALLATION — An installation, including service and storage yards, of facilities such as water mains, pumps, valves and hydrants, electric conductors, wires and supporting structures, transformers, switches and substations, manholes, ducts, cables, vaults and vents for any public utility use which provide accessory services in all zones and are not limited by this term.

QUORUM — The majority of the full authorized membership of a municipal agency.

REFUSE SEPARATION OR RECYCLING STATION — A structure or the use of any land where refuse or waste products are processed by separating the various component parts of the refuse, i.e., glass, paper, rags, wood and metal, and then either transformed into new or different products or shipped out in their separated state. **[Added 11-8-84 by Ord. No. 32-1984]**

REFUSE TRANSFER STATION — A structure or the use of any land serving as a collection site serving one (1) or more locations intended for the temporary storage of refuse, garbage or waste products before they are transferred from the site to its disposition. **[Added 11-8-1984 by Ord. No. 32-1984]**

RESOURCE RECOVERY PLANT — A structure or the use of any land where refuse, garbage or waste products are processed to obtain materials or energy by any means, including incineration. **[Added 11-8-1984 by Ord. No. 32-1984]**

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

RETAIL — Relating to the sale of goods to ultimate consumers for personal or household consumption and not bulk sale of goods to customers engaged in the business of reselling goods. **[Added 3-20-1997 by Ord. No. 6-1997]**

RETAIL STACK STORAGE — A retail use that stocks an inventory of goods in large quantities for the purpose of selling retail from a building in which the goods are held and which utilizes warehouse stack storage techniques on the sales floor area. A retail stack storage use is open to the general public, and its patronage is not restricted by a membership requirement. **[Added 3-20-1997 by Ord. No. 6-1997]**

SEX CLUB — A public or private place where persons pay either a membership fee or an admission fee and where the activity on the premises consists, in whole or in part, of direct sexual contact between and among the patrons. Notwithstanding the fact that the owners or operators of a “sex club” contend that the club is private, nevertheless such places shall be deemed to be public if there is nothing about the operation to distinguish a member from anyone else who seeks admittance to the premises. **[Added 11-9-1995 by Ord. No. 31-1995]**

SHALL — Means a mandatory requirement. **[Added 8-27-1981 by Ord. No. 21-1981]**

SHOPPING CENTER — A cluster of two or more retail, business, personal service or related uses on one or more lots which share common parking and access facilities. **[Added 3-20-1997 by Ord. No. 6-1997]**

SHOP, RETAIL — A building or part thereof in which or from which a service is rendered directly to the public.

SIGN — Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of others, but not including any flag, badge, banner or insignia of any public, quasi-public, civic, charitable or religious group.

SIGN, AREA OF — The area of a sign as measured from the extreme ends of the message in a geometric manner.

SINGLE OWNERSHIP — Ownership by one (1) person or entity or by two (2) or more persons, whether jointly, as tenants by the entirety or as tenants in common, of a separate lot of real property not adjacent to land in the same ownership.

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

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

SPECIAL PERMIT — A permit directed to be issued pursuant to N.J.S.A. 40:55D-76 for a building or structure in the bed of a mapped street or public drainageway or flood control basin or public area. **[Added 12-14-1982 by Ord. No. 31-1982]**

STANDARDS OF PERFORMANCE — Standards adopted by this chapter regulating noise levels, glare, earthborne or sonic vibrations, heat, electronic or atomic radiation, noxious odors, toxic matters, explosive and flammable matters, smoke and airborne particles, waste discharge, screening of unsightly objects or conditions and such other similar matters as may be reasonably required by the township, or standards required by applicable federal or state laws or municipal ordinances. **[Added 12-14-1982 by Ord. No. 31-1982]**

STORE, RETAIL — A building or part thereof in which or from which merchandise is sold at retail directly to the public.

STORY — That part of a building between the surface of any floor and the next floor above it, or in its absence, then the finished ceiling or roof above it. A “split-level story” shall be considered a second story if its floor level is five (5) feet or more above the level of the line of the finished floor next below it except a basement. A basement or cellar shall be counted a “story” if its ceiling is more than four (4) feet above the level of the ground from which the height of the building is measured or if it is used for business or sleeping purposes. Any floor under a sloping roof at the top of a building which is more than two (2) feet below the top plate shall be counted as a “story,” and if less than two (2) feet below the top plate, it shall be counted as a half story, provided not

more than sixty percent (60%) of the floor area is used for rooms, baths or toilets; otherwise, it shall be counted as that fraction of a “story” which its floor area in rooms, baths or toilets bears to the entire floor area.

STREET — Any street, avenue, boulevard, road, parkway, viaduct, drive or other way which is an existing state, county or municipal roadway, or which is shown upon a plat heretofore approved pursuant to law, or which is approved by official action as provided by this chapter, or 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, gutters, curbs, sidewalks, parking areas and other areas within the street lines.

STREET LINE — The dividing line between the street and the lot, across which there is a permanent access to the lot.

STRUCTURE — Any combination of materials forming any construction the use of which requires location on the ground or attachment to something having location on the ground, including, among other things, display stands, platforms, pools, flagpoles, standpipes, tanks and towers of any kind. The term “structure” shall include the term “building.”

SUBDIVIDER — Any individual, firm, association, syndicate, copartnership, corporation, trust or any other legal entity commencing proceedings under this chapter to effect a subdivision of land hereunder for himself or for another.

SUBDIVISION (also includes the term “resubdivision”) — The division of a lot, tract or parcel of land into two (2) 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: divisions of land found by the Planning Board to be for agricultural purposes where all resulting parcels are five (5) acres or larger in size; divisions of property by testamentary or intestate provisions; divisions of property upon court order, including but not limited to judgments of foreclosure; consolidation of existing lots by deed or other recorded instrument; and the conveyance of one (1) or more adjoining lots, tracts or parcels of land owned by the same person or persons and all of which are found and certified by the Zoning Enforcement Official to conform to the requirements of the zoning regulations of the Township of East Hanover and are shown and designated as separate lots, tracts or parcels on a map or atlas of the Township of East Hanover. **[Amended 5-15-1980 by Ord. No. 3-1980]** ⁷

7. Editor’s Note: The former definition of “substantive certification,” added 6-20-1995 by Ord. No. 17-1995 and which immediately followed this definition, was repealed 12-29-2009 by Ord. No. 16-2009.

TATTOO PARLOR — Any establishment, shop or operation wherein a tattoo is removed from or affixed upon the surface of a human body. **[Added 11-9-1995 by Ord. No. 31-1995]**

TOWNSHIP — The Township of East Hanover.

TRANSCRIPT — A typed or printed verbatim record of the proceedings or reproduction thereof. **[Added 5-15-1980 by Ord. No. 3-1980]**

USE — The specific purpose for which land or a building is designed, arranged, intended or for

which it is or may be occupied or maintained. “Use” includes the words “arranged,” “designed” and the phrase “intended to be used.” The words “arranged” and “designed” shall include the word “use.”

USED CAR LOT — Any place out-of-doors where two (2) or more motor vehicles in operating condition are displayed or offered for sale.

VARIANCE — Permission to depart from the literal requirements of a zoning regulation.

YARD, FRONT — An open, unoccupied space, unless occupied by a use as hereinafter specifically permitted, extending across the full width of the lot and lying between the street right-of-way line and the nearest line of any building on the subject lot. The depth of the “front yard” shall be measured at right angles to the street line.

YARD, REAR — A space unoccupied except by an accessory building or use as hereinafter permitted specifically, extending across the full width of the lot and lying between the rear lot line and the nearest line of any building on the subject lot other than an accessory building. The depth of a “rear yard” shall be measured at right angles to the rear line of the lot, or if the lot is not rectangular, then in the general direction of its side lot lines.

YARD, SIDE — An open, unoccupied space, unless occupied by a use as hereinafter specifically permitted, on the same lot with the principal building, between the side line of the lot and the nearest line of the principal building on the subject lot, extending from the front yard to the rear yard, or in the absence of either of such yards, to the street or rear lot lines, as the case may be. The width of a “side yard” shall be measured at right angles to the side line of the lot.

ZONING BOARD OF ADJUSTMENT — The Zoning Board of Adjustment of the Township of East Hanover. **[Added 8-27-1981 by Ord. No. 21-1981]**

ZONING ENFORCEMENT OFFICIAL — The individual who shall be, from time to time, charged by the Township Committee with the enforcement of zoning regulations of the Township of East Hanover, and unless otherwise designated, shall be the Construction Subcode Enforcement Official of the Township of East Hanover.

- B. Terms not defined. Whenever a term is not defined in this chapter, it is intended to have the meaning set forth in P.L. 1975, c. 291 (N.J.S.A. 40:55D-1 et seq.), if defined by that statute. In the event of conflict between the definition in this chapter and that contained in said statute, the definition in said statute shall apply.
- C. Word usage. Words used in the present tense include the future; the singular number includes the plural, and the plural the singular. The word “lot” includes the word “plot.” The word “building” includes the word “structure.” The word “shall” is always mandatory. The term “such as” where used herein shall be considered as introducing a typical or illustrative, rather than an entirely exclusive or inclusive, designation of permitted or prohibited uses, activities, establishments or structures.

ARTICLE III Administration and General Procedures

§ 95-4. Administrative procedures.

Every municipal agency shall adopt and may amend reasonable rules and regulations, not inconsistent with this chapter, for the administration of its functions, powers and duties, and shall furnish a copy thereof to any person upon request and may charge a reasonable fee for such copy. Copies of all such rules and regulations and amendments thereto shall be maintained in the office of the Township Clerk.

§ 95-5. Meetings of municipal agencies.

- A. Every municipal agency shall by its rules fix the time and place for holding its regular meetings for business authorized to be conducted by such agency. Regular meetings of the municipal agency shall be scheduled not less than once a month and shall be held as scheduled. The municipal agency may provide for special meetings at the call of the Chairman or on the request of any two (2) of its members, which shall be held on notice to its members and the public in accordance with the provisions of the Open Public Meetings Act, P.L. 1975, c. 231 (N.J.S.A. 10:4-6 et seq.), and related legal, municipal and agency regulations. No action shall be taken at any meeting without a quorum being present. All actions shall be taken by a majority vote of the members present at the meeting, except as otherwise provided by §~ 95-7D, 95-iSA and B, 95-23A(4), 95-30 and 95-31 hereof and the Municipal Land Use Act (N.J.S.A. 40:55D-1 et seq.), PL. 1975, c. 291. Nothing herein shall be construed to contravene any act providing for procedures for the governing body. **[Amended 5-15-80 by Ord. No. 3-1980]**
- B. 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 Law, P.L. 1975, c. 231 (N.J.S.A. 10:4-16 et seq.). An executive session for the purpose of discussing and studying any matters to come before the agency shall not be deemed a regular or special meeting within the meaning of this chapter.
- C. Minutes of every regular or special meeting shall be kept and shall include the names of the persons appearing and addressing the municipal agency and of the persons appearing by attorney, the action taken by the municipal agency, 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 Township Clerk. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceedings concerning the subject matter of such minutes. Such interested party may be charged a reasonable fee for reproduction of the minutes for his use.

§ 95-6. Hearings.

- A. When required. The Planning Board or the Board of Adjustment, as the case may be, shall hold a hearing on each application for development. The Planning Board shall also hold a hearing on the adoption, revision or amendment of a Master Plan. The governing body shall hold a hearing on the adoption or amendment of a development regulation, an Official Map or a capital improvements program.
 - (1) The municipal agency shall make rules governing such hearings. Any maps and documents for which approval is sought at a hearing shall be on file and available for public inspection at least ten (10) days before the date of the hearing during normal business hours in the office of the Township Clerk. The applicant may produce other documents, records or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.

- (2) 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, P.L. 1953, c. 38 (N.J.S.A. 67A-1 et seq.), shall apply.
- (3) 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 the reasonable limitations as to time and number of witnesses.
- (4) Technical rules of evidence shall not be applicable to the hearing, but the agency may exclude irrelevant, immaterial or unduly repetitious evidence.
- (5) The municipal agency shall provide for the verbatim recording of the proceedings by either stenographer or mechanical or electronic means. The municipal agency shall furnish a transcript, or duplicate recording in lieu thereof, on request, to any interested party at his expense.
- (6) A member of a municipal agency who is absent for one (1) 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 (1) or more of the meetings ; provided, however, that such agency member has available to him the transcript or recording of all of the hearings from which he was absent and certifies in writing to the agency that he has read such transcript or listened to such recording. **[Added 8-27-81 by Ord. No. 21-1981]**

B. Notice of hearing on application for development or adoption of Master Plan. Notice pursuant to Subsection B(1) and (2) below shall state the date, time and place of the hearing, the nature of the matters to be considered and, in the case of notices pursuant to Subsection B(1) below, an identification of the property proposed for development by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the Municipal Tax Assessor's office, and the location and times at which any maps and documents for which approval is sought are available pursuant to Subsection A(1) hereof.

- (1) Notice of applications. Notice pursuant to Subsection B(1)(a), (b), (d), (e), (f) and (g) hereof shall be given by the applicant. Said notice shall be given at least ten (10) days prior to the date of the hearing.
 - (a) Public notice of a hearing on an application for development shall be given except for conventional site plan review, minor subdivision, sketch plats or final approval, provided that public notice shall be given in the event that relief is requested pursuant to §~ 95-14D and 95-23A(3), (4), (5), (6) and (7) of this chapter as part of an application for development otherwise excepted herein from public notice. Public notice shall be given by publication in the official newspaper of general circulation in the municipality at least ten (10) days prior to the date of the hearing, by the applicant. **[Amended 5-15-80 by Ord. No. 3-1980]**
 - (b) Notice of a hearing requiring public notice pursuant to Subsection B(1)(a) of this section shall be given to the owners of all real property as shown on the current tax

duplicate or duplicates located in the State of New Jersey and within two hundred (200) feet in all directions of the property which is the subject of such hearing, provided that this requirement shall be deemed satisfied by notice to the condominium association in the case of any unit owner whose unit has a unit above or below it or to the horizontal property regime in the case of any co-owner whose apartment has an apartment above or below it. Such notice shall be given by 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 by mailing a copy thereof by certified mail to the property owner at his address as shown on the said current tax duplicate. A return receipt is not required. Notice to a partner owner or 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, common trust or homeowners' association, because of its ownership of common elements or areas located within two hundred (200) feet of the property which is the subject to 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. [Amended 5-15-80 by Ord. No. 3-1980]

- (c) Pursuant to the provisions of N.J.S.A. 40:55D-12, Subdivision C, the Secretary of the Board of Assessors shall, within seven (7) days after receipt of a request therefor and upon receipt of payment of a fee not to exceed twenty-five cents (\$0.25) per name or ten dollars (\$10.), whichever is greater, make and certify a list from the said current tax duplicates of names and addresses of owners to whom the applicant is required to give notice pursuant to Subsection B(1)(b) of this section or other section of the chapter. 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. **[Amended 545-80 by Ord. No. 3-1980]**
- (d) Notice of all hearings on applications for development involving property located within two hundred (200) feet of an adjoining municipality shall be given by personal service or certified mail to the Clerk of such municipality. Said notice shall be in addition to the notice required to be given pursuant to Subsection B(1)(b) of this section to the owners of lands in such adjoining municipality which are located within two hundred (200) feet of the subject premises.
- (e) Notice shall be given by personal service or certified mail to the County Planning Board of any hearing on an application for development of property adjacent to an existing county road or proposed road shown on the Official County Map or on the County Master Plan, adjoining other county land or situate within two hundred (200) feet of a municipal boundary.
- (f) 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 high-way.
- (g) 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 one hundred fifty (150) acres or five hundred (500) dwelling units. Such notice shall include a

copy of any maps or documents required to be on file with the Municipal Clerk pursuant to Subsection A(1) of this section.

- (h) The applicant shall file an affidavit of proof of service with the municipal agency holding the hearing on the application for development in the event that the applicant is required to give notice pursuant to this section.
 - (i) Notice pursuant to Subsection B(1)(d), (e), (f) and (g) of this section shall not be deemed to be required unless public notice pursuant to Subsection B(1)(a) and notice pursuant to Subsection B (1) (b) of this section are required. **[Added 5-15-80 by Ord. No. 3-1980]**
- (2) Notice concerning Master Plan. The Planning Board shall give:
- (a) Public notice of a hearing on adoption, revision or amendment of the Master Plan. Such notice shall be given by publication in the official newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality at least ten (10) days prior to the date of the hearing.
 - (b) Notice by personal service or certified mail to the Clerk of an adjoining municipality of all hearings on adoption, revision or amendment of a Master Plan involving property situated within two hundred (200) feet of such adjoining municipality at least ten (10) days prior to the date of any such hearing.
 - (c) Notice by personal service or certified mail to the County Planning Board of all hearings on the adoption, revision or amendment of the Municipal Master Plan at least ten (10) days prior to the date of the hearing, and such notice shall include a copy of any such proposed Master Plan or any revision or amendment thereto; and notice of the adoption, revision or amendment of the Master Plan not more than thirty (30) days after the date of such adoption, revision or amendment, and such notice shall include a copy of the Master Plan or revision or amendment thereto.
- (3) Effect of mailing notice. Any notice by certified mail pursuant to Subsection B(1) and (2) above shall be deemed complete upon mailing.

C. Decision.

- (1) Each decision on any application for development shall be in writing as a written and adopted resolution or motion and shall include findings of facts and conclusions based thereon.
- (2) A copy of the decision shall be mailed by the municipal agency within ten (10) days of the date of adoption of the written resolution or motion to the applicant, or if represented, then to this attorney, without separate charge, and to all who request a copy of the decision for a reasonable fee. A copy of the written resolution or motion shall also be filed by the municipal agency in the office of the Township Clerk. The Township Clerk shall make a copy of such filed decision available to any interested party for a reasonable fee and available for public inspection at the Township Clerk's office during reasonable hours.
- (3) A brief notice of the decision after adoption of a written resolution or motion shall be published in the official newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality. Such publication shall be arranged by the Township

Clerk; provided that nothing in this chapter shall be construed as preventing the applicant from arranging such publication if he so desires. The municipality shall make a reasonable charge to the applicant for its publication. The period of time in which an appeal of the decision may be made shall run from the first publication of the decision, whether arranged by the municipality or the applicant. Said notice shall be sent to the official newspaper for publication within ten (10) days of the date of any such decision.

(4) Time for decision. **[Added 5-15-80 by Ord. No. 3-1980]**

- (a) The Board may provide such written decision and findings and conclusions either on the date of the meeting at which the Board takes action to grant or deny approval or, if the meeting at which such action is taken occurs within the final forty-five (45) days of the applicable time period for rendering a decision on the application for development, within forty-five (45) days of such meeting 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, notwithstanding the time at which such action occurs within the applicable time period for rendering a decision of the application.
 - (b) 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 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 Board and not to be an action of the Board; except that failure to adopt such a resolution within the forty-five-day period shall result in the approval of the application for development, notwithstanding any prior action taken thereon.
 - (c) Whenever a resolution of memorialization is adopted in accordance with this subsection, the date of such adoption shall constitute the date of the decision for purposes of the mailings, filings and publications required by Subsection C(2) of this section.
- (5) 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. **[Added 8-27-81 by Ord. No. 21-1981]**

D. Notice of hearing on ordinance or capital improvement program; notice of action on capital improvement or Official Map.

- (1) Notice by personal service or certified mail shall be made to the Clerk of an adjoining municipality of all hearings on the adoption, revision or amendment of a development regulation involving property situated within two hundred (200) feet of such adjoining municipality at least ten (10) days prior to the date of any such hearing.
- (2) Notice by personal service or certified mail shall be made to the County Planning Board of all hearings on the adoption, revision or amendment of any development regulation at least ten (10) days prior to the date of the hearing, and notice to said Board of the adoption, revision or amendment of the municipal capital improvement program or Municipal Official Map shall be made not more than thirty (30) days after the date of such adoption, revision or amendment.

- (3) Any notice provided hereunder shall include a copy of . the proposed development regulation, the Municipal Official Map or the municipal capital program, or any proposed revision or amendment thereto, as the case . • may be. Notice of hearings to be held pursuant to this subsection shall state the date, time and place of the hearing and the nature of the matters to be considered. Any notice by certified mail pursuant to this sub-section • shall be deemed complete upon mailing.

- E. Filing of chapter and amendments. This chapter or any revision or amendment thereto shall not take effect until a copy thereof has been filed with the County Planning Board. An Official Map shall not take effect until filed with the county recording officer. Copies of this chapter and any revisions or amendments thereto shall be filed and maintained in the office of the Township Clerk.

§ 95-7. Appeals. [Amended 5-15-80. by 3-1980; 8-17-82 by Ord. No. 24-1982; 10-20-83 by Ord. No. 25-1983]

Any interested party desiring to appeal the decision of the Zoning Board of Adjustment approving an application for development pursuant to § 95-23A(4) shall appeal to the governing body.

- A. Time of appeal. Any such appeal shall be made within ten (10) days of the date of publication of such final decision pursuant to § 95-6C(3). The appeal to the governing body shall be made by serving the Township Clerk in person or by certified mail with a notice of appeal specifying the grounds thereof and the name and address of the appellant and the name and address of his attorney, if represented. Such appeal shall be decided by the governing body upon the record established before the Board of Adjustment.
- B. Meeting date and notice. A meeting date shall be established by the governing body, and notice of the meeting to review the record below shall be given by the governing body by personal service or certified mail to the appellant, to those entitled to notice of a decision pursuant to § 95-6C(2) and to the Board of Adjustment at least ten (10) days prior to the date of the meeting. The parties may submit oral and written argument on the record at such meeting, and the governing body shall provide for verbatim recording and transcripts of such meeting pursuant to § 95-6A(5).
- C. Time for decision
 - (1) The governing body shall conclude a review of the record below not later than ninety-five (95) days from the date of publication of the notice of the decision below pursuant to Subsection (i) of Section 6 of the Municipal Land Use Act (N.J.S.A. 40:55D-10), unless the applicant consents in writing to an extension of such period. Failure of the governing body to hold a hearing and conclude a review of the record below and to render a decision within such specified period shall constitute a decision affirming the action of the Board.
 - (2) The appellant shall, within five (5) days of service of the notice of appeal pursuant to this section, arrange for a transcript pursuant to § 95-6A(5) or otherwise, for use by the governing body, and shall pay a deposit of fifty dollars (\$50.) or the estimated cost of such transcript, whichever is less, or shall, within thirty-five (35) days of service of the notice of appeal, submit a transcript as otherwise arranged to the Township Clerk; otherwise the appeal may be dismissed for failure to prosecute.
- D. Decision. The governing body may reverse, remand or affirm, wholly or in part, or may modify the final decision of the Board of Adjustment The affirmative vote of a majority of the full authorized membership, of the governing body shall be necessary to reverse, remand or modify any final

action of the Board of Adjustment. A copy of the decision shall be forwarded to the Board of Adjustment.

- E. Stay of proceedings. An appeal to the governing body shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made unless the Board of Adjustment certifies to the governing body, after the notice of appeal shall have been filed with that Board, that by reason of facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by an order of the Superior Court on application, upon notice to the Board of Adjustment and on good cause shown.
- F. Notice of decision. The governing body shall mail a copy of the decision to the appellant, or if represented, then to his attorney, without separate charge, and for a reasonable charge to any interested party who has requested it, not later than ten (10) days after the date of the decision. A brief notice of the decision shall be published in the official 'newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality. Such publication shall be arranged by the Township Clerk; provided that nothing contained herein shall be construed as preventing the applicant from arranging such publication if he so desires. The governing body may make a reasonable charge for its publication. The period of time in which an appeal to a court of competent jurisdiction may be made shall run from the first publication, whether arranged by the municipality or the applicant.
- G. Court review. Nothing in this chapter shall be construed to restrict the right of any party to obtain a review by any court of competent jurisdiction according to law.

§ 95-8. Exclusive authority of Planning Board and Board of Adjustment.

Any power expressly authorized by this chapter to be exercised by Planning Board or the Board of Adjustment shall not be exercised by any other body, except as otherwise provided in this chapter.

§ 95-9. Tolling of running of period of approval.

In the event that, during the period of approval heretofore or hereafter granted to an application for development, 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 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 or welfare and the developer is otherwise ready, willing and able to proceed with said development, the running of the period of approval shall be suspended for the period of time said legal action is pending or such directive or order is in effect.

§ 95-10. Conditional approvals.

- A. In the event that a developer submits an application for development proposing a development that is barred or prevented, directly or indirectly, by a legal action instituted by any state agency, political subdivision or court of competent jurisdiction to protect the public health and welfare, the municipal agency shall process such application for development in accordance with this chapter and municipal development regulations, and if such application for development complies with municipal development regulations, the municipal agency shall approve such application conditioned on removal of such legal barrier to development.

- B. In the event that development proposed by an application for development requires an approval by a governmental agency other than the municipal agency, the municipal agency shall, in appropriate instances, condition its approval upon the subsequent approval of such governmental agency; provided that the municipality shall make a decision on any application for development 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 municipal agency is prevented or relieved from so acting by the operation of law.

§ 95-11. Fees and deposits. [Amended 8-27-1981 by Ord. No. 21-1981; 5-18-1982 by Ord. No. 13-1982; 8-17-1982 by Ord. No. 24-1982; 4-21-1983 by Ord. No. 10-1983; 10-7-1993 by Ord. No. 22-1993; 4-18-1996 by Ord. No. 2-1996]

- A. There is hereby established, in connection with various applications for development and other matters which fees are the subjects of this chapter, a schedule of fees, which fees shall be paid by the applicant. Said schedule of fees is included in Chapter 79, Fees and Licenses, of this Code.
- B. Escrow deposit fees
- (1) In addition to the filing fee established herein, all applications for development shall be accompanied by a deposit of adequate funds from which the Chief Financial Officer of the township shall make all of the payments to professionals for services rendered to the municipality or approving authority for review of applications for development, review and preparation of documents, inspection of improvements or other purposes under the provisions the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.). Such fees or charges shall be based upon a schedule established by resolution.
 - (2) The application review and inspection charges shall be limited only to professional charges for review of applications, review and preparation of documents and inspections of developments under construction and review by outside consultants when an application is of a nature beyond the scope of the expertise of the professionals normally utilized by the municipality. The only costs that shall be added to any such charges shall be actual out-of-pocket expenses of any such professionals or consultants, including normal and typical expenses incurred in processing applications and inspecting improvements. The municipality or approving authority shall not bill the applicant, or charge any escrow account or deposit authorized under Subsection B of this section, for any municipal clerical or administrative functions, overhead expenses, meeting room charges or any other municipal costs and expenses except as provided for in this section, nor shall a municipal professional add any such charges to his bill.
 - (3) If the salary, staff support and overhead for a municipal professional are provided by the municipality, the charge shall not exceed two hundred percent (200%) of the sum of the products resulting from multiplying the hourly base salary, which shall be established, annually by ordinance, of each of the professionals by the number of hours spent by the respective professional upon review of the application for development or inspection of the developer's improvements, as the case may be. For other professionals the charge shall be at the same rate as all other work of the same nature by the professional for the municipality when fees are not reimbursed or otherwise imposed on applicants or developers.
 - (4) All moneys required under this chapter as a deposit toward anticipated municipal expenses for professional services shall be deposited in an escrow account pursuant to N.J.S.A. 40:55D-53.1. Deposits for inspection fees shall be established in accordance with N.J.S.A.

40:55D-53h.

- (5) The amount of the initial deposit to said escrow account, to be remitted at the time of the filing of the application, shall be as provided in § 79-7E.
- (6) Each payment charged to the deposit for review of applications, review and preparation of documents and inspection of improvements shall be pursuant to a voucher from the professional, which voucher shall identify the personnel performing the service, and, for each date the services are performed, the hours spent to one-fourth-hour increments, the hourly rate and the expenses incurred. All professionals shall submit vouchers to the Chief Financial Officer of the municipality on a monthly basis, in accordance with schedules and procedures established by the Chief Financial Officer of the municipality. If the services are provided by a municipal employee, the municipal employee shall prepare and submit to the Chief Financial Officer of the municipality a statement containing the same information as required on a voucher, on a monthly basis. The professional shall send an informational copy of all vouchers or statements submitted to the Chief Financial Officer of the municipality simultaneously to the applicant.
- (7) The Chief Financial Officer of the municipality shall prepare and send to the applicant a statement which shall include an accounting of funds listing all deposits, interest earnings, disbursements and the cumulative balance of the escrow account. This information shall be provided on a quarterly basis, if monthly charges are one thousand dollars (\$1,000.) or less, or on a monthly basis, if monthly charges exceed one thousand dollars (\$1,000.).
- (8) If an escrow account or deposit contains insufficient funds to enable the municipality or approving authority to perform required application reviews or improvement inspections, the chief financial officer of the municipality shall provide the applicant with a notice of the insufficient escrow or deposit balance. In order for work to continue on the development or the application, the applicant shall within a reasonable time period post a deposit to the account in an amount to be agreed upon by the municipality or approving authority and the applicant. In the interim, any required health and safety inspections shall be made and charged back against the replenishment of funds.
- (9) The following close-out procedure shall apply to all deposits and escrow accounts established under the provisions of the Municipal Land Use Law⁸ and shall commence after the approving authority has granted final approval and signed the subdivision plat or site plan, in the case of application review escrows and deposits, or after the improvements have been approved, in the case of improvement inspection escrows and deposits. The applicant shall send written notice, by certified mail, to the Chief Financial Officer of the municipality and the approving authority, and to the relevant municipal professional, that the application or the improvements, as the case may be, are completed. After receipt of such notice, the professional shall render a final bill to the Chief Financial Officer of the municipality within thirty (30) days and shall send a copy simultaneously to the applicant. The Chief Financial Officer of the municipality shall render a written final accounting to the applicant on the uses to which the deposit was put within forty five (45) days of receipt of the final bill. Any balances remaining in the deposit or escrow account, including interest, shall be refunded to the developer along with the final accounting.

8. Editor's Note: See N.J.S.A. 40:55D.1 et seq.

- (10) All professional charges for review of an application for development, review and

preparation of documents or inspection of improvements shall be reasonable and necessary, given the status and progress of the application or construction. Review fees shall be charged only in connection with an application for development presently pending before the approving authority or upon review of compliance with conditions of approval or review of requests for modification or amendment made by the applicant. A professional shall not review items which are subject to approval by any state governmental agency and not under municipal jurisdiction except to the extent consultation with a state agency is necessary due to the effect of state approvals in the subdivision or site plan. Inspection fees shall be charged only for actual work showing on a subdivision or site plan or required by an approving resolution. Professionals inspecting improvements under construction shall charge only for inspections that are reasonably necessary to check the progress and quality of the work, and such inspections shall be reasonably based on the approved development plans and documents.

- (11) If the municipality retains a different professional or consultant in the place of the professional originally responsible for development, application review or inspection of improvements, the municipality or approving authority shall be responsible for all time and expenses of the new professional to become familiar with the application or the project, and the municipality or approving authority shall not bill the applicant or charge the deposit or the escrow account for any such services.
- (12) Notwithstanding any other provisions of this section, whenever the Planning Board or the Zoning Board of Adjustment shall determine that a particular application is not likely to result in any costs to the Township of East Hanover for professional review services, said Planning Board or Zoning Board of Adjustment may waive deposit by the applicant of some or all of the escrow fees otherwise required under the provisions of this section. Any such waiver of escrow fees shall be done at a meeting of the appropriate Board and shall require the vote of majority of those members present.

C. Appeal of disputed charges.

- (1) An applicant shall notify, in writing, the governing body, with copies to the Chief Financial Officer, the approving authority and the professional, whenever the applicant disputes the charges made by a professional for service rendered to the municipality in reviewing applications, for development, review and preparation of documents, inspection of improvements or other charges made pursuant to the provisions of the Municipal Land Use Law.⁹ The governing body, or its designee, shall within a reasonable time period attempt to remediate any disputed charges. If the matter is not resolved to the satisfaction of the applicant, the applicant may appeal to the county construction board of Appeals any charge to an escrow account or a deposit by any municipal professional or consultant or the cost of the installation of improvements estimated by the Municipal Engineer. An applicant or his authorized agent shall submit the appeal, in writing, to the Township Construction Board of Appeals. The applicant or his authorized agent shall simultaneously send a copy of the appeal to the municipality, approving authority and any professional whose charge is the subject of the appeal. An applicant shall file an appeal within forty-five (45) days from receipt of the informational copy of the professional's voucher required by § 95-11B(6) herein; except that, if the professional has not supplied the applicant with an informational copy of the voucher, then the applicant shall file his appeal within sixty (60) days from receipt of the municipal statement of activity against the deposit or escrow account required by § 95-11B(7) herein. An applicant may file an appeal for an ongoing series of charges by a professional during a period not exceeding six (6) months to demonstrate that they represent a pattern of excessive

or inaccurate charges. An applicant making use of this provision need not appeal each charge individually.

9. Editor's Note: See N.J.S.A. 40:55D.1 et seq.

- (2) The Township Construction Board of Appeals shall hear the appeal, render a decision thereon and file its decision with a statement of the reasons therefor with the municipality or approving authority not later than ten (10) business days following the submission of the appeal, unless such period of time has been extended with the consent of the applicant. The decision may approve, disapprove or modify the professional charges appealed from. A copy of the decision shall be forwarded by certified or registered mail, to the party making the appeal, the municipality, the approving authority and the professional involved in the appeal. Failure by the Board to hear an appeal and render and file a decision thereon within the time limits prescribed in this subsection shall be deemed a denial of the appeal for purposes of a complaint, application or appeal to a court of competent jurisdiction.
- (3) The Township Construction Board of Appeals shall provide rules for its procedure in accordance with this section. The Board shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, and the provisions of the County and Municipal Investigations Law, (N.J.S.A. 2A:67A-1 et seq.) shall apply.
- (4) During the pendency of any appeal, the municipality or approving authority shall continue to process, hear and decide the application for development and to inspect the development in the normal course and shall not withhold, delay or deny reviews, inspections, the signing of subdivision plats or site plans, the reduction or the release of performance or maintenance guarantees, the issuance of construction permits or certificates of occupancy or any other approval or permit because an appeal has been filed or is pending under this subsection. The Chief Financial Officer of the municipality may pay charges out of the appropriate escrow account or deposit for which an appeal has been filed. If a charge is disallowed after payment, the Chief Financial Officer of the municipality shall reimburse the deposit or escrow account in the amount of any such disallowed charge or refund the amount to the applicant. If a charge is disallowed after payment to a professional or consultant who is not an employee of the municipality, the professional or consultant shall reimburse the municipality in the amount of any such disallowed charge.

§ 95-11.1. Zoning Enforcement Official. [Added 7-15-1993 by Ord. No. 16-1993]

A. Establishment.

- (1) The Zoning Enforcement Official is hereby designated as the public officer to exercise the powers prescribed by this chapter.
- (2) Pursuant to this section, there is hereby created the office of the Zoning Enforcement Official of the Township of East Hanover. The term of office shall be one (1) year and shall expire December 31 of the same year. The appointment of a Zoning Official shall be by the Township Council. A vacancy from the office shall be filled for the unexpired term only. Nothing herein shall prohibit the Township Council from designating a current Township employee to the position of the Zoning Enforcement Official.

B. Duties of Zoning Enforcement Official.

- (1) It shall be the duty of the Zoning Enforcement Official to investigate any violation of this chapter coming to his attention whether by complaint or from his own personal knowledge or observation. Where any building or structure is erected, constructed, altered, repaired, converted or maintained or where any building, structure or land is used in violation of any provision of this chapter, the Zoning Enforcement Official shall either serve an appropriate abatement notice upon the owner or persons violating said provision, either personally or by registered mail, to remove said violation or, as the circumstances may warrant:
 - (a) File a complaint in the Municipal Court of the Township of East Hanover against the owner, his agent or any person or corporation perpetrating said violation, serving the aforesaid offender with proper notice and prosecute this judgment in the Municipal Court.
 - (b) Upon the express authority of the Township Council and with the advice and assistance of the Township Attorney, file in the Superior Court a complaint to terminate said violation.
- (2) This chapter shall be enforced by the Zoning Enforcement Official, who shall in no case, except under written order of the Board of Adjustment or the Director of Land Use, issue any permit for the erection or structural alteration of any building nor grant any occupancy permit for any building where the proposed erection, structural alteration or use thereof would be in violation of any provision of this chapter. The Zoning Enforcement Official shall investigate any alleged violation of the prescribed performance standards in each zone and, if there are reasonable grounds to believe that a violation exists, may either file a complaint in the Municipal Court or serve an abatement notice.
- (3) The salary of the Zoning Enforcement Officer shall be set forth in the annual salary ordinance of the Township of East Hanover.¹⁰

¹⁰ **Editor's Note: See Ch. 47, Salaries and Compensation.**

§ 95-11.2. Development Review Advisory Committee. [Added 2-10-2004 by Ord. No. 8-2004]

- A. The Mayor shall appoint a Development Review Advisory Committee for the purpose of reviewing all development applications which are to be brought before either the Planning Board or the Board of Adjustment for decision. In reviewing all applications, the Development Review Advisory Board shall determine the completeness of each application, and may offer opinions to the respective land use boards on improvements which could be made in any development application. The term "development application" shall include all applications for subdivisions, site plans, conditional uses and variances of any type (c or d).
- B. The Development Review Advisory Committee shall include, without limitation, the Zoning Officer, Construction Official, Director of Land Use, Township Planner and Township Engineer. The Mayor shall designate the Chair of the Committee from among the permanent members.
- C. In reviewing applications, the Development Review Advisory Committee shall solicit and consider the opinions of, without limitation, the Police, Fire, Public Services and Health Departments, the Water/Sewer Utility and the Environmental Commission.

§ 95-11.3. Certification of application as complete. [Added 2-10-2004 by Ord. No. 8-2004]

A. An application for development shall be complete for purposes of commencing the applicable time period for action by a municipal, agency when the following have occurred:

(1) The Development Review Advisory Committee has certified the application is complete.

(2) The applicant has submitted the appropriate number of copies of the application, including plans, site plans, maps, sketches, and supporting information, to the administrative officer.

B. In the event that the Development Review Advisory Committee does not certify the application to be complete within 45 days of the date of submission, the application shall be deemed complete upon the expiration of the forty-five-day period for purposes of commencing the applicable time period, unless the application lacks the information indicated in the applicable sections of this chapter, and the administrative officer 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 requirements be waived, in which event the Development Review Advisory Committee shall grant or deny the request within 45 days. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that he is entitled to approval of the application. The Planning Board or Board of Adjustment may subsequently require correction of any information found to be in error or 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 approving board.

§ 95-11.4. Environmental Commission. [Added 2-10-2004 by Ord. No. 8-2004]

A. Pursuant to the provisions of P.L. 1968. c. 245 (N.J.S.A. 40:56A-1 et seq.), there is hereby created an Environmental Commission for the protection, development or use of the natural resources located within the territorial limits of the Township.

B. The Environmental Commission shall consist of seven regular members and two alternates appointed by the Mayor. One of the regular members shall be a member of the Planning Board, and all regular members and alternates shall be residents of the Township. Regular members shall serve three-year terms staggered so that approximately 1/3 Of the members' terms shall expire each year. Alternates shall be designated "Alternate No. 1" and "Alternate No. 2" and shall serve staggered two-year terms. The Mayor shall designate one of the regular members to serve as Chairperson and presiding officer of the Commission. The Mayor or Township Council may remove any regular member or alternate for cause, on written charges served upon the individual and after a hearing thereon at which the individual shall be entitled to be heard in person or by counsel. A vacancy on the Commission occurring otherwise than by expiration of a term shall be filled for the unexpired term in the same manner as the original appointment.

C. The Environmental Commission shall have the power to conduct research into the use and possible use of the open land areas of the Township and may coordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which, in its judgment, it deems necessary for its purposes. It shall keep an index of all open areas, publicly or privately owned, including open marshlands, swamps, and other wetlands, in order to obtain information on the proper use of such areas, and

may, from time to time, recommend to the Planning Board plans and programs for inclusion in a municipal master plan and the development and use of such areas.

- D. The Environmental Commission shall also have the power to study and make recommendations concerning open space preservation, water resources management, air pollution control, solid waste management, noise control, soil and landscape protection, environmental appearance, marine resources and protection of flora and fauna.
- E. Where an applicant before the Planning Board or Board of Adjustment is required to submit an environmental impact statement, said applicant shall adhere to the following procedure:
 - (1) The applicant shall submit eight copies of any environmental impact statement and all accompanying maps, charts or other material which the applicant wishes the Commission to consider. Such submission shall be made to the Commission not fewer than 10 working days prior to the Commission's next regularly scheduled monthly meeting.
 - (2) Prior to review by the Commission, the applicant must also file, if applicable, the following:
 - (a) Morris County Planning Board report.
 - (b) Any and all reports required by or received from the New Jersey Department of Environmental Protection or the Federal Environmental Protection Agency.
 - (c) Any and all reports by Township departments, including, without limitation, Public Works, Water and Sewer, Fire, Police, Health and Engineering.
 - (d) Morris County Soil Conservation District Report.
 - (e) Wetlands letter of interpretation, stream encroachment permit and/or any and all other permits required for the project.
- F. The Environmental Commission may, subject to the approval of the Township Council, acquire property, both real and personal, in the name of the Township, by gift, purchase, grant, bequest, devise, or lease for any of its purposes, subject to the terms of the conveyance of the gift. Such an acquisition may be to acquire the fee or any lesser interest, development right, easement (including conservation easement), covenant or other contractual right (including a conveyance on conditions or with limitations or reversions), as may be necessary to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve and properly utilize open spaces and other land and water areas in the Township.
- G. The Environmental Commission shall keep records of its meetings and activities and shall make an annual report to the Township Council.
- H. The Commission may appoint such clerks and other employees as it may from time to time require, provided that such, shall be within the limits of the finds appropriated to it by the Township Council.

ARTICLE IV

Land Use Planning Board

[Amended 5-15-1980 by Ord. No. 3-1980; 8-27-1981 by Ord. No. 21-1981; 8-17-1982 by Ord. No. 24-1982; 12-27-2005 by Ord. No. 38-2005]

§ 95- 12. Establishment; composition.

- A. There is hereby established, pursuant to N.J.S.A. 40:55D-1 et seq. (Municipal Land Use Law) in the Township of East Hanover a Land Use Planning Board, hereinafter sometimes called “Board,” of nine members consisting of the following classes:
- (1) Class I: the Mayor or the Mayor’s designee in the absence of the Mayor. Said designee shall serve at the pleasure of the Mayor during the Mayor’s official tenure.
 - (2) Class II: one of the officials of the Township other than a member of the Township Council, to be appointed by the Mayor.
 - (3) Class III: a member of the governing body to be selected by the governing body.
 - (4) Class IV: six citizens of the Township of East Hanover to be appointed by the Mayor. The members of Class IV shall hold no other municipal office. A member of the Environmental Commission who is also a member of the Land Use Planning Board as required by N.J.S.A. 40:56A-1 shall be a Class IV Land Use Planning Board member.
- B. The term of the member composing Class I shall correspond with his official tenure. The term of the member composing Class II shall be for one year or terminate at the completion of his term of office, whichever occurs first. The term of a Class III member shall correspond with his term of office. 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/her term, whichever comes first.
- C. The terms of all other Class IV members shall be for four years, provided that the initially appointed members shall receive staggered terms as follows: one one-year term; one two-year term; two three-year terms; two four-year terms. All terms shall run from January 1 of the year in which the appointment was made.
- D. The Mayor shall appoint four alternate members for Class IV members who shall meet the qualifications of Class IV members. Alternate members shall be designated by the Mayor at the time of their appointment 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 commencing from January 1 of the year of their appointment, except that the terms of the alternate members shall be such that the term of not more than two alternate members shall expire in any one year; provided, however, that in no instance shall the terms of the alternate members first appointed exceed two years. 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 first, then Alternate No. 2, Alternate No. 3 and Alternate No. 4, in that order.
- E. 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.
- F. Any member other than a Class I member, after a public hearing if he or she requests one, may be removed by the Township Council for cause.

§ 95-13. Organization.

The Land Use Planning Board shall elect a Chairman and Vice Chairman from the members of Class IV and select a Secretary who may be either a member of the Land Use Planning Board or a Township employee designated by it.

§ 95-14. Attorney; experts and staff.

- A. There is hereby created the office of Land Use Planning Board Attorney. The Land Use Planning Board may annually appoint and fix the compensation of or agree upon the rate of compensation of the Land Use Planning Board Attorney, who shall be an attorney other than the Township Attorney, in an amount not exceeding the amount appropriated by the Township Council for such purpose.
- B. The Land Use 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 exceed, however, exclusive of gifts or grants, the amount appropriated by the Township Council for its use.

§ 95-15. Powers and duties generally.

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

- A. To make and adopt and from time to time amend a Master Plan for the physical development of the Township, in accordance with the provisions of N.J.S.A. 40:55D-28.
- B. To administer the provisions of the Land Subdivision and Site Plan Ordinance¹¹ of the Township in accordance with the provisions of said ordinance and the Municipal Land Use Law.¹²

¹¹ Editor's Note: See Art. VI, Subdivision and Site Plan Review.

¹² Editor's Note: See 40:55D-1 et seq.

- C. To issue permits for conditional uses. The term "conditional use" means a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in this chapter and upon the issuance of an authorization therefor by the Land Use Planning Board. The Land Use Planning Board shall either issue or deny issuance of a conditional use permit within 95 days of submission of a complete application therefor by a developer or within such further time as may be consented to by the applicant. The review by the Land Use Planning Board of a conditional use shall include any required site plan review. The time period for action by the Land Use Planning Board on conditional uses shall apply to such site plan review. Failure of the Land Use Planning Board to act within the period prescribed shall constitute approval of the application, and a certificate of the Clerk as to the failure of the Land Use Planning Board to act shall be issued on request of the applicant. Such certificate shall be sufficient in lieu of the written endorsement or other evidence of approval herein required.
- D. To participate in the preparation and review of programs or plans required by state or federal law or regulation.
- E. To assemble data on a continuing basis as part of a continuous planning process.

- F. To annually prepare a program of Township capital improvement projects projected over a term of six years, and amendments thereto, and recommend the same to the Township Council.
- G. To consider and make a report to the Township Council 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 to pass upon other matters specifically referred to the Land Use Planning Board by the Township Council, pursuant to the provisions of N.J.S.A. 40:55D-26b.
- H. Applications for approval.
 - (1) When reviewing applications for approval of subdivision plots, site plans or conditional uses, to grant to the same extent and subject to the same restrictions as a Zoning Board of Adjustment:
 - (a) Variances pursuant to N.J.S.A. 40:55D-70c and d.
 - (b) Direction, pursuant to N.J.S.A. 40:55D-34, for issuance of a permit for a building or structure in the bed of a mapped street or public drainageway, flood control basin or public area reserved pursuant to N.J.S.A. 40:55D-32c direction, pursuant to N.J.S.A. 40:55D-36 for issuance of a permit for a building or structure not related to a street.
 - (2) Whenever relief is requested pursuant to this subsection, notice of a hearing on the application for development shall include reference to the request for a variance or direction for the issuance of a permit as the case may be.
- I. Zoning board of adjustment powers. The Land Use Planning Board is authorized to act as a zoning board of adjustment and to exercise all the powers and duties granted to a zoning board of adjustment in the Municipal Land Use Act. In acting upon the variances set forth in N.J.S.A. 40:55D-70b, Class I and Class III members shall not participate in the consideration of the variance. The powers and duties include, but are not limited to the following:
 - (1) To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, decision or refusal made by an official based on or made in the enforcement of Chapter 95, Land Use and Zoning.
 - (2) To hear and decide requests for interpretation of the Zoning Map or this chapter or for decisions upon other special questions upon which the Board is authorized to act.
 - (3) Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property, by reason of exceptional topographic conditions, or by reason of other extraordinary and exceptional situations or condition of such piece of property the strict application of any regulation in this chapter would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to grant, upon an application or an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, including a variance for a conditional use.
 - (4) Variances
 - (a) In particular cases and for special reasons, grant a variance to allow departure from regulations to permit: a use or principal structure in a district restricted against such use

or principal structure; an expansion of a nonconforming use; deviation from a specification or standard pertaining solely to a conditional use; an increase in the permitted floor area ratio as defined in this chapter; an increase in the permitted density as defined in this chapter, except as applied to the required lot area for a lot or lots for detached one- or two-dwelling-unit buildings, which lot or lots are either an isolated undersized lot or lots resulting from minor subdivision; or a height of a principal structure which exceeds by 10 feet or 10% the maximum height permitted in the district for a principal structure. A variance under this subsection shall be granted only by affirmative vote of at least five members.

- (b) If any application for development requests one or more variances but not a variance for a purpose enumerated in this Subsection 1(4), the decision on the requested variance or variances shall be rendered under Subsection 1(3) of this section.
- (c) No variance or other relief may be granted under the terms of Subsection 1(1), (2), (3) or (4) unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zoning plan and this chapter. In respect to any airport safety zones delineated under the Air Safety and Zoning Act of 1983, P.L. 1983, c. 260 (N.J.S.A. 6:1-80 et seq.), no variance or other relief may be granted under the terms of this section permitting the creation or establishment of a nonconforming use which would be prohibited under standards promulgated pursuant to that Act, except upon issuance of a permit by the Commissioner of Transportation. An application under this section may be referred to any appropriate person or agency for its report, provided that such reference shall not extend the period of time within which the Land Use Planning Board shall act.
- (5) To direct issuance, upon application, of a permit pursuant to N.J.S.A. 40:550-34 for a building or structure in the bed of a mapped street or public drainageway, flood control basin or public area reserved on the Official Map.
- (6) To direct issuance, upon application, of a permit pursuant to N.J.S.A. 40:550-36 for a building or structure not related to a street.
- J. No variance or other relief may be granted under the provisions of Subsection 1(1), (2), (3) and (4) of this section unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning plan and this chapter. Any application under any subsection of this section may be referred to any appropriate person or agency for its report, provided that such reference shall not extend the period of time within which the Land Use Planning Board shall act.

§ 95-16. Time limits.

The Land Use Planning Board shall exercise its powers for the granting or denying of approval for minor and major subdivisions and for site plans in accordance with the time limitations set forth in this chapter. Additionally whenever the Land Use Planning Board is called upon to exercise its ancillary powers before the granting of a variance, as set forth in § 95-15H(1) of this chapter, the Land Use Planning Board shall grant or deny approval of the application within 95 days after submission by the developer of a complete application, or within such further time as may be consented to by the applicant. Failure of the Land Use Planning Board to act within the period prescribed shall constitute approval of the application, and a certificate of the Board Secretary as to the failure of the Land Use Planning Board to act shall be issued on request of the applicant.

§ 95-17. Citizens Advisory Committee.

The Mayor may appoint one or more persons as a Citizens' Advisory Committee to assist or collaborate with the Land Use 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.

§ 95- 18. Environmental Commission.

Whenever the Environmental Commission has prepared and submitted to the Land Use Planning Board an index of the natural resources of the Township, the Land Use Planning Board shall make available to the Environmental Commission an informational copy of every application for development to the Land Use Planning Board. Failure of the Land Use Planning Board to make such informational copies available to the Environmental Commission shall not invalidate any hearing or proceeding.

§ 95-19. Rules and regulations.

The Land Use 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 of 195.3 (N.J.S.A. 2A-67A-1 et seq.) shall apply.

§ 95-20. Appeals and applications.

- A. Appeals to the Land Use Planning Board may be taken by any interested party affected by any decision of a Township official based on or made in the enforcement of this chapter or Official Map. Each appeal shall be taken within 20 days by filing a notice of appeal with the official from whom the appeal was taken, together with three copies of such notice with the Administrative Officer of the Land Use Planning Board. Such notice of appeal shall specify the grounds for the appeal. The official from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- B. Three copies of an application for the exercise of the Board's power pursuant to Subsection 1(2) , (3) , (4) (5) or (6) of § 95-15 shall be filed with the Administrative Officer of the Land Use Planning Board. The application shall also contain a certification from the Township Tax Collector that no taxes or assessments for local improvements are due or delinquent on the property for which the application is made. The failure to provide said certification and the failure to provide all application and escrow fees to the Administrative Officer shall result in the application being deemed incomplete.
- C. At the time of filing the appeal or application, but in no event less than 10 days prior to the date set for hearing, the applicant shall also file all relevant plot plans, maps or other papers. The applicant shall obtain all necessary forms from the Administrative Officer of the Land Use Planning Board. The Administrative Officer of the Board shall inform the applicant of the steps to be taken to initiate proceedings and of the regular meetings dates of the Board.
- D. An appeal shall stay the decision appealed from, unless the official from whose decision the appeal is taken certifies to the Land Use Planning Board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise

than by an order of the Superior Court of New Jersey upon notice to the official from whom the appeal is taken and on good cause shown.

- E. The Land Use Planning Board may reverse or affirm, wholly or partly, or modify the action, order, requirement, decision, interpretation or determination appealed from and, to that end, have all the powers of the official from whom the appeal is taken.

§ 95-21. Expiration of variance.

Unless otherwise specified by the Land Use Planning Board, any variance from the terms of this chapter granted by the Land Use Planning Board permitting the erection or alteration of any structure or structures or specified use of any premises shall expire and become null and void two years from the date of authorization by the Land Use Planning Board unless such construction, alteration or use shall have been actually commenced on or in each and every structure permitted by such variance within said period. The Land Use Planning Board, upon application, notice and for good cause and within said period, may extend said period for one year, but not to exceed three extensions. The running of this period shall be tolled from the date of filing an appeal from the decision of the Land Use Planning Board to the Township Council or to a court of competent jurisdiction until the termination in any manner of such appeal or proceeding. Each request for extension shall be subject to the same fee and escrow requirements as those applicable to a variance application.

§ 95-22. Time limit for decision.

- A. The Land Use Planning Board shall render its decision not later than 120 days after the date an appeal is taken pursuant to § 95-151(1) or not later than 120 days after a complete application for approval of a subdivision plat, site plan, conditional use, zoning variance or direction for the issuance of a permit is submitted to the Board pursuant to the provisions of § 95-151(3), (4), (5) or (6).
- B. Failure of the Board to render such decision within such one-hundred-twenty-day period or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant. In the event that the Board fails to so act on a complete application for development, the Administrative Officer of the Board shall issue a certificate on request to the applicant, and it shall be sufficient in lieu of written endorsement or other evidence of approval herein required and shall be so accepted by the County Clerk for purposes of filing subdivision plats.

§ 95-23. Conditional approval.

- A. Whenever review or approval of the application by the County Planning Board is required by N.J.S.A. 40:27-6.3 in the case of a subdivision or N.J.S.A. 40:27-6.6 in the case of a site plan, the Township Land Use Planning Board shall condition any approval that it grants upon the 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.
- B. An application under this section may be referred to any appropriate person or agency, including the Land Use Planning Board, pursuant to § 95-15G of this chapter, for its report, provided that such reference shall not extend the period of time within which the Land Use Planning Board shall act.

§ 95-24. General provisions.

- A. No member of the Land Use 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 Land Use Planning Board shall be scheduled no less often than once a month, and any meeting so scheduled shall be held as scheduled unless cancelled for lack of applications for development to process.
 - (2) Special meetings may be provided for at the call of the Chairman or on the request of any two 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 action shall be taken at any meeting without a quorum being present, which is defined as the majority of the full authorized membership of the Board.
 - (4) All actions shall be taken by majority vote of the members of the Board present, except as otherwise required by statute.
 - (5) 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.
- C. 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; and 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 Township 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. Fees for application or for the rendering of any service by the Land Use Planning Board or any member of its administrative staff, including fees for variance applications and conditional use applications, shall be as set forth in § 79-7 of the Code of the Township of East Hanover.
- E. No application for development shall be deemed complete if there are outstanding, uncollected fees and escrows resulting from past applications or prior submissions involving the property in question or any part thereof, including the base tract. No performance guaranty shall be released or reduced unless all professional fees to be charged against escrow are paid.
- F. Should construction, building, excavation, clearing or use of structure or property take place that is not in accordance with the approvals granted by the reviewing authority and required by any developmental ordinance or without fulfillment or compliance with the conditions imposed by such approvals, such deviation shall be considered a violation of said ordinance. If within 95 days of notification and demand by the municipality the applicant has failed to pay the fees and escrows required by the ordinance or the applicant has failed to pay the inspection fees assessed pursuant to N.J.S.A. 40:55D-53h, a violation of said ordinance shall be deemed to have

occurred.

- G. Any developmental ordinance of the Township of East Hanover shall be enforced by the municipality's Construction Official or its Zoning Officer. Any citizen of the municipality may bring a proceeding in Municipal Court alleging a violation of any developmental ordinance. Any administrative violation of any developmental ordinance, including nonpayment of fees, escrows, inspection fees or other costs, may be enforced by the Administrative Officer of the municipality by instituting a proceeding in the Municipal Court of the municipality alleging a violation of the developmental ordinances of the municipality.

§ 95-25. Escrows.

- A. The escrow amount set forth in any developmental ordinance shall be subject to increase upon demand. Charges against the escrow account shall be made for inspection and professional review fees by the Township's staff, such as but not limited to the Township Engineer, Township Planner, Board Attorney and Administrative Officer. Charges against the escrow account shall be at the same rate that said professional bills the municipality, and no applicant shall be charged in excess of that rate. Each professional shall file annually with the Secretary of his or her Board his or her billing rate and fee schedule, and a copy of said billing rate or fee schedule shall be available to any applicant who requests the same, without charge. No sums shall be disbursed from the escrow account without receipt by the Township of appropriate vouchers from its professionals. Any balances remaining in the escrow account when the development or action on the application in question has been completed shall be returned to the applicant. For purposes of this section, completion of action on the application includes the approval and review of the resolutions. Furthermore, the Township is authorized to charge against inspection escrows for the review of performance guaranties and the coordination required with other agencies and the preparation for issuing construction permits and/or certificates of occupancy. No performance guaranty shall be released until all professional fees are paid. Moneys deposited by applicants shall, in addition to the provisions of this chapter, be covered by terms and conditions of an escrow agreement to be entered into and agreed upon by the applicant as part of the application procedure. For purposes of certifying completeness, the execution of the escrow agreement shall be deemed necessary.
- B. In the event that an applicant, developer or property owner, whether or not said entity has received Land Use Planning Board approval pursuant to the Municipal Land Use Law¹³ applies to the New Jersey Department of Environmental Protection for a permit to construct certain facilities or to otherwise utilize land in accordance with New Jersey Department of Environmental Protection regulations and said regulations require the approval or consent of the Township, said entity shall deposit in escrow with the Township the amount of \$1,500. Said escrow deposit shall be utilized to pay for the cost of professional review of the application, plans and regulations and a review of the property, if necessary, and any and all correspondences and actions necessary with respect to municipal approval or consent. Said amount shall be increased or decreased in accordance with the provisions set forth in § 95-25.

¹³ **Editor's Note: See N.J.S.A. 40:55D-1 et seq.**

§ 95-26. Application for more than one type of relief.

In the event that an application includes a request for more than one type of relief, the fees applicable to each type of relief shall be separately charged and collected and separate application forms shall be submitted, even though the applicant may be applying to only one municipal board.

§ 95-27. Fees.

- A. Any interested party appealing the decision of the Board to the governing body, pursuant to N.J.S.A. 40:55D-17, shall pay a fee of \$150 to the Municipal Clerk at the time that the notice of appeal is filed in accordance with N.J.S.A. 40:55D-17a, and, within five days of service of the notice of appeal upon the Municipal Clerk, arrange for a transcript of the proceedings before the Board for use by the governing body and pay a deposit of \$50 or the estimated cost of such transcription, whichever is less, unless the appellant submits a transcript as otherwise arranged to the Municipal Clerk in accordance with N.J.S.A. 40:55D-17c.
- B. In the event that an application to the Land Use Planning Board or to the governing body results in changes to the Zoning Map, the cost of said changes shall be charged against any escrow funds which exist.

§ 95-28. Revised plans. [Amended 5-12-2014 by Ord. No. 6-2014]

- A. In the event during the plan review process, it is necessary that revised plans for approval be submitted to the Land Use Planning Board, said revised plans shall be submitted to the Board at least 21 days prior to the Board's meeting scheduled to review the revised plans. The failure to submit the revised plans within the appropriate time shall be adequate grounds to deny approval to the application.
- B. Any proposed revision to a previously approved site plan of a single-family residential property would first be reviewed by the Zoning Officer. If the Zoning Officer determined the revision to be "minor" in scale and/or nature, the applicant may elect to present the revision for approval at a Development Review Committee meeting. However, any proposed revision that results in a variance condition must be presented to the Township of East Hanover Land Use Planning Board. The application fee for review by the Development Review Committee is \$500. If the Development Review Committee determines that any prospective change is not "minor" in nature, the \$500 application fee shall be applied toward the application to the East Hanover Land Use Planning Board for a full review. The decision of the Development Review Committee shall be binding and final upon the applicant and the East Hanover Land Use Planning Board.

§ 95-29. Hearings.

- A. Rules. The Land Use Planning Board may make rules governing the conduct of hearings before such body, which rules shall not be inconsistent with the provisions of N.J.S.A. 40:55D-1 et seq., 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 applied 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 of the proceedings to any interested party at his request and at his expense, charging therefor at the maximum rate permitted by N.J.S.A. 2A: 1 1-15. The transcript shall be certified in writing by the transcriber to be accurate.
- F. Notice requirements for hearings. Whenever a hearing is required on an application for development, pursuant to N.J.S.A. 40:550-1 et seq., the applicant shall give notice thereof as follows:
- (1) Public notice shall be given by publication in the official newspaper of the Township 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 or duplicates, located within 200 feet in all directions of the property which is the subject of such hearing and whether located within or without the Township in which the applicant's land is located. Such notice shall be given by serving a copy thereof on the owner, as shown on the current tax duplicate, or his agent in charge of the property or by mailing a copy thereof by certified mail to the property owner at his address as shown on the current tax duplicate. A return receipt is not required. Notice to a partnership owner, corporate owner or condominium association, horizontal property regime, community trust or homeowners' association owner may be made in the manner provided by N.J.S.A. 40:550-12.
 - (3) 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 Subsection F(2) of this section to the owners of lands in such adjoining municipality which are located within 200 feet of the subject premises.
 - (4) Notice shall be given by personal service or certified mail to the County Planning Board of a hearing on an application for development of property adjacent to an existing county road or proposed county road shown on the Official County Map or on the County Master Plan, adjoining other county land or situate within 200 feet of a municipal boundary.
 - (5) Notice shall be given by personal service or certified mail to the State of New Jersey Commissioner of Transportation of a hearing on an application for development of property adjacent to a state highway.
 - (6) 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 the State of New Jersey 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 secretary of the appropriate board.
 - (7) All notices hereinabove specified in this section shall be given at least 10 days prior to the date fixed for hearing and the applicant shall file an affidavit of proof of service with the

Board holding the hearing on the application for development.

- (8) Any notice made by certified mail as hereinabove required shall be deemed to be complete upon mailing, in accordance with the provisions of N.J.S.A. 40:55D-14.
- (9) Form of notice. All notices required to be given, pursuant to the terms of this chapter, shall state the date, time and place of the hearing; the nature of the matters to be considered; the 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 Township Tax Assessor's office; and the location and times at which any maps and documents for which approval is sought are available for public inspection.
- (10) The notices set forth Subsection C(3) through (6) inclusive, of this subsection shall not be required unless public notice, pursuant to N.J.S.A. 40:55D-12a, and notice, pursuant to N.J.S.A. 40:55D-12b, are required. Even though public notice is not required pursuant to N.J.S.A. 40:55D-12a, notice to the property owners within 200 feet, pursuant to Subsection B of this section, shall be provided in all instances with respect to all applications.
- (11) Notice of hearings on applications for approval of a major subdivision or a site plan not defined as a minor site plan under this chapter requiring public notice pursuant to Subsection A of this section shall be given, in the case of a public utility, cable television company or local utility which possesses a right-of-way or easement within the Township and which has registered with the municipality in accordance with Section 5 of P.L. 1991, c.4 12 (N.J.S.A. 40:550-12-1), by serving a copy of the notice on the person whose name appears on the registration form on behalf of the public utility, cable television company or local utility, or mailing a copy thereof by certified mail to the person whose name appears on the registration form at the address shown on that form.

§ 95-30. List of property owners furnished.

- A. Pursuant to the provisions of N.J.S.A. 40:550-12c, the Township Tax Assessor shall, within seven days after receipt of a request therefor and upon receipt of a fee of \$10 or \$0.25 per name, whichever is greater, make and certify a list from the current tax duplicate of names and addresses of owners to whom the applicant is required to give notice pursuant to § 95-29F(2) of this chapter. In addition, the Administrative Officer shall include on the list the names, addresses and positions of those persons who, not less than seven days prior to the date on which the applicant requested the list, have registered to receive notice pursuant to the Municipal Land Use Act.¹⁴ The applicant shall be entitled to rely upon the information contained in such list, and failure to give notice to any owner or to any public utility, cable television company or local utility not on the list shall not invalidate any hearing or proceeding.

¹⁴ **Editor's Note: See N.J.S.A. 40:55D-1 et seq.**

- B. Every public utility, cable television company and local utility Interested in receiving notice pursuant to Subsection h of Section 7.1 of P.L. 1975, c.291 (N.J.S.A. 40:550-12) may register with the Township in which the public utility, cable television company or local utility has a right-of-way or easement. The registration shall remain in effect until revoked by the public utility, cable television company, or local utility or by its successor in interest.
- C. The Administrative Officer of the Township shall adopt a registration form and shall maintain a record of all public utilities, cable television companies and local utilities which have registered

with the Township pursuant to Subsection A of this section. The registration form shall include the name of the public utility, cable television company or local utility and the name, address and position of the person to whom notice shall be forwarded, as required pursuant to the Municipal Land Use Act. The information contained therein shall be made available to any applicant, as provided by this chapter and the Municipal Land Use Act.

- D. There shall be a registration fee of \$10 payable to the Township by any public utility, cable television company or local utility which registers to receive notice pursuant to this section.

§ 95-31. Decisions.

