

LAND USE ORDINANCE
and
STORM WATER CONTROL AND FLOOD PLAIN ORDINANCE

BOROUGH OF MOUNTAINSIDE
UNION COUNTY, NEW JERSEY

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LAND USE ORDINANCE

AN ORDINANCE RELATING TO MUNICIPAL PLANNING AND REGULATING LAND USE AND DEVELOPMENT IN THE BOROUGH OF MOUNTAINSIDE, NEW JERSEY.

BE IT ORDAINED, by the Borough Council of the Borough of Mountainside, in the County of Union and the State of New Jersey, as follows: The Planning Board Ordinance, Subdivision Ordinance, Zoning Ordinance and Official Map and Building Permit Ordinance, as amended, including every amendment thereof heretofore passed, are hereby further amended in their entirety that each of said ordinances are combined into one ordinance together with Official Map Regulations entitled Land Use Ordinance, so that the same shall read as follows:

ARTICLE 1.

TITLE, PURPOSE, SCOPE

101. SHORT TITLE. This Ordinance shall be known as the LAND USE ORDINANCE of the Borough of Mountainside.

102. PURPOSE. It is the intent and purpose of this Ordinance to encourage action to guide the appropriate use or development of all lands in the Borough of Mountainside, in a manner which will promote the public health, safety, morals and general welfare; to secure safety from fire, flood, panic and other natural and man-made disasters; to provide adequate light, air and open space; to insure that the development of Mountainside does not conflict with the development and general welfare of neighboring municipalities; to promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods and the entire municipality as well as the preservation of the environment; to encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies; to provide sufficient space in appropriate locations for a variety of residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements; 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; to promote a desirable visual environment through creative development techniques and good civic design and arrangements; 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; to establish orderly and uniform procedures relating to land use and development regulation; and to promote the conservation of energy through the use of planning practices designed to reduce energy consumption and to provide for maximum utilization of renewable energy sources.

103. SCOPE. It is not intended by this Ordinance 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 Ordinance, or any private restrictions placed upon property by covenant, deed or other private agreement unless repugnant hereto.

Where this Ordinance 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 larger yards, or other open spaces than are imposed or required by such rules, regulations or permits or by such private restrictions, the provisions of this Ordinance shall control.

ARTICLE 2.

DEFINITIONS

For the purpose of this Land Use Ordinance for the Borough of Mountainside, certain terms are defined as follows:

201. ACCESSORY BUILDING OR STRUCTURE. A building or structure on the same lot with and subordinate to a principal building, occupied or devoted exclusively to an accessory use. Where an accessory building is attached to a principal building by a breezeway, roof, wall or the like, such accessory building shall be considered part of the principal building.

202. ACCESSORY USE. A use naturally and normally incident and subordinate to the principal and primary use upon any premises and located on the same lot. More particularly, but not by way of limitation, an accessory use shall be construed to include a private swimming pool, driveway, private road, alley or other facility for ingress and egress by pedestrians and vehicles, and other uses as may be specifically listed for each zoning district in Article 10 of this Ordinance.

203. ADMINISTRATIVE OFFICER. The Zoning, Land Use, Construction Code and Fire Subcode Official.

204. ALTERATION OF BUILDING OR CHANGE OF USE. An alteration of building is any change in the supporting members of a building, such as bearing walls, columns, beams, girders, interior partitions, as well as any change in doors or windows, or any addition to or diminution of a building. A change of use is a change from the use permitted in one zone district to a use permitted in another zone district, any removal of a building from one location to another, or the conversion of any building, or any part thereof, from a use permitted in one zone district to a use permitted in another zone district.

205. APPLICANT. A developer submitting an application for development.

206. APPLICATION FOR DEVELOPMENT. The application form and all accompanying documents required by Ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit pursuant to Sections 1005 and 1006 of this Ordinance. In addition to other information required by the Ordinance, each application for development shall indicate the owner of record of the property in question, and shall be certified to be complete by the Administrative Officer before it can be heard before a municipal board.

207. ATTIC. The open, non-habitable space between the ceiling

beams of the top habitable story and the roof rafters in an building.

208. BASEMENT. An interior space, or a portion of an interior space, having a floor level below the lowest outside elevation of ground at the foundation wall of the structure in which it is contained. With reference to occupancy or use and to regulate the height and bulk of buildings, that portion of a building in which the ceiling averages more than four feet above the average finished grade where such grade meets the outside walls of the building, and has a clear height of six feet or more, shall be considered a story. (See "Cellar.")

209. BUILDING. A combination of materials to form a construction adapted to permanent, temporary, or continuous occupancy, and having a roof and including an accessory building.

209.1 BUILDING GROUND PROJECTION AREA. That portion of a lot which is covered by a building, as measured from the outermost portion of the roof, foundation, or other part of the structure including porches and decks but excluding patios, sidewalks, driveways, and other structures which are on the lot but which rise no more than one foot above grade. Swimming pools, whether in the ground or above ground, shall not be counted in the determination of building ground projection area.

210. CAPITAL IMPROVEMENT. A governmental acquisition of real property or major construction project.

210.1 CELLAR. Any basement space in which the ceiling or underside of beams averages less than 4 feet above the surrounding average finished grade.

211. COMMON OWNERSHIP. Ownership of two (2) or more contiguous lots of real property by one (1) person or by two (2) persons owning such property in any form of joint ownership.

212. 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 Ordinance, and upon the issuance of an authorization therefor by the Planning Board.

213. DAYS. Calendar days.

214. DENSITY. The permitted number of dwelling units per gross area of land to be developed.

215. 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.

216. DEVELOPMENT. The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, excavation of 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 this Ordinance.

217. DRAINAGE. The removal of surface water or groundwater from land by drains, grading or other means and including control of runoff during and after construction or development to minimize erosion and sedimentation, to assure the adequacy of existing and proposed culverts and bridges, to induce water recharge into the ground where practical, to lessen nonpoint pollution, to maintain the integrity of stream channels for their biological functions as well as for drainage, and the means necessary for water supply preservation or prevention or alleviation of flooding.

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

219. DWELLING UNIT. A unit comprising living accommodations designed and used for occupancy by only one (1) family; provided, however, said unit may contain not more than two (2) persons, each of whom is a roomer or boarder.

220. EASEMENT. A restriction established in a deed or duly recorded instrument or on a duly recorded or filed map to permit the use of land by the public, or by particular persons for specified uses.

221. FAMILY. Persons living privately together as a single housekeeping unit and using certain rooms and cooking facilities in common, but not including the residents of an apartment hotel, or of a boardinghouse or lodginghouse serving more than two (2) paying guests.

222. FEES. Fees are as established by ordinance.

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

224. FINAL PLAT. The final map of all or a portion of the subdivision which is presented to the Planning Board for final approval in accordance with these regulations, and which if approved shall be filed with the proper County Recording Officer.

225. FLOOR AREA. The aggregate area of all floors in a building enclosed by an exterior wall, excluding, however, attic and cellar floors, utility rooms, open porches, breezeways and garages; provided, however, any basement area in any non-residential zone that is used for sales, offices, heated storage or display, or is otherwise open to the public shall be construed as floor area.

226. FLOOR AREA RATIO. The sum of the area of all floors of the buildings and structures compared to the total area of the site.

227. GOVERNING BODY. The chief legislative body of the Borough of Mountainside.

228. HEIGHT OF BUILDING. The distance from the highest roof point to the average natural elevation of the ground level at the foundation wall of the building.

229. HISTORIC SITE. Any building, structure, area or property that is significant in the history, architecture, archeology or culture of New Jersey, the Borough of Mountainside or the United States and has been so designated pursuant to Chapter 291, Laws of N.J. 1975.

229.1 HOUSEKEEPING UNIT. One or more persons living together in one dwelling unit on a fairly stable, rather than transient, basis where the occupants share the ordinary tasks of living in a dwelling unit such as, but not limited to, cooking and eating together, sharing inside and outside chores, and performing other functional duties and otherwise exhibiting a kind of stability, permanency and functional lifestyle which is equivalent to that of a traditional family unit.

230. INSTITUTIONAL USE. Non-profit institutions limited to churches, public or private schools covering grades pre-kindergarten through 12, and libraries.

231. INTERESTED PARTY.

(a) in a criminal or quasi-criminal proceeding, any citizen of the State of New Jersey; and

(b) in the case of a civil proceeding in any court or in an administrative proceeding before a municipal agency, any person, whether residing within or without the Borough of Mountainside, whose rights to use, acquire, or enjoy property is or may be

affected by any action taken under this Ordinance or whose rights to use, acquire, or enjoy property under this Ordinance or under any law of this State or of the United States have been denied, violated or infringed by an action or a failure to act under this Ordinance.

232. LAND. Includes improvements and fixtures on, above or below the surface.

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

(a) CORNER LOT. A lot at the junction of and having frontage on two (2) or more intersecting streets. A corner lot is also a lot bounded on two (2) or more sides by the same street. The greater frontage of a corner lot is its depth, and its lesser frontage is its width. The front yard requirements of this ordinance shall be met along all street frontages. See the definition of Side Yard in Section 280(c).

(b) LOT DEPTH. The mean distance between the front and rear property lines of any lot.

(c) LOT WIDTH. The shortest straight-line distance between the two (2) side lines of any lot. If a lot does not have parallel side lines, the average of such widths taken at ten-foot intervals and parallel to the front street line throughout the depth of the lot shall constitute the width of the lot.

(d) LOT AREA. The total square unit contents of any lot as measured within the lot lines. The minimum permitted lot area shall be adjusted in accordance with critical area provisions of this Ordinance as set forth in Section 1003(z) of this Ordinance.

(e) LOT FRONTAGE. In the case of a lot running through from one street to another, the front of such lot shall, for the purposes of this Ordinance, be considered that frontage upon which the majority of the buildings in the same block front; but in case there has been no clearly defined frontage established, the owner may, when applying for a building permit, specify on his permit application which lot line shall be considered the front lot line.

(f) LOT COVERAGE. The total coverage of the lot by all buildings, structures, sidewalks, swimming pools, driveways, parking areas, and other impervious improvements, expressed as a percentage of lot area. (See "Building Ground Projection Area," Section 209.1 of this Ordinance.)

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

235. MAJOR SUBDIVISION. Any subdivision not classified as a minor subdivision.

236. 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 Section 19 of Chapter 291, Laws of N.J. 1975.

237. MINOR SUBDIVISION. A subdivision of land resulting in the creation of three (3) or fewer lots, including the remainder of the original lot, provided that such subdivision does not:

(a) Adversely affect the development of the remainder of the parcel of adjoining property or conflict with any provision or portion of the Master Plan, Official Map or this Ordinance;

(b) Involve any new street;

(c) Involve extension of any off-tract improvements, the cost of which is to be prorated in accordance with Section 913 of this Ordinance, and

Provided, however, that in the event that more than one (1) minor subdivision from any tract of land as recorded at the time of the passage of this Ordinance is submitted within a five-year period from the date of approval of the first minor subdivision, then, for the purpose of administering this Ordinance, said subsequent subdivision shall be construed as a major subdivision and shall be processed accordingly.

238. MUNICIPAL AGENCY. The Borough of Mountainside Planning Board or Board of Adjustment, or Borough Council when acting pursuant to this Ordinance and any agency created by or responsible to the Borough of Mountainside when such agency is acting pursuant to this Ordinance.

239. MUNICIPAL USE. Any use for municipal purposes by the Borough of Mountainside of any property, easement or right-of-way owned or leased by it.

240. NON-CONFORMING LOT. A lot, the area, dimension or location of which was lawful prior to the adoption, revision or amendment of this Ordinance, but fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

241. NON-CONFORMING STRUCTURE. A structure, the size, dimension or location of which was lawful prior to the adoption, revision or amendment of this Ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

242. NON-CONFORMING USE. A use or activity which was lawful prior to the adoption, revision or amendment of this Ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

243. NON-RESIDENTIAL ZONES. Those zones set forth in Article 10 of this Ordinance designated as the B, H, L-I and O-B Zoning Districts.

244. OCCUPANCY OR OCCUPIED. Any dwelling unit shall be construed to be occupied if one (1) or more persons or a family customarily reside in said dwelling unit overnight. In non-residential buildings, the installation, storage or use of equipment, merchandise or machinery in any commercial, public or industrial building shall be construed as constituting occupancy of said building.

245. OFFICIAL MAP. A map adopted by Ordinance pursuant to Article 5 of Chapter 291, P.L. 1975, and amendments thereto. Such map shall be deemed conclusive with respect to the location and width of streets and public drainage ways and the location and extent of flood control basins and public areas including public parks, playgrounds, trails, paths and other recreation areas, public open spaces, scenic and historic sites, sites for schools and other public buildings and structures, whether or not such streets, ways, basins or areas are improved or unimproved or are in actual physical existence.

246. OFF-TRACT. Not located on the property which is the subject of a development application or on a contiguous portion of a street or right-of-way.

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

248. OWNER. Any person having sufficient proprietary interest in the land, structure or premises sought to be processed for development under this Ordinance.

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

250. PARKING SPACE. A rectangular space nine (9) feet wide and twenty (20) feet long either outdoors or enclosed within a structure and used for accommodation for off-street motor vehicle parking with an area of not less than one hundred eighty (180) square feet per vehicle, exclusive of access drives or aisles, provided, however, that a longitudinal (end-to-end) parking space

is a rectangular space ten (10) feet wide and twenty-five (25) feet long with an area of not less than two hundred fifty (250) square feet exclusive of access drives or aisles. All parking space shall be provided with adequate means of ingress and egress which shall be kept open and unobstructed at all times and which shall be designed to provide surface driveways or aisles to meet the minimum standards of Article 9 of this Ordinance.

251. PARTY IMMEDIATELY CONCERNED. For purposes of the notification requirements of this Ordinance, any applicant for development, the owners of the subject property and all owners of property and government agencies entitled to notice under Section 612.

252. PERFORMANCE GUARANTEE. Any security which may be accepted by the Borough, including cash, pursuant to Section 907 of this Ordinance, 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; provided that the Borough shall not require more than ten (10) per cent of the total performance guarantee in cash.

253. PERSON. Shall include any individual, business entity, partnership, association, corporation, company or organization of any kind or nature.

254. PLAT. The map or maps of a subdivision.

255. PRELIMINARY APPROVAL. The conferral of certain rights pursuant to Sections 34, 36 and 37 of Chapter 291, P.L. 1975, and Amendments thereto, prior to final approval after specific elements of a development plan have been agreed upon by the Planning Board and the applicant.

256. PRELIMINARY PLAT. The preliminary map meeting the requirements of Article 9 of this Ordinance and indicating the proposed layout of the subdivision which is submitted to the Administrative Officer for Planning Board, consideration and preliminary approval.

257. PRELIMINARY SITE PLAN. The preliminary development plan meeting the requirements of Article 9 of this Ordinance and indicating the proposed layout of the site which is submitted to the Administrative Officer for Planning Board consideration and preliminary approval.

258. PRINCIPAL USE OR STRUCTURE. A principal use is the primary or predominant use of any lot. A principal structure is one devoted to the principal use.

259. PRIVATE GARAGE. A detached accessory building, or a portion of a principal building, used primarily for the storage of motor vehicles owned or used by the occupant of the principal

building to which the garage is an accessory.

260. PUBLIC AREAS.

(a) public parks, playgrounds, trails, paths, and other recreation areas;

(b) other public open spaces;

(c) scenic and historic sites; and

(d) sites for public schools and other public buildings and structures.

261. PUBLIC GARAGE OR GASOLINE SERVICE STATION. Any building, structure, lot or land in or upon which a business, service or industry involving the fueling, storage, maintenance, washing or servicing, and storage in connection therewith, of motor vehicles is maintained, conducted, operated or rendered.

262. 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.

263. RESIDENTIAL ZONES. Those zones set forth in Article 10 of this Ordinance known as the R-1, R-2 and R-3 Zoning Districts.

264. 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. Resubdivision shall also include the assembly of two or more lots into a fewer number of lots than existed prior to the resubdivision, but does not include conveyances so as to combine existing lots by deed or other instrument.

265. RETAIL SALES AND SERVICE ESTABLISHMENTS. Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sales of such goods.

266. SIGN. Any material or structure, or part thereof, or device attached thereto on which is painted, represented, displayed or included a letter, word, figure, trademark symbol or emblem which attracts or is intended to attract attention to itself. The word "sign" as used in this Ordinance shall also include any lettered or worded display not outdoors which is visible and is intended to be read from the outdoors, or any banner or portable sign or display. The following terms are also used in connection with the regulation of signs under this Ordinance:

266.1 COMMERCIAL ADVERTISING BILLBOARD SIGN. An advertising sign erected and maintained by a person engaged in the sale or rental of space thereon for advertising purposes.

266.2. ENTERPRISE IDENTIFICATION SIGN. A sign used to identify the product made or the activity being pursued by any individual business, service, commercial or industrial enterprise, which is displayed upon the lot or premises occupied by such an enterprise for the purpose of apprising the public of the location of such enterprise and the type of activity in which it is engaged.

266.3. DIRECTIONAL SIGN. An advertising sign intended to direct or point toward a place, or one that points out the way to a place, that obviously could not be easily located without such a sign.

266.4. ADVERTISEMENT. The outdoor display of any writing, printing, picture, painting, emblem, drawing, sign or similar representation intended to invite or draw the attention of the public to any goods, merchandise, property, business services, entertainment, amusement or industrial activity or establishment, including signs painted on exterior of a building or its roof.

266.5. ADVERTISING STRUCTURE. A rigid or semi-rigid material with or without advertisement displayed thereon, situated upon or attached to real property outdoors for the purpose of furnishing a background or base or support on which an advertisement may be posted or displayed.

266.6. OFFICIAL SIGN. A sign, symbol or device erected and maintained by the federal government, the State of New Jersey, County of Union or the Borough of Mountainside for the purpose of informing or guiding the public or for the protection and promotion of health, safety, convenience and general welfare.

266.7. ILLUMINATED SIGN. A sign which has characters, letters, figures, designs or outlines illuminated by electric lights or luminous tubes as part of the sign proper.

266.8. GROUND SIGN. A self-supporting sign connected to the ground and independent of any structure, used for and limited to the display of business advertising, and including, but not limited to:

(a) PYLON SIGN. A special-type ground sign supported by tall mastlike members or pyramidal tower supports.

(b) PEDESTAL SIGN. A special-type ground sign generally supported by one (1) post.

(c) SIDEWALK SIGN. A sign painted on sidewalks, curbs or similar places.

(d) **ROADSIDE SIGN.** A temporary sign advertising seasonal or special products and identified with either a temporary or a relatively small permanent structure occupied intermittently in connection with the business to which the sign relates.

266.9. **RESIDENCE DESIGNATION.** A nameplate or letters and ornaments connected to a post or structure, indicating the name of the property or occupants, the address and the profession of the occupant. As provided in Section 1007(d)(3); such a sign shall be exempt from the permit requirements of this Ordinance provided that the area of said lettering and ornamentation does not exceed one (1) square foot.

266.10. **WALL SIGN.** A flat sign or lettering attached to the building wall which extends not more than eighteen (18) inches from the face of the wall and not beyond the line of the building.

266.11. **ROOF SIGN.** A sign erected, constructed and maintained above and on the roof or ledge of a building, used for and limited to business advertising.

266.12. **MARQUEE SIGN.** A sign attached to or hung from a marquee, canopy or other portion of a building and projecting beyond the building, building line or street line, used for and limited to business advertising.

266.13. **PROJECTING SIGN.** A sign attached at or nearly at a right angle to the building wall which extends from the face of the wall, used for and limited to business advertising.

266.14. **VERTICAL SIGN.** A sign attached to the building, with its greatest dimension in a vertical direction, and which extends not more than sixty (60) inches from the face of the wall, measured at right angles thereto, used for and limited to business advertising.

266.15. **AWNING SIGN.** A sign painted on awnings, or consisting of letters, figures, or other materials secured to the awning. Sun protection devices or canvas or metal covering windows with an advertisement thereon shall be classified as awning signs. Awning signs shall be limited to business advertising.

266.16. **TEMPORARY SIGN.** A sign, banner or other advertising device constructed of cloth, canvas, fabric or other light, temporary material, with or without structural frame, intended for a limited period of display, including decorative displays for holidays or public demonstration.

266.17. **WINDOW SIGN.** A poster, placard or sign painted or otherwise displayed on windows close to the window panes and visible from the street.

266.18. EXEMPT SIGN. Any sign exempt from specific provision of this Ordinance and therefore for which permits and permit fees are not required.

267. SINGLE-FAMILY RESIDENCE. A building or structure lawfully accommodating only one (1) family.

268. SITE PLAN. A development plan of one or more lots of which is shown:

(a) The existing and proposed conditions of the lot including but not necessarily limited to topography, vegetation, drainage, flood plains, marshes and water ways;

(b) The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting, screening devices;

(c) Any other information reasonably necessary and required in order to make an informed determination pursuant to the provisions of this Ordinance relevant to site plan review.

269. SITE PLAN COMMITTEE. A joint committee of not more than three (3) members, including one from the Planning Board, one from the Zoning Board of Adjustment, and the chairman of either board, which will assist the Zoning and Construction Official in the preliminary review of site plan plats or applications to determine completeness and informally to identify deficiencies in the submission and to recommend requirements for approval.

270. SKETCH PLAT. The sketch map of a subdivision and of sufficient accuracy to be used for the purpose of preliminary discussion and classification pursuant to Section 903 of this Ordinance.

271. STORY. That portion of a building included between the surface of any one (1) floor, exclusive of any basement, and the surface of the floor next above it, or, if there is no floor above it, then that portion of the building included between the surface of that floor and the ceiling next above it.

272. STREET. Any street, avenue, boulevard, road, parkway, viaduct, drive or other way:

(a) which is an existing State, County or municipal roadway, or;

(b) which is shown upon a plat heretofore approved pursuant to law, or;

(c) which is approved by official action as provided by

this Ordinance and P.L. 1975, Chapter 291, and Amendments thereto or;

(d) 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.

273. STREET SIDE LINE. The outermost line of the whole area devoted to street purposes on either side thereof. Street side line is synonymous with street right-of-way line, but generally throughout this Ordinance the former is used in conjunction with existing streets and the latter is used in conjunction with proposed streets.

274. STRUCTURE. A combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land. As used in this Ordinance, the term structure includes the term building.

275. SUBDIVIDER. Any person commencing proceedings under this Ordinance to effect a subdivision of land hereunder whether for himself or for another.

276. SUBDIVISION. The division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development. The following shall not be considered subdivisions within the meaning of this Ordinance, if no new streets are created:

(a) Divisions of land found by the Planning Board or Subdivision Committee to be for agricultural purposes where all resulting parcels are five (5) acres or larger in size;

(b) Divisions of property by testamentary or intestate provisions;

(c) Divisions of property by court order including, but not limited to judgments of foreclosure;

(d) Consolidation of existing lots by deed or other recorded instrument;

(e) The conveyance of one or more adjoining lots, tracts or parcels of land, owned by the same person or persons and all of which are found and certified by the Administrative Officer to conform to the requirements of the municipal development regulations and are shown and designated as separate lots, tracts or parcels on the tax map or atlas of the Borough.

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

277. SUBDIVISION COMMITTEE. A committee of at least three (3), but not more than four (4) Planning Board members appointed by the Chairman of the Board for the purpose of classifying subdivisions and approving minor subdivisions and resubdivisions in accordance with the provisions of this Ordinance, and performing such other duties relating to land subdivision which may be conferred by the Board and the Board's By-Laws.

277.1 TENANT. Any person having a leasehold interest in the land, building or structure.

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

279. TERMS. In the construction of this Ordinance, the present tense shall include the future, the singular number shall include the plural, and the plural the singular. The word "shall" is always used in its mandatory and not its permissive sense. The words "zone" and the term "zoning district" are synonymous. The word "used" shall include the words "arranged, designed, or intended to be used."

279.1 WHOLESALE SALES AND SERVICES. Establishments or places of business engaged in selling merchandise to retailers, to industrial, commercial, institutional, or professional business users; or to other wholesalers; or acting as agents or brokers and buying merchandise for or selling merchandise to, such individuals or companies. Direct sales to the general public are not part of wholesale sales and services.

280. WOOD DECK. Deck or similar platform constructed primarily of wood. Such a deck may be added to or constructed as part of any single family residential building provided that no part of it is located in the required front yard of the lot, that it is attached to the residential building, and that it conforms to all front, side and rear yard setback requirements. The area of the wood deck shall be limited by the maximum building size requirement for each residential zone. (For R-1, see Section 1008(c)(6); For R-2, see Section 1009(c)(6); For R-3, see Section 1010(c)(6). For restrictions on outdoor storage, see Section 1003(1)(1).

281. YARDS.

(a) FRONT YARD. An open, unoccupied space (unless occupied by an accessory structure or use hereinafter specifically permitted) extending across the full width of any lot and lying between the front street line and the nearest line of any principal building on said lot. The street side line shall also be referred to as the front-yard line and the nearest line of the principal

building shall be referred to as the rear front-yard line. A lot which borders more than one street side line shall meet the front yard requirements from all street side lines.

(b) REAR YARD. An open, unoccupied space (unless occupied by an accessory structure or use hereinafter specifically permitted) extending across the full width of any lot and lying between the rear lot line and the rear line of any principal building thereon. The rear lot line shall also be referred to as the rear-yard line and the rear line of the principal building shall be referred to as the front rear-yard line. On a corner lot, there shall be no required rear yard setback, and for those accessory structures or uses which are permitted only in the rear yard area, such area shall be considered to be that portion of the lot which lies beyond two (2) times the required front yard setback from all adjoining street side lines.

(c) SIDE YARD. An open, unoccupied space (unless occupied by an accessory structure or use hereinafter specifically permitted) extending from the rear front-yard line to the front rear-yard line of any lot between either side lot line and the side line of the principal building nearest thereto. On a corner lot, the two yards adjoining the side lot lines shall be considered to be side yards, and there shall be no rear yard requirements on such lots.

ARTICLE 3.
PLANNING BOARD

301. CREATION OF BOROUGH PLANNING BOARD. There is hereby established in the Borough a Planning Board of nine regular members and two alternate members pursuant to PL 1975 Chapter 291 and amendments thereto. The Planning Board shall consist of four classes of members as follows:

(a) Class I - The Mayor of the Borough

(b) Class II - One of the officials of the Borough other than a member of the Governing Body, to be appointed by the Mayor; provided that, if the Borough has established an Environmental Commission, the member of the Environmental Commission who is also a member of the Planning Board as required by Section 1 of P.L. 1968, Chapter 245, and Amendments thereto, shall be deemed to be the Class II Planning Board member for purposes of this Ordinance in the event that there be among the Class IV or alternate members of the Planning Board both a member of the Zoning Board of Adjustment and a member of the Board of Education.

(c) Class III - A member of the Governing Body to be appointed by it.

(d) Class IV - Six citizens of the Borough to be appointed by the Mayor. The members of Class IV shall hold no other municipal office, except that one such member may be a member of the Zoning Board of Adjustment and one member may be a member of the Board of Education. If the Borough has established an Environmental Commission, the member of the Environmental Commission who is also a member of the Planning Board, as required by Section 1 of P.L. 1968, Chapter 245, and Amendments thereto, shall be a Class IV Planning Board member, unless there be among the Class IV or alternate members of the Planning Board both a member of the Zoning Board of Adjustment and a member of the Board of Education, in which case the member common to the Planning Board and municipal Environmental Commission shall be deemed a Class II member of the Planning Board.

302. ALTERNATE MEMBERS. Two alternate members shall be appointed by the Mayor and shall meet the qualifications of Class IV members. These two alternate members shall be designated at the time of their appointment by the mayor as "Alternate No. 1" and "Alternate No. 2." Alternate members may participate in discussion 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.

303. TERMS. The terms of the member composing Class I shall

correspond to his official tenure. The terms of the members composing Class II and Class III shall be for 1 year or terminate at the completion of their respective terms of office, whichever occurs first except for a Class II member who is also a member of the Environmental Commission. The term of a Class II or Class IV member who is also a member of the Environmental Commission shall be for 3 years or terminate at the completion of his term of office as a member of the Environmental Commission, whichever occurs first. The term of a Class IV member who is also a member of the Board of Adjustment or Board of Education shall terminate whenever he is no longer a member of such other body or at the completion of his Class IV term, whichever occurs first. The terms of all Class IV members first appointed under this Ordinance shall be so determined that to the greatest practicable extent, the expiration of such terms shall be distributed evenly over the first 4 years after their appointment; provided that the initial Class IV term of no member shall exceed 4 years. Thereafter the Class IV term of each such member shall be 4 years. The terms of the alternate members shall be for 2 years, except that the terms of the alternate members shall be such that the term of not more than one alternate member shall expire in any 1 year; provided, however, that in no instance shall the terms of the alternate members first appointed exceed 2 years. Nothing contained herein shall affect the term of any present member of the Planning Board, all of whom shall continue in office until the completion of the terms for which they were appointed. All terms shall run from January 1 of the year in which the appointment is made.

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

305. REMOVAL FROM OFFICE. Any member other than a Class I member, after a public hearing if he requests one, may be removed by the Governing Body for cause.

306. CONFLICT OF INTEREST. No member of the Planning Board shall be permitted to act on any matter in which he has, directly or indirectly, any personal or financial interest.

307. ORGANIZATION. The Planning Board is authorized to adopt by-laws and such other rules and regulations governing its procedural operation, which by-laws, rules and regulations shall be consistent with the provisions of this Ordinance and the New Jersey Municipal Land Use Law P.L. 1975, Chapter 291 and amendments thereto). The Planning Board shall elect a chairman and vice chairman from the members of Class IV, select a secretary who may or may not be a member of the Planning Board or a municipal employee, and create and fill such other offices as established by ordinance. It may employ, or contract for, and fix the compensation of legal counsel, other than the municipal attorney,

and experts, and other staff and services as it may deem necessary, not exceeding, exclusive of gifts or grants, the amount appropriated by the Governing Body for its use.

308. POWERS OF THE PLANNING BOARD. The Planning Board shall be governed by and shall have such powers as are conferred upon it by P.L. 1975, Chapter 291 and amendments thereto. More specifically, the Planning Board shall have authority to:

(a) Master Plan. Prepare, adopt and, from time to time, amend or revise a Master Plan for the Borough.

(b) Subdivision and Site Plans. Exercise control over the review of subdivisions and site plans in accordance with the Ordinance.

(c) Continuing Planning. Assemble data on a continuing basis as part of a continuous planning process.

(d) Conditional Uses. Exercise such control as may be conferred upon it by this Ordinance over the granting of applications for conditional uses.

(e) Variances and Direction for Issuance of a Permit. Whenever the proposed development requires approval of a subdivision, site plan, or conditional use, but not a variance pursuant to Subsection 57(d), Chapter 291, Laws of New Jersey 1975 as amended, the Planning Board shall have the power to grant to the same extent and subject to the same restrictions as the Board of Adjustment:

(1) Variances pursuant to Subsection 57c, Chapter 291, Laws of New Jersey, 1975 as amended;

(2) Directions pursuant to Subsection 25 of said Act for issuance of a permit for a building or structure in the bed of a mapped street or public drainage way, flood control basin, or public area reserved on an Official map pursuant to Section 23 of said Act; and

(3) Directions pursuant to Section 27 of said Act for issuance of a permit for a building or structure not related to a street.

Whenever relief is requested pursuant to this section, notice of the hearing on the application for development shall include reference to the request for a variance or direction for issuance of a permit as the case may be.

The developer may elect to submit a separate application requesting approval of the variance or direction of the issuance of a permit and a subsequent application for any required approval of

a subdivision, site plan or conditional use. The separate approval of the variance or direction of the issuance of a permit shall be conditioned upon grant of all required subsequent approvals by the Planning Board. No such subsequent approval shall be granted unless the approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance.

(f) Review of Capital Projects. Whenever the Planning Board shall have adopted any portion of the Master Plan, the Governing Body or other public agency having jurisdiction over the subject matter, before taking action necessitating the expenditure of any public funds, incidental to the location, character or extent of such project, shall refer the action involving such specific project to the Planning Board for review and recommendation in conjunction with such Master Plan and shall not act thereon, without such recommendation or until 45 days have elapsed after such reference without receiving such recommendation. This requirement shall apply to action by a housing, parking, highway, special district, or other authority, redevelopment agency, school board or other similar public agency, State, County or municipal.

(g) Referrals.

(1) Prior to the adoption of a development regulation, revision, or amendment thereto, the Planning Board shall make and transmit to the Governing Body, within 35 days after referral, a report including recommendations concerning the proposed development regulation, revision or amendment. The Governing Body, when considering the adoption of a development regulation, revision or amendment thereto, shall review the report of the Planning Board and may disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following such recommendations. Failure of the Planning Board to transmit its report within the 35-day period provided herein shall relieve the Governing Body from the requirements of this subsection in regard to the proposed development regulation, revision or amendment thereto referred to the Planning Board.

(2) The Governing Body may by ordinance provide for the reference of any matter or class of matters to the Planning Board before final action thereon by a municipal body or municipal officer having final authority thereon except for any matter under the jurisdiction of the Board of Adjustment. Such reference shall not extend the time for action by the referring body, whether or not the Planning Board has submitted its report. Whenever the Planning Board shall have made a recommendation regarding a matter authorized by Ordinance to another municipal body, such recommendation may be rejected only by a majority of the full authorized membership of such other body.

(h) Simultaneous Review. The Planning Board shall have the power to review and approve or deny conditional uses or plans simultaneously with review for subdivision approval with the developer being required to make further application to Planning Board, or the Planning Board being required to have further hearings. The longest time period for action by Planning Board, whether it be for subdivision, conditional use site approval, shall apply. Whenever approval of a conditional is requested by the developer pursuant to this Section, notice of the hearing on the plat shall include reference to the request for such conditional use.

(i) Other Functions. Exercise such other duties as may be assigned to it by ordinance or resolution of the Governing Board and perform such other functions as may be authorized by the Jersey Municipal Land Use Law, P.L. 1975, Chapter 291 and amendments thereto, and other State statutes and administrative regulations.

(j) NOTICE AND TIME PERIODS UNDER SECTION 308. Whenever an application for approval of a subdivision plat, a plan or conditional use includes a request for relief pursuant to Section 308 (e) of this Article, the Planning Board shall grant or deny approval of the application within one hundred and twenty days (120) after submission by a developer of a complete application to the administrative officer or within such further time as may be consented to by the applicant. In the event the developer elects to submit separate consecutive applications, the aforesaid provisions shall apply to the application for approval of a variance or direction for issuance of a permit. The period for granting or denying and subsequent approval shall be as otherwise provided in this ordinance. Failure of the Planning Board to act within the period prescribed shall constitute approval of the application, and a certificate of the Administrative Officer as to the failure of the Planning Board to act shall be issued on request of the applicant, and it shall be sufficient in lieu of written endorsements or other evidence of approval, hereinafter required, and shall be so accepted by the County Recording Office for purposes of filing subdivision plats.

ARTICLE 4.
ZONING BOARD OF ADJUSTMENT

401. CREATION OF BOARD OF ADJUSTMENT. Pursuant to P.L. 1975, Chapter 291 and amendments thereto, there is hereby established Zoning Board of Adjustment consisting of seven regular members and not more than two alternate members to be designated as "Alternate No. 1" and "Alternate No. 2" who shall not hold any elective office or position under the municipality. Members of the Board shall be appointed by the Governing Body.

402. TERMS. The terms of the members initially appointed shall run from January 1 preceding the date of appointment with the terms of the members distributed as follows:

One Member - 1 year
Two Members - 2 years
Two Members - 3 years
Two Members - 4 years

The initial term of the alternate members shall be distributed evenly over the first two years and the initial term of an alternate member shall not exceed two years. Thereafter, the term of each regular member shall be four years and the term of each alternate member shall be two years. Members of the Board on the effective date of this Ordinance shall continue in office until the completion of their terms as provided by law immediately prior to the effective date of this Ordinance. Any new appointments or reappointments to said Board shall be governed by the provisions of this Ordinance.

403. VACANCIES. If a vacancy on the Board of Adjustment shall occur otherwise than by expiration of the Board of Adjustment term, it shall be filled by appointment, as provided by Section 401 of this Ordinance, for the unexpired term.

404. ORGANIZATION. The Zoning Board of Adjustment is authorized to adopt by-laws and such other rules and regulations shall be consistent with the provisions of this Ordinance and P.L. 1975, Chapter 291 and amendments thereto. The Board shall elect a chairman and vice chairman from its members and select a secretary who may or may not be a member of the Board of Adjustment or a municipal employee. The Board may employ, or contract for, and fix the compensation of legal counsel, other than the municipal attorney, and experts and other staff and services as it may deem necessary, not exceeding, exclusive of gifts or grants, the amount appropriated by the Governing Body for its use. Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member. 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.

405. POWERS OF THE BOARD OF ADJUSTMENT. The Board Adjustment shall have the power to:

(a) Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by the Administration Officer based on or made the enforcement of this Ordinance and the zoning regulation contained in Article 10 of this Ordinance.

(b) Hear and decide in accordance with the provisions of this Ordinance, requests for interpretation of the zoning map or ordinance or for decisions upon other special questions upon which such Board is authorized to pass by any zoning regulation or official map in accordance with this Ordinance of P.L. 1975 Chapter 291 and amendments, thereto.

(c) (1) Where (a) by reason of exceptional narrowness shallowness or shape of a specific piece of property (b) or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property or (c) by reason of other extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon the strict application of any regulation pursuant to this Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer or such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation, as to relieve such difficulties or hardship;

(2) Where in an application of appeal relating to a specific piece of property the purposes of this ordinance would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from regulation pursuant to Article 10 of this ordinance provided however, that no variance from those departures enumerated in subsection (d) of this section shall be granted under this subsection; and provided further that the proposed development does not require approval by the Planning Board of a subdivision, site plan, or conditional use in conjunction with which the Planning Board has power to review a request for a variance pursuant to Subsection 47(a) of P.L. 1975, Chapter 291 and amendments thereto.

(d) In particular cases and for special reasons, grant a variance to allow departure from regulations contained in this Ordinance pursuant to Article 10 of this Ordinance to permit:

(1) a use or principal structure in a district restricted against such use or principal structure;

- (2) an expansion of a non-conforming use;
- (3) deviation from a specification or standard for a conditional use;
- (4) an increase in the permitted floor area ratio as herein defined;
- (5) an increase in the permitted density as herein defined except as applied to the required lot area for a lot or lots for detached one or two dwelling unit buildings which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision.

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

(e) By an affirmative vote of a majority of its full authorized membership, direct issuance of a permit pursuant to Section 25 of P.L. 1975, Chapter 291, and amendments thereto, for a building or structure in the bed of a mapped street or drainage way, flood control basin or public area reserved pursuant to Section 23 of said Chapter 291.

(f) Direct issuance of a permit pursuant to Section 27 of P.L. 1975, Chapter 291, and amendments thereto, for a building or structure not related to a street.

(g) Grant to the same extent and subject to the same restrictions as the Planning Board subdivision or site plan approval pursuant to Article 9 of this Ordinance or conditional use approval pursuant to Section 1004 of this Ordinance whenever the proposed development requires approval by the Board of Adjustment of a variance pursuant to Subsection 405(d) of this Ordinance. The developer may elect to submit a separate application requesting approval of the variance and a subsequent application for any required approval of a subdivision site plan or conditional use. The separate approval of the variance shall be conditioned upon grant of all required subsequent approvals by the Board of Adjustment. The number of votes of Board of Adjustment members required to grant any such subsequent approval shall be as otherwise provided in this Ordinance for the approval in question and the special vote required in Section 405 (d) shall not be required.

Whenever an application for development requests relief pursuant to subsection g. of this section, the Board of Adjustment shall grant or deny approval of the application within 120 days after submission by a developer of a complete application to the Administrative Officer or within such further time as may be consented to by the applicant. In the event that the developer elects to submit separate consecutive applications, the aforesaid

provision shall apply to the application for approval of a variance. The period for granting or denying any subsequent approval shall be as otherwise provided in this Ordinance. Failure of the Board of Adjustment to act within the time period prescribed shall constitute approval of the application and a certificate from the Administrative Officer as to the failure of the Board of Adjustment 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.

Whenever review or approval of the application by the County Planning Board is required by section 5 of P.L. 1968, c. 285 (C. 40:27-6.3), in the case of a subdivision, or section 8 of P.L. 1968, c. 285 (C. 40:27-6.6), in the case of a site plan, the Board of Adjustment shall condition any approval that it grants upon a timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board in the event of its failure to report thereon within the required time.

406. REFERRAL TO OTHERS. An application under the terms of Section 405 may be referred to any appropriate person or agency, including the Planning Board pursuant to Section 17 of P.L. 1971, Chapter 291, and amendments thereto, for its report; provided that such reference shall not extend the period of time within which the Board of Adjustment shall act.

407. EXPENSES AND COSTS. The Governing Body shall make provision in its budget and appropriate funds for the expenses of the Board of Adjustment. The Board may employ experts and legal advice as set forth in Section 404 above.

408. APPEALS AND APPLICATIONS TO BOARD OF ADJUSTMENT.

(a) Appeals to the Board of Adjustment may be taken by any interested party affected by any decision of the Administrative Officer of the municipality based on or made in the enforcement of this Ordinance. Such appeal shall be taken within 20 days by filing a notice of appeal with the officer from whom the appeal is taken specifying the grounds of such appeal. The officer 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.

(b) A developer may file an application for development with the Board of Adjustment or action under any of its power without prior application to the Administrative Officer.

409. TIME FOR DECISION.

(a) The Board of Adjustment shall render a decision not

later than 120 days after the date:

(1) an appeal is taken from the decision of the Administrative Officer or;

(2) the submission of a complete application for development to the Board of Adjustment pursuant to Section 408(b) above.

(b) Failure of the Board to render a decision within such 120-day period or within such further time as may be consented to by the applicant, shall constitute a decision favorable to the applicant.

(c) In the event that a developer elects to submit separate consecutive applications pursuant to Section 405(g) of this Ordinance, the provisions of Sections 409(a) and 409(b) shall apply to the application for approval of the variance. The period for granting or denying any subsequent approval shall be as otherwise provided in this Ordinance.

410. PROPOSED LAND USE. Inquiries as to whether a proposed land use is permissible under the zoning ordinance or official zoning map shall be submitted in writing to the Board of Adjustment which shall issue a written response within 45 days after the next meeting following receipt of the request or within such additional time as may be consented to by the inquirer.

411. MODIFICATION ON APPEAL. The Board of Adjustment may reverse or affirm, wholly or in part, or may modify the action, order, requirement, decision, interpretation or determination appealed from and to that end have all the powers of the administrative officer from whom the appeal is taken.

412. STAY OF PROCEEDINGS BY APPEAL; EXCEPTION. An appeal to the Board of Adjustment shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made unless the officer from whose action the appeal is taken certifies to the Board of Adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate to stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by an order of the Superior Court upon notice to the officer from whom the appeal is taken and on due cause shown.

413. COUNTY PLANNING BOARD REVIEW. Whenever review or approval of the application by the County Planning Board is required by Section 5 of P.L. 1968, Chapter 285, and amendments thereto, in the case of a subdivision, or Section 8 of P.L. 1968, Chapter 285, and amendments thereto, in the case of a site plan, the Board of Adjustment 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 its failure to report thereon within the required time.

414. EXPIRATION OF VARIANCE. Any exception or variation from this Ordinance granted by the Board to an applicant shall expire if no construction, alteration or conversion has been commenced within one year from the date of granting such variations or exceptions unless otherwise provided in the resolution of the Board granting the exception or variation.

415. CONFLICT OF INTEREST. No member of the Board Adjustment shall be permitted to act on any matter in which he has either directly or indirectly, any personal or financial interest.

ARTICLE 5.
ADMINISTRATION AND GENERAL PROCEDURES

501. ADMINISTRATIVE PROCEDURES. The Borough Planning Board, Board of Adjustment and Governing Body shall adopt, and may amend reasonable rules and regulations, not inconsistent with this Ordinance, 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 Borough Clerk.

502. MEETINGS; MUNICIPAL AGENCY.

(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 unless canceled for lack of applications for development to process. The municipal agency may provide for special meetings, at the call of the chairman, or on the request of any two of its members, which shall be held on notice to its members and the public in accordance with municipal 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 of the municipal agency present at the meeting, except as otherwise required by the following sections of P.L. 1975, Chapter 291, and amendments thereto:

Section 23 (dealing with the Governing Body's adoption of the Official Map);

Section 25 (dealing with the Board of Adjustment's issuance of building permits on lands reserved on the Official Map pursuant to Section 405(e) of this Ordinance);

Section 49 (dealing with the Governing Body's adoption of a Zoning Ordinance);

Section 50 (dealing with the Governing Body's action on a protest against a zoning change);

Subsection 8(e) (dealing with the Governing Body reversing action by the Board of Adjustment and the Planning Board pursuant to Section 805 of this Ordinance);

Subsection 17(a) (dealing with the Governing Body overriding the Planning Board report on development regulations);

Subsection 17(b) (dealing with another municipal agency overriding the Planning Board on matters which the Governing Body requires be referred to the Planning Board).

Subsection 57(d) (dealing with a use variance application to the Board of Adjustment pursuant to Section 405(d) of this Ordinance). Failure of a motion to receive the number of votes required to approve an application for development pursuant to the exceptional vote requirements of section 25 or subsection 57(d) of P.L. 1975 chapter 291 as amended shall be deemed an action denying the application.

Nothing herein shall be construed to contravene any act providing for procedures for the Governing Body.

(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 municipal regulations and this Ordinance. 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 Ordinance.

(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 therefore. The minutes shall thereafter be made available for public inspection during normal business hours at the office of the administrative officer. 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 this use.

503. FILING OF ORDINANCES. This Ordinance 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 Ordinance and any revisions or amendments thereto shall be filed and maintained in the office of the Borough Clerk.

504. EXCLUSIVE AUTHORITY OF PLANNING BOARD AND BOARD OF ADJUSTMENT. Any power expressly authorized by this Ordinance to be exercised by (1) the Planning Board or (2) the Board of Adjustment shall not be exercised by any other body, except as otherwise provided in this Ordinance.

505. 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 under this Ordinance shall be suspended for the period of time said legal action is pending or such directive or order is in effect.

506. 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 legal action instituted by any State agency, political subdivision or other party to protect the public health and welfare or by a directive or order issued by any State agency, political subdivision or court of competent jurisdiction to protect the public health and welfare, the municipal agency shall process such application for development in accordance with this Ordinance, and, if such application for development complies with this Ordinance, 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 Borough shall make a decision on any application for development within the time period provided in this Ordinance 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.

507. PAYMENT OF TAXES. Every application for development submitted to the Planning Board or Board of Adjustment 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.

ARTICLE 6.
HEARINGS

601. WHEN REQUIRED. The Planning Board or the Board of Adjustment, as the case may be, shall hold a hearing on each application for development, except where this Ordinance specifically exempts an application from the requirements of a hearing before the Planning Board, and on the adoption, revision or amendment of the Master Plan. The Governing Body shall hold a hearing on the adoption or amendment of any development regulation, and Official Map or Capital Improvements Program. Those hearings requiring a public notice be given are herewith set forth in Section 610 of this Article.