- A. Each decision on any application for development shall be set forth, in writing, and shall include findings of fact and 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. The Board may provide such written decision and findings and conclusions either on the date of the meeting at which the Board takes action to grant or deny approval or, if the meeting at which such action is taken occurs within the final 45 days of the applicable time period for rendering a decision on the application for development, within 45 days of such meeting 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, notwithstanding the time at which such action occurs within the applicable time period for rendering a decision on the application. The adoption of a resolution of memorialization 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 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 Board and not to be an action of the Board, except that failure to adopt such a resolution within the forty-five-day period shall result in the approval of the application for development, notwithstanding any prior action taken thereon. Whenever a resolution of memorialization is adopted in accordance herewith, the date of such adoption shall constitute the date of the decision for purposes of the mailings, filings and publications required herein.
- B. A copy of the decision shall be mailed by the Board within 10 days of the date of decision to the applicant or, if represented, then to his 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 set forth in N.J.S.A. 47:1A-2. A copy of the decision shall also be filed in the office of the Township Clerk, who shall make a copy of such filed decision available to any interested party upon payment of the fee set forth in N.J.S.A.47:1A-2.
- C. A member of the Board who was absent for one or more of the meetings at which a hearing was conducted may vote upon the application notwithstanding his absence from one or more of the meetings, provided 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.
- D. A brief notice of every final decision shall be published in the official newspaper of the Township. Such publication shall be arranged by the Secretary of the Land Use Planning Board, who shall charge the applicant for the cost of such publication. Such notice shall be sent to the official newspaper for publication within 10 days of the date of any such decision.

§ 95-32. Records to be retained.

Upon the conclusion of any matter coming before the Land Use Planning Board, or, upon appeal, to the Township Council, a copy of each application, supporting documentation, minutes of hearings, correspondence, decisions and other information relevant to the determination shall be maintained in the office of the Director of Land Use of the Township of East Hanover for a period of not less than five years, which copies shall be considered as public records under N.J.S.A. 47:1A-1 et seq. (Right to Know Act).

§ 95-32.1. Payment of taxes.

Pursuant to the provisions of N.J.S.A. 40:550-39 and 40:550-65, every application for development submitted to the Land Use 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.

§95-32.2. Administrative Officers; Deputy Administrative Officers.

The Director of Land Use of the Township of East Hanover shall serve as the Administrative Officer. Any vacancy in said office, due to resignation, death or other lawful reasons, shall be filled by the Mayor. There is hereby created the Office of Deputy Administrative Officer who shall assist the Administrative Officer in the performance of the duties and responsibilities of the Administrative Officer and such other duties as may be assigned by the Administrative Officer, said duties to include but not be limited to the following:

- A. Cause to be published the public notices required by statute or this Code to be published by a Township official.
- B. Assemble the record on appeal from a Land Use Planning Board approval of a use variance as set forth in N.J.S.A. 40:550-17.
- C. Coordinate referrals pursuant to N.J.S.A. 40:550-26.
- D. Assist all advisory committees created pursuant to N.J.S.A. 40:550-27.
- E. Assist the Township experts and the Land Use Planning Board in the preparation of the Master Plan and amendments, capital improvement programs and official maps as set forth in the Municipal Land Use Act.
- F. Assist the Township Engineer and coordinate the review of plans submitted to the Land Use Planning Board.
- G. Coordinate the inspection of on- and off-site improvements and the procedure with respect to the release of performance guaranties filed with respect thereto.
- H. Maintain escrow fund accounts with respect to plan review and inspection of improvements.
- I. Schedule hearings and application review processes for the Land Use Planning Board.

§ 95-32.3. Professional review; applications for development. [Amended 7-10-2006 by Ord. No. 11-2006]

All applications for development (including, but not limited to, subdivisions, site plans, variances, ordinance interpretations, whether formal or informal) shall be reviewed by the appropriate professionals and staff (Land Use Planning Board Attorney, Township or Board Engineer, Township Planner, Architect and/or Township Attorney) prior to review and consideration by the Land Use Planning Board. The appropriate professionals and/or staff shall prepare oral and/or written reports for presentation to the Land Use Planning Board with respect to various issues, including but not limited to, completeness of the application, substantive aspects of the approval, waivers, changes and variances. No application shall be deemed complete nor forwarded to the Land Use Planning Board for its review unless the applicant has completed all applicable items on the checklist attached hereto and made a part hereof as if written fully herein. A copy of the checklist shall be provided to each applicant as part of the application package. The fees incurred in the review process shall be charged against the escrows posted by the applicant pursuant to other sections of this Code. Applications shall not be considered by the Land Use Planning Board until said professional and/or staff review is provided. Said professional and/or staff review may be provided as many times as deemed necessary to meet the statutory deadlines with respect to approvals.

ARTICLE V

Appeals

[Amended 5-15-1980 by Ord. No. 3-1980; 8-27-1981 by Ord. No. 21-1981; 5-21-1992 by Ord. No. 9-1992; 3-16-1995 by Ord. No. 10-1995; 12-27-2005 by Ord. No. 38-2005]

§ 95-32.4 Appeals to Land Use Planning Board.

An appeal to the Land Use Planning Board may be taken by any interested party affected by any decision of an official based on or made in the enforcement of this chapter or Official Maps. Such appeal shall be taken within 65 days by filing a notice of appeal with the official from whom the appeal is taken, specifying the grounds of such appeal. The official from whom the appeal is taken shall immediately transmit to the Board all the papers constituting the record upon which the action appealed from was taken. However, an applicant for development may file such an application with the Land Use Planning Board for action under any of its powers without prior application to an official.

§ 95-33. Appeals from Land Use Planning Board to Township Council.

- A. An appeal from any final decision of the Land Use Planning Board approving an application for development, pursuant to the provisions of N.J.S.A. 40:55D-70d or of the Land Use Planning Board granting preliminary approval of a major subdivision, may be taken to the Township Council, provided that such appeal shall be made within 10 days of the date of publication of such final decision of the Land Use Planning Board. Such appeal shall be made by serving the Township Clerk, in person or by certified mail, with a notice of appeal specifying the grounds of such appeal, the name and address of the appellant, and, if represented, his or her attorney. Such appeal shall be decided by the Township Council only upon the record established before the Board from which the appeal is taken.
- B. Notice of the meeting to review the record below shall be given by the Township Council by personal service or certified mail to the appellant, to those entitled to notice of a decision, pursuant to § 95-31B and to the Land Use Planning Board at least 10 days prior to the date of the meeting. The parties may submit oral and written argument on the record of such meeting. The appellant, within five days of service of the notice of appeal, shall arrange for a transcript for use by the Township Council and pay a deposit of \$50, or the estimated cost of such transcription, whichever is less, if the appeal is from the granting of preliminary approval of a major subdivision; or within 35 days of service of the notice of appeal submit a transcript as otherwise

arranged to the Township Clerk. Otherwise, the appeal may be dismissed for failure to prosecute. If the appeal is from the approval of an application for development, pursuant to the provisions of N.J.S.A. 40:550-70(d), the Township Council shall provide the transcript.

- C. The Township Council shall conclude a review of the record below no later than 95 days from the date of publication of notice of the decision below, unless the applicant consents in writing to an extension of such period. Failure of the Township Council to hold a hearing and conclude a review of the record below and to render a decision within such specified period, without such written consent of the appellant, shall constitute a decision affirming the action of the Board.

ARTICLE VA
Site Development Permit
[Added 10-6-1994 by Ord. No. 26-1994]

§ 95-33.1. Definitions.

The following terms, whenever used herein, shall have the respective meanings assigned to them, unless a different meaning clearly appears from the context:

DEVELOPER'S AGREEMENT — That agreement entered into between a developer and the Township of East Hanover concerning a specific site within the Township.

DIRECTOR OF LAND USE - The Director of Land Use of the Township of East Hanover.

PERSON - An individual, partnership, association, corporation or any other entity.

SITE IMPROVEMENT — Any work above, on or below ground which in any way alters an existing site condition.

TOWNSHIP ENGINEER — The Township Engineer of the Township of East Hanover as appointed by the Township Council.

§ 95-33.2. Permit required.

- A. No person shall construct, excavate or undertake any site improvements, nor do any work of any kind upon a site that is subject to a site plan or subdivision approval unless a site development permit shall have been issued therefor.
- B. No person shall permit, allow or cause any construction, excavation or the undertaking of any site improvements, nor any work of any kind upon a site that is subject to a site plan or subdivision approval unless a site development permit shall have been issued therefor.

§ 95-33.3. Filing of application; additional documents; fees and deposits.

- A. All applications for site development permits shall be filed in duplicate with the Director of Land Use on forms supplied by the said Director.
- B. Each applicant shall file with the application form two (2) copies of each of the following:
 - (1) A fully executed developer's agreement.

- (2) An approved and fully executed site plan or subdivision plat.
- (3) The approving board's resolution.
- (4) The construction sequence schedule.
- (5) A list of all contractors, equipment and manpower to be utilized in the construction sequence.
- (6) An approved soil moving permit (if applicable).
- (7) A certified soil erosion and sediment control plan.
- (8) An approved New Jersey Department of Environmental Protection and Energy (NJDEPE) stream encroachment permit (if applicable).
- (9) An approved NJDEPE sanitary sewer extension permit (if applicable).
- (10) An approved NJDEPE wetlands disturbance permit (if applicable).
- (11) Any other NJDEPE permit which may be required for the subject site.
- (12) An approved permit from the United States Army Corps of Engineers (if applicable).
- (13) Evidence of any other approvals, permits or licenses which may be required by any county, state or federal governmental entity.

C. Each applicant shall pay all required fees and post escrow deposits required at the time of filing application.

§ 95-33.4. Review; conference; recommendations and report.

- A. The Director of Land Use shall refer one set of application documents to the Township Engineer for review.
- B. Following the municipal review, a conference will be scheduled with the applicant to discuss all aspects of the proposed project. Specific factors to be considered include but are not limited to:
 - (1) Have all required approvals and permits been obtained and are the approving resolution and the executed site plan or subdivision plat consistent therewith.
 - (2) Is the construction sequence schedule of sufficient detail to determine:
 - (a) Estimated starting date.
 - (b) Sequence of major construction items with estimated time of completion.
 - (c) Period during which ground will be disturbed, replanting schedule and materials to be utilized.

(d) Estimated completion date.

- (3) The completeness of the submission relating to contractors, manpower and equipment to be utilized.

C. Following the conference, the Township Engineer shall prepare a formal report and recommendations with regard to the requested permit.

§ 95-33.5. Notice of certain events required.

As a condition of the permit requested, the applicant shall agree to provide the Director of Land Use with no fewer than seventy-two (72) hours' notice, in writing, of the following construction events:

- A. Layout of facilities prior to any clearing or tree removal.
- B. Installation of all buried utilities, including storm drainage, water piping and sanitary sewerage facilities.
- C. Backfilling of all buried utilities.
- D. Installation of all curbing.
- E. Installation of roadway subbase course and of base course and of surface course [three (3) notifications].
- F. Installation of all cast-in-place concrete structures.
- G. Testing and start-up of all mechanical equipment or systems associated with storm drainage, water or sewerage facilities.
- H. Installation of monuments.
- I. Connection to any existing utilities.

§ 95-33.6. Right of entry for inspections.

For the purpose of administering or enforcing the provisions of this Article and any permit issued hereunder, any authorized officer, employee or agent of the township shall have the right to enter into and upon any lands covered by the site development permit to conduct such inspections or examinations as may be required.

§ 95-33.7. Issuance of permit; term; nontransferability.

Upon satisfaction of all requirements hereunder, the Director of Land Use shall issue a site development permit which shall set forth all terms, conditions, schedules and other data relating to the subject development project.

- A. A site development permit shall be valid for one (1) year from the date of issue and may be renewed thereafter for consecutive one-year periods, provided that all required performance guaranties and insurance coverages are current.

- B. Site development permits are specific to the applicant and may not be assigned or transferred.

§ 95-33.8. Appeals.

- A. Any person aggrieved by the failure of the Director of Land Use to act upon a filed application or by conditions of a site development permit may take an appeal to the East Hanover Construction Board of Appeals.
- B. The application for an appeal shall be filed within 20 days of notice of denial of a site development permit or of issuance of the permit where the appeal concerns the contents thereof. If the appeal relates to a failure to act upon an application, such appeal must be brought within 20 days following the 31st day after the permit application was filed.
- C. All other procedures relating to the appeal shall be as detailed in § 75-2E(1)(c) through (e), inclusive, and § 75-2E(2) and (3).

§ 95-33.9. Fees; escrow deposit.

- A. The fee for a site development permit shall be \$250.
- B. The fee for a site development permit renewal shall be \$75.
- C. **[Amended 6-14-2001 by Ord. No. 22-2001]** In addition to the application fee, each applicant shall be required to establish an escrow account with the Township of East Hanover in the initial amount of \$1,000 which shall cover the costs of professional services and inspection fees in connection with said application; provided, however, that an application made solely for a setback variance for the installation of an access ramp for a disabled person shall be exempt from this provision.
 - (1) The escrow funds shall be treated in the same manner as set forth in § 95-11B(2), (4), (7) and (8) of the Code of the Township of East Hanover.
 - (2) In the event that the funds in the escrow account shall be depleted prior to the completion of the permitted work, the applicant shall upon notice deposit additional funds, and it shall be a violation of this Article if, after notice, such additional funds are not deposited within 10 calendar days.
 - (3) A monthly accounting of all funds to be withdrawn from the township escrow account shall be submitted by the Director of Land Use to the applicant/permit holder at least 10 calendar days prior to such withdrawal. Within that 10 days, the applicant/permit holder may request, in writing, a hearing before the Township Administrator as to the reasonableness of any charges against the account, and no withdrawals shall be made there from until such hearing shall have been held. If no request is received within the ten-day period, the applicant/permit holder is deemed to have agreed to the charges.

§ 95-33.10. Violations and penalties.

- A. Violations of any provision of this Article shall be punishable by a fine of not less than \$100 nor more than \$1,000 and imprisonment for not more than 90 days.
- B. Each violation of a separate section of this Article shall constitute a separate violation, and each

day that a violation continues shall constitute a separate and distinct violation hereof.

ARTICLE VI
Subdivision and Site Plan Review

§ 95-34. Filing procedures.

Prior to the subdivision or resubdivision of land and prior to the issuance of a building permit or certificate of occupancy for any development, an application shall be submitted to and approved by the Planning Board in accordance with the requirements of this chapter, except that subdivision or individual lot applications for detached one- or two-family dwelling unit buildings shall be exempt from site plan review and approval. In the event that the subdivision or site plan application requires action by the Board of Adjustment as provided in this chapter in § 95-23A(4), said application shall be submitted to and processed by said Board, which shall act in the same manner as the Planning Board as provided in this Article and as further provided in § 95-23A(7).

- A. Time of filing. An application for subdivision or site plan approval shall be filed with the Secretary of the Planning Board at least 21 days prior to a regular meeting of the Planning Board. **[Amended 8-27-1981 by Ord. No. 21-1981]**
- B. Application content. Application shall be made in triplicate on forms available from the Secretary of the Planning Board, and shall be accompanied by the required filing fee and twelve (12) blue- or black-on-white prints of the subdivision plat or site plan and twelve (12) copies of any other required documents and improvement plans. An application for final subdivision approval shall also be accompanied by the original tracing, three (3) translucent tracings and two (2) cloth prints of the subdivision plat. In addition, each subdivision application and each site plan application requiring review by the County Planning Board shall be accompanied by one (1) additional print and one (1) reverse line sepia, which shall be submitted by the Secretary of the Planning Board to the County Planning Board. **[Amended 8-27-81 by Ord. No. 21-1981]**
- C. The application shall be accompanied by a filing fee pursuant to § 95-11 of this chapter to cover the technical, investigative and administrative expenses involved in processing the application.
- D. The time for review shall not begin to run until the submission of a complete application with the required fee.
- E. Incomplete application; completion; hearing. **[Amended 5-15.80 by Ord. No. 3-1980]**
 - (1) If the application for development is found to be incomplete, the developer shall be notified in writing of the deficiencies therein by the Board or the Secretary of the Planning Board for a determination of completeness within forty-five (45) days of the submission or it shall be deemed to be properly submitted.
 - (2) Upon receipt of a complete application for preliminary site plan or subdivision approval as defined herein and in accordance with the rules and regulations of the Planning Board, the Board shall schedule a date of hearing and give due notice to the applicant, who shall, in accordance with the provisions of this chapter and the Municipal Land Use Act, notify the surrounding property owners of such hearing; provided, however, that when reviewing an application for conventional site plan pursuant to Section 34 of the Municipal Land Use Act (N.J.S.A. 40:55D-46), the Planning Board or Board of Adjustment, as the case may be, shall have the power to waive public notice of the hearing.

§ 95-34.1. Principles and standards for site plan review [Added 12-14-82 by Ord. No. 31-1982]

- A. The following criteria have been set forth as a guide for evaluating the adequacy of proposed development in the Township of East Hanover. The Planning Board shall review the site plan for compliance with all applicable ordinances and the Comprehensive Plan for harmony' with surrounding uses and the overall plan for development of the municipality ; for the promotion of the health, safety, order, efficiency and economy of the municipality ; and for the maintenance of property values and the general welfare Based upon its review and the degree which it can make positive findings, the Planning Board may approve, conditionally approve, request modifications or deny approval of the site plan based on the following:
- (1) The site plan's compliance with all provisions of the municipality's Land Use and Zoning Ordinance, including but not limited to off-street parking and loading; signs; lighting; open space and the generation of objectionable smoke, fumes, noise, odors, dust, glare, vibration or heat.
 - (2) The site plan's compliance with all requirements and standards of the Subdivision Ordinance, including but not limited to standards for construction, layout dimensions and materials.
 - (3) The environmental impact of the development relating to the preservation of existing natural resources on the site and the impact on the natural resources of the surrounding properties and neighborhood.
 - (4) The relationship of the development to adjacent uses in terms of harmonious use and design, setbacks, maintenance of property values and negative impacts.
 - (5) The provision of a safe and efficient vehicular and pedestrian circulation system.
 - (6) The design and location of off-street parking and loading facilities.
 - (7) The design and location of buildings in an efficient and aesthetically pleasing manner.
 - (8) The adequacy of the screening and landscaping plan.
 - (9) The location of exterior lighting in terms of safety needs, intensity and glare.
 - (10) The adequacy of facilities serving the development.
 - (11) The location, size, extent and configuration of open space areas.
- B. The approving authority may waive those requirements or details specified to be shown on the site plan in any given application if it is determined that said requirements or specifications are not necessary to be shown in order to ensure that said site plan conforms to the standards of good planning, will have no deleterious effect on the neighboring properties and indicates- sufficient information to assure adequate protection to health, welfare and safety of the people of the township.

§ 95-35. Review procedures.

A. General. **[Amended 8-27-81 by Ord. No. 21-1981]**

(1) Agencies to review application. **[Amended 12-14-82 by Ord. No. 31-1982]**

- (a) Upon receipt of an application, the Secretary of the Planning Board shall send a copy to each of the following for report and recommendation:

[1] East Hanover Board of Health.

[2] East Hanover Environmental Commission.

[3] East Hanover Department of Public Works.

[4] East Hanover Police Department.

[5] East Hanover Fire Department.

[6] East Hanover Water Department.

[7] East Hanover Township Engineer.

[8] East Hanover Shade Tree Commission.

[9] East Hanover Board of Education.

[10] East Hanover Sewer Department or Sewer Engineer.

[11] East Hanover Professional Planner upon determination of the Planning Board of the need of a review of an application.

- (b) When required, any transmittal to the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, the Morris County Planning Board and Morris County Soil Conservation District shall be made by the applicant.

(2) The Planning Board shall have the power to grant the waiver of the submission to any of the above agencies for reports which are not applicable to a particular application.

(3) Minor site plan review; time limitations generally.

- (a) **[Amended 5-15-80 by Ord. No. 3-1980]** The Planning Board shall grant or deny the application within the times of submission of a complete application prescribed below or within such further time as may be consented to by the applicant:

Type of Application	Period of Time for Action by Planning Board (days)
Sketch plat, minor subdivision	45
Sketch plat, major subdivision	45

Preliminary plat, 10 lots or less	45
Preliminary plat, more than 10 lots	95
Site plan, 10 acres of land or less and 10 residential units or less	45
Site plan, more than 10 acres of land or more than 10 residential units	95
Final plat	45
Final site plan	45

- (b) The Planning Board, upon receipt and review of a proposed site plan, may waive notice and public hearing for an application for conventional development if the Board finds that the application for development conforms to the definition of “minor site plan” as set forth in this chapter. Minor site plan approval shall be deemed to be final approval of the site plan by the Board, provided that the Board may condition such approval on terms ensuring the provision of improvements pursuant to Sections 29, 29.1, 29.3 and 41 of the Municipal Land Use Act (N.J.S.A. 40:55D-38, 40:55D-39, 40:55D-41 and 40:55D-53). Minor site plan approval shall be granted or denied within forty-five (45) days of the date of submission of a complete application to the administrative officer or within such further time as may be consented to by the applicant. Major site plan approval shall be granted or denied within ninety five (95) days of the date of submission of a complete application to the administrative officer or within such further time as may be consented to by the applicant. Failure of the Planning Board to act within the period prescribed shall constitute site plan approval.¹⁵
- (4) Failure of the Planning Board to act within the period prescribed shall constitute approval, and a certificate of the Township Clerk 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 purposes of filing subdivision plats. The applicant shall be notified in writing of the Planning Board action within one (1) week of its action.
- (5) Whenever review or approval of an application by the County Planning Board is required by the county land development standards 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. The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor site plan approval was granted shall not be changed for a period of two (2) years after the date of minor site plan approval.¹⁶

¹⁵ **Editor’s Note: Added at time of adoption of Code; see Ch. 1, General Provisions, Art. I.**

¹⁶ **Editor’s Note: Amended at time of adoption of Code; see Ch. 1, General Provisions Art I.**

- (6) If the scheduled time for the Planning Board meeting does not allow sufficient time for the

Board to reach a determination regarding action on an application within the time prescribed, the applicant shall be requested to consent to an extension of time until such meeting. Failure of the applicant to consent in writing to such extension of time shall constitute automatic denial of the application. **[Amended 8-27-81 by Ord. No. 21-1981]**

- (7) Prior to the return of the approved plat or site plan to the applicant, the applicant shall submit sufficient copies to the Secretary of the Planning Board in order to furnish a copy to each of the following:

Building Inspector/Construction Official

Township Clerk

Township Engineer

Township Tax Assessors

Secretary of the Planning Board

Board of Health

Road and Water Department

Environmental Commission

County Planning Board

Such other agency as may be directed by the Planning Board

- B. Sketch plat. Prior to the subdivision or resubdivision of land within the Township of East Hanover, a sketch plat application shall be filed in accordance with § 95-34 and shall contain all data and information prescribed in § 95-36A.
- (1) The Planning Board shall classify the application as either a major subdivision or a minor subdivision. If classified as a major subdivision, no further Planning Board action on the application shall be required and the applicant shall follow the procedures in Sub-sections C and E of this section for preliminary and final plats. In classifying an application as a major subdivision, the Planning Board may make recommendations or establish conditions to be followed in the preliminary and final plats.
- (2) If the application is classified as a minor subdivision, the Planning Board shall approve or deny the application pursuant to Subsection A(3) hereof. Minor subdivision approval shall be deemed to be final approval of the subdivision by the Board; provided that the Board may condition such approval on terms ensuring the provision of improvements pursuant to §~ 95-37A and 95-38.
- (3) If the sketch plat is classified and approved as a minor subdivision, the Chairman and Secretary of the Planning Board shall affix their signatures and return the approved plat to the subdivider within one (1) week following action by the Planning Board, following compliance by the applicant with Subsections A and B hereof.

- (4) Approval of a minor subdivision shall expire one hundred ninety (190) days from the date of municipal approval unless within such period a plat in conformity with such approval and the provisions of the Map Filing Law, P.L. 1960, c. 141 (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 Township Engineer and the Township Tax Assessors. Any such plan 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 the Map Filing Act. P.L. 1960, c. 141 (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 to the provisions of said Act.
- (5) 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 (2) years after the date of minor subdivision approval; provided that the approved minor subdivision shall have been duly recorded as provided in this section.
[Amended 8-27-81 by Ord. No. 21-1981]

C. Preliminary plat and preliminary site plan. Application for approval of a preliminary plat or a preliminary site plan following classification shall be filed in accordance with § 95-34 and shall contain all information prescribed in § 95-3GB or D, as the case may be.

- (1) If the Planning Board finds that the application is in compliance with this chapter and all other ordinances of the township and statutes and other regulations of the State of New Jersey, it shall schedule a hearing on the application, following the procedures in § 95-6. If the application is found not to be in such compliance, it shall so stipulate and shall require the filing of an amended application, which shall be proceeded upon as in the manner of and as if it were on the original application with the same time limitations and procedures.
- (2) If the Planning Board requires any substantial amendment in the layout of improvements proposed by the developer that have been the subject of the hearing, an amended application shall be submitted and proceeded upon as in the case of the original application. The Planning Board shall, if the proposed application complies with this chapter, together with any conditions imposed by the Board, grant preliminary approval.
- (3) Preliminary approval shall, except as provided in Subsection C(4) of this section, confer upon the applicant the following rights for a three-year period from the date of the preliminary 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 ; and, in the case of a site plan, any requirements peculiar to site plan approval pursuant to § 95-37B; except that nothing herein shall be construed to prevent the municipality from modifying by ordinance such general terms and conditions of preliminary approval as relate to public health and safety.
 - (b) That the applicant may submit for final approval on or before the expiration date of preliminary approval the whole or a section or sections of the preliminary subdivision plat or site plan, as the case may be.

- (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 (1) year but not to exceed a total extension of two (2) years, provided that if the design standards have been revised by ordinance, such revised standards may govern.
- (4) In the case of a subdivision of or site plan for an area of fifty (50) acres or more, the Planning Board may grant the rights referred to in Subsection C(3)(a), (b) and (c) above for such period of time longer than three (3) years as shall be determined by the Planning Board to be reasonable, taking into consideration the number of dwelling units and nonresidential floor area permissible under preliminary approval, economic conditions and the comprehensiveness of the development. 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 the number of dwelling units and nonresidential floor area permissible under preliminary approval, the potential number of dwelling units and nonresidential floor area of the section or sections awaiting final approval, economic conditions and the comprehensiveness of the development provided that if the design standards have been revised, such revised standards may govern

D. Installation of improvements guaranty agreement

- (1) Improvements for final subdivision approval Prior to final subdivision approval, the applicant shall have installed all improvements set forth in § 95-37 and all improvements designated upon the applicant's preliminary approvals or, in lieu of the installation of improvements, the applicant may furnish, and the township may accept, adequate performance guaranties in accordance with Subsection D(4) hereof to assure the installation and maintenance of all improvements not installed and approved. **[Amended 5-15-1980 by Ord. No 3-1980, 8-27-1981 by Ord. No 21-1981¹⁷]**

¹⁷ **Editor's Note: Amended at time of adoption of Code; see Ch. 1 General Provisions Art. I.**

- (2) Improvements for final site plan approval Prior to final site plan approval, the applicant shall have installed any improvements as the Planning Board may determine are necessary prior to building construction, provided, however, that the township may accept performance guaranties for the later installation of those improvements referred to in Subsection D(1) as well as for on site improvements and landscaping as required in § 95-37B. **[Amended 5-15-1980 by Ord. No 3-1980, 8-27-1981 by Ord. No 21 -1981¹⁸]**

¹⁸ **Editor's Note: Amended at time of adoption of Code; see Ch. 1 General Provisions Art. I.**

- (3) Off-tract improvements. Prior to the recording of final subdivision plats and prior to the filing of an application for final site plan approval, the applicant shall have installed or paid his pro rata share of the costs of any off-tract improvements necessitated by his development, as determined in accordance with the requirements of § 95-38. **[Amended 8-27-1981 by Ord. No. 21-1981]**
- (4) Performance guaranty. Performance guaranty for the later installation of those improvements referred to in Subsection D(1) shall be in favor of the Township of East Hanover in an amount equal to one hundred twenty percent (120%) of the cost of such improvements. At least ten percent (10%) of the performance guaranty shall be in the form of cash, certified check, irrevocable assignment of a savings account or certificate

of deposit or an irrevocable letter of credit (sufficient in form and substance to the Township Attorney) made payable to the Township of East Hanover. The cost of the installation of improvements shall be estimated by the Township Engineer based on documented construction costs for public improvements prevailing in the general area of the township. The developer may appeal the Township Engineer's estimate to the Construction Board of Appeals established under N.J.S.A. 52:27D-127. **[Amended 8-27-1981 by Ord. No. 21-1981; 4-18-1996 by Ord. No. 7-1996]**

- (5) Time of guaranty. The performance guaranty shall run for a term not to exceed eighteen (18) months from the date of final subdivision approval or twelve (12) months from the date of final site plan approval. With the consent of the principal, the performance guaranty may be extended by the governing body by resolution, after the recommendation by the Planning Board by resolution, for an additional period not exceeding eighteen (18) months in the case of subdivision approval and twelve (12) months in the case of site plan approval. **[Amended 5-15-1980 by Ord. No. 3-1980; 8-27-1981 by Ord. No. 21-1981]**
- (6) Reduction of performance guaranty. The governing body may, in its discretion, upon application, in writing, by the developer or subdivider pursuant to N.J.S.A. 40:55D-53, reduce the amount of the performance guaranty upon certification, in writing, by the Township Engineer that certain portions of the required improvements and conditions of the governing body have been properly completed and upon posting of proper guaranties and maintenance bonds, provided that the remaining performance guaranty, maintenance bonds and deposit moneys are adequate to ensure the completion of the remaining improvements. **[Amended 8-27-1981 by Ord. No. 21-1981]**
- (7) Right to complete. If the required improvements are not completed or corrected in accordance with the performance guaranty, the obligor and surety, if any, shall be liable thereon to the township for the reasonable cost of the improvements not completed or corrected and the township may, either prior to or after the receipt of the proceeds thereof, complete such improvements.
- (8) Notification of completion. When all of the required improvements have been completed, the obligor shall notify the governing body, in writing, pursuant to N.J.S.A. 40:55D-53, by certified mail addressed in care of the Township Clerk, of the completion of said improvements and shall send a copy thereof to the Township Engineer. Thereupon the Township Engineer shall inspect all of the improvements and shall file a detailed report, in writing, with the governing body, indicating either approval, partial approval or rejection of the improvements, with a statement of reasons for any rejection. If partial approval is indicated, the cost of the improvements rejected shall be set forth. **[Amended 8-27-1981 by Ord. No. 21-1981]**
- (9) Time for action. The governing body shall either approve, partially approve or reject the improvements on the basis of the report of the Township Engineer and shall notify the obligor, in writing, by certified mail, of the contents of said report and the actions of the governing body with relation thereto not later than sixty-five (65) days after receipt of the notice of the obligor of the completion of the improvements. Where partial approval is granted, the obligor shall be released from all liability pursuant to its performance guaranty, except for that portion adequately sufficient to secure provision of the improvements not yet approved provided that thirty percent (30%) of the amount of the performance guaranty posted may be retained to ensure completion of all improvements

Failure of the governing body to send or provide such notification to the obligor within sixty-five (65) days shall be deemed to constitute approval of the improvements, and the obligor and surety, if any shall be released from all liability pursuant to such performance guaranty **[Amended 5 15 80 by Ord. No 3 1980]**

- (10) Rejection of improvements. If any portion of the required improvements is rejected, the governing body may require the obligor to complete and/or correct such improvements, and upon completion and/or correction, the same procedure of notification as set forth in this section shall be followed
- (11) Inspection of improvements and construction All required improvements shall be installed under the supervision of the Township Engineer No construction work covering the required improvements shall be commenced unless all requisite fees are paid without the applicant s first notifying the Township Engineer that said construction work is about to take place Such notice shall be given in writing to the Township Engineer at least one (1) week before the commencement of such work No required improvements shall be covered until inspected and approved by the Township Engineer
- (12) Agreement Prior to Planning Board approval of a final subdivision application or final site plan application and prior to any construction by •the developer, there shall be executed by the developer and the Township of East Hanover an agreement incorporating all terms and conditions of approval imposed by the Planning Board and the township ordinances This agreement shall be referred to as a “developer’s agreement.” The developer’s agreement shall be prepared by the Attorney to the Planning Board. The Planning Board, by resolution of approval for the developer’s agreement, shall forward same to the Township Committee for its execution. The Township Attorney shall review the developer’s agreement for sufficiency of form and substance prior to execution by the proper township official. If the developer’s agreement meets with the approval of the Township Attorney as to the sufficiency of form and substance, the Township Attorney shall present the developer’s agreement to the proper township official for execution within thirty (30) days of the date of the submission of said developer’s agreement to the Township Attorney simultaneously with the execution of the developer’s agreement, and the developer shall post the bond, cash performance guaranty and deposits required under this chapter. **[Amended 8-27-1981 by Ord. No. 21-1981¹⁹]**

¹⁹ **Editor’s Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.**

- (13) Maintenance guaranty. In all developer’s agreements relating to subdivision approval, there shall be provisions for a maintenance guaranty to be posted with the governing body for a period not to exceed two (2) years after final acceptance of the improvements in an amount of fifteen percent (15%) of the cost of the improvements. 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 guaranty to another governmental agency, no performance or maintenance guaranty, as the case may be, shall be required by the municipality for such utilities or improvements. The Township Engineer and the Planning Board shall review the maintenance bond; it shall be reviewed by the Township Attorney as to form, sufficiency and execution and approved by the governing body. **[Amended 8-27-1981 by Ord. No. 21-1981²⁰]**

²⁰ **Editor’s Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.**

- (14) Inspection fees. The developer’s agreement referred to in Subsection D(12) above shall

provide that the applicant shall deposit with the township an inspection fee of four percent (4%), to be paid to the Township Engineer for the inspection of any improvements and construction by the Township Engineer as set forth in the developer's agreement, which fee, if not paid, shall become a lien on any and all performance guaranties and shall also halt the final execution by the township of the developer's agreement. This inspection fee deposit shall represent a reimbursement to the Township of East Hanover for the costs of inspections of the subdivision or site plan by its employees or agents. **[Amended 5-1980 by Ord. No. 3-1980; 8-27-1981 by Ord. No. 21-1981]**

E. Final plat and final site plan. Application for approval of a final plat or a final site plan shall be filed in accordance with § 95-34 and shall contain all the information prescribed in § 95-36C or E, as the case may be. Said application shall be filed within the period prescribed in § 95-34A and may be for the whole or a section or sections of the preliminary plat or site plan, as the case may be.

- (1) If the Planning Board finds that the application is in compliance with this chapter and all ordinances of the township and statutes and other regulations of the State of New Jersey, it shall schedule a hearing on the application, following the procedures in § 95-6. If the application is found not to be in such compliance, it shall so stipulate and shall require the filing of an amended application, which shall be proceeded upon as in the original application with the same time limitations and procedures.
- (2) If the Planning Board requires any substantial amendment in the layout of improvements proposed by the developer that have been the subject of the hearing, an amended application shall be submitted and proceeded upon as in the case of the original application. The Planning Board shall, if the proposed application complies with this chapter, together with any conditions imposed by the Board, grant final approval.
- (3) Distribution. If final approval is granted, copies of the plat or site plan shall be filed by the Secretary with the following:

Township Engineer

Building Inspector/Construction Official

Tax Assessors

Township Clerk

County Planning Board, if required

Secretary of the Planning Board

Board of Health

Department of Water and Roads

Environmental Commission

Such other copies as may be required by the Planning Board

- (4) Effect of final approval. The zoning requirements applicable to the preliminary approval first granted and all other rights conferred upon the developer pursuant to Subsection C(3) hereof, whether conditionally or otherwise, shall not be changed for a period of two (2) 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 time period provided in Subsection E(5). If the developer has followed the standards prescribed for final approval and, in the case of a subdivision, has duly recorded the plat as required in Subsection E(5), the Planning Board may extend such period of protection for extensions of one (1) year but not to exceed three (3) extensions. Notwithstanding any other provisions of this chapter, the granting of final approval terminates the time period of preliminary approval pursuant to Subsection C(3) hereof for the section granted final approval.
- (5) Recording of final plat.
 - (a) Final approval of a major subdivision shall expire ninety-five (95) days from the date of signing of the plat unless within such period the final 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 one hundred ninety (190) days from the date of signing of the plat.
 - (b) No final 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 signatures of the Chairman and Secretary of the Planning Board or a certificate has been issued pursuant to P.L. 1975, C. 291 (N.J.S.A. 40:55D-1 et seq.). The signatures of the Chairman and Secretary of the Planning Board shall not be affixed until all improvements have been installed or until the developer has posted the guaranties required pursuant to Subsection D hereof. If the county recording officer records any plat without such approval, such recording shall be deemed null and void as provided by New Jersey statutes. **[Amended 8-17-82 by Ord. No. 24-1982]**
- F. Installation of improvements prior to issuance of certificates of occupancy. Prior to the issuance of a certificate of occupancy for any lot within a subdivision or site plan involving residential or nonresidential structures within which improvements are required to be installed pursuant to the terms and conditions of preliminary or final subdivision approvals, including roads, infrastructure and other improvements related to the right-of-way shall be installed with exception of the final course of the pavement or other specific improvements related to the certificate of occupancy which have been deferred at the discretion of the Township Engineer. Certificates of occupancy for lots within subdivisions and site plans are issued at the discretion of the Township Construction Official based on review of the requirements of the subdivision and/or site plan by the Township Engineer. **[Added 12-1-1988 by Ord. No. 41R-1988; amended 3-7-1991 by Ord. No. 2-1991]**

§ 95-36. Subdivision plat and site plan details.

- A. **[Amended 8-27-81 by Ord. No. 21-1981]** Sketch plat. The sketch plat shall be drawn by a licensed New Jersey professional engineer or land surveyor on a sheet twenty-four by thirty-six (24 x 36) inches and shall be based on Tax Map information or an accurate survey at a scale of not more than fifty (50) feet to the inch and shall show or include the following information:
 - (1) Location. The location of that portion which is to be subdivided in relation to the entire tract.

- (2) Structures and wooded areas. All existing structures with yard setbacks based on ground instrument survey shall be shown, and all proposed building envelopes as designated by the setback requirements of this chapter should be shown and wooded areas within the portion to be subdivided and within two hundred (200) feet thereof.
- (3) Owners. The name and address of the record owner or owners, the name and address of the developer and the names of all adjoining property owners as disclosed by the most recent township tax records.
- (4) Identity. The tract name and the Tax Map sheet, block and lot numbers of the property to be subdivided. Lot numbers of lots to be created shall be supplied by the Tax Assessor.
- (5) Streets, etc. All existing or proposed streets, roads, easements, public rights-of-way, streams, drainage ditches and natural watercourses in and within two hundred (200) feet of the subdivision.
- (6) Lots. The original and proposed lot layout, lot dimensions and total area of each lot and all applicable setbacks.
- (7) Topography. Existing contours based on United States Coast and Geodetic Survey datum at two-foot intervals for slopes of less than ten percent (10%) and at five-foot intervals for slopes of greater than ten percent (10%), to determine the general slope and natural drainage of the land, shall accompany the sketch plat of a major subdivision. The Planning Board may also require submission of topographic data with the sketch plat of a minor subdivision if physical conditions of the land are likely to result in drainage problems or otherwise cause concern in connection with the future development of the property.
- (8) Other data. The name and address of the person preparing the map in a title block in conformance with N.J.A.C. 13:40-1 and 40-2, the scale and reference meridian. **[Amended 8-27-1981 by Ord. No. 21-1981]**
- (9) Zone boundaries. Zone district boundaries, if any, on or adjoining the property to be subdivided and identification of zones.
- (10) Taxes. Certification from the Tax Collector that no taxes or assessments for local improvements are due or delinquent.
- (11) Soil erosion and sediment control plan. A soil erosion and sediment control plan for a minor subdivision, if required, in accordance with N.J.S.A. 4:24-39 et seq. Said plan shall be submitted to the Soil Conservation District in accordance with said statute, and approval of the application shall be conditioned upon certification of the soil erosion and sediment control plan by the district. **[Amended 8-27-1981 by Ord. No. 21-1981]**
- (12) Septic systems. Location of existing septic systems on any parcel of land within the confines of the application shall be specifically designated and location of existing septic systems on any adjoining lot within 20 feet of the existing or proposed lot lines. **[Added 5-15-1980 by Ord. No. 3-1980; amended 8-27-1981 by Ord. No. 21-1981]**
- (13) Existing utilities. The availability of existing utilities should be shown, if pertinent. **[Added**

8-27-1981 by Ord. No. 21-1981]

(14) If a wetland survey/letter of interpretation reveals the existence of wetlands or wetland transition areas, then the applicant shall place that area into a conservation easement pursuant to the provisions of Chapter 161 of the Code of the Township of East Hanover. Said easement shall be indicated on all plans submitted in support of the application. Alternatively, the applicant may modify the area with permission of the New Jersey Department of Environmental Protection, for example by way of a transition averaging plan. Such a modification shall be indicated on the plan in support of the application, with supporting documentation to be submitted to the Board. **[Added 9-8-2003 by Ord. No. 23-2003]**

(15) Stream Corridor Protection Zone, In addition to the wetland survey requirement, all applications for major or minor subdivisions or major site plan approval shall have a qualified professional perform a survey on the property so as to determine if any part of that property is within Zone One or Zone Two of the Stream Corridor Protection Zone, as defined in Chapter 131 of the Code of the Township of East Hanover. If any portion of the property is within the Stream Corridor Protection Zone, it shall be designated on the plans submitted in support of the application. Further, the proposed development shall allow only permitted uses within the area designated the Stream Corridor Protection Zone. The application shall not entail any prohibited uses in the Township's Stream Corridor Protection Zone on the property unless the applicant submits and has approved a stream corridor management plan pursuant to Chapter 131 of the Code of the Township of East Hanover. **[Added 9-8-2003 by Ord. No. 23-2003]**

B. Preliminary plat. **[Amended 8-27-1981 by Ord. No. 21-1981]** The preliminary plat shall be designed in accordance with the provisions of § 95-39, in strict accord with modern and accepted planning techniques and procedures, by a licensed New Jersey land surveyor and a professional engineer, not either alone, at a scale of not more than 50 feet to the inch, on a sheet 24 inches by 36 inches. The plat shall show or be accompanied by sufficient information to establish the design, arrangement and dimensions of streets, lots and other. planned features as to form, size and location. This information shall form the basis for the general terms and conditions upon which preliminary approval may be granted and shall include:

- (1) Key map. A key map showing the entire subdivision and its relation to the surrounding areas, at a scale of not more than 400 feet to the inch.
- (2) Identify. The tract name; Tax Map sheet, block and lot numbers; date; reference meridian; graphic scale; and the following names and addresses, together with consent to file:
 - (a) Name and address of subdivider.
 - (b) Name, address, license number, seal and signature of the person who prepared the map.
 - (c) Name and address of the record owner, along with certification that the applicant is the owner of the land or his authorized agent or that the owner has given consent, giving names and addresses of both.
 - (d) The names of owners of all properties located within 200 feet of the extreme limits of the property to be subdivided.
 - (e) A title block in conformance with N.J.A.C. 13:40-1 and 40-2.

- (3) Taxes. Certification from the Tax Collector that no taxes or assessments for local improvements are due or delinquent.
- (4) Acreage. The acreage of the tract to be subdivided to the nearest tenth of an acre.
- (5) Lots. The lot layout, lot dimensions, the total area of each lot in square feet.
- (6) Topography. The topography map shall include the area of the entire property and an area within a one-hundred-foot radius outside the property lines of the subject application. The topography map shall show the final elevations proposed for the corners of each building, the intersection of the setback lines and rear property lines with the side line and the front and rear lot corners. The proposed first floor and ground floor elevations must also be shown. All swales must be indicated with appropriate widths and flow direction symbols and spot elevations. Existing and proposed contours shall be shown at five-foot vertical intervals for slopes averaging 10% or greater and at two-foot vertical intervals for land of lesser slope to determine the general slope and natural drainage of the land and the high and low points. Datum of all elevations shall be that of the United States Coast and Geodetic Survey.
- (7) Existing and proposed locations. The location of existing and proposed property lines, streets, buildings, watercourses, railroads, bridges, culverts, drainpipes and any natural features such as wooded areas, large trees and rock formations.
- (8) Streets. Plans and profiles of all proposed streets within the subdivision and profiles of existing or future continuing streets a minimum distance of 200 feet beyond the subdivision boundaries, with cross sections at fifty-foot intervals.
- (9) Sewers, drains, ditches, etc. Plans and profiles of all proposed and existing water mains, gas, electricity, television, sanitary sewers, with building laterals extending two feet beyond the curbs, storm drains, drainage ditches and streams within the subdivision, together with the location, sizes, elevations, grades and capacities of any existing sanitary sewer, storm drain, drainage ditch or stream to which the proposed facility shall be connected. **[Amended 8-27-1981 by Ord. No. 21-1981]**
- (10) Individual sewage disposal system. When an individual sewage disposal system is proposed, the plan for such system must be approved by the appropriate local, county or state health agency. When a public sewage system is not available, the developer shall have percolation tests made in accordance with local requirements and submit the results with the preliminary plat. Percolation tests shall be made under the supervision of the Board of Health. The Township will receive a fee of \$10 per test hole, with a minimum of \$25 in each case.
- (11) Deed restrictions. A copy of any protective covenants or deed restrictions applying to the land being subdivided.
- (12) Soil erosion and sediment control plan. A soil erosion and sediment control plan, if required, in accordance with N.J.S.A. 4:24-39 et seq. Said plan shall be submitted to the Soil Conservation District in accordance with said statute, and approval of the application shall be conditioned upon certification of the soil erosion and sediment control plan by the district. **[Amended 8-27-1981 by Ord. No. 21-1981]**
- (13) Drainage design data. Map showing the entire drainage area and the drainage area contributing to each pertinent drainage structure, along with drainage tabulation sheets

showing calculations for each drainage area and calculations used to determine size of drainage pipes and channels proposed. Each drainage area shall be marked for identification purposes.

- (14) Soil filling or removal. The amount of earth, topsoil or other products in or upon the premises which will be moved within the confines of the proposed subdivided premises and the amount of such material which will be removed from the site. None of said materials shall be removed except in accordance with the soil removal permit issued under the provisions of the Soil Removal Ordinance of the Township of East Hanover.²¹

21. Editor's Note: See Article VIII of this chapter.

- (15) Public utilities. The developer shall arrange with the serving utility for the underground installation of the utility distribution supply lines and service connections in accordance with the provisions of the applicable standard terms and conditions incorporated as part of its tariff as the same are now on file with the State Board of Public Utility Commissioners. Applicant shall submit to the Planning Board, prior to the granting of any final approval, a written statement from each serving utility which shall evidence full compliance with the provisions of this subsection, provided that lots in such subdivision which abut existing streets where overhead television, electric and telephone distribution supply lines have theretofore been installed may continue said overhead service. Whenever the utility is not installed in the public right-of-way, an appropriate utility easement of not less than 15 feet in width shall be provided. **[Added 8-27-1981 by Ord. No. 21-1981]**
 - (16) If a wetland survey/letter of interpretation reveals the existence of wetlands or wetland transition areas, then the applicant shall place that area into a conservation easement pursuant to the provisions of Chapter 161 of the Code of the Township of East Hanover. Said easement shall be indicated on all plans submitted in support of the application. Alternatively, the applicant may modify the area with permission of the New Jersey Department of Environmental Protection, for example by way of a transition averaging plan. Such a modification shall be indicated on the plan in support of the application, with supporting documentation to be submitted to the Board. **[Added 9-8-2003 by Ord. No. 23-2003]**
 - (17) Stream Corridor Protection Zone, In addition to the wetland survey requirement, all applications for major or minor subdivisions or major site plan approval shall have a qualified professional perform a survey on the property so as to determine if any part of that property is within Zone One or Zone Two of the Stream Corridor Protection Zone, as defined in Chapter 131 of the Code of the Township of East Hanover. . If any portion of the property is within the Stream Corridor Protection Zone, it shall be designated on the plans submitted in support of the application. Further, the proposed development shall allow only permitted uses within the area designated the Stream Corridor Protection Zone. The application shall not entail any prohibited uses in the Township's Stream Corridor Protection Zone on the property unless the applicant submits and has approved a stream corridor management plan pursuant to Chapter 131 of the Code of the Township of East Hanover. **[Added 9-8-2003 by Ord. No. 23-2003]**
- C. Final plat. **[Amended 8-27-1981 by Ord. No. 21-1981]** The final plat shall be drawn by a licensed New Jersey land surveyor and professional engineer, not either alone, on a tracing cloth or Mylar measuring 24 inches by 36 inches in size, at a scale of not more than 50 feet to the inch. The final plat shall show or be accompanied by the following:
- (1) Identity. Date, name and location of the subdivision, name of owner, graphic scale and

reference meridian.

- (2) Other contents. Tract boundary lines, right-of-way lines of streets, street names, easements and other rights-of-way, land to be reserved or dedicated to public use, all lot lines and other site lines, with accurate dimensions, bearings or deflection angles and radii, arcs and central angles of all curves.
- (3) Public use. The purpose of any easement or land reserved or dedicated to public use shall be designated and the proposed use of sites other than residential shall be noted.
- (4) Block and lot numbers. Tax Map block and lot numbers, as supplied by the Tax Assessor, shall be shown.
- (5) Setback lines. Minimum building setback lines on all lots and other sites.
- (6) Monuments. Location and description of all monuments.
- (7) Owners. The names of owners of adjoining property and the names of adjoining subdivisions, if any, and the case and filed map number. **[Amended 8-27-1981 by Ord. No. 21-1981]**
- (8) Accuracy. Certification by the surveyor as to the accuracy of details of plat. **[Amended 8-27-1981 by Ord. No. 21-1981]**
- (9) Consent of owner. Certification that the applicant is agent or owner of the land or that the owner has given consent under an option agreement.
- (10) Approval. When approval of a plat is required by an officer or body of the Township, county or state, approval shall be certified on the plat.
- (11) Improvement construction plans. Improvement construction plans shall be prepared on a sheet measuring a 24 inches by 36 inches, at a scale of not less than 50 feet to the inch and drawn by a licensed New Jersey professional engineer, showing proposed construction, including plans, cross sections and profiles of streets, storm and sanitary sewers, water mains and other utility layouts. **[Amended 8-27-1981 by Ord. No. 21-1981]**
- (12) Topography. Final contours of the land according to the requirements of Subsection B(6) hereof.
- (13) Taxes. A written certification from the Tax Collector that no taxes or assessments for local improvements are due or delinquent.
- (14) Lot grading plans. **[Amended 8-27-1981 by Ord. No. 21-1981]** The lot grading plan shown on the topographic map prepared for the preliminary plat shall be revised to suit the final map and improvement construction plans and shall be submitted as a separate lot grading plan. Following final approval, applicant shall make application for building permits pursuant to township ordinances and in conformity with the requirements of the Uniform Construction Code.²² The building permit application shall include a preliminary location survey which shall contain, in addition to other requirements of the Construction Official or Township Engineer and not by way of limitation, the location of the proposed foundation, proposed elevations of finished basement floor and first floor and proposed final 1~t grading elevations in accordance with the final subdivision approval. Subsequent to the issuance of the building

permit and at the time of the foundation inspection, the applicant shall submit a location survey con-taming the location of the constructed foundation and the proposed and existing final grading elevations for said lot. Applicant may submit the final location survey containing proposed final grades which differ from the grades proposed on the. preliminary location survey, provided the altered grades shall not adversely affect the grading of the contiguous lots and the overall grading plan for the subdivision, and provided further that said final location survey shall be subject to the approval of the Township Engineer. In the event the Township Engineer disapproves the final grading plan, the developer shall amend the plan accordingly in order to receive approval from the Township Engineer. Once the final location survey as presented or amended has been approved by the Township Engineer, the final grades noted thereon shall be binding upon the applicant and no certificate of occupancy shall be issued unless and until the approved final grades are met. After approval of the final location survey and before commencing further construction, the applicant shall grade the lot at each of its corners and along the side lines at the point of the building setback line to within six (6) inches plus or minus of the final grades contained on the approved final location survey and shall submit an Engineer's certification that said grading has been completed as required. Applicant, however, shall not be required at that time to backfill the foundation. At such time as the dwelling shall be completed and the applicant shall apply for a certificate of occupancy, all lot improvements required shall be completed, as set forth above, including the final lot grading, which shall conform exactly to the final grade elevations on the approved final location survey. Applicant shall submit an Engineer's certification that said grading has been completed as required.

22. Editor's Note: See Ch. 75, Construction Codes, Uniform.

- (15) Topsoil protection. No topsoil shall be removed from the site or used as spoil except if permitted by the soil removal permit. Topsoil moved during the course of construction shall be redistributed so as to provide at least six (6) inches of cover to all areas of the subdivision and shall be stabilized by seeding or planting.

D. [Amended 5-15-80 by Ord. No. 3-1980; 8-27-81 by Ord. No. 21-1981; 12-14-82 by Ord. No. 31-1982] Preliminary site plan. The preliminary site plan shall be drawn at a scale of not more than fifty (50) feet to the inch and shall include such details as may be necessary to properly evaluate the application and determine compliance with this chapter. Any site plan involving any new building or addition thereto or any site improvements shall be drawn by a licensed New Jersey professional engineer or land surveyor or architect. Where complicated or serious sanitary sewage and/or stormwater runoff collection and disposal problems are involved, then such site work plan must be prepared by a licensed professional engineer having expertise in such matters. Where applicable to the proposed use or construction, the following information shall be clearly shown:

- (1) Key map drawn at a scale of not more than one (1) inch equals one hundred (100) feet showing the location of the property, all streets and property lines within five hundred (500) feet of the affected property, and all buildings or structures are within three hundred (300) feet of the building or structure proposed by the applicant.
- (2) The name and address of the owner and site plan applicant together with the names of the owners of all contiguous land and of property directly across the street and within two hundred (200) feet of the property, as shown by the most recent tax records of the township.

- (3) North point, scale and the date on which the plan was prepared, and the date of every revision.
- (4) Tax Map lot and block numbers of the property affected.
- (5) Zoning district in which the property is located.
- (6) Area of the lot and all lot line dimensions.
- (7) A table indicating zoning requirements and development proposals.
- (8) Location of all existing buildings, culverts, storm sewers, sanitary sewers, water, fire protection, electric and telephone lines (both above and below ground) and poles, gas and underground heating systems, pipelines and other manmade features, including fences and walls.
- (9) Location of all existing streets and highways on or adjacent to the property affected, including names, right-of-way width, pavement width, curb or curb width.
- (10) Location of all existing easements and rights-of-way and the purpose for which they have been established.
- (11) Location of existing high points, watercourses, depressions, ponds, marshes, wooded areas, single trees not in wooded areas with a diameter of twelve (12) inches or more as measured three (3) feet above the base of the trunk and other significant existing features, including previous flood elevations of watercourses, marsh and wetland areas as determined by survey and by the State of New Jersey.
- (12) The existing and proposed contours on the site and for one hundred (100) feet outside the property at two-foot intervals for areas less than five-percent grade and ten-foot intervals above five-percent grade. A reference bench mark should be clearly designated.
- (13) Elevations at the corners of all proposed buildings and paved areas and at property corners if new buildings or paved areas are proposed and at such locations designated by the Township Engineer.
- (14) Tentative building floor plans and front, rear and side building elevations, showing building materials. Said plans shall be at a scale of not less than one-eighth (1/8) inch equals one (1) foot, Said plans shall be drawn by a licensed architect when the building(s) or addition(s) thereto exceeds two thousand five hundred (2,500) square feet in ground floor area.
- (15) The present status and contemplated use of all existing buildings on the property.
- (16) Location of proposed buildings and structures and all accessory structures, if any, including setback side lines and rear yard distances.
- (17) All proposed streets with profiles indicating grading; and cross sections showing width of roadway, location and width of sidewalk.
- (18) Specifications for and location of proposed surface paving and curbing.

- (19) The location, type and size of proposed culverts, storm sewers, sanitary sewers, fire protection, electric and telephone lines and poles, gas and underground heating systems, pipelines and all other utilities both above and below ground including the connection of such proposed facilities with existing facilities according to the standard specifications of the township.
- (20) Septic systems. Location of existing septic systems on any parcel of land within the confines of the application shall be specifically designated, and the location of existing septic systems on any adjoining lot within fifty (50) feet of the existing or proposed lot lines.
- (21) The location of all off-street parking areas and off-street loading facilities, showing the number, location and dimensions of parking spaces, loading areas, curb stops, bumpers, traffic aisles, traffic patterns, curb radii and type of pavement.
- (22) A landscaping and buffering plan showing what will remain and what will be planted, indicating species of plants, trees and dimensions, approximate time of planting and method of planting (bare-rooted, ball and burlap) and maintenance plans, seeding schedule, slope stabilization.
- (23) All fences, walls, sidewalks or similar features to be provided.
- (24) The design and details of any retaining walls, manholes, headwalls, retention basins, detention basins, etc.
- (25) Lighting details indicating the type and height of light standards, locations, radius of light, type of light and intensity in foot candles.
- (26) Proposed design and location of signs.
- (27) Soil analysis as deemed necessary by the Township Engineer, including borings, test pits, groundwater information, samples and analysis of engineering properties.
- (28) Aerial photographs and other photographs illustrating site details.
- (29) A copy of any protective covenants or deed restrictions applying to the land, if applicable.
- (30) An environmental impact. statement in accordance with § 95-39.1 of this chapter.
- (31) Legends and signature blocks as appropriate.
- (32) The applicant shall submit to the approving authority a proposed sequence of development with a projected time schedule for completion of each of the several elements. Such projection shall include, where applicable, the removal of structures, trees and brush, temporary drainage considerations, utilities, road and sidewalk improvements and provisions for the protection of topsoil.
- (33) Morris County Planning Board and other state and county approvals as may be appropriate.

- (34) A soil erosion and sediment control plan, if required, in accordance with N.J.S.A. 4:24-39 et seq. Said plan shall be submitted to the Morris County Soil Conservation District in accordance with said statute and approval of the application shall be conditioned upon certification of the soil erosion and sediment control plan by the district
- (35) A map showing the entire drainage area and the drainage area contributing to each pertinent drainage structure, along with drainage tabulation sheets showing calculations for each drainage area. Each drainage area shall be marked for identification purposes.
- (36) Official seals and signatures of a licensed professional engineer, land surveyor and architect.
- (37) Additional information. The approving authority may require other information and data for specific site plans. This data may include, but is not limited to, geologic information, water yields, flood data, environmental information, traffic counts, road capacities, market information, economic data and similar exhibits. This information shall be deemed to be required unless specifically determined to be unnecessary by the approving authority as provided in Subsection D(38) below.
- (38) If it can be demonstrated by the applicant that because of peculiar conditions relating to the property or proposed construction, any of the above details are not necessary or additional data is necessary to properly evaluate the site plan, the approving authority, by way of a specific written resolution, may modify or waive any of the specific site plan details or require such additional data, specifications and information.
- (39) An application shall be deemed incomplete, and the review period shall not begin to run, until all the requirements of this section are satisfied.
- (40) If a wetland survey/letter of interpretation reveals the existence of wetlands or wetland transition areas, then the applicant shall place that area into a conservation easement pursuant to the provisions of Chapter 161 of the Code of the Township of East Hanover. Said easement shall be indicated on all plans submitted in support of the application. Alternatively, the applicant may modify the area with permission of the New Jersey Department of Environmental Protection, for example by way of a transition averaging plan. Such a modification shall be indicated on the plan in support of the application, with supporting documentation to be submitted to the Board. **[Added 9-8-2003 by Ord. No. 23-2003]**
- (41) Stream Corridor Protection Zone, In addition to the wetland survey requirement, all applications for major or minor subdivisions or major site plan approval shall have a qualified professional perform a survey on the property so as to determine if any part of that property is within Zone One or Zone Two of the Stream Corridor Protection Zone, as defined in Chapter 131 of the Code of the Township of East Hanover. If any portion of the property is within the Stream Corridor Protection Zone, it shall be designated on the plans submitted in support of the application. Further, the proposed development shall allow only permitted uses within the area designated the Stream Corridor Protection Zone. The application shall not entail any prohibited uses in the Township's Stream Corridor Protection Zone on the property unless the applicant submits and has approved a stream corridor management plan pursuant to Chapter 131 of the Code of the Township of East Hanover. **[Added 9-8-2003 by Ord. No. 23-2003]**

E. **[Amended 8-27-1981 by Ord. No. 21.1981]** Final site plan. The final site plan shall be drawn by a licensed New Jersey professional engineer or land surveyor or architect in the same manner as the preliminary site plan and shall clearly show all details prescribed in Subsection D hereof. In addition, the final site plan shall show or include the following:

- (1) Final contours of the property and for one hundred (100) feet outside the property at two-foot intervals when new buildings or parking areas are proposed. If only a portion of the property is being developed, contours need only be shown for said portion and one hundred (100) feet beyond.
- (2) Final elevations at the corners of all proposed buildings and paved areas and at property corners if new buildings or paved areas are proposed.
- (3) Final building floor plans and front, rear and side building elevations, showing building materials.
- (4) Location and description of proposed signs and outdoor lighting.
- (5) A detailed plan for proposed landscaping showing the size, species and spacing of trees and plants and other landscaping treatment of unpaved areas.

§ 95-37. On-tract improvements for site plans and subdivisions. [Amended 5-15-80 by Ord. No. 3-1980; 3-19-81 by Ord. No. 3-1981; 8-27-81 by Ord. No. 21-1981; 8-17-82 by Ord. No. 24-1982]

Prior to final subdivision approval or final site plan approval the applicant shall have installed all improvements or furnished performance guaranties as set forth in § 95-35.D, where applicable, for the ultimate installation of the improvements described below as set forth in preliminary approvals.

A. Required installations for subdivisions.

- (1) Streets. To be graded and constructed in accordance with the design standards and specifications in § 95-39A(2) of this chapter.
- (2) Curbs and sidewalks.
 - (a) Curbs shall be constructed on both sides of the pavement in accordance with the design standards and specifications in § 95-39A(2)(s) of this chapter.
 - (b) Sidewalks shall be constructed by the developer along both sides of any street; provided, however, that, for any major subdivision seeking preliminary approval which meets all of the zone requirements and/or for any major subdivision~ for which final approval has been obtained but sidewalks have not yet been installed, the Planning Board may grant a waiver as to either side or both sides of the proposed streets, unless said sidewalks are necessary to provide adequate access to schools. If the sidewalks are within one thousand (1,000) feet of a school or along a primary road designated as such by the governing body, a sidewalk waiver request shall not be approved nor granted. In the event that the Planning Board deems it appropriate to wave by resolution the requirements for sidewalks on either or both sides of the proposed streets, it shall require the developer to pay to the township a sum

approximately equal to the cost of the sidewalks waived, to be used by the township either for the installation of sidewalks at a future date or for beautification of the particular subdivision within what shall be deemed an appropriate period. In the event that the township falls to use said funds within a period of seven (7) years after they are deposited with the township, said funds shall be transferred to the township's general funds. Prior to the expiration of the aforesaid seven-year time period, said funds shall be held in an appropriate escrow account, entitled the name of the development in question, and said funds shall be invested at the highest available rate of interest, which investment income shall accrue to and be added to said fund. If the chief financial officer shall deem it appropriate, the chief financial officer of the township may commingle said escrowed funds with other funds of the township in order to achieve the highest rate of return. Annually, the chief financial officer shall prepare and submit to the Township Committee an accounting as to each escrow fund established under the terms of this ordinance with an investment income earned on the escrowed funds credited to each escrow account. **[Amended 3-15-84 by Ord. No 4-1984]**

- (3) Drainage facility. Provisions shall be made for culverts , catch basins, stormwater drains, detention and retention basins and other necessary drainage facilities. All such installations shall be connected with an adequate approved system and shall be adequate for all present and future development of the subdivision and surrounding areas and subject to the specifications of the Township Engineer and Planning Board.
- (4) Water mains. To be installed and approved in accordance with the standards and specifications of the East Hanover Township Water Engineer.
- (5) Sanitary sewer. Where a public sanitary sewer system is accessible, each lot within a subdivision shall be provided with sewage disposal facilities by the required extension of sewer mains and connection thereto. All such installations shall be made in accordance with construction standards of the township and approved by the Township Engineer and the State Department of Environmental Protection. The public sanitary sewer is not considered accessible, and therefore no connections can be made for those areas so prohibited as set forth in § 95-460.
- (6) Private disposal system. Where a public sanitary sewer system is not accessible, the subdivider shall construct an individual sewage disposal system for each lot or may be required to install sewer lines and a private sanitary sewer disposal plant. All such installations shall be subject to the approval of local and state health agencies, the Township Engineer and the Township Sewer Department and the East Hanover Township Board of Health.
- (7) Monuments. To be of the size and type required by Chapter 141 of the Laws of 1960²³ and shall be placed in accordance with the requirements of said statute and the specifications of the township.

23. Editor's Note: See N.,J.S.A. 46:23-9.9 et seq.

- (8) Shade trees. The subdivider shall install shade trees of the size, quality and variety approved by the Shade Tree Commission of the Township of East Hanover. The shade trees shall be located along the street line as directed by said Shade Tree Commission.

- (9) Street signs. To be of the same type and design as the street signs currently in use and shall be installed in accordance with applicable township requirements and state statutes in such a manner that the name of each intersecting street is clearly visible to approaching traffic.
- (10) Fire hydrants, etc. Fire hydrants and fire alarm boxes shall be installed at intervals as directed by the Water and Fire Departments in accordance with the standards of the National Board of Fire Underwriters or other applicable authority.
- (11) Street lighting. Streetlights shall be installed as directed by the Township Streetlights Committee and in accordance with recommended practice of street and highway lighting of the Illuminating Engineering Society, where it is required by the Planning Board, along the streets within and abutting the subdivision. All fixtures or luminaries which will be required in a subdivision shall be installed at the same time, thereby constituting a single process of installation. All wires necessary to serve the street lighting system shall be placed underground, and arrangements shall be made with the appropriate utility for carrying out this provision. Construction and maintenance easements shall be provided for such installations. The subdivider shall pay the cost of operating said streetlights until such time as the said lights which are installed shall be accepted by resolution of the Township Committee as part of the acceptance of a public street of the township. At the time of final approval, the subdivider shall deposit with the township cash in an amount equal to twice the annual billing rate, as determined by the appropriate utility which shall provide street lighting. The township shall utilize said cash deposit to pay the annual billings for such street lighting in the subdivision until the streets are accepted by resolution of the Township Committee, at which time the township will return to the subdivider the remaining cash on deposit, if any.
- (12) Topsoil. No topsoil shall be removed from the subdivision site or used as spoil or fill. In addition, topsoil removed during the course of construction shall be redistributed in the subdivision so as to provide equal distribution of cover to all areas of the subdivision and shall be stabilized by seeding and planting. At least six (6) inches of topsoil shall be provided on all portions of lots not occupied by buildings, driveways or walks.
- (13) Earth removal. No change shall be made in the elevation or contour of any lot or site other than a required minimum amount, as determined by the Engineer and Planning Board in accordance with the township's Soil Removal Ordinance.²⁴

24. Editor's Note: See Article VIII of this chapter.

- (14) Disposal of dead trees, etc. All stumps, litter, rubbish, brush, weeds, dead and dying trees, rock, roots and debris shall be removed or destroyed immediately upon the request of and to the satisfaction of the Engineer. None of the same shall be buried without written permission of the Planning Board upon recommendation of the Township Engineer.
- (15) Other items. The Board may impose other conditions where specific problems peculiar to any particular development exist which are likely to be detrimental to the public safety and general welfare of the township, or may, for good cause for the same, change or modify any of the foregoing.