602. APPLICATION AVAILABLE FOR PUBLIC INSPECTION. The Borough Planning Board or Board of Adjustment or Governing Body, as the case may be, shall make the 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 21 days before the date of the hearing during normal business hours in the office of the administrative officer. The applicant may produce other documents, records or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.

603. POWERS OF CHAIRMAN. 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, chapter 38, and amendments therefor shall apply.

604. TESTIMONY OF WITNESSES. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation, 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.

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

606. RECORD OF PROCEEDINGS. The municipal agency conducting such hearing shall provide for the verbatim recording of the proceedings by either stenographer, mechanical or electronic means. Said municipal agency shall furnish a transcript, or duplicate recording in lieu thereof, on request to any interested party at his expense. The municipal agency in furnishing a transcript of the proceeding to an interested party at his expense shall not charge

such interested party more than the maximum permitted in N.J.S.A. 2A:11-15. Said transcript shall be certified in writing by the transcriber to be accurate.

607. WRITTEN DECISIONS. Each decision on any application for development shall be reduced to writing as provided by this Section, and shall include findings of facts and conclusions based thereon. The findings and conclusions shall be provided through:

(a) A resolution adopted at a meeting held within the time period provided in this ordinance for action; or

(b) A memorialization resolution adopted at a meeting held not later than forty-five (45) days after the date of the meeting at which the municipal agency voted to grant or deny approval. Only the members of the municipal agency who voted for the action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is adopted shall be sufficient to adopt the resolution.

The disapproval of an application due to the failure of a resolution to approve shall be memorialized by a resolution with those members voting against the motion for approval being the members eligible to vote on the memorializing resolution. The vote on any such resolution shall be deemed to be a memorialization of the action of the municipal agency and not to be an action of the municipal agency; however, the date of the adoption of the resolution shall constitute the date of the decision for purposes of the mailings, filings and publications required by Section 608 and Section 609 of this Ordinance.

608. DECISIONS AVAILABLE TO PUBLIC. A copy of the decision shall be mailed by the municipal agency within 10 days of the date of decision to the applicant, or if represented then to his attorney, without separate charge, and to all who request a copy of the decision for a fee of ten dollars (\$10). A copy of the decision shall also be filed by the municipal agency in the office of the Borough Clerk. The Borough Clerk shall make a copy of such filed decision available to any interested party for a fee of ten dollars (\$10) and available for public inspection at his office during the hours from 9 a.m. to 4 p.m.

609. PUBLICATION OF DECISION. A brief notice of the decision shall be published in the official newspaper of the Borough or in a newspaper of general circulation in the Borough. Such publication shall be arranged by the Planning Board's secretary. The fee for the cost of such publication shall be \$10.00 which shall be payable by the applicant at the time of the initial application. 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.

610. WHEN NOTICE OF HEARING IS REQUIRED. The following hearings shall require a public notice be given by publication in the official newspaper of the Borough, if there be one, or in a newspaper of general circulation.

(a) An application for development before the Planning Board requiring action by that Board.

(b) The adoption, revision or amendment of the Master Plan or any part thereof by the Planning Board.

(c) Any application before the Board of Adjustment.

(d) The adoption, revision or amendment of any development regulations by the Governing Body.

(e) The adoption, revision or amendment of a capital improvement program or the Borough Official Map by the Governing Body.

611. CONTENTS OF NOTICE. Notices pursuant to Sections 612 and 613 of this Ordinance 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 612, 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 Borough Tax Assessor's office, and the location and times at which any maps and documents for which approval is sought are available.

612. NOTICE OF HEARING ON APPLICATIONS FOR DEVELOPMENT. All hearings on application for development requiring a public notice pursuant to subsections 610(a) and (c) shall meet the following requirements:

(a) Notice pursuant to subsections (b), (c), (e), (f), (g) and (h) shall be given by the applicant at least 10 days prior to the date of the hearing.

(b) Public notice shall be given by publication in the official newspaper of the Borough, if there is one, or in a newspaper of general circulation. Such publication shall be arranged by the Planning Board's secretary and the applicant shall pay, at the time of the initial application, a fee of \$10.00 for the cost of such publication.

(c) Notice of the hearing shall be given to the owners of all real property as shown on the current tax duplicate, located within 200 feet in all directions of the perimeter of the property which is the subject of such hearing; provided that this requirement shall be deemed satisfied by notice to the (1) condominium association, in the case of any unit owner whose unit

has a unit above or below it, or (2) horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it. Notice shall be given by 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. Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, a vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within 200 feet of the property which is the subject of the hearing, may be made in the same manner as to a corporation without further notice to unit owners, co-owners, or homeowners on account of such common elements or areas.

(d) Upon the written request of an applicant, the Borough Engineer of the Borough shall, within 7 days, make and certify a list from said current tax duplicates of names and addresses of owners to whom the applicant is required to give notice pursuant to subsection (a) of this Section. 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. A sum not to exceed \$0.25 per name, or \$10.00, whichever is greater, may be charged for such list.

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

(f) 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 road shown on the Official County Map or on the County Master Plan, adjoining other County land or situated within 200 feet of a municipal boundary.

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

(h) Notice shall be given by personal service or certified mail to the Director of the Division of State and Regional Planning in the Department of Community Affairs of a hearing on an application for development of property which exceeds 150 acres or 500 dwelling units. Such notice shall include a copy of any maps or documents required to be on file with the Municipal

Clerk pursuant to Section 602 of this Ordinance.

(i) 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.

(j) Notice pursuant to subsections (e), (f), (g) and (h) of this Section shall not be deemed to be required unless public notice pursuant to Section 610 and notice pursuant to subsection (c) of this Section are required.

(k) An applicant may request no more than three (3) adjournments of an application. Adjournments at the request of an applicant shall only be granted for good cause.

613. NOTICE OF HEARING INVOLVING 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 Borough or in a newspaper of general circulation in the Borough at least 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 200 feet of such adjoining municipality at least 10 days prior to the date of any such hearing.

(c) Notice by personal service or certified mail to the County Planning Board of (a) all hearings on the adoption, revision or amendment of the municipal Master Plan at least 10 days prior to the date of the hearing; such notice shall include a copy of any such proposed Master Plan, or any revision or amendment thereto; and (b) the adoption, revision or amendment of the Master Plan not more than 30 days after the date of such adoption, revision or amendment; such notice shall include a copy of the Master Plan or revision or amendment thereto.

614. EFFECT OF MAILING NOTICE. Any notice made by certified mail pursuant to Sections 612 and 613 of this Ordinance shall be deemed complete upon mailing.

615. NOTICE OF HEARINGS ON ORDINANCE, CAPITAL IMPROVEMENTS, OFFICIAL MAP.

(a) 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 200 feet of such adjoining

municipality at least 10 days prior to the date of any such hearing.

(b) 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 10 days prior to the date of the hearing. Notice by personal service or certified mail shall be made to the County Planning Board of the adoption, revision or amendment of the municipal Capital Improvement Program or municipal Official Map not more than 30 days after the date of such adoption, revision or amendment. Any notice provided hereunder shall include a copy of the proposed development regulation, the municipal Official Map or the municipal Capital Improvement Program, or any proposed revision or amendment thereto, as the case may be.

(c) Notice of hearings to be held pursuant to this Section 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 Section shall be deemed complete upon mailing.

616. VOTE BY MEMBER WHEN ABSENT. A member of a municipal agency who was absent for one or more of the meetings at which a hearing was held shall be eligible to vote on the matter upon which the hearing was conducted, notwithstanding his absence from one or more of the meetings; provided, however, that such board member has available to him the transcript or recording of all of the hearings from which he was absent, and certifies in writing to the board that he has read such transcript or listened to such recording.

ARTICLE 7.
FEES

701. APPLICABILITY AND MANNER OF PAYMENT. All application fees and escrow deposits set forth in this Article shall apply to all applications to be considered by the Planning Board or the Zoning Board of Adjustment as appropriate. No action shall be taken by these Boards or by the Governing Body until proof has been submitted that the required fees have, in fact, been paid.

All payments required by the provisions of this Article made payable by check or money order to the Borough of Mountainside, shall be deposited with the Administrative Official at the time of filing of the application(s) as required by the Borough.

702. APPLICATION FEES.

(a) All application fees shown in Section 704 for minor or major subdivisions, for preliminary or final site plans, for variances, for certificates of occupancy, and for signs are non-refundable.

(b) All application fees for an appeal, or for an interpretation, or on a special question (per MLUL 40:55D-70a or 70b); or for approval of a conditional use; or for permits (per MLUL 40:55D-34 and 36); or for any other matter which involves action or inspection by a Borough official or a hearing before the Planning Board or the Zoning Board of Adjustment likewise are non-refundable.

703. ESCROW FEES.

(a) In addition to the Application Fees required by this Article, each applicant or developer, at the time of filing of the application, also shall make the required escrow deposit(s) with the Borough as shown in Section 704, which will be expended in accordance with the provisions of this section.

(b) Escrow funds shall be used to cover the Municipal cost of professional services incurred during the development review process, which shall include professional fees and charges, including prorated salaries incurred in connection with the review of plans, consultations, site inspections, written reports and the preparation of resolutions, meeting attendance, general preparation, research, testimony, and other work performed by the Board's planner, the Board Attorney, the municipal engineering staff and other professional consulting services as may be required by the nature and/or complexity of the application. Court reporter fees, the costs of advertising, the prorated salary of the Board's Secretary, and overtime paid to municipal employees in connection with special requirements or meetings required by the applications shall also be paid out of the escrow funds.

(c) Escrow funds required by this Article shall not be used to pay inspection costs incurred during actual construction.

(d) Any application which involves more than one of the categories set forth in the fee schedule of Section 704 shall require the payment of the sum of the individual application fees and shall also require the deposit of an escrow payment equal to the sum of all the individual and applicable escrow amounts.

(e) All such payments shall be made and completed with the Administrative Official before the application(s) can be considered to be complete and before the applicant shall be permitted to appear and be heard before the Planning Board or the Zoning Board of Adjustment.

(f) Additional escrow funds may be required when an escrow account has been depleted to twenty percent (20%) of the original escrow amount. An official designated by the Borough Council shall have the responsibility to notify the appropriate Board when escrow funds have been so depleted. The persons authorized to make charges against the escrow fund shall advise the Board as to anticipated additional costs. The Board considering the application shall notify the applicant or the developer as to the amount of additional funds to be deposited. No further action will be taken on the application by the Board until such additional deposit has been made.

(g) Escrow deposits shall be placed in an interest-bearing account by the Council-designated official. The account shall be administered in accordance with the requirements of N.J.S.A. 40:55D53.1.

(h) All disbursements to consulting professionals and applicable charges by Borough or Board-employed professionals and non-professionals for services involved in processing an application which requires the deposit of an escrow amount shall be made against the escrow account.

(i) All bills submitted by consulting professionals relative to said application(s) shall specify the services performed and the time expended relative thereto. The bill shall set forth the hourly billing amount, which will be the amount charged to the Borough pursuant to the Professional Consultant's contract.

(j) All charges by Borough-employed professionals and non-professionals shall specify the services performed on said application and the time expended relative thereto. The hourly billing rate for Borough-employed professionals and non-professionals shall be one thirty-fifth (1/35) of their weekly compensation, plus forty percent (40%) to compensate for the benefits supplied to said employee. The Attorney's time shall be

billed at the contract rate with the Board; the Clerk's time shall be billed at thirty-five dollars (\$35) per hour.

(k) The Borough shall supply the applicant or developer with a complete accounting of the escrow fund within ninety (90) days after the appropriate Board has taken official action on the application.

(l) All sums of the escrow account not actually expended shall be refunded to the applicant within ninety (90) days after the appropriate Board has taken official action.

(m) Any resolution of approval adopted by the Planning Board or the Zoning Board of Adjustment shall specify the condition that all fees and escrow payments required by the Article have been paid in full before the Board officers may sign any plan, map or deed.

704. FEE SCHEDULE.

Minor Subdivision

-Residential Application	\$250.00
-Residential Escrow	\$250.00
-Non-residential Application	\$250.00
-Non-residential Escrow	\$250.00

Preliminary Major Subdivision

-Residential Application	\$200 + \$50/lot
-Residential Escrow	\$250 + \$50/lot
-Non-residential Application	\$200 + \$50/lot
-Non-residential Escrow	\$250 + \$50/lot

Final Major Subdivision

Same fees as for Preliminary Major Subdivision.

Preliminary Site Plan

-Residential Application	\$250 + \$50/unit
-Residential Escrow	\$500 + \$100/unit
-Non-residential Application	\$500 + \$50/acre + \$1/parking space + \$0.02/sq. ft. floor area
-Non-residential Escrow	Building Floor Area: Less than 10,000 sq. ft. \$1500. 10,001-50,000 sq. ft. \$5000. 50,001-100,000 sq. ft.

\$10,000. More than 100,000
sq. ft. \$15,000.

Final Site Plan

Same fee as for Preliminary
Site Plan.

Informal Conceptual Plan

50% of the Application and
Escrow fees otherwise
chargeable

Appeal or Interpretation which involves Site Inspection or
Board Action

-Residential Application

\$100

-Residential Escrow

\$500

-Non-residential Application

\$250

-Non-residential Escrow

\$1000

All Variances

-Residential Application

\$50 each

-Non-residential Application

\$500 each

Signs, Non-Residential:

Application Fee

Escrow Fee

-Less than 10 sq. ft.

\$25

\$100

-More than 10 sq. ft.

\$50

\$200

-More than 25 sq. ft.

\$75

\$300

-More than 50 sq. ft.

\$100

\$400

Certificates of Occupancy

-Residential Application

\$25

-Non-residential Application

Review by Municipal Official

\$75

Review by a Municipal Board

\$250

Engineer Advisory Fee

\$25

ARTICLE 8.
APPEAL TO THE GOVERNING BODY

801. WHO MAY APPEAL. Any interested party may appeal to the Governing Body any final decision of the Board of Adjustment approving an application for development pursuant to Section 57, Paragraph (d) of P.L. 1975, Chapter 291 and amendments thereto and subsection 405(d) of this Ordinance.

802. TIME PERIOD FOR APPEAL. Any appeal listed in Section 801 shall be made within 10 days of the date of publication of such final decision pursuant to Section 609 of this Ordinance. The appeal to the Governing Body shall be made by serving the Borough 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 name and address of his attorney, if represented. Such appeal shall be decided by the Governing Body only upon the record established before the Planning Board or Board of Adjustment.

803. NOTICE OF MEETING TO CONSIDER APPEAL. 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 Section 608 of this Ordinance and to the Board from which the appeal is taken at least 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 Section 606 of this Ordinance.

804. TIME PERIOD FOR DECISION. The appellant shall (1) within five days of the service of notice of appeal pursuant to Section 802, arrange for a transcript for use by the Governing Body and pay a deposit of \$50.00 or the estimated cost of such transcription, whichever is more, or (2) within thirty-five (35) days of service of the notice of appeal, submit a transcript, as otherwise arranged, to the municipal clerk; otherwise, the appeal may be dismissed for failure to prosecute.

The Governing Body shall conclude a review of the record below not later than ninety-five (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 Governing Body to hold a hearing and conclude a review of the record below and to render a decision within such specific period, without such written consent of the appellant, shall constitute a decision affirming the action of the Board.

805. DECISION OF GOVERNING BODY. The Governing Body may reverse, remand or affirm with or without the imposition of conditions, the final decision of the Board of Adjustment approving

a variance pursuant to Section 57, paragraph (d) of P.L. 1975, Chapter 291, and amendments thereto, and subsection 405(d) of this ordinance. The review shall be made on the record before 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 affirm with or without conditions any final action of the Board of Adjustment.

806. STAY OF PROCEEDING. 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 from whose action the appeal is taken certifies to the Governing Body, after the notice of appeal shall have been filed with such Board, that by reasons 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 other than by an order of the Superior Court on application upon notice to the Board from whom the appeal is taken and on good cause shown.

807. PUBLICATION 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, as established by Ordinance, to any interested party who has requested it, not later than 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 Borough Clerk; provided that, however, nothing contained herein shall be construed as preventing the applicant from arranging such publication if he so desires. The Governing Body shall charge the applicant for its publication as established by Ordinance. 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.

808. COURT REVIEW. Nothing in this Ordinance shall be construed to restrict the right of any party to obtain a review by any court of competent jurisdiction according to law.

ARTICLE 9.
SUBDIVISION AND SITE PLAN REVIEW

901. FILING PROCEDURES. It is the intent of this Section to define the procedures and time sequence for the preparation and review of documentary information which is necessary to assure a productive and timely hearing of an application by a municipal board. Application forms, instructions and checklists are available from the Planning Board secretary. No applications will be scheduled for a board hearing which have not been previously certified by the Administrative Official to be "complete" and then filed as described below, within the designated time period.

Prior to the subdivision of land and prior to the issuance of a building permit, zoning permit, or certificate of occupancy, for any development, change of occupancy, or change of use, an application must be submitted to and approved by the Planning Board in accordance with the requirements of this Article; except the subdivisions and individual lot applications for detached one or two-family dwelling unit buildings shall be exempt from site plan review and Board approval. In the event the subdivision or site plan application requires action by the Board of Adjustment as provided in Section 405(g) of this Ordinance, said application shall be submitted to and processed by said Board, which shall act to the same extent and subject to the same restrictions as the Planning Board, as set forth in this Article.

(a) In the interest of conserving time, cost and paperwork, an initial or preliminary submission of an application and supporting documents for staff review and review of completeness may be submitted in only three (3) copies. Such review will be handled promptly and within the maximum forty-five (45) days of submission. The Administrative Official shall indicate to the applicant:

(1) That the information supplied is adequate for the application to be declared "complete," or

(2) What additional information is required in order to declare the application "complete," and

(3) That the application will be certified to be "complete" in view of (1), or when (2) is satisfied, and upon the date of the receipt of the required number of copies of the formal application, together with supporting documents and the payment of applicable fees.

(b) In the event that the Administrative Official does not certify an application to be "complete" within the forty-five (45) days of its submission, or its resubmission with the

additional information requested, the application shall automatically be deemed to be "complete," upon the expiration of the forty-five (45) day period for purposes of commencing the formal filing and commencing the applicable time period for Board action. The application shall not be deemed "complete" automatically at the expiration of the forty-five (45) day period; however, if

(1) The supporting documents lack the information required by and indicated on a checklist, adopted by ordinance, and provided to the applicant; and

(2) The Administrative Official has notified the applicant, in writing, of the deficiencies in the application or supporting documents within the forty-five (45) day period and the applicant has failed to respond to the deficiencies, the applicant may request that one or more of the submission requirements be waived if there is sufficient reason for such request. If waiver is justified and is granted, the Administrative Official will certify that the application is "complete" if the requirements of item (a).(3). of this Section are otherwise met.

In the case of certain, uninvolved applications, such as those dealing with ordinance-conforming signs, or changes in like tenancy during preliminary review and in the interest of not delaying formal filing of the application, the Administrative Official is authorized to waive certain requirements which in his judgment, or upon the advice of staff, are not necessary for Board consideration. He shall, however, clearly identify for the Board all items waived in each case. Such applications can then be certified to be "complete" and may proceed to formal filing.

(c) Following preliminary review and the indication that all required information has been submitted and found to be adequate, fifteen (15) copies of the application and all supporting documents shall be filed formally with the Administrative Official at least three (3) weeks in advance of the meeting of the municipal board at which the application is to be heard. Upon such filing and the payment of the applicable fees, said application will be certified by the Administrative Official to be "complete," and the time period for municipal board action, as prescribed in Section 902(b)., shall commence. The three (3) week period is required for formal review of the certified "complete" application, site plans, drawings, and other documents by the Borough Engineer, by subcode officials, for site inspections, and for public notices, as necessary. Filing of incomplete or uncertified applications at the cut-off date prior to a scheduled Board meeting is unacceptable and not permitted, since it fails to meet the requirements of this Section.

The applicant has the responsibility to prove in the application

process, which includes formal hearing before a municipal board that he is entitled to approval of the application. The municipal board hearing the application may require correction of information found to be in error, and/or the submission of additional information not specified in the ordinance, or revision in the accompanying documents, as are reasonable necessary to make an informed decision as to whether the requirements necessary for the approval of the application have been met. The application shall not be deemed "incomplete" for lack of any such additional information or the need for revisions in the accompanying documents as may be required by the municipal board during formal hearing.

902. REVIEW PROCEDURES. Upon receipt of an application, the Administrative Officer shall forward same to either the Planning Board or Board of Adjustment depending upon which Board has jurisdiction. If the Planning Board has jurisdiction, the Administrative Officer shall forward the application to the Secretary of the Planning Board who in turn shall forward same to the Subdivision or Site Plan Committee, or directly to members of the Planning Board, and in addition shall send a copy to each of the following for report and recommendation:

Borough Engineer
Board of Health Official
Fire Official
Such other municipal, County, State and Federal
Officials and agencies as directed by the
Subdivision and Site Plan Committee

(a) The Subdivision or Site Plan Committee shall review the application along with reports required from any officials or agencies and shall submit its findings and recommendations to the Planning Board.

(b) 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.

<u>Type of Application</u>	<u>Period of Time for Action by Planning Board</u>
Minor Subdivision or resubdivision	45 days
Preliminary Plat - 10 lots or less	45 days
Preliminary Plat - more than 10 lots	95 days

Preliminary Site Plan - 10
acres of land or less and
10 dwelling units or less 45 days

Preliminary Site Plan - more
than 10 acres of land or
more than 10 dwelling units 95 days

Final Plat 45 days

Final Site Plan 45 days

Subdivision with variance 120 days

Site Plan with variance 120 days

Failure of the Planning board to act within the period prescribed shall constitute approval and a certificate of the Administrative Officer as to the failure of the Planning Board to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval, herein required, and shall be so accepted by the County Recording Officer for purposes of filing subdivision plats. The applicant shall be notified of the Planning Board's action within one week of its action.

(c) Whenever review or approval of an application by the County Planning Board is required pursuant to Section 5 of P.L. 1968, Chapter 285, and amendments thereto, in the case of a subdivision, or Section 8 of P.L. 1968, Chapter 285, and amendments thereto, in the case of a site plan, 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.

(d) If the scheduled time of the Planning Board meeting allows insufficient time for the Board to reach a determination regarding action on an application within the time prescribed in this Section, the applicant shall be requested to consent to an extension of time. Failure of the applicant to consent to such extension of time shall constitute adequate grounds for denial of the application.

(e) When final approval of an application has been granted, the applicant shall submit ten (10) signed and sealed copies of the plan, site or subdivision plan, so approved, to the Secretary of the Planning Board for filing and distribution as follows:

Borough Engineer
Construction Official
Planning Board

County Planning Board (where required)
Fire Official (where required)
Board of Health Official (where required)
Board of Adjustment (where required)

903. SKETCH PLAT OF A MAJOR SUBDIVISION AND OTHER INFO
REVIEW. A sketch plat of any major subdivision may be submitted
preliminary discussion before the preliminary plat is prepar
This step is recommended by the Planning Board. As its r
indicates, the sketch plat is designed to enable the Subdivisor

Site Plan Committee or the full Planning Board and the applicant
discuss the proposed subdivision in general terms before
applicant has gone to the expense of completing detail
engineering drawings as required for preliminary and final pla
The Planning Board will act on said sketch plat within 45 days a
if satisfactory, give sketch plat approval. This approval will
be binding and will be subject to change, but will enable applic
to proceed on a reasonable, sound basis.

At the request of the developer, the Planning Board sha
grant an informal review of a concept plan for a development
which the developer intends to prepare and submit an applicati
for development. The amount of any fees for such an informati
review shall be a credit toward fees for review of the applicati
for development. The developer shall not be bound by any conce
plan for which review is requested, and the Planning Board sha
not be bound by any such review.

904. SUBMISSION OF MINOR SUBDIVISION. Prior to the subdividi
or resubdividing of any land within the Borough, so as sa
subdivision constitutes a minor subdivision as defined in Secti
237 of this Ordinance, a minor subdivision application shall
filed in accordance with Section 901 above and shall contain a
data and information required in Section 911(b).

If classified and approved as a minor subdivision by th
Planning Board, the Chairman and Secretary of the Planning Boar
shall sign said minor subdivision and said approval shall be deeme
to be final approval. Said minor subdivision, after approval, shal
be returned to the subdivider within one week following the signin
of said plat by the Chairman and Secretary.

Approval of a minor subdivision shall expire 190 days from th
date of municipal approval unless within such period a plat is
conformity with such approval and the provisions of the "Map Filing
Law," P.L. 1960, Chapter 141, and amendments thereto, or a dec

clearly describing the approved minor subdivision is filed by the developer with the County Recording Officer, the Borough Engineer and the Borough Tax Assessor. Any such plat or deed accepted for such filing shall have been signed by the Chairman and Secretary of the Planning Board. In reviewing the application for development for a proposed minor subdivision, the Planning Board may accept a plat not in conformity with the "Map Filing Act," P.L. 1960, Chapter 141, and amendments thereto; provided that if the developer chooses to file the minor subdivision as provided herein by plat rather than deed such plat shall conform with the provisions of said Act.

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 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.

If the application for a minor subdivision is classified as a major subdivision by the Subdivision Committee, the subdivider will be so notified. No further Planning board action on the application shall be required and the subdivider shall follow the procedures contained herein for processing approval of a preliminary and final plat of a major subdivision.

905. PRELIMINARY PLAT AND PRELIMINARY SITE PLAN. Any application for approval of a preliminary plat or preliminary site plan shall be filed in accordance with Section 901 of this Article and shall contain all information as required in Section 911(c) or Section 911(e) as the case may be. The application will be forwarded to the Planning Board or Board of Adjustment for processing as herein required. The Subdivision Committee shall report to the Planning Board on all subdivision applications and the Site Plan Committee shall report to the Board on site plan applications.

(a) If the Committee processing an application finds that said application is in substantial compliance with the provisions of this Ordinance, it shall so report to the Board and the Planning Board shall schedule a hearing on the application pursuant to Article 6 of this Ordinance. If the application is found to be not in compliance, it shall so inform or cause the Administrative Officer to so inform the applicant in writing of the deficiencies and shall require the filing of an amended application which shall be processed as in the case of the original application.

(b) 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. If the Planning Board is satisfied that the proposed application, together with any conditions as imposed by the Board, meets all of the requirements of this Ordinance, it shall grant preliminary approval.

(c) Preliminary approval shall, except as provided in Subsection (4) of this subsection, confer upon the applicant the following rights for a 3-year period from the date of the preliminary approval:

(1) 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 Section 912(b); 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;

(2) 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; and

(3) That the applicant may apply for and the Planning Board may grant extensions on such preliminary approval for additional periods of at least 1 year but not to exceed a total extension of 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 50 acres or more, the Planning Board may grant the rights referred to in Subsections (1), (2) and (3) above for such period of time, longer than 3 years, as shall be determined by the Planning board to be reasonable taking into consideration: the number of dwelling units and the 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 the non-residential floor area permissible under preliminary approval; and the potential number of dwelling units and the non-residential 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.

906. INSTALLATION OF IMPROVEMENTS PRIOR TO FINAL APPROVAL. Prior to the filing of an application for final subdivision or site plan approval the applicant shall have installed the improvements required under this Section, under the supervision and inspection of the Borough Engineer, except that in the case of major subdivisions, the Planning Board may accept performance guarantees to assure the installation of the improvements under this Section:

(a) Pavement surface course consisting of machine-laid bituminous concrete two (2) inches in compacted thickness.

(b) Concrete sidewalks.

(c) Shade trees.

(d) Street signs.

(e) Survey monuments.

All on-site improvements for site plans, as required in Section 912 (b), shall be installed prior to final approval.

No performance guarantee for major subdivision, shall be accepted unless and until the Borough Engineer shall have certified to the Planning Board the accuracy of the description of the improvements to be made and the sufficiency of the amount of the performance guarantee to assure completion of improvements and the Borough Attorney shall have approved the form and sufficiency of the execution thereof. The performance guarantee shall state the time period within which all improvements are to be installed by the applicant.

Also, prior to the filing of an application for final subdivision or site plan approval, the applicant shall have installed or paid his pro rata share of the cost of any off-site improvements necessitated by his development as determined in accordance with the requirements of Section 913 of this Ordinance.

907. PERFORMANCE GUARANTEE. The performance guarantee for the installation of on-tract improvements required pursuant to Section 912 of this Ordinance shall be in favor of the Borough in an amount equal to 120 per cent of the cost of such improvements. No more than 10 per cent of the performance guarantee shall be required to be in the form of cash or a certified check made payable to the Borough.

(a) The performance guarantee shall run for a term not to exceed eighteen (18) months from the date of final approval. With the consent of the principal, the performance guarantee may be extended by the Governing Body after the recommendation by the Planning Board by resolution for an additional period not exceeding

eighteen (18) months. As a condition or as part of any such extension, the amount of any performance guarantee shall be increased or decreased as the case may be, to an amount not to exceed 120 percent of the cost of the installation as determined as of the time of the passage of the resolution.

(b) The Planning Board may, upon application by the developer, recommend to the Governing Body the reduction of the amount of the performance guarantee upon certification in writing by the Borough Engineer that specific portions of the required improvements and conditions of the Board have been properly completed and complied with and upon posting or continuance of performance guarantee, maintenance bonds and deposit money adequate to insure the completion of the remaining improvements.

(c) If the required improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the Borough for the reasonable cost of the improvements not completed or corrected and the Borough may either prior to or after the receipt of the proceeds thereof complete such improvements.

(d) Upon substantial completion of all required appurtenant utility improvements, and the connection of same to the public system, the obligor may notify the Governing Body in writing, by certified mail addressed in care of the Borough Clerk of the completion or substantial completion of improvements and shall send a copy thereof to the Borough Engineer. Thereupon, the Borough Engineer shall inspect all improvements of which such notice has been given and shall file a detailed report, in writing, with the Governing Body, indicating either approval, partial approval or rejection of such improvements with a statement of reasons for any rejection. The cost of the improvements as approved or rejected shall be set forth.

(e) The Governing Body shall either approve, partially approve or reject the improvements, on the basis of the report of the Borough Engineer and shall notify the obligor in writing, by certified mail, of the contents of said report and the action of the Governing Body with relation thereto, not later than 65 days after receipt of the notice from 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 guarantee, except for that portion adequately sufficient to secure provision of the improvements not yet approved; provided that 30% of the amount of the performance guarantee 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 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 guarantee for such

improvements.

(f) If any portion of the required improvements are rejected, the Governing Body may require the obligor to complete such improvements and, upon completion, the same procedure of notification, as set forth in this Section shall be followed.

(g) The obligor shall reimburse the Borough for all reasonable inspection fees paid to the municipal engineer for inspection of the improvements pursuant to this Section; provided that the municipality may require of the developer a deposit for all or a portion of the reasonably anticipated fees to be paid to the municipal engineer for each inspection.

(h) Prior to any construction and coincident with the furnishing of the performance guarantee by the developer, there shall be drafted an agreement between the developer and the Borough incorporating all of the terms and conditions of approval imposed by the Planning Board.

908. **MAINTENANCE GUARANTEE.** Before recording of final subdivision plats or as a condition of final site plan approval, the Planning Board may require a maintenance guarantee to be posted with the Governing Body for a period not to exceed 2 years after final acceptance of the on-site improvements in an amount not to exceed 15 per cent 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 guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the Borough for such utilities or improvements. The Borough Engineer and the Planning Board shall review the maintenance bond. It shall also be reviewed by the Borough Attorney as to form, sufficiency and execution, and approved by the Governing Body.

909. **INSPECTION OF ALL IMPROVEMENTS AND CONSTRUCTION.** All improvements required by the Planning Board, except electric and gas, shall be installed under the supervision and inspection of the Borough Engineer. No construction work covering the required improvements shall be commenced without the developer first notifying the Engineer that said construction work is about to take place. Such notice shall be given in writing to the Borough Engineer at his office in the Borough Hall at least one week before the commencement of such work. No required improvements shall be covered-until inspected and approved by the Borough Engineer.

910. **FINAL PLAT AND FINAL SITE PLAN.** Application for approval of a final plat or final site plan shall be filed in accordance with Section 901 of this Ordinance and shall contain all the information prescribed in Section 911 (d) or Section 911 (g), as

the case may be. Said application shall be filed within the period prescribed in Section 901 (a) and may be for the whole or a section or sections of the preliminary plat or site plan, as the case may be. The application will be forwarded to the Planning Board or Board of Adjustment for processing as herein required. The Subdivision Committee or Site Plan Committee shall report to the Planning Board on all subdivision applications and site plan applications respectively.

(a) If the Committee processing an application finds that said application is in compliance with the general terms and conditions of the preliminary approval of said application, it shall so report to the Board and the Board shall schedule a hearing on the application pursuant to Article 6 of this Ordinance. If the application is found to be deficient in any respect said Committee shall so inform or cause the Administrative Officer to so inform the applicant and shall require the filing of an amended application which shall be processed as in the case of the original application.

(b) After the Planning Board or Board of Adjustment, as the case may be, is satisfied that the proposed application, together with any conditions as imposed by said Board, conforms to the standards established by this Ordinance for final approval, the conditions of the preliminary approval and, in the case of a major subdivision, the standards prescribed by the "Map Filing Law," P.L. 1960, Chapter 141, and amendments thereto, it shall grant final approval.

(c) Whenever review or approval of the application by the County Planning Board is required pursuant to Section 5 of P.L. 1968, Chapter 285 and amendments thereto in the case of a subdivision, or Section 8 of P.L. 1968, Chapter 285 and amendments thereto, in the case of a site plan, the Borough Planning Board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required time period.

(d) If final approval is granted, copies of the plat or site plan shall be signed by the Chairman and Secretary of the Board granting said approval and the Secretary shall file the approved plans with the following:

Land Use/Construction official
Tax Assessor
County Planning Board (if required)
Planning Board
Department of Transportation (if required)

(e) The zoning requirements applicable to the

preliminary approval first granted and all other rights conferred upon the developer pursuant to Section 905 (c) of this Ordinance, whether conditionally or otherwise, shall not be changed for a period of 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 Section 910 (f). 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 Section 910 (f), the Planning Board may extend such period of protection for extensions of 1 year but not to exceed 3 extensions. Notwithstanding any other provisions of this Ordinance, the granting of final approval terminates the time period of preliminary approval pursuant to Section 905 (c) for the section of the development granted final approval.

(f) Final approval of a major subdivision shall expire 95 days from the date of signing of the plat unless within such period the plat shall have been duly filed by the developer with the County Recording Officer. The Planning Board may for good cause shown extend the period for recording for an additional period not to exceed 190 days from the date of signing of the plat.

No subdivision plat shall be accepted for filing by the County Recording Officer until it has been approved by the Planning Board as indicated on the instrument by the signature of the Chairman and Secretary of the Planning Board or a certificate has been issued pursuant to Section 44 of P.L. 1975 Chapter 291, and amendments thereto. The signatures of the Chairman and Secretary of the Planning Board shall not be affixed until the developer has posted the guarantees required pursuant to Sections 906, 907 and 908 of this Ordinance. If the County Recording Officer records any plat without such approval, such recording shall be deemed null and void, and upon request of the Borough, the plat shall be expunged from the official record.

(g) Unless otherwise provided by resolution of the Planning Board or of the Board of Adjustment, as the case may be:

(1) No building permit shall be issued as to any lot which is the subject of a subdivision application until final subdivision approval, as herein required, is granted by the Planning Board or by the Board of Adjustment, as the case may be, and the final subdivision plat has been filed with the County Recording Officer of Union County as provided in Subsection (f) hereof (or, in the case of minor subdivision approval, the plat or deed is filed with said County Recording Officer as provided in Section 904 hereof) and the time to appeal said subdivision approval, as provided in Section 802 hereof, has expired; and

(2) No building permit shall be issued as to any

lot which is the subject of a site plan application until preliminary site plan approval, as herein required, has been granted by the Planning Board or by the Board of Adjustment, as the case may be, and until the time to appeal such approval, as provided by law has expired; and

(3) No certificate of occupancy shall be issued pursuant to either a filed subdivision application or a filed site plan application, as the case may be, until final approval of said application has been granted and until all improvements provided for in the approved application have been installed.

911. SUBDIVISION PLAT AND SITE PLAN DETAILS.

(a) SKETCH PLAT. The sketch plat shall be based on tax map information or some other similarly accurate information. The plat shall be drawn by a New Jersey licensed professional engineer or land surveyor and shall show and include the following information:

(1) Scale. The plat shall be drawn accurately to scale. The minimum scale shall be two hundred (200) feet to the inch.

(2) Location. The location of that portion of the tract to be subdivided in relation to the entire tract.

(3) Identity. The tax map sheet, block and lot number.

(4) Owners. The name of owner and of all adjoining land owners as disclosed by the most recent Mountainside tax records.

(5) Dimensions. The dimension of all lot lines and the area in square feet of each lot.

(6) Structures. All existing structures on the tract to be subdivided and on adjoining property within two hundred (200) feet of the subdivision tract.

(7) Street and easements. All existing or proposed streets, easements, restrictions, rights-of-way, streams or natural watercourses and drainage ditches in and within two hundred (200) feet of the subdivisions and all street names, stating the use of each easement and the text of such restrictions.

(8) Zoning. All zoning districts and the location of any zoning boundaries within the subdivision.

(9) Airport hazard areas. The location of any

airport hazard areas delineated pursuant to the Airport Safety and Hazardous Zoning Act of 1983, P.L. 1983, Chapter 260.

(10) Yard setbacks. Front, rear and side yard setback lines as required by the zoning regulations of this Ordinance.

(11) Certification. Name and address of person preparing map and appropriate seal and State License number.

(12) Date. Date of original preparation of map and date of revision, if any, of map.

(13) Title. Title of subdivision as well as old name of map if previously submitted under different title.

(14) Certification from the Tax Collector that no taxes or assessments for local improvements are due or delinquent on the subject property.

(b) MINOR SUBDIVISION PLAT. The plat shall be based on tax map information or some other similarly accurate information at a scale to enable the entire tract to be legibly shown on one (1) sheet. Said scale shall not be less than fifty (50) feet to the inch but need not be larger than ten (10) feet to the inch. Where this scale would result in an unduly large map, the Planning Board may permit the use of a key to show the entire tract. The plat may be prepared by the owner if drawn in a form acceptable to the Planning Board or shall be prepared by a New Jersey licensed professional engineer or land surveyor and shall show and include the following information:

(1) Location. The location of that portion of the tract to be subdivided in relation to the entire tract.

(2) Identity. The tax map sheet, block and lot number.

(3) Owners. The name of owner and of all adjoining land owners as disclosed by the most recent Mountainside tax records.

(4) Dimensions. The dimension of all lot lines and the area in square feet of each lot.

(5) Structures. All existing structures on the tract to be subdivided and on adjoining property within two hundred (200) feet of the subdivision tract.

(6) Street and easements. All street names and all existing and proposed easements, and restrictions stating the use

of each easement and the text of such restrictions.

(7) Zoning. All zoning districts and the location of any zoning boundaries within the subdivision.

(8) Airport hazard areas. The location of any airport hazard areas delineated pursuant to the Airport Safety and Hazardous Zoning Act of 1983, P.L. 1983, Chapter 260.

(9) Yard setbacks. Front, rear and side yard setback lines as required by the zoning regulations of this Ordinance.

(10) Certification. Name and address of person preparing map, with appropriate seal and State License number.

(11) Date. Date of original preparation of map and date of revision, if any, of map.

(12) Certification from the Tax Collector that no taxes or assessments for local improvements are due or delinquent on the subject property.

(13) Soil Erosion and Sediment Control Plan if required in accordance with P.L. 1975, Chapter 251, and amendments thereto. 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.

(14) Critical Areas. Environmental information and lot area calculations as required under the provisions of Section 1003(z) of this Ordinance.

(c) PRELIMINARY PLAT. Preliminary plats shall be drawn by a New Jersey licensed professional engineer or land surveyor and shall meet all provisions of Section 914 of this Ordinance and shall show or be accompanied by the following information:

(1) Scale. The plat shall be drawn accurately to scale. The minimum scale shall be one hundred (100) feet to the inch.

(2) Key map. A key showing the entire subdivision and its relation to surrounding areas, including the location and names of principal roads. Minimum scale shall be one thousand five hundred (1,500) feet to the inch.

(3) Data. The tract name, tax map sheet, block and lot number, date reference meridian, graphic scale and the following names and addresses:

Name and address of record owner or owners:

Name and address of the subdivider:

Name and address of the person who prepared map.

(4) Owners. The names of all abutting land owners as disclosed by the most recent Mountainside tax records.

(5) Area. The total area of the tract measured in square feet.

(6) Contours and profiles. Contours at five-foot intervals for slopes averaging ten per cent (10%) or greater and at two-foot intervals for land of lesser slope to determine the general slope and natural drainage of the land and the high and low points for all proposed new streets.

(7) Street profiles. Cross sections, centerline profiles and tentative grades of all proposed streets base on the design standards of Section 914 of this Ordinance, together with specifications furnished by the Borough Engineer.

(8) Property lines. The location of existing and proposed property lines showing the dimensions of each.

(9) Structures. All existing structures on the tract to be subdivided and on adjoining property within two (200) feet of the subdivision property.

(10) Streets and easements. The locations of existing and proposed streets, easements, watercourses, bridges, culverts, drain pipes, any natural features such as wooded areas and rock formations in and within two hundred (200) feet of the subdivision, and all street names, together with copies of existing easements of record.

(11) Utilities. Plans of proposed utility layouts (sanitary sewers, storm drains, water, gas and electricity) showing feasible connections to existing or any proposed utility systems. Letters or other acceptable evidence shall be provided from the serving utilities indicating their adequacy to serve the proposed development, or in the alternative indicating their plans to upgrade service to an adequate level. To be included are plans and profiles of storm and sanitary sewers including sizes and types of materials and water and gas main locations. When an individual water supply or sewage-disposal system is proposed, an application shall be submitted with the Preliminary Plat to the appropriate governmental bodies for approval, and such approval shall be submitted with the preliminary plat. Any subdivision or part thereof which does not meet the established requirements of this

Ordinance or other applicable regulations shall not be approved. Any remedy proposed to overcome such a deficiency shall first be approved by the appropriate governmental body.

(12) Zoning. All zoning districts and the location of any zoning boundaries within the tract.

(13) Airport hazard areas. The location of any airport hazard areas delineated pursuant to the Air Safety and Hazardous Zoning Act of 1983, P.L. 1983, Chapter 260.

(14) Yard Setbacks. Front, rear and side yard setback lines as required by the zoning requirements of this Ordinance.

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

(16) Open space. The location of open spaces to be dedicated for public parks, playgrounds or other public uses.

(17) Development Plan. A map indicating the use of the lots within the subdivision.

(18) Lot areas. A map showing individual lot areas including:

(A) Total lot area.

(B) Area that may be measured in accordance with the zoning regulations.

(19) Drainage and grading. A preliminary grading and drainage system shall be part of the preliminary layout. This shall conform to the specifications furnished by the Borough Engineer.

(20) Certification from the Tax Collector that no taxes or assessments for local improvements are due or delinquent on the subject property.

(21) A Soil Erosion and Sediment Control Plan, if required, in accordance with P.L. 1975, Chapter 251, and amendments thereto. 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.

(22) Critical areas. Environmental information and lot area calculations as required under the provisions of Section

1003(2) of this Ordinance.

(d) FINAL PLAT. The final plat shall be drawn by a New Jersey licensed engineer or land surveyor in ink on tracing cloth or mylar and shall be in compliance with all provisions of P.L. 1960, Chapter 141, and amendments thereto. The final plat shall show or be accompanied by the following:

(1) Scale. The plat shall be drawn accurately to scale. The minimum scale shall be one hundred (100) feet to the inch.

(2) Data. Date, name and location of the subdivision, name of owner and subdivider, graphic scale and reference meridian.

(3) Property lines. 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 deflections, angles and radii, arcs and central angles of all curves.

(4) Use of land. The purpose of any easement of land reserved or dedicated to public use shall be designated and the proposed use of sites other than residential shall be noted.

(5) Block and lot numbers. Each block shall be numbered in conformance with the tax map of the Borough of Mountainside and the lots within each new block shall be numbered consecutively beginning with the number one (No. 1).

(6) Yard setbacks. Front, rear and side yard setback lines as required by the zoning regulations of this Ordinance on all lots and other sites.

(7) Monuments. Location and description of all monuments.

(8) Adjoining property ownership. Names of owners of adjoining land.

(9) Engineer's certification. Certification by engineer or surveyor as to accuracy of plat.

(10) Owner's certification. Certification that the applicant is agent or owner of the land or that the owner has given consent under an option agreement.

(11) Certification of others' approval. When approval of a plat is required by any officer or body of such a

municipality, County or State, approval shall be certified on the plat.

(12) Street profiles. Cross sections and profiles of streets approved by the Borough Engineer shall accompany the final plat. A construction sheet showing construction detail such as typical section of street or road, curb section, drop inlet or catch basin, manhole, and guardrail detail shall accompany the final plat.

(13) A statement by the Borough Engineer that he is in receipt of a map showing all utilities in exact location and elevation identifying those portions already installed and those to be installed, and that the developer has installed all improvements in accordance with the requirements of this regulation, or a statement by the Borough Clerk that proper performance guarantees have been posted with the Governing Body. Said performance guarantees shall be based on a detailed written estimate prepared by the Borough Engineer showing the estimated cost of installation of all required improvements.

(14) Grading plan. Grading plan showing existing and final contours at five-foot intervals for slopes averaging ten percent (10%) or greater and at two-foot intervals for land of lesser slope.

(15) Water, gas and sewer utilities. Plans and profiles of storm and sanitary sewers including sizes and types of materials and water and gas-main locations.

(16) Approval form for certification by the Planning Board and Borough Council shall be shown on said plat as follows:

"Approved for filing by the Planning Board and Borough Council, Borough of Mountainside, New Jersey."

Date Chairman of Planning Board

Date Secretary

Date Borough Clerk

(17) Certificate from Borough Tax Collector that all taxes are paid to date.

(e) PRELIMINARY SITE PLAN. The preliminary site plan

shall be drawn at a scale of not more than 50 feet to the inch, shall include such details as may be necessary to properly evaluate the application and determine compliance with this Ordinance. Any site plan involving any new building, or addition thereto, or any site improvements shall be drawn by a licensed New Jersey Professional Engineer, Land Surveyor, Architect or Professional Planner. Where applicable to the proposed use or construction, the following information shall be clearly shown:

(1) Name and title of applicant, owner and person preparing map.

(2) Place for signature of Chairman and Secretary of the Planning Board.

(3) Place for the signature of Borough Engineer.

(4) Borough tax map lot and block number.

(5) Date, scale and north sign.

(6) Zone district in which property in question falls and zone district of adjoining property.

(7) All existing and proposed signs and their size, nature of construction and location, and all existing and proposed exterior lighting, including size, nature of construction, location, height, the area and direction of illumination and the lumen power.

(8) Rights-of-way, easements and all lands to be dedicated to the Borough.

(9) The entire property in question, even though only a portion of said property is involved in the site plan provided, however, where it is physically impossible to show the entire property on the required sheet, a key map is permitted.

(10) All abutting streets and property lines.

(11) Indication of sanitary disposal system.

(12) Area of the lot and all lot line dimensions.

(13) Location of all existing and proposed buildings with front, rear and side yard setback lines and distances.

(14) Location of off-street parking areas showing proposed parking, sidewalks and loading spaces, with dimensions, width of proposed access drives and aisles and traffic circulation.