B. Required installations for site plans.

- (1) Pavement. All parking and loading areas shall be paved in accordance with the design standards and specifications in § 95-39B(14) of this chapter. **[Amended 8-27-1981 by**

Ord. No. 21-1981]

- (2) Drainage. All parking and loading areas shall be graded and equipped with adequate drainage facilities as approved by the Township Engineer.
- (3) Marking. All parking and loading spaces shall be appropriately marked with painted lines.
- (4) Lighting. Adequate lighting of all parking and loading areas shall be provided as required by the Planning Board.
- (5) Screening. All off-street parking and loading areas shall be effectively screened on any side which adjoins or faces premises situated in any residential zone, by a fence, wall or screening not less than four (4) nor more than eight (8) feet in height, maintained in good condition; provided, however, that a screening or hedge or other natural landscaping consisting of four-foot-high evergreen plants in two (2) rows five (5) feet apart and with plants five (5) feet apart in each row may be substituted for the required fence or wall if approved by the Planning Board. The screening as required by this subsection shall not be waived by the Planning Board. Where parking is located in a front yard, the Planning Board may require construction of landscaped berms up to a height of five (5) feet with slopes at a ratio of not less than two to one (2:1). **[Amended 8-27-1981 by Ord. No. 21-1981; 3-20-1997 by Ord. No. 6-1997]**
- (6) Curbing. Parking areas shall be enclosed by curbing in accordance with design standards and specifications in § 95-39B(17) of this chapter unless waived by the Planning Board when drainage runoff can be absorbed by surrounding soil without causing erosion or flooding to adjoining landowners, located at least five (5) feet from any property line or nearest structural wall of a building, except that in the nonresidential zones, parking areas may be constructed up to the property line which abuts a parking area on property in the nonresidential zone, and further provided that proper access and circulation between the two (2) parking areas is provided. **[Amended 8-27-1981 by Ord. No. 21-1981]**
- (7) Sidewalks. Sidewalks shall be constructed within the street right-of-way in accordance with township specifications.
- (8) **[Amended 12-14-1982 by Ord. No. 31-1982; 3-20-1997 by Ord. No. 6-1997]**
Landscaping. All portions of the property shall be landscaped as follows, and said landscaping requirements shall not be waived by the Planning Board:
 - (a) All portions of the property shall be attractively landscaped, incorporating grass lawns, trees and shrubs.
 - (b) Shade trees shall be installed within street rights-of-way in accordance with requirements of the Shade Tree Commission.
 - (c) All newly planted shade trees shall be of nursery stock, be balled and burlapped, and be of a specific species approved by the approving authority and/or the Shade Tree Commission.
 - (d) Minimum size of plantings to be installed shall be as follows:

[1] Deciduous trees: two and one-half (2½) inches caliper.

[2] Evergreen trees: five (5) feet in height.

[3] Shrubbery: two (2) feet in height.

Plantings greater in height may be required by the approving authority to achieve specific purposes of this chapter or if required by other regulations or ordinances of the township.

- (e) Each off-street parking area shall have a minimum area equivalent to one (1) parking space per every ten (10) parking spaces landscaped, with one-half (1/2) of said spaces having shrubs no higher than three (3) feet and the other half having trees with branches no lower than seven (7) feet. Such landscaped spaces shall be distributed throughout the parking area in order to break the view of long rows of parked cars in a manner not impairing visibility and shall not be construed as meeting the requirements for buffers or screening as specified in this chapter.
- (f) Buffers and screening shall be provided per § 95-47A(6).
- (g) Existing large trees shall be saved by not varying the grade around the tree by more than six (6) to twelve (12) inches, by constructing free wells and by erecting protective fences. Wherever possible, clumps of trees shall be saved rather than individual trees unless an individual tree is one of distinctive, rare, mature or unusual quality.
- (9) Other items. The Board may impose other conditions where specific problems peculiar to any particular development exist which are likely to be detrimental to the public safety and general welfare of the township, or may, for good cause for the same, change or modify any of the foregoing.

§ 95-38. Off-tract improvements.

As a condition of preliminary approval and prior to any construction and to the filing of an application for final approval of a subdivision or site plan, the applicant shall have made cash payments or, with the consent of the township, installed all off-tract improvements stipulated by the Planning Board in the manner provided below with respect to the immediate or ultimate installation of any required off-tract improvements stipulated by the Planning Board.

- A. Allocation of costs; criteria in determining allocation. The allocation of costs for off-tract improvements as between the applicant, other property owners and the township, or any one (1) or more of the foregoing, shall be determined by the Planning Board, with the assistance of the appropriate township agencies, on the basis of the total cost of the off-tract improvements, the increase in market values of the property affected and any other benefits conferred, the needs created by the application, population and land use projections for the general area of the applicant's property and other areas to be served by the off-site improvements, the estimated time of construction of the off-site improvements and the condition and periods of usefulness, which periods may be based upon the criteria of N.J.S.A. 40A:2-22. Requirements for off-tract improvements shall be consistent with P.L. 1975, c. 291 (N.J.S.A. 40:55D-1 et seq.). In addition, the following criteria may also be considered, as well as any other reasonable criteria:

- (1) Street, curb, sidewalk, shade trees, streetlights, street signs and traffic light improvements may also be based upon the anticipated increase of traffic generated by the application. In determining such traffic increase, the Planning Board may consider traffic counts, existing and projected traffic patterns, quality of roads and sidewalks in the area and other factors related to the need created by the application and the anticipated benefit thereto.
 - (2) Drainage facilities may also be based upon or be determined by the drainage created by or affected by a particular land use, considering:
 - (a) The percentage relationship between the acreage of the application and the acreage of the total drainage basin.
 - (b) The use of a particular site and the amount of area to be covered by impervious surfaces on the site itself.
 - (c) The use, condition or status of the remaining area in the drainage basin.
 - (3) Water supply and distribution facilities may be also based upon the added facilities required by the total anticipated water use requirements of the property of the applicant and other properties in the general area benefiting there from.
 - (4) Sewerage facilities may be based upon the proportion that the total anticipated volume of sewage effluent of the applicant's property and other properties connected to the new facility bears to the existing capacity of existing sewerage facilities, including but not limited to lines and other appurtenances leading to and servicing the applicant's property. Consideration may also be given to the types of effluent and particular problems requiring special equipment or added costs for treatment. In the event the applicant's property shall be permitted to be connected to existing sewer facilities, the applicant shall pay a charge or be assessed in accordance with law.
- B. Determination of cost of improvements. The cost of installation of the required off-tract improvements shall be determined by the Planning Board with the advice of the Township Engineer and appropriate township agencies.
- C. Manner of construction. When those estimates are received and the work is not to be done exclusively by the applicant as specified by the Planning Board, the Township Committee shall then decide whether the off-tract improvement is to be constructed:
- (1) By the township as a general improvement, or
 - (2) By the township as a local improvement, or
 - (3) By the applicant under a formula providing for partial reimbursement by the township for benefits to properties other than the subdivision or site plan.
- D. Amount of contribution. When the manner of construction has been determined, the applicant may be required to provide a cash deposit to the township of one (1) of the following amounts:
- (1) If the improvement is to be constructed by the township as a general improvement, an amount equal

- to the difference between the estimated cost of the improvement and. the estimated total amount, if less, by which all properties to be serviced thereby, including the subject property, will be specifically benefited by the off tract improvement
- (2) If the improvement is to be constructed by the township as a local improvement, then, in addition to the amount referred to in Subsection D(1), the estimated amount by which the subject property will be specifically benefited by the off-tract improvement.
 - (3) If the improvement is to be constructed by the applicant, an amount equal to the estimated cost of the off tract improvement less an offset for benefits to properties other than the subject property.

E. Payment of allocated cost.

- (1) The estimated costs of the off-tract improvement allocated to the applicant, if deposited in cash, shall be paid by the applicant to the Township Treasurer, who shall provide a suitable depository therefor, and such funds shall be used only for the off-tract improvements for which they are deposited or improvements serving the same purpose, unless such improvements are not initiated by the township within a period of ten (10) years from the date of payment, after which time said funds so deposited shall be returned, together with accumulated interest or other income thereon, if any.
 - (2) In the event the payment by the applicant to the Township Treasurer provided for herein is less than its share of the actual cost of the off-tract improvements, then the applicant shall be required to pay its additional appropriate share of the cost thereof.
 - (3) In the event the payment by the applicant to the Township Treasurer provided for above is more than its appropriate share of the actual cost of installation of the off-tract improvements, it or its successors or assigns shall be repaid an amount equal to the difference between the deposit and its share of the actual cost.
 - (4) If the applicant shall deem that any of the amounts so estimated by the Planning Board are unreasonable, it may challenge them and seek to have them reviewed in appropriate proceedings brought to compel sub-division approval.
 - (5) If the applicant and the Planning Board cannot agree with respect to the applicant's appropriate share of the actual cost of the off-tract improvement or the determination made by the officer or board charged with the duty of making assessments as to special benefits, if the off-tract improvement is to be constructed as a local improvement, no approval shall be granted; provided, however, that the applicant may challenge such determination and . seek to have it revised in appropriate judicial proceedings in order to compel subdivision or site plan approval.
- F. Assessment of properties. Upon receipt from the applicant of its allocated share of the costs of the off-tract improvements, the township may adopt a local improvement assessment ordinance for the purpose of construction and installation of the off-tract improvements based upon the actual cost thereof. Any portion of the cost of the improvements not defrayed by a deposit by the applicant may be assessed against benefiting property owners by the township. Any assessments for benefits conferred made against the applicant or his successors in interest shall be first offset by a pro rata share credit of the allocated costs previously deposited with the Township Treasurer pertaining thereto. The applicant or his successors in interest shall not be liable for any part of an assessment

for such improvements unless the assessment exceeds the pro rata share credit for the deposit, and then only to the extent of the deficiency.

G. Credit for work performed. In the event the applicant, with the township's consent, decides to install and construct the off-tract improvement or any portion thereof, the certified cost shall be treated as a credit against any future assessment for that particular off-tract improvement or portion thereof constructed by the township in the same manner as if the subdivider had deposited its apportioned cost with the Township Treasurer as provided herein

H. Installation of improvements by applicant.

(1). At the discretion and option of the township and with the consent of the applicant, the township may enter into a contract with the applicant providing for the installation and construction of the off-tract improvements by the applicant upon contribution by the township of the remaining unallocated portion of the cost of the off-tract improvement.

(2) In the event the township so elects to contribute to the cost and expense of installation of the off-site improvements by the applicant, the portion contributed by the township shall be subject to possible certification and assessment as a local improvement against benefiting property owners in the manner provided by law, if applicable.

I. Design standards. Should the applicant and the township enter into a contract for the construction and erection of the off-tract improvements to be done by the applicant, it shall observe all requirements and principles of this chapter and other township ordinances in the design of such improvements.

§ 95-39. Design standards.

A. Subdivisions.

(1) General. The applicant shall observe the following requirements and principles of land subdivision in the design of each subdivision or portion thereof:

(a) Development pattern. The subdivision plat shall conform to design standards that will encourage good development patterns within the township.

(b) Conformance to Master Plan and Official Map. Where either or both an Official Map or Master Plan has been adopted, the subdivision shall conform to the proposals and conditions shown therein. The streets, drainage rights-of-way, school sites, public parks and playgrounds shown on an officially adopted Master Plan or Official Map shall be considered in the approval of subdivision plats.

(c) Further conformance. Where no Master Plan or Official Map exists, streets and drainage rights-of-way shall be shown on the final plat in accordance with the applicable statutes of New Jersey and shall be such as to lend themselves to the harmonious development of the township so that natural features, such as trees, brooks, hilltops and natural topography, shall be preserved as much as possible.

(2) Streets.

(a) General. Streets shall be designed in accordance with the requirements of the

Township of East Hanover and constructed in accordance with Subsection A(2)(f) hereof. **[Amended 8-27-81 by Ord. No. 21-1981]**

- (b) Arrangement. The arrangement of streets now shown on the Master Plan or Official Map shall be such as to provide for the appropriate extension of existing streets.
- (c) Minor streets. Minor streets shall be so designed as to discourage through traffic.
- (d) Marginal access. Subdivisions abutting arterial streets shall provide a marginal service road or reverse frontage with a buffer strip for planting or some other means of separation of through and local traffic as the Planning Board may determine appropriate.
- (e) Right-of-way width. The right-of-way width shall be measured from lot line to lot line and shall not be less than fifty (50) feet unless a greater width is shown on the Master Plan or Official Map. The width of the right-of-way for any proposed industrial subdivision and/or site plan shall be sixty (60) feet from lot line to lot line unless otherwise designated and approved by the Planning Board. **[Amended 5-15-80 by Ord. No. 3-1980]**
- (f) Pavement.
 - [1] The pavement width of public streets shall be measured from curb to curb and shall not be less than thirty (30) feet unless a greater width is shown on the Master Plan. The pavement width for any proposed industrial subdivision or site plan shall be forty (40) feet from curb to curb unless otherwise designated or approved by the Planning Board. **[Amended 5-15-80 by Ord. No. 3-1980]**
 - [2] Streets shall be paved with a surface cover of fine aggregate bituminous concrete two (2) inches thick after compaction, on a bituminous concrete stabilized base course four (4) inches thick after compaction, construction on a stable subbase and approved by the Township Engineer. **[Added 8-27-81 by Ord. No. 21-1981]**
- (g) Private street. Any private street hereafter created for the purpose of providing access to lots or buildings shall meet the following requirements:
 - [1] Said street shall have a right-of-way of at least fifty (50) feet definable by bearings and dimensions incorporated in the deed or deeds of the property or properties it serves.
 - [2] The establishment of any such street shall include provision for access to all properties it adjoins, and no such street which would eliminate existing access to any property shall be created.
 - [3] Provisions shall be made to ensure proper and continuous maintenance by the owner or owners of any such street hereafter created.
 - [4] Included with the creation of any such street shall be the granting to the Township of East Hanover and other public agency or public utility company

of any necessary utility easements .

- [5] Said street shall be improved with pavement, curbs, sidewalks, drainage and other utility facilities as found necessary by the Planning Board based upon anticipated type and volume of traffic, stormwater conditions and other utility requirements. In determining the necessary improvements, the Planning Board shall be guided by the standards and requirements for public streets.
- (h) Reserve strips. No subdivision showing reserve strips controlling access to streets shall be approved except where the control and disposal of land comprising such strips has been placed in the governing body under conditions approved by the Planning Board.
 - (i) Existing streets. Subdivisions that adjoin or include existing streets that do not conform to the widths as shown on the Master Plan or Official Map or the street width requirements of this chapter shall dedicate additional width along either one (1) or both sides of said road. If the subdivision is along one (1) side only, one-half (1/2) of the required extra width shall be dedicated.
 - (j) Grades. Street grades shall not be less than one-half of one percent ('A of 1%) nor more than six percent (6%) for arterial or collector streets and ten percent (10%) on all other streets. **[Amended 8-27-81 by Ord. No. 21-1981]**
 - (k) Intersections. Street intersections shall be as nearly at right angles as is possible and in no case shall be less than sixty degrees (60°). The block corners at intersections shall be rounded at the curblin with a curve having a radius of not less than twenty-five (25) feet.
 - (l) Street jogs. Street jogs with center-line offsets of less than one hundred twenty-five (125) feet shall be prohibited.
 - (m) Tangents. A tangent at least one hundred (100) feet long shall be introduced between reverse curves.
 - (n) Street line deflection. When connecting street lines deflect from each other at any one point by more than ten degrees (10°) and not more than forty-five degrees (45°), they shall be connected by a curve with a radius of not less than one hundred (100) feet for residential streets and three hundred (300) feet for arterial and collector streets. **[Amended 8-27-81 by Ord. No. 21-1981]**
 - (o) Changes in grade All changes in grade shall be connected by vertical curves of sufficient radius to provide a smooth transition and minimum sight distance of two hundred (200) feet measured between two (2) points each four (4) feet six (6) inches above the surface of the pavement. **[Amended 8-27-81 by Ord. No. 21-1981]**
 - (p) Dead end streets (culs-de-sac) Dead end streets shall not be longer than one thousand (1,000) feet and shall provide a turnaround at the end with a right of way radius of not less than fifty (50) feet and with a paved radius of forty (40) feet at the property line and tangent whenever possible to the right side of the street If a dead end street is of a temporary nature, a similar turnaround shall be provided and provisions made for future extension of the street and reversion of the right of way to the adjoining

properties In any proposed industrial subdivision or site plan, the right of way radius of the turnaround (cul-de-sac) shall be sixty (60) feet with a paved radius of fifty (50) feet at the property line and tangent whenever possible to the right side of the street. Wherever a temporary or permanent turnaround is proposed on any street, the front yard setback shall be measured from the right of way lines of these turnarounds **[Amended 5 15 80 by Ord. No 3 1980, 8 27 81 by Ord. No 21 1981²⁵]**

25. Editor's Note: Amended at time of adoption of Code; see Ch .1 General Provisions Art I.

- (q) Street names. No street shall 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.
 - (r) Construction. Construction of streets, curbs and sidewalks shall be in conformance with township ordinances and regulations.
 - (s) Curbs. Curbing shall consist of concrete or granite block curbing six (6) inches above the paved surface, when required **[Added 8 27 81 by Ord. No 21 1981]**
 - (t) Sidewalk specifications. Concrete sidewalks of a minimum width of four (4) feet and a minimum depth or thickness of four (4) inches shall be constructed and approved by the Township Engineer. **[Added 8-27-81 by Ord. No. 21-1981]**
- (3) Blocks.
- (a) Length and width. Block lengths and width or acreage within bounding roads shall be of such sizes and shapes as to accommodate the size of lot required in the area by the Zoning Article of this chapter and as consideration of topography and street layout shall dictate and to provide for convenient access, circulation control and safety of street traffic.
 - (b) Crosswalks. In blocks over one thousand (1,000) feet long, pedestrian crosswalks may be required in locations deemed necessary by the Planning Board. Such walkways shall be ten (10) feet wide and be straight from street to street.
- (4) Lots.
- (a) Dimensions. Lot dimensions and area shall be not less than the requirements of the Zoning Article of this chapter.
 - (b) Side lines. Insofar as is practical, side lot lines shall be at right angles to straight streets and radial to curved streets.
 - (c) Frontage. Each lot must front upon an approved street at least fifty (50) feet in width.
 - (d) Setbacks. Where extra width has been dedicated for widening of existing streets, lots shall begin at such extra-width line and all setbacks shall be measured from such line.
 - (e) Suitability. Where there is a question as to the suitability of a lot or lots for their intended use due to factors such as rock formations, flood conditions or similar circumstances, the Planning Board may, after adequate investigation, withhold approval of such lots.

(5) Public use and service areas.

- (a) Easements. In large-scale development, easements along rear property lines or elsewhere for utility installations may be required. Such easements shall be at least fifteen (15) feet wide and located in consultation with the companies or township departments concerned.
- (b) Drainage easements. Where a subdivision is traversed by a watercourse, drainageway, channel or stream, there shall be provided a stormwater easement or drainage right of way at least fifteen (15) feet in width conforming substantially with the lines of such watercourse, and of such further width or construction, or both, as will be adequate for the purpose.
- (c) Natural features. Natural features, such as trees, brooks, hilltops and views, shall be preserved whenever possible in designing any subdivision containing such features.

(6) Stormwater drainage **[Amended 8-27-81 by Ord No 21-1981, 12-14-82 by Ord No 31-1982]**

(a) General Requirements

- [1] All streets shall be provided with manholes, catch basins and pipes where the same may be necessary for proper surface drainage. On-site facilities may be permitted. Additionally, all work shall be in accordance with the established design standards of the township.
- [2] The system shall be adequate to carry off or store the stormwater and natural drainage water which originates not only within the lot or tract boundaries, but also that which originates beyond the lot or tract boundaries. No stormwater runoff, natural drainage water or water discharged from any source shall be so diverted as to overload the existing drainage systems or create flooding or the need for additional drainage structures on other private properties or public lands without proper and approved provisions being made for taking care of these conditions. Over-the-sidewalk, under-the-sidewalk and/or through-the-curb drains for the purpose of disposing of sump pump and/or roof leader runoff is prohibited. These facilities must outlet into • an adequate watercourse or drainage system as approved by the Township Engineer. Specific findings shall be made by the Township Engineer in this regard for review and adoption by the approving authority as part of its written resolution (findings of facts).
- [3] Techniques for computing stormwater runoff shall be as approved by the Township Engineer. The rational method of surface water runoff computation may be used for storm sewers and open channels with drainage basins up to twenty-five (25) acres in area.
- [4] The coefficient of runoff should be based on good engineering judgment and should take into account the ultimate use of the total drainage area. The range of coefficients is listed below:

Description of Area	Runoff Coefficient
Residential	0.50
Other (industrial, commercial)	0.75 to 0.90 as per Township Engineer

- [5] Rainfall intensity should be based on rainfall curves for northern New Jersey. The design storm frequency shall be twenty-five (25) years, except that a one-hundred-year design storm frequency criteria shall be used when specifically required by the approving authority or the Township Engineer in individual cases and as mandated by other governmental entities having jurisdiction. Minimum inlet time shall be ten (10) minutes.
- [6] Manning's formula shall be used for design of pipes and open channels where the coefficient of roughness (n) is

Description	n
Reinforced concrete pipe	0.013
Corrugated metal pipe	0.024
Corrugated metal pipe, coated and 25% paved	0.022
Corrugated metal pipe with smooth asphalt lining	0.013

This formula may be modified, recalculated and redesignated in the discretion of the Township Engineer

- [7] Storm sewers, open channels, bridges and culverts, unless otherwise directed by the Township Engineer, shall be designed for minimum flow capacities as follows

Type	Design Capacity
Drainage systems ¹	25 years
Drainage structures ²	100 years
Open channels	As determined by Township Engineer

NOTES

¹The term 'drainage systems' refers to the composite of all drainage infrastructure improvements.

²The term drainage structures refers to particular drainage infrastructure improvement such as bridges and culverts.

- [8] The materials used in the construction of storm sewers, bridges and other drainage structures shall be in accordance with the specifications of the Standard Specifications for Road and Bridge Construction of the New Jersey State Highway Department, current edition, and any supplements, addenda and modifications thereof unless otherwise specified by the Township Engineer. Modifications or change of these specifications may be requested by the applicant but may be implemented only with the knowledge and written consent of the Township

Engineer

- [9] Lots shall be graded to secure proper drainage away from buildings and into streets, where possible. Additionally, drainage shall be provided in a manner which will prevent the collection of stormwater in pools or other unauthorized concentrations of flow and, to the extent possible, and unless specifically approved in writing by the adjacent property owner and incorporated into appropriate resolution by the approving authority, water shall not flow across adjacent property lines.
 - [10] Approval for drainage structures shall be obtained from the appropriate municipal, county, state and federal agencies and offices. Each applicant shall make application to the State Division of Water Policy and Supply of the Department of Environmental Protection, the Morris County Engineering Department, the Township Engineer and, if applicable, the United States Army Corps of Engineers. Letters of approval from the appropriate governmental authorities shall be furnished to the Township Engineer, with copies to the approving authority, prior to the granting of final approval.
 - [11] Where required by the township and a lot or tract is traversed by a watercourse, surface or underground drainageway or drainage system, channel or stream, there shall be provided and dedicated a drainage right of way easement to the township conforming substantially with the lines of such water course, and such further width or construction or both as will be adequate to accommodate expected stormwater runoff in the future, based upon reasonable growth potential in the township and, in any event, meeting any minimum widths and locations shown on any adopted official map or Master Plan. Such easement dedication shall be expressed on the plat as follows "Drainage easement granted for the purposes provided for and expressed in the Land Development Ordinance of the township."
 - [12] Where appropriate, seepage pits may be required in order to recharge aquifers.
- (b) Major developments
- [1] Major developments include all residential, governmental, commercial or industrial developments which add one (1) or more acres of impervious surface, and to all other developments which pose a significant potential for pollution of surface or ground waters.
 - [2] The flood and erosion control standard for detention will require that volumes and rates be controlled so that after development the site will generate no greater peak runoff at the site than prior to development, for either a two year, ten year, and one-hundred-year storm considered individually. Such storms may be computed either as a Type II twenty four hour storm under United States Soil Conservation Service procedures, (United States Soil Conservation Service, Urban Hydrology for Small Watersheds, Technical Release No 55, January 1975) or as the estimated maximum rainfall for the estimated time of concentration of runoff at the site. Tabulations of estimated maximum rainfall are available from the New Jersey Department of Environmental Protection and shall be the basis for calculation unless more reliable localized data is available, which then shall be used accordingly.
 - [3] The water quality requirement for detention will require prolonged retention of a small design storm which shall be either a one year frequency Type II storm or a storm of one and one quarter (1 1/4) inches of rainfall in two (2) hours. Provisions shall be made for it to be retained and released so as to evacuate ninety percent (90%) in approximately eighteen (18) hours in the case of residential developments and thirty six (36) hours in the case of

other developments This is usually accomplished by a small outlet at the lowest level of detention storage, with a larger outlet or outlets above the level sufficient to control the small design storm If the above requirement would result in a pipe smaller than three (3) inches in diameter, the period of retention shall be waived so that three (3) inches will be the minimum pipe size used Where soils have sufficient permeability, the production of zero (0) runoff from the site will be considered sufficient to meet the water quality requirement for residential developments, provided that the groundwater does not rise to within two (2) feet of the bottom of the detention basin For other than residential developments, approvals will be on a case by case basis after technical review by the Township Engineer The object of this review will be to avoid pollution of ground-water.

(c) Floodplain development.

- [1] There will be no detention basins in the floodway.
- [2] Stormwater drainage analysis for development located in floodplains is to determine the adequacy of proposed detention measures during the one hundred year flood applying the one-hundred-year-design storm to both the site and to the entire watershed contributing to the floodplain, assuming that the two (2) peak simultaneously. The time of concentration assumed for the entire watershed should be that appropriate to the larger area, rather than the shorter period applicable to the site
- [3] All development in the floodplain must be in compliance with all applicable regulations under the Flood Hazard Area Control Act, N J S A 58 16A 50 et seq.
- [4] In default of an analysis such as described above, detention storage provided by construction of dikes or embankments below the elevation of the one-hundred-year flood (either specifically calculated or taken from an official floodplain delineation map) will be credited as effective storage at a reduced proportion as indicated in the table below

TABLE 1: ALLOWABLE PROPORTION OF STORAGE TO BE ASSUMED USABLE IN DETENTION BASINS BELOW THE LEVEL OF THE ONE-HUNDRED-YEAR FLOOD, IN DRAINAGE BASINS OF VARIOUS SIZES

Elevation of storage provided	Drainage Basin Area at Site		
	Less than 5	5-100	Over 100
below 100 year flood level	Square Miles (percent)	Square Miles (percent)	Square Miles (percent)
Less than 2 feet	40	65	90
2 4feet	25	50	75
Over 4 feet	10	25	50

- [5] This effective detention storage, plus other supplementary measures, will be required to provide for stormwater detention in accordance with established standards However, the gross storage considered for this evaluation will not exceed that which would be filled by runoff of a one-hundred-year storm at the site
- [6] In making computations under the method described above, the volume of net fill added to the flood hazard area portion of the project site will be subtracted from the capacity of effective detention storage provided Net fill is defined as the total amount of fill created by the project less the amount of material excavated during the construction of the project,

both measured below the elevation of the one hundred year flood but above the elevation of low water in the stream

(d) Alternatives to detention basins.

- [1] In lieu of or in combination with detention basins, basic requirements may be satisfied by means of rooftop storage, tanks, in filtration pits, dry wells or gravel layers underneath paving, with appropriate consideration for length of life and feasibility of continued maintenance. Vacuum street sweeping may be substituted for the water quality requirement, in cases in which continuity of the service can be assured, and where the pollution in question originates on the pavement.

(e) Maintenance and repair

- [1] Applicant shall indicate responsibility for long term maintenance of detention basins or other stormwater facilities.
- [2] A schedule of maintenance inspections shall be established.
- [3] Agreements shall be prepared providing, in the case of privately owned and maintained drainage facilities, that in the event maintenance or repair is neglected, the township and/or County of Morris has the authority to perform necessary work and charge the property owner accordingly.

B. Site plans. [Amended 8-27-1981 by Ord. No. 21-1981; 12-14-1982 by Ord. No. 31 1982]

- (1) Site plan design principles shall be in accord with subdivision design standards, § 95-39A, as appropriate.
- (2) The provisions of the township ordinance with respect to height, minimum lot areas, mandatory open spaces and other requirements shall be complied with.²⁶

26. Editor's Note: See the Schedule of Area Requirements at the end of Art. VII.

- (3) Adequate provision shall be made for off street parking in accordance with this chapter, and adequate traffic circulation, traffic safety and protection to adjoining property shall be provided.
- (4) Stormwater disposal shall satisfy requirements of 95-36A(6).
- (5) The location, design and construction of any building shall not create undue risks of traffic congestion, public safety or other hazards.
- (6) The design or construction of any building or use shall not be so markedly incongruous with the character of the neighborhood as to materially affect the value of adjacent or nearby property.
- (7) Lighting. All parking areas and walkways thereto and appurtenant passageways and driveways serving commercial, public, office, industrial, apartment or other similar uses having common off street parking and/or loading areas and building complexes requiring area lighting shall be adequately illuminated for security and safety purposes. The lighting plan in and around the

parking areas shall provide for nonglare, color-corrected lights focused downward. The light intensity provided at ground level shall be a minimum of three tenths (0.3) footcandle anywhere in the area to be illuminated, shall average a minimum of five tenths (0.5) footcandle over the entire area and shall be provided by fixtures with a mounting height not more than twenty five (25) feet or the height of the building, whichever is less, measured from the ground level to the center line of the light source, spaced a distance not to exceed five (5) times the mounting height. Any other outdoor lighting, such as building and sidewalk illumination, driveways with no adjacent parking, the lighting of signs and ornamental lighting, shall be shown on the lighting plan in sufficient detail to allow determination of the effects to adjacent properties, traffic safety and overhead sky glow. The objective of these specifications is to minimize undesirable off premises effects. No light shall shine into windows or onto streets and driveways in such manner as to interfere with or distract driver vision. To achieve these requirements, the intensity of such light sources, the light shielding and similar characteristics shall be subject to site plan approval.

- (8) All parking areas shall provide for adequate ingress and egress and safe and convenient traffic circulation. Access drives and aisles shall be of sufficient width to permit safe access to parking spaces and safe traffic movement.
- (9) Off-street parking areas shall be used solely for the parking of passenger automobiles and no commercial repair work or service of any kind shall be conducted on the parking lot, nor shall such lots be used for the parking of disabled, dismantled, inoperable or unregistered vehicles.
- (10) No signs other than "entrance," "exit" or "conditions of use" signs shall be maintained.
- (11) Service aisles distance between parking spaces
 - (a) All parking areas shall be designed with service aisles to meet the following standards

Type of Parking	Width of Aisle (feet)
Parallel	12
30-degree angle	11
45 degree angle	12
60-degree angle	18
90-degree angle	24

- (b) In addition, there shall be a minimum distance between parallel parking spaces of six (6) feet when found necessary to provide for convenient access.
- (12) All off-street parking and loading areas, except for parking which is accessory to one- and two-family dwellings, shall meet the location requirements prescribed in Article VII, Zoning, of this chapter.
- (13) All grades within parking lots shall be at least one percent (1%) and shall not exceed ten percent (10%) and shall be adequately drained, subject to the approval of the Township.

Engineer. All grades in lawn areas shall be at least two percent (2%).

(14) Paving. Parking lot pavement shall consist of one (1) of the following, to be measured at a compacted depth:

(a) Three-inch bituminous stabilized base with one-and-one-half inch FABC.

(b) Four-inch quarry process (Type 5, Class A) with three-inch FABC.

(c) Other as approved by the approving authority.

(15) The applicant shall obtain necessary approvals of any state, county or municipal agencies.

(16) The approving authority shall give consideration to such other elements or aspects of the site plan or proposed use as may relate to the design of the plan, the general environment of the area or the health, safety and general welfare of the public.

(17) Sidewalks, curbing and/or wheel stops shall be in-stalled whenever required by the approving authority. Curbing shall consist of concrete or granite block curbing six (6) inches above the paved surface, when required

(18) In general, parking spaces shall be ten (10) feet wide by twenty (20) feet long and shall be clearly marked with painted lines. In major developments where the parking requirements will be long-term in duration, such as corporate office facilities, office parks, etc., parking stalls may be reduced in width to nine (9) feet and in length to nineteen (19) feet.

(19) For purposes of this article, parking garages are permitted, but the area within the garage(s) shall be exclusive of the permitted floor area ratio requirement.²⁷

27. Editor's Note: Former Subsection B(19), regarding requirements for smaller car parking spaces, was repealed 8-13-2007 by Ord. No. 17-2007. This ordinance also provided for the redesignation of former Subsection B(20) as Subsection B(19).

C. Route 10 corridor. It is the Township's intention to provide alternatives to the strip development pattern currently found along the Route 10 corridor and to upgrade the corridor from an economic, aesthetic and functional perspective. The following standards are to be applied to all development and redevelopment proposals located in the three Highway Business Districts delineated in the 2005 Land Use Element of the Township Master Plan. Each application for development or redevelopment shall provide a concise written report documenting how each standard is addressed. **[Added 7-10-2006 by Ord. No. 11-2006]**

(1) General.

(a) Encourage development and redevelopment that emphasizes quality architecture, shared access and parking, transit-friendly facilities, pedestrian circulation, appropriate intensification of buildings and extensive landscaping, especially in parking areas.

(b) Discourage commercial development with blank or windowless walls, oversized parking areas, light pollution, multiple and uncontrolled access points.

- (c) Provide a healthy balance of land uses, and retrofit single-use commercial into accessible, compact, well-designed mixed use centers with linkages to the surrounding community.

(2) Design.

- (a) Establish the architecture, pedestrian space and green spaces as the focal point of development as opposed to parking lots and signs, and create a sense of place by providing amenities such as parks, recreational opportunities , entertainment and cultural activities.
- (b) Plazas, courtyards and green areas are to be considered an integral component of all development in the corridor and should be designed to provide a lively human scale environment for residents, customers and employees. These features should also be designed to protect environmentally sensitive features, and provide appropriate visual and noise buffers, especially between residential and nonresidential areas.
- (c) Buildings should be designed to provide architectural interest and to avoid a monolithic box-like appearance. Pitched roofs and architectural embellishments such as dormers are encouraged. Flat roofs should include appropriate ornamentation such as cornices or parapets. Windows should be provided in all building facades to avoid monotonous blank walls. The front of each building should be oriented toward a sidewalk, courtyard or street. Sidewalks should extend from the building facade to the curb for the purpose of facilitating pedestrian movement and creating opportunities for outdoor eating and shopping areas, and providing space for bus waiting areas or shelters, street furniture, etc.
- (d) Ground floor commercial facades should have large, clear storefront glass areas to display the nature of the business and to produce an interesting streetscape. A shop front should be separated from the roofline or a second floor by a horizontal architectural element such as a sash, cornice, frieze or molding. The design of awnings or canopies should be architecturally compatible with the style, materials, colors and details of buildings and should not conceal significant architectural features such as cornices, columns, pilasters or other trim details.
- (e) Freestanding signs should be consolidated at strategic locations , complement the architectural style of the development, avoid a cluttered appearance and be limited to the name and logo of a project or center. Tenant directory signs should be located away from the right-of-way. Facade signs should complement and not interfere with or be out of proportion with or cover over a building's architectural details,
- (f) Appropriate landscaped areas should be provided along the highway edge that include provisions for walkways, bike paths, plantings and shade trees.

(3) Transportation and access.

- (a) Use interconnected internal road systems to provide opportunities for parallel movement along the corridor; and channel vehicular access to well-defined access points such as signalized intersections and service roads.
- (b) Provide opportunities for residents, shoppers and employees to access mass transit

through the incorporation of design features that accommodate bus and shuttle service such as shelters, street furniture and pull-off lanes within reasonable proximity to major uses and destinations.

- (c) Provide workable and attractive pedestrian and bicycle circulation systems within each development and linkages to surrounding developments and neighborhoods.

(4) Parking.

- (a) Locate parking lots behind or next to buildings, so that the buildings can be closer to the roadway, be more visible and be more accessible to pedestrians.
- (b) Reduce the number of curb cuts along the corridor and the need for excessive parking through the use of shared and connected parking facilities.
- (c) Surface parking lots should be extensively landscaped to provide visual relief from large expanses of parking, to guide circulation and to minimize impervious coverage.
- (d) Structured parking shall be designed to provide architectural interest and ameliorate the appearance of large concrete facades. Whenever possible, parking structures should be integrated into the principal structure in such a way as to be indistinguishable from surrounding buildings.

§ 95-39.1. Environmental impact statement. [Added 12-14-1982 by Ord. No. 31-1982]

A. General provisions. The impact on the environment generated by land development projects necessitates a comprehensive analysis of the variety of problems that may result and the actions that can be taken to minimize those problems. It is further recognized that the level of detail required for various types of applications will vary depending on the size of the proposal, the nature of the site and the location of the project. Therefore, having determined that some flexibility is needed in preparing the environmental impact statement, the requirements for such a document are listed as follows:

- (1) All agricultural operations conducted in accordance with a plan approved by the Soil Conservation District and all silvaculture operations conducted in accordance with a plan prepared by a professional forester are specifically exempt from the environmental impact statement requirements.
- (2) It is strongly advised that a preapplication conference be held with the approving authority and the East Hanover Environmental Commission to determine the level of detail required in the environmental impact statement.
- (3) In preparing an environmental impact statement, the applicant shall retain one or more competent professionals to perform the necessary work. All applicable material on file in the Township pertinent to local conditions shall be consulted. Any additional material pertinent to evaluation of potential regional impacts shall also be considered. Furthermore, as much original research as is necessary shall be conducted to develop a comprehensive environmental impact statement.
- (4) The environmental impact statement shall consist of written and graphic materials which will clearly present the information that is required.

B. General application requirements.

- (1) All minor subdivision applications, preliminary and final site plan applications consisting of less than 10 acres and conditional use applications, consisting of less than 10 acres, may be required to be accompanied by an environmental impact statement. The information required shall be presented in a concise descriptive report. The descriptive report shall be supplemented with additional graphic and explanatory material when environmentally sensitive areas are involved. Environmentally sensitive areas include but are not limited to stream corridors and floodplains, streams and water bodies, wetlands, slopes greater than 20%, highly acid or erodible soils, mature stands of native vegetation, aquifer recharge areas, aquifer discharge areas and unique natural features and habitats.
- (2) All preliminary and final major subdivision applications, preliminary and final site plan applications, consisting of 10 acres or more, and conditional use applications, consisting of 10 acres or more, may be required to be accompanied by an environmental impact statement. The information required shall be presented in a detailed descriptive report which shall include written, graphic or other explanatory material. Certain requirements may be waived by the approving authority if the applicant can prove conclusively that specific requirements are unwarranted.
- (3) Any variance application not involving a site plan, subdivision or conditional use application may be required, at the discretion of the Board of Adjustment, to be accompanied by an environmental impact statement. The information required shall be determined by the Zoning Board of Adjustment.

C. When an environmental impact statement is required, the following format shall be utilized and the information requested shall be provided:

- (1) Project description. Indicate the purpose and scope of the proposed project. Enumerate the benefits to the public which will result from the proposed project and describe the suitability of the site for the intended use. A description of the proposed project shall be presented to indicate the extent to which the site must be altered, the kinds of facilities to be constructed, how they are to be considered and the uses intended. The resident population, working population and visitor population shall be estimated. The compatibility or incompatibility of the proposed project shall be described in relation to the following:
 - (a) Township Master Plan, especially the land use and open space elements.
 - (b) The Master Plan of adjacent municipalities.
 - (c) The Morris County Master Plan.
 - (d) Regional and state planning guides.
 - (e) Other pertinent planning documents.
- (2) Site description and inventory. Provide a description of environmental conditions on the site, which shall include but not be limited to the following items:
 - (a) Types of soil. List and describe each soil type located on the site. If applicable, provide

percolation data. Where the proposed area of land disturbance will involve soils with moderate or severe limitations, as per the Soil Survey of Morris County - Soil Conservation Service, relative to the type of project proposed, a complete mapping of all soil types on the site shall be required indicating where those moderate and severe limitations exist.

- (b) Topography. Describe the topographic conditions of the site.
 - (c) Geology. Describe the geologic formations and features associated with the site as well as depth to bedrock conditions. Delineate those areas where bedrock is in close proximity to the surface (within two (2) feet of the surface) as well as major rock outcroppings.
 - (d) Vegetation. Describe the existing vegetation on the site. When required, prepare a map showing the location of major vegetation groupings, such as woodland, open field and wetland. Where woodlands are delineated, indicate the forest type.
 - (e) Wildlife. Identify unique habitats. Where applicable, other data assembled regarding wildlife activity on the site shall also be mapped and/or described.
 - (f) Surface water. Describe existing watercourses and water bodies that are partially or totally on the site and their relationship to the area of disturbance. Calculate existing surface runoff from the site. When the natural drainage pattern will be significantly altered or sewage effluent is to be added to a watercourse or body, an analysis shall be conducted which will investigate flow, depth, capacity and water quality of the receiving waters. When required, floodplain areas will be mapped in consultation with the Department of Environmental Protection, and, as appropriate, all floodplain lines affecting the project should be verified. Existing structures shall be mapped and the capacity of drainage network shall be determined. Floodplain analysis will also take into account upstream drainage area, floodwater storage areas and backwater requirements.
 - (g) Subsurface water. Describe the subsurface water conditions on the site, in terms of depth to groundwater, water tables elevations, and of water supply capabilities of the site. Where existing conditions warrant, provide detailed information regarding existing wells within five hundred (500) feet of the site relative to depth, capacity capabilities of the adjacent areas and the recharge capabilities of the site.
 - (h) Unique, scenic and/or historic features. Describe and map those portions of the site that can be considered to have unique, scenic and/or historic qualities.
 - (i) Existing development features. Describe any existing features on the site that are not considered to be part of the natural environment. This may include, but not necessarily be limited to, roads, housing units, accessory structures, utility lines, etc.
 - (j) Miscellaneous. When warranted, an analysis shall be conducted of existing air quality and noise levels as prescribed by the New Jersey Department of Environmental Protection.
- (3) Area and regional description. Provide a description of the surrounding environs. Describe the existing land use pattern. When required, describe in detail the existing infrastructure with respect to the drainage and transportation network as well as any central sewage and water supply facilities. Include an appropriate regional analysis relative to the proposed

project.

- (4) Environmental performance controls. Describe in detail what measures will be employed during the planning, construction and operation phases which will minimize or eliminate negative impacts on- and off-site that could result from the proposed project. Of specific interest are:
 - (a) Drainage plans, which shall include but not be limited to soil erosion and sedimentation controls. Every effort should be made to limit off-site surface runoff to predevelopment levels.
 - (b) Sewage disposal techniques.
 - (c) Water supply and water conservation proposals.
 - (d) Site design techniques sensitive to the natural environment, which should include innovative landscape, building and circulation design.
 - (e) Energy conservation measures.
 - (f) Noise reduction techniques.
 - (g) Miscellaneous on-site and off-site public improvements.
- (5) Impact. Discuss both the negative and positive on-tract and off-tract impacts. Indicate those negative impacts that are unavoidable. The specific concerns that shall be considered include, but are not limited to, the following:
 - (a) Soil erosion and sedimentation resulting from surface runoff.
 - (b) Flooding and floodplain disruption.
 - (c) Degradation of surface water quality.
 - (d) Groundwater pollution.
 - (e) Reduction of groundwater capabilities.
 - (f) Sewage disposal.
 - (g) Solid waste disposal.
 - (h) Vegetation destruction.
 - (i) Disruption of wildlife habitats.
 - (j) Destruction of scenic and historic features.
 - (k) Air quality degradation.
 - (l) Noise levels.

- (m) Energy utilization.
 - (n) Neighborhood deterioration.
 - (o) Effect on public services, i.e., schools, fire, police, etc.
 - (p) Traffic congestion.
 - (q) Health, safety and welfare of existing residents.
 - (r) Regional development policies.
- (6) Alternatives. Discuss what alternatives were considered both in terms of site design and project location. Indicate why an alternative was rejected if it would have resulted in less of a negative impact than the subject proposal.
 - (7) Licenses, permits and other approvals required by law. The applicant shall list all known licenses, permits and other forms of approval required by law for the construction and operation of the proposed project. This list shall include, but will not be limited to, approvals required by the township, as well as agencies of the county, state and federal governments. Where approvals have been granted, copies of said approvals shall be attached. Where approvals are pending, a note shall be made to that effect.
 - (8) Documentation. All publications, file reports, manuscripts or other written sources of information related to the project, the project site and the township which were consulted and employed in compilation of the environmental impact statement shall be listed. A list of all agencies and individuals from whom pertinent information was obtained orally or by letter shall be listed separately. Dates and locations of all meetings shall be specified.
- D. Disposition. The approving authority shall not approve any submission unless it determines and finds that the proposed development:
- (1) Will not result in appreciable harm to the environment.
 - (2) Has been designed and conceived with a view toward the protection of regional sources.
 - (3) Will not place a disproportionate or excessive demand upon the total resources available for such proposal and for any future proposals.

§ 95-39.2. Performance standards for all uses. [Added 12-14-1982 by Ord. No. 31-1982]

An application for a permit shall provide documentation that the intended use will comply with the performance standards enumerated below. In the case of a structure being built where the future use is not known, a construction permit may be issued with the condition that no certificate of occupancy will be issued until such time as this documentation is submitted with respect to the particular occupant. A new application and a new certificate of occupancy shall be required in the event of a change of any user of any structure. In reviewing any site plan, the approving authority shall consider the following:

- A. Traffic. 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, foods and vehicles from access roads within the site, between buildings and between buildings and vehicles, should be carefully reviewed. The approving authority shall ensure that all parking spaces are usable and are safe and conveniently arranged. 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.

- B. Design and layout. 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 development and contiguous and adjacent buildings and lands.
- C. Lighting. 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 approving authority. Directional lights shall be arranged so as to minimize glare and reflection on adjacent properties.
- D. Buffers. Buffering shall be located around the perimeter of the site and/or in groupings at strategic locations in order to minimize the glare of headlights of vehicles, lights from structures, noise and the movement of people and vehicles and to shield activities from adjacent properties, etc. Buffering may consist of fencing, evergreens, shrubs, bushes, deciduous trees, etc., or combinations thereof to achieve the stated objectives.
- E. Landscaping. Landscaping shall be provided as part of the overall site plan design 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 in an imaginative manner.
- F. Signs. 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 a hazard to vehicles and pedestrians. (See § 95-54C.)
- G. Storm drainage, sanitary waste disposal and water supply. Storm drainage, sanitary waste disposal and water supply shall be reviewed and considered. Particular emphasis shall be given to the adequacy of the existing system 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.
- H. Garbage disposal. Garbage disposal should be adequate to ensure freedom from vermin and rodent infestation.
- I. Environmental elements. Environmental elements relating to soil erosion, preservation of trees, protection of watercourses and resources, emission of glare, noise, odor, air and water pollution, aesthetic conditions, topography, soil and animal life shall be reviewed and the design of the plan shall minimize any adverse impact on these elements.
- J. Support facilities. Support facilities, including the proximity and capacity of community facilities necessary to sustain the needs and demands of the proposed development, should be carefully considered so as to maintain and promote balanced community environments. These support facilities may include phone booths, benches, bike racks, trash receptacles, bus shelters, tot lots, game fields, open space and land dedication for educational facilities,

firehouses, etc.

- K. Electrical and/or electronic devices. All electrical or electronic devices shall be subject to the provisions of Public Law 90-602, 90th Congress, HR 10790, dated October 18, 1968, entitled "An Act for the Protection of Public Health and Safety from the Dangers of Electronic Production Radiation." Radiation products, as defined in Department of Health, Education and Welfare Publication No. (FDA) 78-8003, shall be so limited and controlled that no measurable energy can be recorded at any point beyond the property boundaries. The applicant, upon request, shall produce certified data wherein measurements made in accordance with the procedures and standards set forth in the Department of Health, Education and Welfare Publication No. (FDA) 75-8003 adequately demonstrate compliance with the minimum standards established by the Act. All other forms of electromagnetic radiation lying between one hundred (100) kilohertz and ten (10) megahertz shall be restricted to the technical limits established in the Federal Communication Commission's Rules and Regulations. Additionally, electric or electronic equipment shall be shielded so that there is no interference with any radio or television reception at the lot line (or beyond the operator's dwelling unit in the case of multifamily dwellings) as the result of the operation of such equipment.
- L. Glare. No use shall produce a strong, dazzling light or a reflection of a strong, dazzling light or glare beyond its lot lines. Exterior lighting shall be shielded, buffered and directed so that glare, direct light or reflection will not become a nuisance to adjoining properties, adjoining dwelling units, adjoining districts or streets. Also see § 95-56C(6)(f).
- M. Heat. No use shall produce heat perceptible beyond its lot lines. Further, no use shall be permitted which would cause the temperature to rise or fall in any body of water.
- N. Noise. Noise levels shall be designed and operated in accordance with local regulations and those rules established by the New Jersey State Department of Environmental Protection, as they are adopted and amended.
- O. Odor. Odors due to nonagricultural operations shall not be discernable at the lot line or beyond.
- P. Storage and waste disposal. No materials or wastes shall be deposited upon a lot in such form or manner that they may be transferred off the lot by natural causes or forces, nor shall any substance be deposited which can contaminate an underground aquifer or otherwise render such underground aquifer undesirable as a source of water supply or recreation, or which will destroy aquatic life. All materials or wastes which might cause fumes or dust or which constitute a fire hazard or which may be edible or otherwise attractive to rodents or insects shall be stored indoors and enclosed in appropriate containers adequate to eliminate such hazards. With respect to solid wastes, each business and industry shall:
 - (1) Assume full responsibility for adequate and regular collection and removal of all refuse.
 - (2) Comply with all applicable provisions of the Air Pollution Code,²⁸ including prohibition of open burning on dumps and regulations applicable to sanitary landfill and incineration.

28. Editor's Note: See Ch. 170, Air Pollution Control.

- (3) Comply with all provisions of the State Sanitary Code, Chapter VIII, Refuse Disposal, Public Health Council of the State Department of Health.
- (4) Permit no accumulation on the property of any solid waste, junk or other objectional materials.
- Q. Ventilation. No use shall obstruct the natural ventilation of adjacent uses nor contaminate the air with excessive heat or odor. Further, no air conditioners or exhaust fans shall be permitted to discharge exhausted air unless set back from all property lines ten (10) feet or equipped with baffles to deflect the discharged air away from the adjacent use.
- R. Vibration. See § 95-56C(6)(d).
- S. Air pollution. As per Air Pollution Control Code of the Township of East Hanover. (See Chapter 170.)
- T. Liquid wastes. See § 95-56C(6)(c).
- U. Radiation. All use of materials, equipment or facilities which are or may be sources of radiation shall comply with all controls, standards and requirements of the Radiation Protection Act, Chapter 116, P.L. 1958, as amended December 4, 1961, and any codes, rules or regulations promulgated under such act. No radioactive materials shall be buried on the premises. This provision shall not be effective until approved by the Commissioner of the Department of Health as provided in N.J.S.A. 26:2D-17.
- V. Noise and vibration noise.
 - (1) When measured at any point along the lot line, the sound-pressure level radiated continuously from a facility between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed the following in any octave band of frequency:

Sound Pressure
Frequency Band Levels in Decibels
Cycles Per Second Re. 0.0002 Microbar

20-75	69	
75-150		54
150 - 300		47
300 - 600		41
600 - 1200		37
1200 - 2400		34
2400 - 4800		31
4800 - 9600		28

- (2) If the noise is not smooth and continuous and is not radiated at nighttime, one (1) or more of the following corrections shall be added to or subtracted from each of the decibel levels given below:

Type of Operation or Correction

Character of Noise	in Decibels
Daytime operation only	+5

Noise source operates less than 20%	+5*
	of the time
Noise source operates less than 5%	+10*
	of the time
Noise source operates less than 1%	+15*
	of the time
Noise impulsive character (hammering, etc.)	—5
Noise of periodic character (hum, screech, etc.)	—5

*NOTE: Apply one (1) of these corrections only.

- (3) The sound pressure shall be measured with a sound-level meter conforming to American Standard Specification for General-Purpose Sound-Level Meters, S 1.4-1961, rev, of Z 24.3-1944, and to an octave band analyzer conforming to the American Standard Specification for an Octave-Band Filter Set for the Analysis of Noise and Other Sounds, Z 24.10-1953, Vibration. No manufacturing, fabricating, research, testing or other processes requiring the use of blasting shall be permitted. Any necessary occasional, emergency or construction blasting shall conform to the limits of the Table of Frequency -Amplitude Relations and all other requirements of the Rules and Regulations Governing Blasting on the Construction and Related Operations, Bureau of Engineering and Safety, State Department of Labor and Industry. No machinery, process or other use will be permitted that causes any mechanical or earth vibration that is detectable beyond the lot line. When operations involve the use of heavy machinery, testing or other facilities likely to produce mechanical vibration, the building shall be constructed and the machinery and equipment shall be installed in such manner as to eliminate the possibility of mechanical vibration or earth vibration of such extent that it is detectable beyond the lot line. For the purpose of measuring compliance, no mechanical vibration or earth vibration shall be permitted that exceeds ten percent (10%) of the limits of the aforementioned Table of Frequency - Amplitude Relations.

W. Fire and explosion hazards. As a condition to approval, the approving authority shall require proof that the applicant for a proposed industry has registered such industry with the Commissioner of Labor and Industry. If, in the judgment of the approving authority, a proposed building, use, structure, process, product or material appears to involve a fire or explosion hazard, the approving authority may require the applicant to supply:

- (1) A copy of the approved plans from the State Department of Labor and Industry showing that adequate safeguards against the origin and spread of fire have been or shall be taken in regard to such things as the construction and materials of the building or structure, the installation of safety and warning devices and the adoption of fire prevention procedures in operations.
- (2) Statement from the appropriate township fire company officials that the applicant has complied with all applicable township fire prevention regulations. (See Chapter 85.)
- (3) Also see § 95-56C(6)(a).

§ 95-40. Exceptions to requirements.

The Planning Board, when acting upon applications for subdivision approval or for site plan approval, shall have the power to grant such exceptions from the requirements for subdivision or site plan approval as may be reasonable and within the general purpose and intent of the provisions herein if the literal enforcement of one (1) or more provisions herein is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

§ 95-41. Selling before final approval.

- A. 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, such person shall be subject to a penalty not to exceed one thousand dollars (\$1,000.) and each lot disposition so made may be deemed a separate violation.
- B. In addition to the foregoing, the township may institute and maintain a civil action for injunctive relief and 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 44 of P.L. 1975, c. 291 (N.J.S.A. 40:55D.1 et seq.). 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.

§ 95-42. Certificates showing approval; contents. [Added 8-27-81 by Ord. No. 21-1981]

- A. 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 (3) years preceding the effective date of this chapter may apply in writing to the Township 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.
- B. The Township Clerk shall make and issue such certificate within fifteen (15) days after the receipt of such written application and the fees therefor. The Secretary to the Planning Board 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 the office of the Secretary.
- C. Each certification shall be designated a "Certificate as to Approval of Subdivision of Land" and shall certify:
 - (1) That there exists in East Hanover a duly established Planning Board and 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 the subdivision of which the lands are a part is a validly existing subdivision.

(3) That the subdivision, if the same has not been approved, is statutorily exempt from the requirement of approval as provided in this chapter.

D. The Township Clerk shall be entitled to demand and receive for such certificate issued by the Clerk 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 the Township Clerk shall be paid by the Clerk to the municipality.

§ 95-42.1. Fertilizer application. [Added 4-2-2012 by Ord. No. 4-2012]

A. Purpose. A Section to regulate the outdoor application of fertilizer so as to reduce the overall amount of excess nutrients entering waterways, thereby helping to protect and improve surface water quality. This section does not apply to fertilizer applications on commercial farms.

B. Basis and background.

(1) Elevated levels of nutrients, particularly phosphorus, in surface water bodies can result in excessive and accelerated growth of algae and aquatic plants (eutrophication). Excessive plant growth can result in diurnal variations and extremes in dissolved oxygen and pH, which, in turn, can be detrimental to aquatic life. As algae and plant materials die off, the decay process creates a further demand on dissolved oxygen levels. The presence of excessive plant matter can also restrict use of the affected water for recreation and water supply.

(2) While healthy vegetated areas are protective of water quality by stabilizing soil and filtering precipitation, when fertilizers are applied to the land surface improperly or in excess of the needs of target vegetation, nutrients can be transported by means of stormwater to nearby waterways, contributing to the problematic growth of excessive aquatic vegetation. Most soils in New Jersey contain sufficient amounts of phosphorus to support adequate root growth for established turf. Over time, it is necessary to replenish available phosphorus, but generally not at the levels commonly applied. Other target vegetation, such as vegetable gardens and agricultural/horticultural plantings, will have a greater need for phosphorus application, as will the repair or establishment of new lawns or cover vegetation. A soils test and fertilizer application recommendation geared to the soil and planting type is the best means to determine the amount of nutrients to apply. Timing and placement of fertilizer application is also critical to avoid transport of nutrients to waterways through stormwater runoff. Fertilizer applied immediately prior to a runoff-producing rainfall, outside the growing season or to impervious surfaces is most likely to be carried away by means of runoff without accomplishing the desired objective of supporting target vegetation growth. Therefore, the management of the type, amount and techniques for fertilizer application is necessary as one tool to protect water resources.

(3) This section does not apply to application of fertilizer on commercial farms, but improper application of fertilizer on farms would be problematic as well. Stewardship on the part of commercial farmers is needed to address this potential source of excess nutrient load to water bodies. Commercial farmers are expected to implement best management practices in accordance with conservation management plans or resource conservation plans developed for the farm by the Natural Resource Conservation Service and approved by the Soil Conservation District Board.

C. Definitions. 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.

BUFFER — The land area, 25 feet in width, adjacent to any water body. However, this buffer may be reduced to 10 feet in the event of small lot sizes or the twenty-five-foot buffer constitutes a majority of the available property. Any reduction will be determined on a case-by-case basis and will require that application of all fertilizer be completed using a drop spreader.

COMMERCIAL FARM — A farm management unit producing agricultural or horticultural products worth \$2,500 or more annually.

FERTILIZER — A fertilizer material, mixed fertilizer or any other substance containing one or more recognized plant nutrients, which is used for its plant nutrient content, which is designed for use or claimed to have value in promoting plant growth, and which is sold, offered for sale, or intended for sale.

IMPERVIOUS SURFACE — A surface that has been covered with a layer of material so that it is highly resistant to infiltration by water. This term shall be used to include any highway, street, sidewalk, parking lot, driveway, or other material that prevents infiltration of water into the soil.

PERSON — Any individual, corporation, company, partnership, firm, association, or political subdivision of this state subject to municipal jurisdiction.

PHOSPHORUS FERTILIZER — Any fertilizer that contains phosphorus, expressed as P₂O₅ with a guaranteed analysis of greater than zero; except that it shall not be considered to include animal (including human) or vegetable manures, agricultural liming materials, or wood ashes that have not been amended to increase their nutrient content.

SOILS TEST — A technical analysis of soil conducted by an accredited soil-testing laboratory following the protocol for such a test established by Rutgers Cooperative Research and Extension.

WATER BODY — A surface water feature, such as a lake, river, stream, creek, pond, lagoon, bay or estuary.

D. Prohibited conduct. No person may do any of the following:

- (1) Apply fertilizer when a runoff producing rainfall is occurring or predicted and/or when soils are saturated and a potential for fertilizer movement off site exists.
- (2) Apply fertilizer to an impervious surface. Fertilizer inadvertently applied to an impervious surface must be swept or blown back into the target surface or returned to either its original or another appropriate container for reuse.
- (3) Apply fertilizer within the buffer of any water body.
- (4) Apply fertilizer more than 15 days prior to the start of or at any time after the end of the recognized growing season. The established growing season for the Township of East Hanover is March 15 through October 31.

E. Phosphorus fertilizer application. No person may do the following:

- (1) Apply phosphorus fertilizer in outdoor areas except as demonstrated to be needed for the specific soils and target vegetation in accordance with a soils test and the associated annual fertilizer recommendation issued by Rutgers Cooperative Research and Extension.
 - (2) Exceptions:
 - (a) Application of phosphorus fertilizer needed for:
 - [1] Establishing vegetation for the first time, such as after land disturbance, provided the application is in accordance with the requirements established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. and implementing rules;
 - [2] Reestablished or repairing a turf area.
 - (b) Application of phosphorus fertilizer that delivers liquid or granular fertilizer under the soils surface, directly to the feeder roots.
 - (c) Application of phosphorus fertilizer to residential container plantings, flowerbeds, or vegetable gardens.
- F. Enforcement. This section shall be enforced by the Township of East Hanover Zoning Officer.
- G. Violations and penalties. Any person(s) found to be in violation of the provisions of this section shall be subject to a fine of not less than to a fine of \$50 for a first offense; \$100 for a second offense; \$200 for a third offense; and for subsequent offenses no more than \$500 and imprisonment for not more than 90 days. Each violation of a separate subsection of this section shall constitute a separate violation, and each day that a violation continues shall constitute a separate and distinct violation hereof.

ARTICLE VII Zoning

§ 95-43. Purpose; interpretation.

It shall be the purpose of this Article to promote health, safety, morals and general welfare; prevent the overcrowding of land and buildings; avoid undue concentration of population; provide adequate light and air, with reasonable consideration to the character of the zone and its peculiar suitability for particular uses, and with the objective of conserving the value of property and encouraging the most appropriate use of land throughout the township.

§ 95-44. Establishment of Zones.

- A. Zones. The land within the township is hereby divided into the following zones:

R-10 One-Family, Residential (10,000 square feet minimum)

R-11 One-Family, Residential (11,250 square feet minimum)

R-15 One-Family, Residential (15,000 square feet minimum)

R-20 One-Family, Residential (20,000 square feet minimum)

R-120 Residential (3-acre density)

R-120-CR Residential, Commercial and Recreational

SFA Single-Family Attached **[Added 11-8-1984 by Ord. No. 27-1984]**

B-1 Neighborhood Business

B-2 Highway Business

B-2B Highway Business **[Added 12-3-1992 by Ord. No. 23-1992]**

R-L Research Laboratory and Office

PB-1 Professional and Business Office (1/2 acre minimum)

PB-2 Professional and Business Office (3 acres minimum)

PB-3 Professional and Business Office (50 acres minimum) **[Added 12-14-1982 by Ord. No. 31-1982]**

I-3 Light Industry (3 acres minimum)

I-1 Light Industry (1 acre minimum)

P Public

CEM Cemeteries

HD/OCI Highway Development/Office, Commercial, Industrial (Hartz) **[Added 11-21-1989 by Ord. No. 14-1989]**

RAH-1 Residential Affordable Housing District (Nike) **[Added 11-21-1989 by Ord. No. 14-1989]**

RAH-4 Residential Affordable Housing Zone **[Added 6-13-1996 by Ord. No. 13-1996; amended 5-15-1997 by Ord. No. 17-1997]**

R-10/CSAH Residential Affordable Housing District (Dixon) **[Added 11-21-1989 by Ord. No. 14-1989; amended 11-21-1989 by Ord. No. 19-1989]**

SED (Special Economic Development) Industrial District **[Added 12-3-1992 by Ord. No. 24-1992]**

- B. Zoning Map.²⁹ The aforesaid zones are hereby established by designations, locations and boundaries thereof as set forth and indicated on the Zoning Map, entitled "Zoning Map, June 1979, Township of East Hanover, Morris County, New Jersey," prepared by Robert Catlin and Associates, City Planning Consultants, Denville, New Jersey, amended through December 14, 1982. Said Zoning Map is hereby incorporated into and made a part of this article.³⁰ Permitted uses in all zones are those permitted subject to and in accordance with Article IX, Flood

Management, of this chapter, of which this section is a part. **[Amended 12-14-1982 by Ord. No. 31-1982³¹]**

29. Editor's Note: See also the Table of Zoning Map Amendments, included at the end of this chapter.

30. Editor's Note: The Zoning Map is included in a pocket at the end of this volume. The Zoning Map was amended 8-17-1982 by Ord. No. 24-1982 to correct three typographical errors that appeared thereon.

31. Editor's Note: Specific zoning changes proposed in this ordinance were indicated on its attached Exhibit A, which is a portion of the Zoning Map. Exhibit A is on file in the office of the Township Clerk.

C. Zone boundaries. Where uncertainty exists as to any of said boundaries as shown on said map, the following rules shall apply:

- (1) Zone boundary lines are intended to follow the center lines of streets, railroad and utility line rights-of-way, streams and lot or property lines as they exist on plats of record at the time of the passage of this chapter, unless such zone boundary lines are fixed by dimensions as shown on the Zoning Map.
- (2) Where such boundaries are not fixed by dimensions and where they approximately follow lot lines and where they are not more than 10 feet distant therefrom, such lot lines shall be construed to be such boundaries unless specifically shown otherwise.
- (3) In unsubdivided land and where a zone boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions shown on the map, shall be determined by the use of the scale appearing thereon.