(15) Existing and proposed contours of the property and for 100 feet outside the property at 2-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 100 feet beyond.

(16) Elevations at the corners of all proposed buildings and paved areas and at property corners if new buildings or paved areas are proposed.

(17) Tentative building floor plans and front, rear and side building elevations showing building materials. These plans shall be at a scale of not less than $1/8"=1'$ and shall be drawn by a licensed architect.

(18) Specifications for and location of proposed surface paving and curbing.

(19) Location of all structures on any abutting property within 100 feet of the property in question.

(20) Existing streams, brooks, or other natural or manmade drainage facilities when pertinent to any proposed construction on the lot.

(21) Utilities. Plans of proposed utility layouts (sanitary sewers, storm drains, water, gas and electricity) showing feasible connections to existing or any proposed utility system. Letters or other acceptable evidence shall be provided from the serving utilities indicating their adequacy to serve the proposed development, or in the alternative indicating their plans to upgrade service to an adequate level. To be included are plans and profiles of storm and sanitary sewers including sizes and types of materials and water and gas main locations. When an individual water supply or sewage-disposal system is proposed, an application shall be submitted with the preliminary plat to the appropriate governmental bodies for approval, and such approval shall be submitted with the preliminary plat. Any subdivision or part thereof which does not meet the established requirements of this Ordinance or other applicable regulations shall not be approved. Any remedy proposed to overcome such a deficiency shall first be approved by the appropriate governmental body.

(22) All fences, walls, sidewalks or similar features to be provided.

(23) A generalized plan for proposed landscaping showing the basic treatment of unpaved areas.

(24) The present status and contemplated use of all existing buildings on the property.

(25) A Soil Erosion and Sediment Control Plan if required in accordance with P.L. 1975, Chapter 251, and amendments thereto. 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.

(26) 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.

(27) Location of any airport hazard areas delineated pursuant to the Air Safety and Hazardous Zoning Act of 1983, P.L. 1983, Chapter 260.

(28) Official seals of licensed Professional Engineer, Land Surveyor, Architect or Planner preparing the plans.

(29) Critical Areas. Environmental information and lot area calculations as required under the provisions of Section 1003(z) of this Ordinance.

(30) Water Supply. Adequate water service for potable use and for fire protection shall be made available for each lot or building proposed for development by the developer. The installation of all water supply systems shall be in accordance with the specifications of the public utility serving the area.

The water supply system shall have adequate capacity and pressure to provide for potable use and fire protection. The proposed installation shall not adversely affect capacity and pressure on adjoining areas.

The developer shall provide for the installation of fire hydrants as required by NFPA and approved by the Borough Engineer and Fire Subcode Official.

The Planning Board may require an applicant to submit evidence and testimony that there will be an adequate supply of potable water conforming with quality standards of the New Jersey Department of Environmental Protection and an adequate fire protection supply suitable for the proposed project.

The developer shall arrange with the servicing utility for the underground installation of the utilities' distribution supply lines and service connections in accordance with the provisions of the applicable Standard Terms and Conditions incorporated as a part of its tariff on file with the State of New Jersey Board of Public Utilities. Any installation to be performed by a serving utility

shall be exempt from any provisions of this Ordinance requiring performance guarantees and inspection and certification by the Borough Engineer.

Prior to the approval of any final commercial or industrial site plan or major subdivision, the approval of the water system must have been obtained from the water utility and filed with the Planning Board, or the final approval will be conditioned upon full approval from the water utility.

(f) DEVIATIONS FROM PRELIMINARY SITE PLAN STANDARDS. If the applicant demonstrates that because of peculiar conditions relating to the property or proposed construction or the limited scope of the application, any of the details for preliminary or final site plan are not necessary to evaluate properly the site plan, the Administrative Officer may modify or waive any of the specific site plan details .

(g) FINAL SITE PLAN. The final site plan shall be drawn in the same manner as the preliminary site plan and shall include all of the information set forth in 911 (e) above. In addition, the final site plan shall show or include the following:

(1) Final contours of the property and for 100 feet outside the property at 2-foot intervals when new buildings or parking areas or resurfacing of existing parking areas are proposed. If only a portion of the property is being developed, contours need only be shown for said portion and 100 feet beyond.

(2) Final building floor plans and front, rear and side building elevations showing building materials.

(3) The location, type and size of existing and proposed catch basins, storm drainage facilities and all utilities, both above and below ground.

(4) The location, type and size of all existing and proposed curbs, sidewalks, driveways, fences, retaining walls, parking space areas and the layouts thereof, and all off-street loading areas, together with the dimensions of all the foregoing.

(5) The location, size and nature of all existing and proposed rights-of-way, easements and other encumbrances which may affect the premises in question, and the location, size and description of any lands contemplated to be dedicated to the Borough.

(6) The location, size and nature of the entire property in question, and any contiguous property owned by the applicant or in which the applicant has a direct or indirect interest, even though only a portion of the entire property is

involved in the site plan for which approval is sought; provided, however, that where it is physically impossible to show such entire property or contiguous property or properties on one map, a key map thereof shall be submitted.

(7) The location, names and widths of all existing and proposed streets abutting the premises in question, the property lines of all abutting properties together with the names and addresses of the owners as disclosed on the Borough tax map and tax rolls on file in the Borough offices as of the date of the final site plan application.

(8) A landscaping plan shall be submitted and be subject to review and approval by the Planning Board. The landscaping plan shall show in detail the proposed setback dimensions for all buildings, 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 landscape plan.

(h) PLANNING BOARD REVIEW. The Planning Board shall review the final site plan in the same manner as the preliminary site plan and shall ascertain that all requirements of this Ordinance are complied with.

912. ON-TRACT IMPROVEMENTS. Prior to the granting of final approval of a major subdivision plat or site plan, the applicant shall have installed or furnished performance guarantees as set forth in Section 906 of this Ordinance for the ultimate installation of the improvements described below.

(a) INSTALLATION FOR SUBDIVISIONS. The following improvements shall be required for all major subdivisions:

(1) Street grading. The subdivider shall provide for the grading of all street rights-of-way for their full width and shall provide slope right easements adjacent to the rights-of-way as required.

(2) Sight easements. When required by the Planning Board as being essential to traffic safety, the subdivider shall provide for sight easements at street intersections to allow for proper sight distances.

(3) Pavement and curbs. For local roads - Said paved roadway shall consist of six (6) inches of quarry processed stone, four (4) inches of machine-laid bituminous-concrete stabilized base and two (2) inches of fine aggregate bituminous concrete, machine-laid top course. For Limited Industrial roads - Said paved roadway shall consist of six (6) inches of quarry processed stone, five (5) inches of machine-laid

bituminous-concrete stabilized base, and two (2) inches of machine-laid fine aggregate bituminous concrete top course.

(4) Water. The subdivider shall make an adequate supply of water available to each lot within the subdivision. The subdivider shall provide for the installation of fire hydrants as approved by resolution of the Borough. The installation of all water supply shall be in accordance with the specifications of the public utility serving the area as approved by the State Public Utility Commission.

(5) Drainage. Adequate provisions shall be made for water mains, culverts, storm sewers and sanitary sewers, and all such installations shall be properly connected with an approved system and shall be adequate to handle all present and probable future development. Provisions shall also be made for special problems of drainage during construction.

(6) Lot must be so graded as to prevent erosion or directing of water into adjacent properties.

(7) Sidewalks. The subdivider shall construct a four-foot concrete sidewalk in all nonresidential zones, or as required by the Planning Board.

(8) Shade trees. The subdivider shall plant nursery-grown shade trees on both sides of each street, eight (8) feet in from the curbline so as not to interfere with possible future utilities or sidewalks, not more than fifty (50) feet apart. Shade trees to be of at least one-and-three-fourths-inches in diameter, to be measured one (1) foot above grade, and of the following varieties: oak, linden, sycamore, maple (except silver maple) or locust, and shall be trimmed so lowest branches will be at least six (6) feet above grade. Any shade tree over three (3) inches in diameter measured one (1) foot above grade shall meet the visibility requirements of Subsection 1003 (m) of the Zoning Regulations.

(9) Topsoil and tree protection. Topsoil moved during the course of construction shall be redistributed so as to provide cover to all areas of the subdivision and shall be stabilized by seeding or planting; provided, however, that the depth of the topsoil need not exceed six (6) inches and provided further that said topsoil cover shall be at least four (4) inches in depth. Any trees that are to be removed must be done in such a manner as to comply with all applicable Borough Ordinances.

(10) Street signs. The subdivider shall provide street signs at all intersections as required by the Borough Engineer.

(11) Manholes. The subdivider shall provide locking-type manholes at locations other than in a public street paving.

(12) Gas. The subdivider shall provide gas mains, if gas is available through a public street within two hundred (200) feet of the proposed subdivision, and shall make the necessary cross connections therein.

(13) Survey monuments. To be of the size and shape required by P.L. 1960, Chapter 141 and amendments thereto, and shall be in accordance with such statute.

(b) INSTALLATIONS FOR SITE PLANS. For all site plans:

(1) All off-street parking areas for nonresidential uses permitted in residential zones and all off-street parking areas in non-residential zones, except for single family dwellings in non-residential zones, shall meet the requirements of Subsections 914 (b) (12) to (15).

(2) Every site plan shall show an area reserved for trash or refuse pick-up as approved by the Planning Board. Such area shall be suitably screened and shall be so located on the premises that solid waste trucks have access to such area at all times.

(3) Every site plan shall show provisions for the handicapped in conformance with the Barrier-free Design Regulations of the Uniform Construction Code.

(4) Sidewalks and curbing shall be constructed on the site to adequately serve pedestrian and vehicular traffic unless waived by the Planning Board.

913. OFF-TRACT IMPROVEMENTS. As a condition of preliminary approval and prior to any construction or the filing of an application for final approval of a subdivision or a site plan, the applicant shall make cash payments toward the immediate or ultimate installation of any required off-tract improvements, or, with the consent of the Borough, install and construct all or a portion of the off-tract improvements in the manner provided below.

(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 Borough or any one or more of the foregoing, shall be determined by the Planning Board, with the assistance of the appropriate Borough 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 the periods of usefulness, which periods may be based upon the criteria of Section 1 of P.L. 1980, Chapter 169 and amendments thereto. Requirements for off-tract improvements shall be consistent with Section 30 of P.L. 1975, Chapter 291 and amendments thereto. In addition, the following criteria may also be considered, as well as any other reasonable criteria the Board considers necessary to protect the health, safety and general welfare of the Borough.

(1) Street, curb, sidewalk, shade trees, street lights, 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; and

(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 therefrom.

(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 IMPROVEMENTS. The cost of installation of the required off-tract improvements shall be determined by the Planning Board with the advice of the Borough Engineer and appropriate Borough agencies.

(c) MANNER OF CONSTRUCTION. When these estimates are received pursuant to Subsection (b) above, the Governing Body shall then decide whether the off-tract improvement is to be constructed:

(1) by the Borough as a general improvement, or

(2) by the Borough as a local improvement, or

(3) by the applicant under a formula providing for partial reimbursement by the Borough 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 Borough of one of the following amounts:

(1) If the improvement is to be constructed by the Borough 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 Borough as a local improvement, then in addition to the amount referred to in Subsection (1) above, the estimated amount by which the subject property will be specifically benefited by the off-tract improvement; or

(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 Borough 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 Borough within a period of ten 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 Borough Treasurer provided for herein is less than its appropriate share of the actual cost of the off-tract improvements then it shall be required to pay its appropriate share of the cost thereof.

(3) In the event the payment by the applicant to the Borough Treasurer provided for above is more than its appropriate share of the actual cost of the off-tract improvements, it or its successor 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 revised in appropriate proceedings brought to compel subdivision or site plan 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 of the 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 Borough 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 Borough. 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 Borough 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 Borough's consent decides to install and construct any off-tract improvement or portion thereof, the

certified cost shall be treated as a credit against any future assessment for that particular off-tract improvement, or portion thereof, by the Borough in the same manner as if the subdivider and deposited its apportioned cost with the Borough Treasurer, as provided herein.

(h) INSTALLATION OF IMPROVEMENTS BY APPLICANT.

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

(2) In the event the Borough so elects to contribute to the cost and expense of installation of the off-site improvements by the applicant, the portion contributed by the Borough 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) COMPLIANCE TO DESIGN CRITERIA. Should the applicant and the Borough enter into a contract for the installation and construction of the off-tract improvements to be done by the applicant, it shall observe all requirements and principles of this Ordinance in the design of such improvements.

914. DESIGN STANDARDS.

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

(1) The subdivision plat shall conform to design standards that will encourage good development patterns within the Borough.

(2) The subdivision shall conform to the proposals and conditions shown on the Borough's Official Map and Master Plan particularly as they pertain to streets, drainage rights-of-way, school sites, public parks and playgrounds and other public lands.

(3) No subdivision showing reserve strips controlling access to streets shall be approved except where the control and authority to dispose of land comprising such strips has been placed in the Governing Body under conditions approved by the Planning Board.

(4) No street grade shall be less than one-half of one per cent ($1/2$ of 1%) nor greater than ten per cent (10%),

except in special instances where the topography of the land to be subdivided is such as to make it impossible to otherwise develop such land.

(5) Street intersections shall be as nearly at right angles as is possible and in no case shall be less than sixty (60) degrees. The block corners at intersections shall be rounded at the property line with a radius of not less than twenty-five (25) feet.

(6) Dead-end streets shall not exceed five hundred (500) feet in length, except where unusual topography or other unusual conditions require. In residential subdivisions dead-end streets should provide a turnaround or cul-de-sac at the closed end with an outside curb radius of not less than thirty-five (35) feet, and shall have a right-of-way radius of forty-five (45) feet. In non-residential subdivisions, dead-end streets should provide a turnaround or cul-de-sac at the closed end with an outside curb radius of not less than fifty (50) feet, and shall have a right-of-way radius of sixty (60) feet. All turnarounds shall be entirely paved. Streets temporarily dead-ended shall have at the closed end a four-foot-high white-painted barrier with reflectors in accordance with specifications determined by the Borough Engineer.

(7) No residential block should exceed one thousand (1,000) feet in length unless approved by the Planning Board.

(8) No name applied to any street shall duplicate or so nearly resemble the name of any existing street within the Borough as to cause confusion. In the case of a direct extension of an existing street, the same name shall be used unless the Board shall otherwise direct. The Planning Board shall, in writing, refer the names of all streets to the Borough Council for approval in connection with the purposes of this Subsection prior to final approval. The Borough Council shall by resolution within thirty (30) days of such referral give its approval of names submitted or indicate those street names in conflict with any existing street and recommend a change thereof.

(9) No street shall have a right-of-way width of less than fifty (50) feet and the entire street width shall be graded. Driveway turnarounds shall be provided on all lots fronting on a major arterial street, as shown on the Official Map or Master Plan. Turnarounds will not be required for corner lots when there is a means of access to a non-arterial side street. Subdivisions that adjoin existing streets that do not conform to widths as shown on the Master Plan or widths as required above shall dedicate additional width along one or both sides of said street. Said additional width shall be equal to one-half ($1/2$) the required street width measured from the center line of the street.

(10) Lot dimensions and area shall not be less than the requirements of the Zoning Regulations contained in this Ordinance.

(11) Insofar as is practical, side lot lines shall be at right angles to straight streets and radial to curved streets.

(12) Each lot shall front upon an approved street which is at least fifty (50) feet in width, unless a greater width is required by Subsection 914 (a) (2) above.

(13) 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, or where the subdivision indicates that a variance would be required to provide for an average house meeting zoning requirements, the Planning Board may, after adequate investigation, withhold approval of such lots. Full consideration shall be given to the Critical Areas requirements as set forth in Section 1003(z) of this Ordinance.

(14) The subdivision plat shall conform to the standards promulgated by the Commissioner of Transportation pursuant to the Air Safety and Hazardous Zoning Act of 1983, P.L. 1983, Chapter 260, for any airport hazard area under that act.

(15) Streets shall be so oriented as to permit, within the limits of practicability and feasibility the buildings constructed thereon to maximize solar gain.

(b) SITE PLANS. The applicant shall observe the following requirements and principles in the development of a site plan or portion thereof:

(1) The provisions of this Ordinance with respect to height, minimum lot areas, mandatory open spaces and the like shall be complied with.

(2) Adequate provision shall be made for off-street parking in accordance with this Ordinance and adequate traffic circulation and protection to adjoining property shall be provided.

(3) Adequate provision shall be made for the disposal of storm water as approved by the Borough Engineer.

(4) The location, design or construction of any building shall be such as not likely to involve risks of traffic congestion, public safety or hazard.

(5) 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.

(6) The location, design and construction of any building shall be such as likely to conserve energy and use renewable energy resources within the limits of practicability and feasibility.

(7) All parts of all yards not used for off-street parking areas shall be adequately landscaped, subject to approval by the Planning Board, and maintained in good condition.

(8) All off-street parking areas shall be used only for the parking of automobiles. No commercial repair work or sales of any kind shall be conducted in any parking areas. No sign shall be maintained other than entrance, exit, identification and conditions-of-use signs in any parking area and any such sign shall be no larger than four (4) square feet in area. Nothing herein contained shall be construed to permit any required parking area to be used for the commercial storage of new or used motor vehicles by a new-or-used-car dealer or motor-vehicle rental agency.

(9) All parking areas and structures shall be provided with adequate means of ingress and egress which shall be kept open and unobstructed at all times and which shall be designed to provide service driveways or aisles which meet the following minimum standards:

Longitudinal (end to end)	
parking one way	12 foot width
30' angle parking one way	11 foot width
45' angle parking one way	13 foot width
60' angle parking one way	18 foot width
90' angle parking (open lot)	24 foot width

(10) Any part of any entrance to or exit from any parking area shall be at least ten feet distant from any abutting property located in any residential zone.

(11) Any owners of property in the non-residential zone districts may meet the required parking provisions of this Ordinance by participating in a joint parking program involving two or more business uses; provided, that plans for such a joint program shall have been approved by the Planning Board; and provided further, that the area for the parking facilities shall equal the collective parking area requirements of the participating properties to be serviced.

(12) All off-street parking areas shall be surfaced with a bituminous-concrete pavement with a minimum four-inch crushed stone base and a two-inch wearing surface and maintained in

good condition, and shall be so graded and drained as to dispose of all surface waters to the satisfaction of the Borough Engineer.

(13) All parking spaces within any parking area shall be clearly marked to show the parking arrangement within the parking area.

(14) All lighting for off-street parking areas shall be so arranged and shielded as to reflect the light downward and prevent any light from shining directly on adjoining streets, residential zones and residential buildings.

(15) All parking areas shall be effectively screened on any side which abuts or faces any premises situated in any residential zone or used exclusively for residential purposes by a fence, wall or hedge at least six (6) feet in height, maintained in good condition, if required by the site plan approved by the Planning Board; provided, however, that such fence, wall or hedge may be waived by the Planning Board if, because of topographic or other extraordinary or exceptional conditions, the same shall not be necessary to protect any abutting or facing premises situated in any residential zone.

(16) If any fence, wall or hedge is required for any parking area under Subsection (b) (15) of this Section, then said fence, wall or hedge shall be protected by a concrete curb or bumper guard, or the equivalent, which shall run parallel to said fence, wall or hedge, be at least five (5) inches in height above the paved surface adjacent to said fence, wall or hedge, and be a sufficient distance therefrom to protect the fence, wall or hedge from the impact of motor vehicles. Utility poles or railroad ties shall not be used to meet required curbing or bumper guards.

(17) Off-street parking areas shall be located as hereinafter specified in this Section. Where a distance is specified, it shall be the distance measured from the nearest point of the parking area to the nearest point of the building that such facility is required to serve. For all residential buildings, regardless of the district in which they may be located, and for all nonresidential buildings in residence zoning districts, required parking shall be provided on the same lot with the building.

(18) Off-street parking areas, where permitted, may be placed in any side or rear yard. Off-street parking areas are prohibited in any front yard.

(19) For all nonresidential uses provision shall be made for off-street parking to meet the standards set forth in the following table entitled "PARKING REQUIREMENTS BY LAND-USE" or the standards as set forth on the following table entitled "PARKING

REQUIREMENTS BY FLOOR AREA AND ZONE," whichever results in the greater number of required parking spaces.

PARKING REQUIREMENTS BY LAND USE

<u>LAND USE</u>	<u>MINIMUM PARKING SPACE REQUIREMENTS</u>
Banks - Savings & Loans Financial Institutions	1 space for every 150 sq. ft. floor area
Bars - Taverns - Night Clubs	1 space for every 2 of the maximum occupancy permitted
Beauty Parlor	4 spaces for every operator on maximum shift
Bowling Alley	5 spaces for each alley
Church, or Place of Worship	1 space for every 3 seats
Clubhouse	1 space for every 75 sq. ft. net floor area available to members and guests plus space for every employee
Food Store, Supermarket	1 space for every 200 sq. ft. floor area
Funeral Parlor	1 space for every 3 chapel seats
Medical, Health Care Practitioner	1 space for every 150 sq. ft. floor area
Hospital and Treatment:	One (1) space for each day shift staff facilities member and employee plus one (1) space for each patient bed plus one (1) space for every 300 square feet of building floor area.
Hotel - Motel	1 space for each guest room plus 1 space for every 3 seats in a restaurant or bar plus 1 space for every 100 sq. ft. of floor area for meeting space facilities
Industrial Manufacturing	1 space for every 500 sq. ft.

	floor area
Library	1 space for every 250 sq. ft. of floor area
Liquor Store	1 space for every 250 sq. ft. of floor area
Nursing Home - Convalescent Home - Sanitarium	1 space for every 2 beds
Business & Administration	1 space for every 250 sq. ft. Office floor area
Professional Offices (non-medical)	1 space for every 200 sq. ft. of floor area
Research Office	1 space for every 200 sq. ft. of floor area
Post Office	1 space for every 200 sq. ft. of floor area
Public Building	1 space for each employee plus 1 space for every 400 sq. ft. of floor area open to public
Restaurant, Fast food-sit down	1 space for every 3 seats devoted to service plus 1 space for every 60 sq. ft. of space available to patrons and not occupied by fixed seats
Retail Store	1 space for every 250 sq. ft. of floor area
Schools (Elementary-High)	1 space for each employee and teacher plus 1 space for every 4 auditorium seats
Service Station	1 space for each pump plus 4 spaces for each service bay - minimum of 6 spaces
Tennis Courts	3 spaces for every court
Theater - Auditorium or Places of Assembly	1 space for every 3 seats
Warehouse	1 space for every 1,000 sq. ft. of floor area

Wholesale Establishment

1 space for every 1,000 sq. ft.
of floor area

PARKING REQUIREMENTS BY FLOOR AREA AND ZONE

<u>ZONE</u>	<u>1 PARKING SPACE REQUIRED FOR EVERY:</u>
B Business	250 sq. ft. of floor area
L-1 Limited Industrial	300 sq. ft. of floor area
O-B Office Building	300 sq. ft. of floor area
Hospital Zone	See above

(20) In all residential zones, off-street parking shall be furnished for all new buildings or additions to buildings at a ratio of one usable off-street parking space for each new dwelling unit on the premises upon which said dwelling unit is located. In all residential zones, permitted nonresidential uses shall be provided with one off-street parking space exclusive of any access drives or aisles within the parking area for every two hundred (200) square feet of floor area, or any fraction thereof, of any building used for said use, exclusive of a private garage. Where any permitted nonresidential use is on the same lot with a permitted residential use, both uses shall be provided with off-street parking and the computation for each use shall be made separately and the total number of off-street parking spaces shall be the sum of the number required for each use on the lot. All off-street parking spaces as required by this Subsection shall be provided with adequate access drives and aisles as defined in Subparagraph (b)(9) above.

(21) In all zoning districts, for every building, or part thereof, hereafter erected which is to be occupied for manufacturing, storage, display of goods, a retail store, wholesale store or warehouse, market, laundry, dry cleaning establishment, or other use similarly requiring the receipt or distribution in vehicles of materials or merchandise, there shall be provided and maintained on the same premises with such use off-street loading spaces each one of which shall be at least twelve (12) feet wide, forty (40) feet long and have a fourteen (14) foot overhead clearance according to the following schedule:

(A) Less than or equal to 10,000 square feet
of floor area - 1 space

(B) More than 10,000 and less than or equal to
25,000 square feet of floor area - 2 spaces

(C) More than 25,000 and less than or equal to 40,000 square feet of floor area - 3 spaces.

(D) More than 40,000 and less than or equal to 100,000 square feet of floor area - 4 spaces

(E) More than 100,000 and less than or equal to 250,000 square feet of floor area - 5 spaces

(F) Each additional 200,000 square feet of floor area - 1 space

Loading spaces shall only be permitted in a side or rear yard and no part of such space shall be nearer than five (5) feet to any side or rear property line.

(22) The site plan shall conform to the standards promulgated by the Commission of Transportation pursuant to the Air Safety and Hazardous Zoning Act of 1983, P.L. 1983, Chapter 260, for any airport hazard area under that act.

(23) If any applicant can clearly demonstrate to the Planning Board that, because of the nature of his operation or use, the parking and loading requirements of this Subsection 914 (b) are unnecessary or excessive, the Planning Board shall have the power to approve a site plan showing less paved parking area and loading space than is required by this Subsection; provided, however, that a landscaped area of sufficient size to meet the deficiency shall be set aside and reserved for the purpose of meeting future off-street parking and loading requirements in the event that a change of use of the premises shall make such additional off-street parking space necessary. Anything in this Ordinance to the contrary notwithstanding, no certificate of occupancy shall be valid except for the particular use for which it was issued and any change on any premises previously improved under this Subsection 914 (b) (23) shall only be permitted after a new site plan shall have been submitted to and reviewed and approved by the Planning Board.

915. DEVIATIONS FROM SUBDIVISION AND SITE PLAN REGULATIONS. The rules, regulations and standards as set forth in this Article shall be considered the minimum requirements for the protection of the public health, safety and welfare of the citizens of the Borough of Mountainside. Any action taken by the Planning Board under the terms of this Article shall give primary consideration to the above-mentioned matters and to the health, safety and welfare of the entire community. However, if the applicant can clearly demonstrate that, because of peculiar conditions pertaining to his land, the literal enforcement of one or more of these subdivision or site plan regulations is impracticable or will exact undue hardship, the Planning Board may permit such deviation as may be reasonable and within the general purpose and intent of the rules,

regulations and standards established by this Article. The purpose of this Section is to provide for deviation from the terms of this Article and not from the terms of the zoning regulations of the Borough as set forth in Article 10 of this Ordinance. In making its findings, as required hereinbelow, the Planning Board shall take into account the nature of the proposed development and the existing use of land in the vicinity, the effect of the proposed deviation on the Borough Master Plan, the number of persons to reside or work in the proposed subdivision or on site and the probable effect of the proposed application upon traffic conditions in the vicinity. No deviation shall be granted unless the Planning Board finds:

(a) That there are special circumstances or conditions affecting such property such that the strict application of the provisions of this Article would deprive the applicant of the reasonable use of his land.

(b) That the deviation is necessary for the preservation and enjoyment of a substantial property right of the applicant.

(c) That the granting of the deviation will not be detrimental to the public health, safety and welfare or injurious to property in the area in which such property is situated.

A petition for any such deviation shall be submitted in writing by the applicant at the time the application is submitted. The petition shall state fully the grounds upon which the application is made and the facts upon which the applicant relies for the relief requested. The petition shall be heard by the Planning Board in connection with the application for development.

916. SELLING BEFORE FINAL SUBDIVISION APPROVAL. 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 \$1,000, and each lot disposition so made shall be deemed a separate violation.

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

(a) For injunctive relief; and

(b) 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, Chapter 291, and amendments thereto.

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

ARTICLE 10.
ZONING REGULATIONS

1001. ZONING DISTRICTS. For the purpose of this ordinance, the Borough of Mountainside is hereby divided into seven (7) zoning districts known as:

R-1 Single-Family Residence District
R-2 Single-Family Residence District
R-3 Single-Family Residence District
B Business District
H Hospital Zone
L-I Limited Industrial District
O-B Office Building District

1002. ZONE MAP. The Zone Map delineating the above districts is hereby declared to be a part of this ordinance. The zoning district boundary lines are intended generally to follow street center lines, existing lot lines and the like, as indicated on the Zone Map. Where a zoning district boundary line does not coincide with any such line as above set forth, its location or relation to another boundary line is indicated on the Zone Map by means of figures expressing distance in feet from a street side line or other boundary line.

1003. GENERAL PROVISIONS.

(a) Zoning Affects All Structures, Buildings and Land and Uses Thereof. No land or premises may be used and no building or structure may be erected, razed, moved, extended, enlarged, altered or used for any purpose other than a purpose permitted by this Ordinance for the zoning district in which the land, premises, building or structure is located, and all uses and construction shall be in conformity with the regulations provided for the zoning district in which such land, premises, building or structure is located. Any use which is not expressly permitted shall be considered a prohibited use.

(b) Building Permits, Zoning Permits and Certificates of Occupancy. No building permit and no certificate of occupancy shall be issued by the Construction Official except upon application therefor in conformity with all the provisions of this Ordinance. No zoning permit shall be issued by the Zoning Officer except upon application therefor in conformity with all the provisions of this Ordinance.

(c) Subdivision of Lot. Whenever a new lot or lots is or are formed from part of any other lot or lots, the assembly or separation shall be effected in such a manner as not to impair any of the requirements of this Ordinance.

(d) Yards. There shall be provided for every lot front, rear and side yards as required in the zoning district in which said lot is located. All front yards must face upon a dedicated public street and shall be of the size required for the particular zoning district in which the lot is located; provided, however, that on streets less than fifty (50) feet in width, the required front yard shall be increased by one-half ($1/2$) the difference between the width of the street and fifty (50) feet, and, provided further, that any lot which abuts a street with a proposed right-of-way greater than fifty (50) feet in width as shown on the Master Plan for the streets of the Borough of Mountainside, adopted pursuant to Section 19 of P.L. 1975, Chapter 291, and amendments thereto, shall have a front yard setback measured from the nearest line of the proposed building or structure to the proposed right-of-way line shown on said Master Plan.

No open space which has been counted or included as a part of a side yard, rear yard, front yard, court or other open space as required by this Ordinance for one building may, by reason of change of ownership or for any other reason, be counted or included in order to comply with the yard, court or other open space requirement of any other building.

(e) Accessory Buildings Or Structures. No accessory building or structure shall be built on any lot on which there is not a principal building or use.

(1) The following requirements shall be met in all residential zones:

(A) No accessory building or structure shall have a ground area greater than twenty-five per cent (25%) of the rear yard area, provided in no event shall the floor area of an accessory building exceed six hundred (600) square feet. This Subsection 1003 (e) (1) (A) does not apply to limit the area of driveways or patios.

(B) No accessory building or structure shall exceed the height of the principal building or structure, or sixteen (16) feet, whichever is the lesser height. Where present, flagpoles cannot exceed a height of thirty-five (35) feet.

(C) No accessory building or structure except flagpoles, driveways, private roads, alleys or other facilities for ingress and egress by pedestrians and vehicles, shall be permitted in any front yard.

(D) No accessory buildings or structures shall be located closer than fifteen (15) feet from any principal building situated on the same lot.

(E) An accessory building or structure may be built within any side yard if the distance from the accessory building or structure to the side line of the lot is equal to or greater than the required side yard setback for the principal building or structure on said lot.

(F) No accessory building or structure in any rear yard shall be closer than six (6) feet from any side or rear property line of the lot containing that accessory building or structure; provided however, that no accessory building or structure on any lot the rear lot line of which abuts the side line of any adjoining lot shall be closer than the following distance to the rear line of the lot upon which it is situated along all points of said rear lot line where said rear lot line is coincident with the required side yard or front yard of the principal building or structure on the adjoining property:

one-eighth ($1/8$) the depth of the lot on which the building or structure is situated if the depth of that lot is greater than one hundred-twenty (120) feet;

ten (10) feet if the depth of the lot is less than or equal to one hundred-twenty (120) feet.

Swimming pools as an accessory use shall conform to the setback requirements of Subsection 1008(a)(5).

(G) No accessory building or structure on a corner lot shall be erected nearer to any street side line than the front yard setback required on the lot adjacent to the side lot line of the yard upon which the accessory building or structure is proposed to be located.

(2) The following requirements shall be met in all nonresidential zones:

(A) No accessory building or structure shall have a ground area greater than the ground area of the principal building on the same lot.

(B) No accessory building or structure including flagpoles shall exceed the height of the principal building or structure.

(C) No accessory building or structure except flagpoles, driveways, private roads or other means of ingress and egress, shall be permitted in any front yard.

(D) No accessory building or structure shall be closer to the principal building or structure on the lot on which it is located than ten (10) feet or one-half ($1/2$) the sum of the height of the principal building or structure and said

accessory building or structure, whichever results in the greater distance.

(E) No accessory building or structure may be built within any side yard unless the distance from said accessory building or structure to the side line of the lot is equal to or greater than the required side yard setback for the principal building or structure on said lot.

(F) No accessory building or structure may be built within any rear yard unless the distance from said accessory building or structure to the rear line of the lot is equal to or greater than the required rear yard setback for the principal building or structure on said lot.

(G) No vehicle shall be parked on a lot unless the vehicle relates to the principal use of the lot, unless otherwise approved by the Planning Board.

(f) Second Principal Building or Structure On Same Lot Prohibited.

(1) No lot shall contain more than one (1) principal building or structure.

(g) Required Area Or Space. No lot, yard, parking area or other open space shall be so reduced in area or dimension as to make it less than the minimum required under this Ordinance. No lot, yard, parking area or other open space which is already less than the minimum required under this Ordinance shall be further reduced in area or dimension.

(h) Garages in Residential Zones. Detached garages are prohibited in all residential zones. Attached garages capable of storing not more than three (3) motor vehicles may be provided on a single lot in any residential zoning district. Any boat, recreational vehicle, house trailer, other trailer or truck with a maximum weight-carrying capacity of one and one-half (1 1/2) tons, motor bus or motor home, vans or like vehicles used for commercial purposes, owned or used by a resident on said lot, shall only be permitted on said lot in an enclosed garage. Parking in the front lot or front yard driveways is not permitted. Alternately, not more than two such vehicles may be parked in a side or rear yard of such residential lot provided they are appropriately screened from view of adjoining lots. No truck with a maximum weight-carrying capacity of over one and one-half (1 1/2) tons shall be housed or kept in any residential zone. No house can be erected with a one-car garage unless provision is made in the placement of the house for addition of a second garage without violation of setback and side line requirements. Carports shall not be permitted in any zone.

(i) Existing Platted Lots. Any lot as defined herein existing at the time of the adoption of this Ordinance that fails to comply with the minimum lot area and lot width requirements of this Ordinance may be used for any use not otherwise prohibited in the zoning district in which it lies, provided said lot is not in common ownership as defined in Section 211 of this Ordinance, and further provided all other requirements of this Ordinance are complied with.

(j) Corner Lots. All corner lots shall meet the front yard setback requirements for every abutting street.

(k) Nature And Extent Of Uses Of Land. The control and regulation of the uses of buildings and structures by this ordinance shall apply equally to the nature and extent of the uses of the lot or lots upon which they are erected.

(l) Outdoor Storage.

(1) Outdoor storage of any kind or nature, except storage in the rear or side yards of those items customarily used in conjunction with a residential occupancy, is prohibited in all residential zones.

(2) In all nonresidential zones, outdoor storage is prohibited

(m) Visibility Requirements.

(1) All trees over three (3) inches in diameter measured one (1) foot above grade adjoining street side lines in all zones shall have their branches trimmed at all times to insure unobstructed vision eight (8) feet above street pavement level. On a corner lot within the triangular area determined as provided in this Section, no wall, fence, structure, or other object shall be erected to a height in excess of two (2) feet; no vehicle, object or other obstruction of a height in excess of two (2) feet shall be permitted within the corner clearance area; and no hedge, shrub or other growth shall be maintained at a height in excess of two (2) feet, except that trees whose branches are trimmed away to a height of at least ten (10) feet above the curb level shall be permitted. Such triangular area or "sight triangle" is defined as that area outside the right-of-way which is bounded by the intersecting street lines and the straight line connecting "sight point," one each located on the two intersecting street centerlines. Such points shall be four hundred (400) feet from the intersection with a County road along such County road and five hundred (500) feet from their intersection with a State highway along such highway. Where County roads and State highways intersect, the distance shall be seventy-five (75) feet along the road or highway having the lower traffic volume. Sight points for local roads shall be

seventy-five (75) feet from their intersections along the centerlines of such roads. In addition, no object or other obstruction shall be so located along any straight or curved roads as to reduce the line of sight along said road to less than four hundred (400) feet. Trimming and maintenance of visibility according to these standards shall be the responsibility of the property owner.

(2) Developments involving the creation of new streets or which have driveway access to nonresidential uses shall maintain the visibility requirements set forth in (1) above, but in addition to that there shall be dedicated to the Borough of Mountainside a sight triangle easement. The purpose of said easement is to permit the Borough to enter upon the property to remove obstructions to vision in the event the property owner is not properly maintaining visibility. A sight triangle easements shall be set forth on the plat as follows: "Sight triangle easement subject to grading, planting and construction restrictions as provided in the Mountainside Land Use Ordinance."

(3) Locations of Driveways & Sight Distances.

(A) All entrance and exit driveways to a road shall be located to afford maximum safety to traffic.

(B) Any exit driveway or driveway land shall be so designed in profile and grading and shall be so located to permit wherever possible the following recommended minimum sight distance measured in each direction along the road; the measurement shall be from the drivers position of a vehicle standing on that portion of the exit driveway that is immediately contiguous to the traveled way or shoulder of the road;

<u>Allowable Speed on Road</u>	<u>Sight Distance in Feet</u>
25 MPH	175
30 MPH	250
35 MPH	325
40 MPH	400
45 MPH	450
50 MPH	500
55 MPH	550

(n) Planting And Fences On Street Property Lines. No fence, hedge, shrubbery or planting on any lot in any residential zone shall be permitted within three (3) feet of any street side line. The branches of all trees projecting beyond any such street side line must be trimmed at all times to insure unobstructed vision and clearance eight (8) feet above ground or sidewalk level. Trimming and maintenance of visibility according to these standards shall be the responsibility of the property owner.

(o) Conversion Of Existing Structures. The conversion of an existing structure to a use permitted in the zoning district in which said structure is located is equally subject to the same regulations as are new structures constructed in said zoning district.

(p) Access To Uses. No driveway shall be permitted to any use other than the permitted use on the lot upon which said driveway is located.

(q) Mixed Occupancy. The use of any premises for residential and business, residential and industrial, or business and industrial uses is prohibited in any zone unless specifically permitted in the provisions regulating same.

(r) Residential Front Yard Coverage Limitations. Within the R-1, R-2 and R-3 Districts, no more than thirty (30) percent of the front yard shall be covered by driveways, parking areas, and other impervious improvements.

(s) Signs. Signs shall only be permitted in the Borough of Mountainside as permitted and regulated in Section 1007 of this Ordinance.

(t) Height Exceptions. The height limitations required in each zoning district shall not apply to church steeples. Church buildings, public school buildings and structures, masts, flagpoles, residential receiving antennae, or any municipally owned, leased or operated building, structure or use, shall not exceed forty-five (45) feet in height above the average natural elevation of the ground at the foundation of the structure.

(u) Fences and Retaining Walls.

(1) No permit is required for the construction of any fence or wall which is four (4) feet or less in height. A permit is required to construct a fence or wall which exceeds four (4) feet in height. No fence or wall shall exceed six (6) feet in height in residential zones nor eight (8) feet in height in nonresidential zones. No fence or wall shall be constructed within six inches of a property line or street side line.

(2) No fence or wall running parallel to a principal building, which fence or wall exceeds four (4) feet in height, shall be constructed nearer to the side of the principal building to which it runs parallel than a distance which equals or exceeds the height of said fence or wall.

(3) Necessary retaining walls over six (6) feet in height, and any related fences as may be required under the New Jersey Uniform Construction Code, shall only be permitted after a

site plan review pursuant to Article 9 of this Ordinance.

(4) Fencing shall not be allowed to extend beyond the rear front-yard line of any building unless the fence is of an open type such a split rail or chain-link, and such fence does not exceed four (4) feet in height. As indicated by Section 1003(j), a corner lot shall be considered as having two frontages.

(5) On residential properties, fencing shall not be allowed with barbed wire, sharp or pointed objects on top, electrification or similar devices or projections dangerous to man or animal. On nonresidential properties, no fencing shall be allowed with electrification, but barbed wire or similar fencing shall be permitted for security reasons, as a part of site plan review.

(6) All fences shall be constructed with the finished side facing out.

(v) Projections And Encroachments. Except as hereinafter specified, yards and courts required under this Ordinance shall be entirely free of buildings or parts thereof.

(1) Cornices and eaves may project not to exceed three (3) feet over any required yard or court.

(2) Sills, leaders, belt courses and similar ornamental or structural features may project six (6) inches into any required yard or court. An open fire balcony or fire escape may project into a required yard not more than four (4) feet.

(3) Ground-story bay windows or oriels may project not more than three (3) feet into any required front yard, rear yard or side yard in the R-1, R-2 and R-3 zoning districts.

(w) Design Of Dwellings. No building or structure shall hereafter be erected, constructed, placed, altered or enlarged in any residence zone which shall be like or substantially like any neighboring building, as hereinafter defined, then in existence or for which a building permit has been issued or which is included in the same building permit application, in more than three (3) of the following six (6) respects.

(1) Height of the main roof ridge, or, in the case of a building or structure with a flat roof, the highest point of the roof beams above the elevation of the first floor.

(2) Height of the main roof ridge above the top of the plate (all roofs shall be deemed identical in this dimension).

(3) Length of the main roof ridge, or, in the case

of a building or structure with a flat roof, length of the main roof.

(4) Width between outside walls at the ends of the building or structure measured under the main roof at right angles to the length thereof.

(5) Relative location of windows in the front elevation or in each of both side elevations with respect to each other and with respect to any door, chimney, porch or attached garage in the same elevation.

(6) In the front elevation, both (1) relative location with respect to each other of garage, if attached, porch, if any, and the remainder of the building or structure, and (2) either (a) height of any portion of the building or structure located outside the limits of the main roof, measured from the elevation of the first floor to the roof ridge, or in the case of a flat roof, the highest point of the roof beams, or (b) width of said portion of the building or structure if it has a gable in the front elevation, otherwise length of said roof ridge or said flat roof in the front elevation.

Buildings or structures shall be deemed to be like each other in any dimension with respect to which the difference between them is not more than two (2) feet.

Buildings or structures between which the only difference in relative location of elements is end-to-end or side-to-side reversal of elements shall be deemed to be like each other in relative location of such elements.

In relation to the premises with respect to which a building or structure is sought to be erected, constructed, placed, altered or enlarged, a building or structure shall be deemed to be a neighboring building or structure if the lot upon which it or any part of it has been or will be located is any one of the following lots:

(A) Any lot on the street upon which the building or structure is to be located on said premises would front which is the first or second lot next along said street in either direction from said premises, without regard to intervening street lines.

(B) Any lot any part of the street line frontage of which is across said street from said premises or from a lot referred to in Subparagraph A of this Paragraph.

(C) Any lot any part of the street line frontage of which faces the end of, and is within the width of, said street, if there are less than two (2) lots between said premises and the end of said street.

(D) Any lot on another street which adjoins said premises on such other street.

(E) Any lot any part of the street line frontage of which is across such other street from said premises or from a lot referred to in Subparagraph D of this Paragraph.

(x) Maintenance Of Required Conditions. All requirements of this ordinance pertaining to fences, walls, buffer areas, trees, landscaping, curbs and paving that are shown on a site plan approved by the Planning Board or the Board of Adjustment shall be adequately maintained at all times by the applicant to always meet the conditions of said approved site plan. Any of the listed items in existence upon a property at the time of this Ordinance, whether previously required by the Planning Board or Board of Adjustment or not, shall be adequately maintained at all times.

(y) Airport Hazard Areas. All buildings and land uses in any airport hazard areas delineated under the Air Safety and Hazardous Zoning Act of 1983, P.L. 1983, Chapter 260, shall conform to the standards promulgated by the Commissioner of Transportation pursuant to Section 5 of that act.

(z) Critical Areas. Applications for development shall identify any area, condition or feature which is environmentally sensitive or which, if disturbed during construction, would adversely affect the environment. Density or land development intensity adjustment shall be made based upon the presence of environmental characteristics as identified in the following sections:

(1) Critical areas include areas which are subject to flooding, wetlands, and slopes greater than 15 percent.

(2) Lot size adjustments shall be made if at least 20 percent of a proposed building lot contains one or more of the features identified in (1) above. This adjustment shall apply whether the lot exists or whether it is proposed as a new lot. Portions of a lot which lie in a flood plain or in wetlands shall be credited at 25 percent toward total lot area calculations. Portions of a lot which have slopes of 15 to 20 percent shall be credited at 75 percent toward total lot area; those with slopes of 20 to 25 percent shall be credited at 50 percent toward total lot area; those with slopes of 25 to 35 percent shall be credited at 25 percent toward total lot area; and those with slopes greater than 35 percent shall be credited at 10 percent toward total lot area.

(3) On all lots, these calculations of adjusted lot area shall apply to the zoning standards for minimum lot area, maximum building ground projection area, and maximum lot coverage.

(4) Where development is proposed on slopes greater than 15 percent, as part of the subdivision or site plan application or for applications for building permits, the following additional information, prepared by a licensed New Jersey Engineer or Landscape Architect shall be submitted.

- (A) Erodibility potential of exposed soils.
- (B) Water table depth
- (C) Nature and description of surface soils and ground cover
- (D) Type and location of construction activity including site grading and access roads
- (E) Volume of site grading to include a cut-fill balance sheet, cross-sections, and the volume and source of off-site fill
- (F) Provisions shall be made for the proper disposition of surface water runoff so that it will not create unstable or erosive conditions on the downward slope
- (G) Appropriate storm drainage facilities shall be constructed as necessary for protection of downslope properties
- (H) Any fill placed on the lot shall be properly stabilized and where found necessary, supported by retaining walls or other appropriate structures as approved by the Borough Engineer
- (I) If revegetation and stabilization of filled and regraded areas cannot be made prior to vegetation growing weather, a temporary treatment adequate to prevent erosion shall be installed on those surfaces

Existing residential dwellings or additions to existing residential dwelling shall be exempt from this provision.

1004. CONDITIONAL USE.

(a) Uses Permitted. Pursuant to P.L. 1975, Chapter 291 and amendments thereto, the Planning Board may grant conditional uses as herein permitted and regulated. Said conditional uses shall be limited to:

Institutional Use as defined in Section 230.

Municipal Uses as defined in Section 239.

Community residences for the developmentally disabled and community shelters for victims of domestic violence.

As used in this Ordinance, "community residence for the developmentally disabled" means any community residential facility licensed pursuant to P.L. 1977, Chapter 448 and amendments thereto, providing food, shelter and personal guidance, under such supervision as required, to not more than 15 developmentally disabled or mentally ill persons, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to: group homes, half-way houses, intermediate care facilities, supervised apartment living arrangements, and hostels. In the case of such community residence housing mentally ill persons, such residence shall have been approved for a purchase of service contract or an affiliation agreement pursuant to such procedures as shall be established by regulation of the Division of Mental Health and Hospitals of the Department of Human Services. As used in this Ordinance, "developmentally disabled person" means a person who is developmentally disabled as defined in section 2 of P.L. 1977, Chapter 448, and amendments thereto, and "mentally ill person" means a person who is afflicted with a mental illness as defined in section 7 of P.L. 1965, Chapter 59 and amendments thereto, but shall not include a person who has been committed after having been found not guilty of a criminal offense by reason of insanity or having been found unfit to be tried on a criminal charge.