§ 95-45. Schedule.

A. Deemed part of article; minimum requirements.

- (1) The schedule of requirements entitled "Schedule of Area Requirements, Zoning Ordinance of the Township of East Hanover, which is attached hereto,³² applying to the yards and other open spaces to be provided contiguous thereto and all other matters contained therein, as indicated for the various zones established by this article, is hereby declared to be a part of this article. **[Amended 8-27-1981 by Ord. No. 21-1981]**

32. Editor's Note: The schedule of Area Requirements is included at the end of Article VII.

- (2) The requirements listed for each zone as designated, reading from left to right across the schedule, are hereby prescribed for such zones, subject to the other provisions in this article, and shall be deemed to be the minimum requirements in every instance of their application.

[Schedule of Area Requirements](#)

§ 95-46. General regulations.

- A. No building shall hereafter be erected and no existing building shall be moved, structurally altered, added to or enlarged, rebuilt nor shall any land be designed, used or intended to be used for any purpose other than those purposes permitted in this article. Nor shall any open space

contiguous to any building be encroached upon or reduced in any manner except in conformity to the yard, lot area, building location, percentage of lot coverage and such other regulations designated in the schedule appended hereto, constituting a part of § 95-45 of this article, for the zone in which such building is located. In the event of any such unlawful encroachment or reduction, such building or space shall be deemed to be in violation of the provisions of this article and the certificate of occupancy for such building shall thereupon become null and void.

- B. **[Amended 12-3-1992 by Ord. No. 23-1992; 11-13-1997 by Ord. No. 48-1997]** Every principal building shall be built upon a lot with frontage upon a public street, and there shall be no accessory structure without a principal structure on a lot.

(1) No residential lot shall have erected upon it more than one residential building.

(2) Except as otherwise herein provided, a nonresidential lot shall not have erected upon it more than one principal structure. This provision shall not apply to:

- (a) Antennas and towers pursuant to Ordinance No. 36-1997³³ located within the P, R-L, HD/OCI and SED Zones, respectively, as well as state-owned property located in the Township of East Hanover.

33. Editor's Note: See Ch. 95, Art. IXA, Telecommunications Antennas and Towers.

- (b) Lots located within the Business B-2 Zone and B-2B Highway Business Zone, if such lots conform to the following conditions: **[Amended 7-12-2004 by Ord. No. 24-2004]**

[1] All structures built on any lot in the Business B-2 Zone or the B-2B Highway Business Zone shall be of nonresidential use.

[2] The minimum lot area shall not be less than five acres.

[3] There shall be highway frontage of at least 400 feet.

[4] The separation between principal buildings shall be a minimum of 40 feet. A greater separation may be required, if necessary, by the board having jurisdiction over an application for development for the construction of storm drainage, water, sanitary sewer and other utilities and for primary access and traffic circulation.

[5] Lot coverage of all buildings constructed on the lot shall not exceed 30% of the total area of the lot.

[6] Minimum setback distances from the front, side and rear lot lines shall meet zone requirements.

[7] Any substantial subdivision shall take place only on the basis of one principal use on the lot with provisions for all required area, frontage and setback requirements.

(3) A nonresidential lot shall only have uses of structures permitted thereon in accordance with the appropriate zoning designation on the Zoning Map.

- C. Off-street parking space and garage space shall be provided with necessary passageways and driveways. All such space shall be deemed to be required space on the lot on which the same is

situated and shall not thereafter be encroached upon or reduced in any manner. No permanent parking facilities shall be permitted within 20 feet of any street line in a zone. There shall be provided not less than one parking space for each dwelling unit in a residential zone, and no commercial registered vehicle owned or used by an occupant of the dwelling, in excess of 3,000 pounds (load capacity as determined by manufacturer's payload specifications), shall be parked outdoors overnight in any residential zone. **[Amended 8-27-1981 by Ord. No. 21-1981]**

- D. Where a lot is formed from part of a lot already occupied by a building, such separation shall be effected in such a manner as not to impair any of the requirements of this article with respect to the existing building and all yards and other open spaces in connection therewith. No permit shall be issued for the erection of a new building on the new lot thus created unless it complies with all the provisions of this article.
- E. Accessory structures and private garages. **[Amended 8-27-1981 by Ord. No. 21-1981; 7-10-2000 by Ord. No. 19-2000; 5-9-2005 by Ord. No. 9-2005; 7-10-2006 by Ord. No. 11-2006; 8-8-2011 by Ord. No. 6-2011]**

(1) Accessory structures.

- (a) Detached accessory structures shall be located to the rear of the front building line of the principal structure and shall comply with the provisions of the schedule governing their location in each zone.
- (b) No more than two detached accessory structures are permitted on a single-family residential property. For the purposes of this section, pools are not to be counted in the maximum number of accessory structures.

(2) Private garages and driveways. The following standards apply to all private garages and driveways associated with detached single-family residential buildings in all zoning districts:

(a) Attached garages.

- [1] Attached garages are to be considered part of the principal building to which they are attached and shall comply with the provisions of the schedule governing the location of the principal building in each zone.
- [2] Front-loaded garages shall be limited to two vehicles. Side-loaded garages, i.e., having the vehicle doors face a sideline, may contain up to three vehicles.
- [3] Both front-loaded garages and side-loaded garages are to be considered part of the principal building and must adhere to all required yard setbacks applicable to the principal building.

(b) Detached garages.

- [1] Detached garages are to be considered accessory structures and shall be included in the calculation of the number of and coverage by accessory structures; and shall comply with the setback provisions for accessory buildings.
- [2] While maintaining the required setbacks for accessory buildings, detached garages shall be placed to the rear of the principal building and located in a manner that

maintains access to and use of the rear yard, provides adequate space to maintain the garage, and lessens the visual impact on neighboring residential properties.

[3] The ground floor area of a garage shall not exceed 30% of the ground floor area of the principal building or 1,000 square feet, whichever is less.

[4] The pitch of a garage roof should, to the greatest extent possible, match the pitch of the roof on the principal residential building, but in no case shall the garage exceed 15 feet or 1 1/2 and is stories in height.

(c) All garages.

[1] Garages shall not accommodate more than three vehicles or have more than three vehicle doors. All vehicle doors on a garage shall be the same height. Garage doors shall contain elements such as panels and windows to reduce the apparent size of the door(s).

(d) Driveways.

Garage Type

Maximum Width

All garages

22 feet from the street to the garage or to a turn or turn-around area, if applicable. The dimensions of the turn/turn-around area shall be approved by the Township Engineer.

[1] The amount of impervious coverage in the area between the front wall of the principal building and the front property line between the two sidelines shall be limited to a maximum of 40% of said area.

[2] Driveways shall be set back at least four feet from an adjoining property line. The setback area shall be suitably landscaped. When side-loaded garages face a residential property, appropriate landscaping or fencing shall be provided along the adjoining property line to buffer the impact of headlights and vehicle exhaust on the adjoining property, and to prevent vehicles from overhanging or otherwise encroaching on the adjoining property.

[3] The number of curb cuts or access points shall be limited to one per 50 feet of frontage, up to a maximum of two. Driveways on a corner lot shall only access one street, and the curb cut shall be located at least 30 feet from the intersection of the right-of-way lines. The maximum width of a curb cut shall be 24 feet.

[4] Driveway permits, for a fee of \$50, shall be obtained for all driveway construction and subject to approval by the Township Engineer.

[5] Driveways shall be constructed to provide sight distances conforming to the standards set forth within "A Policy on Geometric Design of Highways and Streets," published by the American Association of State Highway and Transportation Officials, except that in performing the analysis, the location of the driver's eye shall be 15 feet behind the curblane or edge of pavement. Within the established sight triangle, there shall be no hedge, tree stand, fence or wall higher than three feet, nor

any obstruction to vision other than a post, column or tree not exceeding in cross section one square foot or one foot in diameter between a height of three feet of the said street or driveway at its point of intersection with the street.

- F. A building attached to the main building shall comply in all respects with the requirements of this article applicable to the main building.
- G. When the rear yard of a corner lot adjoins the front yard of a lot to the rear, no building on such corner lot shall be located nearer to the street line of the street on which the lot to the rear faces than a distance equal to the depth of front yard required on such lot to the rear.
- H. Accessory and incidental uses.
 - (1) Nothing in this article shall be deemed to prohibit the following accessory and incidental uses in addition to those specified in this article:
 - (a) Customary recreational and service uses and buildings in a public park, playground or other public recreational area, incidental to the recreational use of such area.
 - (b) Excavation for construction of a building on the same lot.
 - (c) Water mains, pumps, valves and hydrants; electric conductors, wires and supporting structures, transformers, switches and substations; manholes, ducts, cables, vaults and vents for any public utility use.
 - (2) Each of the accessory and incidental uses specified in this subsection shall be deemed to be a permitted use in every zone.
- I. If the average alignment (as defined in § 95-3A) of existing structures differs from the front yard requirements of the schedule, all new structures shall provide a front yard equal to such average alignment.
- J. Where a property line of a nonresidential use abuts the boundary of a residential zone, the adjacent strip of property in such nonresidential zone and no less than 10 feet in width shall be utilized as a buffer area in accordance with the specifications set forth in § 95-37B(5) unless waived by the appropriate municipal board at the time of site plan application. A screening or hedge or other natural landscaping consisting of four foot-high evergreen plants in two rows five feet apart and with plants five feet apart in each row may be substituted for the planting referred to above if approved by the Planning Board. **[Amended 8-27-1981 by Ord. No. 21-1981]**
- K. In Residence R-20, R-15 and R-10 Zones, the minimum frontage at the street line specified in the Schedule of Area Requirements, Zoning Ordinance of the Township of East Hanover, dated November 1, 1976, and attached hereto, shall be increased by 25 feet in the case of corner lots which abut the following streets: River Road, Ridgedale Avenue, South Ridgedale Avenue, Mt. Pleasant Avenue, Hanover Road, Troy Road, Eagle Rock Avenue and DeForest Avenue.
- L. The raising, breeding or keeping of horses and ponies, except in the R-120 Zone on a minimum size lot of 10 acres, is hereby prohibited.
- M. Any and all fences erected shall not be more than six feet in height, except where a lesser height is required by this Code, and the finished side, as designated by the Construction Office, shall

face out, i.e., toward adjoining properties. **[Amended 7-10-2000 by Ord. No. 19-2000; 8-7-2006 by Ord. No. 19-2006]**

- (1) When a wall or fence is installed on top of a berm, railroad tie wall or other similar structure or mounding, the height of the fence shall include the height of the berm, retaining wall or other mounding which is at a higher elevation than the predominant grade of the property on which the fence is located, as determined by the Zoning Officer.
 - (2) The yard requirements of this chapter shall not be deemed to prohibit the following types of otherwise lawful fences and walls.
 - (a) A fence, not exceeding six feet in height, across the rear lot line of the property and along the side lot lines from the rear lot line to a point equal to the front line of a dwelling if the same were extended to said side line, and across the dwelling line extended to the side line. For the purpose of corner lots, both street frontages shall be treated as a front yard.
 - (b) A front yard fence not exceeding 48 inches at its highest point and not less than 50% open, such as picket fences and post and rail fences, but in no instance shall a front yard fence be made of chain link or similar materials. A "front yard fence" is defined as any fence that is on a residential property between the plane of the facade of the residence and the property line. (Note: On many streets the property line is not the edge of pavement but at some point off said edge of pavement. Fences are not permitted in the right-of-way which is the area between the property line and the edge of pavement.) For the purpose of corner lots, both street frontages shall be treated as a front yard.
 - (c) Retaining walls.
 - (3) The horizontal members of fences shall be of the same material composition as the vertical members and shall be no wider nor of greater diameter than the vertical members and in no case shall be wider than nor have a diameter greater than six inches
 - (4) The use of barbed wire, razor wire or similar shall not be permitted on any fence or atop any wall, except for walls or fences where the use of such is required by state or federal statute or regulation.
 - (5) Fences and/or walls which impede the natural flow of drainage across property lines are prohibited.
 - (6) Fences and walls shall comply with corner site clearance provisions in Subsection Q hereof.
- N. Any use which is not specifically permitted under the appropriate zone designation is thereby prohibited, and, in addition, certain uses are specifically prohibited in each zone.
- O. For a period of fifty (50) years from the date of completion of sanitary sewer construction known as Phases 1, 2 and 3 within the township, no sewer hookup or other connections to the sewage collection system included in the scope of the township's grants from the United States Environmental Protection Agency will be allowed or permitted so as to allow the discharge of wastewater from any building, facility or other construction on any parcel of land within the one-hundred-year floodplain as defined by the United States Department of Housing and Urban Development (HUD), or any area mapped as wetlands in accordance with the requirements of the

New Jersey Wetlands Act of 1970, which land parcel as of September 7, 1979, was undeveloped (i.e., upon which no building, facility or other construction had been erected or placed). The affected parcels are contained in Table 1, Land Parcels Within Floodplain Wetlands Areas, in a report entitled "Flood Plain/Wetlands Mapping," dated April 1980, prepared by Van Note — Harvey Associates. The affected parcels are delineated on the maps entitled "Floodway and Wetlands -Superimposed on Tax Map, Township of East Hanover," revised September 17, 1979, by Van Note — Harvey Associates. **[Added 3-19-81 by Ord. No. 3-1981]**

P. (Reserved)³⁴

34. Editor's Note: Former Subsection P, Affordable alternative marketing, pricing and income regulations, added 11-21-1989 by Ord. No. 15-1989, was repealed 12-29-2009 by Ord. No. 15-2009.

(1) Purpose. The purpose of this subsection is to set forth the affirmative marketing, pricing and income standards which must be met in the Affordable Housing Zone Districts.

(2) Definitions.

(a) As used in this subsection, the following terms shall have the meanings indicated:

COAH REGULATIONS — Those regulations promulgated by the Council on Affordable Housing in effect on March 16, 1989.

INCLUSIONARY DEVELOPMENT — A residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate-income households.

LOW-INCOME HOUSING — Housing affordable according to the United States Department of Housing and Urban Development (hereinafter HUD) or other recognized standards for home ownership and rental costs equal to fifty percent (50%) or less of the median gross household income for households of the same size within the housing region in which the housing is located and is subject to affordability controls.

MEDIAN INCOME The HUD uncapped median income by family size for Morris County using the most recent calculations of HIJD or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to or more than fifty percent (50%) but less than eighty percent (80%) of the median gross household income for households of the same size within the housing region in which the housing is located and is subject to affordability controls.

MODERATE-INCOME HOUSING — Housing affordable according to HUD or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to or more than fifty percent (50%) but less than eighty percent (80%) of the median gross households of the same size within the housing region in which the housing is located and is subject to affordability controls.

SENIOR CITIZEN — A head of household who is sixty-two (62) years of age or older.

(b) Words and phrases not specifically defined herein or elsewhere in the Code of the

municipality shall be determined by definitions set forth in COAH regulations first and then by HUD regulations, to the extent set forth in said regulations and if not set forth in either, then by other applicable authority, if any.

- (3) **[Amended 2-13-2001 by Ord. No. 2-2001]** Affirmative marketing. The Township of East Hanover has a fair share obligation of 266 units of which 74 inclusionary purchase units and 127 rental credit facilities will be constructed. This affirmative marketing ordinance shall apply to all developments that contain low- and moderate-income housing units. The affirmative marketing plan is a regional marketing strategy designed to attract income eligible households of all majority and minority groups, regardless of sex, age or number of children, for the purpose of buying or renting affordable housing units. The plan shall address the requirements of N.J.A.C. 5:93-11. In addition, the plan prohibits discrimination in the sale, rental financing, etc., on the basis of race, color, sex, religion, handicap, age, familial status/size or national origin. The Township of East Hanover is in the housing region consisting of Sussex, Morris, Union and Essex Counties. The affirmative marketing plan is a continuing program and shall meet the following requirements:

- (a) All newspaper articles, announcements and requests for applicants for low- and moderate-income housing shall appear in the following daily regional newspaper(s): The Newark Star Ledger, and the Morristown Daily Record.
- (b) The primary advertising of affordable housing shall take the form of at least one press release and one paid display advertisement in each of the above newspaper(s). Additional advertising and publicity shall be on an "as needed" basis. At a minimum, the paid display advertisement shall include the following:
 - [1] Street address of units.
 - [2] Directions to housing units.
 - [3] Number of bedrooms per unit.
 - [4] Size of units.
 - [5] Prices or rents of units.
 - [6] Income range for qualifying households.
 - [7] Location of applications.
 - [8] Telephone number and office hours for obtaining information and requesting applications.
- (c) Applications must be mailed to prospective applicants upon request.
- (d) Public service announcements may be made through the use of the following radio and/or cable television stations broadcasting throughout the region: local cable access through bulletin board and local programming.
- (e) Announcements, requests for applicants and newspaper articles may be placed in the following neighborhood-oriented weekly newspapers, religious publications and

organizational newsletters within Sussex, Union, Essex and Morris Counties, as needed: Hanover Eagle.

- (f) Affordable housing applications, brochures, signs and/or announcements regarding the availability of affordable housing units within the Township of East Hanover shall be forwarded to and posted at large-scale employers within the region.
- (g) The following is a listing of community and regional organizations in Sussex, Union, Essex and Morris Counties that will aid in the affirmative marketing program with particular emphasis on contracts that will reach out to groups that are least likely to apply for affordable housing within the region:

[1] East Hanover Township Director of Land Use.

[2] Housing Partnership of Morris County.

- (h) Affordable housing applications, brochures, announcements and/or posters will be forwarded to and posted at the following locations:

[1] Municipal Building and Library.

[2] Morris County Library.

- (i) Informational circulars and applications shall be sent to each of the following agencies for publication in their journals and for circulating among their members:

[1] Board of Realtors in Morris County.

[2] Board of Realtors In Sussex County.

[3] Board of Realtors in Union County.

[4] Board of Realtors in Essex County.

- (j) Additional informational circulars and applications shall be sent to the following nonprofit, religious, governmental, fraternal, civic, community action agencies in Sussex, Union, Essex and Morris Counties: Morris County Welfare Board.

- (k) The following is a description of the random selection method that will be used to select occupants of low- and moderate-income housing: Applicants will be placed on a waiting list and be selected as their names are reached.

- (l) The New Jersey Department of Community Affairs will be the agency under contract with the Township of East Hanover to administer the affordable housing purchase units. The Department of Community Affairs has the responsibility to advertise; income qualify low and moderate income households; to place eligible households in low- and moderate-income units upon initial occupancy; to continue to qualify households for reoccupancy of units as they become vacant and to enforce the terms of the deed restriction. The Department of Community Affairs will provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord-tenant law. In addition, the

Township of East Hanover is designating the Director of Land Use as a “housing officer” to act as liaison between COAH, the municipality and the Department of Community Affairs. The municipal liaison will be responsible for tracking the progress of affordable housing, fielding inquiries regarding affordable housing from the public and COAH, and complying with COAH monitoring and reporting requirements as per N.J.A.C. 5:93-11.6 and 5:93-12.1.

- (m) Developers/builders/sponsors of low- and moderate income housing units may be required by the Township of East Hanover to assist in the advertising of affordable units in their respective developments in accordance with the preceding paragraphs. Such advertising must be coordinated with the housing officer and is subject to the approval of the Township of East Hanover.
 - (n) The Township of East Hanover, in conjunction with the Department of Community Affairs, may delegate other specific tasks to a developer/builder/sponsor (such as interviewing applicants, prescreening households, etc.), provided that copies of all applications, income verification documents, sales records, etc., of the low- and moderate-income units are returned to the Department of Community Affairs or the municipal housing officer for reporting purposes and to aid with future resales.
 - (o) Households who live or work in the housing region of Sussex, Union, Essex and Morris Counties are to be given preference for the affordable housing units within the municipality. Applicants living outside the housing region shall have an equal opportunity for units after intraregional applicants have been processed. The Township of East Hanover intends to comply with N.J.A.C. 5:93-11.7.
 - (p) The affirmative marketing plan for any new units shall commence 120 days before the issuance of either temporary or permanent certificates of occupancy. Affirmative marketing shall continue until all low- and moderate-income housing units are initially occupied. Affirmative marketing for existing units shall continue on an “as needed” basis for as long as affordable units are deed restricted.
 - (q) The Department of Community Affairs will comply with monitoring and reporting requirements as per N.J.A.C. 5:93.
- (4) Eligibility standards.
- (a) The developer shall provide that 50% of all affordable units are available to low-income families, and that the remainder are available to moderate-income families in accordance with the rules and regulations of COAH.
 - (b) In addition, the prices of low- and moderate-income units, as best as practicable, shall be distributed for every twenty (20) low- and moderate-income units as follows in accordance with COAH standards.

[1] Low:

[a] One (1) of all low-income units: forty percent (40%) through forty-two and five-tenths percent (42.5%).

[b] Three (3) of all low-income units: forty-two and six-tenths percent (42.6%)

through forty-seven and five-tenths percent (47.5%).

- [c] Six (6) of all low-income units: forty-seven and six-tenths percent (47.6%) through fifty percent (50%).

[2] Moderate:

- [a] One (1) of all moderate-income units: fifty and one-tenth percent (50.1%) through fifty-seven and five-tenths percent (57.5%).

- [b] One (1) of all moderate-income units: fifty-seven and six-tenths percent (57.6%) through sixty-four and five-tenths percent (64.5%).

- [c] One (1) of all moderate-income units: sixty-four and six-tenths percent (64.6%) through sixty-eight and five-tenths percent (68.5%).

- [d] One (1) of all moderate-income units: sixty-eight and six-tenths percent (68.6%) through seventy-two and five-tenths percent (72.5%).

- [e] Two (2) of all moderate-income units: seventy-two and six-tenths percent (72.6%) through seventy-seven and five-tenths percent (77.5%).

- [f] Four (4) of all moderate-income units: seventy-seven and six-tenths percent (77.6%) through eighty percent (80%).

- (c) As near as practicable the average cost of low- and moderate-income units within a development shall be affordable to households of fifty-seven and five-tenths percent (57.5%) of median income by household size.

(5) Maximum monthly housing costs for low- and moderate-income housing.

- (a) The maximum monthly housing cost shall be twenty-eight percent (28%) of the gross annual median income based on HUD's uncapped Section 8 income limits by family size for Morris County "for sale" housing and thirty percent (30%) for rental housing, excluding utilities.
- (b) Government subsidies may be used at the discretion of the applicant to fulfill the requirements of this subsection. The lack of said subsidies shall in no way alter or diminish the lower income requirements of this subsection.

(6) Resale and rental of lower-income housing.

- (a) All lower-income dwelling units shall be required to have covenants and deed restrictions running with the land to control the resale price or sublease of rental units or to employ other legal mechanisms which shall be approved by the municipality, and will ensure that such housing will remain affordable to persons of lower income for at least twenty (20) years.
- (b) The owner of all rental units shall provide legal documentation, to be approved by the

municipality, to assure that rental units will remain affordable to persons of lower income for at least twenty (20) years.

- (c) Administrative mechanism. The municipality shall contract with the New Jersey Housing and Mortgage Finance Agency, the Department of Community Affairs or other county or state agency for assuring that low- and moderate-income housing units remain affordable to low- and moderate-income households. The per-unit cost of such contract shall be borne for initial sales by the developer and in resales or rerental by the purchaser or new tenant.
 - (d) Initial pricing. Maximum housing cost (for sale or rent) shall be calculated as a percentage of the uncapped HUD Section 8 income limit for Morris County, and as set forth in rules and regulations of COAH [N.J~A.C~ 5:92-12.4(a)], as amended.
 - (e) The price of an owner'occupied housing unit and the rents of affordable housing units may increase annually based on the percentage increase in median income for Morris County as determined from the uncapped Section 8 income limits, published by HUD, or other recognized standard adopted by COAH that applies to the rental housing.
- (7) Within inclusionary developments, unless specified otherwise by agreement by and between the municipality and the developer, low- and moderate-income housing units shall be built in accordance with the following schedule:

Minimum Income Units Completed	Percentage of Market Housing Completed
0	25
10	25, plus 1 unit
50	50
75	75
100	90

- (8) Occupancy preference and policy.
- (a) For all low- and moderate-income housing units provided in inclusionary developments, the developer shall establish occupancy such that initially fifty percent (50%) of the units shall be made available to income eligible households that reside and/or work in the municipality.
 - (b) Occupancy policy for low- and moderate-income housing units in inclusionary developments shall have the objective of effective utilization of space without overcrowding or providing more space than is needed by the number of people in the household.
 - (c) The following occupancy standards are to be complied with to assure efficient use of the units:

Number of Bedrooms	Minimum Number of People
0 (studio)	1
1	2

2	3
3	4or5
4	6
5	7or8

- (d) A change in family size after occupancy will not be a violation of this policy except and unless in violation of applicable state law.

(9) Bedroom distribution.

- (a) Within inclusionary developments, the distribution of the number of bedrooms shall be in accordance with the following standards:

[1] At a minimum, thirty-five percent (35%) of all low- and moderate-income housing units shall be two-bedroom units.

[2] At a minimum, fifteen percent (15%) of all low and moderate-income housing units shall be three-bedroom units.

[3] No more than 20% of all low- and moderate-income units may be efficiency units.

- (b) This provision shall not apply to units restricted to senior citizens.

- (10)Aesthetics. Low- and moderate-income housing units shall be designed and constructed in such a manner that they are in substantial visual and aesthetic conformance with and complementary to other housing units in the developer's project.

- Q. **[Added 7-10-2000 by Ord. No. 19-2000]** Corner sight clearance. On every corner lot within the triangle formed by the property lines on such lot and a line drawn between points on such lines at the distance from their intersection specified below, there shall be no fence or wall higher than three feet, nor any obstruction to vision other than a post, column or tree not exceeding in cross section one square foot or one foot in diameter, between a height of three feet and 10 feet above the established grade of either street.

(1) For a lot having an interior angle of 90° or more at the corner thereof, 20 feet.

(2) For a lot having an interior angle of less than 90° at the street corner thereof, 20 feet plus one foot for every 10° or major fraction thereof by which such interior angle is less than 90°.

- R. Yards. Setback requirements for all yards shall be measured from the property line to the foundation of the building. **[Added 7-12-2004 by Ord. No. 25-2004]**

(1) Ground story and bay windows or balconies may project not more than three feet into a required front or rear yard or into any side yard which is more than six feet wide.

(2) An open porch or entranceway not exceeding one story may project into any required side yard, provided that it does not come nearer to the side lot line than a distance equivalent to 10% of the width of the lot and provide further that no open porch or entranceway shall be required by this section to be more than 10 feet from a side lot line.

(3) An open porch or entranceway not exceeding one story may project into the required front

yard a distance of not more than eight feet.

- (4) Wooden decks attached to a principal dwelling may encroach into a rear or side yard not more than 50% of the minimum side or rear yard requirement for the principal building; provided, however, that in no event shall such deck extend closer than either the minimum setback requirement for accessory structures in the respective zone district or six feet, whichever is greater.
- (5) Cornices and eaves may not project more than two feet over any required yard.
- (6) Sills, leaders, belt courses and similar ornamental or structural features may project not more than six inches into any required yard.
- (7) A chimney may project not more than three feet into any required yard.
- (8) A fire escape or open fire balcony may project into a required yard not more than four feet.
- (9) The requirements of this subsection shall not apply to any necessary retaining wall or steps associated therewith.

§ 95-46.1. Prohibited uses. [Added 11-8-1984 by Ord. No. 32-1984; amended 11-3-1988 by Ord. No. 17-1988]

The following uses shall be prohibited uses within all zones within the Township of East Hanover:

- A. Refuse transfer stations.
- B. Composting.
- C. Heliports/helistops.
- D. Sex clubs and massage parlors. **[Added 11-9-1995 by Ord. No. 31-1995]**
- E. Tattoo parlors. **[Added 11-9-1995 by Ord. No. 31-1995]**

§ 95-46.2. Affordable housing. [Added 12-29-2009 by Ord. No. 15-2009]

- A. Affordable housing obligation.
 - (1) This section is intended to assure that low- and moderate-income units (“affordable units”) are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This section shall apply except where inconsistent with applicable law.
 - (2) The Township of East Hanover Planning Board has adopted a housing element and fair share plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The fair share plan has been endorsed by the governing body. The fair share plan describes the ways the Township of East Hanover shall address its fair share for low- and moderate-income housing as determined by the Council on Affordable Housing (COAH) and documented in the housing element.

(3) This section implements and incorporates the fair share plan and addresses the requirements of N.J.A.C. 5:97, as may be amended and supplemented.

(4) The Township of East Hanover shall file monitoring reports with COAR in accordance with N.J.A.C. 5:96, tracking the status of the implementation of the housing element and fair share plan. Any plan evaluation report of the housing element and fair share plan and monitoring prepared by COAH in accordance with N.J.A.C. 5:96 shall be available to the public at the Township of East Hanover Municipal Building, Municipal Clerk's office, 411 Ridgedale Avenue, East Hanover, New Jersey, or from COAH at 101 South Broad Street, Trenton, New Jersey and on COAH's website, www.nj.gov/dcaffiliates/coah.

B. Definitions, the following terms when used in this section shall have the meanings given in this subsection:

ACCESSORY APARTMENT — A self-contained, residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

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*.

ADMINISTRATIVE AGENT — The entity responsible for the administration of affordable units in accordance with this section, N.J.A.C. 5:96, N.J.A.C. 5:97 and N.J.A.C. 5:80-26.1 et seq.

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 restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE — A sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:97-9; 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 DEVELOPMENT — A housing development all or a portion of which consists of restricted units.

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 one-hundred-percent-affordable 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 Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable housing trust fund.

AGENCY — The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-i, et seq.).

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:

- (1) All the residents of the development where the unit is situated are 62 years or older; or
- (2) At least 80% of the units are occupied by one person that is 55 years 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.

ASSISTED-LIVING RESIDENCE — A facility 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, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under 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 require 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 proposed to be included in a proposed development, including the holder of an option to contract or 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-i et seq.

INCLUSIONARY DEVELOPMENT — A development containing both affordable units and market-rate units. This term includes, but is not necessarily limited to new construction, the conversion of a nonresidential structure to residential and the creation of new affordable units through the 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 median household income.

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 or load-bearing structural systems.

MARKET-RATE UNITS — 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 county, as adopted annually by COAH.

MODERATE-INCOME HOUSEHOLD — A household with a total gross annual household income in excess of 50% but less than 80% of the median household income.

MODERATE-INCOME UNIT — A restricted unit that is affordable to a moderate-income household.

NIKE SITE — Block 96, Lot 47.02 and Lot 50 as depicted on the Tax Assessment Maps of the Township of East Hanover.

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 COAH's adopted regional income limits published annually by COAR.

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 ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHORP 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 median household income.

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 doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

- C. Affordable housing programs. The Township of East Hanover has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

- (1) Rezone the Nike site to accommodate the Township's affordable housing obligations.
- (2) Construct low- and moderate-income units on the Nike site.
- (3) Require developers constructing multifamily housing to provide one affordable unit for every four market-rate units.

- D. Multifamily developments.

- (1) Use variances. To ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, any residential development proposed on a lot not zoned for multifamily residential use shall be required to provide affordable housing units at a ratio of one affordable unit for every four market-rate units as a condition of approval.
 - (a) For-sale developments: Inclusionary zoning in Planning Area 1 permits residential development at a presumptive minimum gross density of eight units per acre and a presumptive maximum affordable housing set-aside of 25% of the total number of units in the development;
 - (b) Rental developments: Inclusionary zoning permits a presumptive minimum density of 12 units per acre and a presumptive maximum affordable housing set-aside of 20% of the total number of units in the development and the zoning provides for at least 10% of the affordable units to be affordable to households earning 30% or less of the area median income for the COAB region.
 - (c) The Nike site (Block 96, Lots 47.02 & 50) is zoned for affordable housing. See the "New Construction" section of this section.

- (2) Design. To the extent possible, low- and moderate-income units shall be integrated with the market units.
 - (3) Payments-in-lieu and off-site construction. The standards for the collection of Payments-in-Lieu of constructing affordable units or standards for constructing affordable units off-site, shall be in accordance with N.J.A.C. 5:97-6.4. The collection of payments-in-lieu of constructing affordable housing units for use variances shall not be permitted.
 - (4) Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.
- E. New construction. The following general guidelines apply to all newly constructed developments that contain low-and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.
- (1) Low/moderate split and bedroom distribution of affordable housing units:
 - (a) The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.
 - (b) In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.
 - (c) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - [1] The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
 - [2] At least 30% of all low- and moderate-income units shall be two-bedroom units;
 - [3] At least 20% of all low- and moderate-income units shall be three-bedroom units; and
 - [4] The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
 - (d) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.
 - (2) Accessibility requirements.

- (a) 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. 5:23-7 and N.J.A.C. 5:97-3.14.
- (b) 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:
 - [1] An adaptable toilet and bathing facility on the first floor;
 - [2] An adaptable kitchen on the first floor;
 - [3] An interior accessible route of travel on the first floor;
 - [4] An interior accessible route of travel shall not be required between stories within an individual unit;
 - [5] An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - [6] 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 and N.J.A.C. 5:97-3.14, or evidence that the Township of East Hanover has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
 - [a] 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.
 - [b] To this end, the builder of restricted units shall deposit funds within the Township of East Hanover's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - [c] The funds deposited under Subsection E(2)(b)[6] [b] above shall be used by the Township of East Hanover for the sole purpose of making the adaptable entrance of any 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.
 - [d] The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Township of East Hanover.
 - [e] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township of East Hanover's

affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.

- [f] 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 Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

(3) Maximum rents and sales prices.

- (a) In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and in COAH, utilizing the regional income limits established by COAH.
- (b) 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 low- and moderate-income units shall be affordable to households earning no more than 52% of median income.
- (c) 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. At least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.
- (d) 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 prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
- (e) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
 - [1] A studio shall be affordable to a one-person household;
 - [2] A one-bedroom unit shall be affordable to a one-and-one-half-person household;
 - [3] A two-bedroom unit shall be affordable to a three-person household;
 - [4] A three-bedroom unit shall be affordable to a four-and-one-half-person household; and
 - [5] A four-bedroom unit shall be affordable to a six-person household.
- (f) In determining the initial rents for compliance with the affordability average

requirements for restricted units in assisted-living facilities, the following standards shall be used:

- [1] A studio shall be affordable to a one-person household;
 - [2] A one-bedroom unit shall be affordable to a one-and-one-half-person household;
and
 - [3] A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- (g) 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 homeowner association fees, does 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.
- (h) 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 household size 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.
- (i) The price of owner-occupied low- and 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.
- (j) The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 9% in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.
- (k) Utilities. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

F. Affirmative marketing requirements.

- (1) The Township of East Hanover shall adopt by resolution an affirmative marketing plan, subject to approval of COAR, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- (2) 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 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 COAB Housing Region 2 and covers the period of deed restriction.

- (3) The administrative agent designated by the Township of East Hanover shall assure that the affirmative marketing of all affordable units is consistent with the affirmative marketing plan for the municipality.
- (4) 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.
- (5) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- (6) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Township of East Hanover.

G. Occupancy standards.

- (1) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the administrative agent shall strive to:
 - (a) Provide an occupant for each bedroom;
 - (b) Provide children of different sex with separate bedrooms; and
 - (c) Prevent more than two persons from occupying a single bedroom.
- (2) Additional provisions related to occupancy standards (if any) shall be provided in the municipal operating manual.

H. Control periods for restricted ownership units and enforcement mechanisms.

- (1) 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 section until the Township of East Hanover elects to release the unit from such requirements; however, and prior to such an election, 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, for at least 30 years.
- (2) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.

- (3) 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.
 - (4) At the time of the first sale of the unit, the 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 requirements of this section, an amount equal to the difference between the unit's nonrestricted 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.
 - (5) The affordability controls set forth in this section shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
 - (6) 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 that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.
- I. Price restrictions for restricted ownership units, homeowner 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:
- (1) The initial purchase price for a restricted ownership unit shall be approved by the administrative agent.
 - (2) The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
 - (3) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
 - (4) 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. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.
- J. Buyer income eligibility.
- (1) 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.

- (2) 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 homeowner association fees, as applicable) does not exceed 33% of the household's certified monthly income.

K. Limitations on indebtedness secured by ownership unit; subordination.

- (1) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- (2) With the exception of original purchase money mortgages, during a control period 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 that unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.6(b).

L. Control periods for restricted rental units.

- (1) 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 section until the Township of East Hanover elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, 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, for at least 30 years.
- (2) 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.
- (3) A restricted rental unit shall remain subject to the affordability controls of this section, despite the occurrence of any of the following events:
 - (a) Sublease or assignment of the lease of the unit;
 - (b) Sale or other voluntary transfer of the ownership of the unit; or
 - (c) The entry and enforcement of any judgment of foreclosure.

M. Price restrictions for rental units; leases.

- (1) A written lease shall be required for all restricted rental units, except for units in an assisted-

living residence, 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.

- (2) 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.
- (3) 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 section.

N. Tenant income eligibility.

- (1) 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:
 - (a) Very-low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
 - (b) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
 - (c) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
- (2) The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income, 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:
 - (a) 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;
 - (b) 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;
 - (c) The household is currently in substandard or overcrowded living conditions;
 - (d) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (e) The household documents proposed 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.

- (3) The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsection N(2)(a) through (e) above with the administrative agent, who shall counsel the household on budgeting.

O. Administration.

- (1) The position of Municipal Housing Liaison (MHL) for the Township of East Hanover shall be established by separate ordinance.
- (2) The Township of East Hanover shall designate by resolution of the governing body, subject to the approval of COAH, one or more administrative agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC.
- (3) An operating manual shall be provided by the administrative agent(s) to be adopted by resolution of the governing body and subject to approval of COAR. The operating manuals shall be available for public inspection in the office of the Municipal Clerk and in the office(s) of the administrative agent(s).
- (4) The administrative agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the operating manual, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:
 - (a) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
 - (b) Affirmative marketing;
 - (c) Household certification;
 - (d) Affordability controls;
 - (e) Records retention;
 - (f) Resale and re-rental;
 - (g) Processing requests from unit owners; and
 - (h) Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.
 - (i) The administrative agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

P. Enforcement of affordable housing regulations.

- (1) Upon the occurrence of a breach of any of the regulations governing the 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, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage,

recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

- (2) 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 against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - (a) 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 found 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:
 - [1] A fine of not more than \$500 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - [2] In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of East Hanover affordable housing trust fund of the gross amount of rent illegally collected;
 - [3] In the case of an owner who has rented his or her 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.
 - (b) The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any 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- and moderate-income unit.
- (3) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff at which time the low- and 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 and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- (4) 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 low- and 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

Sheriffs sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for and to the 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.

- (5) 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 low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriffs sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriffs sale shall not be entitled to any right of redemption.
- (6) If there are no bidders at the Sheriffs 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 low- and 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 low- and 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.
- (7) Failure of the low- and moderate-income unit to be either sold at the Sheriffs 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 low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (8) 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.

Q. Appeals. Appeals from all decisions of an administrative agent designated pursuant to this section shall be filed in writing with the Executive Director of COAH.

§ 95-46.3. Municipal Housing Liaison. [Added 12-29-2009 by Ord. No. 14-2009]

- A. Purpose. The purpose of this section is to create the administrative mechanisms needed for the execution of the Township of East Hanover's responsibility to assist in the provision of affordable

housing pursuant to the Fair Housing Act of 1985.

- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

ADMINISTRATIVE AGENT — The entity responsible for administering the affordability controls of some or all units in the affordable housing program for the Township of East Hanover to insure that the restricted units under administration are affirmatively marketed and sold or rented, as applicable, only to low- and moderate-income households.

MUNICIPAL HOUSING LIAISON — The employee charged by the governing body with the responsibility for oversight and administration of the affordable housing program for the Township of East Hanover.

- C. Establishment of Municipal Housing Liaison position and compensation; powers and duties.

- (1) Establishment of position of Municipal Housing Liaison. There is hereby established the position of Municipal Housing Liaison for the Township of East Hanover.
- (2) Subject to the approval of the Council On Affordable Housing (COAH), the Municipal Housing Liaison shall be appointed by the governing body and may be a full- or part-time municipal employee.
- (3) The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Township of East Hanover, including the following responsibilities which may not be contracted out, exclusive of Subsection C(3)(f), which may be contracted out:
 - (a) Serving as the Township of East Hanover's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents, and interested households;
 - (b) Monitoring the status of all restricted units in the Township of East Hanover's fair share plan;
 - (c) Compiling, verifying, and submitting annual reports as required by COAR;
 - (d) Coordinating meetings with affordable housing providers and administrative agents, as applicable;
 - (e) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COA}T;
 - (f) If applicable, serving as the administrative agent for some or all of the restricted units in the Township of East Hanover as described in Subsection C(6) below.
- (4) Subject to approval by COAR, the Township of East Hanover may contract with or authorize a consultant, authority, government or any agency charged by the governing body, which entity shall have the responsibility of administering the affordable housing program of the Township of East Hanover, except for those responsibilities which may

not be contracted out pursuant to Subsection C(3) above. If the Township of East Hanover contracts with another entity to administer all or any part of the affordable housing program, including the affordability controls and affirmative marketing plan, the Municipal Housing Liaison shall supervise the contracting administrative agent.

- (5) Compensation shall be fixed by the governing body at the time of the appointment of the Municipal Housing Liaison.
- (6) Administrative powers and duties assigned to the Municipal Housing Liaison.
 - (a) Affirmative marketing.
 - [1] Conducting an outreach process to insure affirmative marketing of affordable housing units in accordance with the affirmative marketing plan of the Township of East Hanover 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; and
 - [6] Employing the random selection process as provided in the affirmative marketing plan of the Township of East Hanover when referring households for certification to affordable units.
 - (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 appropriate county's register of deeds or county clerk's office after the termination of the affordability controls for each restricted unit;
- [4] Communicating with lenders 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) Resale and rental.

- [1] Instituting and maintaining an effective means of communicating information between owners and the administrative agent regarding the availability of restricted units for resale or rental; and
- [2] Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental.

(e) Processing requests from unit owners.

- [1] Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership;
- [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 cost of central air conditioning systems; and
- [3] Processing requests and making determinations on requests by owners of restricted units for hardship waivers.

(f) Enforcement.

- [1] Securing annually lists 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] The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent 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 or other appropriate municipal fund approved by the DCA;
- [6] Creating and publishing a written operating manual, as approved by COAH, setting forth procedures for administering such affordability controls; and
- [7] Providing annual reports to COAH as required.

(g) The administrative agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.

D. Severability. If any section, subsection, paragraph, sentence or other part of this section is adjudged unconstitutional or invalid, such judgment shall not affect or invalidate the remainder of this section, but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of this section directly involved in the controversy in which said judgment shall have been rendered, and all other provisions of this section shall remain in full force and effect.

E. Inconsistent ordinances repealed. All ordinances or parts of ordinances which are inconsistent with the provisions of this section are hereby repealed, but only to the extent of such inconsistencies.

F. Effective date. This section shall take effect immediately upon final adoption and publication in the manner prescribed by law.

§ 95-47. Modifications and exceptions.

A. General modifications. The following modifications are permitted under the terms and specifications herein:

(1) Height.

(a) The height limitations of this article shall not apply to chimneys, church spires, gables, cupolas, standpipes, flagpoles, monuments, transmission towers, radio or television or other antennas as defined in Ordinance No. 36-1997,³⁵ cables, water tanks and similar

structures and necessary mechanical appurtenances for the zone in which the building is located, provided that no such exception shall cover at any level more than 10% of the area of the roof or the ground on which it is located. **[Amended 11-13-1997 by Ord. No. 47-1997]**

35. Editor's Note See CII. 95, Art. IXA, Telecommunications Antennas and Towers.

- (b) Public and institutional buildings and uses shall decrease the setback requirements of the front, rear and side yards by one foot for each foot by which such building exceeds the height limit herein established for such zone in which it is located, but in no case shall any building have a height greater than 50 feet.
- (2) **[Amended 8-27-1981 by Ord. No. 21-1981]** Lots with insufficient street frontage. Any parcel of land with a frontage at the street line less than that prescribed for a lot in the zone in which such lot is located, which parcel of land conformed to the former lot area requirement of minimum lot width at the setback line, may be used as a lot for any purpose permitted in the zone, provided that:
 - (a) Said parcel existed as a separate lot at the date of adoption of Ordinance No. 20-1979.
 - (b) The owner thereof owns no adjoining land which would allow the criteria as to frontage at the street line to be met.
 - (c) All other scheduled lot area requirements prescribed for the zone by this article are complied with.
- (3) Yards. **[Amended 6-14-2001 by Ord. No. 22-2001]**
 - (a) Upon application, the appropriate municipal board may vary the yard requirements of a lot to permit the construction of a building in accordance with the following standards:
 - [1] Front and rear yards may be reduced, provided that they are not less than the average alignment of the front and rear yards in existence in the same block or within 200 feet of the lot under consideration and on the same side of the street.
 - [2] Combined total side yard requirements may be reduced by six inches for each foot a lot is less than the required width prescribed for the zone in which such lot is located, provided that such is deemed necessary to permit construction thereon and provided that no principal building shall be placed nearer than eight feet to any property line.
 - (b) Where the owner of any single-family dwelling certifies to the Zoning Official that a resident within the said dwelling shall, because of a disability, require ramped access to the dwelling, the ramp may encroach upon the required front or rear yard setback 1% for each foot of ramp required; provided, however, that no such encroachment may exceed 50%; and provided further that the ramp so constructed shall be considered a temporary accommodation, to be removed not more than six months following the time it is no longer needed as a result of the termination of a disability or because the disabled person no longer resides in the dwelling; and provided further that, because the ramp is a temporary construction, it shall not in any way alter the setback requirement nor establish a new setback line for any other construction. The certification required herein shall be resubmitted on an annual basis.

- (4) Outdoor storage. Any outdoor storage or display in the Township of East Hanover shall be permitted and governed by the terms and provisions of this article.

- (a) The following terms regarding said storage and display are defined or elaborated upon as follows:

BUFFER STRIP — A buffer strip of 10 feet shall be provided wherever adjacent to a residential zone or when the outdoor storage is within the public view as hereinafter defined.

OUTDOOR DISPLAY — Those goods and merchandise for retail sale, rental or awaiting delivery pursuant to any of the permitted uses in the B-2 Zone which are located on the lot out of doors.

OUTDOOR STORAGE APPROVAL — All outdoor storage areas permitted in the Township of East Hanover shall be screened from public view and shall be subject to a site plan application, review and approval by the appropriate municipal board.

OUTDOOR STORAGE AREA — Any area devoted to keeping or storing of goods, merchandise, equipment, raw materials, lumber, machinery, vehicles, contractor storage yards, containers and any similar commercial and industrial material which is not enclosed within a building.

PUBLIC VIEW — Visibility of an outdoor storage area from any public street, park or other public place, any residential or commercial zone or any permitted ground floor residential use within 200 feet of the outdoor storage area.

SCREENING MAINTENANCE — Screening must be maintained in a neat, substantial and safe condition at all times. Fences or walls must be painted or stained unless constructed of masonry or rustproof metal or wire. Dead portions of any live natural screening must be promptly replaced.

SCREENING MATERIALS AND TECHNIQUES — The screening requirements of this article may be satisfied by the use of permanent buildings; fences of masonry, wood, metal or woven wire; or trees, shrubbery or landscaping, separately or in combination, of a sufficient height (not to exceed six feet in the case of man-made fences) and density to screen the outdoor storage area from public view. Wherever natural features or conditions or exceptional topographical considerations presently exist, the Planning Board or the Zoning Board of Adjustment may deem any of these factors sufficient to meet the desired screening requirements. All outdoor storage shall be conducted within the required screening.

- (b) Outdoor storage as defined in this subsection shall be permitted in the B-2, I-1, 1-3 and R-L Zones on the Zoning Map of the Township of East Hanover. Outdoor storage shall not be permitted in a B-1 Zone on the Zoning Map of the Township of East Hanover or when a B-1 use is permitted in any other zone on the Zoning Map of the Township of East Hanover, nor in any residential or professional business zone on the Zoning Map of the Township of East Hanover.
- (c) In the I-1 and 1-3 Zones on the Zoning Map of the Township of East Hanover, outdoor storage may be permitted in the rear yard and side yard only and shall be limited in area to a maximum of fifty percent (50%) over and above the buildable area allowed by this

Article.

- (d) In the B-2 Zone on the Zoning Map of the Township of East Hanover, outdoor storage may be permitted in the rear yard and side yard only when the combined building area and outdoor storage area shall not exceed one hundred ten percent (110%) of the buildable area set forth in this Article.
- (e) The use of outdoor storage area within the I-i and 1-3 Zones on the Zoning Map of the Township of East Hanover is not restricted solely to use by the owners or, if applicable, the tenants of the principal structure, but may also be utilized by others with totally unrelated activities as long as such activities are permitted in the I-i and 1-3 Zones and the provisions of this Article are complied with.
- (f) The use of outdoor storage area within the B-2 Zone is restricted solely to use by the owners or tenants of the principal structure.
- (g) In any residential zone in the Township of East Hanover, no front yard shall be used for open storage of boats, trailers, vehicles or equipment, except for passenger automobiles that are in operating condition and parked on designated driveways. All open storage areas in other yard areas must be suitable and effectively screened from public view.
 - [1] No commercial or construction vehicle in excess of three thousand (3,000) pounds shall be parked overnight or on Sunday in any residential zone other than in an enclosed garage, and not more than one (1) such vehicle may be kept within an enclosed garage on each lot.
 - [2] Outdoor storage of any kind or nature, except storage of those items customarily used in conjunction with a residential occupancy, is prohibited in all residential zones.
- (5) Outdoor display. For the purposes of this section, “outdoor display” is defined as those goods and merchandise for retail sale, rental or awaiting delivery pursuant to any of the permitted uses in the B-2 Zone which are located on the subject lot out of doors. Outdoor display is solely limited to the B-2 Zone in the Township of East Hanover.
 - (a) Upon a site plan application and approval by the appropriate municipal board, an outdoor display will be allowed as a permitted accessory use to a principal use for an indefinite period of time and shall not be required to be screened by a planting or a fence:
 - (b) Outdoor display may be permitted by the appropriate municipal board₁ provided that:
 - [1] All vehicles, equipment and machinery offered for retail sale or rental are in operating condition.
 - [2] Goods and merchandise displayed for retail sale or rental must be owned by the owner, principal user or a bona fide tenant of the principal structure.
 - [3] No outdoor display shall be permitted within ten (10) feet of any street lines or within five (5) feet of any side or rear lot line.
 - [4] The appropriate municipal board, upon site plan review, must determine that the outdoor display will have no detrimental effect on the health, safety or welfare of the

general public.

- (c) Goods or merchandise within the B-2 Zone which are intended for outdoor storage of same, rather than outdoor display for purposes of sale or rental on a retail basis, as determined by the appropriate municipal board upon site plan review, shall be governed by the provisions of Subsection A(4) of this section as applicable to the B-2 Zone.
- (6) At any existing nonresidential building in a B-1, B-2 or B-2B Zone, any duly licensed restaurant or other occupant of said building which is a purveyor on the premises of food or refreshments as permitted in the applicable zoning district, with the permission of the site owner, may apply to the administrative officer (Director of Land Use and Development) for a seasonal permit to provide temporary outdoor seating in the front or side yard of the premises as an integral part of that business, for consumption of food or refreshments by patrons. A permit shall be issued provided that the following requirements are met: **[Added 6-13-2005 by Ord. No. 10-2005]**
 - (a) The area for outdoor seating shall not impinge upon any public sidewalk or right-of way, nor with the approved internal circulation of the site, nor shall it occupy or render unusable any designated parking space.
 - (b) The seating in such an area shall be limited to 10% of the establishment's existing interior seating, or eight seats, whichever is greater. No food or refreshment preparation or storage shall be permitted within the outdoor seating area, and all persons shall be seated when consuming food or refreshments within the area.
 - (c) Permitted outdoor seating areas may be delineated on the sides and front, always without intrusion upon the areas as set forth in Subsection A(6)(a) above, by planters not more than 36 inches high, or a fence which is not taller than 60 inches at its highest point, is not less than 50% open, is not made of chain link or similar materials and does not have sharp spikes or points or jagged or sharpened surfaces or other components which may cause injury. Any gates shall not open so as to intrude upon any right-of-way, sidewalk, footpath, driveway or off-street parking area. The planters or fence shall define the seating area without creating a full barrier to viewing the area or the street and shall not bear any advertising or signage. Walls, partitions, trellises, roofs, canopies, arbors or any permanent structure, which cover, enclose or delineate the outdoor seating area are prohibited; provided, however, that where such are part of the existing building, they may be permitted.
 - (d) The outdoor seating area, including planters or fence, shall not physically displace or impinge upon required parking spaces or, unless otherwise permitted hereunder, public sidewalks or rights-of-way. The outdoor seating capacity shall not be included in the calculation of required off-street parking spaces for the appropriate zone.
 - (e) Pedestrian passage between the building and the public sidewalk or any driveway or off - street parking shall not be impeded or obstructed by any fence or planter, or by equipment or furnishings in the area for outdoor seating. Such clear passage shall have a width not less than the greater of three feet or the width of the building entrance, whichever is greater.
 - (f) Tables, chairs and other furniture must be strong, durable, waterproof, weather-resistant and of sufficient mass as to not be easily blown about. Dark and nonreflective colors are

preferred. Umbrellas shall be designed with mechanisms to secure them against the effects of wind and shall not display any advertising. Amplified music and sound are prohibited.

- (g) The outdoor seating area and its furnishings and equipment shall be kept clean and free of garbage or trash. No equipment, dumpster, structure or enclosure for the storage of garbage shall be placed in or adjacent to the outdoor seating area. Hours of operation of the outdoor seating area shall not be greater than the hours of operation of the restaurant or purveyor; provided, however, that if the outdoor seating area is within 200 feet of a residence district, the outdoor seating area shall not operate between the hours of 11:00 p.m. and 7:00 a.m.
 - (h) No alcoholic beverage, as defined by the applicable law, N.J.S. 33:1-i, as amended, is permitted in an outdoor seating area unless it is served under a license duly issued pursuant to said law or if the outdoor seating is provided exclusively by a restaurant which follows a "bring your own" policy within the restaurant.
 - (i) The administrative officer may, in his sole discretion, deny, suspend or revoke a seasonal permit if he finds that the location, volume of pedestrian traffic, violations of provisions of this subsection, or any other factor affecting public order, convenience or safety warrants such action.
 - (j) Every application for a seasonal permit for outdoor seating shall be accompanied by a filing fee of \$300. A seasonal permit shall be in effect as of March 1 in the year issued and shall expire on October 30 of that year. When reviewing any application for a seasonal permit, the administrative officer may deny the application upon finding that requirements of this subsection were not complied with by the applicant during the prior outdoor seating season.
 - (k) Seasonal permits are temporary authorizations which expire on a specified date. Even if renewed, or if none or more subsequent permit(s) be issued, they do not create any permanent rights or vested interests and shall not be deemed or construed as to grant any waiver or deviation in regard to the Land Use Ordinance or Zoning Regulations which survive such expiration.
- (7) **[Amended 8-27-1981 by Ord. No. 21-1981]** Required landscaping and buffer areas. For the purposes of this article, landscape and buffer areas shall consist of lawn areas and massed evergreen and deciduous trees and shrubs planted in a manner that will provide a continuous visual screen throughout the entire year within a period of two growing seasons following the planting of the buffer. Buffer areas shall meet with the specifications set forth in § 95-37B(5) unless waived by the appropriate municipal board at the time of site plan application. The height of the shrubs planted in a buffer area shall be measured from the ground level around the base of the shrubs to the topmost part of the shrub, once the shrub has been properly planted in the ground.
- (a) Where any nonresidential property abuts a residential zone, a ten-foot landscape buffer strip shall be permanently maintained along the nonresidential property line abutting the residential zone.
 - (b) In any residential zone, all parking areas, exclusive of the ingress and egress drive, having a capacity of more than four vehicles shall be screened from adjacent properties

and the public street by a buffer strip five feet in width.

- (c) Required buffers may be used for no other purpose than as a buffer. The only structures which may be erected within a buffer area are fences as regulated by ordinance.
 - (d) All nonpaved areas on properties shall be suitably landscaped with trees, shrubs, grass and other suitable landscaping materials. Where an area required for a buffer is already wooded, it shall be left in its natural state, and existing growth shall be supplemented with additional plant material where necessary to bring the buffer area up to minimum requirements of § 95-37B(5).
- (8) Split zones. A B-2 use is permitted to extend out of the B-2 Zone into the I-3 Zone, provided that the majority of lot area of the property is in the B-2 Zone and the requirements for street frontage are met within the B-2 Zone. **[Amended 8-17-1982 by Ord. No. 24-1982]**

B. Conditional uses. The following uses are permitted under the standards and procedures herein. Whereas the necessity for certain specific uses is recognized and at the same time appreciating the fact that they or any one of them may be or become inimical to the public health, safety and general welfare of the community if located without due consideration to the existing conditions and surroundings, the following standards and procedure are hereby established. The following standards and procedures are intended to provide the Planning Board or the Zoning Board of Adjustment with a guide for the purpose of reviewing certain uses not otherwise permitted in this article. In approving a site plan, the Planning Board or Zoning Board may act on site plans submitted to it or may, upon request, require modifications, variations and changes thereto which are in the opinion of that Board sound and prudent in nature and will not endanger the health and welfare of the citizens of the Township nor thwart the intent and purpose of this article. A site plan may include, among the features hereinafter specified, such other features or design in general keeping therewith that will further the purpose of these regulations, and such features shall be provided and maintained as a condition of the establishment and maintenance of any use to which they are **appurtenant**.

- (1) Public utilities. Uses by a public utility, such as electric generating plants, gas storage holders, radio transmitting or receiving towers and telephone exchanges, but no service or storage yards, may be permitted in residential zones, provided that:
 - (a) A set of plans, specifications and plot plans and a statement setting forth the reason for the need and the purpose of the installation are filed with the appropriate municipal board by the applicant in triplicate.
 - (b) Proof is furnished to the appropriate municipal board that the proposed installation is necessary in a specific location and convenient for the efficiency of the public utility system or the satisfactory and convenient provision of service by the utility to the neighborhood or area in which the particular use is to be located; that the design of any building in connection with such facility also shall conform to the general character of the residential area and will in no way adversely affect the safe and comfortable enjoyment of property rights of the zone in which it is located; that adequate and attractive fences and other safety devices will be provided; and that sufficient landscaping, including shrubs, trees and lawn, is provided and will be periodically maintained.
 - (c) The appropriate municipal board shall then decide the matter in accordance with the procedure provided for site plan review of conditional uses.

- (2) Hospitals, philanthropic or eleemosynary uses. Hospitals, philanthropic or eleemosynary structures, except correctional institutions, clubs, lodges, community centers, recreational buildings and uses, may be permitted in any zone, provided the following standards are observed:
- (a) A set of plans, specifications and plot plans and a statement setting forth full particulars on the operation of the structure or use are filed with the appropriate municipal board in triplicate by the applicant.
 - (b) The appropriate municipal board finds that any parcel upon which such use is proposed contains at least one (1) acre of land; that no structure will be erected nearer than seventy-five (75) feet to any street line nor nearer than thirty (30) feet to any property line; that buildings will not occupy more than twenty-five percent (25%) of the lot area; that all other requirements as set forth in this Article for the zone in which it is to be located are observed; that such use will in no way be detrimental to the surrounding property values; and that the structure or use proposed will serve a useful purpose to the general welfare of the township. -
 - (c) The front, rear and side yard setback requirements shall be decreased one (1) foot for each foot by which such building exceeds the height limit herein established for the zone in which it is to be located, but in no case shall any building exceed a height greater than fifty (50) feet.
 - (d) Off-street parking space shall be required in accordance with standards set forth below:
 - [1] Hospitals: one (1) space for each four (4) beds.
 - [2] Institutions and other quasi-public buildings: one (1) space for each six (6) beds where beds are a function of the use or one (1) space for each four hundred (400) square feet of floor area.
 - (e) The appropriate municipal board shall then decide the matter in accordance with the procedure provided for site plan approval for conditional uses.
- (3) Public garage or gasoline station. A public garage or gasoline station may be permitted in all zones except residential, provided that:
- (a) A set of plans, specifications and plot plans in triplicate is filed with the appropriate municipal board, showing in detail the exact location of such garage or gasoline station, the number and location of tanks to be installed, the dimensions and capacity of each tank, the depth at which the tanks will be placed below ground, the number and location of pumps to be installed, the type and location of all structures to be constructed and the number of automobiles to be garaged.
 - (b) Said use shall be located on a lot whose lot lines are located not less than two thousand (2,000) feet from any school offering courses of general educational instruction, hospital, church, theater or library, nor less than two thousand (2,000) feet from any other public garage or gasoline station, said distance to be measured from the periphery of the lot; and further provided that all filling pumps shall be located at least twenty-five (25) feet from the street line and side and rear property lines; and provided thither that such location will

not be located at the corner of any dangerous street intersection or traffic way which is so found by the appropriate municipal board.

§ 95-48. Residence R-10 Zone regulations.

- A. Uses. In the Residence R-10 Zone, no lot shall be used and no building shall be erected, altered or occupied for any purpose other than the following:
 - (1) Permitted uses.
 - (a) One-family dwellings.
 - (2) Permitted accessory uses: exceptions and limitations.
 - (a) Private garage space for one (1) motor vehicle for each five thousand (5,000) square feet of lot area, but not more than two (2) motor vehicles.
 - (b) Customary accessory buildings and uses, including swimming pools, tennis courts and storage sheds, provided such buildings and uses are incidental to the principal building and use.
- B. Other provisions and requirements.
 - (1) Area requirements. As specified in the schedule, § 95-45
 - (2) Corner lots. Side yard on street side of not less than forty (40) feet.
 - (3) Off-street parking spaces. Minimum of one (1) space, including garage, and maximum of three (3) for each dwelling unit

§ 95-49. Residence R-11 Zone regulations.

- A. Uses. In the Residence R-11 Zone, no lot shall be used and no building shall be erected, altered or occupied for any purpose other than the following:
 - (1) Permitted uses.
 - (a) One-family dwellings.
 - (2) Permitted accessory uses: exceptions and limitations.
 - (a) Private garage space for one (1) motor vehicle for each five thousand (5,000) square feet of lot area, but not more than two (2) motor vehicles.
 - (b) Customary accessory buildings and uses, including swimming pools, tennis courts and storage sheds, provided such buildings and uses are incidental to the principal building and use.
- B. Other provisions and requirements.
 - (1) Area requirements. As specified in the schedule, § 95-45.

(2) Corner lots. Side yard on street side of not less than forty (40) feet.

(3) Off-street parking spaces. Minimum of one (1) space, including garage, and maximum of three (3) for each dwelling unit.

§ 95-50. Residence R-15 Zone regulations.

A. Uses. In the Residence R-15 Zone, no lot shall be used and no building shall be erected, altered or occupied for any purpose other than the following:

(1) Permitted uses.

(a) One-family dwellings.

(2) Permitted accessory uses: exceptions and limitations.

(a) Private garage space for one (1) motor vehicle for each five thousand (5,000) square feet of lot area, but not more than three (3) motor vehicles.

(b) Customary accessory buildings and uses, including swimming pools, tennis courts and storage sheds, provided such buildings and uses are incidental to the principal building and use.

B. Other provisions and requirements.

(1) Area requirements. As specified in the schedule, § 95-45.

(2) Corner lots. Side yard on street side of not less than forty (40) feet.

(3) Off-street parking spaces. Minimum of one (1) space, including garage, and maximum of three (3) for each dwelling unit.

§ 95-51. Residence R-20 Zone regulations.

A. Uses. In the Residence R-20 Zone, no lot shall be used and no building shall be erected, altered or occupied for any purpose other than the following:

(1) Permitted uses.

(a) One-family dwellings.

(2) Permitted accessory uses: exceptions and limitations.

(a) Private garage space for one (1) motor vehicle for each six thousand (6,000) square feet of lot area, but not more than three (3) motor vehicles.

(b) Customary accessory buildings and uses, including swimming pools, tennis courts and storage sheds, provided such are buildings and uses incidental to the principal building and use.

B. Other provisions and requirements.

- (1) Area requirements. As specified in the schedule, § 95-45.
- (2) Corner lots. Side yard on street side of not less than fifty (50) feet.
- (3) Off-street parking spaces. Minimum of one (1) space, including garage, and maximum of three (3) for each dwelling unit.

§ 95-52. Residence R-120 Zone regulations.

A. Uses. In the Residential R-120 Zone, no lot shall be used or developed and no building shall be erected, altered or occupied for any purpose other than the following, subject, however, to submission by the developer of satisfactory evidence to the Planning Board in accordance with Article IX, Flood Management:

(1) Permitted uses.

- (a) One-family dwellings.
- (b) Farm, truck garden and noncommercial nursery or greenhouse, provided such use is carried out on a parcel of ten (10) acres or more and that the owner resides on the premises.
- (c) Public parks and playgrounds.

(2) Permitted accessory uses: exceptions and limitations.

- (a) Private garage space for one (1) motor vehicle for each thirty thousand (30,000) square feet of lot area.
- (b) The keeping of chickens or other fowl but only on farms as permitted above. Chicken houses and chicken runs shall be located in accordance with accessory building requirements for this zone.
- (c) Signs as permitted by § 95-63A.
- (d) Customary accessory buildings and uses, including swimming pools, tennis courts and storage sheds, provided that such buildings and uses are incidental to the principal building and use.

B. Other provisions and requirements.

- (1) Area requirements. As specified in the schedule, § 95-45.
- (2) A minimum of one (1) off-street parking space, including garage, is required for each dwelling unit.

§ 95-53. Residence R-120-CR Zone regulations.

A. Uses. In the R-120-CR Zone, no lot shall be used and no building shall be erected, altered or

occupied for any purpose other than the following, subject, however, to submission by the developer of satisfactory evidence to the Planning Board in accordance with Article IX, Flood Management:

(1) Permitted uses.

- (a) One-family dwellings.
- (b) Farm, truck garden and noncommercial nursery or greenhouse, provided such use is carried out on a parcel of ten (10) acres or more and that the owner resides on the premises.
- (c) Public parks and playgrounds.
- (d) Open-type commercial recreation facilities, such as golf courses and tennis courts, provided that no enclosed structures are included, except for locker rooms or toilet facilities; not to include amusement parks.

(2) Permitted accessory uses: exceptions and limitations.

- (a) Private garage space for one (1) motor vehicle for each thirty thousand (30,000) square feet of lot area.
- (h) The keeping of chickens or other fowl, but only on farms as permitted above. Chicken houses and chicken runs shall be located in accordance with accessory building requirements for this zone.
- (c) Signs as permitted by § 95-63A.
- (d) Customary accessory buildings and uses, including swimming pools, tennis courts, storage sheds, etc., provided that such buildings and uses are incidental to the principal building and use.

B. Other provisions and requirements.

- (1) Area requirements. As specified in the schedule, § 95-45.
- (2) For residential uses, a minimum of one (1) off-street parking space, including garage, is required for each dwelling unit.
- (3) For other than residential uses, a minimum of one (1) off-street parking space shall be provided for each employee and a minimum of one (1) parking space -per acre of lot area.

§ 95-53.1. Single-Family Attached SFA Zone regulations. [Added 11-8-84 by Ord. No. 27-1984]

There is hereby established a new zone, to be known as 'SFA". Single family or one-family residential units shall be permitted, as well as the following permitted accessory uses: private garage space for each single-family attached residential unit; and customary accessory buildings and uses, including swimming pools, tennis courts and storage sheds, provided that such buildings and uses are accessory and incidental to the principal buildings and use of single-family residential units, subject to the following terms and conditions:

A. Density.

- (1) The maximum number of attached dwelling units permitted for any project in the SFA Zone shall be limited to and determined by multiplying seven (7) attached dwelling units times the total area of the tract in acres, exclusive of any lands designated as floodway or wetlands area by the Department of Environmental Protection or the United States Corps of Engineers and any area designated as a conservation area.

EXAMPLE: $7 \times (34 \text{ acres} - 4 \text{ floodway} - 4 \text{ acres wetlands} - 1 \text{ acre conservation area}) = 25$
= 175 units.

- (2) Any fractional number of units shall be treated as one (1) unit.

B. Height. No structure containing a single-family attached unit shall exceed a height of thirty (30) feet.

C. Setbacks. No building or structure shall be located closer than:

- (1) Fifty (50) feet from any public street or highway.
- (2) Twenty (20) feet from the curblineline or edge of pavement of any internal private road.
- (3) Ten (10) feet from the pavement edge of a driveway where said driveway traverses the setbacks between buildings as hereinafter regulated in Subsection B(7).
- (4) Forty (40) feet from any other property line.

D. Buffer areas. Those setbacks required in Subsection C above shall be landscaped areas and shall not contain any building structure. Off-street parking is not permitted within the forty-foot setback required in Subsection C(4) above.

E. Minimum tract size. Single-family attached units will only be permitted on a tract having a minimum area of thirty (30) acres.

F. Distance between buildings. No structure containing a single-family attached dwelling unit shall be permitted closer to another structure containing a single-family attached dwelling unit than a distance which equals or exceeds seventy-five percent (75%) of the sum of heights of the two (2) said structures or thirty (30) feet, whichever results in the greater distance.

G. Landscaping. A landscaping plan shall be submitted and shall be subject to review and approval by the Planning Board at the same time as the site plan. The landscaping plan will show in detail the location, size and type of all plantings, including lawns to be used on the site. All areas not used for buildings or off-street parking shall be included in the landscaped plan. All parking and service areas shall be screened so that said areas are shielded from residential areas adjacent to the site.

H. Lighting. Yard lighting shall be provided during the hours of darkness to provide illumination for the premises and all interior sidewalks, walkways and parking areas thereon. All wiring shall be laid underground, and all lighting fixtures shall be arranged so that the direct source of light is not visible from any residential areas adjacent to the site.

I. Architecture and construction.

(1) From a design and construction standpoint, a single-family attached residence structure has two (2) basic options:

- (a) It shall be designed and constructed to resemble a large single-family residence; or
- (b) It shall be designed and constructed with appropriately different single-family attached residence setbacks and rooflines so as to reflect the combination of more than one (1) but not more than eight (8) single-family attached residences.

(2) The architecture employed shall be aesthetically in keeping with the surrounding area and shall be subject to approval by the Planning Board. All buildings shall be constructed in accordance with the Building Code and shall comply with the following requirements:

- (a) The exterior of each building wall of single-family attached residences shall be of wood, brick or stone facing, solid brick or stone or some other acceptable durable material. Asbestos shingle and cinder or concrete block as exterior finishes are prohibited. The applicant shall submit to the Planning Board for review and approval, in addition to any and all other documents required by any other ordinance concerning site plan review, floor plans, elevation drawings, color rendering and detailed finish schedules.
- (b) The exterior of any accessory structures shall harmonize architecturally with and be constructed of materials of a like character to those used in principal structures.
- (c) There shall be between single-family attached residences a soundproof fire wall constructed according to the specifications approved by the Construction Official. Such noncombustible wall shall have a sound transmission classification (STC) of not less than fifty-two (52) based on the laboratory test procedure specified in the ASTM (American Society of Testing and Materials) recommended practice E-90-66T.

J. Utilities. Every single-family attached residential unit must be connected to the public sanitary sewer and water systems as approved by the Township Engineer.

K. Roads and storm drainage. All roads within the project shall be private roads at least twenty-four (24) feet wide, constructed in accordance with township specifications and maintained by the developer and its successors, inclusive of any owner's association or condominium association, pursuant to specifications prepared by the Township Engineer and subject to approval by the Planning Board. All required storm drainage shall be installed and maintained by the developer and its successors.

L. Master deed. The developer shall furnish to the township, as a condition of site plan approval, such guaranties, covenants, master deed or builder's agreement, which shall satisfy the requirements of the Planning Board for the construction and maintenance of common areas, landscaping, recreational areas, public improvements and buildings.

M. Units per structure. No structure shall contain more than seven (7) single-family attached dwelling units.

N. Impact statement.

- (1) An environmental impact statement shall be prepared and submitted, which will include an assessment, supported by engineering data, of the environmental impact of the project upon the following factors:
 - (a) Vehicular traffic.
 - (b) Noise.
 - (c) Storm drainage.
 - (d) Sanitary sewer facilities.
 - (2) As far as the traffic impact is concerned, the Planning Board shall require entrances and exits to the site at locations and widths that will minimize traffic congestion and result in the best vehicular and pedestrian circulation pattern both on and abutting the site. The Planning Board may require the applicant to submit a traffic engineering study prepared by a licensed professional traffic engineer, which will indicate the impact that the development of the site will have on surrounding roads. This traffic study shall include the following elements:
 - (a) Estimated peak hourly traffic to be generated by the proposal.
 - (b) Assignment of estimated peak hourly traffic by percentage and volume to surrounding streets.
 - (3) If the results of the survey indicate necessary off-site improvements of existing township streets, the applicant shall contribute a prorated share of such improvements as determined by the Planning Board. Also, the applicant shall bear the full cost of improving or widening abutting streets.
- O. Building coverage. Not more than twenty percent (20%) of the total tract area shall be covered by any above-grade buildings or structures.
- P. Total impervious coverage. Not more than thirty-five percent (35%) of the total tract area shall be covered by any impervious material, including but not limited to buildings, structures, driveways, parking areas, patios, walkways, game areas, such as tennis courts, swimming pools and the like. Porous pavement shall be permitted and shall be considered an impervious surface.
- Q. Common open space. The developer of single-family attached residential units as a conditional use shall make provision for the establishment of an open space organization of owners or residents of the development which shall own and maintain all common open space. Such organization shall not be dissolved and shall not dispose of any open space, by sale or otherwise, except to an organization conceived and established to own and maintain the open space for the benefit of such development, and thereafter such organization shall not be dissolved or dispose of any of its open space without first offering to dedicate same to the Township of East Hanover. In the event that such organization shall fail to maintain the open space in reasonable order and condition, the Township Committee may serve written notice upon such organization or upon the owner of the development setting forth the manner in which the organization has failed to maintain the open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within thirty-five (35) days thereof and shall state the date and place of a hearing thereon, which shall be held within fifteen (15) days of the notice. At such

hearing, the Township Committee may modify the terms of the original notice as to deficiencies and may give a reasonable extension of time not to exceed sixty-five (65) days, within which they shall be cured. If the deficiencies set forth in the original notice or in the modification thereof shall not be cured within said thirty-five (35) days or any permitted extension thereof, the township, in order to preserve the open space and maintain the same for a period of one (1) year, may enter upon and maintain such land. Said entry and maintenance shall not vest in the public any rights to use the open space except when same is voluntarily dedicated to the public by the owners. Before the expiration of said year, the Township Committee shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the open space, call a public hearing upon fifteen (15) days' written notice to such organization and to the owners of the development, to be held by the Township Committee, at which hearing such organization and the owners of the development shall show cause why such maintenance by the township shall not, at the election of the township, continue for a succeeding year. If the Township Committee shall determine that such organization is ready and able to maintain said open space in a reasonable condition, the township shall cease to maintain said open space at the end of said year. If the Township Committee shall determine that such organization is not ready and able to maintain said open space in a reasonable condition, the township may, in its discretion, continue to maintain said open space during the next succeeding year, subject to a similar hearing and determination in each year thereafter. The decision of the Township Committee in any such case shall constitute a final administrative decision subject to judicial review. The cost of such maintenance by the township shall be assessed pro rata against the properties within the development that have a right of enjoyment of the open space in accordance with assessed value at the time of imposition of the lien, and shall become a lien and a tax on said properties and be added to and be a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officers and in the same manner as other taxes.

- R. Floodway and wetlands. Although no area designated as floodway and/or wetlands and/or conservation area shall be included in the calculation of permitted density, areas designated as floodway and/or wetlands may, at the discretion of the Planning Board, be utilized for recreational purposes.
- S. Site plan approval. Site plan approval shall be obtained for any single-family attached project from the Planning Board as required by Article VI, § 95-34 of the Code of the Township of East Hanover, and said site plan shall disclose, in addition to all the required conditions of that section, that all the standards herein established for a single-family attached unit have been complied with.

§ 95-53.1.1. R-10/CSAH Residential Affordable Housing Zone regulations. [Added 11-21-1989 by Ord. No. 19-1989]

There is hereby established a new zone to be designated R-10/ CSAH. The permitted uses and requirements for said zone shall be as set forth in the Cluster Residential Development provisions adopted under Ordinance No. 22-1983 of the township and set forth as Addendum A in Chapter 95 of the municipal Zoning Ordinances;³⁷ provided, however, that the following amendments to those provisions shall be applicable in an R-10/CSAH Zone:

A. Section I, Tract requirements.

- (1) Add Section i(3) to read as follows: "The maximum density provision shall be two and one-tenth (2.1) units per acre of the gross land area for single-family units and thirteen and thirty-three hundredths (13.33) units per acre for senior citizen housing units. These density

provisions shall supersede Section i(1) and i(2) of this section.

37. Editor's Note: Addendum A is included at the end of this chapter.

- (2) Amend Section iv to read as follows: "Single-family detached dwellings and senior citizen housing units shall be permitted in an R-10/CSAH Zone."

B. Section II, Lot area and dimensions, shall be amended as follows:

- (1) Minimum lot area and minimum average lot area: ten thousand (10,000) square feet
- (2) Minimum lot width and minimum average lot width: seventy (70) feet.
- (3) Maximum lot coverage: thirty percent (30%).

C. Section III, Open space:

- (1) Amend Section i as follows: "The developer shall designate a three-acre area of the tract to be dedicated for development of senior citizen housing units and shall convey this land in the Township of East Hanover for that stated purpose. The developer shall not be required to build the senior citizen housing units after the conveyance to the township. The conveyance shall occur after final site and subdivision approval by the township of no fewer than eighty-three (83) single-family residential lots on the remaining parcel and upon execution of a developer's agreement, posting of bonds and application for the first building permit regardless of construction phasing. The three-acre area, as set forth herein, shall be included with the twenty-five percent (25%) maximum depreciation area set forth in this provision and the balance of the areas to be dedicated for public use shall be as set forth on the subdivision plat submitted by the developer and approved by the Municipal Planning Board. The developer shall not be required to install within the dedicated open space areas any of the public improvements to which the areas may be dedicated as set forth in Section iv of this section."
- (2) Amend Section ii as follows: "All open space to be dedicated to the township shall be in its present natural state, with the exception of improvements designated by the developer for the use and benefit of the subdivision development"

D. **[Added 7-15-1993 by Ord. No. 15-1993]** Alternate voluntary contribution. In lieu of the developer dedicating a three-acre parcel for senior citizen housing, the developer shall have the option of constructing six (6) building lots on the three-acre parcel and making a voluntary bidder's contribution in the amount of three hundred thirty thousand dollars (\$330,000.), which may be utilized for any other purpose in furtherance of the township's Affordable Housing Plan. The contribution is payable upon issuance of building permits and certificates of occupancy for the 82nd to 87th lots as follows:

- (1) Twenty-nine thousand dollars (\$29,000.) upon issuance of each building permit for the 84th to 87th lots.
- (2) Forty-three thousand five hundred dollars (\$43,500.) upon issuance of each certificate of occupancy for the 84th to 87th lots.
- (3) Ten thousand dollars (\$10,000.) upon issuance of each building permit for the 82nd and 83rd

lot.

- (4) Ten thousand dollars (\$10,000.) upon issuance of each certificate of occupancy for the 82nd and 83rd lot.

**§ 95-53.2. HD/OCI Highway Development Office Commercial Industrial Zone regulations.
[Added 11-21-1989 by Ord. No. 18-1989]**

A. Purpose of HD/OCI Zone.

- (1) The HD/OCI Zone is designed to establish development options in order to facilitate the production of affordable housing. The options consist of either mixed-use commercial and inclusionary residential development in the zone or a mixed-use commercial, office and industrial development in the zone, together with a cash contribution in lieu of inclusionary residential development.
 - (a) Option A of the HD/OCI Zone is designed to accommodate a large number and different types of commercial activities and residential units, comprehensively planned and proposed to be constructed and managed as a single, coordinated and integrated mixed-use development. The variety of uses and the intensity and density of development is designed to assure a realistic opportunity for the construction of various commercial uses to serve the township, and to assure different housing types and income levels in the township, including affordable housing for lower-income households.
 - (b) Option B of the HD/OCI Zone is designed to accommodate a large number of different types of commercial, office and industrial activities, comprehensively planned and proposed to be designed as an integrated mixed-use development. The variety of uses and the intensity and density of development is designed to assure a realistic opportunity for the construction of various commercial, industrial and office uses to serve the township.
- (2) These land use regulations are designed in part to meet the mandate of the New Jersey Unit Housing Act and the rules and regulations of the Council on Affordable Housing. Any provision of this or any other ordinance in conflict with the HD/OCI Zoning regulations and which impose higher standards not immediately and directly related to health and safety shall be inapplicable and the provisions of this section shall govern.

B. Submission requirements. No later than the time of the filing of the development application, the applicant shall select either Option A or Option B, which options are hereby deemed to be mutually exclusive.

C. Permitted uses.

- (1) Retail and commercial service establishments.
- (2) Banks and financial institutions.
- (3) Automobile sales and service.
- (4) Business, corporate and professional offices.
- (5) Hotels and motels.

- (6) Theaters.
- (7) Restaurants and food establishments.
- (8) Public parks, playgrounds, conservation areas and municipal facilities.
- (9) Dwellings, multifamily (Option A only).
- (10) Warehouses and business offices ancillary thereto (Option B only).
- (11) All uses permitted in the 1-3 Light Industry Zone (Option B only).

D. Permitted accessory uses.

- (1) Accessory buildings.
- (2) Fences.
- (3) Off-street parking and parking structures.
- (4) Recreational facilities.
- (5) Signs.
- (6) Public utility uses.
- (7) Common open space.

E. Minimum size, width, maximum nonresidential development and number of residential units.

- (1) Minimum tract size: thirty (30) acres.
- (2) Minimum tract width: five hundred (500) feet.
- (3) For Option A, which includes inclusionary residential development, the maximum intensity of development shall be as follows:
 - (a) Mixed commercial. A maximum of three hundred fifty thousand (350,000) square feet of floor area, not including any structure used for parking, storage of vehicles or public or quasi-public uses. The mixed commercial uses shall be distributed on no less than fifteen (15) contiguous acres and shall front on Route 10. "Mixed commercial uses" shall mean all uses as permitted under Subsection C(1) through (8) of this section, Permitted uses.
 - (b) Residential uses: maximum number of dwelling units permitted is two hundred four (204) units to be distributed as follows:
 - [1] Maximum number of market, townhouses and units: one hundred sixty-four (164).
 - [2] Minimum number of multifamily affordable (low- and moderate-income) housing units: forty (40).

(4) For Option B, the maximum intensity of development shall be as follows:

- (a) Mixed commercial. A maximum of three hundred fifty thousand (350,000) square feet of floor area, not including any structure used for parking, storage of vehicles or public or quasi-public uses. The mixed commercial uses shall be distributed on no less than fifteen (15) contiguous acres and shall front on Route 10. "Mixed commercial uses" shall mean all uses as permitted under Subsection C(1) through (8) of this section, Permitted uses.
 - (b) Light industry/office. A maximum of four hundred thousand (400,000) square feet to be contained in not more than two (2) structures, not including any structure used for parking or public or quasi-public uses. The light industry/office uses shall be distributed on the rear portion of the parcel on no less than seventeen (17) contiguous acres, including any land which may be dedicated, conveyed or otherwise encumbered for purposes of meeting buffer or open space requirements. "Light industry/office" shall mean all uses as permitted under Subsection C(4), (10) and (11) of this section, Permitted uses, except that uses permitted under Subsection C(4) shall not exceed fifty percent (50%) of the total square footage permitted in the light industry/office portion.
- F. Subdivision. The applicant, subsequent to preliminary site plan approval for the entire tract, may apply for a subdivision of one (1) or more parts of the tract without regard to setbacks, minimum tract size, width, frontage, density and number of residential units for purposes of financing, administration or similar reasons. All conditions of prior approval that apply to those parcels being subdivided shall continue to be in force and effect.
- G. Minimum tract setback for residential buildings under Option A.
 - (1) Front lot line: fifty (50) feet.
 - (2) Side lot line: twenty-five (25) feet.
 - (3) Rear lot line: as set forth in Subsection H, Buffer to adjacent uses, for the HD/OCI Zone.
- H. Buffer to adjacent uses. A one-hundred-fifty-foot buffer shall be provided along any rear lot line contiguous to residential uses. The rear lot line shall be that line furthest from the front lot line. Any intermediate rear yard shall be considered as a side yard. The existing vegetation and hardwood forest within the rear yard buffer shall be preserved as a buffer and supplemented with indigenous plant species in order to provide permanent buffer screening between this tract and adjacent single-family dwellings. This one-hundred-fifty-foot buffer shall include lands which are hereby required to be conveyed by or on behalf of applicant to adjacent land owners, at the option of said land owners, which conveyance shall be fifty (50) feet in depth and equal to the width of the grantee's lot at the rear lot line. This conveyance option shall be available to all abutting residential properties. The area of any buffer land dedicated or conveyed shall be counted in the total tract area for the purposes of calculating lot area, coverage, setbacks and open space. Said conveyance shall be made upon receipt of all governmental approvals in unappealable form. There shall also be a twenty-foot buffer maintained between this zone and the contiguous property designed as Block 99, Lots 12 and 18, of which the ten (10) feet furthest from the common lot line of said property may be used for roadways or parking uses.
- I. Coverage and height requirements.

(1) For Option A, coverage and height requirements shall be as follows:

Permitted Uses	Maximum Building Coverage (percent)	Maximum Height
Residential (market)	35	3 stories/40 feet
Residential (affordable)	45	5 stories/65 feet
Mixed commercial	75	75 feet

(2) For Option B, coverage and height requirements shall be as follows:

Permitted Uses	Maximum Building Coverage (percent)	Maximum Height
Mixed commercial	75	75 feet
Light industry/office	60	1 story (35 feet) (except that the applicant is permitted to construct not more than 100,000 square feet of floor area on a second level on that portion of the structure on the rear parcel which is closest to the mixed commercial portion. Mezzanine space within a building shall not be counted as a second story.)

(3) The height of the mixed commercial uses shall be measured from base elevation of two hundred (200) feet above sea level. The height of the structures shall include any roof top mechanical and architectural appurtenances. Parking garages shall not exceed sixty-five (65) feet in height.

J. Distance between residential buildings under Option A.

(1) The minimum distance between residential buildings shall be as follows:

(a) Windowless wall to windowless wall:

[1] Two (2) stories: fifteen (15) feet

[2] One (1) story: ten (10) feet

(b) Window wall to windowless wall:

[1] Two (2) stories: twenty (20) feet.

[2] One (1) story: fifteen (15) feet.

(c) Window wall to window wall:

[1] Front to front: forty (40) feet.

[2] Rear to rear: fifty (50) feet

[3] End to end:

[a] Two (2) stories: thirty (30) feet.

[b] One (1) story: twenty-five (25) feet.

[c] Nongarage front: sixty-five (65) feet if garages in front

(d) Any building with face to local or private road curb: twenty (20) feet.

(e) Any building with face to common parking area (excluding private driveways): twelve (12) feet.

(2) The Planning Board may reduce the above distances by not more than one-half (1/2) if there is an angle of twenty degrees (20°) or more between buildings and if extensive landscaping or buffers are placed between buildings.

K. Setbacks for mixed commercial uses. Minimum setback from Route 10: 75 feet.

L. (Reserved)³⁸

38. Editor's Note: Former § 95-53.2L, regarding signs, was repealed 5-6-2008 by Ord. No. 5-2008.

M. Location of affordable units under Option A. Affordable (low-and moderate-income) housing units shall be sited on the development tract in accordance with good site planning principles in appropriate locations as approved by the Planning Board. Those units shall be convenient and accessible to common open space and community facilities.

N. Minimum off-street parking requirements.

(1) Each dwelling unit shall provide off-street parking in the following ratio:

(a) Dwelling units with one (1) bedroom or less: one and five-tenths (1.5) spaces.

(b) Dwelling units with two (2) bedrooms or more: two (2.0) spaces.

(2) Nonresidential uses:

(a) All nonresidential uses shall provide off-street parking in the following ratios:

[1] Retail and commercial uses: five (5) spaces per one thousand (1,000) square feet of floor area.

[2] Office uses: three (3) spaces per one thousand (1,000) square feet of floor area.

[3] Theaters and restaurants: one (1) space per four (4) seats.

[4] Auto sales and services: one (1) space per one thousand (1,000) square feet of showroom space.

[5] Hotels and motels: one (1) space per room.

[6] Light industry/warehouse: one (1) space per one thousand (1,000) square feet of floor area.

(b) The applicant may reduce the number of required spaces based on the concept of shared parking among the nonresidential uses. In no event may the township require more than one thousand five hundred (1,500) parking spaces for the nonresidential uses.

(3) Parking shall be permitted in all required minimum yard areas.

(4) All parking spaces shall be at least nine by eighteen (9 x 18) feet.

(5) Residential garages shall count as one (1) off-street parking space. A driveway in front of a private residential garage which is a part of a townhouse development shall be counted as one (1) off-street parking space, provided that it has a minimum area of nine by eighteen (9 x 18) feet.

O. Minimum floor area for dwelling units. Minimum floor area for dwelling units is as follows:

(1) One-bedroom: six hundred (600) square feet

(2) Two-bedroom: six hundred fifty (650) square feet.

(3) Three-bedroom: seven hundred twenty-five (725) square feet.

P. Affordable (low- and moderate-income) housing requirements.

(1) Number and type of required affordable (lower income) dwelling units.

(a) Number of units: forty (40).

(b) Type of units:

[1] Efficiency twenty percent (20%) (maximum).

[2] One-bedroom: thirty percent (30%) to fifty percent (50%).

[3] Two-bedroom: thirty-five percent (35%) (minimum).

[4] Three-bedroom: fifteen percent (15%) (minimum).

(2) Rules and requirements of § 95-46P, Affordable alternative marketing, pricing and income

regulations, shall apply to all affordable dwelling units.

- (2) Phasing of lower-income housing. Lower-income housing shall be phased in accordance with the following schedule:

Minimum Number of Market Housing Units Completed	Minimum Number of Non-Age Restricted Lower-Income Units Completed
41	0
42	4
82	20
123	30
164	40

- Q. Unity of development Any development in the HD/OCI Zone for which site plan approval has been approved shall be considered a single development 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 Township Attorney, setting forth the requirements for low- and moderate-income housing units.

- R. Waiver of fees.

- (1) Notwithstanding any ordinance requirement of the Township of East Hanover to the contrary, the following fees and ordinances shall not apply to development in the HDCI Zone:
- (a) Subdivision and site plan application fees for every unit designated as low- and moderate-income housing.
 - (b) Escrow fees applicable to low- and moderate-income housing units.
 - (c) Ordinance No. 18-1987³⁹ or any other ordinance which imposes fees on nonresidential and/or residential development for purposes of establishing a housing trust fund shall not apply to the HD/OCI Zone.

39. Editor's Note: See Ch. 79, Fees and Licenses, Art. III.

- (d) Section 95-38, Off-tract improvements, of the Township Land Use and Zoning Ordinance or any other ordinance now in effect or later- enacted, including Ordinance No. 14-1989, which requires sharing of costs of any off-tract improvements other than running waterlines from adjacent existing municipal services in Route 10 necessitated by the development. Nothing herein shall relieve the applicant from the responsibility for constructing any roadway improvements contiguous to the site in order to achieve proper, safe and efficient ingress and egress to the site consistent with the requirements of the New Jersey Department of Transportation, including but not limited to any turning lanes, traffic signals or other improvements, as required.
- (2) **[Amended 12-5-1991 by Ord. No. 25-1991]** In furtherance of the township fair share housing plan, if an applicant voluntarily selects option b, then the applicant shall make the

following builder's contribution in lieu of constructing an inclusionary residential development:

- (a) Eight hundred thousand dollars (\$800,000.) by way of letter of credit for actual physical construction of roadway capital improvements associated with Route 10, including contiguous public improvements on or adjacent to Route 10, posted upon issuance of the first certificate of occupancy for any portion of the development and to be drawn down or released as improvements are constructed and accepted by the township, county or New Jersey Department of Transportation.
- (b) Two million nine hundred fifty thousand dollars (\$2,950,000.) in escrow, to be utilized by the township for the construction of low- and moderate-income and senior citizen housing within the township at a location other than within the HD/OCI Zone, and to meet the township's obligations pursuant to any regional contribution agreements consistent with COAH guidelines and regulations. One million three hundred thousand dollars (\$1,300,000.) will be paid upon issuance of the first building permit for the office building at the rear of the developer's project, a letter of credit of four hundred sixty-five thousand dollars (\$465,000.) has been posted and shall be credited toward this obligation; eight hundred twenty-five thousand dollars (\$825,000.) will be paid upon issuance of a certificate of occupancy within the front portion of the property for a nonresidential use as provided in Subsection N(2) hereof; and eight hundred twenty-five thousand dollars (\$825,000.) will be paid upon issuance of a certificate of occupancy within the front portion of the property for either a hotel, motel or office use as defined in Subsection N(2) hereof.

S. Other requirements.

- (1) An applicant for residential inclusionary development in the HD/OCI Zone shall meet all requirements of the Council on Affordable Housing in effect at the time of approval of the application. Such requirements shall supersede any requirements in this amendment.
- (2) Recognizing the intensity of development and nature of uses resulting in public assembly, the applicant shall submit a plan and program for site security or enter into an agreement with East Hanover Township for adequate provision for public safety and security which the township deems adequate under all of the circumstances.

T. Common open space requirements under Option A.

- (1) A minimum of twenty percent (20%) of the land area of that part of any site used for residential purposes shall be designated for conservation, open space, recreation and/or other common open space. Such area may include environmentally sensitive lands.
- (2) Common open space may be deeded to the township, if accepted by the governing body, or to an open organization or trust or to a private nonprofit organization charged with the provision of recreation activities for the residents of the development.
- (3) All common open space deeded to an open space organization, trust or private organization shall be owned and maintained as provided for in N.J.S.A. 40:55D-43.

U. Utilities and roads.

(1) Water and sewers. All projects within the IID/OCI Zone shall be served by central sewer and water which the township shall be obligated to provide on a priority basis. The applicant shall be required to meet the normal prevailing standards of the township as to an on-site drainage improvements as set forth in § 95-39A(6) of the Code of the township.

(2) Roads.

(a) All developments shall be served by public or private paved roads in accordance with an approved subdivision and/or site plan. All such roads shall be curbed and paved in accordance with township specifications and shall have adequate drainage and lighting. Under Option B, the light industry/office portion of the development shall be served by two (2) separate access roads to the mixed commercial portion of the development.

(b) Local roads shall be planned so as to discourage through traffic.

(c) The minimum public road right-of-way and cartway and the minimum private street cartway shall be in accordance with the following schedule:

Type of Road	Right-of-Way (feet)	Cartway (feet)
Collector road	50	30
Local road with no Parking	40	26
Local road with park- ing on 1 side only	40	26
Local road with on- street parking on both sides	50	30
Private road	None	26

V. Waivers. Notwithstanding any provision set forth elsewhere in this chapter, the Planning Board may waive any engineering, construction and design requirements contained in this section and in other township ordinances in order to achieve the objectives of the HD/OCI Zones, provided that the Planning Board shall be satisfied that such a waiver does not jeopardize the public health and safety.

W. Applicability. The provisions set forth in this section shall apply to both Options A and B unless otherwise specifically stated in this section of the Code.

§ 95-53.3. RAH-1 Residential Affordable Housing Zone regulations. [Added 11-21-1989 by Ord. No. 17-1989]

A. Purpose. The purpose of this district is to provide the opportunity for development of affordable housing units as required by the Constitution of the State of New Jersey and the Fair Housing Act

B. Permitted uses.

- (1) Permitted uses shall be limited to townhouses and condominiums.
- (2) A total of three hundred seventy (370) dwellings shall be permitted of which seventy-four (74) units shall be affordable in accordance with the rules and regulations of COAH.

C. Standards for development The standards for development shall be as follows:

- (1) The bulk, design and other standards for development in the RAH-1 Zone shall be such as to facilitate its construction in accordance with §§ 95-44A and 95-46P of the Code; and, in a reasonable and economical fashion so as to permit the unit yield set forth in Subsection B. In addition, the following specific requirements shall be met
 - (a) Seventy-five (75) feet of landscaped buffering from residential areas shall be provided.
 - (b) No residential building shall be located within fifty (50) feet of the buffer area, except parking areas, access ways and recreational facilities may be provided within fifty (50) feet as appropriate.
- (2) The following shall be general guidelines which shall be waived as necessary or appropriate to achieve development consistent with health and safety and to achieve the unit yield set forth in Subsection B.
 - (a) Buildings shall not exceed three (3) living stories, excluding garages, nor shall they exceed thirty-five (35) feet in height as building height is determined under the Township Land Use Ordinance.
 - (b) Interior roadways shall be private and have a cart way width of twenty-six (26) feet, subject to the reasonable review and approval of the Fire Subcode Official.
 - (c) Parking standards shall be one and five-tenths (1.5) spaces for each one-bedroom or efficiency unit, if any, and two (2) spaces for each other unit. Parking spaces shall not be smaller than nine (9) feet in width by eighteen (18) feet in length. A garage and driveway together shall count as two (2) spaces.
 - (d) Residential buildings shall consist of not more than twenty-four (24) dwelling units. Each residential building shall be at least thirty (30) feet from any other except where necessary to achieve the unit yield specified in Subsection B or to promote overall sound project design.
 - (e) Only the following provisions of the present SFA Zone regulations, § 95-53.1 of the Code of the Township of East Hanover, shall be applicable except to the extent that they would impede the achievement of the unit yield or interfere with sound project design: § 95-53.1C, G, H, J, K, L, N(2) and Q.

D. Other requirements. **[Amended 11-10-1994 by Ord. No. 30-1994]**

- (1) The buffer standards shall be as shown and dimensioned on the attached map, entitled "Buffer, Setback and Affordable Housing Site Standards."⁴⁰

40. Editor's Note: Said map is on file in the office of the Township Clerk.

- (2) A conveyance by deed, subject to approval of East Hanover Township, of five and zero-tenths (5.0) acres of land shall be made to East Hanover Township, and the construction of thirty-two (32) affordable housing units either directly by the township or a not-for-profit agency or in accordance with a turnkey agreement between East Hanover Township and the developer dated ~June 30, 1988, on file with the Township Clerk and available for public inspection.
- (3) A developer in the RAH-1 Zone shall not be requested or required to contribute in any manner or to contribute any off-tract or off-site improvements, except for installing waterlines from existing municipal services, unless over fifty percent (50%) of the need for such improvements is demonstrated to be directly necessitated by the development. Where the over fifty-percent requirement is met, the developer's responsibility shall be no greater than a fair share of the cost of such improvements. The thirty-two (32) affordable housing units shall not be considered in calculating impacts.

§ 95-53.4. (Reserved)⁴¹

41. Editor's Note: Former § 95-53.4, RAH-2, Residential Affordable Housing Zone regulations, added 11-21-1989 by Ord. No. 16-1989 was repealed 7-24-1997 by Ord. NO. 15-1997.

§ 95-53.5. (Reserved)⁴²

42. Editor's Note: Former § 95.53.5, RAH-3, Residential Affordable Housing Zone regulations, added 11-21-1989 by Ord. No. 20-1989, was repealed 6-13-1996 by Ord. No. 12-1996; 5-15-1997 by Ord. No. 16-1997; 12-18-1997 by Ord. No. 39-1997; and 12-18-1997 by Ord. No. 40-1997.

§ 95-53.6. SED (Special Economic Development) Industrial District regulations. [Added 12-3-1992 by Ord. No. 24-1992⁴³]

43. Editor's Note: Original Section W of this ordinance provided for the fast-tracking obligation by the township for the rezoned property; original Section V, regarding water capacity, sanitary sewers and utilities, amended Section vi of Ord. No. 14-1989, which section is not included in this chapter. Copies of these original ordinances are on file in the office of the Township Clerk.

A. Purpose of SED District.

- (1) The SED (Special Economic Development) Industrial District is designed to facilitate the production of affordable housing by establishing special design and use standards in an industrial/office/research development zone together with a cash contribution for affordable housing in lieu of provision of either inclusionary residential development or application of development impact fee ordinances.
- (2) The adoption of this section is consistent with and in furtherance of the 1986 Municipal Master Plan update which recommended that the purpose of the special economic development designation is to encourage coordinated development and preservation of large tracts of land zoned for industrial development and which concluded that maintenance of large tracts of land will result in greater economic development to the township and would permit the most appropriate utilization of the property by the owner.

B. Permitted uses shall be as follows:

- (1) Business campus uses primarily related to the pharmaceutical industry, including but not limited to:
 - (a) Research and development laboratories.
 - (b) Chemical and pharmaceutical manufacture, warehousing, processing and distribution.
 - (c) Business, corporate and professional offices for executive and administrative purposes.
 - (d) All other uses permitted in the T-3 Light Industry Zone.

C. Permitted accessory uses shall be as follows:

- (1) Buildings, structures and uses which are required to satisfy local, state or federal regulatory or environmental requirements related to the pharmaceutical research and manufacturing uses or other uses permitted within the zone and utility buildings and uses.
- (2) Cafeterias and dining areas.
- (3) Off-street parking and parking structures.
- (4) Recreational facilities for employees, including but not limited to day care, ball fields and gyms.
- (5) Signs as permitted by Subsection I herein.
- (6) Regional stormwater detention facilities and private water supply systems.
- (7) Resource recovery, recycling and waste disposal facilities for materials generated on site.
- (8) Pollution prevention and control facilities.
- (9) Maintenance and equipment storage facilities.
- (10) Such other uses as are clearly accessory to the principal structures and uses.

D. Prohibited uses. Uses and activities which are specifically prohibited for the Light Industry 1-3 Zone in § 95-59B are specifically prohibited in the SED Zone.

E. Buffer area requirement. There shall be established along the rear lot line of Block 99, Lot 12, which is adjacent to existing residential uses, a one-hundred-foot buffer area from buildings. Vegetation and hardwood forests within buffer areas shall be preserved and supplemented from time to time in order to provide screening between this tract and adjacent single-family dwellings. The area of this buffer shall be included in the total tract area for the purposes of calculating lot area, coverage, setbacks and open space. Permitted uses within this buffer area shall include roadways for security purposes, drainage swales and water retention facilities.

F. Coverage and height requirements.

(1) Coverage and height requirements shall be as follows:

Type	Maximum Building Coverage (percent)	Maximum Height (feet)
Principal buildings	30	75
Total of principal and accessory buildings	35 (see above)	n/a
Office buildings		75
Warehouses (unmanned)		85
Warehouses and storage		75
Manufacturing facilities		75
Parking structures		65

(2) The height shall be measured from the average top of grade and shall be measured to top of roof. The permitted height of the structures shall exclude rooftop mechanical and architectural appurtenances and discharge stacks. Rooftop mechanical structures shall be shielded from public view as nearly as possible.

G. Building setbacks and lot size, shall be as follows:

- (1) Minimum building setback from Route 10: seventy-five (75) feet; and from Ridgedale Avenue: fifty (50) feet.
- (2) Minimum building setback from adjacent residential zone: one hundred (100) feet.
- (3) Minimum building setback from nonresidential zone: twenty (20) feet, of which ten (10) feet may be paved and the balance grassed or planted.
- (4) Minimum lot size: one hundred (100) acres, together with smaller tracts which are contiguous or devoted to the same operation and use.

H. Subdivision. The applicant may apply for a subdivision of one (1) or more parts of the tract without regard to setbacks, minimum tract size, width, frontage and density for purposes of financing, administration or similar reasons. All conditions of prior site plan approvals that apply to those parcels being subdivided shall continue to be in force and effect.

I. (Reserved)⁴⁴

44. Editor's Note: Former § 95-53.6I, regarding signs, was repealed 5-6-2008 by Ord. No. 5-2008.

J. (Reserved)

K. Minimum off-street parking requirements. For purposes of calculating parking requirements, parking located on Block 99, Lot 12, shall be considered as applicable to all parking requirements without respect to the specific location of buildings on the site and shall incorporate the following standards:

- (1) Required parking:

- (a) There shall be twenty-five (25) spaces per ten thousand (10,000) feet of usable floor area. Usable floor area shall exclude storage areas and areas not occupied by employees.
 - (b) The applicant may seek to reduce the number of required spaces based on a survey of on-site parking needs at the time of any site plan review; provided, however, that the applicant shall not be required to provide additional parking on each building development unless the need for the parking is shown.
- (2) Parking shall be permitted in all required minimum yard setback areas.
- (3) All parking spaces shall be a minimum of nine by eighteen (9 x 18) feet, except as may be provided in § 95-39B(19) of this chapter.
- L. Waiver of fees and voluntary contribution requirements. Notwithstanding any ordinance requirement of the Township of East Hanover to the contrary, the following fees and ordinances shall not apply to the development in the SED Zone:
 - (1) Ordinance No. 18-1987⁴⁵ or any other ordinance which imposes development fees on nonresidential and/or residential development for purposes of establishing an affordable housing trust fund to implement N.J.S.A. 52:27D-301 shall not apply to the SED Zone.

45. Editor's Note: See Ch. 79, Fees and Licenses, Art. III, Development Fees to Assist in Providing Affordable Housing.

- (2) Section 95-32 of Chapter 95, Land Use and Zoning, shall not apply to the SED Zone.
- (3) In furtherance of the Township Fair Share Housing Plan, the developer of property located in the SED Zone shall make a voluntary builder's contribution, in cash, in the amount of one million dollars (\$1,000,000.) in lieu of development fees imposed pursuant to Ordinance 18-1987 or similar future ordinances enacted pursuant to the Fair Housing Act. Cash contributions shall be made in accordance with the following schedule:
 - (a) Two hundred fifty thousand dollars (\$250,000.) by the later date of forty-six (46) days from the date of adoption of this section or the amendment of the Municipal Fair Share Housing Plan and court order of acceptance of the same and expiration of a favorable determination to the Township of East Hanover on any appeal of this section or the amendment of the Municipal Fair Share Plan.
 - (b) Two hundred fifty thousand dollars (\$250,000.) by six (6) months from the date of the first payment.
 - (c) Two hundred fifty thousand dollars (\$250,000.) by twelve (12) months from the date of the first payment.
 - (d) Two hundred fifty thousand dollars (\$250,000.) by eighteen (18) months from the date of the first payment.
- M. Waivers of site plan submission requirements. Notwithstanding any provision set forth elsewhere in this chapter, the Planning Board may waive any engineering, construction and design requirements contained in this chapter and other township ordinances, including but not limited to

§ 95-39 and 95-39.2, in order to achieve the objectives of the SED Zone and necessary to facilitate approval, provided that the Planning Board shall be satisfied that such waiver does not jeopardize the public health and safety. Section 39.1 of Article VI of this chapter of the Code of the Township of East Hanover shall be inapplicable to development applications in the SED Zone District.

- N. Stormwater detention facilities. Stormwater detention facilities shall be provided by developers in the SED Zone in accordance with State DEPE and County Planning Board requirements. The applicant may propose to base its needs on a central regional watershed at the time of any site plan review.
- O. Contribution to off-tract improvements. A developer in the SED Zone shall not be requested or required to construct or contribute in any manner to any off-tract improvement unless over fifty percent (50%) of the need for such improvement is demonstrated to be necessitated by the proposed development. Where such construction or contribution may be required pursuant to this section, the developer's responsibility shall be no greater than a fair share of the cost of such improvements, based on the proportion of any improvement which is directly necessitated by the proposed development.

§ 95-53.7. RAH-4 Residential Affordable Housing Zone regulations. [Added 6-13-1996 by Ord. No. 13-1996; amended 5-15-1997 by Ord. No. 17-1997; 12-18-1997 by Ord. No. 41-1997]

- A. Purpose. The purpose of this zone is to provide the opportunity for development of rental affordable housing units for both age-restricted and non-age-restricted use as required by the Constitution of the State of New Jersey and the Fair Housing Act⁴⁶ and to establish one contiguous affordable housing zone.

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

- B. Permitted uses.

- (1) Permitted uses shall be limited to multiple single-family dwellings and multiple-family dwellings and corresponding recreational facilities.
- (2) A total of 96 dwellings shall be permitted of which 60 affordable age-restricted rental units shall be permitted and 36 affordable non-age-restricted rental units shall be permitted in accordance with the rules and regulations of COAH.

- C. Standards for development. The standards for development shall be as follows:

- (1) Not more than 20% of the site area shall be covered by buildings.
- (2) The buildings shall not exceed three living stories, excluding garages, nor shall they exceed 35 feet in height as building height is determined under the Township Land Use Ordinance. No apartments shall be built with any part below the outside ground level.
- (3) Interior roadways shall be private and have a cartway width of 24 feet for two-way traffic and 18 feet for one-way traffic subject to the reasonable review and approval of the Fire Subcode Official.
- (4) Parking requirements shall be 1.5 spaces for each one-bedroom or efficiency unit, if any, and

two spaces for each other unit. Parking spaces shall not be smaller than nine feet in width by 19 feet in length. A garage and driveway together shall count as two spaces. No parking space shall be located closer than 10 feet to the building, except where parking spaces are located within attached garages or within the building and except for driveways serving garages.

- (5) Age-restricted rental units and non-age-restricted units shall not be mixed in the same building.
- (6) Residential buildings shall consist of not more than 24 dwelling units, subject to considerations of overall sound project design. Each residential building shall be at least 30 feet from any other, except where necessary to achieve the unit yield specified in Subsection B or to promote overall sound project design.
- (7) The following provisions of the present SFA Zone regulations, § 95-53.1 of the Code of the Township of East Hanover, shall apply: § 95-53.1C, H, I, J, K, L, O and S.

D. Other requirements.

- (1) Miscellaneous recreational facilities shall be incorporated into common open spaces. These facilities shall provide active and passive recreation.
- (2) The developer shall submit a housing plan in conformance with housing affordability regulation § 95-46P of this chapter. No development shall occur until the housing plan has received approval of the East Hanover Township Council or its assigns.
- (3) A conveyance by deed, subject to approval of East Hanover Township, of the 13.88 acres of land, designated as Block 96, Lot 50, from the federal government shall be required.

§ 95-54. Business B-1 Zone regulations.

A. Uses. In the Business B-1 Zone, no lot shall be used and no building shall be erected, altered or occupied for any purpose other than the following:

(1) Permitted uses.

- (a) Same as specified for Residence R.15 Zone and subject to all requirements of that zone.
- (b) Stores, shops and markets where goods are sold at retail or where personal services are rendered; provided that:

[1] All goods or products fabricated or processed incidental to such use shall be sold at retail on the premises.

[2] Such fabricating or processing done on the premises shall be done by not more than three (3) persons so employed at any one time.

[3] Such fabricating or processing shall be confined to the first floor and basement of the premises, and no supplies, materials or goods shall be stored or displayed for retail sale or rental outdoors.

- (c) Business and professional offices, banks and fiduciary institutions.
 - (d) Parking lot for private passenger vehicles and business-related commercial vehicles not exceeding two (2) tons, but not for the storage of used or new motor vehicles for sale or hire unless incidental to the operation conducted on the premises.
 - (e) Restaurants.
 - (f) Mortuary or funeral homes.
 - (g) Theater, bowling alley and other similar commercial recreation, provided their activity is carried on entirely within a building.
 - (h) Automobile salesrooms, provided no used or new motor vehicles are stored within the front yard area.
 - (i) Uses similar to those listed above.
- (2) Permitted accessory uses: exceptions and limitations.
- (a) Accessory uses incidental to the permitted uses.
 - (b) Signs as permitted in § 95-63B.

B. **[Amended 8-17-1982 by Ord. No. 24-1982]** Prohibited uses. Although it should be understood that any use which is not specifically permitted in Subsection A of this section is thereby prohibited, the following uses and activities are specifically prohibited in the Business B-1 Zone:

- (1) Drive-in theater.
- (2) Motel, cabin, trailer court, tourist home and hotel.
- (3) Billiard room.
- (4) Used car lot or trailer sales unless accessory to the sale or leasing of new vehicles actually conducted on the same lot.
- (5) Automobile laundry or car-wash establishment.
- (6) Coin-operated dispensers, including mechanical and automatic machines in which a product is returned, except when located in a principal building.
- (7) Commercial public auctions, whether open or closed.
- (8) Retail use in excess of 35,000 square feet of gross floor area. **[Added 3-20-1997 by Ord. No. 6-1997]**
- (9) Any establishment engaged in the sale of goods or materials or storing, displaying or selling goods or materials where forklifts are utilized in areas open to the public, when open to the public, to move merchandise and/or load or unload a customer vehicle. **[Added 3-20-1997 by Ord. No. 6-1997]**

C. Other provisions and requirements.

(1) Area requirements.

- (a) As specified in the schedule, § 95-45.
- (b) One (1) side yard and rear yard required adjacent to a residence zone equal to the larger of the two (2) sides and equal to the rear yard requirements in such adjacent residential zone.
- (c) The minimum side yard requirements may be waived in locations where the adjoining property is in a business zone, provided that all other requirements with respect to parking, servicing and access as specified in this Article are provided. The waiving of the side yard requirements shall be subject to the approval of the Planning Board.

(2) Off-street parking space. The “floor area” as used herein is that area used or intended to be used for service to the public as customers, patrons, clients, patients or tenants, including areas occupied by fixtures and equipment and used for the display or sale of merchandise, but not including storage area. One (1) space shall be required for each two (2) employees or operators, plus:

- (a) Retail stores: one (1) space for each three hundred (300) square feet of floor area or portion thereof.
- (b) Business, professional offices and banks: one (1) space for each four hundred (400) square feet of floor area.
- (c) Restaurant: one (1) space for each five (5) seats.
- (d) Mortuary or funeral home: one (1) space for each car used in connection with the business, plus one (1) space for each forty (40) square feet of assembly room floor area.
- (e) Theater or similar commercial recreation and so forth: one (1) space for each five (5) seats provided for its patrons (based on maximum seating capacity).
- (f) Bowling alley: four (4) spaces for each alley.
- (g) Public utility installation: one (1) space for each two (2) employees.

(3) All parking spaces provided for business uses in this section may be located on a lot within three hundred (300) feet of the premises of the building they are intended to serve, but only if it is determined by the appropriate municipal board that it is impractical to provide the required parking spaces on the same lot as the building they are intended to serve.

(4) Nothing in this Article shall be construed to prevent collective provision of off-street parking facilities by two (2) or more buildings or uses located on adjacent lots, provided that the off-street parking facilities shall not be less than the sum of the requirements for the various individual uses computed separately in accordance with the standards contained in this section, and further provided that the land is owned by one (1) or more of the collective users.

(5) If more than one (1) user collectively meets the off-street parking requirements of this Article, all users shall specify the parking requirements being furnished by each at the time of site plan approval. Said site plan resolution shall provide as a condition that all subsequent owners or users of the premises shall be bound by the parking facilities collectively provided and agreed to by the original users.

(6) Off-street loading and unloading area shall be provided in sufficient amount to permit the transfer of goods and products in an area other than on the public streets.

D. No use permitted within the B-1 Zone shall operate except during the hours of 7:00 a.m. to 11:00 p.m. **[Added 3-3-1988 by Ord. No. 7-1988]**

§ 95-55. Business B-2 Zone regulations.

A. Uses. In the Business B-2 Zone, no lot shall be used and no building shall be erected, altered or occupied for any purpose other than the following:

(1) Permitted uses.

(a) Business uses as permitted in the Business B-1 Zone, including those uses in excess of 35,000 square feet of gross floor area. **[Amended 3-20-1997 by Ord. No. 6-1997]**

(b) Business uses serving highway traffic, such as automobile repair garages and designed shopping centers and business offices.

(c) Commercial greenhouses and nurseries.

(d) Restricted industrial uses as follows:

[1] Warehouse facilities, provided that the goods or merchandise being stored is actually owned by the owner of the parcel or a bona fide tenant with a minimum leased space of five thousand (5,000) square feet and, additionally, the goods to be stored shall be owned and used by said owner or tenant and shall be subject to Planning Board site plan review.

[2] The finishing or assembling of articles made from previously prepared or refined materials.

[3] The preparation and fabrication of metals and metal products and chemicals and chemical products.

[4] Research activities, including laboratories and structures and facilities used in connection therewith and the testing, sale or lease of articles designed and produced in such laboratories. Such uses and other similar uses shall be permitted, provided that they meet the requirements outlined in § 95-56B.

(e) Hotels or motor inns, with appurtenant restaurants, meeting rooms, and recreational facilities such as swimming pools, under the following restrictions:

[1] Minimum site area: three (3) acres.

- [2] Minimum frontage at the street line: two hundred (200) feet.
 - [3] Maximum height: the greater of two (2) stories or thirty-five (35) feet.
 - [4] Minimum height of section of building used for bedrooms: two (2) stories.
 - [5] Maximum percentage of lot to be occupied by buildings, excluding parking areas: thirty percent (30%).
 - [6] Minimum front yard setbacks: seventy-five (75) feet. Setbacks apply to all buildings, excluding parking areas, on the site.
 - [7] Minimum off-street parking: one (1) space per bedroom; for restaurant facilities: one (1) parking space per two (2) seats over twenty (20) seats, the first twenty (20) seats not requiring any parking spaces; for meeting room facilities: one (1) parking space per five (5) seats; for employees: one (1) space per two (2) employees.
- (2) On all property lines except the street line, a strip of property no less than ten (10) feet in width shall be utilized as a buffer area in accordance with specifications set forth in § 95-37B(5) unless waived by the appropriate municipal board at the time of site plan application. **[Amended 8-17-1982 by Ord. No. 24-1982]**
- (3) Permitted accessory uses: exceptions and limitations.
- (a) Accessory uses incidental to the permitted uses.
 - (b) Signs as permitted in § 95-63 C.⁴⁷

47. Editor's Note: Former §95-63, Signs, as amended, was repealed 9-19-1996 by Ord. No. 27-1996. See now Ch. 125, Signs.

- B. Prohibited uses. Although it should be understood that any use which is not specifically permitted in Subsection A of this section is thereby prohibited, the following uses and activities are specifically prohibited in the Business B-2 Zone:
- (1) Same as specified for the Business B-1 Zone in § 95-54B.
 - (2) Residential dwelling units, excluding motels.
 - (3) Industrial uses which do not meet the requirements of §95-56.
 - (4) Any establishment engaged in the sale of goods or materials or storing, displaying or selling goods or materials where forklifts are utilized in areas open to the public, when open to the public, to move merchandise and/or load or unload a customer vehicle. **[Added 3-20-1997 by Ord. No. 6-1997]**
- C. Other provisions and requirements.
- (1) Area requirements.

- (a) As specified in the schedule, § 95-45.
 - (b) One side yard and rear yard required adjacent to a residential zone equal to the larger of the two sides and equal to the rear yard requirements in such adjacent residential zone.
- (2) Off-street parking. Off-street parking spaces shall be provided on the same lot as the use which they are intended to serve and shall be located in other than the required front yard area or the required side yard area on the street side in the case of corner lots. Such parking area shall not be located closer than 50 feet to a residential zone, unless this requirement is waived by the appropriate municipal board in cases where a buffer strip as required by such board is provided and maintained. The following standards shall govern the provisions of such parking space. For uses other than those listed, the number of off-street parking spaces required is the number of spaces required for the use which most nearly approximates the proposed use.
[Amended 11-21-2005 by Ord. No. 32-2005]
- (a) Retail and shopping center retail uses. One space for each 300 square feet or part thereof of total floor area for buildings up to and including 24,000 square feet. For all others, one space per 200 square feet or part thereof of total floor area.
 - (b) Retail furniture and major appliances exclusively. One space for each 500 square feet or part thereof of total floor area.
 - (c) Retail financial institutions and office buildings. One space for each 300 square feet or part thereof of total floor area.
 - (d) Eating and drinking establishments. One space for each three seats plus one space for every two linear feet of bar or counter space where food or beverages are sold at the same.
 - (e) Eating establishments, take-out service only. One parking space for each 100 square feet or part thereof of total floor area, but not fewer than four spaces.
 - (f) Gasoline station. The greater of three spaces or one space for each pump island plus four spaces for the first repair bay and three spaces for each additional bay plus one additional space for each 150 feet or part thereof of total floor area devoted to selling food, beverages, sundries or other nonautomotive merchandise.
 - (g) Motor vehicle repair garage. Four spaces for the first repair bay and three spaces for each additional bay.
 - (h) Automobile sales. One space for each 500 square feet or part thereof of total floor area excluding the service area plus the parking required for a repair facility if service is provided on site.
 - (i) Industrial uses. Three spaces for each 1,000 square feet or part thereof of total floor area.
- (3) **[Added 3-20-1997 by Ord. No. 6-1997]** Loading facilities. Where goods, merchandise, materials or equipment are delivered to, shipped from or loaded at a use, an off-street loading area must be planned and provided in accordance with the following provisions to safely accommodate delivery, shipment or loading operations:

- (a) An off-street loading and unloading area shall be provided in sufficient amount to permit the transfer of goods and products in an area other than in the public streets. This off-street loading and unloading area is specifically not to be included in calculation of required parking.
- (b) The site plan application shall include a full description of the nature and extent of the loading and unloading operations to be undertaken at the use as well as the types of materials involved, including any materials which may be hazardous, toxic or have special handling considerations.
- (c) The site plan application shall identify the number and types of vehicles, including but not limited to flatbed trucks, tractor-trailer trucks, tank trucks and pickup trucks, that shall be loaded or unloaded, the duration of the loading or unloading operations and the maximum number of vehicles by type expected to be loading or unloading at a loading or unloading area at one time.
- (d) The site plan shall clearly identify each and every area where loading and unloading operations will take place and each location where a forklift vehicle will enter or exit a building to assist in loading or unloading operations.

(4) (Reserved)⁴⁸

48. Editor's Note: Former Subsection C(4), pertaining to premises with merchandise stored above floor level, which was added 3.20-1997 by Ord. No. 6-1997, was repealed 11.21-2005 by Ord. No. 32-2005.

- (5) Maximum percentage of impervious surface shall be 70% of lot area. **[Added 3-20-1997 by Ord. No. 6-1997]**
- (6) Establishments having a gross floor area in excess of 35,000 square feet, shall not equal, in the aggregate, more than 33% of the total gross floor area of the entire shopping center. **[Added 3-20-1997 by Ord. No. 6-1997]**

§ 95-55.1. Highway Business B-2B Zone regulations. [Added 12-3-1992 by Ord. No. 23-1992]

- A. The Highway Business B-2B Zone is hereby established.
- B. Uses. In the Highway Business B-2B Zone, no lot shall be used and no building shall be erected, altered or occupied for any purpose other than the following:
 - (1) Permitted uses:
 - (a) Warehouse facilities, provided that the goods or merchandise being stored is actually owned by the owner of the parcel or a bona fide tenant with a minimum leased space of 5,000 square feet, and, additionally, the goods to be stored shall be owned by said owner or tenant and shall be subject of Planning Board site plan review.
 - (b) The finishing or assembling of articles made from previously prepared or refined materials.
 - (c) The preparation and fabrication of metals and metal products or chemicals and chemical

products.

- (d) Research activities, including laboratories and structures and facilities used in connection therewith and the testing, sale or lease of articles designed and produced in such laboratories.

(2) Permitted accessory uses:

- (a) Signs as permitted in § 95-63C.⁴⁹

49. Editor's Note: Former § 95.63, Signs, as amended, was repealed 949-1996 by Ord. No. 27-1996. See now Ch. 125, Signs.

- (b) Such other uses as are clearly accessory to the principal structure and use.

(3) Prohibited uses. Although it should be understood that any use which is not specifically permitted in Subsection B(1) of this section is hereby prohibited, the following uses and activities are specifically prohibited:

- (a) The same as specified for the Business B-2 Zone in § 95-55B.

- (b) Residential dwelling units.

- (c) Sand, clay or gravel mining or other extractive processes and the commercial stripping of topsoil.

- (d) Junkyards and automobile wrecking or disassembly yards.

- (e) Tar plants, asphalt manufacturing or refining plants and concrete or bituminous concrete processing plants.

- (f) Any establishment engaged in the sale of goods or materials or storing, displaying or selling goods or materials where forklifts are utilized in areas open to the public, when open to the public, to move merchandise and/or load or unload a customer vehicle.

[Added 3-20-1997 by Ord. No. 6-1997]

(4) Conditional uses. The following uses are permitted only upon a showing that the use will comply with conditions and standards as contained herein:

- (a) Conditional uses shall be as follows:

- [1] Stores, shops and markets and other retail facilities (including the warehousing of goods to be sold thereon at retail) where goods are sold at retail or where personal services are rendered, provided that all goods or products fabricated or processed incidental to such use shall be sold at retail on the premises.

- [2] Business and professional offices, banks and fiduciary institutions.

- [3] Restaurants.

- [4] Mortuary or funeral homes.

[5] Theater, bowling alley and other similar commercial recreation, provided that their activity is carried on entirely within a building.

[6] Retail stack storage facilities and discount warehouse club facilities. **[Added 3-20-1997 by Ord. No. 6-1997]**

(b) Conditions.

[1] If any application for development of the site adversely affects any streets or intersections in proximity to the area directly and substantially affected by the application for development, the applicant shall pay his pro rata share of the cost of providing reasonable and necessary street improvements to ameliorate such adverse condition, including but not limited to providing appropriate turnarounds, road intersections and safe levels of ingress and egress to and from the site and adjacent roads.

[2] If any application for development of a site significantly increases the ingress and egress of traffic to or from a site, the Board may require the developer to provide and pay for the construction of on-site turnarounds, jughandles and ramps to safely and satisfactorily accommodate the traffic into, out of and along the site. Said turnarounds, jughandles, ramps and intersections, if constructed, shall be deeded to the state, county or local agency having jurisdiction, provided that said agency agrees to accept the same.

[3] The board having jurisdiction over any application for development shall take into consideration environmental factors, including the development's effect upon drainage, wetlands, noise, liquid and/or solid waste generation, water supply requirements, glare, fire and explosion potentials, air emissions and buffering considerations. The board having jurisdiction shall require the applicant to take such action and/or measures to comply with federal, state and/or local regulations and standards for all such factors.

[4] The Schedule of Area Requirements⁵⁰ as specified for the B-2 Zone shall apply to all applications for development in the B-2B Zone except that the minimum lot size in the B-2B Zone shall be eighty-seven thousand (87,000) square feet.

50. Editor's Note: The Schedule of Area Requirements is included at the end of Article VII.

C. Other provisions.

(1) Off-street parking shall be as stipulated under § 95-55C(2).

(2) Loading facilities shall be as specified in § 95-55C(3)(a), (b), (c) and (d). **[Amended 3-20-1997 by Ord. No. 6-1997]**

(3) Parking shall be as specified in § 95-55C(4). **[Added 3-20-1997 by Ord. No. 6-1997]**

(4) Maximum percentage of impervious surface for all permitted and conditional uses shall be as set forth in the requirements for the B-2 Zone. **[Added 3-20-1997 by Ord. No. 6-1997]**

- (5) Shopping centers shall adhere to the dimensional standards of the B-2 Zone as set forth in § 95-55C(6) as set forth herein. **[Added 3-20-1997 by Ord. No. 6-1997]**

§ 95-56. Research Laboratory and Office R-L Zone regulations.

- A. Uses. In the Research Laboratory and Office R-L Zone, no lot shall be used and no building shall be erected, altered or occupied for any purpose other than the following:

(1) Permitted uses.

- (a) Offices for executive or administrative purposes.
- (b) Limited manufacturing or processing and scientific or research laboratories.
- (c) Agriculture.

- B. Prohibited uses. Although it should be understood that any use which is not specifically permitted in Subsection A of this section is thereby prohibited, the following uses and activities are specifically prohibited:

- (1) Residential construction or conversion.
- (2) Mink or fox farms.
- (3) Piggeries.
- (4) Commercial incineration.
- (5) Junkyards.
- (6) Rubbish, garbage or trash dumps.
- (7) Retail sales or service unless an accessory use and unless an integral part of the principal building, provided such sales or service is restricted to the convenience of the employees and visitors of the permitted principal building.
- (8) Any use which will in any manner create any dangerous, injurious, noxious or other objectionable or hazardous condition.
- (9) Any objectionable use by reason of fire, explosion, radioactivity, noise, vibration, smoke, dust, odor or other form of air pollution.
- (10) Any use which creates excessive heat, cold, dampness, excessive movement of air, glare, electrical disturbances or liquid or solid wastes.

- C. Other provisions and requirements.

(1) Area requirements.

- (a) As specified in the schedule, § 95-45.

- (2) Parking. Not more than ten percent (10%) of the required parking area shall be permitted in the front yard. Parking is permitted in the side and rear yards. No off-street parking area shall be closer than fifty (50) feet to any property line nor seventy-five (75) feet to any street right-of-way line.
- (3) Landscaping. Those portions of all front, rear and side yards which are not used for off-street parking shall be attractively planted with trees, shrubs, plants and grass lawns as required by the appropriate municipal board and in accordance with § 95-47A(4), (5) and (6). Special planting or a fence shall be provided along the side and rear property lines as required by the appropriate municipal board so that the parking area is not visible from the abutting residential properties and in accordance with § 95-47A(4), (5) and (6).
- (4) Storage. All materials and equipment shall be stored in completely enclosed buildings or shall be otherwise screened by such walls, fences and landscaping as may be determined by the appropriate municipal board to be adequate to screen such materials and equipment from the abutting residential properties in accordance with § 95-47A(4), (5) and (6).
- (5) Permits and operations.
 - (a) An application for any building permit or certificate of occupancy in the Research Laboratory and Office R-L Zone shall be submitted to the Construction Official in triplicate. The applicant shall also submit in triplicate all plans of the proposed construction and development, including a general description of the proposed machinery operation and products as well as an affidavit by the applicant acknowledging his understanding of the applicable performance standards and agreement to conform to same at all times.
 - (b) The Construction Official shall investigate any alleged violation of the performance standards, and if there are reasonable grounds to believe that a violation exists, shall notify the Township Committee. The Township Committee shall investigate the alleged violation and for such investigation may employ qualified experts. If the experts find such a violation exists, the Construction Official shall revoke the certificate of occupancy and same shall not be reinstated until such time as the violation is remedied to the satisfaction of the Township Committee.
- (6) Performance standards. Before the issuance of any building or occupancy permit for any use in the Research Laboratory R-L Zone, all of the following regulations must be complied with:
 - (a) Fire and explosion hazards. All activities shall be carried on only in buildings classified as fireproof by the Uniform Construction Code as adopted by the township, and the operation shall be carried on in such a manner and with such precaution against fire and explosion hazards as to produce no explosion hazard as determined by the Middle Department Association of Fire Underwriters to a use on an adjacent property. Further, all activities shall conform to all requirements set forth in the Fire Prevention Code of the township.⁵¹ Every factory or manufacturing building or other buildings permitted shall be equipped with automatic sprinklers or other automatic fire extinguishers if required and as approved by the Construction Official and the Chief of the Fire Department as being sufficient in view of the nature and extent of the fire risk.

51. Editor's Note: See Ch. 85, Fire Prevention.

(b) Smoke. There shall be no emission at any point, from any chimney or otherwise, of visible gray smoke of a shade darker than No. 1 on the Ringelmann Smoke Chart as published by the United States Bureau of Mines (Powers Micro Ringelmann Chart, McGraw-Hill Publishing Company, 1954, may be used), except that visible gray smoke of a shade not darker than No. 2 on said chart may be emitted for not more than four (4) minutes in any thirty (30) minutes. These provisions applicable to visible gray smoke shall also apply to visible smoke of a different color but with an equivalent apparent opacity.

(c) Liquid or solid waste. No operations shall discharge waste of any kind into any reservoir, pond or lake. The discharge of untreated waste into a stream is prohibited. All methods of sewage and waste treatment and disposal shall be approved by the township and State Department of Health. Effluent from a treatment plant shall at all times comply with the following standards:

[1] Maximum five-day biochemical oxygen demand: five (5) parts per million.

[2] Maximum quantity of effluent: ten percent (10%) of minimum daily stream flow.

[3] Maximum five-day biochemical oxygen demand after dilution (BOD of effluent multiplied by quantity of effluent divided by quantity of stream flow): twenty-five hundredths (0.25) parts per million.