"Community shelter for victims of domestic violence" means any shelter approved for a purchase of service contract and certified pursuant to standards and procedures established by regulation of the Department of Human Services pursuant to P.L. 1979 Chapter 337, and amendments thereto, providing food, shelter, medical care, legal assistance, personal guidance, and other services to not more than 15 persons who have been victims of domestic violence, including any children of such victims, who temporarily require shelter and assistance in order to protect their physical or psychological welfare.

(b) Applications For Conditional Uses. Application for a permitted conditional use shall be made in accordance with procedures set forth in Article 9 of this Ordinance and the Planning Board shall act on the application in accordance with said procedures. No conditional use shall be granted unless the same will not be detrimental to the health, safety and general welfare of the Borough, is not likely to involve unusual risks of traffic safety or traffic congestion and is reasonably necessary for the convenience of the community.

In reviewing an application for a conditional use, the Board shall give reasonable consideration to:

- (1) Character of the neighborhood.
- (2) Conservation of property values.
- (3) Health and safety of residents and workers on adjacent properties in the surrounding neighborhood.
- (4) Potential congestion of vehicle traffic or creation of undue hazard.
- (5) Pedestrian safety.
- (6) Effect on the use and enjoyment of adjacent properties.
- (7) The nature and intensity of the use.
- (8) Adequacy of utility, drainage and other facilities.
- (9) Stated principles and objectives of this Ordinance and the Master Plan of the Borough.

(c) General Provisions For Conditional Uses. In reviewing an application for any conditional use as herein provided, the Board may impose such conditions and safeguards as it deems appropriate with respect to, among other matters, the minimizing of traffic congestion by appropriate arrangements of entrances and exits to assure public safety. Requirements for conditional uses shall take precedence over any regulations for the zone in which said use is located. Conditional use requirements for the following permitted conditional uses shall be as set forth in subsections (d), (e), (f), (g), and (h) below.

(d) Churches As A Conditional Use. Churches and similar places of worship together with rectories or parish houses or convents of religious groups on the same tract, are permitted as a conditional use in all zoning districts provided said conditional use shall meet all of the following requirements:

(1) Charter. The application shall be accompanied by the existing or proposed charter and by-laws of the organization and such other material as may be required to guarantee to the satisfaction of the Planning Board, the following:

(A) The organization is or will be a bona fide non-profit religious group organized primarily for the benefit of its membership, and such other activities normally carried on by

religious groups.

(B) The organization has been granted exemption from taxation under the laws of both the State of New Jersey and the United States.

(C) The organization will not engage in sales of products or materials to the general public or otherwise engage in activities normally carried on as a business or commercial activity, except that:

(i) The premises may be made available on a rental basis for meetings of other groups, private social functions and the like,

(ii) The organization may conduct intermittent commercial activities open to the general public designed solely to raise funds to support the purposes of the organization or for related or affiliated organizations with charitable, educational or religious purposes, provided such activities are conducted inside of a building or structure. Such activities shall also be permitted outside of a building or structure under the authority of a special license granted by the Governing Body of the Borough of Mountainside, which shall contain such conditions as are considered necessary for the public health, safety and welfare. This paragraph shall not prevent the organization from hiring or otherwise engaging profit-making organizations to conduct fund raising activities, even though a portion of the funds raised is taken by such profit-making organization as a fee, and

(iii) Sale of religious articles, or items having a relation to the cultural or ethnic background or the members of the faith are permitted on a continuous basis, provided that such sales are conducted inside of the building or structure.

(2) Minimum Lot Size. The lot on which the proposed use is to be located shall have a minimum area of 75,000 square feet, and shall have a minimum street frontage of 225 feet.

(3) Lot Coverage. The coverage of the lot by all buildings, structures, sidewalks, parking areas, driveways and other improvements, shall not exceed 50 per cent of the total lot area.

(4) Front Yard. Any building or structure shall conform to the front yard setback requirements for the zone in which it is located.

(5) Side and Rear Yard. Any building or structure shall be setback from the side property lines a distance not less

than the height of the structure or 25 feet, whichever is greater. Any building or structure shall be set back from the rear property line a distance not less than the height of the structure or 50 feet, whichever is greater.

(6) It is not intended that part-time schools which are conducted as an adjunct or supplement to the religious activities of a church, religious organization, or place of worship, such as, but not limited to, Sunday Schools, nursery schools, catechism, hebrew schools, adult education, and the like, create a mixed use as defined herein for the premises on which they are conducted.

(e) Public And Private Schools As A Conditional Use. Public schools covering any or all grades prekindergarten through grade 12, and full time private schools covering any or all grades prekindergarten through grade 12, operated by religious or non-profit organizations, which are not conducted for the purpose of pecuniary profit and which are intended to satisfy state mandated educational requirements, are permitted as a conditional use in all zoning districts, provided said conditional use shall meet all of the following requirements:

(1) Charter. The application shall be accompanied by the existing or proposed charter and by-laws of the organization and such other material as may be required to guarantee to the satisfaction of the Planning Board, the following:

(A) The organization is or will be a nonprofit school organized for educational purposes and such other activities normally carried on by such schools and not for pecuniary profit.

(B) The organization has been granted exemption from taxation under the laws of both the State of New Jersey and the United States.

(C) The organization will not engage in sales of products or materials to the general public or otherwise engage in activities normally carried on as a business or commercial activity, except that:

(i) The premises may be made available on a rental basis for meetings of other groups, private social functions and the like.

(ii) The organization may conduct intermittent commercial activities open to the general public designed solely to raise funds to support the purposes of the organization or for related or affiliated organizations with charitable, educational or religious purposes, provided such activities are conducted inside of a building or structure. Such

activities shall also be permitted outside of a building or structure under the authority of a special license granted by the Governing Body of the Borough of Mountainside, which shall contain such conditions as are considered necessary for the public health, safety and welfare. This paragraph shall not prevent the organization from hiring or otherwise engaging profit-making organizations to conduct fund raising activities, even though a portion of the funds raised is taken by such profit-making organization as a fee, and

(iii) Sale of items, products or materials required of the educational programs or welfare of the students, or accessory to and having a relation to the activities conducted on the premises, such as, but not limited to, books, art materials and school supplies, tickets for student activities, or other school related events, or food for school lunches, are permitted on a continuous basis, provided such sales are conducted inside a building or structure.

(2) Minimum Lot Size. The lot on which the proposed use is to be located shall have a minimum area of ninety thousand (90,000) square feet, plus an additional forty-five thousand (45,000) square feet for every one hundred (100) pupils or portion thereof of maximum capacity, and the lot shall have a minimum street frontage of two hundred twenty-five (225) feet.

(3) Lot Coverage. The coverage of the lot by buildings and structures will not exceed fifteen (15) per cent, and the total coverage of the lot by all buildings, structures, sidewalks, parking areas, driveways and other improvements, shall not exceed forty (40) per cent of the total area of the lot.

(4) Front Yard. Any building or structure shall be set back from the front street line a distance not less than two (2) feet of setback for each one (1) foot of building or structure height of shall conform to the front yard setback requirements of the zone in which it is located, whichever is greater.

(5) Side And Rear Yard. Any building or structure shall be set back from the side property lines a distance not less than two (2) feet of setback for each one (1) foot of building or structure height or forty (40) feet, whichever is greater. Any building or structure shall be set back from the rear property line a distance not less than two (2) feet of setback for each one (1) foot of building or structure height or fifty (50) feet, whichever is greater.

(6) Off-Street Parking. Off-street parking shall be provided at the rate of one (1) parking space for each four hundred (400) square feet of floor area in the school building and any appurtenant structures on the same lot for schools containing

grades under the tenth (10th) grade. For schools containing grades tenth (10th) and/or eleventh (11th) and/or twelfth (12th), off-street parking shall be provided at the rate of one (1) space for each two hundred (200) square feet of floor area in the school building and any appurtenant structures on the same lot. The Planning Board may require additional parking if, in its opinion, the parking spaces prescribed above are not sufficient to insure that the use will not cause parking in a public street during the course of normal educational programs. Such parking area shall not be located within the front yard area nor within twenty-five (25) feet of a property line and shall otherwise comply with all general requirements of Section 914(b) concerning parking areas. In addition, landscape plantings shall be provided in sufficient quantity, location and height, and maintained or replaced as required, to preclude, to the maximum extent possible, the transmission of headlight glare or other lighting to adjacent properties and to preclude, to the maximum extent possible, view of the parking area from a public street.

(7) Exclusions. This Subsection is not intended to apply to part-time schools which are conducted as an adjunct or supplement to the religious activities of a church, religious organization or place of worship, such as, but not limited to, sunday schools, nursery schools, catechism or hebrew schools, adult education, or the like, or as an adjunct or supplement to the activities or programs of chartered membership organizations, but is intended to apply to educational institutions, whether or not operated in conjunction with religious organizations, churches, or places of worship, or chartered membership organizations which are operated on a full-time basis, which offer general academic instruction or training in a skill trade of vocation, and which are intended to fulfill state mandated educational requirements.

(f) Municipal Uses. Municipal buildings and uses, other than parks, are permitted as a conditional use in all zones provided said conditional use shall meet all of the following requirements:

(1) Lot Coverage. The lot coverage by buildings or structures shall not exceed twenty-five (25) per cent.

(2) Off-Street Parking. Sufficient off-street parking area shall be provided to insure that the use will not cause parking in a public street during the course of normal activities.

(3) Screening. Landscape plantings shall be provided in sufficient quantity, location and height to preclude to the maximum extent possible the transmission of headlight glare or other lighting to adjacent properties and to preclude to the maximum extent possible view of the parking area from any public

street.

(g) Community Residences For The Developmentally Disabled And Community Shelters For Victims Of Domestic Violence As A Conditional Use. Community residences for the developmentally disabled and community shelter for victims of domestic violence housing more than six persons excluding resultant staff are permitted as a conditional use in all residential zoning districts provided said conditional use shall meet all of the following requirements in addition to all requirements for a single family residence within such zoning districts:

(1) License Or Certificate. The application shall be accompanied by a copy of the applicant's license issued pursuant to P.L. 1977, Chapter 448, and amendments thereto, in the case that application is for a community residence for the developmentally disabled or by a copy of the applicant's certification and purchase of service contract issued pursuant to standards and procedures established by regulation of the Department of Human Services pursuant to P.L. 1979, Chapter 337, and amendments thereto, in the case the application is for a community shelter for victims of domestic violence;

(2) Off-Street Parking. Off-street parking shall be provided at the rate of one parking space for each 200 square feet of floor area in the building for community residences for the developmentally disabled and at the rate of one parking space for each 150 square feet of floor area in the building for community shelters for victims of domestic violence. The Planning Board may require additional parking if, in its opinion, the parking spaces prescribed above are not sufficient to insure that the use will not cause parking in a public street during the course of normal operations of the use. Such parking area shall not be located within the front yard area nor within twenty-five (25) feet of a property line and shall otherwise comply with all general requirements of Section 914 (b) concerning parking areas. In addition, landscape plantings shall be provided in sufficient quantity, location and height, and maintained or replaced as required, to preclude, to the maximum extent possible, the transmission of headlight glare or other lighting to adjacent properties and to preclude, to the maximum extent possible, view of the parking area from a public street.

(3) Location Within 1500 Feet Of Existing Residence Or Shelter. No proposed community residence for the developmentally disabled or community shelter for victims of domestic violence shall be permitted on a lot which is within 1500 feet of the lot on which is located an existing such residence or shelter.

(4) Sufficient Existing Residences Or Shelters. No proposed community residence for the developmentally disabled or

community shelter for victims of domestic violence shall be permitted if the number of persons, other than residential staff, resident at existing such residences or shelters within the Borough exceeds 50 persons, or 0.5% of the population of the Borough, whichever is greater.

1005. NONCONFORMING USES, LOTS AND STRUCTURES.

(a) Continuance Of Nonconforming Uses Lot Or Structures. Any nonconforming use, lot or structure which lawfully existed at the time of the passage of this Ordinance may be continued upon the lot or in the structure so occupied and any such existing nonconforming structure may be reconstructed or structurally altered, provided it shall meet the requirements of this Section.

(b) Alteration, Extension Or Enlargement Of Nonconforming Uses Or Structures. Nonconforming uses or structures in all zoning districts shall conform to the following requirements:

(1) Any structure or use of land which is nonconforming because of use shall not be enlarged or extended in any manner whatsoever.

(2) There shall be no structural alterations or enlargement made to any nonconforming building or structure that is nonconforming because of use. Structural alterations or enlargements may be made in a building which is nonconforming because it fails to comply with height, area, yard, off-street parking or other like requirements of this Ordinance, so long as the structural alteration or enlargement does not further violate said height, area, yard, off-street parking or other like requirements, and provided that all other provisions of this Ordinance are complied with.

(3) A nonconforming use changed or altered to a conforming use may not thereafter be changed back to a nonconforming use, but nothing hereinbefore stated shall prevent the strengthening or restoring to a safe and lawful condition of any part of any building declared unsafe by the Construction Official, the Chief of the Borough Fire Department or the Borough Engineer. A nonconforming use changed or altered to a different nonconforming use shall be deemed abandoned immediately and the new nonconforming use shall not be considered to be lawfully existing.

(4) In the event that there shall be a cessation of operation of any nonconforming use for a period of twelve (12) consecutive calendar months, the same shall be presumed an abandonment of such nonconforming use. Any subsequent attempt to rely upon, exercise or reinstate such abandoned nonconforming use (the provisions of 1005(a) of this Ordinance notwithstanding) shall

be deemed a violation of the terms of this Ordinance.

(5) Nothing in this Ordinance shall require any change in plans, construction or designated use of a structure or building for which a building permit has been heretofore validly issued or if a variance has been authorized by the Board of Adjustment or if construction has been legally started and diligently prosecuted at the time of the adoption of this Ordinance.

(6) Nothing in this Ordinance shall be construed as authorization for or approval of the continuance of the use of a building, structure or premises in violation of any zoning ordinances, rules or regulations in effect immediately preceding the time of the effective date of this Ordinance unless made conforming by the enactment of this Ordinance.

(7) Restoration Of Existing Buildings Or Structures Which Are Nonconforming Because Of Use. Nothing in this Ordinance shall prevent the restoration or continuance of a nonconforming building or structure which is nonconforming because of its use and which is partially destroyed by fire, explosion, act of God, or of any public enemy, or the like, if the extent of the destruction be not more than fifty per cent (50%) of said value of the whole building or structure at the time of such destruction, then the same may only be reconstructed and thereafter used in such a manner as to conform to all the requirements, terms and conditions of this Ordinance.

(8) Restoration Of Existing Buildings Which Are Nonconforming Because Of Reasons Other Than Use. Nothing in this Ordinance shall prevent the restoration or continuance of a nonconforming building or structure which is nonconforming because it fails to comply with any height, area, yard, off-street parking or other like requirements of this Ordinance, and which is partially destroyed by fire, explosion, act of god, or of any public enemy, or the like; provided, however, that any restoration of any such building or structure shall not enlarge the previously existing nonconformance.

(9) Any nonconforming lot existing at the time of the adoption of this Ordinance that fails to comply with the minimum lot area and lot width requirements of this Ordinance may be used for any use not otherwise prohibited in the zoning district in which it lies, provided said lot is not in common ownership as defined in Section 211 of this Ordinance, and further provided all other requirements of this Ordinance are complied with.

(c) Emergency Housing. In the event that damage resulting from a fire, an explosion, or an act of God renders any single-family dwelling uninhabitable, mobile housing units shall be

permitted to be located on the lot on a temporary basis, not to exceed eight (8) months, unless an extension of time is approved by the Administrative Official. The location of said temporary housing unit requires the approval of the Zoning Officer and of the Borough Engineer and shall not be governed by existing setback requirements of the zone, but shall be set back a minimum of five (5) feet from adjacent properties and shall not be located within a required eight (8) foot sight triangle. Permits required for the emergency housing shall be issued by the Construction Department.

1006. BUILDING AND ZONING PERMITS AND CERTIFICATES OF OCCUPANCY.

(a) Building Permits And Plans. No building or structure or part thereof shall be erected, razed, moved, extended, enlarged, altered or demolished unless and until a permit has been granted by the Construction Official therefore. Application for nonresidential uses shall be filed in quadruplicate with the Construction Official by the owner, or his agent, and shall state the intended use of the structure and the land. The application shall be accompanied by detailed plans and specifications and an application for new buildings or additions to buildings shall be accompanied by a plot plan showing finished grades and existing grades, open spaces, the established building lines within the block upon which the land is located, and such other information as may be required to show that the proposed building or other structure shall comply with all of the requirements of this Ordinance for the zoning district in which the premises are located. Said plan shall be drawn to scale and shall show actual dimensions and figures. All plans, specifications and plot plans shall be signed and sealed by a licensed architect or a licensed professional engineer of the State of New Jersey; provided, however; that the owner of a single-family residence may sign said plans in the event he has prepared them and intends to occupy said premises, and the owner shall file an affidavit to that effect with said plans. A plot plan, but only a plot plan, may be prepared and certified by a licensed land surveyor of the State of New Jersey.

No building permit shall be issued for the erection, razing, moving, extending, enlargement or alteration of any building or structure, or any part thereof, unless and until the plans and intended uses therefor indicate that such building or structure is designed to conform in all respects to the provisions of this and all other applicable ordinances of the Borough of Mountainside. No building permit shall be issued for the erection, razing, moving, extending, enlargement or alteration of any building or structure, or part thereof, in any B, H, I-I or O-B Zoning District unless and until the requirements of Article 9 have been met except that the Construction Official may grant a building permit for internal building construction or alteration in any zone without the necessity of site plan approval by the Planning Board if the

Construction Official is satisfied that the plan as submitted complies with all ordinances of the Borough of Mountainside including building codes. However, building permits shall not be issued for any change in use without the prior approval of the Planning Board or Board of Adjustment.

(b) Zoning Permits. No land shall be occupied or used in whole or in part for any purpose whatsoever unless and until a zoning permit therefor shall have been issued by the Administrative Officer. A zoning permit shall be required for the use of any premises which do not have upon them a building. Whenever there shall be a change contemplated in the use of any premises which do not have a building upon them, a new zoning permit therefor shall be required.

(c) Certificate Of Occupancy.

(1) Industrial/Commercial/Professional: No person, company, firm or corporation shall commence operations or enlarge the premises of any business or industry in the Borough of Mountainside, or change the location of its business or industry from one location to another within the Borough until a Certificate of Occupancy shall have been issued therefore by the Administrative Official.

Similarly, no building, newly erected or newly altered, and no building in which the tenancy of the building shall change, shall be occupied or used in whole or in part for any purpose whatsoever until a Certificate of Occupancy shall have been issued therefore by the Administrative Official.

The Administrative Official may grant a Certificate of Occupancy for offices in an existing building or structure for business, professional, executive or administrative use, or for a warehouse for such specific use, without the necessity of site plan approval by the Planning Board if the Administrative Official is satisfied that the proposed new office or new warehouse use is the same as the use which previously occupied the premises, that the floor plan submitted therefore complies with all of the requirements of the Borough of Mountainside including the applicable building and zoning codes, that the proposed use does not alter the traffic and parking patterns of the prior tenancy, and does not endanger the health, safety and welfare of the citizens.

(2) Residential: No change in occupancy of a residential dwelling which results from a change in ownership or, if the residential dwelling is occupied pursuant to a lease, from a change of tenant, shall occur until a Continued Certificate of Occupancy has been obtained. In connection with the issuance of such Continued Certificate of Occupancy, the Administrative

Official or Building Official shall determine that the residence conforms to all applicable regulations and ordinances of the Borough of Mountainside.

(d) Time Limitation. The Administrative Officer shall issue or deny a zoning permit within ten (10) days of the application therefor where site plan approval by the Planning Board is not required and within ten (10) days after action on the site plan by the Planning Board where site plan approval is required. The Administrative Officer shall issue or deny a certificate of occupancy within ten (10) days of the application therefor where site plan approval by the Planning Board is not required, and within ten (10) days after action on the site plan by the Planning Board where site plan approval is required.

(e) Prerequisite For The Issuance Of Zoning Permits Or Certificates Of Occupancy. No zoning permit or certificate of occupancy shall be issued by the Administrative Officer until he has ascertained that all the requirements of this Ordinance and any other applicable Borough or state regulations and ordinances, Board of Adjustment decisions, necessary resolutions of the Governing Body of the Borough, and the site plan as approved by the Planning Board have been and are fully complied with except as hereinafter provided. All improvements shown on any site plan shall have been installed on the premises in question before any zoning permit or certificate of occupancy, as the case may be, shall be issued, except that such may be issued if the person making such improvements shall post good and sufficient bond with an acceptable surety company.

(f) Terms And Conditions. A zoning permit or certificate of occupancy shall specify the use of the land, or building or buildings, as the case may be, and any terms or conditions imposed thereunder. Any change in use shall be treated as a new use and a new zoning permit or certificate of occupancy, as the case may be, shall be required therefor. Before any zoning permit or certificate of occupancy, as the case may be, shall be issued for any such change in use, all provisions of this Ordinance shall be complied with in the same manner as if the new use were an initial use of land or a new structure or building.

(g) Records. It shall be the duty of the Administrative Officer and the Construction Official, respectively, to keep records of all applications for building permits, zoning permits or certificates of occupancy and of all such permits and certificates issued, together with a notation of all special terms or conditions imposed thereunder. Each shall be responsible for the filings and safekeeping of all plans and specifications submitted to him with any application, and the same shall form a part of the records of his office and shall be available to all officials of the Borough

of Mountainside. Copies of any permits or certificates shall be furnished upon request to any person who shall have a right thereto by law.

(h) Violations. The use or occupancy of land or buildings prior to securing of a building permit, zoning permit or a certificate of occupancy, as the case may be, when one is required, shall be a direct violation of this Ordinance and shall subject the violator or violators to the penalties hereinafter prescribed.

1007. SIGNS.

(a) Procedure To Obtain Sign Or Permit.

(1) No sign of any kind or description shall be constructed, erected or altered in any way without a permit issued by the Administrative Official after approval as set forth hereafter, except those signs which are exempt under the provisions of Section 1007 (d). The Administrative Official may issue a permit for a replacement sign for an existing tenant which is substantially the same size, shape, coloring, lettering, illumination and material construction and in the same location as an existing and previously approved sign without referral to the Planning Board or Board of Adjustment as long as the replacement sign conforms in all ways with this ordinance.

(2) All applications for sign permits shall be made on forms provided by the Construction Official.

(3) Applications must be submitted to the Secretary of the Borough Planning Board, or to the Secretary of the Board of Adjustment if the application is made to that Board pursuant to Subsection (4), at least three (3) weeks prior to the regular monthly meeting of the Board.

(4) All applications for sign permits, except those exempt from Board approval, shall be considered and voted upon by the Planning Board, except that, if the Board of Adjustment is considering an application for the premises upon which the sign application is made, it may concurrently consider and vote upon the sign application. The Board of Adjustment shall follow the same procedures and be guided by the same standards as the Planning Board as set forth in this Section.

(5) If the application is approved by the Planning Board or the Board of Adjustment, the Construction Official shall issue a permit after receiving payment of the requisite fees.

(6) In addition to the required fees for sign permits, a cash bond of one hundred dollars (\$100) for each

temporary sign, as defined by Section 265.16 of Article 2, shall be deposited and held by the Borough Clerk for each such sign to insure the removal of the sign after it has served its purpose.

(7) The Construction Official shall be responsible to ensure that approved signs are properly constructed, installed and/or erected. He shall be responsible for the inspection, including factors of structural safety and stability, in accordance with the provisions of this Ordinance and of the Building Code.

(8) No permit need be applied for or obtained in order to repair, service, or otherwise maintain a sign for which a permit has previously been issued and is still in effect; provided that the sign is not altered, extended, enlarged or relocated.

(b) Expiration Of Permit. All permits for permanent signs shall expire on the 31st day of December and may be renewed upon application prior to that date in accordance with the ordinance.

(c) Signs Prohibited In All Zones Of The Borough. Signs of the following types, or types closely related to them are specifically prohibited in all zones in the Borough:

- (1) Billboards and outdoor display structures.
- (2) Projecting signs.
- (3) Pylon signs.
- (4) Roof signs.
- (5) Marquee signs.
- (6) Awning signs.
- (7) Banners, streamers and advertising flags.
- (8) Fence signs, except those necessary for safety, such as "High Voltage."
- (9) Advertising signs tacked, pasted, painted or otherwise attached on poles, posts, trees, fences, sidewalks or curbs.
- (10) Illuminated signs of the flashing or animated type or illuminated signs which in the judgement of the licensing authority will in any way interfere with traffic.
- (11) Silhouette, cutout three-dimensional, caricature signs or signs of the startling or bizarre nature or

which would in the opinion of the licensing authority be disruptive to traffic flow and safety.

(12) Signs producing glare.

(13) Portable signs which are signs, usually of a temporary nature, not securely anchored to the ground or to a building or structure and which obtain some or all of their structural stability with respect to wind, or other normally applied forces, by means of their geometry or design.

(14) Commercial and advertising displays and merchandise within twenty (20) feet of any property line.

(15) Signs not accessory to or describing the business actually conducted at the property.

(d) Exempt Signs. The following signs shall be exempt signs. All other signs require a permit and payment of a permit fee and posting of bond where applicable, as set forth in Section 701 and Section 1007 (a) (6).

(1) Real estate signs not exceeding six (6) square feet, which advertise the sale, rental or lease of the premises on which the sign is located. Maximum of one per building lot; and such sign shall not be placed on trees or utility poles. Such signs shall be removed within 7 days of the sale, rental or lease of the premises.

(2) Bulletin boards not over twenty-four (24) square feet in area providing information of scheduled public, charitable or religious events when located on the premises of a public, charitable or religious institution.

(3) Residence designations.

(4) Driveway warning signs (wall, ground or sidewalk type) on the grounds of libraries, schools, churches or other public buildings. Not more than one (1) per driveway entrance, and not more than one (1) square foot in area.

(5) Directional signs (ground type) not exceeding one (1) square foot in area, provided that no such sign shall remain for more than two (2) days.

(e) Revocation Of Permit To Erect Or Maintain sign. A permit to erect or maintain a sign may be revoked for any one or more of the following causes:

(1) Whenever the application submitted in obtaining the permit is found to be false or misleading.

(2) Whenever any of the provisions of this Ordinance are violated.

(3) Whenever any agreement made with the Borough or any municipal agency for the purpose of securing a permit has been violated.

(4) Whenever the permittee erects or maintains the sign on a location or property other than the one applied for.

(5) Whenever the advertising area of the sign is in excess of the area specified in this Ordinance or in the permit.

(6) Whenever the structure or sign for which the permit was obtained is not being maintained in a safe, sound and good condition.

(7) Whenever a complaint is made and verified that the sign is being maintained upon public property without the written permission of the governing authority controlling same.

(8) Whenever a complaint is made and verified that the sign is being maintained upon property without the consent of the owner or his duly authorized agent.

No permit will be revoked for any of the above causes until written notice of revocation has been given the permittee, which notice shall be served either personally or by certified mail. Any permittee will be given a hearing before the Municipal Court if he so requests in writing addressed to the Municipal Court Clerk within five days after service of the notice. If the permittee does not request such hearing within five days, the permit shall be automatically revoked.

(f) Removal Upon Revocation Of Permit

(1) As soon as a permit for the maintenance of a sign is revoked, the permittee shall remove the sign and any associated advertising structure and in case the sign is a wall sign, obliterate it entirely.

(2) If the permittee fails to so remove the sign within the period of time specified by the Construction Official in the revocation notice, the Construction Official may immediately cause said sign to be removed and the cost and expense incurred shall be charged against the permittee. A bill rendered for the cost of the removal, unless paid on demand, shall bear legal interest charges, and collection shall be made accordingly.

(g) Illuminated Signs: Special Requirements. The application for a permit for creation of a sign, except a residence

designation if it shall comply in all other respects, shall be granted subject to the applicant's furnishing the Construction Official within fifteen (15) days after the completion of the construction and/or the erection of the illuminated sign, a New Jersey Uniform Construction Code Permit showing that the sign has been properly installed insofar as the wiring connections and other electrical requirements. In the event that said Uniform Construction Code Permit is not filed with the Construction Official within fifteen (15) days after the completion and erection of said sign, the permit therefor shall be revoked by the Construction Official. In no case shall illuminated signs interfere with traffic.

(h) Nonconforming Signs. Any permanent sign lawfully in existence at the time of the passage of this Ordinance, the erection or placing of which is prohibited hereunder, may be continued. However, at no time shall such sign be altered, rebuilt, enlarged, extended or relocated until application has been made hereunder as though for a new sign. The failure to keep a nonconforming sign painted, illuminated, if illumination is normally provided, or in good repair for a period of six (6) months, shall constitute abandonment, and such sign may not be reused and must be removed.

(i) Residential Zone: Sign Restrictions. Only the following signs may be erected in any residential zone.

(1) Exempt signs.

(2) Official signs.

(3) Builders', architects', developers' and engineers' temporary signs erected on the site of construction during the course of any building or developing operations; not more than one (1) sign per construction site or subdivision, and not larger than three by four (3 x 4) feet.

(4) Public information signs, located at roadside, erected by service clubs, churches, public buildings, charitable or civic organizations, hospitals or similar organizations, not exceeding three (3) square feet in area.

(5) Developers' directional signs, placed at intersections during period of sale of development, not exceeding six (6) square feet in area. The permit for any such sign shall be renewable every six (6) months.

Illuminated signs shall not be permitted in a residential zone, except residence designation may be illuminated with a maximum of twenty-five (25) watts incandescent or equivalent.

(j) Business, Hospital, Limited Commercial And Industrial Zones: Sign Restrictions. In any business, hospital, limited commercial or industrial zone only the following signs may be created and subject to the following limitations:

- (1) Exempt signs.
- (2) Signs permitted in Section 1007 (i).

(3) Enterprise identification signs (wall type) not more than three (3) feet in height and not exceeding a total of ten percent (10%) of the face of the first floor facade, including the window area and door area, on which the sign is located. Such signs shall be limited to two (2) per building except for multiple retail establishments in one building where each such establishment may have one (1) sign.

(4) Window signs not exceeding twenty-five per cent (25%) of the glass area of the window in which it is located or ten per cent (10%) of the glass area of the door on which it is located. Such signs shall be included in the calculation of total wall sign coverage as specified in Section 1007 (j) (3).

(5) Enterprise identification signs (ground type), one (1) per building, to be erected wholly within the front property line and at right angles thereto as close as practical to the property line nearest the oncoming traffic, or parallel to the building within twenty (20) feet of the front face of the building. Such sign shall not be larger than fifty (50) square feet in area, with a display height no greater than twice its width. The top of the sign shall be no higher than eighteen (18) feet and the bottom of the sign shall be no lower than six (6) feet above ground level at the point of placement so as not to obstruct the view of oncoming traffic upon egress from any driveway on the site. No such sign shall be illuminated by red or green light if situated within two hundred (200) feet of any street intersection.

(6) No sign of any type shall be permitted to obstruct driving vision, traffic signals, signs, or other safety devices, or other places of business.

(7) No more than three (3) signs shall be permitted or any business establishment.

(8) No sign shall be permitted which is not accessory to the business conducted on the property, unless otherwise permitted by the Ordinance.

1008. R-1 SINGLE FAMILY RESIDENCE DISTRICT

(a) Primary Intended Use. This zoning district is

designed for single-family residential use. The only other uses permitted in this zone are:

(1) Accessory uses customarily incident to the above use provided they do not include any activity commonly conducted for gain; provided, however, the home office of a member of a recognized profession is permitted if said professional office is incidental to the residential occupation, is conducted by a member of the residential family entirely within a residential building and the office is that of a doctor, physician, dentist, optometrist, minister, architect, landscape architect, professional engineer, lawyer, artist, author, musician or any other another similar professional occupation which may be so designated as similar by the Board of Adjustment upon a finding by that 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 in no way adversely affects the safe and comfortable enjoyment of property rights in any zone to a greater extent than for the professional occupations listed herein. The issuance of a state or local license for regulation of any occupation is not necessarily dispositive of the professional character required by this subsection. Nothing contained herein shall be construed to permit farm animals or fowl of any kind; provided, however, riding horses are a permitted accessory use if they are kept within an enclosure which will prohibit said horses from coming closer than fifty (50) feet to any property line.

(A) Said practitioner shall be the owner or lessee of such residence.

(B) Said practitioner shall reside in the subject residence.

(C) Said practitioner shall not have the services of more than one (1) other employee in his employ assisting in his practice (who need not be resident therein).

(D) Such office shall be limited to the first floor in such residence and shall not occupy an aggregate amount of space in excess of fifty per cent (50%) of the floor area of such first floor.

(E) And no patient shall remain therein overnight.

(2) Conditional uses as permitted and regulated in Section 1004.

(3) Private garages as regulated in 1003(h).

(4) Parking and parking areas in conformance with Section 914 (b)(20), provided that where the principal use is residential, parking shall only be permitted in areas paved or covered with gravel which, together with any driveway or similar access, cover no more than 30 percent of the front yard area. Any access to such parking areas shall be through a curb cut, and that portion of the access from the street pavement to the property line shall be paved.

(5) Private swimming pools; provided, however, all appurtenances and the water line of said pool shall not be closer than ten (10) feet to any side or rear lot line, and on corner lots no part of any private swimming pool shall be constructed within the front yard requirement for either street.

(A) Lights used or maintained in connection with a private swimming pool shall be so located that the direct source of light is not visible from an adjacent property.

(B) No private swimming pool shall be used other than as an accessory use.

(b) Prohibited Use. Any use other than those uses listed in 1008(a) is prohibited.

(c) Required Conditions. The following requirements must be complied with in the R-1 Residence District.

(1) Height. No building shall exceed a maximum of two and one-half (2 1/2) stories or thirty-five (35) feet in height, whichever is the lesser.

(2) Front Yard. There shall be a front yard of not less than thirty (30) feet.

(3) Side Yard. There shall be two (2) side yards, neither of which shall be less than ten (10) feet or ten per cent (10%) of the lot width, whichever is the greater.

(4) Rear Yard. There shall be a rear yard of at least thirty (30) feet.

(5) Minimum Lot Area. Each lot shall have a minimum lot area of twenty thousand (20,000) square feet and a minimum lot width of one hundred ten (110) feet; provided, however, that no lot fronting on a cul-de-sac or curved street shall measure less than fifty (50) feet along the arc of its front street property line. The minimum lot area of twenty thousand (20,000) square feet shall be computed within two hundred (200) feet of the front street side line, and shall be adjusted in accordance with the Critical Area provisions set forth in Section 1003(z) of this Ordinance.

(6) Maximum Building Size. No single-family building shall have a foundation area, measured by the whole outer boundary of ground penetration, which exceeds fifteen percent (15%) of the lot area as adjusted in accordance with the Critical Area provisions set forth in Section 1003(z) of this Ordinance. Where present, porches, decks, or any other ground projection structures, including roof and building overhangs, shall not exceed twenty-five percent (25%) of the maximum building size requirement.

(7) Maximum Lot Coverage. Lot coverage shall not exceed thirty percent (30%) of the lot area as adjusted in accordance with the Critical Area provisions set forth in Section 1003(z) of this Ordinance.

1009. R-2 SINGLE-FAMILY RESIDENCE DISTRICT.

(a) Primary Intended Use. This zoning district is limited to single-family residential use. The only other uses permitted in this zone are:

(1) Accessory uses customarily incident to the above uses provided they do not include any activity commonly conducted for gain; provided, however, the home office of a member of a recognized profession is permitted if said professional office is incidental to the residential occupation, is conducted by a member of the residential family entirely within a residential building and the office is that of a doctor, physician, dentist, optometrist, minister, architect, landscape architect, professional engineer, lawyer, artist, author, musician or any other similar professional occupation which is so designated as similar by the Board of Adjustment upon a finding by that 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 in no way adversely affects the safe and comfortable enjoyment of property rights in any zone to a greater extent than for the professional listed herein. The issuance of a state or local license for regulation of any occupation is not necessarily dispositive of the professional. Nothing contained herein shall be construed to permit farm animals or fowl of any kind; provided, however, riding horses are a permitted accessory if they are kept within an enclosure which will prohibit said horses from coming closer than fifty (50) feet to any property line.

(A) Said practitioner shall be the owner or lessee of such residence.

(B) Said practitioner shall reside in the subject residence.

(C) Said practitioner shall not have the

services of more than one (1) other employee in his employ assisting in his practice (who need not be resident therein).

(D) Such office shall be limited to the first floor in such residence and shall not occupy an aggregate amount of space in excess of fifty per cent (50%) of the floor area of such first floor.

(E) And no patient shall remain therein overnight.

(2) Conditional uses as permitted and regulated in Section 1004.

(3) Private garages as regulated in Section 1003(h).

(4) Parking and parking facilities conforming to Section 1008(a)(4).

(5) Public parks and playgrounds.

(6) Private swimming pools as permitted and regulated in the R-1 Zone.

(h) Prohibited Use. Any use other than those uses listed in Section 1009(a) is prohibited.

(c) Required Conditions. The following requirements must be complied with in the R-2 Residence District.

(1) Height. No building shall exceed a maximum of two and one-half (2 1/2) stories or thirty-five (35) feet in height, whichever is the lesser.

(2) Front Yard. There shall be front yard of not less than thirty (30) feet.

(3) Side Yard. There shall be two (2) side yards, neither of which shall be less than eight (8) feet or ten per cent (10%) of the lot width, whichever is the greater.

(4) Rear Yard. There shall be a rear yard of at least thirty (30) feet.

(5) Minimum Lot Area. Each lot shall have a minimum lot area of fifteen thousand (15,000) square feet and a minimum lot width of one hundred (100) feet; provided, however, that no lot fronting on a cul-de-sac or curved street line shall measure less than fifty (50) feet along the arc of its front street property line. The minimum lot area of fifteen thousand (15,000) square feet shall be computed within one hundred fifty (150) feet

of the front street side line and shall be adjusted in accordance with the Critical Area provisions set forth in Section 1003(z) of this Ordinance.

(6) Maximum Building Size. No single-family building shall have a foundation area, measured by the whole outer boundary of ground penetration, which exceeds fifteen percent (15%) of the lot area as adjusted in accordance with the Critical Area provisions set forth in Section 1003(z) of this Ordinance. Where present, porches, decks, or any other ground projection structures, including roof and building overhangs, shall not exceed twenty-five percent (25%) of the maximum building size requirements.

(7) Maximum Lot Coverage. Lot coverage shall not exceed thirty percent (30%) of the lot area as adjusted in accordance with the Critical Area provisions set forth in Section 1003(z) of this Ordinance.

1010. R-3 SINGLE-FAMILY RESIDENCE DISTRICT.

(a) Primary Intended Use. This zoning district is limited to single-family residential use. The only other uses permitted in this zone are:

(1) Limited non-residential uses as permitted and regulated in subsection 1009(a)(1).

(2) Conditional uses as permitted and regulated in Section 1004.

(3) Private garages as regulated in Section 1003(h).

(4) Parking and parking facilities conforming to Section 1008(a)(4).

(5) Public parks and playgrounds.

(6) Private swimming pools as permitted and regulated in the R-1 Zone.

(b) Prohibited Use. Any use other than those uses listed in Section 1010(a) is prohibited.

(c) Required Conditions. The following requirements must be complied with in the R-3 Residence District.

(1) Height. No building shall exceed a maximum of two and one-half (2 1/2) stories or thirty-five (35) feet in

height, whichever is the lesser.

(2) Front Yard. There shall be a front yard of not less than thirty (30) feet.

(3) Side Yard. There shall be two (2) side yards neither of which shall be less than eight (8) feet or ten per cent (10%) of the lot width, whichever is the greater.

(4) Rear Yard. There shall be a rear yard of at least thirty (30) feet.

(5) Minimum Lot Area. Each lot shall have a minimum lot area of ten thousand (10,000) square feet, and a minimum lot width of seventy-five (75) feet, provided, however, that no lot fronting on a cul-de-sac or curved street shall measure less than fifty (50) feet along the arc of its front street property line. The minimum lot area shall be adjusted in accordance with the Critical Area provisions set forth in Section 1003(z) of this Ordinance.

(6) Maximum Building Size. No single-family building shall have a foundation area, measured by the whole outer boundary of ground penetration, which exceeds fifteen percent (15%) of the lot area as adjusted in accordance with the Critical Area provisions set forth in Section 1003(z) of this Ordinance. Where present, porches, decks, or any other ground projection structures, including roof and building overhangs, shall not exceed twenty-five percent (25%) of the maximum building size requirements.

(7) Maximum Lot Coverage. Lot coverage shall not exceed thirty percent (30%) of the lot area as adjusted in accordance with the Critical Area provisions set forth in Section 1003(z) of this Ordinance.

1011. B BUSINESS DISTRICT

(a) Primary Intended Use. This zoning district is limited to business uses of a strictly retail sales and service nature. The only other uses permitted in this zone are:

(1) Conditional uses as permitted and regulated in Section 1004.

(2) Business and professional offices, banks, savings and loan associations and other lending agencies.

(3) Accessory uses customarily incident to the principal uses set forth in subsections (a)(1) and (a)(2).

(4) Off-street parking facilities including public

or private parking lots conforming to Section 914(b).

(b) Prohibited Use. Any use other than those uses permitted in Section 1011(a) above is prohibited and more particularly, but not by way of limitation, none of the following uses shall be permitted.

(1) Residential construction or conversion either as a separate structure or combined with a permitted business structure.

(2) Any business, including sales or services conducted outside the confines of a building.

(3) Used car sales as a principal use. Used car sales are permitted as an accessory use to a business where new cars are sold within the confines of a building in conformity with this Section, provided the area devoted to the sale of used cars is no larger than the floor area of the building used for new car sales.

(4) Junkyards or the dismantling of automobiles.

(5) Outdoor amusements.

(6) Eating establishments where food and drink are consumed outside the confines of a structure on the premises.

(7) Warehouses unless an accessory use.

(8) The bulk storage of crude oil or other inflammable liquids or explosives aboveground.

(9) Any industry, manufacturing, processing, producing or fabricating of any materials as a principal use. For purposes of this Ordinance, laundries, bakeries, printing shops, dry-cleaning establishments and other businesses in which a product is produced as part of the operation of the business shall be deemed to be industries when they employ more than ten (10) persons or use production machinery totaling more than ten (10) horsepower, but it is not intended that a retail store or service such as a hotel, department store or bank shall be considered an industry despite having more than ten employees.

(c) Required Conditions. The following requirements must be complied with in the B Business District.

(1) Height. No building shall exceed a maximum of two and one-half (2 1/2) stories or thirty-five (35) feet in height, whichever is the lesser.

(2) Front Yard. There shall be a front yard of not less than five (5) feet. Corner lots shall have a setback of five (5) feet on the side street.

(3) Side Yard. There shall be a side yard on each side of the business building of not less than ten (10) feet. Off-street parking as required in Section 914(b) is permitted in the side yards.

(4) Rear Yard. There shall be a rear yard of not less than thirty (30) feet. Off-street parking as required in Section 914(b) is permitted in the side yards.

(5) Minimum Lot Area. Each lot shall have a minimum lot area of three thousand (3,000) square feet, with a minimum lot width of thirty (30) feet.

(6) Screening. There shall be required a six-foot high woven cedar fence or other screening fence as approved by the Planning Board to prevent visibility along the business zone side of the common boundary line separating all business zones from abutting residence zones. The finished side of such fence shall face the abutting residential zone.

(7) Performance Standards. Before issuance of any building or occupancy permit for any use, all of the regulations and requirements of Section 1013 must be complied with.

1012. H HOSPITAL ZONE.

(a) Primary Intended Use. This zoning district is limited to hospitals and parking.

(b) Prohibited Use. Correctional institutions, or institutions exclusively for the treatment of mental disorders or chemical or alcohol dependency are prohibited, as is any use other than those uses listed in Section 1012(a).

(c) Required Conditions. The following requirements must be complied with in the H Hospital Zone.

(1) Height. No building shall exceed three (3) stories or thirty-five (35) feet in height, whichever is the lesser.

(2) There shall be a front yard on one hundred seventy-five (175) feet and there shall be no further encroachment into the front yard than the line of the existing building. At-grade parking shall be permitted in the front yard provided the impervious surface therefore does not exceed twenty-five (25%) percent of the total front yard area.

(3) Side Yard. There shall be a side yard on the South (Knightsbridge Road) side of the building which averages not less than 125 feet, and on the North side of the building which averages no less than 100 feet. Included in each of these side yards is a buffer area measuring forty (40) feet from the property line. Measurement of the average side yard setback shall be taken at 10 foot intervals along the side lot line measured perpendicular to the side lot line to the nearest point of the building. The resulting distances shall be averaged. Off-street parking as set forth in Section 914(b), as amended for the H Zone, is permitted in the side yards, outside the required buffer area, except that structured parking shall be considered part of the building for purposes of measuring side yard setbacks.

(4) Rear Yard. There shall be a rear yard of not less than forty (40) feet. Off-street parking as set forth in Section 914(b), as amended for the H Zone, is permitted in the rear yard, outside the required buffer area, except that structured parking shall be considered part of the building for purposes of measuring rear yard setbacks.

(5) Lot Area. It is the intent of this Ordinance not to permit any subdivision of lots within this zone, retaining the existing lot pattern as the maximum allowable lot area.

(6) Maximum Building Size. The maximum building ground projection area for all buildings on a lot shall not exceed twenty-five percent (25%) of the lot area, with structured parking counted toward building ground projection area.

(7) Maximum Lot Coverage. Lot coverage shall not exceed fifty-five (55%) percent of the lot area.

(8) Maximum Floor Area Ratio: The floor area ratio shall not exceed thirty-eight (38%) percent of the lot area. The floor area of all buildings and structures, including parking structures, shall be included in the calculation, and said floor area shall be certified by a licensed architect or engineer.

(9) Buffer Area. Wherever a lot within the H Zone abuts any residence zone, there shall be provided within said H Zone lot, a buffer strip area of at least forty (40) feet in width which shall include evergreen shrubbery and a row of twelve foot shade trees planted not more than fifteen (15) feet apart, and a six-foot woven cedar fence or other screening fence as approved by the Planning Board to prevent visibility. The finished side of the fence shall face the residential zone, and such fence shall be situated within the buffer area near the common boundary line. The buffer area shall be used for no other purpose than as above regulated.

1013. L-I LIMITED INDUSTRIAL DISTRICT.

(a) Primary Intended Uses. The uses permitted in this zoning district are business, professional, executive or administrative office purposes, scientific or research laboratories, warehousing and limited industrial and manufacturing uses, the nature of such industrial and manufacturing uses being dependent upon their compliance to performance standards of Section 1013(d) and commercial uses of a strictly wholesale sales and services nature. The intensity of operations shall not exceed the limitations imposed by the performance standards set forth in Section 1013(d). Before issuance of a building or occupancy permit, the Planning Board shall review and approve a site development plan of the proposed use. The Planning Board shall ascertain that all the requirements of this Section are complied with. All uses permitted shall be conducted wholly within a completely enclosed building except for loading and unloading operations, on-site parking of delivery vehicles, and the storage of any products (such as propane) which are required to be located outside an enclosed building. No display of wares shall be visible from the outside of the building.

(b) Prohibited Use. Any use other than those uses permitted by Section 1013(a) above is prohibited. No use shall be permitted which will in any manner create any dangerous, injurious, noxious or otherwise objectionable fire, ^{poisonous} explosive, radioactive or other hazard noises or vibration; smoke, dust, odor or other form of air pollution; heat, cold, dampness, movement of air; electrical or other disturbance; glare; liquid or solid waste in any manner or amount unless that use conforms to the performance standards of Section 1013 (d) and no use shall be permitted which is detrimental to the health, safety, morals or general welfare of the Borough of Mountainside. In addition, retail sales or service establishments are prohibited in the L-I zone, as is any use that is prohibited in the B zone with the exception of those uses listed in Section 1011 (b)(7) and (9) which are permitted as regulated by this Section.

(c) Required Conditions. The following requirements must be complied with in the L-I Limited Industrial District.

(1) Height. No building shall exceed a maximum of three (3) stories or thirty-five (35) feet in height, whichever is the lesser.

(2) Front Yard. There shall be a front yard of not less than thirty (30) feet; provided, however, no building shall be set closer to Route 22 than fifty (50) feet.

(3) Side Yard. There shall be a side yard on each side of the principal building of not less than fifteen (15) feet. Off-street parking as required in Section 914 (b) is permitted in

the side yard, outside the required buffer area.

(4) Minimum Rear Yard. There shall be a rear yard of not less than thirty (30) feet. Off-street parking as required in Section 914(b) is permitted in the rear yard, outside the required buffer area.

(5) Minimum Lot Area. Each lot shall have a minimum lot area of twenty-six thousand (26,000) square feet, with a minimum lot width of one hundred twenty-five (125) feet; provided, however, the minimum lot width on Route 22 shall be two hundred (200) feet.

(6) Maximum And Minimum Building Size. The maximum building ground projection area for all buildings on a lot shall not exceed thirty-five per cent (35%) of the lot area; provided, however, the principal building shall contain a minimum ground floor area of not less than four thousand (4,000) square feet.

(7) Maximum Lot Coverage. Lot coverage shall not exceed seventy-five percent (75%) of the lot area.

(8) Buffer Area. Wherever a lot within the L-I zone abuts any residence zone, there shall be provided within said L-I zone lot a buffer strip area of at least thirty (30) feet in width which shall include evergreen shrubbery and a row of twelve foot shade trees planted not more than fifteen (15) feet apart, and a six foot woven cedar fence, or other screening fence as approved by the Planning Board, to prevent visibility. The finished side of the fence shall face the residential zone, and such fence shall be situated within the buffer area near the common boundary line. This buffer area shall be used for no other purpose than as above regulated.

(d) Performance Standards. Before the issuance of any building or occupancy permit for use in the L-I zoning district, all of the following regulations must be complied with.

(1) Fire and Explosion Hazards. All activities and the storage of materials shall be carried on only in structures which conform to the standards of all National Board of Fire Underwriters or the Uniform Construction Code or Borough Fire Ordinance, whichever is more restrictive.

(2) Radioactivity. Any industrial activity which emits dangerous radioactivity at any point is prohibited, except for laboratory research, design or experimental use and then only in compliance with all applicable federal and state safety laws and regulations.

(3) Smoke, Dust, Fly Ash and Other Air

Pollutants. There shall be no dissemination of smoke, fumes, gas, dust, odor or any other atmospheric-pollutant beyond the boundary of the lot occupied by such use. All activities shall be carried on in accordance with the regulations set forth in the New Jersey Air Pollution Control Code as published by the New Jersey State Department of Environmental Protection.

(4) Liquid or Solid Wastes. No operation shall discharge untreated industrial wastes of any kind into a reservoir, pond or lake. The discharge of untreated wastes into a stream shall be prohibited. All methods of sewage and industrial waste treatment and disposal shall be approved by the Borough and the New Jersey State Department of Environmental Protection. Effluents shall at all times comply with the following standards:

(A) Maximum five-day biochemical oxygen demand-five (5) parts per million

(B) Maximum quantity of effluent - ten percent (10%) of minimum daily stream flow

(C) Maximum five-day biochemical oxygen demand after dilution (B.O.D. of effluent multiplied by quantity of effluent divided by quantity of stream flow) - zero point two five (0.25) parts per million

(D) Maximum total solids - five thousand (5,000) parts per million

No effluent shall contain any other acids, oils, dust, toxic metals, corrosive or other toxic substance in solution or suspension which would create odors or discolor, poison or otherwise pollute the reservoir, pond, lake or stream in any way.

(5) Vibration. There shall be no vibration beyond the immediate site on which such use is conducted.

(6) Noise. Noise, defined in terms of sound pressure level, shall not exceed the limitation herein set forth 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:

<u>Frequency Bank</u> <u>Cycles per Second</u>	<u>Sound Pressure</u> <u>Level in Decibels</u>
20-75	65
75-150	50
150-300	44

300-600	38
600-1,200	35
1,200-2,400	32
2,400-2,800	29
4,800-9,600	26

where sound pressure level is calculated according to the following formula: Sound pressure level in decibels equals $20 \log PIP_2$ where P_2 equals 0.0002 dynes per square centimeter. If the noise is not smooth and continuous and/or is not radiated at nighttime, one (1) or more of the following adjustment shall be added to or subtracted from each of the decibel levels given above, provided that no more than one of the first three adjustments shall be applied:

<u>Type of Operation or Character of Noise</u>	<u>Adjustment in Decibels</u>
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Noise source operates less than 20% of the time	+5
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Noise source operates less than 5% of the time	+10
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Noise source operates less than 1% of the time	+15
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Daytime operations only	+5
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Noise of impulsive character (hammering, etc.)	-5
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Noise of periodic character (hum, screech, etc.)

The sound pressure level radiated non-continuously or between the hours of 7:00 a.m. and 10:00 p.m. shall not exceed the levels in any octave band of frequency as adjusted to account for daytime operation, time of operation or character of noise.

The foregoing measurements shall be made at a point twenty-five (25) feet distance from the building wherein the noise originates or at the boundary line of the property nearest to such building, whichever is farther away, and shall be measured with a sound level meter and an octave band analyzer that conforms to the specifications published by the American Standards Association, Incorporated, New York, New York.

(7) Glare. There shall be no direct or sky-reflected glare exceeding zero point five (0.5) foot candles measurable beyond the property line of the lot occupied by such use. This regulation shall not apply to lights used at the entrance or exits of service drives.

(8) Non-residential Wastes Discharges Into Borough Sanitary Sewer System. All discharge of non-residential wastes into the Borough sanitary system shall comply with the standards set forth in Ordinance No. 490-74, entitled "An Ordinance To Regulate, Control and Recover The Costs of Treating Non-Residential Wastes."

1014. O-B OFFICE BUILDING DISTRICT.

(a) Primary Intended Use. The uses permitted in this zoning district are business, executive, professional or research offices or laboratories. The intensity of operations should not exceed the limitations imposed by the performance standards set forth in Section 1013(d).

(b) Prohibited Use. Any use other than those uses permitted by Section 1014(a) above is prohibited. In addition, every use which is prohibited in Section 1013(b) and including the uses prohibited in Sections 1011 (b) (7) and (9) are prohibited in the O-B zone.

(c) Required Conditions. The following requirements must be complied with in the O-B Building District:

(1) Height. No building shall exceed a maximum of two (2) stories or thirty-five (35) feet in height, whichever is the lesser.

(2) Front Yard. There shall be a front yard of not less than fifty (50) feet.

(3) There shall be a side yard on each of the principal buildings of not less than twenty-five (25) feet, except that no building shall be constructed which is nearer than fifty (50) feet to any residence zoning district boundary line. Off-street parking as required in Section 914 (b) is permitted in the side yards, outside the required buffer area.

(4) Rear Yard. There shall be a rear yard of not less than fifty (50) feet. Off-street parking as required in Section 914 (b) is permitted in the rear yard, outside the required buffer area.

(5) Minimum Lot Area. Each lot shall have a minimum lot area of thirty thousand (30,000) square feet with a minimum lot

width of one hundred fifty (150) feet. The minimum lot width on Route 22 shall be two hundred (200) feet. The minimum lot area shall be adjusted in accordance with the Critical Area provisions set forth in Section 1003(z) of this Ordinance.

(6) Maximum and Minimum Building Size. The maximum building ground projection area for all buildings on a lot shall not exceed twenty-five per cent (25%) of the lot area, adjusted in accordance with the Critical Area provisions set forth in Section 1003(z) of this Ordinance; provided, however, the principal building shall contain a minimum ground floor area of not less than six thousand (6,000) square feet.

(7) Maximum Lot Coverage. Lot coverage shall not exceed sixty-five percent (65%) of lot area, adjusted in accordance with the Critical Area provisions set forth in Section 1003(z) of this Ordinance.

(8) Buffer Area. Wherever a lot within the O-B zone abuts any residence zone, there shall be provided within said O-B zone lot a buffer strip area of at least thirty (30) feet in width, which shall include evergreen shrubbery and a row of twelve-foot shade trees planted not more than fifteen (15) feet apart, and a six-foot woven cedar fence or other screening fence as approved by the Planning Board to prevent visibility. The finished side of the fence shall face the residential zone, and such fence shall be situated within the buffer area near the common boundary line. This buffer area shall be used for no other purpose than as above regulated.

(d) Performance Standards. Before issuance of any building or occupancy permit for any use in the O-B zone, all the regulations set forth in Section 1013 (d) must be complied with.

(e) Nonconforming Uses and Exemptions In The O-B Zone.

(1) Any residential nonconforming use and structure which lawfully existed at the time of the passage of this ordinance may be continued, and any such existing nonconforming building or structure may be reconstructed or structurally altered for the same use in the same manner, and to the same extent as if it were in an R-2 Residential Zone.

(2) Any undeveloped lot within any area zoned by this Ordinance as an O-B zone which has a lot area of less than thirty thousand (30,000) square feet or a lot width of less than one hundred fifty (150) feet is a nonconforming lot and as such may be developed as a residential use provided all of the requirements for construction in the R-2 Residential Zone are complied with.

ARTICLE 11.
OFFICIAL MAP

1101. ESTABLISHMENT. Pursuant to P.L. 1975, Chapter 291, and amendments thereto, there is hereby established an Official Map for the Borough which is titled "Official Map, Borough of Mountainside, New Jersey" and dated June, 1978.

1102. EFFECT OF ADOPTION. The Official Map shall be deemed conclusive with respect to the location and width of streets and public drainage ways and the location and extent of flood control basins and public areas, whether or not such streets, ways, basins or areas are improved or unimproved or are in actual physical existence. Upon receiving an application for development, the Borough may reserve for future public use the aforesaid streets, ways, basins and areas shown on the plat or site plan for a period of 1 year after the approval of the final plat or site plan or within such further time as may be agreed to by the developer. Unless during such period or extension thereof the Borough shall have entered into a contract to purchase or institute condemnation proceedings according to law for a fee or a lesser interest in the land comprising such streets, ways, basins or areas, the developer shall not be bound by such reservations shown on the plat and may proceed to use such land for private use in accordance with applicable development regulations. The provisions of this Section shall not apply to streets and roads, flood control basins or public drainage ways necessitated by the subdivision or land development and required for final approval.

1103. CHANGE OR ADDITION TO MAP. The approval by the Borough by Ordinance under the provisions of any law other than as contained in Article 5, P.L. 1975, Chapter 291, and amendments thereto, or the layout, widening, changing the course of or closing any street, or the widening or changing the course of any public drainage way or changing the boundaries of a flood control basin or public area, shall be subject to relevant provisions of this Ordinance and P.L. 1975, Chapter 291, and amendments thereto.

1104. ISSUANCE OF PERMITS FOR BUILDINGS OR STRUCTURES. For the purpose of preserving the integrity of the Official Map of the Borough, no permit shall be issued for any building or structure in the bed of any street or public drainage way, flood control basin or public area as shown on the official Map, or shown on a plat filed pursuant to this Ordinance or any predecessor thereto before adoption of the Official Map, except as herein provided. Whenever one or more parcels of land, upon which is located the bed of such a mapped street or public drainage way, flood control basin or public area reserved pursuant to this Ordinance cannot yield a reasonable return to the owner unless a building permit is granted, the Board of Adjustment may, in a specific case, by an affirmative

vote of a majority of the full authorized membership of the Board, direct the issuance of a permit for a building or structure in the bed of such mapped street or public drainage way or flood control basin or public area shown on the Official Map, which will as little as practicable increase the cost of opening such street, or tend to cause a minimum change of the Official Map and the Board shall impose reasonable requirements as a condition of granting the permit so as to promote the health, morals, safety and general welfare of the public. Sections 408 through 412 of this Ordinance shall apply to applications or appeals pursuant to this Section.

1105. BUILDING LOT TO ABUT STREET. No permit for the erection of any building or structure shall be issued unless the lot abuts a street giving access to such proposed building or structure. Such street shall have been duly placed on the Official Map or shall be (1) an existing State, County or Borough street or highway, or (2) a street shown upon a plat approved by the Planning Board, or (3) a street or plat duly filed in the office of the County Recording Officer prior to the passage of this Ordinance or any predecessor thereto under P.L. 1975, Chapter 291, and amendments thereto, or any prior law which required prior approval of plats by the Governing Body or other authorized body. Before any such permit shall be issued, such street shall have been certified to be suitably improved to the satisfaction of the Governing Body, or such suitable improvement shall have been assured by means of a performance guarantee, in accordance with standards and specifications for road improvements approved by the Governing Body, as adequate in respect to the public health, safety and general welfare of the special circumstance of the particular street.

1106. APPEALS. Where the enforcement of Section 1105 would entail practical difficulty or unnecessary hardship, or where the circumstances of the case do not require the building or structure to be related to a street, the Board of Adjustment may upon application or appeal, vary the application of Section 1105 and direct the issuance of a permit subject to conditions that will provide adequate access for firefighting equipment, ambulances and other emergency vehicles necessary for the protection of health and safety and that will protect any future street layout shown on the Official Map or on a general circulation plan element of the Borough Master Plan. Sections 408 through 412 of this Ordinance shall apply to application or appeals pursuant to this Section. Pursuant to Section 308 (e)(3), the Planning Board shall have the same authority as the Board of Adjustment to vary the application of Section 1105 and direct the issuance of a permit when so requested in conjunction with an application for subdivision, site plan or conditional use approval.

ARTICLE 12.
ENFORCEMENT, VIOLATIONS
AND PENALTIES

1201. ENFORCEMENT. The Governing Body shall enforce this Ordinance and, to that end, may require directly or delegate the authority to require the issuance of specified permits, certificates or authorizations as a prerequisite to:

(a) The erection, construction alteration, repair, remodeling, conversion, removal or destruction of any building or structure;

(b) The use or occupancy of any building, structure or land; and

(c) The subdivision or resubdivision of any land.

1202. ZONING OFFICER. Pursuant to Section 1201, there is hereby created the office of the Zoning Officer of the Borough. The terms of office shall be one year, but the first term shall commence upon the effective date of this Ordinance and shall expire December 31, of the same year. Thereafter, every appointment shall be made for the calendar year. A vacancy for the office shall be filled for the unexpired term only.

(a) Duties of Zoning Officer. It shall be the duty of the Zoning Officer to enforce Article 10 of this Ordinance and pursuant to that duty to investigate any violation or alleged violation of that Article coming to his attention, whether by complaint of third persons or from his own personal knowledge or observation. When any building or structure is erected, constructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of any provision of Article 10, it shall be the duty of the Zoning Officer to proceed with the enforcement of this Ordinance and the penalties provided for hereunder. He may also pursue such other statutory methods and remedies as may be open to him.

(b) Obtaining Of Search Warrant. In the enforcement of the provisions of Article 10, the Zoning Officer may apply to the municipal court judge of the Borough for a warrant to search and inspect the properties and premises upon which he has reason to believe any violation of this Ordinance has taken or is taking place, and upon probable cause shown, the municipal court judge may issue such a warrant and the information obtained pursuant thereto shall be admissible as evidence in any court of competent jurisdiction for the purpose of proving any case brought for violation of this Ordinance.

1203. ENFORCEMENT PROCEEDINGS. In case any building or structure is erected, constructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this Ordinance, the proper local authorities as set forth herein or an interested party, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

1204. SEPARATE VIOLATIONS. In case any building or structure is erected, constructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this Ordinance, each and every day such violation continues after the expiration of an abatement notice or after initial construction as the case may be shall be deemed a separate and distinct violation.

1205. PENALTIES. The owner or user of any building or structure, lot or land or part thereof, where anything in violation of this Ordinance 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 offense and upon conviction thereof shall each be liable to a fine of not more than \$200.00 or to imprisonment for not more than 90 days, or to both such fine and imprisonment.

ARTICLE 13. TREE PROTECTION

1301. PURPOSE. The Mountainside Borough Council has determined that the preservation of trees within the Borough is beneficially linked to the health, safety and well-being of the Borough's inhabitants, and enhances the aesthetic values of the Borough. This article provides for the protection of trees from indiscriminate destruction or removal of trees in the Borough as set forth below.

1302. DEFINITIONS:

Person: An entity whose existence is recognized by law, including but not limited to any individual, partnership, corporation (for profit, non-profit, or municipal and its agencies), firm association, or any combination of the foregoing.

Tree: Any living woody perennial plant having a diameter greater than twelve (12) inches at a point four and one-half (4.5) feet above ground level.

Enforcement Officer: A qualified individual appointed by the Borough Council for the purpose of enforcing the terms of this article.

Drip Line: The circular area surrounding a tree, the radius of which shall be the distance from the trunk of the tree to the outermost branch of the tree.

1303. **GOVERNED ACTS.** A person may remove, cut or otherwise destroy any tree on any land within the Borough only in accordance with the terms of this article.

Precautions should be taken, particularly during periods of construction, to avoid the placement of materials, machinery or temporary soil deposits within the drip line area of any tree located on any land within the Borough of Mountainside.

1304. **APPROVAL PROCESS.**

(a) a person desiring to remove or destroy more than five (5) trees within a twelve (12) month period shall apply to the Enforcement Officer for a permit to remove or destroy such trees. The application should be in narrative form within a letter and specify:

(1) The name and address of the owner of the premises.

(2) The name and address of the applicant for the permit if other than the owner, accompanied by owner's consent of said application, and

(3) A description by lot and block number of the premises for which the permit is sought.

(b) The application for a permit should be accompanied by a sketch containing the following:

(1) A description of the premises upon which the tree removal is to take place by street address, and lot and block number;

(2) The size of the lot;

(3) The location upon the lot where the destruction or removal of the tree or trees is to take place;

(4) The identity of and number of trees to be destroyed or removed;

(5) The purpose of the destruction or removal of

said trees;

(6) Proposals, if any for replacing any destroyed or removed trees; and

(7) The location of all streams on the lot or adjacent premises.

(c) Standards. Upon receipt of an application, the Enforcement officer shall visit the location and inspect the land and trees which are the subject of the application in order to determine the effect of destruction or removal upon:

(1) The drainage and other physical conditions on the land and adjacent property;

(2) The stability of the soil of the subject land, with particular concern for whether erosion will be created; and

(3) The growth and development of the remaining trees on the land and adjacent property.

(d) Permit. The Enforcement Officer shall within ten (10) business days of the receipt of an application:

(1) Visit and inspect the location in the application.

(2) Decide whether the destruction or removal of the trees, which is the subject of the application, will cause or contribute to drainage problems, soil erosion, the loss of tree species, or impair needed buffering.

(3) Grant or deny the permit requested. The failure of the Enforcement Officer to act upon an application within ten (10) business days of receipt of same shall constitute approval of said application and entitle the applicant to the permit requested unless an extension of the ten (10) day period has been agreed upon between the applicant and the Enforcement Officer before the period expires.

(e) Appeal. Within ten (10) days of receipt of the decision of the Enforcement Officer, which denies approval for tree removal, the applicant may appeal in writing to the Planning Board of the Borough of Mountainside. The Planning Board shall decide the appeal within sixty (60) days of receipt of the appeal. The failure of the Planning Board to decide the appeal within the sixty (60) days shall constitute reversal of the decision by the Enforcement Officer. In any event, the applicant shall be notified of the Planning Board action or failure to act by written notice.

1305. EXCEPTIONS. Excepted from the provisions of this article shall be:

(a) Any tree located on publicly owned land and removed by the appropriate public agency or its representatives.

(b) Any tree located on land actually being used as a nursery, orchard, or tree farm.

(c) Any dead or diseased tree or storm damaged tree where:

(1) The person desiring to destroy or remove the tree is the owner of the land upon which the tree is located.

(2) The person notifies the Enforcement Officer of the desire to remove the tree.

(3) The Enforcement Officer verifies that the tree is dead or diseased.

(d) Accident or storm damaged trees where removal is in response to an emergency.

(e) Tree removal covered by approved site plans.

1306. VIOLATIONS AND PENALTIES. Any person violating or causing to be violated any of the provisions shall be subject to a fine of not more than five hundred (\$500.00) dollars and shall replace each tree destroyed or removed in violation of this article with another tree of an approved species by the Enforcement Officer, at least two and one-half (2.5) inches in diameter measured at four and one-half (4.5) feet above the ground. Each tree destroyed or removed in violation of this article shall be considered a separate offense.

1307. ANNUAL REPORT. The Enforcement Officer shall make an annual report to the Borough Council as to the permits granted and denied in each calendar year pursuant to this article. Such report shall be submitted by February 1 of each year as to the preceding year.

1308. SEVERANCE. In the event that any portion of this article, or the application of the article to any specific situation, shall be declared invalid, such declaration shall not, in any manner, prejudice the enforcement of the remaining provisions, or the enforcement of this article in other situations.

All ordinances or parts of ordinances inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed.

STORM WATER CONTROL AND FLOOD PLAINS ORDINANCE

AN ORDINANCE REGULATING ENCROACHMENTS AND LAND
USE IN FLOODWAYS AND FLOOD HAZARD AREAS AND
ESTABLISHING STORM DRAINAGE REQUIREMENTS
WITHIN THE BOROUGH OF MOUNTAINSIDE, STATE OF
NEW JERSEY.

ARTICLE 14

1401. SHORT TITLE. This Ordinance shall be known as THE
STORM WATER CONTROL AND FLOOD PLAIN ORDINANCE of the Borough of
Mountainside.

1402. PURPOSE AND POLICY. It is hereby found that the rivers
and streams within the Borough of Mountainside 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 flood plain,
that developments contribute to the condition by increasing local
storm runoff and erosion, 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 controlling storm
drainage justifies the regulation of land use located in the flood
plain and the regulation of storm drainage for the entire municipal
area as provided in the Ordinance, as an exercise of the police
power of the municipality, for the protection of the persons and
property of its inhabitants, and for the preservation of health,
safety, and general welfare.

Among the purposes of this Ordinance are:

- (a) to prevent loss of life,
- (b) to protect the public health and promote public
safety and welfare,
- (c) to minimize losses and damages to public and private
property due to inundation and siltation caused by flood waters and
storm runoff,
- (d) to prevent installation of structures and restrict
land uses which cause increases in flood heights and or
velocities, erosion and siltation,
- (e) to prevent increase in volume and rate of surface
runoff due to development,
- (f) to reduce public expenditures for emergency
operations, evacuations and restorations,

(g) to prevent damage to transportation and utility systems,

(h) to prevent unwise development in flood plains and thereby reduce future expenditures for protective measures, and

(i) to preserve, protect, and enhance the natural environment of the flood plains.

1403. DEFINITIONS. For the purposes of this Ordinance, unless the context clearly indicates otherwise, the following words shall mean:

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

(b) DEPARTMENT: The State Department of Environmental Protection, Division of Water Resources.

(c) ENCROACHMENT: Any obstruction within a delineated floodway.

(d) FILL: Sand, gravel, earth or other materials of any composition whatsoever placed or deposited by any person or persons.

(e) FLOOD DAMAGE POTENTIAL: The susceptibility of a specific land use at a particular site to damage by potential floods at that site, as well as increased off-site flooding or flood related damages caused by such land use.

(f) FLOOD FRINGE AREA. That portion of the flood hazard area outside of the Floodway.

(g) FLOOD HAZARD AREA. The flood plain based on the total area inundated during the flood of record unless delineated by the Department and at a minimum to coincide with the F.I.A. Flood Insurance Rate Map, Borough of Mountainside (Union County) effective February 16, 1977, prepared by Department of Housing and Urban Development, Federal Insurance Administration and any subsequent modifications.

(h) FLOOD HAZARD ELEVATION: The 100-year flood elevation as shown on the plates of the Flood Insurance Rate Study Map.

(i) FLOOD OF RECORD: The total volume of rainfall occurring on August 2, 1973 as measured at the Plainfield rain gauge. This rainfall is seven inches total rainfall.

(j) FLOOD PLAIN: For the purposes of this Ordinance, the

flood plain shall be the same as the FLOOD HAZARD AREA.

(k) **FLOODWAY:** The channel of a natural stream and portions of the flood plain adjoining the channel which are required to carry and discharge the 100-year flood without cumulatively increasing the water surface elevation more than two-tenths of a foot. The regulatory floodway shall be delineated, it shall be based on encroachment lines established by the Department, and additional width for access and maintenance.

(l) **HAZARDOUS MATERIALS:** Including, but not limited to, inorganic mineral acids of sulfur, fluorine, chlorine, nitrogen, chromium, phosphorus, selenium and arsenic and their common salts; lead, nickel and mercury and their inorganic salts or metallo-organic derivatives; and coal tar acids, such as phenols and cresols, and their salts.

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

(n) **PERCOLATION TEST:** A test designed to determine the ability of ground to absorb water. The test shall be performed by a licensed professional engineer with proven competence in the field of soils engineering and shall be in accordance with acceptable engineering standards and practices. A detailed report of the test shall be submitted to the Planning Board and Borough Engineer for review if required and or inspection of excavations for underground retention by Borough may be required.

(o) **PERSON:** Corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, the State and all political subdivisions of the State or any agencies or instrumentalities thereof.

(p) **PERMITTED USE:** Any use which shall be allowed subject to the provisions of this Ordinance.

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

(r) PROHIBITED USE: Any use which shall not be allowed under any circumstances.

(s) RAINFALL EXCESS: The portion of rainfall which becomes direct surface runoff.

(t) RESTRICTED USE: Any use which requires a restricted use permit.

(u) STREAM ENCROACHMENT PERMIT: A permit issued by the Department under the provisions of N.J.S.A. 58:1-26.

(v) STORM WATER DETENTION: Any storm drainage technique which retards or detains runoff, such as a detention basin, parking lot storage, rooftop storage, porous pavement, dry wells, or any combination thereof.

(w) STRUCTURE. Any assembly of materials above or below the surface of land or water, including, but not limited to, buildings, fences, dams, levees, bulkheads, dikes, jetties, embankments, wharves, piers, docks, landings, obstructions, pipelines, causeways, culverts, roads, railroads, bridges and the facilities of any utility or municipality.

(x) DEVELOPMENT: Means any man-made change to improved or unimproved real estate, including but not limited to buildings, or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations. The Borough of Mountainside does not have any existing mobile home type development and the Borough of Mountainside Zoning Ordinance prohibits mobile homes, mobile home parks and mobile home subdivisions.

1404. GENERAL REQUIREMENTS.

(a) With the exception of a one family residentially zoned lot of an area of one acre or less which is a subdivided, separately taxed lot as of the date of enactment of this Ordinance and which construction will be reviewed by the Building Official and Borough Engineer at the time of issuance of building permit to control the increase of storm runoff onto adjacent properties or critical local storm drainage facilities, no construction, subdivision or development shall take place within the municipal boundaries unless a site plan and any other required information hereunder shall have been submitted to the Planning Board of the Borough of Mountainside for its review and approval. The Borough Engineer shall review all development permits to assure that all permits have been obtained from those federal, state or local governmental agencies from which prior approval is required, notify adjacent communities and the state coordinating agency prior to any alteration or relocation of a water course and shall submit evidence of such notification to the Federal Insurance

Administration and require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

Said site plan shall be drawn to a scale not smaller than one (1) inch equals fifty (50) feet and shall show in addition to the information required under other ordinances, the following information:

- (1) The location and size of every existing and proposed building and structure;
- (2) The proposed finished grade elevations at the corners of any structure or structures;
- (3) Existing topography and proposed grading at contour intervals of two (2) feet or less;
- (4) The lowest elevation within any proposed structure after its completion;
- (5) The location, type and size of all existing and proposed storm drainage facilities and other utilities servicing, and to service, the premises in question;
- (6) The location, size and nature of all existing and proposed drainage rights-of-way or easements and the location, size and description of any lands to be dedicated to the municipality or county;
- (7) The layout and size of existing and proposed public streets;
- (8) The elevation of any existing or proposed pumping facilities;
- (9) The nature and extent of any construction alterations or repairs;
- (10) The location, size and nature of the entire lot or lots in question and any contiguous lots owned by the applicant or in which the applicant has a direct or indirect interest;
- (11) Proof of stream encroachment lines obtained from the Department;
- (12) The extent of filling of the land, if any;
- (13) The location, type and size of all existing and proposed erosion and siltation control measures, such as slope protection, soil stabilization, sedimentation basins, sediment

traps, headwalls, water retention facilities.

(14) All the pertinent rainfall data, stream flow data, gaugings, etc., on which circulations were based.

(15) Any and all other information and data necessary to meet any of the requirement of this Ordinance.

Complete calculations, hydraulic profiles for normal, average, and storm of record shall be submitted with the application.

A copy of the completed application and all data as sent to the Department for approval if applicable.

In addition, where required by the Planning Board, the developer shall furnish information relating to subsurface conditions, based on percolation tests and soil borings or probes.

(16) All subdivision proposals and other proposed new development greater than 50 lots or 5 acres whichever is the lesser shall include within such proposals base flood elevation data.

(b) In reviewing any proposed construction, subdivision or development, the Planning Board of the Borough of Mountainside or the Building Official in the case of separate residential building permit review as noted in Section IV-A shall require that any structure when built or altered, can be occupied without peril to the health or safety of the occupant and that the proposed land use:

- (1) Has an inherent low flood damage potential;
- (2) Either alone or in combination with existing or future uses, does not obstruct flood flows or increase flood heights and/or velocities;
- (3) Does not affect the water carrying capacity of any delineated floodway and/or channel;
- (4) Does not unreasonably increase local runoff and erosion;
- (5) Does not unduly stress the natural environment of the flood plain or degrade the quality of surface water or the quality and quantity of ground waters;
- (6) Does not require channel modification or relocation.

The Planning Board shall act upon any Site Plan provided for

in Section IV within sixty (60) days of the date of filing thereof or the date of approval by the Department, whichever is later or other extension of time agreed to by the applicant.

(7) Notify, in riverine situations, adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Administrator.

(8) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

Failure of the Planning Board to act within the time limit or limits shall be deemed a denial of any Site Plan submitted under this Ordinance. Planning Board disapproval shall include written findings upon any Site Plan element found contrary to the provisions or intent of this Ordinance.

(c) Except for a detached single family dwelling and its accessory buildings in one lot of one acre or less which lot is a subdivided, separately taxed lot as of the date of enactment of this Ordinance and which construction will be reviewed by the Building Official and Borough Engineer as noted in Section IV-A, no land area shall be developed by any person if:

(1) The volume and/or rate of storm water runoff occurring at the area is increased by such development;

(2) The drainage of adjacent areas is affected by such development;

(3) Soil erosion during and after development is increased by such development;

(4) Soil absorption and ground water recharge capacity of the area is adversely affected by such development;

(5) The natural drainage pattern of the area is significantly altered by such development.

(d) In order to duplicate as nearly as possible natural drainage conditions, regulation and control of storm water runoff and erosion for any land area to be developed shall be accomplished by onsite storm water detention and/or ground absorption systems which include, but are not limited to, the following:

(1) Detention areas which may be depressions in parking areas, excavating basins, basins created through use of curbs, stabilized earth berms or dikes, or any other form of grading which serves to temporarily impound and store water;

(2) Rooftop storage through temporary impoundment and storage of storm water or flat or slightly pitched building rooftops by use of drain outlets which restrict the storm water runoff from the roof surface;

(3) Drywells or leeching basins which control storm water runoff through ground absorption and temporary storage;

(4) Porous asphaltic pavement, which preserves the natural ground absorption capacity of a site and provides a subsurface reservoir for temporary storage of storm water;

(5) Any system of porous media, such as gravel trenches drained by porous wall or perforated pipe, which temporarily store and dissipate storm water through ground absorption; and

(6) Any combination of the above mentioned techniques which serve to limit storm water runoff from a given site to pre-development levels.

(e) Design Of Storm Water Detention Facilities.

(1) Storm water detention facilities shall be designed to contain an amount equal to the increase in volume of runoff which would result from development of any site. The volume of runoff shall be computed on the basis of the total rainfall which produced the Flood of Record for the area involved, and shall be equivalent to the rainfall excess, as previously defined. The total rainfall which produced the Flood of Record shall be determined from records of the Borough Engineer.

(2) The rainfall excess shall be computed for each site using runoff coefficients which reflect land use and topography acceptable to the Borough Engineer. Acceptable runoff coefficients currently in practice include, but are not limited to, the following:

Land Use Type	Runoff Coefficients
Business:	
Downtown areas	0.70 to 0.95
Neighborhood areas	0.50 to 0.70
Residential:	
Single-family areas	0.30 to 0.50
Multi-units, detached	0.40 to 0.60
Multi-units, attached	0.60 to 0.75
Residential (suburban)	0.25 to 0.40
Apartment dwelling areas	0.50 to 0.70
Industrial:	
Light areas	0.50 to 0.80
Heavy areas	0.60 to 0.90

Parks, cemeteries	0.10 to 0.25
Playgrounds	0.20 to 0.35
Railroad yard areas	0.20 to 0.40
Unimproved areas	0.10 to 0.30
Surface Type	
Streets:	
Asphaltic	0.70 to 0.95
Concrete	0.80 to 0.95
Brick	0.70 to 0.85
Drives and walks	0.75 to 0.85
Roofs	0.75 to 0.95
Lawns; Sandy Soil:	
Flat, 2 Percent	0.05 to 0.10
Average, 2 to 7 Percent	0.10 to 0.15
Steep, 7 Percent	0.15 to 0.20
Lawns; Heavy Soil:	
Flat, 2 Percent	0.13 to 0.17
Average, 2 to 7 Percent	0.18 to 0.22
Steep, 7 Percent	0.25 to 0.35

The range of coefficients for each land use and surface type reflects, differences in land slope, intensity of development, amount of impervious surface and degree of ground saturation due to antecedent precipitation.

(3) The runoff coefficients shall be determined for each site for both existing and proposed conditions and the difference between the two shall be used to compute the volume of rainfall excess for design of storm water detention facilities. The volume for design is equal to the depth of the rainfall excess multiplied by the area of the site.

(4) The outlet(s) for any storm water detention facility shall be designed such that the discharge rate never exceeds the peak runoff rate for conditions existing on, or before, the effective date of this Ordinance, and such that there is no adverse affect on any other property.

(5) More sophisticated methods than the procedure described in paragraphs 1-3 above may be used to design storm water detention facilities. However, any method used shall be subject to the approval of the Borough Engineer.

(6) In the case of detention facilities utilizing porous media for ground absorption, such as drywells, porous pavement, or the like, the volume of the porous media shall be large enough to contain the total volume of rainfall excess within the voids. Ground absorption systems shall be used only where the infiltration rate of the receiving soil is acceptable as

determined by percolation tests and soil borings provided by developer or other acceptable means as approved by the Borough Engineer. Provisions shall be made to contain overflow in such a way as not to adversely affect any other property.

(7) If detention facilities utilizing surface impoundment, such as detention basin or roof top storage, are used, sufficient volume to fully contain the total volume of rainfall excess shall be provided. The outlets of such facilities shall be designed to limit the maximum discharge rate of storm water runoff to what occurs at the site under existing conditions and shall discharge in such a way as not to adversely affect any other property. If rooftop storage is proposed, the weight of the impounded water on the roof shall be accounted for in the structural design of the building and the roof shall be designed to provide maximum protection against leakage. If earth berms or dikes are used to create the impounding area, they shall be adequately stabilized and the slopes protected with vegetative cover, paving or rip-rap to protect against failure or breaching.

(8) If a combination of different storm water detention techniques is used, combined volume of the system shall be large enough to fully contain the total volume of rainfall excess.

(9) Storm water detention facilities shall be maintained regularly by the owner to ensure continual functioning of the systems at design capacity and to prevent the health hazards associated with debris buildup and stagnant water. In no case shall water be allowed to remain in any facility long enough to constitute a mosquito breeding, disease, or any other type of health problem.

(10) In accordance with the "New Jersey Soil Erosion and Sediment Control Act" (Chapter 251, P.L. 1975), sediment and erosion control measures shall be installed prior to any other site development and shall be in operation during, all stages of development.

Increased runoff and sediment, resulting from modified soil and surface conditions caused by the proposed development, shall be minimized and, where possible, retained onsite. Detention and sediment and erosion control facilities shall be designed in conformance with the "Standards for Soil Erosion and Sediment Control in New Jersey" of the New Jersey State Soil conservation Committee and administered by the Somerset-Union Conservation District.

1405. FLOOD PLAIN REQUIREMENT.

(a) Preservation of Natural Land.

(1) Because of the importance of the natural flood plain, serious consideration shall be given to preservation of all natural land within any delineated flood plain, except for land to be developed as a Permitted Use in accordance with Section V.B. of this Ordinance, in its natural state and, where possible, developed land within the flood plain shall be restored to its natural state.

(b) Permitted Land Use.

(1) For purposes of this Ordinance, permitted uses are land uses which have an inherent low flood damage potential and which do not:

- (A) Require fill;
- (B) Require channel modification or relocation;
- (C) Obstruct flood flows;
- (D) Increase local runoff and/or erosion;
- (E) Reduce ground absorption of storm water;
- (F) Require equipment or material storage;
- (G) Affect the water carrying or storage capacity of any channel, floodway or flood plain;
- (H) Cause degradation of water quality and/or the natural environment.

(2) Permitted uses include, but are not limited to, the following:

- (A) Agriculture: general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, and wild crop harvesting.
- (B) Private and public recreation golf course, tennis courts, basketball courts, baseball fields, other playing fields, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wild life and nature preserves, game farms, fish hatcheries, shooting preserve, target ranges, trap and skeet ranges, hunting and fishing areas and hiking and horseback riding trails.
- (C) Residential lawns, gardens, parking areas and play areas.

(3) No person or persons shall engage in a permitted use, within a delineated floodway, until he has received a stream encroachment permit issued by the Department, or within a delineated flood fringe are until he has received approval by the Planning Board and a permit issued by the Building Official.

(4) Conditions: The municipality may impose such conditions on permitted uses as it deems appropriate to promote the public safety, health and welfare, to protect public and private property, wildlife and fisheries, and to preserve protect and enhance the natural environment of the flood plain.

(c) Restricted Uses.

(1) For purposes of this Ordinance, restricted uses are uses within the flood plain which involve:

(A) Structures (temporary and permanent),

(B) Fill;

(C) Storage of materials or equipment;

(D) Channel modification and/or relocation;

(E) Extraction of sand, gravel, and other materials.

(2) Restricted uses in addition shall include, but are not limited to, the following, to the extent that they are not prohibited by any other local ordinance or State statute, rule or regulation:

(A) All uses listed under Section B which also involve the factors in Section C.1 above;

(B) Railroads, streets, bridges, utility transmission lines and associated facilities, and pipelines;

(C) Storage yards.

(3) No person shall engage in a restricted use within a delineated flood plain until he has received approval by the Planning Board, a restricted use permit from the Building Official, and a stream encroachment permit issued by the Department. The Planning Board shall notify the general public, the municipality's environmental commission, if any, and the governing bodies and the environmental commissions of other municipalities which may be affected by the proposed use as to the application. Such notifications shall include the name and address of the applicant, the location of the proposed use and abbreviated

description of the proposed use, an announcement as to where and at what times the complete application may be reviewed, and to whom and by what date interested parties may communicate their positions concerning the application and any data that they may have developed in reference to effects of the proposed use. The Planning Board shall review the restricted use permit application and all information received from interested parties under Section IV.A. The Building Official shall issue a restricted use permit only if the Planning Board finds that the proposed use:

- (A) Has an inherent low flood damage potential.
- (B) Either acting alone or in combination with existing or future uses, does not obstruct flood flows or increase flood heights and/or velocities;
- (C) Does not affect the water carrying capacity of any delineated floodway and/or channel;
- (D) Does not increase local runoff and erosion;
- (E) Does not unduly stress the natural environment of the flood plain or degrade the quality of surface water or the quality and quantity of ground waters; and
- (F) Does not require channel modification or relocation.

(4) In reviewing the permit application and arriving at findings the Planning Board shall consult with the Borough Engineer and consider the following criteria:

- (A) The danger of life and property due to increased flood heights of velocities caused by encroachments;
- (B) The danger that materials may be swept onto other lands or downstream to the injury of others;
- (C) The proposed water supply and sanitation systems and the insulation of these systems from disease, contamination and unsanitary conditions resulting from flooding;
- (D) The susceptibility of the proposed use to flood damage and the effect of such damage;
- (E) The duration, rate of rise and sediment transport of flood waters expected at the site;
- (F) The safety of access to the property in

times of flood for ordinary and emergency vehicles;

(G) The extent to which the hydraulic capacity of the floodway will be disrupted;

(H) The degree to which the proposed activity alters natural water flow;

(I) The degree to which the natural, scenic and aesthetic values at the proposed activity site can be retained; and

(J) The degree to which materials not subject to major damage by floods are firmly anchored to prevent flotation and/or are readily removable from the area within the time available after flood warning.

(5) If the Planning Board finds that the proposed use would violate or tend to violate the purposes and intent of this Ordinance, it may deny the application, or may approve the application and impose such permit conditions as are necessary to promote the public safety, health and welfare, to protect public and private property, wildlife and fisheries, and to preserve, protect and enhance the natural environment of the flood plain. These conditions may include, but are not limited to, the following:

(A) Modification of waste disposal and water supply facilities;

(B) Imposition of operational controls, sureties and deed restrictions;

(C) Requirements for construction of storm water detention facilities, channel modifications, dikes, levees and other protective measures;

(D) Installation of an adequate flood warning system; and

(E) Postponement of development until such time as protective measures are installed.

(6) The Planning Board shall condition restricted use permits as follows:

(A) Fill shall be no lower than one (1) foot above the Flood Hazard Elevation and shall extend at such height for a distance of at least 15 feet beyond the limits of any structure erected thereon;

(B) All residential structures on fill shall be elevated so that the first floor and/or basements are at a minimum of one (1) foot above the Flood Hazard Elevation except where the Department requires more.

(C) All-non-residential structures shall be placed on fill or otherwise elevated so that the first floor including basement is at a minimum of one (1) foot above the Flood Hazard Elevation except where the Department requires more or shall be flood proofed as set forth in Sub-paragraph 6.d. below. Flood proofing alone shall not be adequate for hospitals, nursing homes, schools, day care centers and similar uses; and

(D) Flood proofing measures shall be consistent with the flood protection elevation for the particular area, flood velocities, durations, rate of rise, hydrostatic and hydrodynamic forces, and other similar factors. The Planning Board shall require the application to submit a plan or document certified by a registered professional engineer that the flood proofing measures are consistent with the Flood Hazard Elevation and associated flood factors. The following flood proofing measures may be required:

- (i) Anchorage to resist flotation and lateral movement;
- (ii) Installation of watertight doors, bulkheads and shutters, or similar devices;
- (iii) Reinforced walls to resist water pressures;
- (iv) Use of paints, membranes, or mortars to reduce seepage of water through walls;
- (v) Addition of weight to structures to resist flotation;
- (vi) Installation of pumps to lower water levels in structures;
- (vii) Construction of water supply and waste treatment systems in a manner which prevents the entrance of flood waters;
- (viii) Pumping facilities, or comparable measures, for the subsurface drainage systems of buildings to relieve external foundation wall and basement flood pressures;
- (ix) Construction that resists rupture of collapse caused by water pressure or floating debris;

(x) Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent backup of sewage or storm waters into the structure. Gravity drainage of basements may be eliminated mechanical devices;

(xi) Location of all electrical equipment, circuits and installed electrical appliances in a manner which will assure they are not subject to inundation and flooding;

(xii) Storage facilities for chemicals, explosives, buoyant materials, flammable liquids, or other toxic or hazardous materials shall be situated above the Flood Hazard Elevation and shall be flood proofed to prevent flotation of storage containers or damage to storage containers which could result in the escape of toxic materials into the flood water; and

(xiii) Use of construction materials which are resistant to water damage.

(E) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(F) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage and by methods and practices that minimize flood damage.

(d) Pre-Existing Structures And Uses (Non-Conforming Uses).

(1) Structures or land uses which existed on or before the effective date of this Ordinance may be permitted to continue subject to the following conditions:

(A) If any pre-existing structure is destroyed by any means, including flood, to an extent of 50 percent or more of its replacement cost at time of destruction, it shall not be reconstructed, except in conformity with the provisions of this Ordinance; and

(B) No pre-existing structure shall be moved, altered expanded, changed or enlarged unless a restricted use permit has been applied for and received.

This provision does not apply to routine maintenance and repair, provided that such maintenance and repair does not increase the flood damage potential of the structure and does not equal or exceed 50 percent of the market value of the structure before the repair or improvement is started.

(C) No pre-existing use of land or structures shall be modified so as to increase its flood damage potential, unless a restricted use permit has been applied for and received; and

(D) The first (initial) use of structures completed under the provisions of this section shall be considered pre-existing uses.

(2) If actual construction of a structure is underway on or before the effective date of this Ordinance, then such construction may be completed without a restricted use permit. Actual construction is hereby defined to mean the first placement of a permanent construction of a structure (other than a mobile home) on a site such as the pouring of slabs or footings or any work beyond the state of excavation. The provisions of Sub-paragraph 1 above shall apply to such structures upon completion of construction.

(3) Structures in the floodway abandoned for six (6) consecutive months or longer and structures abandoned for twelve (12) consecutive months or longer in the flood fringe area after the effective date of this Ordinance shall not qualify as pre-existing uses.

(e) Prohibited Uses.

(1) Floodway: No person shall hereafter engage in, cause or permit other persons to engage in prohibited uses within a delineated floodway.

The following uses shall be prohibited:

(A) Placing, depositing, or dumping any solid waste, garbage, refuse, trash, rubbish or debris;

(B) Dumping or discharging untreated domestic sewage or industrial wastes, either solid or liquid;

(C) The storage or disposal of pesticides;

(D) The storage or processing of materials that are in time of flooding buoyant, flammable or explosive;

(E) The storage or processing of hazardous materials that could be injurious in time of flooding to human, animal, or plant life; and

(F) The erection of structures for human occupancy.

(2) Flood Fringe Area: No person shall engage in, cause or permit other persons to engage in prohibited uses within a delineated flood fringe area. The following uses shall be prohibited:

(A) Placing depositing, or dumping any solid waste, garbage, refuse, trash, rubbish or debris;

(B) Dumping or discharging untreated domestic sewage or industrial wastes, either solid or liquid; and

(C) The disposal of pesticides.