[4] Maximum total solids: five thousand (5,000) parts per million.

[5] Maximum phenol: one hundredths (0.01) parts per million.

No effluent shall contain any other acids, oils, dust, toxic metals, corrosives or other toxic substances in solution or suspension which would create odors, discolor, poison or otherwise pollute the stream in any way.

(d) Vibration. There shall be no vibration which is discernible to the human sense of feeling beyond the immediate site on which such use is conducted.

(e) Noise. There shall be no noise emanating from the operation which will be audible beyond the boundaries of the immediate site.

(f) Glare. There shall be no direct or sky-reflected glare exceeding one and five-tenths (1.5) foot-candles measured at the property line of the lot occupied by such use. This regulation shall not apply to lights used at the entrances or exits of service drives leading to a parking lot.

(g) Fly ash, dust, fumes, vapors and gases. There shall be no emission which can cause any damage to health, to animals or vegetation or other forms of property or which can cause any excessive soiling at any point. Emission from any chimney or otherwise of any solid or liquid particles in concentration exceeding two-tenths (0.2) grain per cubic foot of the conveying gas or air at any point is prohibited. Measurement of the amount of particles in gases resulting from combustion shall be applied to a standard stack temperature of five hundred degrees Fahrenheit (500° F.) and fifty percent (50%) excess air.

(7) Buffer area requirement. There shall be established along the line of any lot that is contiguous

to any residential district, unless the lot line coincides with a state or federal highway right-of-way, a buffer area of one hundred (100) feet in width plus twenty (20) feet of additional buffer width for each five-foot interval or fraction thereof of the height of the principal building exceeding thirty-five (35) feet up to fifty (50) feet in height and thereafter for each five (5) feet of additional building height [to a maximum of sixty-five (65) feet] or fraction thereof. An additional thirty (30) feet of buffer width shall be required for each five-foot interval of building height exceeding fifty (50) feet. Buffer areas shall remain in perpetuity and shall not be the subject of any future land use or variance applications. In each case where proposed building height exceeds thirty-five (35) feet, a line-of-sight analysis shall be submitted by applicant detailing (architectural and engineering studies) the location of adjacent residential areas which will be in view of the proposed building from various directions and angles, as well as the view of the proposed structure from residential areas. The analysis shall be utilized by the township to determine if the above buffer requirements shall be adjusted to increase height and density of the buffer to provide adequate screening of the proposed building(s). **[Added 12-5-85 by Ord. No. 25-1985]**

§ 95-57. Professional and Business Office PB-1 Zone regulations.

A. Uses. In the Professional and Business Office PB-i Zone, no lots shall be used and no building shall be erected, altered or occupied or any purpose other than the following:

(1) Permitted uses.

(a) Same as specified for Residence R-20 Zone and subject to all requirements of that zone.

(b) Office buildings for business, professional and administrative offices not engaged in retail or wholesale sale and delivery of goods nor the repairing, servicing or receiving for repair or service on the premises.

(c) Banks or other financial institutions.

(d) Municipal facilities or uses.

B. Other provisions and requirements.

(1) As specified in the schedule, § 95-45.

(2) On all property lines except the street line, a strip of property no less than ten (10) feet in width shall be utilized as a buffer area in accordance with specifications set forth in § 95-37B(5) unless waived by the appropriate municipal board at the time of site plan application. **[Amended 8-17-82 by Ord. No. 24-1982]**

C. Permitted accessory uses: exceptions and limitations.

(1) Signs as permitted in § 95-63B.

(2) Off-street parking facilities as permitted and regulated in § 95-54C.

§ 95-58. Professional and Business Office PB-2 Zone regulations.

A. Uses. In the Professional and Business Office PB-2 Zone, no lots shall be used and no building

shall be erected, altered or occupied for any purpose other than the following:

(1) Permitted uses.

- (a) Same as specified for Residence R-20 Zone and subject to all requirements of that zone.
- (b) Office buildings for business, professional and administrative offices not engaged in retail or wholesale sale and delivery of goods nor the repairing, servicing or receiving for repair or service on the premises.
- (c) Banks or other financial institutions.
- (d) Municipal facilities or uses.

B. Other provisions and requirements.

- (1) As specified in the schedule, § 95-45.
- (2) On all property lines except the street line, a buffer strip of property no less than ten (10) feet in width shall be utilized as a buffer area in accordance with specifications set forth in § 95-37B(5) unless waived by the appropriate municipal board at the time of site plan application.
[Amended 8-17-82 as Ord. No. 24-1982]

C. Permitted accessory uses: exceptions and limitations.

- (1) Signs as permitted in § 95-63C.
- (2) Off-street parking facilities as permitted and regulated in § 95-54C.

§ 95-58.1. Professional and Business Office PB-3 Zone regulations. [Added 12-14-82 by Ord. No. 31-1982]

A. Uses. In the Professional and Business Office PB-3 Zone, no lots shall be used and no building shall be erected, altered or occupied for any purpose other than the following:

(1) Permitted principal uses.

- (a) Office buildings for business, professional and administrative offices not engaged in retail or wholesale sale and delivery of goods nor the repairing, servicing or receiving for repair or service on the premises.
- (b) Banks and financial institutions subject to the requirement that they be located within office buildings permitted in Subsection A(1) (a) above.
- (c) Municipal facilities or uses.

(2) Permitted accessory uses; exceptions and limitations.

- (a) Signs, as permitted in § 95-63C.

(b) Off-street parking facilities, including parking decks, as permitted and regulated in § 95-54C.

(c) Employees facilities, including recreation areas, cafeterias, snack bars and other similar facilities.

B. Other provisions and requirements.

(1) Area and building requirements as specified in the following Schedule of Regulations:⁵²

52. Editor's Note: For regulations for other zones, see the Schedule of Area Requirements Included at the end of Art. VII.

**Schedule of Regulations
Professional and Business Office PB-3 Zone**

Minimum Tract Requirements

Type	Requirement
Area	50 acres
Frontage	1,000 feet

**Building Regulations
Requirement**

Type	
Maximum floor area ratio	.27
Maximum building height	
Stories	3
Feet	39
Maximum coverage	
Principal building	20%
All structures	30%
Minimum distance between buildings	100 feet

Type	Requirement
Minimum setback from residential zone district line	
Principal building	200 feet
Accessory structures	200 feet
Required setbacks	
Front	150 feet
Rear	50 feet
Side, each	50 feet
Maximum impervious surface coverage	50%

Minimum buffer area at residential zoning district line	100 feet
Minimum landscape areas	
Along external streets	50 feet
Along internal streets	30 feet
Along any other property line	30 feet

NOTE: In instances where adjoining lots are to be developed simultaneously, the required landscaped area may be reduced by fifty percent (50%).

- (2) Lot requirements. It is the intent of this section that any application for development in the PB-3 Zone be for a tract having a minimum size of fifty (50) acres. The criteria established for development within the PB-3 Zone shall remain in full force and effect as to entire fifty-acre tract. This section, which creates a fifty-acre tract in the PB-3 Zone, establishes criteria for the development of the entire fifty-acre tract. It is also the specific intent of this section that in the event any subdivision of any fifty-acre tract included within the PB-3 Zone is approved or authorized, the development of any such subdivided parcel must adhere to the overall specifications as set forth in the preliminary site plan approved for the development of the entire fifty-acre tract.

§ 95-59. Light Industry 1-3 Zone regulations.

- A Uses In the Light Industry I 3 Zone, no lot shall be used and no building shall be erected, altered or occupied for any purpose other than the following:

(1) Permitted uses

- (a) Warehouse facilities, provided that the goods or merchandise being stored is actually owned by the owner of the parcel or a bona fide tenant with a minimum leased space of five thousand (5,000) square feet and, additionally, the goods to be stored shall be owned by said owner or tenant and shall be the subject of Planning Board site plan review.
- (b) The finishing or assembling of articles made from previously prepared or refined materials.
- (c) The preparation and fabrication of metals and metal products or chemicals and chemical products.
- (d) Research activities, including laboratories and structures and facilities used in connection therewith and the testing, sale or lease of articles designed and produced in such laboratories.
- (e) Any municipally owned and operated uses, such as municipal garage, municipal utility facility, municipal dog pond, etc.⁵³

53. Editor's Note: Former Subsection A(1)(f), regarding uses not specifically prohibited, which immediately followed this subsection, was repealed 7-18-85 by Ord. No. 9-1985 and 12-5-1985 by Ord. No. 25-1985.

(2) Permitted accessory uses.

- (a) Signs as permitted in § 95-63C.
 - (b) Such other uses as are clearly accessory to the principal structure and use.
- B. Prohibited uses. Although it should be understood that any use which is not specifically permitted in Subsection A of this section is thereby prohibited, the following uses and activities are specifically prohibited:
 - (1) Same as specified for the Business B-2 Zone in § 95-55B.
 - (2) Residential dwelling units.
 - (3) Retail business, including stores and shops and including all restaurants and similar service establishments.
 - (4) Sand, clay or gravel mining or other extractive processes and the commercial stripping of topsoil.
 - (5) Junkyards and automobile wrecking or disassembly yards.
 - (6) Tar plants, asphalt manufacturing or refining plants, concrete or bituminous concrete processing plants.
- C. Buffer area. On all property lines except the street line, a buffer strip of property no less than ten (10) feet in width shall be utilized as a buffer area in accordance with specifications set forth in § 95-37B(5) unless waived by the appropriate municipal board at the time of site plan application.¹⁴
- D. Other provisions and requirements.
 - (1) Area requirements.
 - (a) As specified in the schedule, § 95-45.
 - (b) One (1) side yard or rear yard of one hundred (100) feet required adjacent to a residence zone.
 - (c) The two-hundred-foot setback required in the schedule shall be landscaped except for access driveways on all street lines opposite a residential zone.
 - (2) Off-street parking. Off-street parking spaces shall be provided on the same lot as the use which they are intended to serve and shall be located in other than the required front yard area or the required side yard area on the street side in the case of corner lots. Such parking area shall not be located closer than fifty (50) feet to a residential zone, unless this requirement is waived by the appropriate municipal board in cases where a buffer strip as required by such board is maintained. One (1) space shall be provided for each two (2) employees and one (1) space for each one thousand (1,000) square feet of gross floor area.
 - (3) Loading facilities. Off-street loading and unloading of vehicles shall be through a rear service lane, which service lane shall have direct access from a public street. This off-street loading and unloading area is specifically not to be included in calculation of required parking.

(4) Performance standards. Subject to the requirements of § 95-56C(6).

E. **[Added 7-16-87 by Ord. No. 17-1987]** Conditional uses. The following uses shall be permitted as conditional uses within the I-3 Industrial Zone, subject to all standards and regulations set forth hereinafter:

(1) Planned office and commercial development permitting general office uses, indoor theaters and restaurant uses, not including drive-in restaurants, subject to the following:

(a) The tract of land shall have an area of no less than twenty-five (25) acres in size.

(b) The tract of land shall have direct access to a state highway.

(c) The development of a planned office and commercial park shall be limited to eighty percent (80%) coverage of the tract by building on all impervious surfaces.

(d) Commercial floor area (restaurant and theater uses) shall not exceed twenty-five percent (25%) of the total floor area of the planned office and commercial development.

(e) The planned office and commercial development shall comply with all development regulations of the 1-3 Zone District in addition to standards established hereinabove.

§ 95-60. Light Industry I-1 Zone regulations.

A. Uses. In the Light Industry I-i Zone, no lot shall be used and no building shall be erected, altered or occupied for any purpose other than the following:

(1) Permitted uses.

(a) Warehouse facilities, provided that the goods or merchandise being stored is actually owned by the owner of the parcel or a bona fide tenant with a minimum leased space of five thousand (5,000) square feet, and, additionally, the goods to be stored shall be owned by said owner or tenant and shall be the subject of Planning Board site plan review.

(b) The manufacturing, compounding, packing, processing or treatment of beverages, candy, cosmetics, dairy products, ice and toilet supplies.

(c) Metalworking, tool and die shop, machine and welding shop, excluding machinery of a nuisance-producing character.

(d) The finishing or assembling of articles made from previously prepared or refined materials.

(e) The preparation and fabrication of metals and metal products and chemicals and chemical products, provided that no nuisance or hazard may occur from fire, explosion, dust, vapor, flashes, smoke, noise and except as prohibited herein.

(f) Research activities, including laboratories and structures and facilities used in connection therewith and the testing, sale or lease of articles designated and produced in such laboratories, the maintenance of general offices and executive operations in connection therewith.⁵⁴

54. Editor's Note: Former Subsections A(1)(g), regarding gas storage, and A(1)(h), regarding uses not specifically prohibited, were repealed 7-18-85 by Ord. No. 9-1985 and 12-5-85 by Ord. No. 25-1985.

(2) Permitted accessory uses: exceptions and limitations. Same as specified for Light Industry I-3 Zone in § 95-59A(2).

B. Prohibited uses. The following uses and activities are specifically prohibited: same as specified for the Light Industry I-3 Zone in 95-59B.

C. Buffer area. On all property lines except the street line, a buffer strip of property no less than ten (10) feet in width shall be utilized as a buffer area in accordance with specifications set forth in § 95-37B(5) unless waived by the appropriate municipal board at the time of site plan application.
[Amended 8-17-82 by Ord. No. 25-1982]

D. Other provisions and requirements.

(1) Area requirements.

(a) As specified in the schedule, § 95-45.

(b) One (1) side yard and/or rear yard of one hundred (100) feet required where adjacent to a residence zone.

(c) All manufacturing and storage activities to be in fully enclosed buildings.

(2) Off-street parking and loading facilities. Same as specified for Light Industry I-3 Zone in § 95.59D(2) and (3).

(3) Performance standards. Subject to the requirements of § 95-56C(6).

§ 95-61. Public P Zone regulations.

A. Establishment. There shall be a zone which shall be known as "Public" and designated as P.

B. This zone applies to all areas of public facilities which are of a permanent nature, including all administrative, educational, service and recreation and conservation lands of the Township of East Hanover, County of Morris, State of New Jersey.

§ 95-62. Cemetery CEM Zone regulations.

A. Establishment. This zone applies to areas of existing cemetery use. In the event that any such lands are proposed for another use, no structure, building or use shall be established or constructed before another zone district or category is adopted for these lands by the municipal governing body.

B. All designated and existing cemetery use zones as per the Zoning Map shall be governed by standards which are provisions that have been formulated to establish limitations and restrictions on any CEM use or proposed CEM use to promote sound and prudent development of said zones in the best interests of both the citizens of the Township of East Hanover and the owners of the existing use. To achieve these interests, the following standards shall apply in the CEM Zone:

- (1) On all property lines in the CEM Zone which abut or adjoin presently existing residentially zoned properties as designated at the time of the final adoption of this chapter, there shall be established a twenty-five-foot buffer strip on the CEM-zoned property. Within the designated twenty-five-foot buffer strip, no structure or building shall be installed, constructed or erected, and furthermore, no burial plot, monuments nor memorial plaque shall be allowed within ten (10) feet of the outer buffer strip boundary. **[Amended 9-20-1979 by Ord. No. 34-1979]**
- (2) The above-mentioned buffer strip shall extend no less than ten (10) feet in width from the outer boundary of said buffer strip and shall be in accordance with specifications set forth in § 95-37B(5) unless waived by the appropriate municipal board.⁵⁵

55. Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

- (3) The ten-foot outer boundary buffer strip will not immediately be planted along adjoining presently zoned residential lands if, in the opinion of the Zoning Officer of the Township of East Hanover, the natural foliage and trees existing along said boundaries are sufficient and adequate to eliminate site distance from the boundary line of the residential zone into the CEM Zone area. If the natural foliage and trees now creating the natural buffer strip are diminished or removed, thereby creating site distance into the CEM Zone, then in the opinion of the township, to eliminate the site distance, the natural foliage shall be supplemented by the buffer strip requirements designated in this subsection. **[Added 9-20-1979 by Ord. No. 34-1979]**
- (4) All boundary lines in the CEM Zone which adjoin presently existing residentially zoned lands shall be buffered in accordance with Subsection B(1), (2) and (3) hereof. The buffer strip requirement imposed herein shall not extent to any CEM Zone boundary line because of any subsequent rezoning of abutting properties from nonresidential to residential zones. **[Added 9-20-1979 by Ord. No. 34-1979]**

C. Any person seeking to build, construct or erect wholly or partially above or below the ground a public mausoleum, vault, crypt or other structure intended to hold or contain dead bodies must obtain a building permit from the Construction Official and obtain site plan approval from the Planning Board and furthermore comply with all the provisions of N.J.S.A. 8A:3-14.

§ 95-63. Sexually oriented businesses.⁵⁶ **[Added 6-5-1997 by Ord. No. 19-1997]**

56. Editor's Note: Former § 95-63, Signs, as amended, was superseded 9-19-1996 by Ord. No. 27-1996. See now Chapter 125, Signs.

A. Declaration and findings of policy; scope.

- (1) Whereas, sexually oriented businesses are a serious hazard to the public health, welfare, safety and quality of life; and whereas, sexually oriented businesses have a demonstrable deleterious effect on both the existing businesses and surrounding residential areas; and whereas, sexually oriented businesses create an atmosphere which is inimical to the values of this significant segment of the township's population; and whereas, sexually oriented businesses, when located in close proximity to each other, contribute to urban blight and downgrade the quality of life in the surrounding area, now, therefore, it is the policy of the Township of East Hanover to regulate sexually oriented businesses, to protect the public

health, welfare and safety and the quality of life.

- (2) This section shall apply to the regulation of sexually oriented businesses within the limits of the Township of East Hanover.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

ADULT ARCADE — Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electricity or mechanically controlled still or motion-picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

ADULT BOOKSTORE OR ADULT VIDEO STORE — A commercial establishment which, as one of its principal business purposes, offers for sale or for rental for any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed material or photographs, films, motion pictures, videocassettes or video productions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas.
- (2) Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.
- (3) Video stores whose inventory of adult videos is less than 20% of the total number of videos offered for sale or rent is not an adult video store for purposes of this section.

ADULT CABARET — A nightclub, bar, restaurant or similar commercial establishment which regularly features:

- (1) Persons who appear in a state of nudity;
- (2) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- (3) Films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT MOTEL — A hotel, motel or similar commercial establishment which offers accommodations to the public for any form or consideration of which:

- (1) Offers a sleeping room for rent for a period of time that is less than 24 hours: or
- (2) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 24 hours.

ADULT MOTION-PICTURE THEATER — A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities

or specified anatomical areas.

ADULT THEATER — A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

COMMERCIAL DISPLAY — The exhibition to the senses of another person for valuable consideration, whether the valuable consideration is paid by the recipient of the exhibition or by another, and whether the exhibition occurs at the exhibitor's place of business or elsewhere.

NUDITY OR STATE OF NUDITY — The appearance of a human bare buttock, anus, male genitals, female genitals or female breasts.

OBSCENE MATERIALS — The definitions of obscene materials set forth in P.L. 1978, c. 95, as amended by P.L. 1982, c. 211, Section 1 (effective December 23, 1982, as N.J.S.A. 2C:34-2), as the same shall be from time to time amended or supplemented, as well as in accordance with or not more strictly than judicial interrelations thereof pursuant to the Constitution of the United States and of the State of New Jersey finally concluded in courts of jurisdiction sufficient to render decisions on constitutional questions of general application.

PERSON — An individual, proprietorship, partnership, corporation, association or other legal entity.

SEXUALLY ORIENTED BUSINESS — An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion-picture theater or adult theater.

SPECIFIED ANATOMICAL AREAS:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttock or female breasts below the point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES — Includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttock or female breasts.
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy.
- (3) Masturbation, actual or simulated.
- (4) Excretory functions as part of or in connection with any of the activities set forth in the definition of specified sexual activities above.

C. Location of sexually oriented businesses.

- (1) A person violates this section if he operates or causes to be operated a sexually oriented business within 1,000 feet of:
 - (a) Places of worship.

- (b) Any school or other place of instruction, whether public or private.
 - (c) Any mental or physical health care provider or facility.
 - (d) An existing residence.
 - (e) A boundary of any zone, as defined by the Township of East Hanover Land Use Ordinance, in which residential uses are permitted.
 - (f) Any day-care center or similar facility for preschool children.
 - (g) Any other sexually oriented business.
- (2) Measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest point of the property line of the parcel of land upon which the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises devoted to residential use or another sexually oriented business, which is used for a purpose set forth in § 95-63C(1) of this Code.

D. Development standards.

- (1) Buildings used for sexually oriented businesses shall meet all applicable safety standards of the Township of East Hanover, including but not limited to adequate fireproofing of walls, floors, ceilings, adequate fire escapes and exits and adequate fireproofing of all book storage areas.
- (2) All zone requirements for setbacks, building height, buffers, signs, parking and the like shall be complied with.
- (3) All site improvements and site design shall conform to the requirements prescribed under § 95-39B of this Code.
- (4) The interior of the sexually oriented business shall be adequately lighted and constructed so that every portion thereof, except for rest room(s) and areas restricted to employees, is readily visible to the clerk or other supervisory personnel from the counter or other regular stations.
- (5) Obscene materials shall not be shown or exhibited so as to be visible to the public from pedestrian sidewalks or walkways or from other areas, public or semipublic.
- (6) No loudspeakers or sound equipment shall be used for adult bookstores, adult motion-picture theaters or adult mini-motion-picture theaters, as defined herein.
- (7) No building, premises, structure or other facility that contains any sexually oriented business shall contain any other kind of sexually oriented business, regardless of the provisions of~ 95-63C(1)(e).

E. Use regulations.

- (1) No person under the age of 18 shall be permitted into any sexually oriented business premises at any time for any purpose. A sign conspicuously posted shall give notice of this regulation.

(2) Hours of operation shall be no earlier than 9:00 a.m. nor later than 12:00 midnight, prevailing time, on weekdays and Saturdays. All sexually oriented businesses shall be closed on Sundays.

(3) No smoking is permitted in any sexually oriented business. No consumption of alcoholic beverages is permitted at any time in any sexually oriented business.

F. Enforcement.

(1) Except as otherwise provided by state statute,. any person violating any provision of this section, upon conviction, is punishable by a fine not to exceed \$1,000 or a term of imprisonment not to exceed 90 days, or both. In no event shall any person violating this section, upon conviction, receive a fine below the amount of \$100.

(2) Each day a sexually oriented business is operating in violation of any provision of this section shall be deemed a separate offense under this section.

§ 95-64. Nonconforming uses and buildings.

A. Continuance of use. Except as otherwise provided in this section, the lawful use of land or buildings existing at the date of the adoption of this chapter may be continued although such use or building does not conform to the regulations specified by this Article for the zone in which such land or building is located; provided that no such nonconforming building or use shall be enlarged, extended or increased so as to cause any further or additional nonconformity.

B. Abandonment of use. A nonconforming use shall be presumed to have been abandoned when there occurs a cessation of any such use or activity by an apparent act or failure to act on the part of the tenant or owner within a period of one year from the commencement of cessation or discontinuance.

C. Restoration on nonconforming buildings.

(1) If any nonconforming building shall be destroyed not in excess of 50% as determined by the Construction Official by reason of windstorm, fire, explosion or other acts of God or the public enemy, the same may be rebuilt, restored or repaired, but said rebuilt, restored or repaired building shall not exceed the size, dimensions or area covered by the original building.. If any nonconforming nonresidential building shall be destroyed in excess of 50% as determined by the Construction Official, then same shall not be rebuilt, restored or repaired unless said restoration conforms to the regulations of the applicable zone.

(2) Nothing in this article shall prevent the strengthening or restoring to a safe condition of any wall, floor or roof which has been declared unsafe by the Construction Official.

D. Reversion of uses. No nonconforming use shall, if once changed into a conforming use, be changed back again into a nonconforming use.

§ 95-65. Administration.

A. Conditional approvals.⁵⁷ [Added 8-11-2003 by Ord. No. 14-2003]

(1) Conditions precedent.

57. Editor's Note: Former § 95-65A, Legislative findings and declarations, as amended, was repealed 7-10-2000 by Ord. No. 17-2000.

- (a) Whenever any application for development is approved subject to specified conditions intended to be fulfilled before the approval becomes effective, said conditional approval shall lapse and become null and void unless all specified conditions, other than those contemplated by N.J.S.A. 40:55D-22b, are fulfilled within 190 days of the date of the conditional approval.
- (b) Proof that applications have been filed with all other agencies having jurisdiction over any aspect of the application for development shall forthwith be filed with the Planning Board or Board of Adjustment, as the case may be.
- (c) The fulfillment of all other conditions precedent shall forthwith be reported in writing to the Planning Board or Board of Adjustment, as the case may be, which may cause such reports to be verified in an appropriate manner. Only upon fulfillment of all conditions shall any subdivision map or site plan be signed or any required building permit, occupancy permit or zoning permit be issued.
- (d) When all conditions have been fulfilled with regard to any minor subdivision, the applicant shall, within 30 days of fulfillment of all such conditions, submit his deed or map for signature in accordance with N.J.S.A. 40:55D-54 or any such approval shall lapse and be of no force and effect; provided, however, that the applicant may, for good cause shown, obtain an extension either before or after the lapse of said thirty-day period within the reasonable exercise of the Board's judgment.

(2) Conditions subsequent.

- (a) Whenever any application for development is approved subject to conditions, which by their terms are incapable of being fulfilled or are not required to be fulfilled prior to the final approval of the application, the performance of which are not guaranteed by bonds or securities of any type, failure to fulfill any such condition within six months from the date of the final approval of the application for development shall be grounds for the issuance of a stop-work order by the enforcing official and the withholding of any zoning permit, certificate of occupancy or any other approval until such condition or conditions are fulfilled.
- (b) Nothing herein contained shall be construed as preventing the Planning Board or Board of Adjustment as the case may be, from specifying a longer period of time within which any specific condition must be fulfilled or from granting, upon an exparte application, an extension of time for good cause shown.
- (c) The fulfillment of all conditions shall be reported in writing to the Planning Board or Board of Adjustment, as the case may be, which may cause such reports to be verified in an appropriate manner. Only upon fulfillment of all conditions shall any subdivision map or site plan be signed or any required building permit, occupancy permit or zoning permit or other required approval be issued.
- (d) For the purpose of calculating the time period within which conditions must be fulfilled,

such time periods shall commence from the date on which the resolution of approval was adopted.

B. Enforcement. [Amended 12-18.1997 by Ord. No.53-1997]

- (1) The Zoning Enforcement Official and/or the Director Land Use, who shall be designated as the administrative officer, and/or such deputies as may be appointed, shall be responsible for the administration and enforcement of Chapter 95, Land use and Zoning. **[Amended 3-7-2005 by Ord. No. 5-2005]**
- (2) No land, building, structure or part thereof within the Township shall be constructed, altered, used or occupied unless such land, building, structure or part thereof shall conform to the provisions of Chapter 95, Land Use and Zoning, and a zoning permit is issued by the Zoning Enforcement Official certifying such conformance.
- (3) In no case shall a permit be granted for the construction or alteration of any building, land, structure or part thereof where the proposed construction, alteration or use thereof would be in violation of any provision of Chapter 95, Land Use and Zoning.
- (4) In no case shall a certificate of occupancy be granted for the occupancy and use of vacant land, change in the use of any land, building or structure, any change involving a nonconforming use or nonconforming structure or change in the ownership, tenancy or occupancy of any land, building or structure where the proposed occupancy, change in the use, change involving a nonconforming use or nonconforming structure, unless such nonconformance is otherwise permitted pursuant to § 95-65 of the Code of the Township of East Hanover, or change in the ownership, tenancy or occupancy thereof would be in violation of any provision of Chapter 95, Land Use and Zoning.
- (5) To ensure compliance with the provisions of Chapter 95, Land Use and Zoning, no permit or certificate of occupancy shall be issued unless a zoning permit has first been granted by the Zoning Enforcement Official.
- (6) As used in this article, “zoning permit” means a document signed by the Zoning Enforcement Official which is required by ordinance as a condition precedent to the commencement of a use, occupancy or the erection, construction, reconstruction, alteration, conversion or installation of a structure or building and which acknowledges that such use, occupancy, structure or building complies with the provisions of Chapter 95, Land Use and Zoning, or variance there from duly authorized by the Planning Board or Zoning Board of Adjustment.
- (7) It shall be the duty of the Zoning Enforcement Official to cause any building, structure, plans or premises to be inspected or examined and to order, in writing, the remedying of any conditions found to exist in violation of any provision in Chapter 95, Land Use and Zoning. The Zoning Enforcement Official shall have the right to enter any building or premises during the daytime in the course of performance of his or her duties, subject to any applicable state or federal constitutional proscriptions.

C. Building permits; permit records. [Amended 12-18-1997 by Ord. No. 53-1997]

- (1) All applications for building permits shall be made in the manner prescribed in the building code (Chapter 75, Construction Codes, Uniform, of the Code of the Township of East Hanover) and shall also constitute an application for a zoning permit, which is a condition

precedent to the issuance of a building permit. A duplicate copy of all applications for building permits must be provided to the Zoning Enforcement Official by the applicant at the same time that the building permit application is made to the Construction Official. Each application for a building permit shall be accompanied by payment of the applicable fee prescribed in Chapter 79, Fees and Licenses, of the Code of the Township of East Hanover. A determination as to the issuance of a building permit shall be made within 20 business days from the date a complete building permit application has been filed pursuant to this subsection.

- (2) The Construction Official shall not issue a building permit unless the applicant has first been granted a zoning permit, except that the Construction Official may, in the case of a real and imminent emergency, issue a building permit to address the emergency without the applicant having to first secure a zoning permit, in which case the Construction Official shall forthwith provide the Zoning Enforcement Official with notice of the issuance of such building permit and the nature of the emergency underlying the same, with copies of such notice to the Mayor and Council. Notice shall be given by the Zoning Enforcement Official to the applicant and Construction Official of the disposition made on all zoning permit applications submitted under this subsection.
- (3) Zoning permits required under this subsection may, in the discretion of the Zoning Enforcement Official, be in the form of a separate document and/or included in a building permit which may be issued by the Construction Official. The form shall be approved by the Township Council. Zoning permits granted under this subsection may, in discretion of the Zoning Enforcement Official, include conditions that the Zoning Enforcement Official deems adequate to ensure compliance with Chapter 95, Land Use and Zoning.

D. Certificates of occupancy and zoning permits; fee; revocation; filing. **[Amended 12-18-1997 by Ord. No. 53-1997]**

- (1) It shall be unlawful to use or permit the use of any building or premises or part thereof hereafter created, located, erected, changed, altered, converted or enlarged, wholly or partly, until a certificate of occupancy and zoning permit have been issued for that premises in accordance with the requirements of the building code and Chapter 95, Land Use and Zoning.
- (2) In the event that any building, premises, structure or part thereof being utilized for a commercial or industrial use shall become vacant or in the event that there is a change in the ownership, tenancy and/or occupancy thereof, it shall be unlawful for any new owner, tenant and/or occupant to occupy or utilize said building, premises, structure or part thereof unless a certificate of occupancy and zoning permit have been issued specifically for said owner, tenant and/or occupant.
- (3) In the event that the present use by an owner, tenant and/or occupant of any building, premises, structure or part thereof being utilized for a commercial or industrial use shall change or contemplate a change to a different use, it shall be unlawful for the owner, tenant and/or occupant to utilize said building, premises, structure or part thereof for such different use unless a certificate of occupancy and zoning permit have been issued specifically for such different use to said owner, tenant and/or occupant.
- (4) All applications for certificates of occupancy shall be made to the Construction Official on a form provided by the township and shall also constitute an application for a zoning permit, which is a condition precedent to the issuance of a certificate of occupancy. A duplicate copy

of all applications for certificates of occupancy must be provided to the Zoning Enforcement Official by the applicant at the same time that a certificate of occupancy application is made to the Construction Official. An application fee in the amount prescribed in Chapter 79, Fees and Licenses, of the Code of the Township of East Hanover shall be submitted with every application for a certificate of occupancy. A determination as to the issuance of a certificate of occupancy and zoning permit shall be made within 10 business days from the date a complete certificate of occupancy application has been filed pursuant to this subsection.

- (5) The Construction Official shall not issue a certificate of occupancy unless the applicant has first been granted a zoning permit. Notice shall be given by the Zoning Enforcement Official to the applicant and Construction Official of the disposition made on all zoning permit applications submitted under this subsection.
- (6) Zoning permits required under this subsection may, in the discretion of the Zoning Enforcement Official, be in the form of a separate document and/or included in a certificate of occupancy which may be issued by the Construction Official. The form shall be approved by the Township Council. Zoning permits granted under this subsection may, in the discretion of the Zoning Enforcement Official, include conditions that the Zoning Enforcement Official deems adequate to ensure compliance with Chapter 95, Land Use and Zoning, so long as said conditions are otherwise consistent with the Municipal Land Use Law⁵⁸ and this Code.

58. Editor's Note: See N.J.5A. 40:55D-1 et seq.

E. Appeals. [Amended 6-7-1984 by Ord. No. 10-1984; 12-18-1997 by Ord. No. 53-1997]

- (1) In the event that a zoning permit is denied or conditioned by the Zoning Enforcement Official, the Zoning Enforcement Official shall set forth the reasons for the denial or condition(s) and the applicant may appeal the denial or condition(s) by the Zoning Enforcement Official to the Zoning Board of Adjustment. The Zoning Board of Adjustment shall have the right to overrule or affirm such denial or condition(s). In the case of an appeal to the Zoning Board of Adjustment, the appellant shall pay fees as established by the Zoning Board of Adjustment in accordance with the procedures for fees relative to other matters coming before the Zoning Board of Adjustment in accordance with the Code of the Township of East Hanover, with an application fee in the amount prescribed in Chapter 79, Fees and Licenses, of the Code of the Township of East Hanover.
- (2) Any appeals made pursuant to Subsection E(1) of this subsection must be filed within 20 days of the date of the denial or conditioning of a zoning permit.

F. Temporary use permits.

- (1) It is recognized that it may be in accordance with the purpose of this article to permit temporary activities for a limited period of time, which uses may be prohibited by other provisions of this article. If such uses are of such a nature and are so located that at the time of petition they will in no way exert a detrimental effect upon the uses of other lands and activities normally permitted in the zone and will also contribute materially to the welfare of the township, or if the need for such permit arises in the state of emergency under conditions peculiar to the time and place involved, then the Planning Board may, subject to all regulations for the issuance of special permits elsewhere specified, issue a temporary permit for a period not to exceed six months. Such period may be extended not more than once for an additional period of six months, provided the applicant demonstrates a continuing effort to

the Construction Official to repair or rebuild in the appropriate case, and provided the applicant presents a site plan application prior to the expiration of the initial six months' period, and provided that the conditions of the initial temporary use permit have been followed.

- (2) In the event of an emergency situation prior to a regular scheduled meeting of the Planning Board, the Township Construction Official may issue a temporary use permit under the conditions outlined above for a period not to exceed one month and conditioned upon application for a temporary use permit to the East Hanover Planning Board.

G. Advisory duties of Planning Board. **[Added 12-18-1997 by Ord. No. 53-1997]**

- (1) The Planning Board is assigned the responsibility **for** performing advisory duties pursuant to N.J.S.A. 40:55D-25 of the Municipal Land Use Law for the purposes of assisting and aiding the governing body, township agencies and township officers in matters involving Chapter 95, Land Use and Zoning.
- (2) The Construction Official and Zoning Enforcement Official may solicit and obtain from the Planning Board advisory assistance and aid pursuant to N.J.S.A. 40:55D-25b(3) in connection with any applications for a building permit, certificate of occupancy or zoning permit, as the case may be, which in the opinion of the Construction Official, in the case of a building permit application or certificate of occupancy application, or Zoning Enforcement Official, in the case of a zoning permit application, presents issues or complexities for which the expertise of the Planning Board would be beneficial or essential. In the event that advisory assistance and aid is sought from the Planning Board pursuant to this subsection, the applicant and Planning Board shall be notified of the same, in writing, by the Construction Official and/or Zoning Enforcement Official, as the case may be.

H. Reports by the Construction Official. **[Added 12-18-1997 by Ord. No. 53-1997]**

- (1) The Construction Official shall prepare and file a written report with the Township Council at thirty-day intervals setting forth an itemization of all applications made for building permits and certificates of occupancy for the relevant period, together with the disposition taken by the Construction Official on all such applications and the basis therefor.
- (2) A copy of each such report shall be filed by the Construction Official with the Planning Board at the same time it is filed with the Township Council.

I. Conflicting provisions. In the event that there exists any conflicts between this § 95-65 and any provisions of the Code of the Township of East Hanover concerning the subject matter hereof, the provisions of this § 95-6 5 shall govern and control. To the extent that any such conflicts exist, such conflicting provisions are hereby amended, modified or repealed as appropriate so as to be compatible with this § 95-65. **[Added 12-18-1997 by Ord. No. 53-1997]**

J. Savings provision. In the event that one or more of the provisions of this § 95-65 shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, such illegality or invalidity shall not affect any other provision hereof, but this § 95-65 shall be construed and enforced as if such illegal or invalid provision had not been contained herein, unless a court of competent jurisdiction holds that such provisions are not severable from all other provisions of this § 95-65 or that the invalidity of the affected provision materially alters the substance of this § 95-65. **[Added 12-18-1997 by Ord. No. 53-1997]**

§ 95-65.1. Zone change requests. [Added 5-18-1982 by Ord. No. 12-1982; amended 4-21-1983 by Ord. No. 10-1983]

A. Procedures.

- (1) Any developer requesting a zone change shall file with the Director of Land Use such a request and simultaneously deposit with the Township Clerk an escrow amount for fees as hereinafter set forth.
- (2) The Director of Land Use shall thereupon notify the Township Committee, in writing, of the zone change request and, thereupon, forward copies of the request and accompanying map to the Planning Board for its review and recommendation on the request. Upon receipt of said request, the Secretary to the Planning Board shall send a copy of said zone change request to those entities as set forth in § 95-35A(1).
- (3) Upon receipt of the reports from the entities set forth in § 95-35A(1), the Planning Board shall thereafter conduct a public hearing and render a decision on the zone change request and, thereupon, forward its recommendation to the Township Committee.
- (4) Upon receipt by the Township Committee of the recommendation of the Planning Board, the Township Committee shall schedule a public hearing on the zone change request.
- (5) The Township shall provide public notice, and the developer shall provide private notice to the owners of all real property shown on the current tax maps of the township within 200 feet in all directions of the property which is the subject of such hearing.

B. Fees. The fee to be charged for a zone change request shall be determined in the following manner:

- (1) The developer, upon the filing of a zone change request, shall deposit with the Township Clerk, adequate funds to cover the cost of professional services in connection with the review of said zone change request, including but not limited to shorthand reporting and transcripts, review, inspection and reports of the Township Engineer, professional planner, Township Attorney, Planning Board Attorney and any other professionals whose services are deemed necessary with respect to the review of the zone change request.
- (2) All moneys required under this section shall be deposited by the Township Clerk in the township's escrow account, and the Township Treasurer shall set up a ledger page in the name of the developer. All disbursements to professional consultants or experts required to review the zone change request shall be charged against the developer's escrow account. The amount of the initial deposit to the escrow account, to be remitted at the time of the submission of the zone change request by the developer, shall be as provided in § 79-7F.
- (3) Any of the aforesaid deposit remaining in the escrow account upon completion of the review procedure shall be returned to the developer.
- (4) In the event that the funds in the escrow account shall become depleted prior to the completion of the review procedure and additional funds are needed to cover the cost of processing said zone change request, the developer shall deposit sufficient additional funds. In order to expedite the processing of all zone change requests, the Township Clerk shall

notify the developer immediately upon the depletion of funds in the escrow account or as soon as an insufficiency of funds becomes evident or is expected.

- (5) No township agency shall review and or take action on a zone change request unless all fees and deposits required in the manner described above shall have been deposited by the developer with the Township Clerk.
- (6) All bills submitted to a township agency by the stenographer, professional planner, Township Attorney, Planning Board Attorney or other professionals containing charges to be applied against the developer's escrow account established pursuant to this section shall specify the services performed in relation to the individually identified zone change request for which the charges have been incurred.
- (7) Unit charges, i.e., per diem or hourly fees, inspection or expert testimony charges, levied by the stenographer, professional planner, Township Attorney, Planning Board Attorney or other professionals for services rendered in connection with a zone change request may not exceed those unit charges contracted for and/or approved by the township agency for services by said professionals.
- (8) A monthly accounting of all funds to be withdrawn by the township from the escrow account shall be submitted by the Township Clerk to the developer at least 10 days prior to withdrawal of said funds. Within said 10 days, the developer shall have the opportunity to request, in writing, a hearing by the appropriate township agency with respect to the reasonableness of the intended charges against the escrow account. In the event that the developer requests such a hearing, no withdrawal shall be made from the escrow account until the township agency shall have ruled on the appeal. If the township agency finds in favor of the developer, the withdrawals from the escrow account shall be adjusted accordingly. If no objection is filed within 10 days, the funds shall be withdrawn from the escrow account and transferred to the township general funds.

§ 95-65.2. Payment in lieu fees for affordable housing. [Added 3-3-2014 by Ord. No. 2-2014⁵⁹]

- A. Purpose. This section of the land use regulations of the Township of East Hanover sets forth mechanisms by which developers shall provide for affordable housing based on growth that is associated with development taking place within the Township of East Hanover, N.J.A.C 5:97-6.4(c) permits payments in lieu of providing whole or fractional affordable units that are required by municipal ordinance.
- B. Applicability for residential development. All residential development in the R-15 Zone that result in the construction of new market-rate dwelling units in accordance with N.J.A.C. 5:97-1 et seq. shall be subject to the provisions of this section.
- C. Residential provisions.
 - (1) All Residential development in the R-15 Zone that results in the construction of new market-rate dwelling units shall provide one affordable unit for every four market-rate units constructed.
 - (2) All residential development in the R-15 Zone consisting of five or more residential units shall provide one affordable housing unit on site for every four market-rate units.

However, the Land Use Board may grant a variance from providing the affordable unit(s) on site and instead allow the developer to make a payment in lieu of constructing the affordable unit(s).

- (3) For developments that result in a number of market-rate residential units not evenly divisible by five, the developer may make a payment in lieu of constructing the additional affordable unit. The amount of said payment shall be the proportionate fraction of the affordable housing unit required multiplied by the payment in lieu established in Subsection C(4) below.
- (4) Where affordable units are required to be constructed and where the developer has been authorized by the Township to make a payment in lieu of constructing the affordable housing units, developers shall make a payment to the Township. The amount of the payment shall be \$148,683 for each affordable unit or fraction thereof.

D. Payment in lieu provisions.

- (1) Fifty percent of the payment in lieu fee shall be paid at the time of issuance of a building permit. The remaining portion of the required payment shall be paid at the issuance of the first certificate of occupancy.
- (2) All payments in lieu of construction affordable housing shall be deposited by the Township of East Hanover into an affordable housing trust fund to be established by ordinance in conformance with the regulations established by COAH and shall at all times be identifiable from development fees. These funds shall be used by the Township of East Hanover in accordance with regulations established by COAH to create new affordable housing opportunities within the physical boundaries of the Township of East Hanover.

59. Editor's Note: Former § 95.65.2, Posting of signs, added 4-21-1983 by Ord. No. 10-1983, was repealed 3-12-2001 by Ord. No. 5-2001.

§ 95-66. Violations and penalties.

- A. Penalty. For each and every violation of the provisions of this article, the owner, contractor or other persons interested as lessee, tenant or otherwise in any building or premises where said violation has been committed or shall exist and who refuses to abate said violation within three days after written notice has been served upon him either by mail or by personal service shall, for each and every violation, be punished by a fine not exceeding \$500 or by imprisonment for a term not exceeding 90 days, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
- B. Where it has been determined that a corporation is the interested party, any officer or director of said corporation may be determined to be a responsible party and liable for the penalties provided for in Subsection A.
- C. Any person who participates in a conveyance which is designed or intended to frustrate the imposition of a penalty under this article shall also be liable for such penalty.

§ 95-67. Repealer; effect.

All ordinances or parts of any ordinance inconsistent with the provisions of this Article are hereby repealed. The adoption of this Article however, shall not abate or prevent the continuance of any proceedings instituted under the ordinance of which this Article is a revision, nor abate or prevent any proceedings or prosecution for offense heretofore committed in violation of the ordinance, known as the "Zoning Ordinance of the Township of East Hanover, in the County of Morris," or any amendments made thereto, of which this Article is a revision. Nothing herein shall be deemed to change the status of nonconforming uses heretofore created by virtue of the prior Zoning Ordinance or amendments thereof, it being the intent that this revision shall not supersede said ordinance or amendments thereof but that said ordinance and amendments and this revision shall constitute a body of law.

§ .95-68. When effective; existing permits.

This Article shall take effect upon its final passage and publication according to law, but any building or structure the erection of which has been authorized by a permit issued by the Construction Official prior to the passage of this Article shall be completed within one year from the date of the passage of this Article in accordance with the permit and the requirements of law and ordinance in force at the time when such permit was granted and said building or structure may be used for the purpose designated in the plans and in the permit.

§ 95-68.1. Development fees for low- and moderate-income housing. [Added 12-29-2009 by Ord. No. 16~2009⁶⁰]

60. Editor's Note: This ordinance also repealed former § 95-68.1, Mandatory development fees, added 6-20-1995 by Ord. No. 17-1995, as amended.

A. Purpose.

- (1) In *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- (2) Pursuant to P.L.2008, c.46 § 8 (N.J.S.A. 52:27D-329.2) and the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7),⁶¹ COAR 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 nonresidential development.

61. Editor's Note: Pursuant to the New Jersey Economic Stimulus Act of 2009, the Nonresidential Development Fee Act, which was signed into law on 7.17-2008, was suspended. For applicable development fees, consult the Township offices.

- (3) This section establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance with P.L.2008, c.46, § 8 and 32 through 38. Fees collected pursuant to this section shall be used for the sole purpose of providing low- and moderate-income housing. This section shall be interpreted within the

framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

B. Basic requirements.

- (1) This section shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1.
- (2) East Hanover Township 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. Definitions. The following terms, as used in this section, 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 one-hundred-percent-affordable development.

COAH or the COUNCIL — 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.

DEVELOPMENT FEE — Money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

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.

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 N.J.S.A. 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.

D. Residential development fees.

- (1) Imposed fees.
 - (a) Residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted.
 - (b) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of 6% of the equalized assessed value for each additional unit that may be realized. However, 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.

[1] Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5% of the equalized assessed value on the first two units; and the specified higher percentage up to 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

(2) Eligible exactions, ineligible exactions and exemptions for residential development.

- (a) Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- (b) Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance 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 building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- (c) Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- (d) Developers of any charitable or not-for-profit entity formed and legally existing in accordance with the laws of the State of New Jersey shall be exempt from paying a development fee.

E. Nonresidential development fees.

(1) Imposed fees.

- (a) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, 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.
- (b) Nonresidential developers, except for developers of the types of development specifically exempted, 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.
- (c) 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

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 nonresidential development fee shall be zero.

- (2) Eligible exactions, ineligible exactions and exemptions for nonresidential development.
 - (a) The nonresidential portion of a mixed-use inclusionary or market-rate development shall be subject to the 2.5% development fee, unless otherwise exempted below.
 - (b) The 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.
 - (c) Nonresidential developments shall be exempt from the payment of nonresidential 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 Nonresidential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.
 - (d) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time 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 of the nonresidential development, whichever is later.
 - (e) 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 East Hanover Township as a lien against the real property of the owner.

F. Collection procedures.

- (1) Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the Construction Official responsible for the issuance of a building permit.
- (2) For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Nonresidential 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.

- (3) The Construction Official responsible for the issuance of a building permit shall notify the local Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
- (4) Within 90 days of receipt of that notice, the Municipal Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- (5) The Construction Official responsible for the issuance of a final certificate of occupancy shall notify the local Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- (6) Within 10 business days of a request for the scheduling of a final inspection, the municipal 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.
- (7) Should East Hanover Township 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).
- (8) Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- (9) Appeal of development fees.
 - (a) 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 East Hanover Township. 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.
 - (b) 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 East Hanover Township. 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.

G. Affordable housing trust fund.

- (1) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Affordable Housing Liaison for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.
- (2) The following additional funds shall be deposited in the affordable housing trust fund and shall at all times be identifiable by source and amount:
 - (a) Payments in lieu of on-site construction of affordable units;
 - (b) Developer contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - (c) Rental income from municipally operated units;
 - (d) Repayments from affordable housing program loans;
 - (e) Recapture funds;
 - (f) Proceeds from the sale of affordable units; and
 - (g) Any other funds collected in connection with East Hanover Township's affordable housing program.
- (3) Within seven days from the opening of the trust fund account, East Hanover Township shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, a banking institution, and COAR to permit COAR to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
- (4) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

H. Use of funds.

- (1) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAR to address the East Hanover Township'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, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or 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, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 5:97-8.9 and specified in the approved spending plan.
- (2) Funds shall not be expended to reimburse East Hanover Township for past housing

activities.

- (3) At least 30% of all development fees collected and interest earned 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 median income by region.
 - (a) 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.
 - (b) 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 use of development fees in this manner may entitle East Hanover Township to bonus credits pursuant to N.J.A.C. 5:97-3.7.
 - (c) 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.
 - (4) East Hanover Township may contract with a private or public entity to administer any part of its housing element and fair share plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
 - (5) 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 consultant fees necessary to develop or implement a new construction program, a housing element and fair share plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20% of the revenues collected from development fees shall be expended for such administrative expenses. 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 objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.
- I. Monitoring. East Hanover Township shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with East Hanover Township's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAR. All monitoring reports shall be completed on forms designed by COAH.
 - J. Ongoing collection of fees. The ability for East Hanover Township to impose, collect and

expend development fees shall expire with its substantive certification unless East Hanover Township has filed an adopted housing element and fair share plan with COAB, has petitioned for substantive certification, and has received COA}T's approval of its development fee ordinance. If East Hanover Township fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal 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). East Hanover Township 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 or judgment of compliance, nor shall East Hanover Township retroactively impose a development fee on such a development. East Hanover Township shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

ARTICLE VIIA
Air Safety and Zoning
[Added 11-14-1996 by Ord. No. 30-1996]

§ 95-68.2. Purpose.

The purpose of this article is to amend the Land Use and Subdivision Ordinances of the Township of East Hanover to comply with the Air Safety and Zoning Act of 1983, N.J.S.A. 6:1-80 et seq. and the rules established in N.J.A.C. 16:62.

§ 95-68.3. Statutory requirement.

An ordinance establishing minimum standards for the control of airport and aeronautical hazards and standards for land use adjacent to airports is hereby adopted pursuant to the Air Safety and Zoning Act of 1983, N.J.S.A. 6:1-80 et seq. and N.J.A.C. 16:62 et seq., as amended. These standards shall become part of the Township of East Hanover master plan of development. A copy of N.J.A.C. 16:62 is annexed hereto, and made a part hereof, by reference.⁶²

62. Editor's Note: A copy of N.J.A.C. 16:62 is on file in the office of the Township Clerk.

§ 95-68.4. Conformance with statutory requirement and regulations.

Incorporated by reference herein is the Township of East Hanover Zoning Map, dated September 3, 1996, prepared by Schoor Depalma, Engineers and Design Professionals, consisting of one page, and delineating air safety and zoning pursuant to N.J.S.A. 6:1-80 et seq., for the area immediately surrounding that portion of the Morristown Airport located within the Township of East Hanover, County of Morris, State of New Jersey.

§ 95-68.5. Transmission to Division of Aeronautics in New Jersey Department of Transportation.

A valid copy of this article and a local development master plan shall be transmitted to the Division of Aeronautics in the New Jersey Department of Transportation.

ARTICLE VIII
Soil Moving

§ 95-69. Legislative declaration.

- A. The unregulated and uncontrolled relocation, filling, excavation and removal of soil on a large scale has resulted and can result in conditions detrimental to the public safety, health and general welfare, substantially hampering and deterring the efforts of the Township of East Hanover to effectuate the general purpose of municipal planning, and must be controlled.
- B. The unregulated and uncontrolled relocation, filling, excavation and removal of soil will result in serious and irreparable damage to the public welfare by reason of consequent soil erosion by water and wind; inadequate and improper surface water drainage; increased flooding and flood damage both within and without the township; the decrease in or destruction of the fertility of soil, the removal of lateral support of abutting streets, land and premises; the creation of dust storms and mosquito-breeding areas; the creation of dangerous depressions; the deterioration of property values; the rendering of lands unfit or unsuitable to their most appropriate uses; and the creation of other factors and elements affecting the coordinated, adjusted and harmonious physical development of the township, and must be controlled and regulated.

§ 95-70. Purpose.

The purpose of this Article shall be to prevent the unregulated and uncontrolled relocation, filling, excavation and removal of soil by property owners, developers and excavators which may result in conditions detrimental to the public safety, health and general welfare, substantially hampering and deterring the efforts of the township to effectuate the general purpose as expressed herein.

§ 95-71. Definitions.

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

DEVELOPER — Any person who, either directly or through an agent or independent contractor, engages or intends to engage in land subdivision or in the construction of two (2) or more dwelling houses, a business or industrial building in any subdivision, for the purpose of sale to or occupancy by another person or persons.

EXCAVATOR — Any person who moves soil.

LOT — Any parcel of land or portion thereof, the boundary lines of which can be ascertained by reference to the maps and records, or either, in the office of the Tax Assessor of the township or in the office of the Morris County Clerk. For the purposes of this Article, a “lot” shall also be deemed to be any contiguous parcels of land under common ownership, which ownership can be ascertained by reference to the maps and records, or either, in the office of the Tax Assessor of the township or in the office of the Morris County Clerk.

MAJOR SOIL PERMIT — Any soil permit other than a minor soil permit for the moving of soil within any period of twelve (12) consecutive months.

MINOR SOIL PERMIT — A permit for the moving of more than one (1) but less than one hundred (100) cubic yards of soil within any twelve (12) consecutive months, as required by § 95.73 hereof, and which is not submitted with or determined to affect an application for subdivision or site plan approval. If two (2) or more applications in any twelve (12) consecutive months’ period require the movement of soil in excess of one hundred (100) cubic yards in the aggregate, said application shall be classified as a major soil moving application and shall be required to comply with § 95-74 hereof.

MOVE — To dig; excavate; remove; deposit; place; fill; grade; regrade; level or otherwise alter or change the location of contour; or to transport or to supply. This term shall not be construed to include plowing, spading, cultivating, harrowing or disking of soil or any other operation usually and ordinarily associated with the tilling of soil for agricultural or horticultural purposes, landscaping and gardening by homeowners or agents of homeowners, provided it does not substantially alter existing drainage patterns.

OWNER — Any person seized in fee simple of any lot or having such other interest or estate therein as will permit exercise of effective possession thereof or dominion thereover.

SOIL — Any earth, sand, clay, loam, gravel, humus, rock or dirt, without regard to the presence or absence therein of organic matter, including any synthetic substance. used as a substitute or in conjunction with soil.

SUITABLE FILL — The Township Engineer shall determine whether the fill is suitable or unsuitable to the particular location. Suitable materials shall include but not be limited to materials such as earth, clay, gravel, stone, dirt, etc.

TOPSOIL — Soil that, in its natural state, constitutes the top layer of earth and is composed of two percent (2%) or more, by weight, of organic matter and has the ability to support vegetation.

UNSUITABLE FILL — The Township Engineer shall determine whether the fill is suitable or unsuitable to the particular location. Unsuitable materials are materials such as peat moss, organic material, vegetation, leaves, tree stumps, wood chips, sawdust, chemical waste, tires, wooden logs, etc.

§ 95-72. Soil moving permit required. [Amended 8-27-81 by Ord. No. 21-1981]

No owner, developer or excavator shall move or cause, allow, permit or suffer to be moved any soil in or upon any lot in the township until a soil moving permit therefor shall first have been issued in accordance with the provisions of this Article. All applications for soil moving permits shall be made through the Township Engineer.

§ 95-73. Application for minor soil moving permit. [Amended 8-27-81 by Ord. No. 21-1981]

The procedure for applying for and issuance of a minor soil moving permit shall be as follows:

A. Applications for minor soil permits shall be filed with the Township Engineer and shall be accompanied by the fee prescribed in § 95.75 of this Article. Applications shall be made in triplicate, on forms prescribed by the township and supplied by the Township Engineer. In addition to any other requirements which the township, acting through the Township Engineer, may require on data pertinent to the application, the application shall show the following:

- (1) The identity and address of the applicant.
- (2) The lot and block numbers and street address of the lot or lots involved.
- (3) The identity and location of the owner of the property.
- (4) The purpose or reason for the moving of soil.

- (5) The estimated quantity in cubic yards of soil to be moved.
 - (6) A statement as to how the moving of the soil will affect all trees with a diameter of six (6) inches or more.
 - (7) The proposed date of completion of the work.
 - (8) The Township Engineer may require the applicant to submit an existing topographical map and proposed grading and drainage plan and give notification by certified mail to the abutting property owners if the Township Engineer deems it necessary due to the existence of drainage or erosion problems and to protect the health, safety and welfare of the applicant, the property and the community.
- B. The Township Engineer, upon receipt of the application, shall make a field investigation and shall issue the permit or deny it, giving his reasons for denial. The Township Engineer will forward a copy of the permit to the township, the Planning Board and one (1) copy to the applicant and shall retain one (1) copy on file. The Township Engineer shall classify any minor soil application as a major soil application if he finds that the application should be considered as part of a site plan or subdivision application, or that the application will present drainage or erosion problems or that it will adversely affect abutting property.

§ 95-74. Application for major soil moving permit.

The procedure for applying for and issuance of a major soil moving permit shall be as follows:

- A. On forms prescribed and supplied by the Planning Board, the applicant shall set forth, in duplicate, to the Planning Board, with carbon copies to the Township Engineer and Zoning Enforcement Official's office:
- (1) The name and address of the applicant.
 - (2) The names and addresses of the owners of the premises.
 - (3) If the soil moving application is submitted in conjunction with subdivisions of six (6) or more lots or for multifamily houses of twenty-five (25) or more units or for approval of a commercial development and the applicant or owner is a corporation, the names and addresses of the officers of the corporation, the board of directors and each and every stockholder of record possessing greater than ten-percent interest in the stock of the corporation.
 - (4) The relationship between the applicant and the owners.
 - (5) The interest that the applicant has in the lands in question.
 - (6) The description of the lands in question, including lot and block numbers of the lot or lots involved.
 - (7) The purpose or reason for moving the soil and whether it will be done in connection with a proposed subdivision; if so, the date of filing the application for subdivision.

- (8) A detailed statement of the method or process to be employed for the excavation and the proposed time period for removal.
- (9) The kind and quantity in cubic yards of the soil to be removed.
- (10) In case of removal or replacement of soil, the place to which the soil is to be removed and the place from which and quantity of soil to be removed, in fill and excavation, and the transportation route to be used within the township.
- (11) The proposed date of the completion of the work, including hours and days of operation.
- (12) The name and address of the excavator, contractor or the person having express charge, supervision and control of the proposed excavation work.
- (13) The number, capacity, type and description of each piece of equipment to be used in the operation and the number of truckloads to be removed.
- (14) The routes over which the material will be transported and the method of traffic control.
- (15) The method of abating noise and dust in the operation.
- (16) The number of trees to be removed and a statement as to how the moving of soil will affect all trees with a diameter of six (6) inches or more.
- (17) The means of assuring lateral support and preventing erosion, floods and washing of silt into streams.
- (18) The submission of an integral soil and sedimentation control plan.
- (19) The means of protecting downstream properties from the effects of the operation.
- (20) A certificate that he has placed or caused to be placed stakes at each corner of the lot or lots from which soil is to be removed, and further, that he has placed or caused to be placed grade stakes at the existing elevation points designated on the topographical map pursuant to the provisions of this Article, clearly marked to indicate the soil cuts or fill.
- (21) In the event that the removal of said soil is in connection with development or subdivision, all of the information required under the terms of the applicable Subdivision Ordinance of the Township of East Hanover.⁶³

63. Editor's Note: See Article VI of this chapter. .

- (22) Such other pertinent data as the Planning Board of the Township of East Hanover may hereinafter reasonably require.
- (23) The moving of soil into floodplains must be approved by the New Jersey Department of Environmental Protection in addition to any municipal permit obtained. **[Added 8-27-81 by Ord. No. 21-1981]**

- B. Signatures. Said application shall bear the signature of the applicant and the endorsement of the owner or owners of said lands signifying approval of the application, consent to the applicant to

perform the proposed work and consent to the township, in the event of failure of the applicant to do so, to cause the proposed work to be completed or otherwise terminated in keeping with the purposes and objectives of this Article.

- C. Topographical map. Accompanying the application shall be eight (8) prints of a topographical map of the lot upon which the proposed soil moving operations are to be conducted and of all surrounding lands within one hundred (100) feet of the perimeter of said lot, prepared and certified by a licensed professional engineer or land surveyor of the State of New Jersey, on a scale of no less than one (1) inch to one hundred (100) feet, and referring to United States Coast and Geodetic Survey data, showing as to both the lot and the surrounding lands:

- (1) The dimensions of the lot, including distance and bearings, and the lot and block numbers of the lot and of each lot in the surrounding lands as shown on a Tax Assessment Map of the township.
- (2) The existing elevations of all lands on a one-hundred-foot grid layout.
- (3) The existing elevations of all buildings, structures, streets, streams, bodies of water.
- (4) All existing surface and subsurface water drainage conditions and provisions therefor.
- (5) All wooded areas and all trees having a diameter of six (6) inches or more at the base.
- (6) The limits of the area or areas within the lot or lots in question within which the soil moving operations are to be conducted, and the existing elevations of said limits at intervals of not more than one hundred (100) feet.
- (7) The proposed final elevations at each point where existing elevations shown on said map are to be changed as a result of completion of the proposed work.
- (8) Proposed slopes and lateral supports at the limits of the area upon completion of the soil moving operations.
- (9) Existing surface water drainage, channels of any streams, bodies of water and watercourses, natural or artificial, including detailed cross sections showing present and proposed channel widths, bank slopes, grade and method of erosion control; proposed provisions and facilities for surface water drainage which will result from the proposed changes in elevations and contours due to the removal of soil. This information may be provided on a separate map in the form of a drainage study.
- (10) Accurate cross sections showing the locations and quantities, in cubic yards, of soil to be removed.
- (11) All proposed elevations in enclosed rectangular boxes; and all existing elevations to be indicated without any kind of enclosure.
- (12) Such other pertinent data as the Planning Board may reasonably require.
- (13) All easements and restrictions of record which may affect the subject lot or lots.
- (14) If said moving application is in conjunction with site plan or subdivision plan, the developer

shall submit complete site plan or preliminary subdivision plan according to the appropriate Subdivision Ordinance.⁶⁴

64. Editor's Note: See Article VI of this chapter.

(15) Soil erosion and sediment control measures. **[Added 8-27-81 by Ord. No. 21-1981]**

D. Inspection of site.

(1) The Township Engineer shall make an inspection of the site from which soil is to be moved and shall make such engineering studies as may be required to determine the effect of the removal of soil from the location as it relates to:

(a) Soil erosion by water and wind.

(b) Surface and subsurface water drainage.

(c) Soil fertility.

(d) Lateral support of abutting streets and lands.

(e) Public health and safety.

(f) Such other factors as may bear upon or relate to the coordinated, adjusted and harmonious physical development of the township.

(2) The Township Engineer shall also inspect the aforesaid site to determine whether stakes have been placed on each corner thereof and whether grade stakes have been placed at the existing points designated on the topographical map pursuant to the provisions of this section.

E. Hearing. The Planning Board shall fix a date for hearing within forty-five (45) days after the receipt of the application and shall give to the applicant, either personally or by mail, notice of the time and place of said hearing. The applicant shall, at least five (5) days prior to the date appointed for said hearing, serve written notice in person or by certified or registered mail upon such persons as are shown on the municipal tax records to be the owners of such lots within two hundred (200) feet of the property in question. The applicant shall also, at least ten (10) days prior to the date appointed for said hearing, place a legal advertisement in the official newspaper of the Township of East Hanover, setting forth its request for a soil moving permit, which notice shall include the name of the developer, a description of the property by lot and block, the amount of soil to be moved, the purpose for which the soil is to be moved and the time, date and place of said hearing. The applicant shall, at the hearing, present to the Planning Board satisfactory proof, in affidavit form, of the service and publication of said notices.⁶⁵

65. Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

F. Factors to be considered in determining application. In considering the application, the Planning Board shall be guided by the general purpose of municipal planning and shall take into consideration the following factors:

(1) Soil erosion by water and wind.

- (2) Surface and subsurface water drainage.
- (3) Soil fertility and soil-bearing capacity.
- (4) Lateral support of abutting streets and lands.
- (5) Public health and safety.
- (6) Land values and uses.
- (7) The general welfare of the municipality and of the citizens of the Township of East Hanover.
- (8) The unsightliness of the premises after excavation.
- (9) The effect of flooding upon the premises in question and other property within and without the township.
- (10) Whether the proposed work will create a nuisance.
- (11) Whether the proposed work is necessary in connection with the development of residential property.
- (12) The effect that the proposed removal of soil would have on individual sanitary sewage disposal systems.
- (13) The preservation of existing watercourses.
- (14) The creation of sharp declivities, pits or depressions.
- (15) Whether the proposed removal of soil constitutes a commercial activity.
- (16) Proposed complete site plan or preliminary subdivision plan.
- (17) Such other factors as may bear upon or relate to the coordinated, adjusted and harmonious physical development of the township.
- (18) Proposed soil and sedimentation control plan.

G. Decision. The Planning Board shall review and consider the completed application, all of the requirements of the provisions of this Article, the material factors brought up at the public hearing and the reports of other reviewing authorities of the township and shall either grant or deny the issuance of said soil permit. If the Planning Board denies the permit, the reason for the denial shall be stated. The Planning Board may also issue a permit with stipulations and conditions. The Planning Board shall grant or deny the application within forty-five (45) days of the filing of a complete application or within such further time as may be mutually consented to between the applicant and the Planning Board.⁶⁶

66. Editor's Note: Amended at time of adoption of Code; see Ch 1, General Provisions, Art. I.

H. Appeal. Any interested party may appeal to the governing body the final decision of the Planning Board on an application for major soil moving permit. Any such appeal shall be made within ten

(10) days from the date of publication of such final decision. The appeal to the governing body shall be made by serving the Township Clerk in person or by certified mail with a notice of appeal specifying the grounds thereof and the name and address of his attorney, if represented. Such appeal shall be decided by the governing body upon the record established before the Planning Board. **[Amended 8-27-81 by Ord. No. 21-1981⁶⁷]**

67. Editor's Notes: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

§ 95-75 Fees.