1406. FLOOD INSURANCE. Flood insurance, in accordance with the National Flood Insurance Program of the United States Department of Housing and Urban Development, shall be required for all development in the flood plain. The community shall adopt and enforce flood plain management regulations based on data provided by the Administrator. Without prior approval of the Administrator, the community shall not adopt and enforce flood plain management regulations based upon modified data reflecting natural or man-made physical changes. The community shall require permits for all proposed construction or other development in the community so that it may determine whether such construction or other development is proposed within floodprone areas.

1407. ISSUANCE OF PERMITS. No building permit shall be issued by the Building Official for any proposed structure or development to be located within any flood plain area unless the Planning Board shall have approved a Site Plan and any other data submitted in accordance with Section IV and which complies fully with all the provisions of this Ordinance. No Certificate of Occupancy shall be issued by the Building Official unless proof has been submitted to him that all conditions of Site Plan approval and all other provisions of this Ordinance have been fully complied with. In addition the Building Official shall verify, record and maintain records of the actual elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures. He shall verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed. When base flood elevation has not been provided in accordance with Section III of this Ordinance, then the Building Official shall obtain, review and reasonably utilize any base flood elevation data available from federal, state or other source, in order to administer Sections V and VI of this Ordinance.

1408. APPEAL. If any person shall be aggrieved by the action of the Planning Board or Building Official, appeal in writing to the Governing Body may be taken within ten (10) days after the date of such action. The Governing Body shall fix and notify appellant

of a time and place for a public hearing to be published in the official newspaper of the municipality at least ten (10) days prior to the hearing. All parties in interest shall be afforded an opportunity to be heard thereat. After such hearing, the Governing Body shall affirm or reverse the action of the Planning Board, stating its findings and reasons for its action, and a written copy of such action shall be given to the appellant.

1409. SEVERABILITY. If any section, subsection, provision, clause or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, such adjudication shall not affect the remaining section, subsection, provisions, clauses or portions, which shall be deemed severable therefrom.

1410. PRECEDENCE. Should the provisions of this Ordinance conflict with the provisions of any other Ordinance of the Borough of Mountainside, the provisions of this Ordinance shall take precedence.

1411. PENALTY FOR VIOLATION. Any person who violates any provision of this Ordinance shall be liable for a fine not exceeding \$500.00 or imprisonment for a term not exceeding 60 days, or both. Each day in which such violation continues shall constitute a separate violation or offense.

1412. INCONSISTENT ORDINANCES. All Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

1413. EFFECTIVE DATE. This Ordinance shall take effect immediately upon final passage and publication as required by law.

ARTICLE 15.
SEVERABILITY, REPEALING
CONFLICTING ORDINANCES,
WHEN EFFECTIVE

1501. SEVERABILITY. In case any article, section, subsection, paragraph, subdivision, clause or provision of this Ordinance shall be judged invalid by a court of competent jurisdiction, such order or judgment shall not affect or invalidate the remainder of any article, section, paragraph, subdivision, clause or provision of this Ordinance, and, to this end, the provisions of each article, section, paragraph, subdivision, clause or provision of this Ordinance are hereby declared to be severable.

1502. REPEALING CONFLICTING ORDINANCES. With the adoption of this Ordinance, the Land Use Ordinance of May 1979, and all prior amendments thereto are repealed in their entirety. Any and all other Borough Ordinances or parts thereof in conflict with or

inconsistent with any of the terms of this Ordinance are hereby repealed to such extent as they are so in conflict or inconsistent, provided, however, that the adoption of this Ordinance shall not prevent or bar the continuance or institution of any proceedings for offenses heretofore committed in violation of any existing Ordinances of the Borough.

1503. WHEN EFFECTIVE. This Ordinance shall take effect immediately upon final approval, publication of notice of such approval, and filing as required by statute. This ordinance has been adopted, published and filed with the County as of April 15, 1985.

Introduced by:	Hart		
Seconded by:	Wyckoff		
Roll Call Vote:	Ayes 4 Nays 0 Absent -	Ayes	Nays
Date	9-18-90	Barre & Schon	-90

ORDINANCE #816-90

AN ORDINANCE ESTABLISHING A SEWER CONNECTION FEE, AUTHORIZING INSPECTIONS FOR IMPROPER OR ILLEGAL SEWER CONNECTIONS AND DISCHARGE, REQUIRING INSTALLATION OF FLOW METERS OF NON-RESIDENTIAL USES, REQUIRING THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR ANY CHANGE IN OWNERSHIP OR TENANCY OF ANY BUILDING, IDE, OTHERWISE AMENDING CHAPTER XI OF THE CODE USE THE BOROUGH OF MOUNTAINSIDE, NEW JERSEY SECTION 1006 OF THE LAND USE ORDINANCE

WHEREAS, the Governing Body of the Borough of Mountainside has determined that it is in the best interests of the Borough and its residents that a sewer connection fee be imposed for all new connections within the Borough; and

WHEREAS, the Governing Body, having reviewed the expenditures made to the sewer system by the Borough, including the expenditures made for the acquisition of flow rights into the Rahway Valley Sewerage Authority System, has determined that a fee which represents a fair contribution to the costs of the system is \$1,800. per dwelling or equivalent connectino unit; and

WHEREAS, the information available to the Governing Body indicates that the average flow associated with a single family residential unit in the borough is 270 gallon per day; and

WHEREAS, the Governing Body is concerned that inflow and infiltration into the sewer system, which increases the flow from the sewer system into the Rahway Valley Sewerage Authority's system, into which the Borough's sewage flows and for which flow the Borough is charged, is being created by improper connections and improper use of the sewer system; and

WHEREAS, the Governing Body has concluded that in order to reduce the incidence of such inflow and infiltration, it is necessary and desirable to specifically authorize the inspection of the buildings which are connected to the sewer system; and

WHEREAS, for residential connections, a potential source of inflow and infiltration into the sewer system is the illegal connection of storm drains and sump pumps to the sewer system; and

WHEREAS, in order to eliminate or reduce the incidence of such improper connections in residences, the Governing Body has concluded that it is necessary and desirable to require that a certificate of occupancy be obtained whenever the sale of a residence occurs;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Mountainside, County of Union and State of New Jersey as follows:

Section 9-1.3 of Chapter IX of the Borough Code is amended to delete the amounts shown for "Sewer Connection, Residential", "Sewer Connection, Residential for new bathroom on existing house", and "Sewer Connection, Commercial". In place of those amounts will appear the language "See Section 11-2.4 of Chapter XI."

§ 11-3.3 shall be based upon the following factors per residential connections: Flow - 270 gallons per day; biochemical oxygen demand - based on the average B.O.D. in ppm reported by R.V.S.A. but not to exceed 180 ppm; the suspended solids in ppm reported by the R.V.S.A. but not to exceed 160 ppm.

A new Section 11-3.3 (j) shall be added as follows:

Each application for a non-residential connection shall be accompanied by payment of a \$250 application and review fee. Upon approval of the connection and execution of the agreement required by section 11-3.3(h), the applicant shall pay the connection fee as calculated pursuant to section 11-2.4.

A new Section 11-3.3 (k) shall be added as follows:

The borough may require the installation of flow meters for any non-residential use, at the cost of the owner, to obtain accurate data regarding the volume of waste being discharged into the sanitary sewer system.

A new section 11-4 shall be added as follows:

11-4 INSPECTION

Representatives of the Borough shall have the right to enter all properties which are connected to the sewer system, or which the representatives have reason to believe may be connected to the sewer system, for the purpose of inspection, observation, measurement, sampling and testing. This right of inspection shall be explicitly set forth in any agreement entered into pursuant to section 11-3.3(h). Such entry shall be made upon with reasonable notice, unless the representatives have reason to conclude that such notice will prevent the observation or discovery of violations of applicable regulations or agreements.

A new paragraph shall be added to section 1006 (c) of the Land Use Ordinance of the Borough of Mountainside as follows:

No change in ownership of any residential dwelling or change in the tenant of any residential dwelling which is occupied pursuant to a lease shall occur until a certificate of occupancy has been obtained. In connection with the issuance of such certificate of occupancy, the Administrative Officer or Building Official shall determine that the residence conforms to all applicable regulations and ordinances. The requirement of obtaining such a Certificate of Occupancy for residential dwellings shall become effective January 1, 1991.

Except otherwise provided herein this Ordinance shall take effect twenty days after the first publication hereof after final passage.

ROBERT VIGLIANTI, Mayor

ATTEST:

Introduced By:
Seconded By:
Roll Call Vote:
Date:
Absent:

Councilman Hart
Councilman Beattie
Ayes: 6 Nays: 0
January 18, 1994

Councilman Beattie
Councilman Jackson
Ayes: 4 Nays: 0
February 22, 1994
Councilmen Hart & Roma

ORDINANCE 894-94

AN ORDINANCE TO ESTABLISH STANDARDS OF
PROPERTY MAINTENANCE WITHIN THE BOROUGH
OF MOUNTAINSIDE FOR THE PROTECTION OF THE
PUBLIC SAFETY, HEALTH AND WELFARE, AND TO
PROVIDE FOR ENFORCEMENT AND PENALTIES FOR
VIOLATIONS OF THE PROVISIONS THEREOF

BE IT ORDAINED by the Mayor and Council of the Borough
of Mountainside, County of Union and State of New Jersey,
that Section 3-9 of Chapter III of the Code of the Borough
of Mountainside is hereby deleted and replaced with the
following:

3-9 PROPERTY MAINTENANCE

3-9.1 TITLE, POLICY AND PURPOSES

Section 1.1 Title

This ordinance shall be known as "The Property
Maintenance Code for the Borough of Mountainside" and may be
referred to in this ordinance as "The Property Maintenance
Code" or as "this code".

Section 1.2 Purposes

Pursuant to the authority granted by N.J.S.A 40:48-2,
the purposes of this Code are hereby stated to be:

- a. To provide for the public health, safety and welfare.
- b. To avoid, prevent and eliminate the maintenance or creation of hazards to the public health and safety.
- c. To avoid, prevent and eliminate conditions which if permitted to exist or continue, will depreciate or tend to depreciate the value of adjacent or surrounding properties.
- d. To prevent the creation, continuation, extension or aggravation of blight.
- e. To preserve property values in the Borough.
- f. To prevent the physical deterioration or progressive downgrading of the quality of housing facilities in the Borough.

- g. To maintain the value and economic health of the commercial properties and businesses that serve and help to support the Borough and its citizens.
- h. To prevent and eliminate physical conditions in or on property which constitute nuisances and are thereby potentially dangerous or hazardous to the life, health or safety of persons on or near the premises where such conditions exist.
- i. To establish minimum standards governing the maintenance and condition of land, buildings, structures and premises in the Borough of Mountainside.
- j. To fix responsibilities and duties thereof upon owners and operators of property.
- k. To provide for administration and enforcement.

Section 2.1 General Provisions

For the specific purposes of this code, the following terms, whenever used herein or referred to in this code shall have the respective meanings assigned to them hereunder unless a different meaning clearly appears from the context.

Section 2.2 Exterior of Premises

Those portions of a structure which are exposed to public view or are visible from adjoining or adjacent lots, including all outside surfaces and appurtenances thereto; and the open land space of any premises outside of any building or structure erected thereon including vacant lots.

Section 2.3 Nuisance

a. Any public or private condition that would constitute a nuisance according to the statutes, laws and regulations of the State of New Jersey, its governmental agencies or the ordinances of the Borough of Mountainside.

b. Any physical condition existing in or on the exterior of any premises which is potentially dangerous, detrimental or hazardous to the life, health or safety of persons on, near or passing within the proximity of premises where said condition exists.

Section 2.4 Operator

Any person, persons, or entity not the owner, but including any agent of the owner who has charge, possession,

custody, care or control of a dwelling or premises, or a part thereof.

Section 2.5 Owner

Any person, persons or entity who shall have legal or equitable title in any form whatsoever to any premises or part thereof, including any fiduciary, trustee, receiver, guardian, or mortgagee in possession. Any lessee, sub-lessee or assignee of a lessee of any part of any premises shall be deemed an owner with respect to that portion of the premises sublet, leased or assigned.

Section 2.6 Premises

As lot, plot or parcel of land, right of way or multiples thereof including the building or structures thereon.

Section 2.7 Refuse or Rubbish

All discarded, useless, unusable, unused or worthless solid waste matter or materials, combustible or non-combustible including but not limited to garbage, trash, ashes, paper, paper goods and products, wrappings, cans, bottles, containers, debris, junk, glass, boxes, crockery, wood, plastic, rubber, leather, furniture, household goods, appliances, bedding, crap lumber, scrap metal, construction material, inoperable machinery or parts thereof, garden or farming implements and supplies, tires, abandoned, inoperative or unusable automobiles and vehicles and solid commercial or industrial waste. Yard clippings, dead or rotting vegetation and other garden waste also constitutes refuse or rubbish unless contained in an approved compost enclosure. Said enclosure shall not be placed closer than 20 feet from any neighboring structure that is used by such neighbor such as but not limited to a porch, a patio, a pool, a garage or any other structure that dwelling may in or on occur.

3-9.3 GENERAL REGULATIONS APPLICABLE TO ALL BUILDINGS, STRUCTURES AND LANDS

Section 3.1 All Structures, Lots and Premises To Comply

Every lot and every structure and the premises or part of the premises on which it is situated shall comply with the provisions of this code, whether or not any such structure shall have been constructed, altered or repaired before or after the enactment of this code, and irrespective

of any permits or licenses which may have been issued for the use or occupancy of such structure, or for the installation or repair of equipment or facilities prior to the effective date of this code.

Section 3.2 Higher Standard to Prevail in Cases of Conflict with Other Laws or Ordinances

In any case where the provisions of this code impose a higher or stricter standard than set forth in any other ordinance or regulation of the Borough of Mountainside, or under the laws or regulations of the State of New Jersey or any of its agencies, then the standards as set forth herein shall prevail, but if the provisions of this code impose a lower or lesser standard than any other regulation or ordinance of the Borough of Mountainside or of the laws and regulations of the State of New Jersey, or any of its agencies, then the higher standard contained in any such other ordinance, regulation, or law shall prevail.

Section 3.3 Compliance With Other Ordinances

Compliance with this code shall not constitute a defense against any violation of any other ordinance of the Borough of Mountainside applicable to any structure or premises, nor shall any one act of compliance constitute a defense against any subsequent or other violation of this code.

SECTION 3.4 Responsibilities of Owner , Operator and Occupant to be Independent of Each Other

Every owner, operator or occupant shall comply with all of the requirements of this ordinance. No owner or operator shall be relieved of any duty, obligation or responsibility hereunder, nor be entitled to assert as a defense against any charge made against him or them for violation of this code, the fact that another owner, operator or any other third person or entity is also responsible and in violation thereof.

Section 3.5 Application of Building Code

Any alterations to buildings, structures or appurtenances thereto, or changes of use therein, which may be caused directly or indirectly by the enforcement of this code shall be done in accordance with all applicable sections of the Building Code of the Borough of Mountainside and the State Uniform Construction Code.

Section 3.6 Application of Zoning Law

Nothing contained in this code or any requirement of compliance herewith shall be deemed to alter, impair or affect the application of the Zoning Ordinance or zoning laws of the Borough of Mountainside.

Section 3.7 Existing Remedies

Nothing in this code shall be deemed to abolish or impair existing remedies of the Borough of Mountainside or its officers or agencies relating to the removal or demolition of any buildings or structures which are deemed to be dangerous, unsafe or unsanitary.

3-9.4 MAINTENANCE STANDARDS

Section 4.1

The exterior of all premises shall be kept free of the following matter, materials or conditions:

- a. Refuse, as hereinabove defined.
- b. Rubbish, as hereinabove defined.
- c. Abandoned, uncovered or structurally unsound wells, shafts, towers, exterior cellar openings, basement hatchways, foundations or excavations.
- d. Abandoned appliances including iceboxes, refrigerators, boilers, hot water heaters, television sets and the like.
- e. Structurally unsafe or unsound buildings, structures or fences.
- f. Rodents, vermin, pest infestations, or rodent harborage.
- g. Grass, weeds and the like, in excess of ^{5"}~~12"~~ in heights. (~~Does not apply to undeveloped property.~~)
- h. Nuisances, as hereinabove defined.
- i. Vehicles, or parts thereof, including boats, and trailers, motorized or not, licensed or unlicensed registered or unregistered, which vehicles or parts thereof are to have been junked, abandoned or dismantled.

2. Section 3-9.4.1 shall be amended by adding a new subsection (k) as follows:

Refuse and rubbish from a site during any construction project must be disposed of in an appropriate dumpster.

- j. Unregistered Motor Vehicle: Motor vehicles without a valid and current State inspection sticker.

SEE UPDATE - NEXT PAGE
Section 4.2

Without limitation by the foregoing, it shall also be the duty and responsibility of owners, and operators to keep all exposed surfaces susceptible to decay at all times painted or otherwise provided with a protective coating sufficient to prevent deterioration and to keep the exterior of all premises structurally sound, in good general repair and sufficiently maintained so as to prevent conditions that violate the purposes of this ordinance.

3-9.5 ADMINISTRATIVE PROVISIONS

Section 5.1 Enforcement Officer

This ordinance may be enforced by the Building Inspector, Police Department and the Construction Code Office of the Borough of Mountainside.

Section 5.2 Enforcement Procedure

Whenever the Enforcement Office determines that there is or has been a violation of any provision of this ordinance, he shall give notice of such violation to the person, persons or entities responsible therefor under this ordinance. Such notice shall be in writing and shall include a concise statement of the reasons for its issuance. Such notice shall be deemed to be properly and sufficiently served if a copy thereof is sent by registered or certified mail to the last known address of the person or entity upon which the same is served, as shown by the most recent tax lists of the Borough of Mountainside, or a copy thereof handed to said person or persons or a copy thereof left at the usual place of abode or office of said persons or entities. Notice shall be given as aforesaid within or without the Borough of Mountainside. The notice shall also state that unless the violation is abated, removed, cured, prevented, or desisted from within 10 days of the date of service of such notice (exclusive of the date of service) a summons shall be issued for such violation. The Enforcement Officer may, at the time he issues the notice, extend the period of compliance with the violation stated in the notice for a period in excess of the aforesaid 10 days if, in his judgement, the abatement, removal, prevention, cessation of or cure of the condition violated cannot reasonably be effected within the 10 day period; and in such cases the Enforcement Officer shall state such reasonably required extended period in the notice, which shall then be applicable instead of the aforesaid 10 days. In the event the violation is not abated, removed, cured, prevented, or

3. Section 3-9.6.1 shall be amended to read as follows:

Any person or entity who shall violate any of the provisions of this ordinance or any order promulgated hereunder shall, after a summons is issued under the terms hereof, upon conviction, be punished as follows:

1. For a first offense, by a minimum fine of one hundred dollars (\$100) and a maximum fine of two hundred dollars (\$200) per day for each day the violation continues; and
2. For a second offense, by a minimum fine of two hundred dollars (\$200) per day and a maximum fine of four hundred (\$400) per day for each day the violation continues; and
3. For a third offense, or any subsequent offenses, by a minimum fine of five hundred dollars (\$500) per day and a maximum fine not to exceed one thousand dollars (\$1,000) per day for each day the violation continues, or by imprisonment in the County Jail for a period not to exceed ninety (90) days or by both such fine and imprisonment. Each of any of the provisions of this ordinance, and each day that such violation shall continue, shall be deemed to be a separate and distinct offense.

desisted from or otherwise fully remedied within said 10 day period or within such extended period as set forth in the notice, pursuant to the foregoing, a summons shall then be issued against the person, persons, entity or entities so notified.

Section 5.3 Emergency Conditions

Whenever the Enforcement Officer finds that an emergency condition in violation of this ordinance exists, which condition requires immediate attention in order to protect the public health or safety, he may issue an order by service of notice as set forth in Section 5.2, reciting the existence of such an emergency condition and requiring that such action be taken by the violator as soon as reasonably necessary to meet the emergency. Notwithstanding any other provision of this ordinance such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately but upon objection in writing to the Enforcement Officer any such person shall be afforded a hearing before the Governing Body of the Borough of Mountainside as soon as is reasonably possible. After such a hearing and decision by the Governing Body as to the existence or non-existence of the emergency condition, the Governing Body may continue such order in effect, or modify or withdraw it, subject to issuance of a summons for violation thereof, if such order is continued.

Introduced by:	First Reading Councilman Mirabelli	Second Reading Councilman Mirabelli
Seconded by:	Councilman Turner	Councilman Perrotta
Roll Call Vote:	Ayes: 5 Nays: 0	Ayes: 5 Nays: 0
Absent:	Councilman Romiak	Councilman Schon
Date:	January 18, 2000	February 15, 2000

ORDINANCE 1021-2000

AN ORDINANCE AMENDING SECTIONS 1006, 1007 AND 1205 OF THE BOROUGH OF MOUNTAINSIDE LAND USE ORDINANCE REGARDING PAYMENT FOR BUILDING PERMITS, ISSUANCE OF CERTIFICATES OF OCCUPANCY FOR EXPANSION OF OPERATIONS WITHIN A BUILDING, ISSUANCE OF PERMITS FOR REPLACEMENT SIGNS, ELIMINATION OF THE PROHIBITION AGAINST RED OR GREEN-COLORED AND/OR ILLUMINATED SIGNS, AND INCREASING THE MINIMUM PENALTY FOR VIOLATIONS OF THE LAND USE ORDINANCE.

BE IT ORDAINED, by Mayor and Council of the Borough of Mountainside, County of Union, State of New Jersey, that Article 10 of the Land Use Ordinance of the Borough of Mountainside, entitled "Zoning Regulations," is hereby amended as follows:

1. Section 1006(a) shall be amended by inserting the following at the end of the subsection:

All building permits must be paid in full by the homeowner within ten (10) business days of issuance.

2. The initial paragraph of Section 1006(c)(1) shall be amended to read as follows:

Industrial/Commercial/Professional/Retail: No person, company, firm or corporation shall occupy, commence operations, expand operations within a building, enlarge the premises of any business or industry in the Borough, or change the location of its business or industry from one location to another with the Borough until an application is first made to the Administrative Official for a Certificate of Occupancy and said Certificate is issued after an inspection is performed by the Fire Official and the Administrative Official.

3. Section 1006(c)(1) shall be further amended by inserting the following paragraph at the end of the subsection:

The Administrative Official may grant a Certificate of Occupancy to a retail sales or service operation in the B Zone without the necessity of a site plan approval if the Administrative Official is satisfied that the operation will be similar to the previous use, does not alter traffic or parking patterns, does not endanger the health, safety and welfare of the citizens, and meets other required approvals, including, but not limited to, those pertaining to Board of Health and Fire Safety Codes.

4. Section 1007(a) shall be amended by deleting the words "existing tenant" and "coloring, lettering" from the second sentence.

5. Section 1007(11) shall be amended to read as follows:

Silhouette, cutout three-dimensional, caricature signs or signs of the startling, garrish or bizarre nature or which would in the opinion of the licensing authority be disruptive to traffic flow, safety and aesthetics.

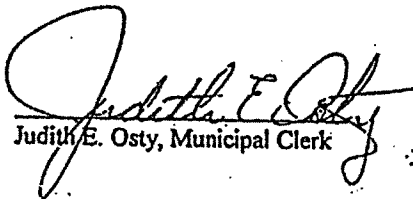
6. Section 1007(j)(5) shall be amended by deleting the last sentence of the paragraph.

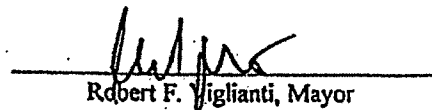
BE IT FURTHER ORDAINED, by Mayor and Council of the Borough of Mountainside, County of Union, State of New Jersey, that Article 12 of the Land Use Ordinance of the Borough of Mountainside, entitled "Enforcement, Violations and Penalties," is hereby amended as follows:

Section 1205 shall be amended to read as follows:

PENALTIES. The owner or user of any building or structure, lot or land or part thereof, where anything in violation of this Ordinance 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 offense and upon conviction thereof shall each be liable to a fine of two hundred dollars (\$200.00) or to imprisonment for not more than 90 days, or to both such fine and imprisonment for each day the violation continues.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect after final passage and publication as provided by law.


Judith E. Osty, Municipal Clerk


Robert F. Vigilanti, Mayor

Introduced by:
Seconded by:
Roll Call Vote:
Absent:
Date:

FIRST READING
Councilman Mirabelli
Councilman Turner
Ayes: 5 Nays: 0
Councilman Perrotta
March 21, 2000

SECOND READING
Councilman Turner
Councilman Perrotta
Ayes: 5 Nays: 0
Councilman Mirabelli
April 18, 2000

ORDINANCE 1025-00

**AN ORDINANCE AMENDING THE LAND USE
ORDINANCE OF THE BOROUGH OF MOUNTAINSIDE**

BE IT ORDAINED, by Mayor and Council of the Borough of Mountainside, County of Union, State of New Jersey, that Article 6 of the Land Use Ordinance of the Borough of Mountainside, entitled "Hearings," is hereby amended as follows:

Section 601 shall be amended by inserting the following at the end of the section:

"Special hearings, scheduled at the request of an applicant, may be held provided that the applicant has paid a non-refundable fee for the special hearing at the time the applicant submits a written request for a special hearing date, which request must state the reasons why such hearing is necessary. The Borough shall not schedule a hearing until the required application is complete, all necessary plans are submitted, and the appropriate review of the application by the Borough is complete."

BE IT FURTHER ORDAINED, that Article 7 of the Land Use Ordinance of the Borough of Mountainside, entitled "Fees," is hereby amended as follows:

1. Section 702 shall be amended to read as follows:

Application and Special Request Fees.

(a) All application fees, as set forth in Section 704, for minor or major subdivisions, for preliminary or final site plans, for variances, for certificates of occupancy, and for signs are non-refundable.

(b) All application fees, as set forth in Section 704, for an appeal, or for an interpretation, or on a special question (per MLUL 40:55D-70a or 70b); or for approval of a conditional use; or for permits (per MLUL 40:55D-34 and 36); or for any other matter which involves action or inspection by a Borough official or a hearing before the Planning Board are non-refundable.

(c) All fees, as set forth in Section 704, for special hearings, scheduled at the applicant's request, before the Planning Board are non-refundable.

2. Section 704 is amended by inserting the following at the end of the section:

"Special Hearing Requested by Applicant \$1,000 per special hearing date"

BE IT FURTHER ORDAINED, that Article 10 of the Land Use Ordinance of the Borough of Mountainside, entitled "Zoning Regulations," is hereby amended as follows:

1. Section 1004(a) shall be amended by inserting "Public warehousing and self-storage facilities" after "Municipal Uses as defined in Section 239."

2. A new Section 1004(h) shall be added to read as follows:

(h) Public Warehousing And Self-Storage Facilities As A Conditional Use. Public warehousing and self-storage facilities are permitted as a conditional use in the L-1 Zone, provided said conditional use shall meet all of the following requirements:

(1) Height. No building shall exceed a maximum of two (2) stories or twenty-five (25) feet in height, whichever is the lesser.

(2) Front Yard. There shall be a front yard of not less than fifty (50) feet.

(3) Side Yard. There shall be a side yard on each side of the principal building of not less than fifteen (15) feet. Off-street parking as required in Section 914(b) is permitted in the side yard, outside the required buffer area.

(4) Minimum Rear Yard. There shall be a rear yard of not less than thirty (30) feet. Off-street parking as required in Section 914(b) is permitted in the rear yard, outside the required buffer area.

(5) Minimum Lot Area. Each lot shall have a minimum lot area of twenty-six thousand (26,000) square feet, with a minimum lot width of one hundred twenty-five (125) feet; provided, however, the minimum lot width on Route 22 shall be two hundred (200) feet.

(6) Maximum and Minimum Building Size. The maximum building ground projection area for all buildings on a lot shall not exceed twenty-five percent (25%) of the lot area; provided, however, the principal building shall contain a minimum ground floor area of not less than four thousand (4,000) square feet.

(7) Maximum Lot Coverage. Lot coverage shall not exceed fifty percent (50%) of the lot area.

(8) Buffer Area. Wherever a public warehouse or self-storage facility abuts any residential zone, there shall be provided within said lot a buffer strip area of at least thirty (30) feet in width which shall include evergreen shrubbery and a row of twelve (12) foot shade trees planted not more than fifteen (15) feet apart, and a six (6) foot woven cedar fence, or other screening fence as approved by the Planning Board, to prevent visibility. The finished side of the fence shall face the residential zone, and such fence shall be situated within the buffer area near the common boundary line. This buffer area shall be used for no other purpose than as above regulated.

(9) Parking. There shall be one off-street parking space for every fifty (50) storage units.

(10) Security and Alarm Systems. Security and alarm systems as required by the Mountainside Police Department and Fire Department shall be installed and operational at all times at the premises.

(11) Video Surveillance. There shall be continuous 24-hour, seven days a week, video surveillance of all exterior and interior areas of the premises.

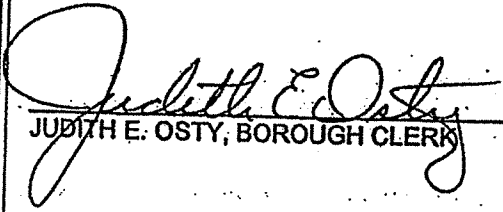
(12) Location Within One-half Mile of Existing Public Warehouse or Self-Storage Facility. No proposed public warehouse or self-storage facility shall be permitted on a lot which is within a one-half (1/2) mile radius of a lot on which is located an existing or proposed public warehouse or self-storage facility.

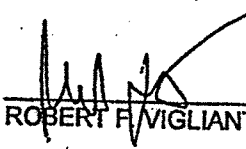
(13) Residential Uses Prohibited. There shall be no short-term or long-term residential use of the premises.

(14) Activities Other Than Public Warehousing and Self-Storage Service Prohibited. There shall be no activity or use, including but not limited to auctions, retail sales, garage sales, flea markets, serving or fabrication activities, and operation of power tools, permitted on the premises except the provision of public warehousing and self-storage services on the premises.

2. Section 1013(a) shall be amended by inserting after "warehousing" in the first sentence "(which is in conjunction with other permitted uses, where the items being warehoused are in the direct possession and control of the person conducting such other permitted uses)"

BE IT FURTHER ORDAINED, that this Ordinance shall take effect after final passage and publication as provided by law.


JUDITH E. OSTY, BOROUGH CLERK


ROBERT F. VIGLIANTI, MAYOR

FIRST READING

SECOND READING

Introduced by:

Seconded by:

Roll call vote: Ayes: Nays: Ayes: Nays:

Absent:

Date:

ORDINANCE NO. 1042-2001

**AN ORDINANCE TO AMEND AND SUPPLEMENT
THE LAND USE ORDINANCE OF THE BOROUGH
OF MOUNTAINSIDE BY ADDING
ARTICLE 16 "SOIL MOVING"**

BE IT ORDAINED by the Mayor and Council of the Borough of Mountainside as follows:

SECTION I. Article 16 of the Land Use Ordinance of the Borough of Mountainside is amended to read as follows:

1600 Soil Moving

1601 Declaration. The Borough of Mountainside has determined that the relocation, excavation and movement of soil within the Borough should be regulated to effectuate the general purposes of the Master Plan and the Land Use Ordinance.

1602 Definitions Soil - any earth, sand, clay, loam, gravel, humus, rock or dirt without regard to the presence or absence therein of organic matter.

Hazardous Materials - those materials as defined by either federal or state law as "hazardous" and or including petroleum and petroleum products.

1603 Permit Required. No person shall excavate, fill or otherwise move soil for any use in amounts which exceed thirteen (13) cubic yards of soil without first having obtained a permit to do so from the Borough of Mountainside.

1604 Permit Application. An application for a permit shall be made in a form provided by the Borough and shall specify the following:

(a) The identity and address of the applicant, and of the person having direct charge, supervision and control of the proposed work.

(b) The identity and address of the owner of the property where the work will be performed.

(c) The address of the property where the work will be performed, including Tax Map Block and Lot description.

(d) A description of the work, including the purpose for which the permit is being sought.

- (e) The present location of the soil which is the subject of the application.
- (f) Description of the soil together with a statement as to whether same has been tested.
- (g) The quantity in cubic yards of the soil involved.
- (h) The period of time the work will take and proposed date for completion of the work.
- (i) A statement of all other permits or approvals that have been submitted to or issued by any other board, office or agency regarding such work, and a copy of each such permit, application or approval.

1605 Map. Accompanying the application shall be topographical maps prepared and certified by a licensed engineer showing:

- (a) The present grades
- (b) The proposed grades when work is completed.
- (c) The grades of all abutting streets and lots
- (d) Existing and proposed slopes and lateral supports.
- (e) Existing and proposed surface water drainage.
- (f) The depth of the top Layer of arable soil over the entire area, or if said depth shall vary, the map shall show where the depths vary and the depth of the top layer of arable soil in each such areas.
- (g) Location and size of trees affected by any soil movement or grading work.

1605 Additional data. The applicant, at the applicant's expense and in cooperation with the Borough of Mountainside, shall:

- (a) Establish the chain of custody of any soil to be added to the site leading up to the applicant's possession of it.
- (b) Have the soil tested by a State approved laboratory to assure that the soil does not contain hazardous material.
- (c) Furnish other data as may be required by the Borough.

1607 Escrow. The applicant shall deposit with the Borough of Mountainside such sum, to be held in escrow, as shall be deemed necessary by the Borough Engineer. Such sum shall cover the expenses incurred by the Borough Engineer as the result of the review of any application filed under this section and the review any work to be performed by the applicant upon the issuance of a permit.

1608 Bond. Before any permit shall be issued, the applicant shall file with the Borough of Mountainside a bond issued in a form, amount and by a surety acceptable to the Borough Engineer sufficient to ensure the performance of the work to be performed pursuant to the provisions of this section and the permission granted by the Borough of Mountainside.

1609 Issuance of a Permit. After reviewing the application, map, test results and other data submitted to the Borough of Mountainside, the Borough Engineer shall act upon the application within twenty (20) days of the submission of all required information. The authorized official shall take into consideration the following:

- (a) Public health, safety and welfare.
- (b) Soil erosion by water and wind.
- (c) Surface water drainage.
- (d) Lateral support of abutting streets and lots.
- (e) Land values and uses.
- (f) Such other factors as may bear upon or relate to the goals and objectives of the Master Plan and Land Use Ordinance.

A permit for work which involves land disturbance in excess of *five thousand (5,000) square feet*, shall only be granted after site plan review and approval pursuant to Article 9 of this Ordinance.

In granting a permit the Borough Engineer, Zoning Officer or Construction Official may require the work be performed under conditions which support and advance the interests of the Borough of Mountainside in connection with section 1609(a-f).

1610 Conduct of Work. If a permit is granted, the work involved shall be performed in such a manner so that no sharp declivities, pits or depressions are created, and the area shall be leveled off, cleared of debris and graded to conform to the contour lines and grades approved.

A duly authorized official of the Borough of Mountainside shall have the right to enter onto the property where the work is being performed to examine and inspect the work being performed. If the Zoning Officer or Construction Official determines that any provision of the Land Use Ordinance or the terms of the permit granted have been or are being violated, that person shall take steps to assure that the violation will be abated or shall prosecute the offender in accordance with section 1611.

1611 Violations and Penalties. This article shall be administered by the Zoning Officer or Construction Official. Any person violating any provision of this section or the terms of the permission granted shall be subject to a fine as set forth in section 1205 Penalties. Each and every violation and non-performance of the terms of this section or the terms of the permission granted, or each and every day any such violation occurs or continues, shall be construed as a separate and distinct violation hereof.

SECTION II.

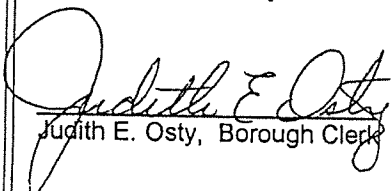
Any or all Ordinances or parts thereof in conflict, or inconsistent, with any part of the terms of this Ordinance are hereby repealed to the extent that they conflict or are inconsistent.

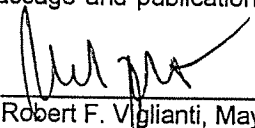
SECTION III.

In the event that any section, part or provision of this Ordinance shall be held to be unconstitutional or invalid by any court, such holding shall not affect the validity of this Ordinance as a whole or any part thereof, other than the part so held unconstitutional or invalid.

SECTION IV.

This Ordinance shall take effect after passage and publication as, and in the manner, permitted by law.


Judith E. Osty, Borough Clerk


Robert F. Vigilanti, Mayor

ORDINANCE 1047-2002

AN ORDINANCE AMENDING THE LAND USE ORDINANCE OF THE BOROUGH OF MOUNTAINSIDE TO REQUIRE THE SUBMISSION OF AN ENVIRONMENTAL IMPACT STATEMENT WITH CERTAIN DEVELOPMENT APPLICATIONS

BE IT ORDAINED by the Mayor and Council of the Borough of Mountainside as follows:

SECTION I. The following is hereby added to the Land Use Ordinance of The Borough of Mountainside as Article 14 Environmental Impact Statement

1401. Purpose and Requirements.

A. The purpose of this chapter is to require and provide guidelines for the filing of Environmental Impact Statements ("EIS") with the Planning Board. The Borough has determined that Environmental Impact Statements must be filed in order to assist the Planning Board in assessing the impact of a proposed project upon the environment, particularly with regard to water and air resources, pollution of all kinds, drainage, waste disposal the landscape and all other environmental factors. The provision of an EIS will assist the Board in determining, whether a proposed structure or project may be undertaken without detriment to the public health, safety and welfare of the Borough of Mountainside and the statutory purposes set forth in the Municipal Land Use Law.

B. This EIS shall be used by the Board to evaluate the probable impacts associated with a proposed development and to propose alternatives which will mitigate any adverse impact. Where the review of an EIS leads the Board to determine that a situation is presented where adverse environmental impacts are real, substantial and not correctable by the applicant, the Board may rely on these impacts as a basis for the denial of an application. The data set forth within an EIS may be used by the Board to require specific conditions relating to site design or improvements which shall be met by the applicant to alleviate or rectify problems before development approval is granted.

1401.1 An EIS shall accompany each and every application to the Planning Board for major and minor subdivision or site plan approval and shall be a required item on the checklist that each applicant for such major and minor subdivision or site plan approval and for any variance must complete before an application is deemed complete pursuant to N.J.S.A. 40:55D-10.3.

A. The Environmental Review Commission, upon the request of an applicant, may in its discretion waive the requirements of any of the provisions of this chapter including the requirement for an applicant to submit an EIS.

(1) The members of the Environmental Review Commission are as follows: The Chair of the Planning Board, The Planning Board Secretary, The Borough Engineer and the Borough Zoning Officer.

(2) The Environmental Review Commission may establish such rules and procedures as they deem appropriate from time to time.

1401.2 The EIS must be prepared and signed by a qualified firm or professional who due to training, experience and education has sufficient expertise to prepare an EIS, and a list of those credentials shall be included in the EIS. Such person or firm shall be selected by the applicant.

A. In the event that the Board deems it appropriate to have a professional consultant review the EIS, the Board at its discretion, upon notice to the applicant, may hire an environmental consultant, the cost of which shall be paid by the applicant.

1402. Contents of an Environmental Impact Statement. The EIS shall include, but not be limited to, the following:

1402.1. Plan and Description of Development. The description shall include a key map showing the location of the project and how it relates to the surrounding region. A description of the project specifying in narrative and in the form of maps, drawings, graphs or similar visual aids, what is to be done and how it is to be done during and after construction of the project, including the information and technical data adequate to permit a careful assessment of the environmental impact of the project, including but not limited to contours, buildings, roads, paved areas, grading and regarding, adjacent natural streams, stream-encroachment boundaries, the project's relation to surrounding property and utility lines and buffer zones for noise and light control.

1402.2. Inventory of Existing Environmental Conditions.

A. An inventory of existing environmental conditions at the project site and in the area surrounding the site which is affected by the plan of development, (the "are surrounding the site" shall include, at a minimum, a radius of 500 feet around the outside of the site) and shall include:

- (1) Sewer facilities.
- (2) Water supply.
- (3) Water quality, ground water and surface water.
- (4) One-hundred-year flood and flood hazard area.
- (5) Air quality.
- (6) Traffic noise, volume and flow.
- (7) Noise.
- (9) Demography.
- (11) Topography.
- (12) Slope.
- (13) Soils and properties thereof, including capabilities and limitations.
- (14) Vegetation.
- (15) Wetlands.

B. Where applicable, quality standards shall be described with reference to those promulgated by the Department of Environmental Protection and Energy of the State of New Jersey and all applicable federal agencies.

1402.3

Assessment of the anticipated impact of the project.

(A) An assessment, supported by environmental data, of the environmental impact of the project shall be set forth. The assessment shall include an analysis of the public costs, such as but not limited to schools, roads, police protection, fire protection, water supply and sewerage disposal, and other similar direct and indirect costs of the project, including the effect on recreational facilities, open space and other similar municipal services.

(B) Assessment Data. Said assessment shall specifically include the following:

(1) Sewerage facilities. A description of the disposal system, expected content of the sewage effluents, expected daily volumes of sewage, the affected sewage treatment plant's present capacity and authorized capacity. A showing that sewage can be disposed of through public facilities of adequate capacity. If disposal is on-site, data on underlying water table, soil analysis, soil stratigraphy, percolation tests for every sewage disposal site, topography, location depth of aquifers; depth and type of construction of all wells within five hundred (500) feet of site; and any other pertinent data in compliance with all federal, state and local sewage and health regulations shall be provided.

(2) Water supply. The source and adequacy of the potable water system to be provided to the site. The expected daily water requirements for the site. The uses to which water will be put on site and if applicant is relying on a public water supply a showing that an adequate potable water supply is available from such public facility.

(3) Groundwater. Average depth to the seasonal high water table. Minimum and maximum depth to water table on site.

(4) Surface water. A showing that water runoff from the site is so controlled that on- and off-site erosion will neither be caused nor worsened during or after construction and that the potential for downstream flooding is not increased. Also include a statement regarding each of the following:

a. Sources and volume and peak flow rates of surface water runoff expected from the undeveloped site and to be generated by new improvements.

b. Destination of the runoff water and method of controlling downstream effects.

c. Chemical additives to runoff from site.

d. Changes of runoff, rates and volumes to be caused by changes in land use and the time of concentration.

e. Plans for disposition of storm water, whether by retention on site or means of channeling so as to protect downstream property.

(5) Soils.

a. List all soil types by reference to the United States Department of Agriculture Soil Types, permeability of soil on site, rate of percolation of water through soil with one test for each five acres or less.

b. Submit an erosion and sediment control plan for during and after construction. Special attention shall be given to proper site surface drainage so that removal of surface water will not adversely affect neighboring properties or the public storm drainage system. Storm water shall be removed from all paved areas and carried away in an efficient and approved manner so that it will not obstruct the flow of vehicles or pedestrian traffic and will not create puddles in paved areas.

(6) Ground cover and vegetation. Specify the extent of existing impervious ground cover on site, extent of impervious ground cover proposed, existing vegetation on site, and proposed vegetation on site.

(7) Stream encroachments. An encroachment permit is required from the New Jersey Division of Water Resources for fill or diversion of a water channel, alteration of a stream, repair or construction of a bridge, culvert reservoir, dam, wall, pipeline or cable crossing. State all such permits that are required and the status of such permit applications.

(8) Flood plains. A description of projected possible flood damage to the property and improvements, including a summary of flood stages from state or federal sources.

(9) Wetlands. A description of all wetlands on site and the impact of the project on those wetlands.

(10) Air quality. A statement of anticipated effects on air quality due to on-site activities such as heating, incineration, any processing of materials and vehicular traffic. Plans for control of emissions affecting air quality and control of dust during construction.

(11) Traffic: pedestrian and vehicular. A statement of the projected effect of anticipated traffic on all internal access, bordering and regional roadways.

(12) Noise. A statement of anticipated effect on noise levels, magnitude and characteristics related to new on-site activities and proposed methods of control. A proposal must be made for control of noise both during and after construction. The applicant must also list neighboring properties that will be adversely affected by the noise.

(13) Topography. Identify the maximum existing elevation of site, minimum existing elevation of site, and maximum proposed elevation of site. Minimum proposed elevation of site. Provide a detailed description of all proposed changes in topography including a plan showing existing and proposed contours of the entire site and adjacent sites. Any grade changes shall be in keeping with the general appearance of the neighboring properties.

(14) Demography. A statement of the on-site and off-site effect on the utilization of public facilities due to changes in population density.

(15) Solid and hazardous waste. A statement of the type, amount and anticipated method of disposal. A list of all licenses, permits and other approvals requested by municipal, county, state or federal law shall be provided.

(16) Historical features. A statement describing all historical features on the site.

(17) Environmental contamination. A statement of all prior uses of the site, with specific attention to all prior uses that might be expected to cause environmental contamination. A statement regarding all efforts to investigate, remove or remediate any environmental contamination. A statement of all known environmental contaminants on site which are above the levels considered by the applicable federal, state or county agencies to be safe for human habitation and a detailed description and analysis of the measures needed to address such contamination or hazards for purposes of the proposed project.

1403. Analysis.

A. Listing of all unavoidable adverse environmental impacts. A listing and evaluation of adverse environmental impacts and damages to natural resources which cannot be avoided, with particular emphasis upon, but not limited to, air or water pollution, increase in noise, damage to plant, tree and wildlife systems, displacement of people and businesses, increase in sedimentation and siltation, increase in municipal services and consequences to municipal tax structure. Off-site impact shall also be set forth and evaluated.

B. Steps to minimize and mitigate environmental damage. A description of steps to be taken to minimize and mitigate adverse environmental impacts during construction and operation, both at the project site and in the affected surroundings; such description to be accompanied by necessary maps, schedules and other explanatory data as may be needed to clarify and explain the actions to be taken.

C. Alternatives. A statement of alternatives to the proposed project which might avoid some or all of the adverse environmental effects of the proposed project. The statement should include the reasons for the acceptability or non-acceptability of each alternative.

D. Reference to federal, state or local statutes or regulations. Wherever possible, the above-referenced assessments shall describe the anticipated impacts with reference to standards as may have been determined by federal, state and local statutes and/or regulations.

E. The EIS shall include a list and status of all environmental approvals needed from federal, state or county agencies and shall include a copy of any comments received by applicant from any such agency.

FIRST READING

SECOND READING

Introduced by: Councilman Mirabelli
Seconded by: Councilman Schon
Roll call vote: Ayes: 6 Nays: 0
Absent:
Date: Nov. 26, 2002

Councilman Mortimer
Councilman Perrotta
Ayes: 5 Nays: 0
Councilman Mirabelli
Dec. 17, 2002

ORDINANCE NO. 1054-2002

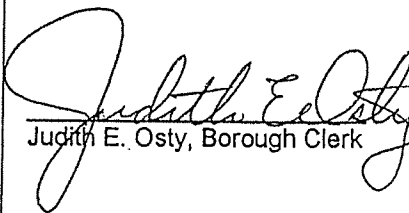
AN ORDINANCE TO AMEND THE LAND USE ORDINANCE
OF THE BOROUGH OF MOUNTAINSIDE
ARTICLE 2, SECTION 228 BY AMENDING THE DEFINITION
FOR "HEIGHT OF A BUILDING"

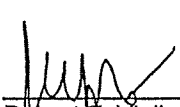
BE IT ORDAINED by the Mayor and Council of the Borough of
Mountainside as follows:

SECTION I. Article 2, Section 228 of the Land Use Ordinance of the
Borough of Mountainside shall be amended by adding a new sentence to the existing
definition as follows:

228. Height of Building. The vertical distance of a structure from its highest
point to; (1) the average elevation of the finished grade adjoining the structure, or (2)
the average natural elevation of the ground level at the site of the structure, which
~~ever results in a lower permissible height for the structure. When determining the~~
height of a structure the height measurement shall not include a chimney, vent, pipe
or similar minimally sized protrusion over the highest roof point, provided that such
protrusions do not extend more than four feet over the highest roof point.