- A. Soil application fee. The following fees are to be paid with soil applications and will not be refundable whether the permit is issued, denied or withdrawn:
 - (1) Minor soil application fee: ten dollars (\$10.).
 - (2) Major soil application fee: two hundred dollars (\$200.).
- B. Soil moving fee. The soil moving fee will be charged at eight cents (\$0.08) per cubic yard of fill or excavation, whichever is greater, less the soil application fee. If the permit is voluntarily withdrawn, the soil moving fee shall be refunded less the expenses incurred by the township.
- C. Exemption from fees. All utility companies and federal, state and local authorities, including the Board of Education and charitable organizations, may be exempt from the requirements of soil application fees and soil movement fees at the discretion of and upon application to the Township Committee.

§ 95-76. Performance guaranty requirements; release.

- A. In the event that the Planning Board approves the soil moving permit application, the Planning Board shall forthwith give notice to the applicant of the action of the Planning Board. When a performance guaranty is required, the Planning Board shall also give notice of the amount of the performance guaranty required as hereinafter set forth in this section. In the event that the applicant fails to post the required performance guaranty within sixty (60) days of said notice, then the approval of the Planning Board shall be automatically rescinded, but in no event shall any soil moving activities be begun until required performance guaranties are posted.
- B. No major soil moving permit shall be issued unless the applicant therefor shall have posted with the township a performance guaranty, in form approved by the Township Attorney, in either cash or its equivalent, or surety bond as specified by the Township Committee, in such amount as the Planning Board, upon written recommendation of the Township Engineer, shall determine, conditioned upon full and faithful performance by the principal, within the time specified in the application, of all the proposed work in accordance with the provisions of this Article and of the soil moving permit issued pursuant hereto.
- C. Amount of performance guaranty.
 - (1) The amount of said performance guaranty shall be determined at the rate of not less than ten cents (\$0.10) per cubic yard and not in excess of fifty cents (\$0.50) per cubic yard of the amount of soil to be moved; provided, however, that in no event shall said performance guaranty be less than the principal amount of two thousand dollars (\$2,000.). The Planning Board may request additional performance guaranties for improvements shown on the soil

moving application or plan, such as but not limited to the following: retaining walls, planting, drainage, erosion control, damages to haul route, etc.

- (2) In ascertaining the rate upon which to compute the amount of the performance guaranties, the Planning Board shall take into consideration such factors as may bear upon the facility with which the proposed work may be performed, including but not limited to the type and character of soil, the extent of the area over which the soil moving operations are to be conducted, the extent and depth of the various cuts and fills, the extent to which the area of operations is wooded, the proximity of the proposed operations to streets, buildings, structures, natural or artificial streams or watercourses and general drainage conditions.
- D. Before the holder of any soil removal permit shall proceed before the Planning Board with any application for any amendment or alteration of the terms and conditions of any outstanding soil removal permit, there shall be submitted to the Planning Board, if a performance bond was posted, the written consent of the surety on said bond approving said application for amendment or alteration and consenting to extension of the bond coverage thereto.
- E. Applications for the release of any performance guaranties posted in accordance with the terms of this section or the resolutions of the Planning Board shall be accompanied by an affidavit stating that the soil moving operation has been completed in accordance with the application and all plans, maps and other data filed therewith and in accordance with all resolutions and conditions therein adopted by the Planning Board. Said affidavit shall be executed by a licensed professional engineer and land surveyor of the State of New Jersey.

§ 95-77. Form of permit; signatures; conditions; term.

- A. The soil moving permit shall be in such form as may be prescribed by the Planning Board. A major soil permit shall be signed by the Secretary of the Planning Board or the Chairman of the Planning Board, and it shall contain any special conditions set forth in the recommendation. A minor soil permit shall be signed by the Township Engineer. **[Amended 8-27-81 by Ord. No. 21-1981]**
- B. The soil moving permit shall be dated as of the date it is actually issued, and the term of said permit shall not exceed one (1) year.
- C. All permits shall automatically expire on the termination date, unless application for renewal has been made and approved in writing, extending such permit.
- D. Hours of operation. There shall be no soil moving operations, which includes loading and unloading, at any time between 5:00 p.m. and 8:00 a.m., prevailing time, nor at any time on Sunday or legal holidays, nor on Saturday after the hour of 12:00 noon.
- E. No soil permit shall be issued until it is determined that there are no outstanding taxes or assessments for local improvements due or delinquent on the property for which the application is made.

§ 95-78. General terms and conditions of operation.

No person to whom a soil moving permit has been issued shall:

- A. Conduct or maintain on the premises any sand, gravel or similar kind of pit; any sand or gravel

washing or screening machinery or equipment; any business or industry not permitted in the district in which said premises are located and classified by East Hanover Zoning Ordinance, as amended and supplemented; or any endeavor or enterprise other than the grading or regrading of said premises in accordance with the provisions of said permit and, where applicable, the necessary disposal of soil incidental to said grading or regrading.

- B. Conduct or maintain any soil moving operations without having first made adequate provisions by means of road oil or otherwise for the prevention of dust incidental to the use of vehicles, machinery and equipment on the lands described in the soil permit.
- C. Neglect to dispose of, on or before the completion date stated in the application, any partially or wholly excavated boulders or other noncombustible debris resulting from the soil moving operations, by burial or removal, and any partially or wholly excavated stumps, felled or uprooted trees or other combustible debris resulting from the soil moving operations.
- D. Conduct any soil moving operations beyond the expiration date as set forth in the soil removal permit or extended expiration date as may duly be granted by the Planning Board.

§ 95-79. Topsoil restrictions.

- A. Whenever any developer or excavator shall move topsoil in or upon any lot, provision shall be made for the storage of said topsoil within the boundary lines of said lot.
- B. Except as hereinafter provided, all of the topsoil so stored shall be uniformly replaced over the entire area or surface of the lot on or before the completion date set forth in the soil permit so that the final grade or grades of said replaced topsoil shall be in accordance with the proposed final grades show on the topographical map.
- C. No developer or excavator shall remove to any point beyond the boundary lines of the lot any topsoil whatsoever unless and until topsoil not inferior in quality to that to be removed shall first have been replaced uniformly to a depth of not less than six (6) inches, measured from the proposed final grades as shown on the topographical map, over the entire surface or area of the lot, excepting only such portions thereof as shall be or shall have become, since the date of filing of said topographical map, permanently covered by a building or structure, street pavement, curb, sidewalk, driveway or other paved area or by any body of water or waterway. In no event shall the developer or excavator remove from the lot more topsoil than that comprising the surplus or excess remaining after the replacement of the topsoil as aforesaid.

§ 95-80. Depth of excavation.

No developer or excavator shall, at any time in the course of the work, dig or excavate more than six (6) inches below the proposed final grades as shown on the topographical map unless:

- A. The soil moving permit specifies otherwise and the performance guaranty, hereinbefore referred to, makes specific provisions for replacement, on or before the completion date set forth in the soil removal permit, of soil of sufficient quantity and kind to restore the final grades to those shown on the topographical map; or
- B. After issuance of the soil removal permit, the developer or excavator, before digging or excavating below said six-inch level, shall apply to the Planning Board and be granted an amendment of the application and topographical map then in effect, which amendment may be

granted upon such terms as the Planning Board may deem necessary to assure adherence to the purpose and objectives of this article.

§ 95-8.1. Final grades.

No developer or excavator shall deposit soil upon, in or raise the grade of any lot without first making provision for:

- A. The use in said work of soil or such other materials as will not result in deviation from the proposed final grades or the uniformity thereof by reason of abnormal shrinkage or settlement.
- B. The collection and storage upon the lot of the original topsoil, to the end that said topsoil shall not be buried beneath soil or other material of inferior quality, and the uniform replacement of the topsoil so stored over the entire area or surface of the fill soil or other material so that the final grade or grades of said replaced topsoil shall be in accordance with the proposed final grades shown on the topographical map. In the event that such provision is not practicable, provision shall be made for the uniform placement over the entire area or surface of the fill soil or other material, excepting only such portions thereof as shall be or shall have become permanently covered by a building or structure, street pavement, curb, sidewalk, driveway or other paved area or by any body of water or waterway, of a layer of topsoil not inferior in quality to that of the original topsoil, to a depth of not less than six inches, measured from the proposed final grades as shown on the topographical map.
- C. Seeding of the property, which shall be accomplished within one month after completion of the soil moving operation, weather permitting, but in no event shall seeding of the property be accomplished more than six months after completion. The applicant will maintain the seeded area for a period of one year after completion.

§ 95.82. Exempt operations.

- A. Nothing in this Article shall be construed to affect or apply to any person engaged in the moving of soil in and upon lands enrolled in the soil conservation program of the Northeastern Jersey Soil Conservation District of the United States Department of Agriculture Soil Conservation Service and for which lands an "approved farm plan" has been established by said agency, provided that all soil moving operations in and upon such lands are performed in accordance with said approved farm plan.
- B. The provisions of this Article shall not apply to excavations for building foundations, swimming pools or driveways related to one single-family residential building not part of a two-lot-or-more subdivision approval, nor shall it apply to excavations for lines, septic tanks or sanitary sewer installations.

§ 95-83 Authorized inspections; enforcement.

- A. For the purpose of administering and enforcing this Article, a duly authorized agent of the office of the Township Engineer shall have the right to enter into and upon any lands in or upon which soil moving operations are being conducted, to examine and inspect such lands in order to determine compliance with the requirements of any soil moving permit issued. **[Amended 8-27-81 by Ord. No. 21-1981]**
- B. In addition to the enforcement provisions of other sections of this article, the Zoning Enforcement

Official or any other person authorized from time to time by the Township Committee shall have the right, upon discovery of any violators of this article, to issue stop orders and remedial directions to force compliance herewith, which may be further enforceable by appropriate actions in any courts of competent jurisdiction in the State of New Jersey.

ARTICLE VIIIA
Lot Grading Permit
[Added 11-10-2003 by Ord. No. 24-2003]

§ 95-83.1. Permit application and criteria; lot grading plan and review; fee; violations and penalties.

- A. Any construction which requires excavating more than two cubic yards of soil (as determined by the Township), any soil disturbance or any alterations to existing grade, whether or not a zoning or construction permit is required, shall require a lot grading permit.
- B. Each application for a lot grading permit shall be written on the application form provided by the Township Office of Land Use and Development and shall be submitted to that office accompanied by three signed and sealed copies of a detailed site grading plan which shall be prepared by a licensed professional engineer, architect or landscape architect at a scale of not less than one inch equals 30 feet.
- C. The detailed lot grading plan shall include at a minimum the following:
 - (1) Delineation of the property boundaries including all lot line dimensions; front, side and rear yard setback dimensions, easements, encroachments and restrictions; locations of all existing or proposed structures (primary and accessory), if any, dimensions thereof and first-floor elevation; location of all buildings on adjoining lots; specific delineation of the area within the lot boundaries where the work is to be performed, description of existing and proposed features of the property and specifically the area surrounding the site of work.
 - (2) Location of retaining walls with top and bottom elevations and details designed by a licensed professional engineer. Walls over four feet in height shall require an inspection and as-built certification by a licensed professional engineer.
 - (3) The applicable tax map sheet, block and lot number, date, graphic scale, North arrow, zone designation, zoning requirements and the names and addresses of the owner or owners of the tract, the applicant (if other than the owner) and of the professional who prepared the plan.
 - (4) The one-hundred-year floodplain limits within the subject property shall be shown per FEMA Flood Insurance Rate Map and NJDEP Flood Hazard Area Delineation, or applicant shall submit a certification from a licensed professional engineer or land surveyor indicating that the property is not in the floodplain.
 - (5) Applicant shall show by metes and bounds all delineated wetlands and transition areas approved through a NJDEP letter of interpretation. NJDEP file number shall be noted on the plan. If no wetlands exist, plan must contain a note confirming this fact.
 - (6) Existing and proposed contours at intervals of one foot where the topography is less than 5% overall or two feet when the topography is greater than 5%.

- (7) The layout of existing public streets and public utilities, proposed driveway alignment and profile grade that indicates intermittent elevations at roadway center line, gutter, right-of-way line and garage floor, etc.
- (8) The location of any existing potable water or sanitary sewage disposal facilities on or within 100 feet of the site.
- (9) The location of proposed vehicular facilities, including roads, drives or parking areas.
- (10) The location and pipe size of leader and footing drains, with inverts at house and street connections. All drains shall connect with the municipal stormwater drainage system whenever feasible. Location of existing storm sewer invert and flow direction at tie-in point shall be shown. If drains cannot connect to the public system, show dry well location, elevations and detail (size and cross-section). Splash pad/surface discharge will be permitted only in specific cases approved by the Township Engineer.
- (11) The location of all existing landscaping, including trees, shrubs and ground covers, with type and size of trees and shrubs. The location of trees with a caliper of eight inches or more must be specifically indicated. Existing and proposed tree line within the area of disturbance shall be shown.
- (12) The disposition and extent of topsoil to be removed or backfilled.
- (13) Soil excavation (cut/fill) balance calculation. Proposed soil movement quantities related to the site plan design must be provided on the plan. Soil import or export in excess of 100 cubic yards must conform to the provisions of Article VIII of Chapter 95 of the Code of the Township of East Hanover (§§95-69 through 95-83, inclusive).
- (14) A soil erosion and sediment control plan including proposed silt fence, soil stockpile, etc.
- (15) A time schedule indicating the anticipated start and completion dates of the development sequence, the expected date of completion of each protection measure provided for in the soil erosion and sediment control plan and the stormwater management plan and the time of exposure of each area prior to the completion of such measures.
- (16) Proposed and as-built plans must include a note that driveway sight triangle requirements have been met.
- (17) The following notifications and certifications shall be inscribed on the plan:
 - (a) That there will be no deviation from the proposed grading plan without approval, in writing, from the Township Engineer.
 - (b) That, at the discretion of the Township Engineer, applicant may be required to field stake a property limit in the interest of limiting the disturbance to the subject property.
 - (c) That the applicant's engineer certifies that the grading plan can tie into existing topographic contours on adjoining lots without an adverse grading or drainage impact and that all disturbance and grading can be limited to within the property in question.
 - (d) That the applicant shall, upon notification from the Township Engineer, field stake

wetlands and/or buffer area limits prior to any land disturbance or clearing.

- (18) The Township Engineer shall have the right to modify, waive or add requirements which may be site-specific.

D. The following criteria shall be applicable in the review of an application for a lot grading permit:

- (1) No soil shall be excavated, removed, deposited or disturbed except as a result of and in accordance with the lot grading plan approved under the terms of this chapter.
- (2) Provision shall be made for the proper disposition of surface water runoff so that it shall not create unstable conditions. Appropriate storm drainage facilities shall be provided to protect downstream properties.
- (3) Provision shall be made for any structure or protective measures that the proposed plan may require for the protection of the public safety, including without limitation retaining walls, guide rails, headwalls and fences.
- (4) Any proposed building, structure, grading or attendant protective measures will not impede the flow of surfacewater through any watercourse. Only a nominal increase in runoff rates and velocities will be allowed due to construction.
- (5) Any proposed vehicular facilities, including roads, drives or parking areas, shall be designed so that any land disturbances shall not cause excessive erosion. Both the vertical and horizontal alignment of vehicular facilities shall be so designed that hazardous circulation conditions will not be created.
- (6) Any pile placed on the property shall be properly stabilized and, when found necessary depending upon existing slopes and soil types, supported by retaining walls or other appropriate structures as approved by the Township Engineer.
- (7) There shall be no alteration of site elevations in excess of one foot within five feet of an adjoining property.
- (8) Changes in grade shall not exceed a slope of 2-to-1 unless supported by retaining walls or maintenance-free vegetation, as appropriate.

E. An application fee of \$250 shall be required for each permit. The fee shall cover the cost of the administrative review of the initial submission and one revision. All engineering costs shall be charged to an escrow account which shall be established at the time of making the application. Engineering fees shall be based upon the Township Engineer's regular hourly rate. All fees must be paid in full prior to the issuance of a certificate of occupancy or the release of any performance guarantee that may have been posted with respect to the property. **[Amended 8-6-2008 by Ord. No. 13-2008]**

F. The following action must be taken within 14 days of the Township's receipt if the initial application for a grading permit and within seven business days upon receipt of revised plans: **[Added 7-1-2014 by Ord. No. 11-2014]**

- (1) Approved.

(2) Denied.

(3) Formal written request for additional information or clarification.

G. Prior to the issuance of any certificate of occupancy, a New-Jersey-licensed professional engineer must certify that the final as-built grading of the lot is in compliance with the approved grading plan and foundation as-builts must be submitted to the Zoning Officer for approval. **[Amended 7-1-2014 by Ord. No. 11-2014]**

G. Violations of this article shall be punishable by a fine of not less than \$100 nor more than \$1,500 or by imprisonment for a term of not more than 90 days or both. Each violation and each day of each violation shall constitute a separate and distinct violation hereof. **[Amended 7-1-2014 by Ord. No. 11-2014]**

ARTICLE VIIIB
Wellhead Protection
[Added 2-10-2004 by Ord. No. 3-2004]

§ 95-83.2. Definitions.

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

ADMINISTRATIVE AUTHORITY — The Planning Board or Board of Adjustment and the Board of Health, acting jointly and in consultation with all of the powers delegated, assigned or assumed by them according to statute or ordinance.

APPLICANT — One applying to the Board of Health, Planning Board, Board of Adjustment or Construction Official proposing to engage in an activity regulated by the provisions of this article that would be located within a regulated WHPA.

AQUTFER — A formation or group of formations, or part of formation that contains sufficient saturated permeable rock, sand or gravel which is capable of storing and transmitting usable quantities of water to wells and springs.

BEST MANAGEMENT PRACTICES (BMP) — Performance or design standards established to minimize the risk of contaminating groundwater or surface waters while managing the use, manufacture, handling or storage of hazardous substances in the water supply.

CONTAMINATION — The presence of any harmful or deleterious substances in the water supply.

DEVELOPMENT — The carrying out of any construction, reconstruction, alteration of surface or structure or change of land use or intensity of use.

DISCHARGE — Any intentional or unintentional action or omission, unless pursuant to and in compliance with the conditions of a valid and effective federal or state permit, resulting in the releasing, spilling, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or lands of the state or into waters outside the jurisdiction of the state when damage may result to the lands, waters or natural resources within the jurisdiction of the state.

GROUNDWATER — Water contained in interconnected pores of a saturate zone in the ground, also

known as “well water.” A saturated zone, is a volume of groundwater in which the voids in the rock or soil are filled with water at a pressure greater than atmospheric.

HAZARDOUS SUBSTANCE — Any substance designated under 42 USC 9601 et seq. (CERCLA) or 40 CFR 116 et seq., or the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. Substances listed include petroleum, petroleum products, pesticides, solvents and other substances.

HAZARDOUS WASTE — Any solid waste that is defined or identified as a hazardous waste pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E; N.J.A.C. 7:26-8, or 40 CFR Part 261.

MAXIMUM CONTAMINANT LOAD — The maximum permissible level of contaminant in water which is delivered to any user of a public community water system.

NJDEP — New Jersey Department of Environmental Protection.

PERSON — Any individual, public or private corporation, company, partnership, firm, association, owner, operator, political subdivision of this state, or any state, federal or interstate agency or an agent or employee thereof.

POLLUTED WATER — In the context of drinking water, water is polluted when a pollutant is present in excess of the maximum contaminant level or bacteriological limit established by law or regulation.

POTENTIAL POLLUTANT SOURCE (PPS) — Activity or land use which may be a source of a pollutant that has the potential to move into groundwater withdrawn from a well. For the purposes of this article, potential pollutant sources are defined in § 95-835.

PUBLIC COMMUNITY WELL — A public water supply well which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

SIC — Standard Industrial Classification.

SOLE-SOURCE AQUIFER — Any drinking water aquifer upon which more than 50% of a population ground depends and for which there is not practicable or affordable alternate water supply, as certified by the U.S. Environmental Protection Agency.

TIME OF TRAVEL (TOT) — The average time that a volume of water will take to travel in the saturated zone from a given point to a pumping well.

TIER 1 WELL HEAD PROTECTION AREA — That area of land within a WEPA from which groundwater may enter the well within two years.

TIER 2 WELL HEAD PROTECTION AREA — That area of land within a WHPA from which groundwater may enter the well within five years.

TIER 3 WELL HEAD PROTECTION AREA — That area of land within a WHPA from which groundwater may enter the well within 12 years.

WELL HEAD — The well borehole and appurtenant equipment.

WELL HEAD PROTECTION AREA (WHPA) — An area described in plain view around a well, from which groundwater flows to the well and groundwater pollution, if it occurs, may pose a

significant threat to the quality of water withdrawn from the well.

§ 95-83.3. Establishment of wellhead protection areas and maps.

A. Wellhead protection area maps.

- (1) The delineation of wellhead protection areas for public community wells which were published by the New Jersey Geological Society of the NJDEP are incorporated herein and made a part hereof by reference. They are designated as follows: New Jersey Well Head Protection Areas, Edition 2, Geospatial Data Presentation, New Jersey Digital Data Series, DGS02-2, dated 18 June 2002. A description of these data and the terms and conditions of the use of these data may be found at <http://www.state.nj.us/dep/njgs/whpaguide.pdf> and <http://www.state.nj.us/dep/njgs/geodata/dgs97-1.htm>. A map of the WHPA located within the Township of East Hanover is included as part of this article.⁶⁸ Maps of the Township on which these delineations have been overlain shall be on file and maintained at the Office of the Township Clerk and the Board of Health of the Township of East Hanover.

68. Editor's Note: The Wellhead Protection Areas Map is on file in the Township offices.

- (2) Wellhead protection areas as shown on the maps described herein shall be considered to be superimposed over any other established zoning district. Land in a WHPA may be used for any of the purposes permitted in the underlyig district, subject to additional restrictions set forth in this article.

B. Assignment of restriction within wellhead protection areas. Properties located wholly or partially within the WHPA shall be governed by the restrictions applicable to the WHPA.

§ 95-83.4. Regulation of wellhead protection areas for public community wells.

- A. The administrative authority for administering the provisions of this article shall be the Planning Board, Board of Adjustment or the Board of Health of the Township of East Hanover.
- B. Any application for a permit requesting a change in land use or activity which is subject to review under the provisions of the Municipal Land Use Law and other pertinent regulations of the Township of East Hanover and which is located within a delineated WHPA as defined in this article and that contains a potential pollutant source as defined in this article shall comply with all requirements of this article.
- C. Any applicant for a permit requesting a change in land use or activity which is subject to the requirements of this article shall file an operations and contingency plan, as required in § 95-83.7, with the administrative authority. No permit that allows a change in land use or activity which is subject to the requirements of this article shall be granted unless an operations and contingency plan for the proposed change has been approved by the administrative authority. Any plan approved by the administrative authority shall be kept on file in the office of the Township Clerk and shall be available for public inspection.
- D. Any change in land use and activity that introduces a major or minor PPS, as set forth in § 95-83.5A, shall be prohibited within a Tier 1 WHPA.
- E. Any change in land use and activity that introduces a Major PPS, as set forth in § 95-83.5B, shall be prohibited within a Tier 2 WHPA.

- F. Any change in land use and activity that involves a PPS, as defined in § 95-83.2, within a WHPA, that is not prohibited pursuant to Subsections D and E above, shall comply with the best management practices standards as set forth in § 95-83.6.
- G. This article is supplementary to all other laws and ordinances in the Township. Where this article or any portion hereof imposes a greater restriction than is imposed by other regulations, the provisions of this article shall prevail. Nothing herein shall be deemed in any way to affect the limitations or requirements applicable in the underlying zoning districts of the Township of East Hanover.

§ 95-83.5. Potential pollutant sources listed.

The following are the major and minor potential pollutant sources subject to the requirements of this article. This listing is consistent with the New Jersey Safe Drinking Water Act Regulations set forth in the New Jersey Administrative Code (N.J.A. C. 7:10-11.7 through 12.12).

A. Major PPS:

- (1) Permanent storage or disposal of hazardous wastes, industrial or municipal sludge or radioactive materials, including solid waste landfills.
- (2) Collection and transfer facilities for hazardous wastes, solid wastes that contain hazardous materials and radioactive materials.
- (3) Any use or activity requiring the underground storage of a hazardous substance or waste in excess of an aggregate of 50 gallons.
- (4) 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.)
- (5) Aboveground storage facility for hazardous substance or waste with a cumulative capacity of greater than 2,000 gallons.
- (6) Any industrial treatment facility lagoon.
- (7) Any facility with an SIC Code number included under the New Jersey Safe Drinking Water Act Regulations at N.J.A.C. 7:10A-1.14, Table 11(N), with a toxicity number of II, or grease.
- (8) Automotive service center (repair and maintenance).
- (9) Landfill.
- (10) Dry-cleaning facility.
- (11) Road salt storage facility.
- (12) Cemetery.
- (13) Highway maintenance yard.

- (14) Truck, bus or locomotive maintenance yard.
- (15) Site for storage and maintenance of heavy construction equipment and materials.
- (16) Site for storage and maintenance of equipment and material for landscaping.
- (17) Livestock operation.
- (18) Quarrying and/or mining facility.
- (19) Asphalt and/or concrete manufacturing facility.
- (20) Junkyard/auto recycling or scrap yard facility.
- (21) Residential or agricultural motor fuel in NJDEP exempted underground storage tanks (i.e., less than 1,000 gallons).

B. Minor PPS:

- (1) Underground storage of hazardous substances 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.
- (4) Sanitary sewer system, including sewer line, manhole or pump station.
- (5) Industrial waste line.
- (6) Septic leaching field.
- (7) Facility requiring a groundwater discharge permit issued by NJDEP pursuant to N.J.A.C. 7:14A.
- (8) Stormwater retention/recharge basin.
- (9) Dry well.
- (10) Stormwater line.
- (11) Waste oil collection, storage and recycling facility.
- (12) Agricultural chemical bulk storage and mixing or loading facility, including crop-dusting facilities.
- (13) Aboveground storage of hazardous substance or waste in quantities of less than 2,000 gallons.

C. Conditions.

- (1) Sanitary sewer lines, industrial waste lines and stormwater lines may be located no closer

than 100 feet to a regulated well, and only if they are constructed of watertight construction (i.e., steel, reinforced concrete, cast iron, PVC or other suitable material).

- (2) Manhole and/or connections to a sanitary sewer system are prohibited within 100 feet of a regulated well.
- (3) Dry wells dedicated to roof runoff and serving residential properties or commercial or industrial properties with SIC Codes not listed in N.J.A.C. 7:10A-1.14, Table 11(N), may be located no closer than 100 feet to a regulated well.

§ 95-83.6. Best management practice performance standards.

Any applicant proposing any change in land use or activity that involves any PPS, as defined in this article, that would be located either wholly or partially within any WHPA shall comply with and operate in a manner consistent with the following best management practices (BMP):

- A. All portions or areas of a facility in which hazardous substances or hazardous wastes are stored, processed, manufactured or transferred outdoors shall be designed so that the discharge of hazardous substances will be prevented from overflowing, draining or leaching into the groundwater or surface waters.
- B. Outdoor storage, dispensing, loading, manufacturing or processing areas of hazardous substances or hazardous wastes must be protected from precipitation, stormwater flows or flooding.
- C. Whenever hazardous substances are stored, processed, manufactured or transferred outdoors, the design features shall include secondary containment and/or diversionary- structures which may include without limitation:
 - (1) Containers, dikes, berms or retaining walls sufficiently impermeable to contain spilled hazardous substances for the duration of the spill event.
 - (2) Curbing.
 - (3) Gutters, culverts and other drainage systems.
 - (4) Weirs, booms and other barriers.
 - (5) Lined diversion ponds, lined lagoons, and lined retention basins, holding tanks, sumps, slop tanks and other collecting systems.
 - (6) Drip pans.
- D. Secondary containment and/or diversionary systems, structures or equipment must meet the following standards:
 - (1) The system must block all routes by which spilled hazardous substances could be expected to flow, migrate or escape into the groundwater or surface waters.
 - (2) The system must have sufficient capacity to contain or divert the largest probable single discharge that could occur within the containment area, plus an additional capacity to compensate for any anticipated normal accumulation of rainwater.

- (3) In order to prevent the discharge of hazardous substances into groundwater, all components of the system shall be made of or lined with impermeable materials sufficient to contain the substance for the duration of the spill event. Such material or liner must be maintained in an impermeable condition.
 - (4) No manufacturing area, processing area, transfer area, dike storage area, or other storage area, or secondary containment/diversion system appurtenant thereto, shall drain into a watercourse, or into a ditch, sewer, pipe or storm drain that leads directly or indirectly into a surface or subsurface disposal area, unless provision has been made to intercept and treat any spilled hazardous substances, in an NJDEP-approved industrial wastewater treatment or pretreatment facility, or other NJDEP-approved facility.
 - (5) Catchment basins, lagoons, and other containment areas that may contain hazardous substances should not be located in a manner that would subject them to flooding by natural waterways.
- E. Stormwater shall be managed so as to prevent contamination of groundwater and so as to be in accordance with applicable laws and regulations of the State of New Jersey and the Township of East Hanover.

§ 95-83.7. Operations and contingency plan.

- A. An applicant proposing any change in land use or activity that involves any PPS as defined in this article that would be located either wholly or partially within any WHPA shall submit an operations and contingency plan to the administrative authority. This plan shall inform the administrative authority concerning the following aspects of the proposal:
- (1) Types of PPS proposed for the site.
 - (2) Types and quantities of hazardous substances or hazardous wastes that may be used or stored on site.
 - (3) Means to be employed to contain or restrict the spillage or migration of hazardous substances or hazardous wastes from the site into groundwater.
 - (4) Means to be used to contain or remediate accidental spillage of such materials.
 - (5) Means to notify the administrative authority about any accidental spillage of such materials.
 - (6) Demonstration that the proposed use and/or activity would employ, to the maximum extent possible, the best management practices set forth in § 95-83.5 hereof, to protect the groundwater quality in the WHPA and to minimize the risk of potential groundwater contamination.
- B. The administrative authority shall review and shall approve or reject any operations and contingency plan prior to approving or denying the application for a land use change or activity.
- C. Any operations and contingency plan submitted shall be available for public review and comment.

§ 95-83.8. Enforcement.

- A. Where it is suspected that a violation of this article may exist, the appropriate personnel of the Township shall promptly conduct an investigation and if, following an inspection, a condition which is in violation of this article is found to exist, a civil action may be commenced in the Special Part of Superior Court, or in the Superior Court if the primary relief sought is injunctive, or if the penalties may exceed the jurisdictional limit of the Special Civil Part, by the filing and serving of appropriate process.
- B. Notwithstanding any action the Township may initiate under Subsection A above, any person violating any portion of this article shall, upon conviction thereof in Municipal Court, be subject to a fine of not less than \$100 nor more than \$1,500 or 90 days in jail, or both.
- C. The violation of any section or subsection of this article shall constitute a separate and distinct offense independent of the violation of any other section or subsection or of any order issued pursuant to this article, and each day that a violation exists shall be considered a separate offense.

ARTICLE VIIC
Tree Protection and Removal Standards
[Added 2-7-2005 by Ord. No. 3-2005]

§ 95-83.9. Definitions.

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

BOARD — The municipal agency, either Planning Board or Zoning Board of Adjustment, to which the application for tree removal permit is submitted.

CALIPER — Standard measure of tree size for trees to be newly planted. The measurement is taken six inches above the ground for trees four inches in diameter or less and 12 inches above the ground for trees over four inches in diameter.

DIAMETER AT BREAST HEIGHT (DBH) — Diameter of a tree measured 4 1/2 feet (forestry method) above the ground level on the downhill side for existing trees. Diameter at breast height may appear as the abbreviation “DBH” (diameter breast height).

DRIPLINE — A limiting line established by a series of perpendicular drop points marking the maximum radius of the crown of an existing tree, but not less than six feet from the trunk, whichever is greater; and within which no construction or disturbance shall occur.

REPLACEMENT TREE — A nursery-grown certified tree, properly balled, marked with a durable label indicating genus, species and variety, and satisfying the standards established for nursery stock and installation thereof set forth by the American Association of Nurseryman.

THINNING — The removal of undesirable, competitive, diseased or damaged trees so as to cultivate and improve the development of remaining trees on the lot.

TOWN TREE — Trees, shrubs, bushes and all other woody vegetation located on land owned by the Township, the Board of Education or any other municipal or governmental entity, or which is lying between the property lines (within the right-of-way) on either side of all streets, avenues, roadways or highways within the Township.

TREE — Any self-supporting woody plant which reaches a typical mature height of 12 feet or more at maturity and has a typical DBH of four inches or greater.

TREE CANOPY — The top layer or crown of mature trees.

§ 95-83.10. Applicability.

- A. With the exception of the exemptions hereinafter set forth, no tree with a six-inch DBH shall be cut or otherwise removed from any lands in the Township of East Hanover without a tree removal permit.
- B. All applications to the Planning Board or Zoning Board of Adjustment for approval of a major subdivision, minor subdivision or site plan requiring tree removal shall include detailed information regarding the same. All applications for grading permits or zoning permits involving construction requiring tree removal shall include a completed tree removal questionnaire.
- C. Any residential, commercial, business or industrial lot owner wishing to remove trees upon said lot must comply with the provisions of this article. The application shall be submitted to the Director of Land Use for review and approval.
- D. No tree that was planted or preserved as part of any landscape plan or in accordance with any street tree requirements approved in conjunction with a subdivision or site plan shall be removed, except for such trees directed to be removed pursuant to § 95-83.11, F, G and H. No other exemptions shall apply.

§ 95-83.11. Exemptions.

The following shall be exempt from this article:

- A. Trees less than six-inch diameter at breast height (DBH).
- B. Removal of 50% or fewer trees with a six-inch DBH in any one calendar year; provided, however, that on any lot that is less than two times the required lot size within its respective zone and where there has been a tree removal rate of four or more trees with a DBH of six inches or greater in a two-year period, or on any lot that is twice the required lot size or greater within its respective zone and where there has been a tree removal rate of more than six trees with a DBH of six inches or greater in a two-year period, an application for a tree removal permit is required prior to the removal of any additional trees.
- C. Christmas tree farms.
- D. Commercial nurseries and fruit orchards.
- E. Any tree which is part of a cemetery; provided, however, that whenever a single project area from which a majority of the trees within such project area are to be removed shall total two acres or more, the cemetery shall notify the Township of its intentions and the reasons **therefor** [Amended 10-11-2005 by Ord. No. 26-2005]
- F. Trees directed to be removed by municipal, county, state or federal authority pursuant to law.
- G. Removal of trees which are dead, dying or diseased, or trees which have suffered damage, or any

tree whose angle of growth makes it a hazard to structures, roads or human life.

- H. Removal of trees which appear to cause structural damage to buildings or foundations.
- I. Pruning or removal of trees within the right-of-way by utility companies for maintenance of utility wires or pipelines and the pruning of trees within sight easements.
- J. Those projects which have received major subdivision or site plan approval prior to the effective date of this article and amended major subdivision and site plans.
- K. Any tree considered invasive or undesirable by Rutgers University Cooperative Extension Service or other qualified entity.

§ 95-83.12. Township tree care.

- A. The Township shall have the right to plant, prune, maintain and remove trees within the right-of-way of any street, alley, avenue, lane, roadway or public grounds as may be necessary to ensure public safety or to preserve or enhance the symmetry or beauty of such public grounds.
- B. The Township may remove or cause to be removed any tree or part thereof which is in an unsafe condition or which, by reason of its nature, can cause damage to sewers, electric power lines, gas lines, water lines or other public improvements or is affected with any injurious fungus, insect or other pest.
- C. It shall be unlawful for any person other than the Township or its employees to remove any town tree for any reason.
- D. It shall be unlawful, as a normal practice, for any person, firm or Township department, with the exception of a regulated public utility company, to top any shade tree, park tree or other tree on public property. Trees severely damaged by storms or other causes shall also be excepted from this provision in cases where other pruning practices are impractical.
- E. Every owner of a tree overhanging any street or right-of-way within the Township shall prune the branches so that said branches shall not obstruct the light from any streetlamp or obstruct the view of any street intersection. Such trees shall be cleared to provide a clear space of eight feet above the surface of the street or sidewalk. The Township shall have the right to prune any tree on private property when it interferes with time proper spread of light along the street from a streetlight or interferes with visibility of any traffic control device or sign or obstructs the view of any intersection.
- F. All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

§ 95-83.13. Tree removal requirements for major and minor subdivisions and site plans.

Each application to the Planning Board or Zoning Board of Adjustment for approval of a major or minor subdivision or a site plan that requires the removal of trees shall include the following information:

- A. A list of all trees to be removed with a DBH equal to or greater than six inches identified by size and species, including total number of each species.

- B. Purpose for tree removal. (N.B. Only those trees necessary to permit the construction of buildings, structures, streets, driveways, infrastructure and other authorized improvements shall be removed. Existing vegetation shall be preserved to the greatest extent feasible.)
- C. In addition to complying with the requirements of §~ 95-36 and 95-37, the application shall include the following:
- (1) Location of existing tree canopy within the property boundaries. (N.B. No more than 60% of the existing tree canopy within the property boundaries shall be removed. The location of the remaining 40% of the tree canopy to be preserved shall be noted on the landscape plan.
 - (2) Location of individual trees with a DBH equal to or greater than six inches identified by size and species within the area of development/limit of disturbance.
 - (3) Location of individual trees with a DBH equal to or greater than six inches identified by size and species beyond the area of development/limit of disturbance.
 - (4) Location of individual existing trees and their driplines noted for preservation within the area of development/limit of disturbance identified by size and species. Where clusters of trees exist on the site or are contiguous with adjacent sites, fragmentation of the cluster shall be avoided where possible.
 - (5) location of all required replacement trees. (Replacement trees shall be required in any case where more than 10% of existing trees with a DBH equal to or greater than six inches within the area of development/limit of disturbance shall be removed unless the applicant shall replant trees removed in accordance with § 95-83.14.)
 - (6) Clear labeling of the area(s) intended for tree/vegetation removal.

§ 95-83.14. Tree replacement and reforestation.

The replacement of trees shall occur as prescribed in the following table.

Caliper of Existing Tree Removed	Number of Replacement Trees (Three-inch caliper)
Between 6 and 12 inches	3
Between 12.1 and 18 inches	4
Between 18.1 and 24 inches	5
Between 24.1 and 30 inches	7
Between 30.1 and 36 inches	10
Greater than 36 inches	The equivalent of three-inch caliper trees or greater needed to equal the DBH of the removed tree.

- A. Replacement tree(s) shall be of nursery grade quality, balled and burlapped and installed on site. Where replacement trees are required but not suitable for the particular site prescribed due to the size of the site, such trees shall be deposited into a community tree bank. Trees deposited into the

community tree bank shall be utilized for planting on public lands.

- B. The type of replacement tree(s) shall be as approved by the Township or as recommended by the Rutgers University Cooperative Extension Service or other qualified entity.
- C. In lieu of providing replacement trees which would otherwise be planted in the tree bank, applicant may deposit into a Township escrow fund a sum to be determined by the Township Engineer as the value of each such tree. If the Township does not utilize such funds within one year after posting, the funds will revert to the applicant. The Township may use the escrow funds for trees or other landscaping plants or vegetation on any Township public site.
- D. Newly planted replacement trees shall be monitored for a period of one year to ensure the health of the trees. If the replacement trees die within the one-year period, the developer/applicant shall replace the dead tree.

§ 95-83.15. Tree removal and protection on private property where no site plan or subdivision is required.

- A. The owner of any lot who intends to remove more than 50% of the trees with a DBH of six inches or greater shall first secure a permit from the Director of Land Use. The application for such permit shall contain the name and address of the property owner, the name and address of the applicant (if not the owner), the street location and block and lot number of the site, all of the information required in § 95-83.15 and a sketch showing the location of the tree(s) to be removed with a DBH of six inches or greater.
- B. Any person applying for a grading permit ,or a zoning permit shall provide with said application a completed tree removal questionnaire. Upon review of the questionnaire, the Director of Land Use may determine that there is a need for a tree removal permit, in which case the applicant shall complete and submit such application prior to receiving either a grading or zoning permit. Such application shall contain the information required in § 95-83.15, Subsection A, above.

§ 95-83.16. Review standards.

In accordance with the design requirements provided in this article, unless otherwise indicated herein, a tree removal permit may only be granted for the following reasons and under the following terms and conditions:

- A. Where the area proposed for tree removal is to be occupied by: a building or other structure; a street or roadway; a driveway; a parking area; a patio; a swimming pool; a recreation area; a power, drainage, sewerage or any other utility line, easement or right-of-way; or where the area of tree removal is 20 feet or less from either side of or around the perimeter of any of the foregoing, whichever is applicable.
- B. In areas proposed for tree removal which are not to be occupied by any of the uses or facilities set forth in Subsection A of this section:
 - (1) Where the continued presence of such tree or trees is likely to cause danger to persons or property upon the property for which removal is sought, or upon adjoining or nearby property.
 - (2) Where the location of such tree or trees has a cut, depression or fill of land, or the topography

of the land is of such a character as to be injurious or dangerous to such tree or trees or to tree or trees located nearby.

- (3) Where removal of trees is for the purpose of conducting forestry activities, which activities include, but are not limited to, the harvesting of trees in accordance with a forest management plan and the thinning out of a heavily wooded area, with some trees to be removed and other trees to be saved.

C. In addition to the foregoing requirements stated above, the Director of Land Use may grant a tree removal permit based upon one or more of the following circumstances:

- (1) Where the location of an existing tree provides no other alternative but to place a structure outside the permitted building setbacks.
- (2) Where no other alternative exists for the placement of a building, building addition, structure, septic field, driveway, deck, patio or lawn area for the recreational use by the inhabitants of the building or dwelling, or any other authorized improvements, but in the vicinity of an existing tree.
- (3) Where the location or growth of a tree inhibits the enjoyment of any outdoor pool, patio or deck.
- (4) Where the location, angle or growth of an existing tree makes it a hazard to structures or human life.

§ 95-83.17. Appeal process.

Any applicant aggrieved by the decision of the Director of Land Use may appeal such decision to the Zoning Board of Adjustment.

§ 95-83.18. Protection of trees.

Whenever an application for tree removal is granted under the terms and conditions of this article, the following protective measures shall be observed:

- A. No material or temporary soil deposits shall be placed within the dripline of any existing tree to be preserved.
- B. Except while engaged in tree removal, no equipment shall be operated within six feet of any tree protected by this article nor shall such equipment be operated at any time in such a manner as to break, tear, bruise, decorticate or otherwise injure any living or dormant tree. Except while engaged in tree removal, all requirements of this section shall be observed.

§ 95-83.19. Permit approval.

Time limits for approval:

- A. Where the permit application is submitted as a part of an application for major subdivision, minor subdivision or site plan approval, the time for approval shall be governed by the timing requirements applicable to major subdivision, minor subdivision or site plans.

- B. Where the application is made in connection with a residential, commercial, business or industrial lot that is not part of a major or minor subdivision or site plan, the Director of Land Use shall act on the application within 30 days of its receipt or within such additional time as is consented to by the applicant. Failure to act within 30 days, or any extension thereof, shall be deemed to be an approval of the application and, thereafter, a tree removal permit shall be issued.
- C. Approval by default with regard to major subdivision, minor subdivision and site plan applications shall not be deemed to be a waiver of a tree removal permit.

§ 95-83.20. Duration of permits.

Permits granted for the removal of trees under the terms and conditions of this article shall run with the land and shall remain in force and effect for the following periods ,of time, and not thereafter. Once the permit has expired, a new application must be submitted for review and a new permit issued.

- A. If granted for a lot or parcel of land for which no building permit is required: one year from the date of issuance.
- B. If granted for a lot or parcel of land for which a building permit is required, but for which no site plan approval is required by the Planning Board: until expiration of the building permit granted with such tree removal permit.
- C. If granted for a lot or parcel of land for which site plan or subdivision approval from the Planning Board or Zoning Board of Adjustment is required as a condition precedent to obtaining a building permit: until expiration of the site plan or subdivision approval or expiration of the building permit issued after such site plan or subdivision approval.

§ 95-83.21. Inspection.

- A. Prior to taking final action upon any application for tree removal, an inspection of the site shall be made by the Director of Land Use or his designee and, if final determination is to be made by a Board, the Director of Land Use shall submit a report to that body for its consideration as to the granting or denial of an application.
- B. Prior to any tree removal, all trees must be marked and areas to be cleared identified for inspection by the Director of land Use or his designee.
- C. The Director of Land Use or his designee shall periodically inspect the site throughout the duration of construction in order to ensure compliance with this article. Such inspection shall be made of the site referred to in the application and of contiguous and adjoining lands, as well as of lands in the vicinity of the application, for the purpose of determining drainage conditions and physical conditions existing thereon.

§ 95-83.22. Notice of commencement of tree removal.

- A. The holder of a tree removal permit shall notify the Director of Land Use in writing at least four business days in advance of when the tree removal activity will commence.
- B. The notice shall also include information as to the manner of disposal of the removed trees.
- C. In the case of the removal of dead or diseased trees, the dead or diseased trees shall not be turned

into mulch and applied to the site, but shall be removed from the site and legally disposed of in a manner so as to not disease other trees on site.

§ 95-83.23. Fees.

A review fee of \$50 shall accompany the application for tree removal; provided, however, that no additional fee shall be required when the application for tree removal is submitted as part of a site plan or subdivision application.

§ 95-83.24. Violations and penalties.

- A. When regulated trees are removed without a tree removal permit, the affected areas shall be replanted to the satisfaction of the appropriate municipal authority in accordance with the replacement schedule in § 95-83.14.
- B. In addition to the requirements of Subsection A of this section, violation of this article shall also be punishable by a fine of not less than \$100 but not to exceed \$1,200, 90 days in jail, or both, and a separate offense shall be deemed committed for each separate violation of the provisions of this article and for each day during or on which the said violation occurs or continues.

ARTICLE IX
Flood Management

§ 95-84. Findings; purpose; authority; scope.

A. Findings of fact.

- (1) It is hereby found that the rivers, streams and watercourses in the Township of East Hanover are subject to recurrent flooding; that such flooding endangers life and damages public and private property and facilities; that this condition is aggravated by developments and encroachments in the floodplain; and that the most appropriate method of alleviating such condition is through regulation of such developments and encroachments. It is, therefore, determined that the special and paramount public interest in the floodplain justifies the regulation of property located therein 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 public health, safety and general welfare.
- (2) It is also hereby found that the Federal Insurance Administration has identified the areas having special flood hazards and has provided water surface elevations for the one-hundred-year base flood. **[Amended 8-27-1981 by Ord. No. 21-1981]**

B. Purpose.

- (1) It is the purpose of this article to promote the public health, safety and general welfare of the community and to minimize public and private losses due to flood conditions in specific areas by the implementation of provisions designed to:
 - (a) Protect human life and health.
 - (b) Reduce public expenditures for costly flood control projects, emergency operations, evacuations and restorations.

- (c) Minimize prolonged business and public interruptions.
 - (d) Prevent damage to public facilities and utilities, such as; water and. gas mains, electric, telephone and sewer lines, streets and bridges located in the floodplains.
 - (e) Prevent the installation of structures which increase flood heights.
 - (f) Remove the impediment to community growth created by recurrent flooding.
 - (g) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood-blight areas.
 - (h) Prevent further inappropriate development in unprotected floodplains, thus reducing future expenditures for protective measures.
 - (i) Ensure that potential buyers are notified that property is located in a flood area.
- (2) It is further stated that the purpose and intent of this article is also to preserve and perpetuate in an open and natural state certain lake, water areas and watercourses hereinafter described because their unique physical features are deemed desirable and functional and natural drainageways and water-retention areas, natural habitat for plant and animal life, green space and other uses beneficial to the health, safety and welfare of the community.
- (3) The regulations of this Article are designed not only to preserve certain natural features as above stated, but also to protect the township from costs incurred in compensation for problems created by unsuitable development. Erosion control, flood control, control of defoliation and protection of aquifer recharge areas are all legitimate concerns affecting the health and safety of the citizens of the Township of East Hanover and, as such, subject to control under this Article.
- (4) The areas herein described contain valuable environmental qualities which, in order to conserve the municipality's natural resources, preserve the amenities of its environment, prevent the overcrowding of land, avoid undue concentration of population and alleviate severe flooding problems, have been determined to best be retained in substantially an undeveloped state.

C. Authority.

- (1). The Legislature of the State of New Jersey has delegated to local governmental units, under the authority of N.J.S.A. 40:48-1, the responsibility to adopt regulations designed to promote the public health, safety and general welfare of its citizens.
- (2) This Article is further authorized under the legislative purpose of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), which states that the intent and purpose of said Act is to encourage municipal action to guide the appropriate use or development of all lands in this state in a manner which will promote the public health, safety, morals and general welfare; to promote the establishment of appropriate population densities and concentrations that will contribute to the wellbeing of persons, neighborhoods, communities and regions and preservation of the environment; to promote a desirable visual environment through creative development techniques and good civic design and arrangements; and to promote the con-

servation of open space and valuable natural resources and to prevent urban sprawl and degradation of the environment through improper use of land.

- (3) The implementation of the purpose of this Article is further authorized by N.J.S.A. 40:55D-65, which permits zoning ordinances to limit and regulate buildings and structures according to their type and the nature and extent of their use, and regulate the nature and extent of the use of land for trade, industry, residence, open space or other purposes.
- (4) This Article is further authorized under the provisions of N.J.S.A. 58:16A-62 as a more restrictive regulation of development and use of land in and around lake and water areas.
- (5) Furthermore, the Township of East Hanover has been charged by the Federal Government with the mandatory implementation of Flood Plain Management Requirements and Criteria as set forth in Part II of the Department of Housing and Urban Development Federal Register Rules and Regulations, Federal Insurance Administration, National Flood Insurance Program, Section 1910.1 et seq.

D. Scope. In order to accomplish the purposes set forth in Subsection B, this Article employs the following methods:

- (1) Restrict or prohibit uses which are dangerous to health, safety and property due to water, erosion, flood heights or velocities.
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- (3) Control the alteration of natural floodplains, streams, channels, lakes, watercourses and natural protective barriers which are involved in the accumulation, accommodation and retention of floodwaters.
- (4) Control filling, grading, dredging and other development which may increase flood damage.
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

§ 95-85. Definitions and usage.

A. Usage. Unless specifically defined, words or phrases in this Article shall be interpreted so as to give them the meaning they have in common usage and to give this Article its most reasonable application.

B. Definitions. For the purpose of this Article, certain terms are defined as follows:

APPEAL — A request for a review of the Township Engineer's interpretation of any provision of this Article or a request for a variance. **[Amended 8-27-81 by Ord. No. 21- 1981]**

APPLICANT — Any person, partnership, corporation or public agency requesting permission to engage in land disturbance activity, construction or development.

APPROVED PLAN — A plan to control surface water runoff which has been approved by the Planning Board of the Township of East Hanover.

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain within the community subject to a one-percent or greater chance of flooding in any given year.

BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year.

CHANNEL — The bed and banks of a river, stream, drainage ditch, watercourse or any other body of water which conveys the normally occurring flow.

CRITICAL AREA — Any area which should not be disturbed by uses incompatible with the paramount public interest in the management of surface water runoff and attendant environmental damage. Examples of critical impact areas include but are not limited to lakes, ponds, floodplains and flood hazard areas, designated stream corridors, steep slopes, highly erodible soils, swamps, marshes, bogs, watercourses, identified aquifer recharge and discharge areas and heavily wooded areas.

DEVELOPMENT — Any man-made change or disturbance to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the critical area or area of special flood hazard.

DRAINAGEWAY — Any watercourse, trench, ditch, depression or other hollow space in the ground, natural or artificial, which collects or discharges surface water from land.

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; and
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

FLOOD HAZARD AREA — The area of the floodplain that is subject to flood flow at lesser depths and lower velocities than occurs in the floodway and that is delineated on the flood map, as further defined herein, prepared by the Department of Housing and Urban Development, Federal Insurance Administrator, as “area having special flood hazards: Zones A-i to A-b.”

FLOOD LEVEL — The base flood elevation as indicated on the flood map. Elevations below “flood level” are subject to flooding.

FLOOD MAP — The official map and Flood Insurance Study as issued by the Federal Insurance Administration, Department of Housing and Urban Development, for the Township of East Hanover, including all accompanying maps, data, rules and regulations as dated and effective April 16, 1979.

FLOODPLAIN — That area composed of the channel, floodway and flood hazard area.

FLOODPROOFED — Watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than two tenths (0.2) foot.

HABITABLE FLOOR — Any floor usable for living purposes, which includes working, sleeping, eating, cooking and recreation or a combination thereof. A floor used only for storage purposes is not a “habitable floor.”

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

REVIEWING AGENCY — The Planning Board of the Township of East Hanover is designated as the reviewing agency and shall grant or deny development applications in accordance with the provisions of this Article.

START OF CONSTRUCTION — The first placement of permanent construction of a structure 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 sidewalks; nor does it include excavation for a basement, footings 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 a dwelling unit or as part of the main structure. For a structure 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.

STRUCTURE — A walled and roofed building that is principally above aground.

SUBSTANTIAL IMPROVEMENT — Any repair, reconstruction or improvement of a structure or property, the cost of which equals or exceeds fifty percent (50%) of the value of the property or structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either any project for the improvement of a structure to comply with existing state and local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

VARIANCE — A grant of relief from the requirements of this Article which permits construction in a manner otherwise prohibited where specific enforcement would result in unnecessary hardship.

WATERCOURSE — All rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and other bodies of water, natural or artificial, public or private, which are contained within, flow through or border on the Township of East Hanover or any portion thereof.

§ 95-86. General provisions.

- A. Applicability. This Article shall apply to all areas of special flood hazard, as herein defined, within the jurisdiction of the Township of East Hanover.
- B. Adoption of Official Flood Map. The map entitled “United States Department of Housing and Urban Development, Federal Insurance Administration Flood Hazard Boundary Map I-01, Flood Insurance Rate Map 1-01, Flood Boundary and Floodway Map OIF, Map Index, Township of East Hanover, New Jersey, Morris County, Community No. 340341, Initial Identification Date August 31, 1973, effective date April 16, 1979,” and any subsequent revision thereto, is hereby adopted

and declared to be the Official Flood Map of the Township of East Hanover.

- C. Compliance. No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this Article, the Zoning Ordinance of the Township of East Hanover, the Subdivision and Site Plan Application Procedure Ordinance and all other applicable ordinances and regulations of the Township of East Hanover.⁶⁹

69. Editor's Note: See Article VI, Subdivision and Site Plan Review, and Article VII, Zoning.

- D. Abrogation and greater restrictions. This Article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Article and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- E. Interpretation. In the interpretation and application of this Article, all provisions shall be:
 - (1) Considered as minimum requirements.
 - (2) Liberally construed in favor of the governing body.
 - (3) Deemed neither to limit nor repeal any other powers granted under state statutes or federal law.
- F. Warning and disclaimer of liability. The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Article does not imply land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the Township of East Hanover or of any officer or employee thereof for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder.

§ 95-87. Administration.

- A. Designation of reviewing authority. The Planning Board is hereby designated to administer and implement this Article by granting or denying development applications and site plan approval in accordance with the provisions contained herein.
- B. Site plan approval.
 - (1) No development shall hereafter take place or be erected, enlarged or expanded in any flood area unless a site plan shall have been submitted to the Planning Board for its review and approval. Said plan shall be referred to the appropriate township agencies by the Planning Board for review and comment.
 - (2) Application shall be made on forms furnished by the Planning Board, which may include but not be limited to the following:
 - (a) Plans in duplicate drawn to scale, showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials; drainage facilities and the location of the foregoing.

- (3) Said site plan shall, in addition to the information required under the Site Plan Ordinance of the Township of East Hanover,⁷⁰ show the following information:

70. Editors Note: See Article VI of this chapter.

- (a) The existing and proposed contours at a contour interval of two (2) feet.
 - (b) Elevation in relation to mean sea level of the lowest proposed area, including basement, within any proposed structure after its completion.
 - (c) The proposed elevations of the lands involved at the corners of the foundation of any structure or structures.
 - (d) The elevation in relation to mean sea level to which any nonresidential structure has been flood proofed.
 - (e) Plans showing how any nonresidential flood-proofed structure will meet the flood proofing criteria contained in § 95-88 and after the structure is built, a certification by a registered professional engineer or architect that the structure, as built, meets the criteria of § 95-88.
 - (f) Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.
 - (g) The layout of existing and proposed public streets and the nature, extent and location of existing and proposed utilities servicing and to service the premises in question.
 - (h) The elevation of any existing or proposed pumping facilities and overflow elevations of vents or entranceways, if underground; overflow elevations of sewage treatment plant units.
 - (i) The nature and extent of the construction, alterations or repairs.
 - (j) Proof of encroachment lines obtained from the New Jersey Department of Environmental Protection, if applicable.
 - (k) The extent of filling of the land, if any.
 - (1) Surrounding structures within a two-hundred-foot radius.
 - (m) Grading in accordance with the recommendations set forth in Data Sheets 72 and 73 of Land Planning Bulletin No. 3, Neighborhood Standards for Northern New Jersey, as issued by the Federal Housing Administration.
- C. Duties of Planning Board in implementing site plan standards.
- (1) In reviewing any proposed development within a flood area, the Planning Board shall not approve a site plan unless it is reasonably assured that:
 - (a) Any structure can be occupied without peril to the health or safety of the occupant.

- (b) Any structure will not impede the flow of surface waters through any river, stream or other watercourse, natural or artificial.
 - (c) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow and placed approximately on the same flood flow lines as those of adjoining structures.
 - (d) The site plan takes into account floodplain management programs, if any, already in effect in neighboring areas.
- (2) The duties of the Planning Board shall include but not be limited to the following:
- (a) Application and site plan review.
 - [1] Review all development and site plan applications to determine that the requirements of this Article have been satisfied. In the case of all subdivision proposals and other proposed new developments greater than fifty (50) lots or five (5) acres, whichever is the lesser, the Planning Board shall require that included in such proposals shall be base flood elevation data.
 - [2] Review all applications and determine or require that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
 - [3] Review all applications to determine if such proposed development is to be located in the floodway.
 - (b) Use of other base flood data. When base flood elevation data has not been provided in accordance with § 95-86B, then the Township Engineer shall obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source in order to administer the provisions of this Article.
 - (c) Information to be obtained and maintained.
 - [1] Verify and record the actual elevation in relation to mean sea level of the lowest habitable floor, including basement, of all new or substantially improved structures.
 - [2] For all new or substantially improved flood proofed structures.
 - [a] Verify and record actual elevation in relation to mean sea level, and
 - [b] Maintain the flood proofing certification required by this section.
 - [3] Maintain for public inspection all records pertaining to the provisions of this Article.
 - (d) Alteration of watercourses. Notify adjacent communities and New Jersey State Coordinating Agency prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Insurance Administration.

§ 95.88. Construction standards.

The Planning Board shall also determine, with the advice and assistance of the Township Engineer, Construction Official and other competent authority, that:

- A. Proposed construction, repairs or alterations shall use construction materials and utility equipment that are resistant to flood damage, such as anchoring to prevent flotation, collapse or lateral movement.
- B. Construction methods and practices are used that will resist rupture or collapse from water pressure and minimize flood damage.
- C. Proposed utilities and facilities such as water, sewer and electrical systems are located, elevated and constructed to minimize or eliminate flood damage. These shall include nonwatertight manholes with vents, raised vents, flap valves, etc. Such facilities shall be constructed with overflow elevations two (2) feet above the flood level.
- D. Drainage is provided to reduce exposure to flood hazards.
- E. New or replacement water systems and sanitary sewage systems are designed and located to prevent infiltration, leakage, impairment or contamination during flooding.
- F. Watertight doors are installed.
- G. Paints, membranes or mortars are used to reduce seepage of water through walls.
- H. Backfill is of soils with natural low permeability or of soils treated to minimize permeability.
- I. Eight (8) inches of compacted granular fill are used beneath ground floor, said fill material to be daylighted in order to act as a French drain.
- J. No buried fuel oil tanks shall be permitted unless properly anchored and vented, with the vent two (2) feet above the flood level. In addition, the fill pipe shall also be two (2) feet above the flood level.
- K. All mechanical devices and equipment subject to water damage, including furnaces and electrical distribution centers, are located at least two (2) feet above the flood level.

§ 95-89. Specific requirements in the floodplain.

- A. Channel. Within the channel of a river, stream or watercourse, no building or structure and no landfill or excavation operations are permitted, except by a public authority in connection with stream improvement or stabilization, without the specific approval of the State Department of Environmental Protection and the Township Planning Board.
- B. Floodway. No building or structure shall be erected or moved or externally altered or added to or enlarged, nor shall any material or equipment be stored, nor shall any fill be placed, nor shall elevations of any land be substantially changed in the floodway, except by specific approval of the State Department of Environmental Protection and the Township Planning Board. The accepted practices of soil husbandry, the harvesting of crops in connection with farming and recreational uses in the nature of parks, playgrounds, golf courses, boat landings, docks and picnic grounds shall be permitted in accordance with a permit provided by this Article, provided such activities or

development shall not cause any increased flood heights.

C. Flood hazard area.

- (1) Within any defined flood hazard area (that portion of the floodplain lying outside of the floodway), no building or structure shall be erected or moved or externally altered, added to or enlarged except in accordance with all applicable ordinances of the township, and provided that:
 - (a) The lowest habitable floor elevation is two (2) feet above the level of the flood hazard elevations shown on the Flood Map.
 - (b) Each main building or structure shall have or be provided with a building site or yard that is not lower than the established high-water elevation plus one (1) foot and extends outside the building walls at least five (5) feet. The finished grade or surface of this yard shall be sloped to drain away from the walls for a distance of at least five (5) feet.
 - (c) No cellar may be constructed in any flood hazard area.
 - (d) All utilities, structures and buildings shall be flood proofed at least two (2) feet above flood level elevations shown on the Flood Map.
- (2) In cases of doubt or uncertainty as to the exact limit of the floodway, flood hazard area or floodplain, the Planning Board may require additional information from competent authority. Such additional information may consist of visual inspections, flood records, field surveys and personal observation.

§ 95-90. Variance procedure.

A. Appeal Board.

- (1) The Planning Board, as established by the Township of East Hanover, shall hear and decide appeals and requests for variances from the requirements of this Article.
- (2) The Planning Board shall hear and decide appeals when it is alleged that there is an error in any requirement or in the interpretation or administration of this Article. **[Amended 8-27-81 by Ord. No. 21-1981]**
- (3) Prior to the Planning Board action on a request for a variance or any appeal set forth hereunder, the Planning Board shall require and review the report of the Township Engineer on the application before it. **[Added 8-27-81 by Ord. No. 21-1981]**
- (4) Any person aggrieved by the decision of the Planning Board or any taxpayer may appeal such decision to the Superior Court of the State of New Jersey, as provided by law.
- (5) Factors for consideration.
 - (a) In passing upon such applications, the Planning Board shall consider all technical evaluations, factors, standards specified in other sections of this Article and:

[1] The danger that materials may be swept onto other lands to the injury of others.

- [2] The danger to life and property due to flooding or erosion damage.
- [3] The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- [4] The importance of the services provided by the proposed facility to the community.
- [5] The necessity to the facility of a waterfront location, where applicable.
- [6] The availability of alternative locations not subject to flooding or erosion damage for the proposed use.
- [7] The compatibility of the proposed use with existing and anticipated development.
- [8] The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
- [9] The safety of access to the property in times of flood for ordinary and emergency vehicles.
- [10] The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
- [11] The cost of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.

(b) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided items [1] through [11] in Subsection A(5)(a) above have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.

- (6) Upon consideration of the factors listed above and the purposes of this Article, the Planning Board may attach such conditions to the granting of variances as it deemed necessary to further the purposes of this Article.
- (7) The Planning Board shall maintain the records of all appeal actions. The Planning Board shall maintain a record of all variance actions, including justification for their issuance, and report any variances to the Federal Insurance Administration upon request.

B. Conditions for variances.

- (1) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this section.
- (2) Variances shall not be issued within any designated floodway if any increase in flood levels

during the base flood discharge would result.

- (3) Variances should only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (4) Variances shall only be issued upon:
 - (a) A showing of good and sufficient cause.
 - (b) A determination that failure to grant the variance would result in exceptional hardship to the applicant.
 - (c) A determination that the granting of a variance will not result in increased flood heights or additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (5) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built, which notice will state the lowest flood elevation permitted below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

§ 95-91. Criteria for mobile homes.

At such time as the Township of East Hanover or reviewing agency has cause to act upon mobile homes, the criteria to be utilized for review shall be based upon Section 1910.3 of the Rules and Regulations, Federal Register, Volume 41, Number 207, dated October 26, 1976.

§ 95-92. Time limitations.

The Planning Board shall act upon any site plan provided for in § 95-87C within 45 days of the date of the filing of a completed application or the date of approval by the State Department of Environmental Protection, whichever is later, or other extension of time agreed to by the applicant. Failure of the Planning Board to act within the time limit or limits shall be deemed an approval of any site plan submitted under this article. Planning Board disapproval shall include written findings.

ARTICLE IXA

Telecommunications Antennas and Towers [Added 11-13-1997 by Ord. No. 36-1997]

§ 95-92.1. Purpose.

A. The purpose of this article is to amend Chapter 95 of the Township Code of the Township of East Hanover delineated "Land Use and Zoning" to include the regulation of cellular communication towers and antennas located within the Township of East Hanover. The goal of this article is to establish general guidelines for the siting of cellular towers and antennas and to:

- (1) Restrict the location of towers to nonresidential areas.
- (2) Minimize the total number of towers throughout the township.

- (3) Encourage strongly the joint use of new and existing tower sites.
- (4) Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal.
- (5) Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas.
- (6) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently.
- (7) Consider the public health and safety of communication towers.
- (8) Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.
- (9) Encourage the use of existing structures for antennas.

B. In furtherance of these goals, the Township of East Hanover should give due consideration to the Township of East Hanover Master Plan, Zoning Map, existing land uses and environmentally sensitive areas in approving sites for the location of towers and antennas.