SECTION II. This ordinance shall take effect after passage and
publication as, and in the manner, permitted by law.


Judith E. Osty, Borough Clerk


Robert F. Viglianti, Mayor

FIRST READING

SECOND READING

Introduced by:	Councilman Mortimer	Councilman Turner
Seconded by:	Councilman Perrotta	Councilman Schon
Roll call vote:	Ayes: 6 Nays: 0	Ayes: 6 Nays: 0
Absent:		
Date:	April 15, 2003	May 20, 2003

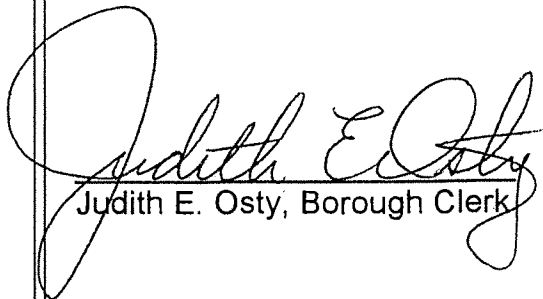
ORDINANCE 1059-2003

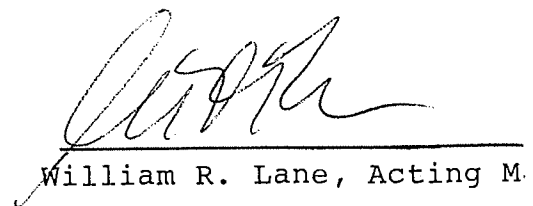
AN ORDINANCE TO AMEND CHAPTER ~~IX~~, SECTION 9-1.3,
PARAGRAPH h, CHANGE IN FEE FOR CONTINUED
CERTIFICATE OF OCCUPANCY

BE IT ORDAINED by the Mayor and Council of the Borough of Mountainside, County of Union and State of New Jersey, that Section 9-1.3, paragraph h of Chapter IX of the Borough Code be and the same is hereby amended as follows:

The fee to obtain a Continued Certificate of Occupancy for residential resale and rentals shall be \$100.00.

This Ordinance shall take effect twenty days after the first publication hereof after final passage.


Judith E. Osty, Borough Clerk


William R. Lane, Acting M.

FIRST READING

SECOND READING

Introduced by:

Seconded by:

Roll call vote:

Ayes:

Nays:

Ayes:

Nays:

Absent:

Date:

ORDINANCE 1075 - 2004

**AN ORDINANCE AMENDING BOROUGH CODE CHAPTER IX ,
BUILDING AND HOUSING TO ESTABLISH THE REQUIREMENT
OF A SURVEY FOR CONSTRUCTION OF ANY NEW FOUNDATION**

WHEREAS, it has come to the attention of the Governing Body of the Borough that there have been incidents entailing the construction of new buildings or additions to existing buildings where "as built" surveys showed the foundations as constructed to be at variance from the plans submitted to the Building Department, and

WHEREAS, the occurrence of such variations, even where the result of mistake or inadvertence, invariably creates difficulties for property owners in attempting to correct or otherwise legitimize the resulting construction; and

WHEREAS, the Governing Body has determined that it is in the public interest to require that a location survey be submitted to the Building Department for approval after foundations are constructed, and that such surveys be approved by the Building Department before further work on the structure is performed;

NOW THEREFORE BE IT ORDAINED, by the Mayor and Council of the Borough of Mountainside, County of Union, State of New Jersey as follows:

Chapter IV of the Borough Code is hereby amended to add the following as Article 9-3, FOUNDATION SURVEY.

a. In addition to any other requirement imposed by the Construction and Building Departments in the Borough of Mountainside, any person, corporation, partnership, limited liability company, sole proprietorship, or other entity of any kind or nature whatsoever that is responsible for constructing a foundation for a new building or for constructing an addition or renovation to an existing building which will have the effect of changing the foundation footprint of such existing building, shall be required to submit to the Building Department a survey certified by a licensed surveyor in the State of New Jersey of the dimensions and location of the foundation as it is constructed, which survey shall include the following information:

1. Lot location and dimensions of each boundary line of the lot;
2. Setback distances of foundation walls from front, side and rear property lines;
3. Square footage of lot;
4. Amount of lot coverage, as calculated from size of foundation footprint; and
5. Such other information as may be required by the Borough Officials to conduct their review.

b. No person required to submit a survey pursuant to subparagraph "a." hereof shall proceed with any further construction on the building, addition or renovation until the Building Department shall have approved the survey submitted pursuant to paragraph "a." hereof, and any person who proceeds with such construction without having obtained such approval shall be a disorderly person and punishable by law as such.

c. Any person required to submit a survey pursuant to paragraph "a." hereof shall, upon completion of construction and prior to application for a certificate of occupancy, submit an as built survey of the building after completion of construction.

d. Upon application to the Building Department a waiver of the requirement contained in paragraph a. hereof may be obtained upon a showing of good cause, as shall be determined by the designated Construction or Building Official of the Borough.

BE IT FURTHER ORDAINED, this ordinance shall take effect after final passage and publication as required by law.

Robert F. Vigilanti, Mayor

Judith E. Osty, Borough Clerk

FIRST READING

SECOND READING

Introduced by: Councilman Mirabelli
Seconded by: Councilman Schon
Roll call vote: Ayes: 6 Nays: 0 Ayes: Nays:
Absent:
Date: September 21, 2004

ORDINANCE 1078-2004

**AN ORDINANCE AMENDING SECTION 3-9.5.1,
ENFORCEMENT OFFICERS, OF SUBSECTION 9,
PROPERTY MAINTENANCE, OF CHAPTER III, OF
THE CODE OF THE BOROUGH OF
MOUNTAINSIDE**

BE IT ORDAINED, by the Mayor and Council of the Borough of Mountainside, County of Union and State of New Jersey that Section 3-9.5.1, of Chapter III, of the Code of the Borough of Mountainside relating to enforcement of the property maintenance code is hereby amended as follows:

1. Section 3-9.5.1, Enforcement Officers, is repealed and replaced by the following:

This ordinance shall be enforced by the Zoning Officer and any other person so designated by the Mayor of the Borough of Mountainside.

BE IT FURTHER ORDAINED, that this ordinance shall take effect after passage and publication, as, and in, the manner permitted by law.

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Werner C. Schon, Acting Mayor

Judith E. Osty, Borough Clerk

FIRST READING

SECOND READING

Introduced by: Councilman Mirabelli
Seconded by: Councilman Lane
Roll call vote: Ayes: 4 Nays: 0 Ayes: Nays:
Absent: Councilmen Mortimer & Schon
Date: March 15, 2005

ORDINANCE 1091-2005

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER
THIRTEEN OF THE CODE OF THE BOROUGH OF
MOUNTAINSIDE REGARDING ROAD OPENING PERMITS ON
NEWLY PAVED ROADS**

WHEREAS, the Borough is responsible for maintaining and paving local roads within the Borough; and

WHEREAS, the Borough each year expends tax money repaving and improving local roadways; and

WHEREAS, the State Department of Transportation regulations which prohibit the issuance of road opening permits for excavation of roads within the first five years of the repaving of a roadway; and

WHEREAS, excavation within local roadways has been found to significantly, and prematurely, deteriorate the condition of the roadway to the detriment of the traveling public and the Borough; and

WHEREAS, the Borough has, as a matter of practice for many years, employed the same five (5) year standard as the State and now desires to codify this practice in its Ordinances.

NOW THEREFORE BE IT ORDAINED, by the Governing Body of the Borough of Mountainside as follows:

The following section shall be added as a new paragraph to the end of Chapter XIII, Streets, Sidewalks and Sanitation:

Five Year Restriction on Road Openings: Notwithstanding the above, permission shall not be granted for the opening of a Borough road within five (5) years of the completion of the repaving of such road. Except that the Borough Engineer may grant a waiver of this restriction in the following circumstances: 1) at the request of a utility company for the emergency repair of existing utility lines, mains, pipes etc.; or 2) upon sufficient evidence that the pavement on the road segment to be excavated has significantly deteriorated since the time of the last repaving, and that the proposed excavation will not have a materially negative effect on the already deteriorating condition of the road. Should an applicant believe it meets the standard set forth in 2, above, an application may be made in writing the Borough Engineer who shall forward it to the Governing Body for final determination. The granting of such a waiver by the Governing Body may include the requirement of additional conditions and safeguards, including the deposit of additional performance and maintenance fees may be required. The Borough Engineer shall provide a memorandum to the Governing Body with an evaluation of the applicant's request and suggestions as to additional conditions for the Governing Body's consideration.

This Ordinance shall take effect after final reading and publication as provided by law.

FIRST READING

SECOND READING

Introduced by:

Seconded by:

Roll call vote:

Ayes:

Nays:

Ayes:

Nays:

Absent:

Date:

ORDINANCE 1107-2006

**ORDINANCE AMENDING ARTICLE 12 OF THE LAND
USE AND ZONING CODE AND CHAPTER 9, BUILDING
AND HOUSING OF THE BOROUGH CODE RELATING TO
MINIMUM FINES AND ENFORCEMENT OF VIOLATIONS**

BE IT ORDAINED, by the Governing Body of the Borough of
Mountainside, County of Union State of New Jersey as follows:

I. Article 12, Section 1205 of the Land Use and Zoning Code of the Borough
shall be amended to read as follows:

1205 PENALTIES. The owner or user of any building or structure, lot or land or part thereof, where anything in violation of this ordinance the Land Use, Zoning or Stormwater Ordinances of the Borough shall be placed or shall exist, and any architect, engineer, 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 offense and upon conviction thereof shall each be liable to a fine of not more than \$200.00 or to imprisonment for not more than 90 days, or to both such fine or imprisonment, or both up to the maximum amount permitted by N.J.S.A. 40:49-5, as amended from time to time.

II. The following shall be added to the end of Chapter 9, Building and Housing of the Borough Code:

ENFORCEMENT and PENALTIES:

In addition to and not in limitation of any other enforcement and penalty provisions provided in the Borough Ordinances and in the State Uniform Construction Code, any owner, user, contractor, engineer, architect, agent person or corporation who violates the Borough Housing and Building Ordinances or assists in the commission of such violation, upon conviction there of, shall be liable to a fine or imprisonment, or both, up to the maximum amount permitted by N.J.S.A. 40:49-5, as amended from time to time.

Each and every day that such violation continues shall be deemed a separate and distinct violation.

III. Any provisions of the Borough Ordinances, which are inconsistent with these amendments, are hereby repealed.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon final passage and publication as required by law.

Martha De Jesus, Acting Municipal Clerk

Richard F. Viglianti, Mayor

FIRST READING

SECOND READING

Introduced by: Councilman Messler
 Seconded by: Councilman Mirabelli
 Roll call vote: Ayes: 4 Nays: 0
 Absent: Councilman Lane
 Councilman Schon Excused
 Date: April 18, 2006

Councilman Messler
 Councilman Lane
 Ayes: 6 Nays: 0

May 16, 2006

ORDINANCE 1111-2006

AN ORDINANCE AMENDING SECTION 704 OF THE LAND USE ORDINANCE OF THE BOROUGH OF MOUNTAINSIDE TO INCREASE THE MINIMUM ESCROW DEPOSIT REQUIRED FOR DEVELOPMENT APPLICATIONS

BE IT ORDAINED, by the Mayor and Council of the Borough of Mountainside, County of Union, State of New Jersey that section 704 Fee Schedule of the Land Use Ordinance is amended as follows:

1. The minimum escrow deposits for each of the following categories shall be amended and replaced by the following amounts:

Minor Subdivision	
Residential Escrow	\$2,500
Non-Residential Escrow	\$2,500
Preliminary Major Subdivision	
Residential Escrow	\$3,500
Non-Residential Escrow	\$3,500
Final Major Subdivision	
Residential Escrow	\$3,500
Non-Residential Escrow	\$3,500
Preliminary Site Plan	
Residential Escrow	\$2,500
Non-Residential Escrow	Building Floor Area:
	Less than 10,000 sq.ft.
\$2,500	
	10,001 to 50,000 sq. ft.
\$5,000	
	50,001 to 100,000 sq.ft. \$10,000
	more than 100,000 sq. ft. \$15,000
Final Site Plan	
Residential Escrow	\$2,500
Non-Residential Escrow	Building Floor Area:
	Less than 10,000 sq.ft.
\$2,500	
	10,001 to 50,000 sq. ft.
\$5,000	
	50,001 to 100,000 sq.ft. \$10,000
	more than 100,000 sq. ft. \$15,000

2. All other provisions of Section 704 Fees Schedule, of the Borough Land Use Ordinance shall remain as provided for in Ordinance 974-97.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon publication after final adoption as provided for by law.

Robert F. Vigilanti

Robert F. Vigilanti, Mayor

Martha De Jesus

Martha De Jesus, Acting Borough Clerk

Preliminary Site Plan
 Residential Application
 Residential Escrow
 Non-residential Application

\$250 + \$50/unit
 \$500 + \$100/unit
 \$500 + \$50/acre +
 \$1/parking space +
 \$0.02/ sq. ft. floor area
 Building Floor Area:
 Less than 10,000 sq. ft. \$1500
 10,001-50,000 sq. ft. \$5000
 50,001-100,000 sq. ft. \$10,000
 More than 100,000 sq. ft. \$15,000

Non residential Escrow

Final Site Plan

Same fee as for Preliminary Site Plan

Informal Conceptual Plan

\$750 non-residential
 \$250 residential

Changes of tenancy without site revisions: Floor area charges shall be measured by the floor area intended to be utilized by applicant both as to application and escrow fees and only final site plan fees will be charged.

Appeal under Section 408 and 801 or Interpretation which involves Site Inspection or Board Action:

Residential Application \$ 100
 Residential Escrow \$ 500
 Non-residential Application \$ 250
 Non-residential Escrow \$1,000

All Variances

Residential Application \$ 50-each
 Non-residential Application \$ 500-each

Signs, Non-residential:

	Application Fee	Escrow Fee
Less than 10 sq. ft.	\$ 25	\$100
More than 10 sq. ft.	\$ 50	\$200
More than 25 sq. ft.	\$ 75	\$300
More than 50 sq. ft.	\$ 100	\$400

Certificates of Occupancy

Residential \$ 30
 Non-residential \$ 75

FIRST READING SECOND READING

Introduced by:
Seconded by:
Roll call vote: Ayes: Nays: Ayes: Nays:
Absent:
Date:

ORDINANCE 44-13-2006

AN ORDINANCE ADOPTING A FLOOD DAMAGE PREVENTION
ORDINANCE FOR THE BOROUGH OF MOUNTAINSIDE IN REPLACEMENT
OF THE EXISTING STORM WATER CONTROL AND FLOOD PLAIN
ORDINANCE IN COMPLIANCE WITH CURRENT STATE AND FEDERAL
GUIDELINES

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WHEREAS, The current Borough Storm Water Control and Flood Plain Ordinance was adopted in April 1985; and

WHEREAS, the State and Federal Governments are continually updating the requirements related to flood zones and flood damage protection, and as a result of the many incidents of terrible flooding in New Jersey over the past several years renewed attention has been paid to local flood control measures; and

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WHEREAS, a draft of this Ordinance was referred to the Planning Board for comment in compliance with N.J.S.A. 40:55D et seq. and the Planning Board has provided a report indicating that this ordinance is consistent with the Master Plan of the Borough; and

WHEREAS, the Governing Body of the Borough desires to adopt this ordinance in compliance with current State and Federal requirements and for the protection of the health, safety and welfare of its residents.

NOW, THEREFORE, BE IT ORDAINED, by the Governing Body of the Borough of Mountainside, State of New Jersey, County of Union, that the existing Borough Storm Water Control and Flood Plain Ordinance is repealed and is hereby replaced by the following:

Section 1.

THE FLOOD DAMAGE PREVENTION ORDINANCE

Article 1

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STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

1.1 STATUTORY AUTHORIZATION

The Legislature of the State of New Jersey has in N.J.S.A. 40:48-1, et seq., delegated the responsibility to local governmental units to adopt regulations designed to promote public health, safety, and general welfare of its citizenry. Therefore, by that authority the governing body of the Borough of Mountainside adopts this ordinance.

1.2 FINDINGS OF FACT

[1] The flood hazard areas of the Borough are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

[2] These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

1.3 STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- [1] To protect human life and health;
- [2] To minimize expenditure of public money for costly flood control projects;
- [3] To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- [4] To minimize prolonged business interruptions;
- [5] To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, bridges located in areas of special flood hazard;
- [6] To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- [7] To insure that potential buyers are notified that property is in an area of special flood hazard; and
- [8] To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

1.4 METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this ordinance includes methods and provisions for:

- [1] Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- [2] Requiring that uses vulnerable to floods including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- [3] —Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- [4] Controlling filling, grading, dredging, and other development which may increase flood damage; and,
- [5] Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

Article 2.0

DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

"Appeal" means a request for a review of the ~~Borough Engineer's~~ *local administrator's* interpretation of any provision of this ordinance or a request for a variance.

"Area of shallow flooding" means a designated AO, AH, or VO zone on a community's Digital Flood Insurance Rate Map (DFIRM) with a one percent annual or greater chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of special flood hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

"Areas of special flood related erosion hazard" is the land within a community which is most likely to be subject to severe flood related erosion losses. After a detailed evaluation of the special flood related erosion hazard area will be designated a Zone E on the Flood Insurance Rate Map.

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

"Development" means any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within the area of special flood hazard.

"Elevated building" means a non-basement building (i) built in the case of a building in a Area of Special Flood Hazard to have the top of the elevated floor or in the case of a building in a Coastal

High Hazard Area to have the bottom of the lowest horizontal structural member of the elevated floor elevated above the ground level by means of piling, columns (posts and piers), or shear walls

parallel to the flow of the water, and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In an Area of Special

Flood Hazard "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In Areas of Coastal High Hazard "elevated buildings" also includes a building otherwise meeting the definition of "elevated building" even though the lower area is enclosed by means of breakaway walls.

"Flood or flooding" means 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/or
- [2] The unusual and rapid accumulation or runoff of surface waters from any source.

"Digital Flood Insurance Rate Map" (DFIRM) means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood Insurance Study" (FIS) means the official report provided in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Insurance Rate Map(s) and the water surface elevation of the base flood.

"Flood plain management regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such State or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

"Floodway" means 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 0.2 foot.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure" means any structure that is:

- [a] Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- [b] Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district preliminarily determined by the Secretary to qualify as a registered historic district;
- [c] Individually listed on a State inventory of historic places in States with historic preservation programs which have been approved by the Secretary of the Interior; or
- [d] Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved State program as determined by the Secretary of the Interior; or
 - (2) Directly by the Secretary of the Interior in States without approved programs.

"Lowest Floor" means the lowest floor of the lowest enclosed area [including basement]. An unfinished or flood resistant enclosure, useable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so to render the structure in violation of other applicable non-elevation design requirements.

"Manufactured home" means a structure, transportable in one or more SectionssectionArticles, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreation vehicle".

"Manufactured home park or manufactured home subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"New construction" means structures for which the start of construction commenced on or after the effective date of a floodplain regulation adopted by a community and includes any subsequent improvements to such structures.

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the flood plain management regulations adopted by the municipality.

"Recreational vehicle" means a vehicle which is [i] built on a single chassis; [ii] 400 square feet or less when measured at the longest horizontal projections; [iii] designed to be self-propelled or permanently towable by a light duty truck; and [iv] designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Start of Construction" (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. No. 97-348) includes substantial improvements and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site such as the pouring of a slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation.

Permanent construction does not include land preparation, such as clearing, grading and filling nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings or piers, or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the

actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building, a manufactured home, or a gas or liquid storage tank, that is principally above ground.

"Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial Improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

[1] Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or

[2] Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

"Variance" means a grant of relief from the requirements of this ordinance that permits construction in a manner that would otherwise be prohibited by this ordinance.

Article 3.0

GENERAL PROVISIONS

3.1 LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of Borough of Mountainside, Union County, New Jersey.

3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard for the Borough of Mountainside, Community No.340468, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

(a) A scientific and engineering report "Flood Insurance Study, Union County, New Jersey (all jurisdictions)" dated September 20, 2006.

(b) Flood Insurance Rate Map for Union County, New Jersey (all jurisdictions) as shown on Index and panel numbers 0008, 0009, 0010, 0018, 0019, 0020, whose effective date is

(c)(b) September 20, 2006.

The above documents are hereby adopted and declared to be a part of this ordinance. The Flood Insurance Study and maps are on file at Borough Hall 1385 U.S. Route 22, Mountainside, NJ 07092.

3.3 PENALTIES FOR NONCOMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be subject to a fine and or imprisonment, or both, upto the maximum permitted by N.J.S.A. 40:49-5, as amended from

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time to time, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Borough of Mountainside from taking such other lawful action as is necessary to prevent or remedy any violation.

3.4 ABROGATION AND GREATER RESTRICTIONS

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

3.5 INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be:

- [1] Considered as minimum requirements;
- [2] Liberally construed in favor of the governing body; and,
- [3] Deemed neither to limit nor repeal any other powers granted under State statutes.

3.6 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance 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 ordinance does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

This ordinance shall not create liability on the part of the Borough of Mountainside, any officer, agent or employee thereof or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made there under.

Article 4.0

DEVELOPMENT PERMIT

4.1 ESTABLISHMENT OF DEVELOPMENT PERMIT

A Development Permit shall be obtained before construction or development begins within any area of special flood hazard established in ~~Section~~Article 3.2. Application for a Development Permit shall be made on forms furnished by the Borough Engineer—~~(local administrator)~~ and may include, but not be limited to; 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.

Specifically, the following information is required:

- [1] Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
- [2] Elevation in relation to mean sea level to which any structure has been floodproofed.
- [3] Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in ~~Section~~Article 5.2-2; and,
- [4] Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

4.2 DESIGNATION OF THE LOCAL ADMINISTRATOR

The Borough Engineer—~~(local administrator)~~— is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

4.3 DUTIES AND RESPONSIBILITIES OF THE

Duties of the ~~Borough Engineer~~ ~~(local administrator)~~ shall include, but not be limited to:

4.3-1 PERMIT REVIEW

[1] Review all development permits to determine that the permit requirements of this ordinance have been satisfied.

[2] Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.

[3] Review all development permits to determine if the proposed development is located in the floodway, assure that the encroachment provisions of ~~Section~~Article 5.3(1) are met.

[4] ~~Review all development permits in the coastal high hazard area of the area of special flood hazard to determine if the proposed development alters sand dunes so as to increase potential flood damage.~~

4.3-2 USE OF OTHER BASE FLOOD AND FLOODWAY DATA

When base flood elevation and floodway data has not been provided in accordance with ~~Section~~Article 3.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the ~~Borough Engineer~~ ~~(local administrator)~~ shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer ~~Section~~Articles 5.2-1, SPECIFIC STANDARDS, Residential Construction, and 5.2-2, SPECIFIC STANDARDS, Nonresidential Construction.

4.3-3 INFORMATION TO BE OBTAINED AND MAINTAINED

[1] Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

[2] For all new or substantially improved floodproofed structures:

- [i] verify and record the actual elevation (in relation to mean sea level); and
- [ii] maintain the floodproofing certifications required in ~~Section~~Article 4.1 (3).

[3] Maintain for public inspection all records pertaining to the provisions of this ordinance.

4.3-4 ALTERATION OF WATERCOURSES

[1] Notify adjacent communities and the New Jersey Department of Environmental Protection, Flood Plain Management ~~Section~~Article and the Land Use Regulation Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

[2] Require that maintenance is provided within the altered or relocated portion of said watercourse so the flood carrying capacity is not diminished.

4.3-5 INTERPRETATION OF FIRM BOUNDARIES

Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in ~~SECTION~~ARTICLE 4.4.

4.4 VARIANCE PROCEDURE

4.4-1 APPEAL BOARD

[1] The ~~Combined Planning/Zoning Board~~ — as established by Borough of Mountainside shall hear and decide appeals and requests for variances from the requirements of this ordinance. In the event that the Borough Engineer is a member of the Planning Board/Zoning Board then an alternate shall be designated to hear the appeal in place of the Borough Engineer. Nothing shall prohibit the Borough Engineer from testify as a witness on behalf of the Borough at the hearing of the appeal.

[2] The ~~Combined Planning/Zoning Board~~ —shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Borough Engineer ~~(local administrator)~~ in the enforcement or administration of this ordinance.

[3] The applicant or any taxpayer aggrieved by the decision of the Combined Planning/Zoning Board, may appeal such decision to the Superior Court of New Jersey in Elizabeth, as provided in N.J.S.A. 40:55D et seq.

[4] In passing upon such applications, the ~~Combined Planning/Zoning Board~~, shall consider all technical evaluations, all relevant factors, standards specified in other ~~section~~Articles of this ordinance, and:

- (i) the danger that materials may be swept onto other lands to the injury of others;
- (ii) the danger to life and property due to flooding or erosion damage;
- (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (iv) the importance of the services provided by the proposed facility to the community;
- (v) the necessity to the facility of a waterfront location, where applicable;
- (vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (vii) the compatibility of the proposed use with existing and anticipated development;
- (viii) the relationship of the proposed use to the comprehensive plan and flood plain management program of that area;
- (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
- (x) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
- (xi) the costs 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.

[5] Upon consideration of the factors of ~~Section~~Article 4.4-1(4) and the purposes of this ordinance, the ~~Combined Planning Board/Zoning Board~~ ~~—(appeal board)~~ may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

[6] The Borough Engineer ~~(local administrator)~~ shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.

4.4-2 CONDITIONS FOR VARIANCES

[1] Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in ~~SECTION~~ARTICLE 4.4-1(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

[2] Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

[3] Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

[4] Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

[5] Variances shall only be issued upon:

- (i) a showing of good and sufficient cause;
- (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
- (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or

(v)(iv) victimization of the public as identified in ~~SECTION~~ARTICLE 4.4- 1(4), or conflict with existing local laws or ordinances.

(6) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation 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.

Article 5.0

PROVISIONS FOR FLOOD HAZARD REDUCTION

5.1 GENERAL STANDARDS

In all areas of special flood hazards the following standards are required:

5.1-1 ANCHORING

[1] All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

[2] All manufactured homes shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

5.1-2 CONSTRUCTION MATERIALS AND METHODS

[1] All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

[2] All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

5.1-3 UTILITIES

[1] All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

[2] New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters;

[3] On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and

[4] Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

5.1-4 SUBDIVISION PROPOSALS

- [1] All subdivision proposals shall be consistent with the need to minimize flood damage;
- [2] All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- [3] All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
- [4] Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less).

5.1-5 ENCLOSURE OPENINGS

All new construction and substantial improvements having fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other covering or devices provided that they permit the automatic entry and exit of floodwaters.

5.2 SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data have been provided as set forth in ~~Section~~Article 3.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD or in ~~SECTION~~ARTICLE 4.3-2, Use of Other Base Flood Data, the following standards are required:

5.2-1 RESIDENTIAL CONSTRUCTION

[1] ~~New Construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.~~
~~In Zones A-1-30 or AE zones new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation;~~

[2] require within any AO zone on the municipality's FIRM that all new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two feet if no depth number is specified). And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

~~New Construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.~~

5.2-2 NONRESIDENTIAL CONSTRUCTION

[1] ~~In A-1-30 or AE all~~ New Construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or together with the attendant utilities and sanitary facilities, shall:

[2] require within any AO zone on the municipality's FIRM that all new Construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two feet if no depth number is

specified). And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures; or

~~New Construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or~~

[3] be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

[4] have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,

[5] be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsectionArticle. Such certification shall be provided to the official as set forth in SECTIONARTICLE 4.3-3 (2).

5.2-3 MANUFACTURED HOMES

[1] Manufactured homes shall be anchored in accordance with SectionArticle 5.1-1(2).

[2] All manufactured homes to be placed or substantially improved within an area of special flood hazard shall be elevated on a permanent foundation such that the top of the lowest floor is at or above the base flood elevation.

5.3 FLOODWAYS

Located within areas of special flood hazard established in SECTIONARTICLE 3.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

[1] Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

[2] If SECTIONARTICLE 5.3(1) is satisfied, all new construction and substantial improvements must comply with SECTIONARTICLE 5.0 PROVISIONS FOR FLOOD HAZARD REDUCTION.

[3] In all areas of special flood hazard in which base flood elevation data has been provided and no floodway has been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than two-tenths (0.2) of a foot at any point.

SectionSection II. Repealing Conflicting Ordinance Provisions:

All provisions of any Borough Ordinance deemed inconsistent with the provisions or intent of this Ordinance are hereby repealed.

SectionSection III. Severability:

If any sectionArticle, subsectionarticle, sentence clause phrase or portion of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision, and its validity or unconstitutionality shall not effect the validity of the remaining portions of the Ordinance.

SectionSection IV. Effective Date:

This Ordinance shall be effective upon its final passage and publication as required by law.

SectionSection V. Filing:

After final adoption the Borough Clerk shall file a copy of this Ordinance with the Mountainside Planning/Zoning Board, the County of Union and the New Jersey Department of Environmental Protection Natural and Historic Resources SectionArticle.

Formatted

-Robert F. Vigilanti, Mayor

Martha De Jesus, Acting-Borough Clerk

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FIRST READING

SECOND READING

Introduced by: Councilman Messler
 Seconded by: Councilman Mirabella
 Roll call vote: Ayes: 4 Nays: 0
 Absent: Councilman Lane
 Councilman Schon Excused
 Date: April 18, 2006

Councilman Messler
 Councilman Lane
 Ayes: 6 Nays: 0
 May 16, 2006

ORDINANCE 1111-2006

AN ORDINANCE AMENDING SECTION 704 OF THE LAND USE ORDINANCE OF
 THE BOROUGH OF MOUNTAINSIDE TO INCREASE THE MINIMUM ESCROW
 DEPOSIT REQUIRED FOR DEVELOPMENT APPLICATIONS

BE IT ORDAINED, by the Mayor and Council of the Borough of
 Mountainside, County of Union, State of New Jersey that section 704 Fee
 Schedule of the Land Use Ordinance is amended as follows:

1. The minimum escrow deposits for each of the following categories shall
 be amended and replaced by the following amounts:

Minor Subdivision	
Residential Escrow	\$2,500
Non-Residential Escrow	\$2,500
Preliminary Major Subdivision	
Residential Escrow	\$3,500
Non-Residential Escrow	\$3,500
Final Major Subdivision	
Residential Escrow	\$3,500
Non-Residential Escrow	\$3,500
Preliminary Site Plan	
Residential Escrow	\$2,500
Non-Residential Escrow	Building Floor Area:
\$2,500	Less than 10,000 sq.ft.
\$5,000	10,001 to 50,000 sq. ft.
	50,001 to 100,000 sq.ft. \$10,000
	more than 100,000 sq. ft \$15,000
Final Site Plan	
Residential Escrow	\$2,500
Non-Residential Escrow	Building Floor Area:
\$2,500	Less than 10,000 sq.ft.
\$5,000	10,001 to 50,000 sq. ft.
	50,001 to 100,000 sq.ft. \$10,000
	more than 100,000 sq. ft \$15,000

2. All other provisions of Section 704 Fees Schedule, of the Borough Land
 Use Ordinance shall remain as provided for in Ordinance 974-97.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon
 publication after final adoption as provided for by law.

Robert F. Vigilanti

Robert F. Vigilanti, Mayor

Martha De Jesus

Martha De Jesus, Acting Borough Clerk

Preliminary Site Plan	
Residential Application	\$250 + \$50/unit
Residential Escrow	\$500 + \$100/unit
Non-residential Application	\$500 + \$50/acre + \$1/parking space + \$0.02/ sq. ft. floor area
Non residential Escrow	Building Floor Area: Less than 10,000 sq. ft. \$1500 10,001-50,000 sq. ft. \$5000 50,001-100,000 sq. ft. \$10,000 More than 100,000 sq. ft. \$15,000
Final Site Plan	Same fee as for Preliminary Site Plan
Informal Conceptual Plan	\$750 non-residential \$250 residential

Changes of tenancy without site revisions: Floor area charges shall be measured by the floor area intended to be utilized by applicant both as to application and escrow fees and only final site plan fees will be charged.

Appeal under Section 408 and 801 or Interpretation which involves Site Inspection or Board Action:

Residential Application	\$ 100
Residential Escrow	\$ 500
Non-residential Application	\$ 250
Non-residential Escrow	\$1,000

All Variances

Residential Application	\$ 50-each
Non-residential Application	\$ 500-each

Signs, Non-residential:	Application Fee	Escrow Fee
Less than 10 sq. ft.	\$ 25	\$100
More than 10 sq. ft.	\$ 50	\$200
More than 25 sq. ft.	\$ 75	\$300
More than 50 sq. ft.	\$ 100	\$400

Certificates of Occupancy

Residential	\$ 30
Non-residential	\$ 75

FIRST READING

SECOND READING

Introduced by:

Seconded by:

Roll call vote:

Ayes:

Nays:

Ayes:

Nays:

Absent:

Date:

ORDINANCE 1135-2008**ORDINANCE AMENDING CHAPTER IX, BUILDING
AND HOUSING, OF THE BOROUGH CODE
RELATING TO BUILDING PERMIT FEES
AND ALTERATIONS**

BE IT ORDAINED, by the Governing Body of the Borough of Mountainside, County of Union State of New Jersey that Chapter 9 of the Borough Code shall be amended to reflect the following fees for Building Permits and Alterations:

<u>Building Permit Type</u>	<u>Fee</u>
Residential Roofs	\$100.00
Siding	\$100.00
Electrical Panel	\$75.00
Central Air/Air Handler	\$75.00
Gas Piping	\$75.00
Boilers	\$75.00
Backflow Preventor	\$75.00
Tank Installation	\$75.00
Oil/Gas Appliances	\$75.00

<u>Alterations</u>	<u>Fee</u>
Cost of Work - \$1,000 - \$100,000	\$26.00 per \$1,000
Over \$100,000	\$20.00 per \$1,000

BE IT FURTHER ORDAINED, that this ordinance shall take effect upon final passage and publication as required by law.

William R. Lane, Acting Mayor

Martha De Jesus, Borough Clerk

FIRST READING

SECOND READING

Introduced by:

Seconded by:

Roll call vote:

Ayes:

Nays:

Ayes:

Nays:

Absent:

Date:

ORDINANCE 1136-2008

**AN ORDINANCE TO AMEND CHAPTER XVI OF THE CODE OF
THE BOROUGH OF MOUNTAINSIDE TO PROVIDE FOR
CERTAIN INSPECTION AND PERMIT FEES**

BE IT ORDAINED by the Governing Body of the Borough of Mountainside,
County of Union, State of New Jersey, as follows:

Section 1. Section 16-8.2 of Chapter XVI of the Code of the Borough of
Mountainside be and hereby is amended to add sub-section (e) at the end of
Section 16-8.2(2), Type 2 Permits:

"e. Propane Exchange Stations \$42"

Section 2. This ordinance shall take effect immediately upon final
adoption and publication and in the manner provided by law.

William R. Lane, Acting Mayor

Martha De Jesus, Borough Clerk

FIRST READING

Introduced by: Councilman Mirabelli
Seconded by: Councilman Mortimer
Roll call vote: Ayes: 4 Nays: 0
Absent: Councilmen Messler and Wass
Date: May 20, 2008

SECOND READING

Councilman Mirabelli
Councilman Mortimer
Ayes: 5 Nays: 0
Absent: Councilman Lane
Date: June 17, 2008

ORDINANCE 1143-2008

**AN ORDINANCE TO AMEND ARTICLE 10 OF THE LAND USE
ORDINANCE OF THE BOROUGH OF MOUNTAINSIDE TO
ADD A NEW SECTION 1015 ENTITLED "PORTABLE
CONTAINERIZED PROPERTY STORAGE FACILITIES
(PCPSF)" FOR THE PURPOSE OF REGULATING THE USE
OF SUCH PCPSF'S**

WHEREAS, the Governing Body of the Borough of Mountainside is entrusted with the responsibility of protecting the public health, safety and welfare, pursuant to its police power, by establishing standards governing the maintenance, appearance, condition and occupancy of residential and nonresidential premises; and

WHEREAS, Portable Containerized Property Storage Facilities ("PCPSF's") have become more commonly used on residential premises, and due to their size, industrial appearance, potential for increased lot coverage, and potential safety hazard, such PCPSF's are not desired in residential zones; and

WHEREAS, it is the intent of this Ordinance that, by expressly limiting the use of PCPSF's in residential zones, the Borough's residential zones will continue to be maintained so that the appearance thereof shall reflect a level of maintenance that, in general, is in keeping with the standards of the neighborhood.

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Mountainside, County of Union, State of New Jersey, as follows:

Section 1. Article 10 of the Land Use Ordinance of the Borough of Mountainside is hereby amended by enacting Section 1015, entitled "Portable Containerized Property Storage Facilities ("PCPSF's")" as follows:

(a) "PCPSF" is defined as a portable containerized property storage facility or unit intended to be utilized upon the exterior of residential premises for the purpose of storing all types of items of personal and household property either for pure storage (most often during, but not limited to, periods of time while construction or improvements are occurring on a property) or to facilitate the moving of persons from household unit to household unit, often with the intention that such unit, after a reasonable period of time for loading, will be moved to commercial storage facilities. A PCPSF is also often referred to as a "PODS."

(b) Applicability. This Ordinance shall apply to the R-1, R-2, and R-3 zones within the Borough. However, no provision of this ordinance shall apply to any governmental unit.

(c) Outdoor Storage Containers, Cargo Containers, and Shipping Containers are prohibited in R-1, R-2, and R-3 zones. "Outdoor Storage Containers," "Cargo Containers," or "Shipping Containers" shall mean an industrial, standardized reusable outdoor storage/ shipping container that is:

originally, specifically or formally designed for or used in the packing, shipping, movement or transportation of freight, articles, goods or commodities and presently utilized for those purposes or for storage of household items; and/or designed for or capable of being mounted or moved on a rail car; and/or designed for or capable of being mounted on a chassis or bogie for movement by truck, trailer or loaded on a ship; and/or intended to or necessary, for purposes of safety, to be placed upon a foundation and, therefore, constituting an accessory structure; and/or having a length greater than 12 feet; and/or being of heavy gauge steel construction, aluminum or a composite material.

(d) Permits.

1. No PCPSF shall be situated on any premises within the R-1, R-2, or R-3 zones unless and until an application has been made to the Borough Zoning Official for a permit allowing for the delivery and use of such PCPSF, and such permit has been granted.

2. A permit application shall be made no less than fourteen (14) days prior to the proposed placement of the PCPSF. The permit application shall depict a sketch of the house, driveway, street, house number, utilities, approximate distance, and any fire hydrants on the property. The application shall contain the mailing address and the contact numbers of the applicant, and the non-refundable \$50 application fee. Within ten (10) days of receipt of the application, the Borough Zoning Official shall visit the proposed site and either approve or disapprove the requested permit.

3. Permits shall be effective for thirty (30) days and shall expire thereafter unless renewed in accordance with this section.

4. No more than one PCPSF may be located on any residential property at any time.

5. No PCPSF shall exceed 12' in length; 7' in height; or 8' in width.

6. If a renewal permit is desired, a new application must be made, and a new \$50 application fee must be submitted. Requests for renewal permits must be received not less than five (5) days prior to the expiration of the existing permit. Renewal permits may be granted at the sole discretion of the Borough Zoning Official in extreme hardship situations, on a case-by-case basis. No residential property shall contain a PCPSF for a total of more than 90 days.

7. Notwithstanding the above, in the event a PCPSF is situated on a property within the R-1, R-2, or R-3 zone without a permit, the property owner/ occupant shall submit an application as described above within twenty-four hours of an abatement notice; however, in such instances, the non-refundable application fee shall be increased to \$200. Submission of an application shall not guarantee issuance of a permit.

(e) Other requirements. The following requirements shall be met by the owner / occupier of the residential premises with respect to a PCPSF:

1. The PCPSF situated on residential property shall only be used for the storage of personal property, furniture and other household items normally located on or in a residential dwelling or premises. No chemicals or dangerous substances may be stored in a PCPSF at any time. No PCPSF may be utilized in a manner that is deleterious to the public health, safety, or

welfare. A PCPSF shall be subject to inspection by an appropriate Borough Official at any time to ensure that such PCPSF is not being utilized in a manner that is or may be deleterious to the public health, safety, and welfare.

2. All access doors shall be secured with locks.

3. The PCPSF must be located in the driveway of the premises as close to the house as possible. All vehicles associated with the house must be parked in the driveway in compliance with Borough overnight parking regulations. If for any reason all cars associated with the house cannot be parked in the driveway, the PCPSF may only be situated on the premises for seven (7) days, with police permission for overnight street parking obtained, and noted in the permit.

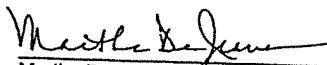
4. The PCPSF may be located in an area other than the driveway of the premises only in extreme hardship cases, decided at the sole discretion of the Borough Zoning Official, on a case-by-case basis. If such permission is granted, it may be for a period not longer than seven (7) days, and shall be expressly noted in the permit.

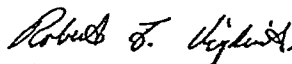
(f) Violations. The enforcement provisions of Article 12 of the Borough Land Use Ordinance shall apply to this Section.

Section 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 3. If any portion of this ordinance shall be determined to be invalid, such determination shall not affect the validity of the remaining portions of said ordinance.

Section 4. This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.


Martha De Jesus, Borough Clerk


Robert F. Viglianti, Mayor

FIRST READING

SECOND READING

Introduced by:

Seconded by:

Roll call vote: Ayes: Nays: Ayes: Nays:

Absent:

Date:

ORDINANCE 1144-2008

AN ORDINANCE TO AMEND CHAPTER IX, BUILDING AND HOUSING, OF THE CODE OF THE BOROUGH OF MOUNTAINSIDE, TO PROVIDE FOR FEES FOR CHANGING CONTRACTORS DURING THE COURSE OF A CONSTRUCTION PROJECT

BE IT ORDAINED by the Governing Body of the Borough of Mountainside, County of Union, State of New Jersey, that Chapter IX of the Borough Code shall be amended to reflect the following fees for changing construction contractors during the course of a residential or non-residential construction project after the issuance of a Building Permit:

Change of contractor after issuance of a Building Permit, for both residential and non-residential construction projects	\$50
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This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.

Robert F. Viglianti, Mayor

Martha De Jesus, Borough Clerk

FIRST READING

SECOND READING

Introduced by:

Seconded by:

Roll call vote: Ayes:

Nays: Ayes:

Nays:

Absent:

Date:

ORDINANCE 1156-2009

**AN ORDINANCE TO AMEND CHAPTER XI OF THE CODE OF THE
BOROUGH OF MOUNTAINSIDE ENTITLED "SEWER AND WATER"**

WHEREAS, the Borough of Mountainside wishes to amend certain of the fees set forth in Chapter XI of the Code, entitled "Sewer and Water," particularly Section 11-2.26(a) and Section 11-3.3(c)(6).

NOW THEREFORE BE IT ORDAINED, by the Governing Body of the Borough of Mountainside, County of Union, State of New Jersey, as follows:

Section 1. Section 11-2.26(a) is hereby amended to read as follows:

"Each and every person violating the provisions of this section shall be liable, upon a conviction, to a fine not less than one hundred dollars (\$100) but not exceeding two thousand dollars (\$2,000), or a jail term not exceeding ninety (90) days, or a period of community service not exceeding ninety (90) days."

Section 2. Section 11-3.3(c)(6) is hereby amended to read as follows:

"No nonresidential user shall pay an annual charge, for its connection, of less than fifty dollars (\$50). No residential user, whose property is exempt from property taxes by law, shall pay an annual charge, for its connection, of less than fifty dollars (\$50)."

Section 3. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 4. If any portion of this ordinance shall be determined to be invalid, such determination shall not affect the validity of the remaining portions of said ordinance.

Section 5. This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.

Paul N. Mirabelli, Acting Mayor

Martha De Jesus, Borough Clerk

FIRST READING

SECOND READING

Introduced by:

Seconded by:

Roll call vote:

Ayes:

Nays:

Ayes:

Nays:

Absent:

Date:

ORDINANCE 1157-2009

AN ORDINANCE REQUIRING THAT OUTDOOR DUMPSTERS AND REFUSE CONTAINERS BE COVERED AT ALL TIMES AND PROHIBITING DISCHARGE OF MATERIAL TO THE STORM SEWER SYSTEM IN COMPLIANCE WITH THE NJDEP'S STORM WATER REGULATIONS

WHEREAS, the Borough has been designated a Tier A municipality under the NJDEP's Stormwater Regulation Program and, therefore, as part of the Borough's NJPDES permit requirements for its stormwater system the Borough is required to implement certain best management practices through the passage of municipal ordinances including this ordinance requiring dumpsters and other refuse containers that are outdoors or exposed to stormwater to be covered at all times and prohibiting spilling, dumping, leaking, or other discharge of liquids, semi-liquids or solids from containers to the Borough's municipal separate storm sewer system(s) and/or the waters of the State; and

WHEREAS, it is understood that stormwater/nonpoint sources are a significant source of pollution in the waters of our state and the Borough desires to do its part to protect the waters of this state.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Mountainside, County of Union State of New Jersey as follows:

Section 1.

SECTION I. Purpose. An ordinance requiring dumpsters and other refuse containers that are outdoors or exposed to stormwater to be covered at all times and prohibiting spilling, dumping, leaking, or other discharge of liquids, semi-liquids or solids from containers to the Borough's municipal separate storm sewer system(s) and/or the waters of the State so as to protect public health, safety and welfare, and to prescribe penalties for the failure to comply.

SECTION II. Definitions. For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this ordinance 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.

a. **Municipal separate storm sewer system (MS4)** - a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) that is owned or operated by the Borough or other public body, and is designed and used for collecting and conveying stormwater.

b. **Person** - any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.

c. **Refuse container** - any waste container that a person controls whether owned, leased, or operated, including dumpsters, trash cans, garbage pails, and plastic trash bags.

d. Stormwater - water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface, is captured by separate storm sewers or other sewerage or drainage facilities, or is conveyed by snow removal equipment.

e. Waters of the State - means the ocean and its estuaries, all springs, streams and bodies of surface or groundwater, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

SECTION III. Prohibited Conduct. Any person who controls, whether owned, leased, or operated, a refuse container or dumpster must ensure that such container or dumpster is covered at all times and shall prevent refuse from spilling out or overflowing. Any person who owns, leases or otherwise uses a refuse container or dumpster must ensure that such container or dumpster does not leak or otherwise discharge liquids, semi-liquids or solids to the Borough's municipal separate storm sewer system.