§ 95-92.2. Definitions.

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

ALTERNATIVE TOWER STRUCTURE — Man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

ANTENNA — Any exterior apparatus designed for telephonic, radio or television communications through the sending and/or receiving of electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals. Satellite dishes shall not be included within this definition.

BACKHAUL NETWORK — The lines that connect a provider's towers/cell sites to one or more cellular telephone switching offices and/or long distance providers or the public switched telephone network.

COLLOCATION — When two or more receiving and/or transmitting facilities are placed together in the same location or on the same tower or monopole.

FAA — The Federal Aviation Administration.

FCC — The Federal Communications Commission.

HEIGHTS — When referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

PREEXISTING TOWERS AND ANTENNAS — Any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of this article, including

permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.

SATELLITE DISH — Any apparatus with a flat or parabolic surface which is designed for the purpose of receiving television, radio, microwave, satellite or similar electronic signals.

TOWER — Any structure that is designated and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and the like. The term includes the structure and any support thereto.

TOWNSHIP — Township of East Hanover, County of Morris, State of New Jersey.

TOWNSHIP COUNCIL — The governing authority of the Township of East Hanover.

§ 95-2.3. Applicability.

- A. New towers or antennas. All new towers or antennas in the Township of East Hanover shall be subject to these regulations, except as provided in § 95-92.4F and G.
- B. Amateur radio; radio; receive-only antennas. This article shall not govern any tower or the installation of any antenna, that is under seven feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.
- C. Preexisting towers and antennas. Any tower or antenna for which a permit has been properly issued prior to the effective date of this article shall not be required to meet the requirements of this article, other than the requirements of § 95-92.4F and G. Any such towers or antennas shall be referred to in this article as “preexisting towers” or “preexisting antennas.” This exception shall not apply to any expansion or intensification of said preexisting tower or antenna.
- D. Government agencies. Communication towers or antennas owned, operated or used by the federal, state, county or municipal governments shall be exempt from the requirements of this article.
- E. AM array. For purposes of implementing this article, an AM array consisting of one or more tower units and supporting ground system which functions as one AM broadcasting antenna shall not be considered one tower.
- F. One- and two-family dwellings. The provisions of this article do not apply to antennas constructed on one- and two-family dwellings.

§ 95-92.4. General guidelines and requirements.

- A. Principal or accessory use. Antennas and towers shall be considered principal unless subservient and clearly related to an existing principal use or structure, except as may be provided under § 95-92.8A.
- B. Lot size. For purposes of determining whether the installation of a tower or antenna complies with local zoning regulations, including but not limited to setback requirements, lot coverage requirements and other such requirements, the dimensions of the entire lot shall control, even

though the antennas or towers may be licensed parcels within such lots.

- C. Inventory of existing sites. Each applicant for an antenna and/or tower shall provide an inventory of its existing towers that are either within the jurisdiction of the township or within 0.25 mile of the border thereof, including specific information about the location, height and design of each tower. The township departments may share such information with other applicants or organizations seeking to locate antennas within the jurisdiction of the township; provided, however, that the township departments are not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- D. Aesthetics. The guidelines set forth in this Subsection D shall regulate the location of all towers and the installation of all antennas, governed by this article; provided, however, that the appropriate township body may waive these requirements if it determines that the goals of this article are better served thereby.
 - (1) Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color, so as to reduce visual obstrusiveness.
 - (2) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors textures, screening and landscaping that will blend the tower facilities to the natural setting and surrounding buildings.
 - (3) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to or closely compatible with the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- E. Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the appropriate township body may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
- F. State or federal requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this article shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling governmental or quasi-governmental agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall require the removal of the tower or antenna at the owner's expense.
- G. Building codes: safety standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable national, state and local standards for towers, as amended from time to time. If, upon inspection, the appropriate township official concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. If the owners fail to bring such tower into compliance within said 30 days, the tower shall be removed at the owner's expense.

- H. Measurement. For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the Township of East Hanover irrespective of municipal and county jurisdictional boundaries.
- I. Not essential services. Towers and antennas shall be regulated and permitted pursuant to this article and shall not be regulated or permitted as essential services, public utilities or private utilities.
- J. Franchises. Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in the township have been obtained and shall file a copy of all required franchises with the Clerk of the Township of East Hanover who shall distribute copies of same to the Township Construction Official and Township Land Use Department.
- K. Signs. No signs or other nonessential accoutrements shall be allowed on any antenna or tower with the exception of warning signs or other signs required by federal, state or local law.
- L. Building and support equipment. Buildings and support equipment associated with antennas or towers shall comply with the requirements of § 95-92.12. Buildings and support equipment clearly related to the use of antenna shall be considered accessory structures.

§ 95-92.5. Permitted uses.

- A. Antennas shall be permitted uses in the following zones in the Township of East Hanover:
 - (1) Research Laboratory and Office (R-L).
 - (2) Public (P) (subject to the sole discretion of the Township Council).
 - (3) Highway Development/Office, Commercial, Industrial (HD/OCI).
 - (4) Special Economic Development Zone (SED).
 - (5) State-owned property located in the township.
- B. Antennas shall not be permitted on state-owned property located either in residential zones or contiguous to residential zones located in the township.

§ 95-92.6. Permitted conditional uses.

- A. Towers shall be permitted conditional uses in the following zones in the Township of East Hanover subject to specific conditions set forth in § 95-92.10 of this article:
 - (1) Research Laboratory and Office (R-L).
 - (2) Public (P) (subject to the sole discretion of the Township Council).
 - (3) Highway Development/Office, Commercial, Industrial-(HD/OCI).
 - (4) Special Economic Development Zone (SED).

(5) State-owned property located in the township.

B. Towers shall not be permitted on state-owned property located either in residential zones or contiguous to residential zones located in the township.

§ 95-92.7. Exemption for property owned, controlled or leased by the township.

All applications for antennas or towers to be placed on property owned, controlled or leased by the township are exempt from Planning Board of Adjustment review but are subject to review and approval by the township governing body which may require a license or lease for such antenna and/or tower.

§ 95-92.8. Antennas.

The following regulations and standards shall apply to all antennas:

A. Antennas on existing structures. Any antenna which is not attached to a tower may be approved by the appropriate township board as an accessory use to any commercial, industrial, professional, institutional or multi-family structure of eight or more dwelling units, provided:

(1) The antenna does not extend more than three feet above the highest point of the structure.

(2) The antenna complies with all applicable FCC and FAA regulations.

(3) The antenna complies with all applicable building codes.

B. Antennas on existing towers. An antenna to be attached to an existing tower may be approved by the appropriate township board subject to the following conditions and other conditions cited in this article and all other township ordinances:

(1) To minimize adverse visual impacts associated with the proliferation and clustering of towers, colocation of antennas by more than one carrier on existing towers shall be preferred over the construction of new towers, provided such colocation is accomplished in a manner consistent with the following:

(a) A tower which is modified or reconstructed to accommodate the colocation of an additional antenna shall be the same tower type as the existing tower, unless the appropriate township board allows reconstruction as monopole.

§ 95-92.9. Site plan approval.

A. General. No person shall construct or erect, or cause to be constructed or erected, a tower or antenna unless site plan approval is obtained from the appropriate township board. The following provisions shall also apply:

(1) Applications for site plan approval under this section shall be subject to the procedures and requirements of Article VT, Chapter 95 of the Township's Land Use Ordinance, except as modified in this section.

(2) In granting site approval, the appropriate township board may impose conditions to the extent such board concludes such conditions are necessary to minimize any adverse effect of the

proposed tower on adjoining properties or the community at large.

- (3) Any information of an engineering nature that the applicant submits, whether civil, mechanical or electrical, shall be certified by a licensed professional engineer.
- (4) An applicant for site plan approval shall submit the information described in this section and a nonrefundable fee as established by the governing township body, or pursuant to existing township escrow fee regulations, to reimburse the township for the costs of reviewing the application.

B. Information required for site plan approval for towers.

- (1) In addition to any information required for applications for site plan approval pursuant to § 95-36D of the township's Land Use and Zoning Ordinance, applicants for site plan approval for a tower shall submit the following information:
 - (a) A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking and other information as required by this and other township ordinances to enable comprehensive review of the application.
 - (b) Survey of the property, signed and sealed by a surveyor licensed in the State of New Jersey, dated no earlier than 12 months prior to the date of the application.
 - (c) The distance between the proposed tower and the nearest residential unit.
 - (d) The separation distance from other towers described in inventory of existing sites submitted pursuant to this article shall be shown on an updated site plan or map certified by a licensed engineer or licensed land surveyor. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s).
 - (e) A landscape plan showing specific landscape materials and precise locations of proposed landscaping improvements certified by a licensed engineer or certified landscape architect.
 - (f) Method of fencing and finished color and, if applicable, the method of camouflage and illumination.
 - (g) A statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.
 - (h) Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the municipality.
 - (i) A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.

- (j) A description of the feasible location(s) of future towers, or antennas which may be erected by the applicant, within the township based upon existing physical, engineering, technological or geographical limitations in the event that the proposed tower is erected.
 - (k) Line of sight analysis detailing the view of the proposed tower from various directions and angles from adjacent residential areas. The analysis shall be utilized to determine buffer requirements.
- (2) Factors considered in granting site plan approval for towers. In addition to any standards for consideration of site plan approval applications pursuant to Article VI, Chapter 95 of the Township Land Use and Zoning Ordinance, the appropriate township board shall consider the following factors and make specific and separate written findings thereon in determining whether to issue site plan approval, although the appropriate township board may waive or reduce the burden on the applicant of one or more of these criteria if the appropriate township board concludes that the goals of this article are better served thereby:
 - (a) Height of the proposed tower.
 - (b) Proximity of the tower to residential structures and residential district boundaries.
 - (c) Nature of uses on adjacent and nearby properties.
 - (d) Surrounding topography.
 - (e) Surrounding tree coverage and foliage.
 - (f) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
 - (g) Proposed ingress and egress.
 - (h) Availability of suitable existing towers, other structures or alternative technologies not requiring the use of towers or structures, as discussed in § 95-92.9B(3) of this article.
- (3) Availability of suitable towers or other structures or alternative technology. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the appropriate township board and said board makes specific and separate written findings thereon that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the appropriate township board related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:
 - (a) No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements.

- (b) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
- (c) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
- (d) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
- (e) The fees, costs or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
- (f) The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, are unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

§ 95-92.10. Conditions for site plan approval of towers.

An applicant shall satisfy specific conditions enumerated below to obtain site plan approval for towers:

- A. Maximum tower height. The maximum height of any tower shall not exceed 70 feet. For purposes of measurement, the maximum tower height shall include any structures supported by the tower and any antenna.
- B. Setbacks. The following setback requirements shall apply to all towers for which site plan approval is required:
 - (1) Towers must be set back a distance equal to at least 125% of the height of the tower from any adjoining lot line, provided that distance is no closer than the building setback applicable to the zone.
 - (2) Guys and accessory facilities must satisfy the minimum zoning district setback requirements.
- C. Separation. The following separation requirements shall apply to all towers and antennas for which site plan approval is required:
 - (1) Separation from off-site uses/designated areas.
 - (a) Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in Table 1, except as otherwise provided in Table 1.
 - (b) Separation requirements for the towers shall comply with the minimum standards established in Table 1.

Table 1

Off-Site Use/Designated Line	Separation Distance Measured From the Nearest Point of the Tower to the Structure of the Off-Site Use or Designated Line
Single-family or duplex residential units	200 feet or 300% height of tower, whichever is greater, measured to the residential unit
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary subdivision plan approval which is not expired	200 feet or 300% height of tower, whichever is greater, measured to the building setback line of the off-site use
Vacant unplatted residentially zoned lands	100 feet or 125% of height of tower, whichever is greater, measured to the property line
Existing multi-family residential units greater than duplex units	100 feet or 125% of height of tower, whichever is greater, measured to the property line
Nonresidentially zoned lands nonresidential uses	Setbacks apply pursuant to § 95-92.10B

- D. In addition to the above conditions for all permitted and permitted conditional uses, the applicant must satisfy other conditions for site plan approval set forth in Chapter 95 of the township's Land Use and Zoning Ordinance.

§ 95-92.11. Design standards for towers.

Applicants shall satisfy the design standards enumerated below to obtain site plan approval for towers in addition to other standards that may be required pursuant to the Township Land Use and Zoning Ordinance, construction codes and/or other applicable regulations:

- A. Security fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall all be equipped with an appropriate anti-climbing device; provided, however, that the appropriate township board may waive such requirements, as it deems appropriate.
- B. Landscaping. The following requirements shall govern the landscaping surrounding towers for which site plan approval is required; provided, however, that the appropriate township board may waive such requirements if the goal of this article would be better served thereby.
 - (1) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall be consistent with the Township Land Use and Subdivision Ordinance, § 95-47A(6).
 - (2) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.

- (3) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

§ 95-92.12. Building or other equipment storage.

The equipment cabinet or structure used in association with antennas shall comply with the following:

- A. The cabinet or structure shall not contain more than 200 square feet of gross floor area or be more than 12 feet in height. In addition, for buildings and structures which are less than 65 feet in height, the related unmanned equipment structure shall not be located on the roof of the structure.
- B. If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than 10% of the roof area.

ARTICLE X

Pending Applications; Penalties; Repealer

§ 95-93. Pending applications.

All applications for development made pursuant to lawful authority preceding the effective date of this chapter may be continued.

§ 95-94. Violations and penalties. [Amended 8-17-1982 by Ord. No. 24-1982]

Any owner or agent and any person or corporation who shall violate any of the provisions of this chapter or fail to comply therewith or with any of the requirements thereof, or who shall erect, structurally alter, enlarge, rebuild or move any building or buildings or any structure or who shall put into use any lot or land in violation of any detailed statement or plan submitted hereunder, or who shall refuse reasonable opportunity to inspect any premises, shall be liable to a fine of not more than \$500 or to imprisonment for not more than 90 days, or both such fine and imprisonment. Each and every day such violation continues shall be deemed a separate and distinct violation.

§ 95-95. Separate violations.

The owner of any building or structure, lot or land or part thereof where anything in violation of this chapter shall be placed or shall exist, and any architect, builder, contractor, agent, person or corporation employed in connection therewith and who assists in the commission of such violation, shall each be guilty of a separate violation and, upon conviction thereof, shall each be liable to the fine or imprisonment, or both, specified in § 95-94 above.

§ 95-96. Enforcement.

Upon refusal or the inability of the Zoning Enforcement Official or others charged with the responsibility to make a complaint or for the enforcement of the sections of this chapter, or by reason of disqualification of those charged with enforcement, then this chapter may be enforced by any member of the Township Committee, and the Township Committee, at any regular or special meeting thereof, may direct any of its members or a member of the Police Department to make such complaint.

§ 95-97. Repealer; effect.

Any and all Township ordinances or parts thereof which are in conflict or inconsistent with any of the terms or provisions of this Land Use and Zoning Chapter of the Township of East Hanover, County of Morris and State of New Jersey, are hereby repealed to the extent necessary to give this chapter full force and effect; provided, however, that the adoption of this chapter shall not prevent or bar the continuance or institution of any proceedings for offenses heretofore committed in violation of any existing ordinance of the Township of East Hanover.

§ 95-98. (Reserved) § 95-99. (Reserved)

ARTICLE XI
Signs
[Added 5-6-2008 by Ord. No. 5-2008⁷¹]

71. Editor's Note: This ordinance also repealed former Article XI, Signs, and former Article XII, Temporary Signs, which were added 7-10-2006 by Ord. No. 11-2006.

§ 95-100. Short title.

This article shall be known as the "Sign Regulations of the Township of East Hanover, Morris County, New Jersey."

§ 95-101. Purpose, intent and scope.

It is the purpose of this article to promote the public health, safety and general welfare through reasonable, consistent and nondiscriminatory sign standards. The sign regulations in this article are not intended to censor speech or to regulate viewpoints, but instead are intended to regulate the secondary effects of speech, and especially insofar as those secondary effects may adversely affect aesthetics and traffic and pedestrian safety. In order to preserve and enhance the Township as a desirable community in which to live and do business, a pleasing, visually attractive environment is of foremost importance. The regulation of signs within the Township is a highly contributive means by which to achieve this desired end. These sign regulations have been prepared with the intent of enhancing the visual environment of the Township and promoting its continued well-being, and are intended to:

- A. Encourage the effective use of signs as a means of communication in the Township;
- B. Maintain and enhance the aesthetic environment and the Township's ability to attract sources of economic development and growth;
- C. Improve pedestrian and traffic safety;
- D. Minimize the possible adverse affect of signs on nearby public and private property;
- E. Foster the integration of signage with architectural and landscape designs;
- F. Lessen the visual clutter that may otherwise be caused by the proliferation, improper placement, illumination, animation, excessive height, and excessive size (area) of signs which compete for the attention of pedestrian and vehicular traffic;
- G. Allow signs that are compatible with their surroundings and aid orientation, while precluding the placement of signs that contribute to sign clutter or that conceal or obstruct adjacent land uses or

signs;

- H. Encourage and allow signs that are appropriate to the zoning district in which they are located and consistent with the category of use and function to which they pertain;
- I. Curtail the size and number of signs and sign messages to the minimum reasonably necessary to identify a residential or business location and the nature of any such business;
- J. Establish sign size in relationship to the scale of the lot and building on which the sign is to be placed or to which it pertains;
- K. Categorize signs based upon the function that they serve and tailor the regulation of signs based upon their function;
- L. Preclude signs from conflicting with the principal permitted use of the site and adjoining sites;
- M. Regulate signs in a manner so as to not interfere with, obstruct the vision of or distract motorists, bicyclists or pedestrians;
- N. Except to the extent expressly preempted by state or federal law, ensure that signs are constructed, installed and maintained in a safe and satisfactory manner, and protect the public from unsafe signs;
- O. Preserve, conserve, protect, and enhance the aesthetic quality and scenic beauty of all districts of the Township;
- P. Allow for traffic control devices consistent with national standards and whose purpose is to promote highway safety and efficiency by providing for the orderly movement of road users on streets and highways, and that notify road users of regulations and provide warning and guidance needed for the safe, uniform and efficient operation of all elements of the traffic stream;
- Q. Protect property values by precluding to the maximum extent possible sign types that create a nuisance to the occupancy or use of other properties as a result of their size, height, illumination, brightness, or movement;
- R. Protect property values by ensuring that sign types, as well as the number of signs, are in harmony with buildings, neighborhoods, and conforming signs in the area;
- S. Regulate the appearance and design of signs in a manner that promotes and enhances the beautification of the Township and that complements the natural surroundings in recognition of the Township's reliance on its natural surroundings and beautification efforts in retaining economic advantage for the community;
- T. Preserve and enhance the rural and historic character of the Township; and
- U. Enable the fair and consistent enforcement of these sign regulations.

§ 95-102. Definitions.

All words used in this article shall carry their customary dictionary meanings, except that the

following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning:

ABANDONED OR DISCONTINUED SIGN OR SIGN STRUCTURE - A sign or sign structure is considered abandoned or discontinued when its owner fails to operate or maintain a sign for a period of six months or longer. The following conditions shall be considered as the failure to operate or maintain a sign:

- A. A sign displaying advertising for a product or service which is no longer available or displaying advertising for a business which is no longer licensed; or
- B. A sign which is blank.

ADVERTISING - Sign copy intended to aid, directly or indirectly, in the sale, use or promotion of a product, commodity, service, activity, entertainment, or real or personal property.

AGRICULTURAL PRODUCE SIGN - A sign in a district with a permitted agricultural use and whose function is exclusively for advertising for the normal, incidental and customary sale of products, produce or livestock raised on the premises.

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

ARTWORK - A two- or three-dimensional representation of a creative idea that is expressed in a form and manner as to provide aesthetic enjoyment for the viewer rather than to specifically convey the name of the business or a commercial message about the products or services offered on the property upon which the artwork is displayed.

AWNING SIGN - See “canopy sign.”

BANDIT SIGN - See “snipe sign.”

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

BEACON - A stationary or revolving light which flashes or projects illumination, single color or multicolored, in any manner which has the effect of attracting or diverting attention, except, however, this term does not include any kind of lighting device which is required or necessary under the safety regulations of the Federal Aviation Administration or other similar agency. This definition does apply to any similar type of lighting device contained entirely within a structure and which does not project light to the exterior of the structure.

BILLBOARD — A sign structure and/or sign utilized for advertising an establishment, an activity, a product, service or entertainment which is sold, produced, manufactured, available or furnished at a place other than on the property on which said sign structure and/or sign is located.

BUILDING FRONTAGE - The length of the single face of a building or that portion of a building occupied by a single office, business or enterprise, commonly referred to as “storefront,” which is abutting a street, parking area, or other means of customer access such as an arcade, a mall or a

walkway. The building frontage for a side facade shall be the length of the single face of a side of a building or that portion of a side of a building occupied by a single office, business or enterprise.

CANOPY SIGN - Any sign that is a part of or attached to an awning or canopy, i.e., a fabric, plastic, or structural protective cover constructed over a door, entrance, window, or outdoor service area that is constructed as an integral part of a building.

COMMERCIAL MESSAGE - Any sign wording, logo, or other representation or image that directly or indirectly names, advertises, or calls attention to a product, service, sale or sales event or other commercial activity.

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

COPY — The linguistic or graphic content of a sign.

DOUBLE-FACED SIGN - A single sign with items of information on both sides of the sign and mounted as a single structure.

ELECTION SIGN A temporary sign erected or displayed for the purpose of expressing support for or opposition to a candidate or stating a position regarding an issue upon which the voters of the Township shall vote.

ERECT — To construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish; but it does not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance or repair of a sign.

FAÇADE - The side of a building, either front or side; and a building facade may be less than the entire side of a building if limited to the occupancy of a portion of a building.

FLAG - Any fabric, or bunting containing distinct colors, patterns or symbols, used as an ornamental flag or as a symbol of government, political subdivision, corporation or business or other entity. (See also “ornamental flag.”)

FLAGPOLE - A pole on which to raise a flag.

FLASHING SIGN - A sign which permits light to be turned on or off intermittently more frequently than once per minute or any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use, including an LED (light-emitting diode) or digital sign and changes more frequently than once per minute.

FREE EXPRESSION SIGN - A sign, not in excess of three square feet in size (area) per side and the top of the sign is not more than six feet off the ground, communicating information or views on matters of public policy concern or containing any other noncommercial message, that is otherwise lawful.

FREESTANDING SIGN - A sign supported by structures or supports that are placed on or anchored

in the ground or at ground level and which are independent of any building or other structure. Unless otherwise limited or restricted, a freestanding sign may be either a freestanding monument sign or a freestanding pole sign.

FRONTAGE - The length of the property line of a parcel of land which runs parallel with and along a road right-of-way or street, exclusive of alleyways.

FUTURE DEVELOPMENT SIGN. - A sign that functions to advertise the future or proposed development of the premises upon which the sign is erected.

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

GRAND OPENING SIGN - An on-premises temporary sign that functions to announce the opening of a new business.

HEIGHT OF A SIGN — The vertical distance measured from ground level nearest the base of the sign to the highest point on the sign.

HOLIDAY AND SEASONAL DECORATIONS — Decorations that pertain to legal or other recognized holidays or to a season of the year.

ILLEGAL SIGN - Any sign which was unlawfully erected or which has been determined to be in violation of any provision of this article.

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

INCIDENTAL SIGN - A sign not exceeding one square foot in size attached to a freestanding sign or affixed to a wall that either identifies credit cards accepted by the owner, tenant, or occupant of the parcel where the incidental sign is located; or provides an official notice of services required by law or trade affiliation.

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

MAINTENANCE - Replacing, repairing or repainting of a portion of a sign structure, or periodically changing changeable copy or renewing copy, which has been made unusable by ordinary wear.

MARQUEE - Any permanent roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the building, generally designed and constructed to provide protection from the weather.

MARQUEE SIGN - Any sign attached to a marquee.

NAMEPLATE SIGN or OCCUPANT IDENTIFICATION SIGN - A sign indicating the name and/or profession or address of a person or persons residing on the premises or legally occupying the premises.

NONCOMMERCIAL MESSAGE - Any message which is not a commercial message.

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

NONCONFORMING SIGN - A sign that was lawfully erected but no longer conforms to the regulations provided in this article.

OFF-PREMISES SIGN or OFF-SITE SIGN — Any sign relating in its subject matter to commodities, accommodations, services or activities on a premises other than the premises on which the sign is located.

ON-PREMISES SIGN or ON-SITE SIGN - Any sign relating in its subject matter to the commodities, accommodations, service or activities on the premises on which the sign is located.

ORNAMENTAL FLAG - Any fabric or similar material containing patterns, drawings or symbols used for decorative purposes and designed to be flown as a flag.

PARAPET — A false front or wall extension above the roofline of a building.

PENNANT - Any series of small flag-like or streamer-like pieces of cloth, plastic, paper or similar material attached in a row to any staff, cord, building, or at only one or two edges, the remainder hanging loosely.

PERMANENT SIGN - Any sign which, when installed, is intended for permanent use. For the purposes of this article, any sign with an intended use in excess of 12 months from the date of installation shall be deemed a permanent sign.

PORTABLE SIGN - Any sign, banner, or poster that is not permanently attached to the ground or structure. For purposes of this article, a cold-air inflatable sign shall be considered a portable sign.

PROJECTING SIGN - Any sign affixed perpendicularly to a building or wall in such a manner that its leading edge extends more than 12 inches beyond the surface of such building or wall.

REAL ESTATE SIGN - A sign advertising the sale, rental or lease of the premises or part of the premises on which the sign is displayed temporarily.

REVOLVING SIGN or ROTATING SIGN - Any sign that revolves or rotates.

ROOF SIGN Any sign erected and constructed wholly on or over the roof of a building, which is supported by the roof structure, or any sign that extends in whole or in part above the roofline of a building. For purposes of this definition, "roofline" shall mean the highest continuous horizontal line

of a roof. On a sloping roof, the roofline is the principal ridgeline or the highest line common to one or more principal slopes of a roof. On a flat roof, the roofline is the highest continuous line of a roof or parapet, whichever is higher.

SAFETY SIGN - See “warning sign.”

SANDWICH BOARD SIGN - A temporary portable double-faced, freestanding sign.

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

- A. For street intersections, this triangle is measured 30 feet in length from the intersection along the abutting right-of-way lines to form a triangle, although these distances may vary based on the type of intersecting road; and
- B. For driveway intersections, this triangle is measured 10 feet from the intersection along the right-of-way line and along the driveway line to form a triangle.

SIGN - Any device, fixture, placard or structure which uses color, form, graphics, illumination, architectural style or design with text, or writing to advertise, attract attention, announce the purpose of or identify the purpose of any person or entity, or to communicate information of any kind to the public. The term “sign” includes sign structure. The following shall not be considered signs subject to the regulations of this article: artwork, holiday or seasonal decorations, cemetery markers, machinery or equipment signs, memorial signs or tablets.

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

SIGN FACE - The part of the sign that is or can be used to identify, display, advertise, communicate information, or for the visual representation, which attracts or intends to attract the attention of the public for any purpose.

SIGN STRUCTURE - Any structure which is designed specifically for the purpose of supporting a sign, which has supports or which is capable of supporting a sign. The definition shall include any decorative covers, braces, wires, supports, or other components attached to or placed around the sign structure.

SNIPE SIGN (BANDIT SIGN) — Any sign tacked, nailed, posted, pasted, glued or otherwise attached to trees, rocks, or other natural features, or poles, stakes, or fences, with the message appearing thereon not applicable to the present use of the premises upon which the sign is located. This shall not include warning signs such as no-trespassing signs or no-hunting signs.

SPECIAL EVENT SIGN — A content-neutral sign providing notice of, or direction to, an event, gathering, assembly or meeting that is open to the public at large.

STATUTORY SIGN - A sign required by any statute or regulation of the State of New Jersey or the United States.

STREET ADDRESS SIGN - Any sign denoting the street address of the premises on which it is attached or located.

SUBSTANTIALLY DAMAGED OR DESTROYED - As it pertains to a nonconforming sign;

- A. Fifty percent or more of the upright supports of a sign structure are physically damaged such that normal repair practices of the sign industry would call for, in the case of wooden structures, replacement of the broken supports and, in the case of a metal sign structure, replacement of at least 25% of the length above ground of each broken, bent, or twisted support; or
- B. More than 50% of a wall or attached sign is physically damaged such that normal repair practices of the sign industry would call for the same to be replaced or repaired.

TEMPORARY SIGN — A sign intended for a use not permanent in nature. For the purposes of this article, a sign with an intended use of one year or less shall be deemed a temporary sign.

TRAFFIC CONTROL DEVICE SIGN - Any sign located within the right-of-way that functions as a traffic control device and that is described and identified in the Manual on Uniform Traffic Control Devices (MUTCD) and approved by the Federal Highway Administrator as the National Standard. A traffic control device sign includes those signs that are classified and defined by their function as regulatory signs (that give notice of traffic laws or regulations), warning signs (that give notice of a situation that might not readily be apparent), and guide signs (that show route designations, directions, distances, services, points of interest, and other geographical, recreational, or cultural information).

VEHICLE SIGN - Any sign or signs where the total sign area covers more than 10 square feet of the vehicle.

WALL SIGN - A sign which is painted on, fastened to, or erected against the wall of a building with its face in a parallel plane with the plane of the building facade or wall that does not extend above the height of the vertical wall or eaves, which is used for advertising. Further, a “wall sign” means a sign that does not project more than 15 inches from a building wall to which it is attached, and when extending more than three inches from the face of the wall, the bottom edge of such sign shall not be less than 10 feet from the ground and shall not have a vertical dimension in excess of five feet.

WARNING SIGN or SAFETY SIGN - A sign that functions to provide a warning of a dangerous condition or situation that might not be readily apparent or that poses a threat of serious injury (e.g., gas line, high voltage, condemned building, etc.) or that functions to provide a warning of a violation of law (e.g., no trespassing, no hunting allowed, etc.).

WINDOW SIGN - Any sign mounted in any fashion on the interior or exterior of the surface of a window.

WIND SIGN - A sign which uses objects or material fastened in such a manner as to move upon being subjected to pressure by wind, and shall include banners, pennants, ribbons, spinners, streamers or captive balloons; however, the term “wind sign” shall not include flags.

§ 95-103. Prohibited signs.

The following signs and sign types are prohibited within the Township and shall not be erected. Any lawfully existing permanent sign or sign type which is among the prohibited signs and sign types listed below shall be deemed a nonconforming sign subject to the provisions of § 95-104.

- A. Billboards.
- B. Revolving signs.
- C. Flashing signs.
- D. Animated signs.
- E. Wind signs.
- F. Portable signs.
- G. Roof signs.
- H. Abandoned and discontinued signs.
- I. Snipe signs; bandit signs.
- J. Projecting signs.
- K. Bus bench advertising signs; bus shelter advertising signs.
- L. Signs that emit smoke, visible vapor or smoke, sound, odor, or visible particles or gaseous matter.
- M. Signs that have unshielded illuminating devices.
- N. Signs that obstruct, conceal, hide or otherwise obscure from view any official traffic or governmental sign, signal or device.
- O. Wall signs that exceed 200 square feet in sign area.
- P. Freestanding signs that are higher than 25 feet.
- Q. Signs within a sight triangle that obstruct a clear view of pedestrian or vehicular traffic.
- R. Signs in the public right-of-way, other than traffic control device signs, warning signs or safety signs.
- S. Signs other than a traffic control device sign that use the word “stop” or “danger,” or present or imply the need or requirement of stopping or the existence of danger, or which copy or imitate an official traffic control device sign, and which are adjacent to the right-of-way of any road, street, or highway.
- T. Signs prohibited by state or federal law.

U. Vehicle sign or signs which have a total sign area on any vehicle in excess of 10 square feet, when the vehicle is not regularly used in the conduct of the business or activity advertised on the vehicle, and is visible from a street right-of-way within 100 feet of the vehicle, and is parked for more than two consecutive hours within 100 feet of any street right-of-way. A vehicle shall not be considered “regularly used in the conduct of the business or activity” if the vehicle is used primarily for advertising; or for the purpose of advertising; or for the purpose of providing transportation for owners or employees of the business or activity advertised on the vehicle.

V. Signs located on real property without the permission of the property owner.

W. Beacons, except as required by federal or state law.

X. Intermittent signs.

Y. Sandwich board signs.

Z. Signs located, painted or affixed on a water tower, storage tower, or cell tower that are visible from a public street or roadway.

AA. Signs within 100 feet of an historic building, site or monument, other than historic markers.

BB. Neon signs, except as may be expressly allowed herein as an interior-mounted sign in a window or door opening in a nonresidential zone.

§ 95-104. Nonconforming signs.

A nonconforming sign that was lawfully erected may continue to be maintained until the nonconforming sign is substantially damaged or destroyed. At such time that the nonconforming sign is substantially damaged or destroyed, the nonconforming sign must either be removed or be brought into conformity with this article and with any other applicable law or regulation.

§ 95-105. Exemptions.

This article does not pertain to the following:

- A. A sign, other than a window sign, located entirely inside the premises of a building or enclosed space.
- B. A sign on a car, other than a prohibited vehicle sign or signs.
- C. A statutory sign.
- D. A traffic control device sign.
- E. Any sign not visible from a public street, sidewalk or right-of-way; except that the foregoing does not exempt a sign for a commercial use that is visible from an abutting residential use.

§ 95-106. Permits.

- A. Building permits. It shall be unlawful for any person or business or the person in charge of the business to erect, construct, or alter a permanent sign structure whose construction is subject to

the New Jersey Uniform Construction Code, without first obtaining such building permit from the Township as may be required by the New Jersey Uniform Construction Code. Permit fees, if any, shall be paid in accordance with the applicable fee schedules. The requirement of a building permit under the New Jersey Uniform Construction Code is separate and independent of the requirement for a sign permit under this article.

B. Sign permits.

- (1) Allowed temporary signs, except for special event signs, of the type described in § 95-115 shall be exempt from sign permitting hereunder. Temporary special event signs shall require a permit.
- (2) Allowed permanent signs of the type described in § 95-115 shall be exempt from sign permitting hereunder.
- (3) No sign permit shall be issued for the erection of a prohibited sign.
- (4) Unless exempt from permitting as provided in § 95-115, below, no permanent sign shall be erected, altered, relocated, maintained or displayed until a sign permit is obtained from and the appropriate fee, if any, is paid to the Township.
- (5) A sign lawfully erected under permit may be repainted or have ordinary and customary repairs performed, including replacement of plastic or glass panels, without a new sign permit; however, if such sign is to be structurally altered in any manner, a new sign permit shall be required and the altered sign must meet all requirements of this article and this Code.

C. Sign permit application and issuance of sign permit.

- (1) A sign permit application shall be made upon a form provided by the Township. The sign permit application is in addition to any building permit application required by the New Jersey Uniform Construction Code. The sign permit application shall be accompanied by plans and specifications drawn to scale, together with any site plan required by this article or this Code. The applicant shall furnish the following information on or with the sign permit application form:
 - (a) The legal description of the real property where the sign is proposed to be located.
 - (b) The zoning district for the real property on which the sign will be located.
 - (c) The name, mailing address and telephone number (where available) of the owner(s) of the real property where the sign is proposed to be located.
 - (d) A notarized statement of authorization signed by the owner(s) consenting to the placement of the proposed sign on the real property.
 - (e) The name, mailing address and telephone number of the sign contractor.
 - (f) Type of proposed sign (e.g., wall sign or freestanding sign).
 - (g) The square footage of the surface area of the proposed sign.

- (h) The cost of the proposed sign.
 - (i) If the proposed sign is a freestanding sign:
 - [1] The height of the proposed freestanding sign.
 - [2] The size (sign area) of the freestanding sign, and the dimensions utilized to calculate the size.
 - [3] The distance of the closest freestanding sign to the proposed freestanding sign.
 - [4] Whether there is an existing freestanding sign on the same lot where the proposed freestanding sign will be located.
 - [5] The front and side yard setbacks for the proposed sign.
 - (j) If the proposed sign is an attached sign, the building frontage for the building to which the attached sign shall be affixed.
 - (k) The number, type, location, and surface area for all existing signs on the same lot and/or building on which the sign will be located.
 - (l) Whether the proposed sign will be an illuminated or nonilluminated sign.
- (2) An applicant shall deliver a sign permit application for a permanent sign to the Township's Zoning Officer or his or her designee, or such other person as designated by the Township. The sign permit application shall be reviewed for a determination of whether the proposed sign meets the applicable requirements of this article and any applicable zoning law. The review of the sign permit application shall be completed within 10 calendar days from the date of receipt of the application, and the application shall be granted or denied within that time frame. In the event that no decision is rendered within 10 calendar days following submission, the application shall be deemed denied and the applicant may appeal to the Board of Adjustment pursuant to the MLUL.⁷²

72. Editor's Note: See N.J.S.A. 40:55D-1 et seq.

D. Fees.

- (1) Sign permit application fees. Every person making an initial application for a sign permit application shall pay a fifty-dollar sign permit application fee to the Township at the time of the application.
- (2) Building permit fees distinguished. The sign permit fee, if any, shall be separate and apart from any required fee for a building permit for the erection of a sign covered by the New Jersey Uniform Construction Code.
- (3) Enforcement of this Article XI. Nothing contained in this Article XI shall be construed as prohibiting the Township from taking appropriate legal action, including the filing of legal proceedings in a court of competent jurisdiction, to enforce this Article XI.

E. Conditions.

- (1) Duration of permit. If the work authorized under a sign permit has not been completed within 180 days after the date of issuance, the permit shall become null and void and a new application for a sign permit shall be required.
- (2) Maintenance of signs.
 - (a) All visible portions of a sign and its supporting structure shall be maintained in a safe condition and neat appearance according to the following:
 - [1] If the sign is lighted, all lights shall be maintained in working order and functioning in a safe manner.
 - [2] If the sign is painted, the painted surface shall be kept in good condition.
 - [3] Every sign shall be kept in such manner as to constitute a complete or whole sign.
 - (b) Lawfully erected nonconforming signs may suffer only ordinary and customary repairs and maintenance. A lawfully erected nonconforming sign shall not be structurally altered except in full conformance with this Article XI.

§ 95-107. Sign illumination.

- A. Freestanding and wall signs may be illuminated unless stated otherwise in the specific zoning district regulations, provided the illumination . is designed and installed in such a manner that light from the sign meets all requirements of this Code and the New Jersey Uniform Construction Code. The following standards shall apply:
- (1) Illumination of signs shall be by either indirect lighting or diffused-lighting, and shall not cause light spillage onto adjacent properties.
 - (2) Lights used for the illumination of freestanding or wall signs shall be shielded so as not to project light above the freestanding sign or the highest elevation of the front wall of the building on which the wall sign is displayed or more than 18 feet above the ground level, whichever is less.
 - (3) Free-form exposed neon lights for signs are prohibited.
 - (4) The light intensity for the illumination of a sign visible from the public right-of-way shall not exceed 50 foot candles per square foot on a standard Weston photolight source, illuminated surface or display window.
 - (5) Illumination shall be of a continuous (nonintermittent) nature and of a uniform color value.
 - (6) Illumination of signs, where permitted, which face property with a residential use shall not be illuminated from 11:00 p.m. until the following dusk, except that an establishment may keep the sign illuminated until the business is closed to the public but not thereafter.

- (7) Illumination of signs shall also comply with any stricter provisions that may be established by this Code.

- B. Illuminated signs, in addition to conforming to all other requirements of this Article XI, shall be shielded in such a manner so that no direct source of light is cast into residential properties or into a public street or right-of-way. Illuminated signs shall not interfere with pedestrian or motorist vision. The illumination shall not be reflective or phosphorescent and shall perform in a steady nonfluctuating or nonundulating manner and shall be placed in a manner that will not create a nuisance to other premises or interfere with vehicular movements.

§ 95-108. Substitution of noncommercial speech for commercial speech.

Notwithstanding anything contained in this Article XI or this Code to the contrary, any sign erected pursuant to the provisions of this Article XI or this Code with a commercial message may, at the option of the owner, contain a noncommercial message unrelated to the business located on the premises where the sign is erected. The noncommercial message may occupy the entire sign face or any portion thereof. The sign face may be changed from a commercial to a noncommercial message, or from one noncommercial message to another, as frequently as desired by the owner of the sign, provided that the sign is not a prohibited sign or sign type and provided that the size, height, setback and other dimensional criteria contained in this Article XI and this Code have been satisfied.

§ 95-109. Content neutrality as to sign message (viewpoint).

Notwithstanding anything in this Article XI or this Code to the contrary, no sign or sign structure shall be subject to any limitation based upon the content (viewpoint) of the message contained on such sign or displayed on such sign structure.

§ 95-110. Appeals to the Board of Adjustment.

Whenever it is alleged that there has been an error in any order, action, decision, determination, or requirement by an administrative official in the enforcement and application of any provision contained within this Article XI pertaining to sign permits (including any allegation that an administrative official has failed to act within applicable time frames), the aggrieved party shall file a written appeal with the Board of Adjustment in accordance with the MLUL.⁷³ The appellate decisions of the Board of Adjustment shall be deemed final, subject to judicial review as provided by law.

73. Editor's Note: See N.J.S.A. 40:55D-1 et seq.

§ 95- 111 . Administration and enforcing official.

The Zoning Enforcement Official shall be the enforcing official of this Article XI, and enforcement shall be governed by this Code, except that imprisonment shall not be a penalty for a violation of this Article XI. In addition, the following enforcement provisions shall apply:

- A. When a temporary sign is erected or maintained in violation of this Article XI, the Zoning Enforcement Official may remove the same at any time without notice.
- B. When a temporary sign is erected or posted on public property in violation of this Article XI, the same shall be considered litter and may be removed at any time by any person.
- C. When a permanent sign is erected or maintained in violation of this Article XI or this Code, the

Zoning Enforcement Official shall send a letter by certified mail to the owner of said sign and/or the owner of the premises on which the sign is located, ordering that such sign shall be brought into conformity with this Article XI and this Code within 30 days. If the sign is not brought into conformity or removed by the end of the thirty-day period, the Zoning Enforcement Official may cause the same to be removed at the expense of the owner of the sign and the owner of the premises on which the sign is located.

- D. In the event that any sign or sign structure is in violation of this Article XI or this Code, the Zoning Enforcement Official may cause the same to be removed summarily and without written notice if it is an immediate peril to persons or property.

§ 95-1 12. Setback measurement.

Required setbacks for signs in all zoning districts shall be measured from the property line to the nearest part of the sign.

§ 95-113. Double-faced signs.

Double-faced signs shall be permitted in all zoning districts, provided the signs are designed and constructed such that the two sign faces are back to back with a maximum distance of 18 inches between the two sign faces and directionally oriented 180 from each other. The maximum sign area allowed shall be permitted for each sign face.

§ 95-114. Temporary special event signs.

- A. Temporary special event signs as approved by the Zoning Enforcement Official as meeting the following content-neutral criteria:
- (1) The signs are temporary signs for a limited time and frequency;
 - (2) The signs are for a special event as defined herein (see special event sign);
 - (3) The temporary signs will not exceed four square feet in size (area) and three feet in height;
 - (4) The temporary signs will not conceal or obstruct adjacent land uses or signs;
 - (5) The temporary signs will not conflict with the principal permitted use of the site or adjoining sites;
 - (6) The temporary signs will not interfere with, obstruct the vision of or distract motorists, bicyclists or pedestrians;
 - (7) The temporary signs will be installed and maintained in a safe manner; and
 - (8) The display of temporary signs for a special event shall not begin any earlier than one week before the event and shall be removed within two business days after the event.
- B. Consistent with § 95-109, approval or disapproval shall not be based on the content of the message contained (i.e., the viewpoint expressed) on such signs. The Zoning Enforcement Official shall render a decision within 10 days after an application is made for such temporary signs. Such a

decision shall be deemed an administrative interpretation and any person adversely affected has the right to appeal the decision to the Board of Adjustment.

§ 95-115. All zones and districts.

The regulations in this Article XI apply in every zoning district, except where otherwise specified or indicated. Sign permits are not required for signs and sign types described and identified in this Article XI.

- A. Street address signs. For each parcel, residence or business, one street address sign may be displayed. For each residence, the street address sign shall not exceed two square feet in sign area unless required by applicable law. For each business or parcel in nonresidential use, the street address sign shall not exceed six square feet in sign area unless required by applicable law.
- B. Nameplate or occupant identification signs. For each residence, business or other occupancy, one nameplate sign may be displayed. For a residence, the nameplate or occupant identification sign shall be nonilluminated and shall not exceed one square foot in sign area. For a nonresidential use, such as a home occupation or professional office, the nameplate or occupant identification sign shall not exceed two square feet in sign area.
- C. Noncommercial on-site directional signs. Noncommercial on-site directional signs, not exceeding four square feet in sign area, shall be allowed on each parcel.
- D. Noncommercial on-site parking space signs. Noncommercial on-site parking space number signs, not exceeding one square foot of sign face per sign, shall be allowed on each parcel in noncommercial use having multiple parking spaces on site. One such sign shall be allowed for each parking space.
- E. Free expression signs. For each parcel, one free expression sign not exceeding three square feet in size (sign area) may be displayed. The free expression sign may be displayed as an attached sign or as a freestanding sign; if displayed as a freestanding sign, the freestanding sign shall not exceed three feet in height. A free expression sign is in addition to any other sign permitted under this article and is permitted in any zoning district. Only one such sign shall be permitted on each parcel.
- F. Election signs. For each parcel, one election sign for each candidate and each issue may be displayed. An election sign may be displayed as an attached sign or as a freestanding sign. The election sign shall not exceed three square feet in size (sign area) if located on a lot in residential use and shall not exceed 24 square feet in size (sign area) if located on a lot in nonresidential use. If the election sign is displayed as a freestanding sign on the parcel, the election sign shall not exceed three feet in height. An election sign shall be removed within five calendar days following the election to which it pertains.
- G. Flagpoles. One flagpole is allowed for each parcel. A flagpole shall not exceed 35 feet in height and shall be set back a minimum of 35 feet from the right-of-way, and shall be subject to setbacks in the applicable zones in which it is located.
- H. Flags. For each flagpole, two flags not greater than 24 square feet in size (sign area) each may be displayed.
- I. Warning signs and safety signs. Warning signs and safety signs not exceeding three square feet in

size (sign area) shall be allowed in all districts.

J. Temporary construction signs. One temporary construction sign shall be allowed on each parcel, subject to the following limitations:

- (1) Number. For each parcel, one temporary construction sign shall be allowed.
- (2) Size and height. For a parcel in residential use, the temporary construction sign shall not exceed three square feet in size (sign area) and three feet in height; and for a parcel in nonresidential use, the temporary construction sign shall not exceed 24 square feet in size (sign area) and six feet in height.
- (3) Setback. Temporary construction signs shall be set back from any lot line by at least 10 feet.
- (4) Duration. Temporary construction signs shall be removed within five days following the issuance of the certificate of occupancy or the expiration date of any applicable building permit, whichever shall first occur.

K. Temporary real estate signs.

- (1) Number. For each parcel, one temporary real estate sign may be displayed on each parcel of land or part thereof that is for sale, lease, or rent; however, when more than one dwelling unit or nonresidential space on a parcel of land is for sale, lease, or rent, there may be one real estate sign for each such unit or space. For a parcel with dual street frontage, such parcels may have one additional temporary real estate sign per frontage.
- (2) Size and height. For a parcel in residential use, the temporary real estate sign shall not exceed three square feet in size (sign area) and three feet in height; and for a parcel in nonresidential use, the temporary real estate sign shall not exceed 24 square feet in size (sign area) and six feet in height.
- (3) Setback. Temporary real estate signs shall be set back from any lot line by at least 10 feet.
- (4) Duration. Temporary real estate signs shall be removed within five days following the closing or settlement of a sale, lease or rental of the real estate that was offered for sale, lease, or rent.

L. Temporary grand opening signs.

- (1) Number. One temporary grand opening sign may be displayed for the grand opening of a business.
- (2) Size and height. The temporary grand opening sign shall not exceed 24 square feet in size (sign area) and six feet in height.
- (3) Setback. The temporary grand opening sign shall be set back from any lot line by at least 10 feet.
- (4) Duration. A temporary grand opening sign shall not be displayed for a period longer than

10 days.

- M. Temporary garage-yard sale signs. For each parcel with a lawful residential use, a temporary garage-yard sale sign may be displayed, subject to the following limitations:
- (1) Number. One temporary garage-yard sale sign may be displayed.
 - (2) Size and height. The temporary garage-yard sale sign shall not exceed three square feet in size (sign area) and three feet in height.
 - (3) Setback. The temporary garage-yard Sale sign shall be set back from any lot line by at least 10 feet.
 - (4) Duration. A temporary garage-yard sale sign may not be displayed for a period longer than three days twice a year.
- N. Temporary window signs. For each parcel, one or more temporary window signs may be displayed. On parcels that are in residential use, the temporary window sign(s) shall not exceed an aggregate of three square feet in sign area. On parcels that are in nonresidential use, the temporary window sign(s) shall not exceed an aggregate of 24 square feet in sign area. Temporary window signs shall not cover more than 25% of any window surface.
- O. Temporary future development signs. A temporary future development sign shall be allowed in new subdivisions, subject to the following limitations:
- (1) Number. No more than one such sign shall be allowed upon any property held in single and separate ownership.
 - (2) Size and height. A temporary future development sign shall not exceed 24 square feet in sign area. A temporary future development sign shall not exceed six feet in height.
 - (3) Setback. The temporary future development sign shall be set back from any lot line by at least 10 feet.
 - (4) Duration. Temporary future development signs shall be removed within five days after the last dwelling has been sold.

§ 95-116. Residential zones.

In addition to the permanent and temporary signs and sign types that are allowed pursuant to § 95-115, the following permanent and temporary signs are also allowed within the R-120, R-120-CR, R-20, R-15, R-1 1, R-10 and R-10/CSAH Zones and residential districts designated in the East Hanover Township Land Use Code, as amended from time to time. The permanent signs described below require a sign permit.

- A. Freestanding signs and mounted wall signs for multifamily residential uses. For each parcel with a permitted multifamily residential use, there may be one permanent freestanding identification sign per development for each public street frontage and one wall identification sign for each building. A permanent freestanding identification sign shall not exceed 24 square feet in size (sign area) and shall not exceed six feet in height. A permanent wall identification sign shall not exceed eight feet in size (sign area).

- B. Freestanding signs and mounted wall signs for institutional, quasi-public and public uses. For each parcel with a permitted institutional, quasi-public or public use, there may be one permanent freestanding identification sign that does not exceed 20 square feet in size (sign area) and six feet in height.

§ 95-117. Neighborhood Business B-1 and Professional and Business Office PB-1 Zones.

In addition to the permanent and temporary signs and sign types that are allowed pursuant to § 95-115, the following permanent signs are also allowed within the B-1 and PB-1 Zones designated in the East Hanover Township Land Use and Zoning Regulations, as amended from time to time. Other than incidental signs, the permanent signs described below require a sign permit.

A. Permanent wall signs.

- (1) Number. For each tenancy, one permanent wall sign is allowed. Subject to the aggregate size limitation described below, a separate sign may be erected for each tenant space for buildings having multiple businesses.
- (2) Height. A permanent wall sign shall not be higher than 25 feet from the ground, and shall not be erected higher than the roofline of the building.
- (3) Size (sign area). The maximum size (sign area) for any single wall sign shall be 30 square feet.
- (4) Aggregate size (sign area). The aggregate size (sign area) allowed for all signs on a front building wall shall not exceed 1.5 square feet in area for each one-foot width of the front building wall or 10% of the total front wall area, whichever is less.

- B. Incidental signs. Up to four incidental signs are permitted to be attached to a freestanding sign structure or to a building wall, but not perpendicular to the wall. An incidental sign shall not exceed one square foot in size.

§ 95-118. Highway Business B-2 and B-2B Zones (retail business uses only).

In addition to the permanent and temporary signs and sign types that are allowed pursuant to § 95-115, the following permanent signs are also allowed within the Highway Business B-2 and PB-1 Zones designated in the East Hanover Township Land Use and Zoning Regulations, as amended from time to time. Other than incidental signs, the permanent signs described below require a sign permit.

A. Permanent freestanding signs. Permanent freestanding signs for uses other than those delineated in § 95-54A(1)(c) and 95-55A(1)(d) are allowed as follows:

- (1) Number. One permanent freestanding sign is allowed per street frontage.
- (2) Height. The height of a permanent freestanding sign shall not exceed 15 feet. Except for retail businesses within the B-2B Zone, the bottom of the sign face shall not be closer than six feet from the ground level of the sign.
- (3) Size. The maximum size (sign area) of a permanent freestanding sign shall not exceed 100 square feet per building, and in no event shall the maximum size exceed 200 square feet.

- (4) Setbacks. Freestanding signs shall be set back a minimum distance of 15 feet from any street line and five feet from any side lot line.
- B. Permanent freestanding signs. Permanent freestanding signs for uses delineated in § 95-54A(1)(c) and 95-55A(1)(d) are allowed as follows:
 - (1) Number. One permanent freestanding sign is allowed per street frontage.
 - (2) Height; width. The height of a permanent freestanding sign shall not exceed five feet. The width of a permanent freestanding sign shall not exceed 10 feet.
 - (3) Size. The maximum size (sign area) of a permanent freestanding sign shall not exceed 40 square feet.
 - (4) Setbacks. Freestanding signs shall be set back a minimum distance of 15 feet from any street line and five feet from any side lot line.
- C. Permanent wall signs.
 - (1) Number. For each tenancy, one permanent wall sign is allowed. Subject to the aggregate size limitation described below, a separate sign may be erected for each tenant space for buildings having multiple businesses. For a business facing two or more streets, one additional wall sign is permitted, provided that the wall sign is not greater in size than the permitted area of the front-facing wall sign and further provided that the additional wall sign does not face a residential zone.
 - (2) Height. A permanent wall sign shall not be higher than 25 feet from the ground, and shall not be erected higher than the roofline of the building.
 - (3) Size (sign area). The maximum size (sign area) for any single wall sign shall be 100 square feet; however, for a business with the B-2B Zone occupying space having a gross floor area in excess of 40,000 square feet, the maximum size shall not exceed 200 square feet.
 - (4) Aggregate size (sign area). The aggregate size (sign area) allowed for all signs on a front building wall shall not exceed 1.5 square feet in area for each one-foot width of the front building wall or 10% of the total front wall area, whichever is less.
 - (5) Side wall or rear wall with business entrance facing a parking area. A side wall or a rear wall with a business entrance facing a parking area is allowed a wall sign not exceeding two square feet or 2% of the wall area on which it is placed for each separate business. A side wall or rear wall sign facing a residential area shall be nonilluminated and shall be screened from view by means of evergreen pine trees or other all-season landscaping acceptable to the Construction Code Official or the Land Use Planning Board should the signage be included with a site plan application.
- D. Incidental signs. Up to four incidental signs are permitted to be attached to a freestanding sign structure or to a building wall, but not perpendicular to the wall. An incidental sign shall not exceed one square foot in size.

§ 95-119. Professional and Business Office PB-2 and PB-3 Zones; Research Laboratory and Office

RL Zone.

In addition to the permanent and temporary signs and sign types that are allowed pursuant to § 95-115, the following permanent signs are also allowed within the Professional and Business Office PB-2 and PB-3 Zones and the Research Laboratory and Office RL Zone as designated in the East Hanover Township Land Use and Zoning Regulations, as amended from time to time. Other than incidental signs, the permanent signs described below require a sign permit.

A. Permanent freestanding signs. Permanent freestanding signs are allowed as follows:

- (1) Number. One permanent freestanding sign is allowed per street frontage.
- (2) Height; width. The height of a permanent freestanding sign shall not exceed five feet. The width of a permanent freestanding sign shall not exceed 10 feet.
- (3) Size. The maximum size (sign area) of a permanent freestanding sign shall not exceed 40 square feet.
- (4) Setbacks. Freestanding signs shall be set back a minimum distance of 25 feet from any street line and 15 feet from any side lot line.

B. Permanent wall signs.

- (1) Number. For each tenancy, one permanent front-facing wall sign is allowed. For a business facing two or more streets, one additional wall sign is permitted for a side wall or rear wall, provided that the additional wall sign does not face a residential zone.
- (2) Height. A permanent wall sign shall not be higher than 25 feet from the ground, and shall not be erected higher than the roofline of the building.
- (3) Aggregate size (sign area). The aggregate size (sign area) for all signs on a front building wall shall not exceed 40 square feet. The same size (sign area) limit applies to an additional wall sign if permitted on a side or rear wall.

C. Incidental signs. Up to four incidental signs are permitted to be attached to a freestanding sign structure or to a building wall, but not perpendicular to the wall. An incidental sign shall not exceed one square foot in size.

§ 95-120. Light Industry I-1 and I-3 Zones.

In addition to the permanent and temporary signs and sign types that are allowed pursuant to § 95-115, the following permanent signs are also allowed within the Light Industry I-1 and I-3 Zones designated in the East Hanover Township Land Use and Zoning Regulations, as amended from time to time. Other than incidental signs, the permanent signs described below require a sign permit.

A. Permanent freestanding signs. Permanent freestanding signs are allowed as follows:

- (1) Number. One permanent freestanding sign is allowed per street frontage.
- (2) Height. The maximum height of a permanent freestanding sign shall not exceed 10 feet for a lot where the principal use is a multitenant warehouse or industrial use having separate

access to each unit from exterior doors; otherwise, the maximum height of a permanent freestanding sign shall not exceed five feet.

- (3) Width. The width of a permanent freestanding sign shall not exceed 10 feet.
- (4) Size. The maximum size (sign area) of a permanent freestanding sign shall not exceed 100 square feet for a lot where the principal use is a multitenant warehouse or industrial use having separate access to each unit from exterior doors; otherwise, the maximum size (sign area) of a permanent freestanding sign shall not exceed 40 square feet.
- (5) Setbacks. Freestanding signs shall be set back a minimum distance of 15 feet from any street line and five feet from any side lot line.

B. Permanent wall signs.

- (1) Number. For each tenancy, one permanent front-facing wall sign is allowed. For a business facing two or more streets, one additional wall sign is permitted for a side wall or rear wall, provided that the additional wall sign does not face a residential zone.
- (2) Height. A permanent wall sign shall not be higher than 15 feet from the ground, and shall not be erected higher than the roofline of the building.
- (3) Size (sign area). For buildings having multiple businesses, each tenancy is allowed a sign that does not exceed 10 square feet; otherwise, the aggregate size (sign area) for all signs on a front building wall shall not exceed 40 square feet. For a business facing two or more streets, the maximum size for an additional wall sign on a side or rear wall, where otherwise permitted, shall not exceed five square feet.

C. Incidental signs. Up to four incidental signs are permitted to be attached to a freestanding sign structure or to a building wall, but not perpendicular to the wall. An incidental sign shall not exceed one square foot in size.

§ 95-121. Special Economic Development Industrial District SED Zone.

In addition to the permanent and temporary signs and sign types that are allowed pursuant to § 95-115, the following permanent signs are also allowed within the Special Economic Development Industrial District SED Zone designated in the East Hanover Township Land Use and Zoning Regulations, as amended from time to time. Other than incidental signs, the permanent signs described below require a sign permit.

A. Permanent freestanding signs. Permanent freestanding signs for nonresidential uses are allowed as follows:

- (1) Number. One permanent freestanding sign is allowed per street frontage.
- (2) Height. The height of a permanent freestanding sign shall not exceed 40 feet.
- (3) Size. The maximum size (sign area) of a permanent freestanding sign shall not exceed two square feet for each one linear foot of frontage, but shall in no event exceed 250 square feet.
- (4) Setbacks. A freestanding sign shall be set back a minimum distance of 20 feet from any

street line and five feet from any side lot line.

B. Permanent wall signs.

- (1) Size. The aggregate size (sign area) for wall signs on a site shall not exceed 15% of the wall area upon which the signs are affixed; however, the aggregate size shall in no event exceed 250 square feet.
- (2) Height. A permanent wall sign shall not be higher than 15 feet from the ground, and shall not be erected higher than the roofline of the building.

§ 95-122. Highway Development, Office Commercial, Industrial HD/OCT Zone.

In addition to the permanent and temporary signs and sign types that are allowed pursuant to § 95-115, the following permanent signs are also allowed within the Highway Development, Office Commercial, Industrial HD/OCT Zone designated in the East Hanover Township Land Use and Zoning Regulations, as amended from time to time. Other than incidental signs, the permanent signs described below require a sign permit.

A. Permanent freestanding signs. Permanent freestanding signs for nonresidential uses are allowed as follows:

- (1) Number. One permanent freestanding sign is allowed per street frontage.
- (2) Height. The height of a permanent freestanding sign shall not exceed 40 feet.
- (3) Size. The maximum size (sign area) of a permanent freestanding sign shall not exceed two square feet for each one linear foot of frontage, but shall in no event exceed 250 square feet.
- (4) Setbacks. A freestanding sign shall be set back a minimum distance of 20 feet from any street line and five feet from any side lot line.

B. Permanent wall signs.

- (1) Size. The aggregate size (sign area) for wall signs on a site shall not exceed 15% of the wall area upon which the signs are affixed; however, the aggregate size shall in no event exceed 250 square feet.
- (2) Height. A permanent wall sign shall not be higher than 15 feet from the ground, and shall not be erected higher than the roofline of the building.

§ 95-123. Transition rules.

Any permit issued prior to the effective date of the adoption of the sign regulations that comprise this article shall remain valid but only until the earlier of the following dates:

- A. The date that said permit expires by its own terms or expired under the operation of the former ordinance; or
- B. Ninety days after the effective date of the adoption of this article..

§ 95-124. Severability.

- A. Generally; severability where less speech results. If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this article is declared or held to be invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such declaration or holding shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this article. Such declaration or holding shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this article, even if such severability would result in a situation where there would be less speech, whether by subjecting previously exempt signs to permitting or otherwise.
- B. Severability of provisions pertaining to billboards and other prohibited signs and sign types. Without diminishing or limiting in any way the declaration of severability set forth above or elsewhere in this article, this Code or in any adopting ordinance, if any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this article or any other law is declared or held to be unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such declaration or holding shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this article that pertains to prohibited signs, including specifically the prohibition on billboards and those signs and sign types prohibited and not allowed under § 95-103.

ADDENDUM A¹

¹ **Editor's Note: This Addendum A was repealed 8-16-1990 by Ord. No. 10-1990. Said Ord. No.10-1994) also provided that nothing contained within it shall be deemed to effect Ord. No. 14-1989, 15-1989, 16-1989, 17-1989, 18-1989, 19-1989 and 20-1989 or any other matters relating to the township's Affordable Housing and Fair Share Plan or any other matters relating to the municipality's State of New Jersey Constitutional or statutory obligations under what is commonly referred to as the ~ML Laurel decisions," 1985 Fair Housing Act and Council on Affordable Housing regulations. See § 95-53.1.1 through 95-53.5.**

**Cluster Residential Developments
[Amended 10-6-83 by Ord. No. 22-1983]**

- I. Tract requirements.
 - i. A tract in the R-20 Zone under single ownership of at least twenty-five (25) contiguous acres shall be the minimum size required for a cluster development. The tract may be divided by an existing public street, which may be retained as a part of the plan for the development or relocated in accordance with an approved site plan. The maximum number of homes permitted for any cluster residential development shall be computed in the following manner:
 - (1) From the total acreage of the site for the proposed development, twenty percent (20%) shall be subtracted for streets, lost land, etc.
 - (2) This net acreage figure shall then be converted to square feet and divided by twenty thousand (20,000) square feet (the minimum lot size permitted in the R-20 Zone) to determine the total number of homes which may be built.
 - ii. There shall be no access from the tract to existing public roads other than be interior streets at

minimum intervals of four hundred (400) feet.

- iii. All improvements within a cluster development shall be installed in accordance with an approved site plan and with the specifications of the Land Subdivision Ordinance of East Hanover Township.²

²**Editor's Note: See Art. VI, Subdivision and Site Plan Review, of this chapter.**

- iv. Only single-family detached dwellings shall be permitted within a cluster development.
 - v. All accessory uses permitted with single-family dwellings shall be permitted with single-family detached dwellings within a cluster development.
- II. Lot area and dimensions for single-family detached units. Cluster residential development shall be allowed only in the residential district.

Minimum lot area: ten thousand (10,000) square feet.

Minimum average lot area: eleven thousand two hundred fifty (11,250) square feet.

Minimum lot width: seventy (70) feet.

Minimum average lot width: seventy-five (75) feet.

Minimum front yard: thirty-five (35) feet.

Minimum side yard: either, ten (10) feet; both, twenty-five (25) feet.

Minimum rear yard: twenty-five (25) feet.

Maximum lot coverage: twenty-five percent (25%).

Minimum living space floor area:

One-story: one thousand (1,000) square feet.

Two-story: first floor, seven hundred fifty (750) square feet; total, one thousand four hundred (1,400) square feet.

- III. Open space. All land not included within lots to be conveyed or utilized for required improvements shall be deeded to the township or shall be reserved by a covenant in favor of the municipality or by a grant of easement providing that it shall be set aside in perpetuity for the residents of the development.
- i. The area to be dedicated for public use shall be so located and of such a shape as to be acceptable to the Planning Board. In determining the acceptability of proposed open space, the township shall consider future township needs and may require a portion of the open space to be designated as the site of a potential future public use, provided that not more than twenty-five percent (25%) of all available open space shall be taken for public buildings.

- ii. All open space shall be graded and seeded by the developer during the course of construction unless the Planning Board approves or directs the maintaining of all or a portion of such open space in its natural state or with minor, specified improvements, in which case it will be disturbed only as necessary to make the specified improvements.
- iii. No single area of less than three (3) acres in size shall be dedicated for public use, unless, due to special conditions that are peculiar to the particular parcel of land or to the public purpose for which the land is to be used, dedication of a smaller area is authorized by the Planning Board.
- iv. Open space areas may be used as park, playground or recreational areas, including golf courses, swimming pools, equestrian trails and centers, tennis courts, shuffleboard courts, basketball courts and similar facilities; woodland or stream conservation areas; pedestrian walkways; stream course or drainage control areas; children's nursery or day-care centers; or any similar use of benefit to the residents of the development, if dedicated to and accepted by the township and deemed appropriate by the Planning Board.