SECTION IV. Exceptions to Prohibition:

- a. Permitted temporary demolition containers
- b. Litter receptacles (other than dumpsters or other bulk containers)
- c. Individual homeowner trash and recycling containers
- d. Refuse containers at facilities authorized to discharge stormwater under a valid NJPDES permit
- e. Large bulky items (e.g. furniture, bound carpet and padding, white goods placed curbside for pickup)

SECTION V. Enforcement. This ordinance shall be enforced by the Borough Police Department.

SECTION VI. Penalties. Any person(s) who is found to be in violation of the provisions of this ordinance shall be subject to a fine not less than one hundred dollars (\$100) but not exceeding two thousand dollars (\$2,000).

Section 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 3. If any portion of this ordinance shall be determined to be invalid, such determination shall not affect the validity of the remaining portions of said ordinance.

Section 4. This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.

Paul N. Mirabelli, Acting Mayor

Martha De Jesus, Borough Clerk

FIRST READING

SECOND READING

Introduced by:

Seconded by:

Roll call vote: Ayes:

Nays:

Ayes:

Nays:

Absent:

Date:

ORDINANCE 1158-2009

**AN ORDINANCE REQUIRING RETROFITTING OF EXISTING STORM DRAIN
INLETS IN DIRECT CONTACT WITH CONSTRUCTION WORK IN COMPLIANCE
WITH THE NJDEP'S STORM WATER REGULATIONS**

WHEREAS, the Borough has been designated a Tier A municipality under the NJDEP's Stormwater Regulation Program and, therefore, as part of the Borough's NJPDES permit requirements for its stormwater system the Borough is required to implement certain best management practices through the passage of municipal ordinances including this ordinance requiring retrofitting of existing storm drain inlets which are in direct contact with repaving, repairing, reconstruction, resurfacing or alterations of facilities on private property; and

WHEREAS, it is understood that stormwater/nonpoint sources are a significant source of pollution in the waters of our state and the Borough desires to do its part to protect the waters of this state.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Mountainside, County of Union State of New Jersey as follows:

Section 1.

SECTION I. Purpose. An ordinance requiring the retrofitting of existing storm drain inlets which are in direct contact with repaving, repairing, reconstruction, resurfacing or alterations of facilities on private property, to prevent the discharge of solids and floatables (such as plastic bottles, cans, food wrappers and other litter) to the Borough's municipal separate storm sewer system so as to protect public health, safety and welfare, and to prescribe penalties for the failure to comply.

SECTION II. Definitions. For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this ordinance 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.

a. Municipal separate storm sewer system (MS4)-a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) that is owned or operated by the Borough or other public body, and is designed and used for collecting and conveying stormwater.

b. Person - any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.

c. Storm drain inlet - an opening in a storm drain used to collect stormwater runoff and including, but not limited to, a grate inlet, curb-opening inlet, slotted inlet, and combination inlet.

d. Waters of the State - the ocean and its estuaries, all springs, streams and bodies of surface or groundwater, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

SECTION III. Prohibited Conduct. No person in control of private property (except a residential lot with one single family house) shall authorize the repaving, repairing (excluding the repair of individual potholes), resurfacing (including top coating or chip sealing with asphalt emulsion or a thin base of hot bitumen), reconstructing or altering any surface that is in direct contact with an existing storm drain inlet on that property unless the storm drain inlet either:

1. Already meets the design standard below to control passage of solid and floatable materials; or
2. Is retrofitted or replaced to meet the standard in Section IV below prior to the completion of the project.

SECTION IV. Design Standard. Storm drain inlets identified herein shall comply with the following standard to control passage of solid and floatable materials through storm drain inlets. For purposes of this paragraph, "solid and floatable materials" means sediment, debris, trash, and other floating, suspended, or settleable solids.

1. Design engineers shall use either of the following grates whenever they use a grate in pavement or another ground surface to collect stormwater from that surface into a storm drain or surface water body under that grate:

a. The New Jersey Department of Transportation (NJDOT) bicycle safe grate, which is described in Chapter 2.4 of the NJDOT Bicycle Compatible Roadways and Bikeways Planning and Design Guidelines (April 1996); or

b. A different grate, if each individual clear space in that grate has an area of no more than seven (7.0) square inches, or is no greater than 0.5 inches across the smallest dimension.

Examples of grates subject to this standard include grates in grate inlets, the grate portion (non-curb-opening portion) of combination inlets, grates on storm sewer manholes, ditch grates, trench grates, and grates of spacer bars in slotted drains. Examples of ground surfaces include surfaces of roads (including bridges), driveways, parking areas, bikeways, plazas, sidewalks, lawns, fields, open channels, and stormwater basin floors.

2. Whenever design engineers use a curb-opening inlet, the clear space in that curb opening (or each individual clear space, if the curb opening has two or more clear spaces) shall have an area of no more than seven (7.0) square inches, or be no greater than two (2.0) inches across the smallest dimension.

3. This standard does not apply:

a. Where the municipal engineer agrees that this standard would cause inadequate hydraulic performance that could not practicably be overcome by using additional or larger storm drain inlets that meet these standards;

b. Where flows are conveyed through any device (e.g., end of pipe netting facility, manufactured treatment device, or a catch basin hood) that is designed, at a minimum, to prevent delivery of all solid and floatable materials that could not pass through one of the following:

i. A rectangular space four and five-eighths inches long and one and one-half inches wide (this option does not apply for outfall netting facilities); or

ii. A bar screen having a bar spacing of 0.5 inches.

c. Where flows are conveyed through a trash rack that has parallel bars with one-inch (1") spacing between the bars; or

d. Where the New Jersey Department of Environmental Protection determines, pursuant to the New Jersey Register of Historic Places Rules at N.J.A.C. 7:4-7.1(c), that action to meet this standard is an undertaking that constitutes an encroachment or will damage or destroy the New Jersey Register listed historic property.

SECTION V. Enforcement. This ordinance shall be enforced by the Borough Police Department.

SECTION VI. Penalties. Any person(s) who is found to be in violation of the provisions of this ordinance shall be subject to a fine not less than one hundred dollars (\$100) but not exceeding two thousand dollars (\$2,000) for each storm drain inlet that is not retrofitted to meet the design standard.

Section 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 3. If any portion of this ordinance shall be determined to be invalid, such determination shall not affect the validity of the remaining portions of said ordinance.

Section 4. This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.

Paul N. Mirabelli, Acting Mayor

Martha De Jesus, Borough Clerk

FIRST READING

SECOND READING

Introduced by:

Seconded by:

Roll call vote: Ayes:

Nays: Ayes:

Nays:

Absent:

Date:

ORDINANCE 1163-2009

AN ORDINANCE TO AMEND ARTICLE 7, SECTION 703(N) OF THE LAND USE ORDINANCE OF THE BOROUGH OF MOUNTAINSIDE

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Mountainside, County of Union, State of New Jersey, as follows:

Section 1. The second sentence of Article 7, Section 703(n) of the Land Use Ordinance of the Borough of Mountainside is hereby deleted in its entirety and replaced with the following:

The hourly billing rate for Borough-employed professionals and non-professionals shall be two hundred percent (200%) of one thirty-fifth (1/35) of their weekly compensation.

Section 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 3. If any portion of this ordinance shall be determined to be invalid, such determination shall not affect the validity of the remaining portions of said ordinance.

Section 4. This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.

Paul N. Mirabelli, Mayor

Martha Lopez, Borough Clerk

FIRST READING

SECOND READING

Introduced by:

Seconded by:

Roll call vote: Ayes: Nays: Ayes: Nays:

Absent:

Date:

ORDINANCE 1175-2010

**AN ORDINANCE AMENDING CHAPTER IX, BUILDING AND
HOUSING, OF THE CODE OF THE BOROUGH OF
MOUNTAINSIDE, PERTAINING TO FEES FOR
PERMITS FOR INSTALLATION OF SIGNS**

BE IT ORDAINED by the Mayor and Council of the Borough of Mountainside, County of Union, State of New Jersey, as follows:

Section 1. Chapter IX, subsection 9-1.3(g) of the Borough Code, establishing fees for permits for the installation of signs, shall be amended to reflect the following fees:

Temporary Signs	\$50
Enterprise/ Window Signs	\$50
Illuminated Signs	\$50
All other signs	\$50

Section 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 3. If any portion of this ordinance shall be determined to be invalid, such determination shall not affect the validity of the remaining portions of said ordinance.

Section 4. This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.

Paul N. Mirabelli, Mayor

Martha Lopez, Borough Clerk

FIRST READING

Introduced by: Councilman Mortimer
Seconded by Councilman Turner
Roll call vote: Ayes: 5 Nays: 0
Absent: Councilman Wass
Date: April 20, 2010

SECOND READING

Councilman Messler
Councilwoman Andrea
Ayes: 5 Nays: 0
Council President Turner
May 18, 2010

ORDINANCE 1167-2010

AN ORDINANCE TO AMEND CHAPTER IX, BUILDING AND HOUSING,
OF THE CODE OF THE BOROUGH OF MOUNTAINSIDE, PERTAINING
TO THE FEE FOR ISSUANCE OF A CONTINUED CERTIFICATE
OF OCCUPANCY

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the
Borough of Mountainside, County of Union, State of New Jersey, as follows:

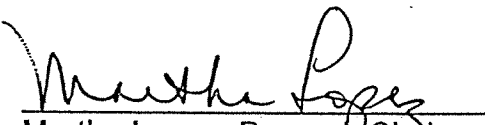
Section 1. Chapter IX of the Borough Code, Building and Housing, shall
be amended to reflect the following fee:

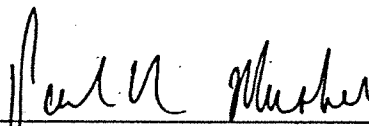
Continuing Certificates of Occupancy \$240.00

Section 2. All ordinances or parts of ordinances inconsistent herewith
are hereby repealed to the extent of such inconsistency.

Section 3. If any portion of this ordinance shall be determined to be
invalid, such determination shall not affect the validity of the remaining portions of
said ordinance.

Section 4. This ordinance shall take effect immediately upon final
adoption and publication and in the manner provided by law.


Martha Lopez, Borough Clerk


Paul N. Mirabelli, Mayor

Need B, E, P, F

FIRST READING

Introduced by: Councilwoman Andre
 Seconded by: Councilman Wass
 Roll call vote: Ayes: 6 Nays: 0
 Absent:
 Date: 6/21/2011

SECOND READING

Councilwoman Andre
 Councilman Wass
 Ayes: 4 Nays: 0
 Councilman Lane & Councilman Mess
 7/19/2011

ORDINANCE 1189-2011

**AN ORDINANCE AMENDING SECTION 704 OF THE LAND USE
 ORDINANCE OF THE BOROUGH OF MOUNTAINSIDE,
 PERTAINING TO FEES FOR DEVELOPMENT APPLICATIONS
 SUBMITTED TO THE PLANNING BOARD**

BE IT ORDAINED by the Mayor and Council of the Borough of Mountainside, County of Union, State of New Jersey, as follows:

Section 1. Section 704 of the Land Use Ordinance of the Borough of Mountainside, shall be amended to reflect the following fees:

Fees for Non-Residential Applications

Use Variance	\$1,000
Initial Escrow Deposit	minimum of \$1,500
Preliminary Site Plan	\$500 + \$100 per acre + \$2 per pkg space + \$0.05 per square foot floor area
Final Site Plan	\$500 + \$100 per acre + \$2 per pkg space + \$0.05 per square foot floor area

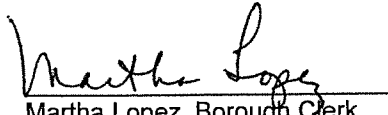
Fees for Residential Applications

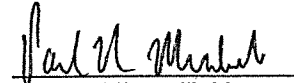
Application Fee	\$150
Variance	\$150/EA
Use Variance	\$500
Initial Escrow Deposit	minimum of \$1,000
Preliminary Site Plan	\$250 + \$1,000 per unit
Final Site Plan	\$250 + \$1,000 per unit
Fence Permit (4 Feet or higher)	\$100
Retaining Wall Permit (4 Feet or higher)	\$100

Section 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 3. If any portion of this ordinance shall be determined to be invalid, such determination shall not affect the validity of the remaining portions of said ordinance.

Section 4. This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.


Martha Lopez, Borough Clerk


Paul N. Mirabelli, Mayor

RESOLUTION
BOROUGH OF MOUNTAINSIDE

Council Meeting Date: March 20, 2012

Title: Shade Tree Policy – Borough's Right of Way

Introduced by: Councilman Lane

Seconded by: Councilman Mortimer

Roll Call Vote: Ayes: 4 Nays: 0 Abstain:

Absent: Councilman Messler & Wass

RESOLUTION 52-2012

**ESTABLISHING POLICY REGARDING TREES GROWING ALONG STREETS
OWNED BY THE BOROUGH IN THE BOROUGH'S RIGHT OF WAY**

WHEREAS, the Borough of Mountainside has determined that it is necessary to establish a policy regarding trees growing along streets owned by the Borough in the Borough's right of way;

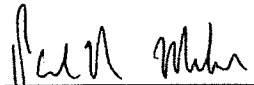
NOW THEREFORE BE IT RESOLVED THAT the following policy is hereby determined to be the policy of the Borough of Mountainside regarding trees that are growing along streets owned by the Borough, and within the Borough right of way, which right of way is typically 10 feet on each side of the street measured from the line where the pavement ends.

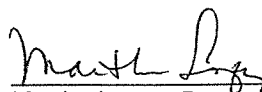
1. The Borough Department of Public Works will elevate or trim trees to allow for the safe passage of vehicles on our municipal streets, but it will not conduct any cosmetic or "beautification" type trimming. The Department of Public Works will also remove limbs which fall from trees that are growing within the Borough right of way.

2. The Borough will only pay contractors to remove dead or dying trees within the Borough right of way that may create an imminent and unusual hazard, as may be determined by the Borough Director of Public Works or other Borough Representative. The Borough will not replace any such trees, but the owner of property abutting the Borough right of way will be entitled to do so at such owner's expense.

3. Abutting property owners will be permitted to remove a tree within the Borough right of way at the abutting property owner's expense if the tree is damaging such property owner's driveway or vehicles parked in the driveway. The removal of other trees within the Borough right of way is governed by the Borough Code, Article 13, and all such removals shall be at the abutting property owner's expense.

AND BE IT FURTHER RESOLVED THAT the foregoing Policy does not apply to streets or highways owned by the State of New Jersey or the County of Union, nor does it apply to private streets or thoroughfares.


Paul N. Mirabelli, Mayor


Martha Lopez, Borough Clerk

**RESOLUTION
BOROUGH OF MOUNTAINSIDE**

Council Meeting Date: November 20, 2012

Title: Waive Construction Inspection Fees due to Hurricane Sandy

Introduced by: Councilman Messler

Seconded by: Councilwoman Andre

Roll Call Vote: Ayes: 5 Nays: 0 Abstain:

Absent: Councilman Wass

RESOLUTION 134-2012

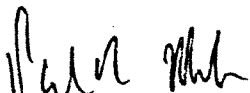
WHEREAS, due to Hurricane Sandy many homeowners were faced with structural damage to their properties and for many it became pertinent to install generators; and

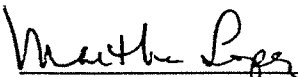
WHEREAS, municipalities are empowered with the ability to waive construction permit fees in the event of an emergency; and

WHEREAS, the Governing Body has agreed to waive construction permit fees for work made necessary by hurricane damage; and

WHEREAS, pursuant to N.J.A.C. 5:23-4.19(b)5, when a municipality waives its permit fees, then the State permit surcharge fee is also waived.

NOW THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Mountainside that any construction permit fee made necessary by Hurricane Sandy, be and the same is hereby waived and shall be effective for one year.


Paul N. Mirabelli, Mayor


Martha Lopez, Borough Clerk

FIRST READING

SECOND READING

Introduced by: Councilman Mortimer
 Seconded by: Councilwoman Andre
 Roll call vote: Ayes: 4 Nays: 0
 Absent: Councilman Messler & Wass
 Date: March 20, 2012

Councilman Lane
 Councilman Mortimer
 Ayes: 4 Nays: 0
 Councilman Wass & Messler
 April 17, 2012

ORDINANCE 1197-2012

**AN ORDINANCE AMENDING SECTIONS 1005(b), 1008(c)(1),
 1009(c)(1), 1010(c)(1) AND 1013 (a) and (d) OF THE LAND USE
 ORDINANCE OF THE BOROUGH OF MOUNTAINSIDE**

WHEREAS, the Mayor and Council of the Borough of Mountainside, County of Union, and State of New Jersey have determined that there is a need to exercise more control over changes made to existing construction and new construction in the residential zoning districts of the Borough, and to expand the permitted uses in the L-I Limited Industrial zoning district of the Borough.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council as follows:

Section 1005(b) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1005(b):

(b) Alteration, Extension Or Enlargement Of Nonconforming Uses, Structures And Lots. Nonconforming uses, structures and lots in all zoning districts shall conform to the following requirements:

(1) Any structure, lot or use of land which is nonconforming shall not be enlarged or extended in any manner whatsoever.

(2) There shall be no structural alterations or enlargement made to any nonconforming building or structure which enlarges or extends the building or structure.

AND BE IT FURTHER ORDAINED THAT Subsection 1008. (c) (1) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1008(c) (1):

(1) Height. No building shall exceed a maximum of two and one-half (2 1/2) stories or thirty (30) feet in height, whichever is the lesser.

AND BE IT FURTHER ORDAINED THAT Subsection 1009. (c) (1) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1009. (c) (1):

(1) Height. No building shall exceed a maximum of two and one-half (2 1/2) stories or thirty (30) feet in height, whichever is the lesser.

AND BE IT FURTHER ORDAINED THAT Subsection 1010. (c) (1) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1010. (c) (1):

(1) Height. No building shall exceed a maximum of two and one-half (2 1/2) stories or thirty (30) feet in height, whichever is the lesser.

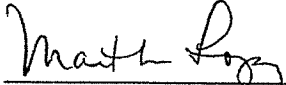
AND BE IT FURTHER ORDAINED THAT Subsection 1013 (a) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1013 (a):

Residential
R-1, R-2, R-3

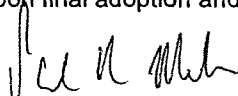
L. I. →

(a) Primary Intended Uses. The uses in this zoning district are business, professionals, executive or administrative office purposes, scientific or research laboratories, warehousing and limited industrial and manufacturing uses, the nature of such industrial and manufacturing uses being dependent upon their compliance to performance standards of Section 1010 (d), commercial uses of a strictly wholesale sales and services nature and private membership, non-profit and/or recreational facilities open to the general public which provide indoor facilities for swimming, tennis, racketball, handball, baseball, soccer, lacrosse, exercise imposed by the performance standards set forth in Section 1013 (d).

This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.



Martha Lopez, Borough Clerk



Paul N. Mirabelli, Mayor

FIRST READING

SECOND READING

Introduced by: Councilman Mortimer Councilman Mortimer
Seconded by: Councilman Wass Councilman Wass
Roll call vote: Ayes: 4 Nays: 0 Ayes: 6 Nays: 0
Absent: Councilwoman Andre Councilmen
 Messler & Turner
 Mayor Mirabelli voted Date: September 18, 2012
Date: August 21, 2012

ORDINANCE 1204-2012

**AN ORDINANCE AMENDING SECTION 1005(b)(1) OF THE LAND USE
ORDINANCE OF THE BOROUGH OF MOUNTAINSIDE TO PERMIT
OTHERWISE CONFORMING ACCESSORY STRUCTURES ON NON-
CONFORMING LOTS IN THE RESIDENTIAL ZONES**

WHEREAS, the Mayor and Council of the Borough of Mountainside, County of Union, and State of New Jersey have determined that there is a need to amend Section 1005(b)(1) of the Land Use Ordinance to permit otherwise conforming accessory structures on non-conforming lots in the residential zones.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council as follows:

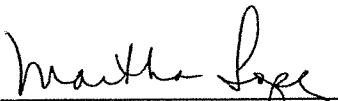
Section 1005(b)(1) of the Borough Code shall be and the same is hereby amended as follows:

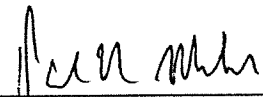
(b)(1) Any structure, lot or use of land which is non-conforming shall not be enlarged or extended in any manner whatsoever, except that in residential zones, accessory structures which do not violate the height, area, yard, lot coverage percentage, ground projection area or other like requirement, may be constructed as long as the use of the land conforms with the single family residential use.

AND BE IT FURTHER ORDAINED THAT there be added the following new Section 1005(b)(3):

(b)(3) Ordinance Section 1014(e)(1) is deleted.

This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.


Martha Lopez, Borough Clerk


Paul N. Mirabelli, Mayor

AND BE IT FURTHER ORDAINED THAT new Subsection 1009(c)(8):

(8) Floor Area Ratio. A floor area ratio for the R-2 Zone shall be .225.

AND BE IT FURTHER ORDAINED THAT Subsection 1010. (c) (1) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1010(c)(1):

(1) Height. No building shall exceed a maximum of two and one-half (2 1/2) stories or thirty-five (35) feet in height, whichever is the lesser.

AND BE IT FURTHER ORDAINED THAT new Subsection 1009(c)(8):

(8) Floor Area Ratio. A floor area ratio for the R-3 Zone shall be .225.

AND BE IT FURTHER ORDAINED THAT all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.

**BOROUGH OF MOUNTAINSIDE
COUNTY OF UNION, NEW JERSEY**

NOTICE OF PASSED ORDINANCE

NOTICE IS HEREBY GIVEN that the following ordinance was passed and adopted on second and final reading at a Regular Meeting duly held by the Mayor and Council of the Borough of Mountainside, County of Union, New Jersey in the Municipal Building, 1385 Route 22, Mountainside, New Jersey held on the 16th day of July 2013.

Martha Lopez
Borough Clerk

ORDINANCE 1210-2013

**AN ORDINANCE AMENDING ARTICLE 10, SECTIONS 1008(c),
1009(c), AND 1010(c) OF THE LAND USE ORDINANCE OF THE
BOROUGH OF MOUNTAINSIDE**

WHEREAS, the Mayor and Council of the Borough of Mountainside, County of Union, and State of New Jersey have determined that upon recommendation by the Borough Engineer that there is a need to amend the residential zone building height standard for the residential zoning districts in the Borough.

WHEREAS, by Ordinance 1197-2012, the Borough previously amended such height restrictions in order to exercise more control over changes made to existing construction in the residential zoning districts.

WHEREAS, upon further recommendation by the Borough Planner, the Mayor and Council have determined that it is in the interest of the Borough to amend the Required Conditions for the residential zoning districts to include a Floor Area Ratio ("FAR") regulations.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council as follows: Article 10, Section 1003 of the Borough Code be and the same is hereby amended by adding new subsection (aa):

(aa) Floor Area Ratio Regulation. A floor area ratio is calculated by dividing the habitable floor area of a dwelling by the lot area. Habitable floor area shall not include garage space, basement whether finished or unfinished, attic space, an open porch or breezeway.

AND BE IT FURTHER ORDAINED THAT Subsection 1008 (c) (1) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1008(c)(1):

(1) Height. No building shall exceed a maximum of two and one-half (2 1/2) stories or thirty-five (35) feet in height, whichever is the lesser.

AND BE IT FURTHER ORDAINED THAT new Subsection 1008(c)(8):

(8) Floor Area Ratio. A floor area ratio for the R-1 Zone shall be .225.

The maximum floor area ratio (FAR) for any residential zone shall be 0.225.

AND BE IT FURTHER ORDAINED THAT Subsection 1009(c)(1) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1009(c)(1):

(1) Height. No building shall exceed a maximum of two and one-half (2 1/2) stories or thirty-five (35) feet in height, whichever is the lesser.

FIRST READING

SECOND READING

Introduced by: Councilman Mirabelli
Seconded by: Councilman Schon
Roll call vote: Ayes: 6 Nays: 0
Absent:
Date: Nov. 26, 2002

Councilman Mortimer
Councilman Perrotta
Ayes: 5 Nays: 0
Councilman Mirabelli
Dec. 17, 2002

ORDINANCE NO. 1054-2002

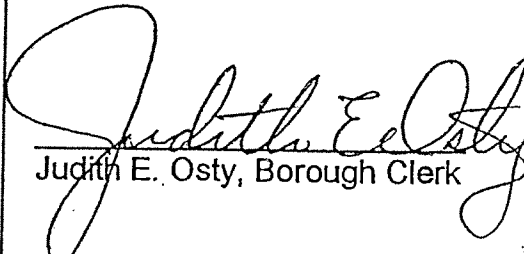
AN ORDINANCE TO AMEND THE LAND USE ORDINANCE
OF THE BOROUGH OF MOUNTAINSIDE
ARTICLE 2, SECTION 228 BY AMENDING THE DEFINITION
FOR "HEIGHT OF A BUILDING"

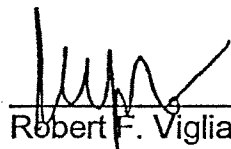
BE IT ORDAINED by the Mayor and Council of the Borough of
Mountainside as follows:

SECTION I. Article 2, Section 228 of the Land Use Ordinance of the
Borough of Mountainside shall be amended by adding a new sentence to the existing
definition as follows:

228. Height of Building. The vertical distance of a structure from its highest
point to; (1) the average elevation of the finished grade adjoining the structure, or (2)
the average natural elevation of the ground level at the site of the structure, which
ever results in a lower permissible height for the structure. When determining the
height of a structure the height measurement shall not include a chimney, vent, pipe
or similar minimally sized protrusion over the highest roof point, provided that such
protrusions do not extend more than four feet over the highest roof point.

SECTION II. This ordinance shall take effect after passage and
publication as, and in the manner, permitted by law.


Judith E. Osty, Borough Clerk


Robert F. Viglianti, Mayor

FIRST READING

Introduced by: Councilman Turner
Seconded by: Councilwoman Andre
Roll call vote: Ayes: 4 Nays: 0
Absent: Councilman Lane & Mortimer
Date: July 16, 2013

SECOND READING

Councilman Turner
Councilman Dierkes
Ayes: 5 Nays: 0
Councilman Messler
August 20, 2013

ORDINANCE 1211-2013

AN ORDINANCE AMENDING ARTICLE 10, SECTION 1005(b) OF THE LAND USE ORDINANCE OF THE BOROUGH OF MOUNTAINSIDE REGARDING ALTERATION, EXTENSION OR ENLARGEMENT OF NONCONFORMING USES AND STRUCTURES

WHEREAS, the Mayor and Council of the Borough of Mountainside, County of Union, and State of New Jersey have determined that there is a need to amend Section 1005(b) of the Land Use Ordinance to reinstate the previous sections as pertains to Alteration, Extension or Enlargement of Nonconforming Uses or Structures.

WHEREAS, by Ordinance No. 1204-2012 and 1197-2012, the Borough previously amended such sections.

WHEREAS, upon further recommendation by the Borough Planner, the Mayor and Council have determined that it is in the interest of the Borough to amend Section 1005(b).

NOW THEREFORE BE IT ORDAINED by the Mayor and Council as follows: Article 10, Section 1005(b) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1005(b):

(b) Alteration, Extension or Enlargement of Nonconforming Uses or Structures. Nonconforming uses or structures in all zoning districts shall conform to the following requirements:

(1) Any structure or use of land which is nonconforming because of use shall not be enlarged or extended in any manner whatsoever.

(2) There shall be no structural alterations or enlargement made to any nonconforming building or structure that is nonconforming because of use. Structural alterations or enlargements may be made in a building which is nonconforming because it fails to comply with height, area, yard, off-street parking or other like requirements of this Ordinance, so long as the structural alteration or enlargement does not further violate said height, area, yard, off-street parking or other like requirements, and provided that all other provisions of this Ordinance are complied with.

(3) A nonconforming use changed or altered to a conforming use may not thereafter be changed back to a nonconforming use, but nothing hereinbefore stated shall prevent the strengthening or restoring to a safe and lawful condition of any part of any building declared unsafe by the Construction Official, the Chief of the Borough Fire Department or the Borough Engineer. A nonconforming use changed or altered to a different nonconforming use shall be deemed abandoned immediately and the new nonconforming use shall not be considered to be lawfully existing.

(4) In the event that there shall be a cessation of operation of any nonconforming use for a period of twelve (12) consecutive calendar months, the same shall be presumed an abandonment of such nonconforming use. Any subsequent attempt to rely upon, exercise or reinstate such abandoned nonconforming use (the provisions of 1005(a) of this Ordinance notwithstanding) shall be deemed a violation of the terms of this Ordinance.

(5) Nothing in this Ordinance shall require any change in plans, construction or designated use of a structure or building for which a building permit has been heretofore validly issued or if a variance has been authorized by the Board of Adjustment or if construction has been legally started and diligently prosecuted at the time of the adoption of this Ordinance.

(6) Nothing in this Ordinance shall be construed as authorization for or approval of the continuance of the use of a building, structure or premises in violation of any zoning ordinances, rules or regulations in effect immediately preceding the time of the effective date of this Ordinance unless made conforming by the enactment of this Ordinance.

(7) Restoration of Existing Buildings or Structures Which Are Nonconforming Because of Use. Nothing in this Ordinance shall prevent the restoration or continuance of a nonconforming building or structure which is nonconforming because of its use and which is partially destroyed by fire, explosion, act of God, or of any public enemy, or the like, if the extent of the destruction be not more than fifty per cent (50%) of said value of the whole building or structure at the time of such destruction, then the same may only be reconstructed and thereafter used in such a manner as to conform to all the requirements, terms and conditions of this Ordinance.

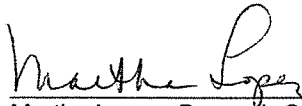
(8) Restoration of Existing Buildings Which Are Nonconforming Because of Reasons Other Than Use. Nothing in this Ordinance shall prevent the restoration or continuance of a nonconforming building or structure which is nonconforming because it fails to comply with any height, area, yard, off-street parking or other like requirements of this Ordinance, and which is partially destroyed by fire, explosion, act of god, or of any public enemy, or the like; provided, however, that any restoration of any such building or structure shall not enlarge the previously existing nonconformance.

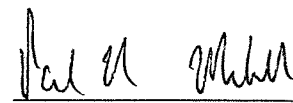
(9) Any nonconforming lot existing at the time of the adoption of this Ordinance that fails to comply with the minimum lot area and lot width requirements of this Ordinance may be used for any use not otherwise prohibited in the zoning district in which it lies, provided said lot is not in common ownership as defined in Section 211 of this Ordinance, and further provided all other requirements of this Ordinance are complied with.

(10) Ordinance Section 1014(e)(1) is deleted.

AND BE IT FURTHER ORDAINED THAT all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.


Martha Lopez, Borough Clerk


Paul N. Mirabelli, Mayor

FIRST READING

SECOND READING

Introduced by: Councilman Dierkes
Seconded by: Councilman Turner
Roll call vote: Ayes: 6 Nays: 0
Absent:
Date: May 20, 2014

Councilman Lane
Councilman Turner
Ayes: 4 Nays: 0
Councilman Dierkes & Morlino
June 17, 2014

ORDINANCE 1217-2014 (Amended)

**AN ORDINANCE CREATING A NEW SECTION OF THE LAND USE ORDINANCE
OF THE BOROUGH OF MOUNTAINSIDE AND AMENDING SECTION 1003(u)(4)
REGARDING CONSTRUCTION SITE SAFETY AND FENCING**

WHEREAS, the Mayor and Council of the Borough of Mountainside, County of Union, State of New Jersey, have determined that there is a need for certain fencing and other safety precautions at construction sites in the Borough; and

WHEREAS, in order to enact such construction site safety, it has been determined to create a new section of the Land Use Ordinance of the Borough; and

WHEREAS, in order to provide for such fencing and safety precautions, it has been determined that section 1003(u)(4) must be amended.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council as follows:

Section 1.

A new section of the Code, to be entitled "Maintenance of Sites Under Construction," shall be added to the Land Use Ordinance of the Borough, as follows:

Definitions.

Contractor. The person or entity identified on the building permit issued by the Borough Construction Official as the contractor.

Construction Site. The real property identified in a building permit issued by the Borough Construction Official or the real property identified in the demolition permit, in the event no such permits have been issued, the property identified on the tax map of the Borough where demolition, excavation or construction is occurring.

Commencement of Work. Any activity by the Contractor, Owner, or agent of either, that begins the process of construction, demolition or excavation, which includes but is not limited to, the use and storage of machinery and supplies.

Excavation. The digging and/or removal of soil or other material forming the surface grade of a construction site so as to leave a hole and/or cavity in the surface grade.

Owner. The person or entity vested with the legal title to the Construction Site as recorded with the Borough Tax Assessor.

Securing the Construction Site.

At the discretion of the Construction Official, it shall be the responsibility of the Contractor working at new Construction Sites or the Owner of a Construction Site to secure the Construction Site with a six (6) foot chain link fence around the entire perimeter of the Construction Site, or in any other manner as the Construction Official in the reasonable exercise of his discretion may determine is necessary so as to protect the health and safety of the public. The perimeter fence shall be installed prior to the Commencement of Work and remain on the Construction Site until a Certificate of Occupancy is issued or until the Construction Official determines the Construction Site no longer requires fencing. In addition, the Construction Official shall have the authority to require that fencing of the type described herein be installed by the Contractor or Owner of

such lesser portion of a given Construction Site, than the entire perimeter, as he shall determine based upon the extent of the demolition, excavation and/or construction.

Portable Toilets

In accordance with the National Standard Plumbing Code 311.1 of the State of New Jersey, toilet facilities shall be provided at all construction sites for workers, and such facilities shall be maintained in a sanitary condition. In the event toilet facilities are not available, a portable toilet must be provided by the Owner or Contractor for the property. Construction worker toilet facilities of the non-sewer type shall conform to ANSI Z4.3.

Penalties.

Any violation of the provisions of this Article shall result in a fine of a minimum of up to \$100 per day. The Owner of any Construction Site and any Contractor operating, engaged to operate or otherwise working at a Construction Site shall be jointly and severally liable for any violation of the provision of this Article.

Enforcement.

The necessity for a fence or a portable toilet will be determined on a case-by-case basis, at the discretion of the Construction Official, based on the nature of the project, at the time of permit application.

The provisions of this chapter may be enforced by the Construction Official, Code Enforcement Officer, Zoning Officer or a police officer of the Borough of Mountainside.

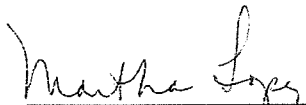
Section 2.

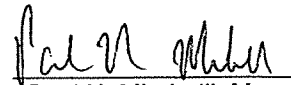
Section 1003(u)(4) of the Borough Code be and hereby is amended and restated as follows:

1003(u)(4) Fencing shall not be allowed to extend beyond the rear front yard line of any building unless the fence is of an open type such as a split rail or chain-link, or any other fence at least 51% open, and such fence does not exceed four (4) feet in height. As indicated by Section 1003(j), a corner lot shall be considered as having two frontages. The provisions of this subsection shall not apply to lots under construction or lots where demolition of the approved structures on the lot has occurred, as determined by the Construction Official of the Borough. In such circumstances, six (6) foot high fencing shall be permitted around the perimeter of the lot or in such other location as the Construction Official in the reasonable exercise of their discretion may determine in order to protect the health and safety of the public in accordance with the provisions of the Borough Code of the Borough of Mountainside.

Section 3.

This ordinance shall take effect twenty days after the first publication hereof after final passage.


Martha Lopez, Borough Clerk


Paul N. Mirabelli, Mayor

FIRST READING

SECOND READING

Introduced by: Councilwoman Andre
Seconded by: Councilman Mortimer
Roll call vote: Ayes: 6 Nays: 0
Absent:
Date: May 20, 2014

Councilwoman Andre
Councilman Lane
Ayes: 4 Nays: 0
Councilman Dierkes & Mortimer
June 17, 2014

ORDINANCE 1219-2014

**AN ORDINANCE CREATING A NEW SECTION OF THE LAND USE ORDINANCE OF
THE BOROUGH OF MOUNTAINSIDE SECTION 1014, "HOUSING ELEMENT AND
FAIR SHARE PLAN"**

WHEREAS, the Superior Court of New Jersey, Law Division, by way of Order entered February 26, 2014, has determined that the Housing Plan Element and Fair Share Plan of the Borough of Mountainside satisfies the Borough's obligation to provide a realistic opportunity to satisfy its "fair share" of the regional need for housing affordable to low and moderate income households pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et. seq., the substantive regulations of the New Jersey Council on Affordable Housing ("COAH") and other applicable laws for COAH's first and second housing cycles; and

WHEREAS, the Order further provided that upon adoption of the Housing Plan Element and Fair Share Plan, the Borough would be entitled to a Judgment of Compliance and Repose and associated protection from any builders remedy lawsuits for ten (10) years; and

WHEREAS, the Mayor and Council of the Borough of Mountainside, County of Union, State of New Jersey, have determined that the Housing Plan Element and Fair Share Plan is a necessary and proper amendment to the Land Use Ordinance, and desire to adopt same as a new section 1014, "Housing Element and Fair Share Plan," of the Land Use Ordinance of the Borough of Mountainside.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council as follows:

Section 1.

A new section of the Code, to be entitled "Housing Element and Fair Share Plan," shall be added to the Land Use Ordinance of the Borough, as follows:

1. Affordable Housing Obligation

- A. 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 chapter shall apply except where inconsistent with applicable law.
- B. The Borough of Mountainside Land Use 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 Borough of Mountainside 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.
- C. This chapter implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:93, as may be amended and supplemented.
- D. The Borough of Mountainside shall file monitoring reports with COAH in accordance with N.J.A.C. 5:93, 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. 5:93 shall be available to the public at the Borough of Mountainside

Municipal Building, Municipal Clerk's Office, 1385 Route 22, Mountainside, New Jersey, 07092 or from COAH at 101 South Broad Street, Trenton, New Jersey, and on COAH's website, www.nj.gov/dca/affiliates/coah.

2. Definitions

The following terms when used in this chapter shall have the meanings given in this section:

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 chapter, N.J.A.C. 5:93 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. 5:93; 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. 5:93, 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-1, 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 all the residents of the development where the unit is situated are 62 years or older; or at least 80% of the units are occupied by at least one person that is 55 years or older and in no units shall there be permanent occupants under the age of 18; or 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-1 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.

Municipality

The Borough of Mountainside, Union County, New Jersey.

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 COAH.

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

3. Affordable Housing Programs

The Borough of Mountainside has determined that it will use the following mechanisms to satisfy its affordable housing obligations: rehabilitation and new construction.

A. Phasing. In inclusionary developments the following schedule shall be followed:

Maximum Percentage of Market Rate Units Completed	Minimum Percentage of Low and Moderate Income Units Completed
25%	0%
25% + 1%	10%
50%	50%
75%	75%
90%	100%

B. Design. In inclusionary developments, to the extent possible, low and moderate income units shall be integrated with the market units.

C. 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. 5:93.

D. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.

4. Affordable Housing (AH) Districts

A. Purpose. The AH districts are established to provide the opportunity to provide affordable housing in accord with NJ Fair Housing Law. The standards and requirements of the districts are designed to recognize the existing developed neighborhood character and to further the goals of the Borough Master Plan as amended.

B. The following sites and areas shall provide affordable housing units as follows:

a. Block 3A, Lots 17 and 18	6 units
b. Block 14 Lot 14	6 units
c. Block 15I, Lot 48B	4 units
d. LI/OB overlay zone	20% of total approved units

- C. The R-2/AH district permits senior citizen development only. The O-B/AH and B/AH district are not age restricted.
- D. The L-I/AH and OB/AH (Springfield Avenue) districts are overlay zones. These properties may be maintained and/or developed in accord with L-I and OB district restrictions and standards as set forth in Section 1013 and 1014 respectively or in the alternative developed for affordable units as set forth in this section.
- E. Permitted Uses. No building, structure or premises shall be used and no building or structure shall be erected or structurally altered except for the following uses:
 - a. Townhouses.
 - b. Apartments.
 - c. In the B/AH zone non-residential uses limited to and subject to all restrictions and standards of the B zone and as set forth in Section 1100.
 - d. In the L-I/AH and OB/AH non-residential uses limited to and subject to all restrictions and standards of the L-I and OB zones and as set forth in Section 1013 and 1014 respectively.
- F. Area, yard and building requirements are as follows:
 - a. Minimum area – 200,000 sf
 - b. Maximum density
 - i. R-2/AH and B/AH – 6 dwelling units/acre
 - ii. O-B/AH and L-I/AH – 6 dwellings/acre subject to critical area restriction (Section 1003Z)
 - c. Bulk and yard requirements.
 - i. Maximum percent lot coverage by residential buildings shall be a maximum of twenty-five (25%) percent for the R-2/AH, O-B/AH and L-I/AH zones. The maximum percent lot coverage by residential buildings shall be forty (40%) percent for the B/AH zone. This restriction excludes common facilities such as clubhouses, gazebos, maintenance sheds, shelters and similar structures.
 - ii. Maximum percent total impervious coverage is sixty five (65%) percent for R-2/AH, O-B/AH and L-I/AH zones and eighty (80%) percent for the B/AH zone.
 - iii. Building height. No buildings shall exceed a height of 2½ stories or thirty-six (36) feet.
 - iv. Minimum setback for front yard is fifty (50) feet for R-2/AH, O-B/AH and L-I/AH zones, five (5) feet for non-residential and mixed use buildings and thirty (30) feet for residential buildings in the B/AH zone. Minimum setback for side and rear yard is twenty-five (25) feet.
 - v. Off-street parking. Off-street parking spaces shall be provided in accordance with applicable Residential Site Improvement Standards (RSIS) N.J.S.A. 5:21-4.14 (parking).
 - d. In the L-I/AH non-residential uses limited to and subject to all restrictions and standards of the L-I zone and as set forth in Section 1013.
 - e. No parking shall be permitted in the required side and rear yard setback area.

- f. Lighting standards for common areas shall conform to standards as set forth in this chapter.
 - g. Roads. All interior roads shall be private streets and conform to applicable RSIS standards.
 - h. Signs. Project ID sign shall be permitted at maximum of 50 sf in size.
- G. Establishment of owners association. Where units are sold the developer shall provide for an organization for the ownership and maintenance of any common facilities and recreation facilities, landscaped areas, internal roadways and other amenities in the development for the benefit of owners and residents of the development. The documentation establishing such owner's association shall be subject to the approval of the Borough Attorney.
- H. Recreation facilities.
 - a. The areas within the common open space shall provide recreation facilities appropriate for the size of the development.
 - b. The common open space and recreation facilities located on the development shall be available on an equal basis to all residents of the development.
 - c. The recreation facilities may include a central recreation complex, swimming pool, tennis courts, picnic areas and similar facilities.
 - d. The recreation facilities shall include meandering open space and trail system linking residential dwellings and other structures located within and without the development.
- I. Sidewalk and walkways.
 - a. A system of contiguous walkways shall be provided throughout the development, including its common areas, for safe pedestrian movement.
 - b. Walkways within common areas shall connect to sidewalks along streets.
- J. Buffers.
 - a. Buffers must be a minimum of twenty-five (25) feet from all property lines of the tract where abutting existing single family homes. These shall either be preserved with natural vegetation or landscaped to provide a visual buffer from adjacent properties.
 - b. Buffering shall provide a year-round visual screen in order to minimize adverse impacts on the site from adjacent areas. Buffering shall also ensure privacy for dwelling units and minimize adverse impacts from traffic, noise and light.
 - c. Buffering shall consist of a berm and either fencing or evergreens or combinations of materials to achieve the stated buffering objectives.
- K. Low and moderate income housing requirement. Required percentage of affordable units to be constructed on-site. The developer shall designate and set aside twenty (20%) percent of the total dwelling units as affordable to low and moderate income households.
- L. Permitted Accessory Building and Uses. Accessory uses customary and incidental to the principal use, including but not limited to those specified. The term accessory use shall not include a business nor any building or unit not located on the same lot with the principal building to which it is accessory.

- a. Private garages and carports.
- b. Private swimming pools and tennis courts provided such uses shall comply with the minimum required yard depth requirement for the principal building.
- c. Outdoor barbecue structures.
- d. Storage buildings.

M. Conditional uses. None.

5. 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.

A. 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:
 - i. The combined number of efficiency and one bedroom units shall be no greater than 20% of the total low and moderate income units
 - ii. At least 30% of all low and moderate income units shall be two bedroom units
 - iii. At least 20% of all low and moderate income units shall be three bedroom units
 - iv. 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.

B. 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. 5:93.
- 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:
 - i. An adaptable toilet and bathing facility on the first floor
 - ii. An adaptable kitchen on the first floor
 - iii. An interior accessible route of travel on the first floor

- iv. An interior accessible route of travel shall not be required between stories within an individual unit
- v. 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
- vi. 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. 5:93, or evidence that the Borough of Mountainside has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:

- 1. 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.
- 2. To this end, the builder of restricted units shall deposit funds within the Borough of Mountainside's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
- 3. The funds deposited under Subsection B(2)(f)[2] above shall be used by the Borough of Mountainside 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.
- 4. 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 Borough of Mountainside.
- 5. 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. 5:93, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Mountainside'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.
- 6. 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. 5:93.

C. 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 80% 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.

- d. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 80% 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:
 - i. A studio shall be affordable to a one person household
 - ii. A one bedroom unit shall be affordable to a one and one half person household
 - iii. A two bedroom unit shall be affordable to a three person household
 - iv. A three bedroom unit shall be affordable to a four and one half person household
 - v. 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:
 - i. A studio shall be affordable to a one person household
 - ii. A one bedroom unit shall be affordable to a one and one half person household
 - iii. 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 do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- 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. 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.

6. Guidelines for all Developments

The following general guidelines apply to all developments that contain low and moderate income housing units, including any currently unanticipated future developments that will provide low and moderate income housing units.

A. Affirmative marketing requirements.

- a. The Borough of Mountainside shall adopt by resolution an affirmative marketing plan, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- b. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is 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 COAH Housing Region 2 and covers the period of deed restriction.
- c. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 2.
- d. The administrative agent designated by the Borough of Mountainside shall assure the affirmative marketing of all affordable units is consistent with the affirmative marketing plan for the municipality.
- e. In implementing the affirmative marketing plan, the administrative agent shall provide a list of counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- f. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- g. 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 Borough of Mountainside.

B. Occupancy standards.

- a. 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:
 - i. Provide an occupant for each bedroom
 - ii. Provide children of different sex with separate bedrooms
 - iii. Prevent more than two persons from occupying a single bedroom
- b. Additional provisions related to occupancy standards (if any) shall be provided in the municipal operating manual.

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

- a. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this chapter until the Borough of Mountainside 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.
 - b. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
 - c. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
 - d. 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 chapter, 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.
 - e. The affordability controls set forth in this chapter shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
 - f. A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title 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.
- D. 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:
- a. The initial purchase price for a restricted ownership unit shall be approved by the administrative agent.
 - b. The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
 - c. The 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.
 - d. The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.
- E. Buyer income eligibility.

- a. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate income ownership units shall be reserved for households with a gross household income less than 80% of median income.
- b. 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.

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

- a. 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.
- b. 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).

G. Control periods for restricted rental units.

- a. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this chapter until the Borough of Mountainside 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.
- b. Deeds of all real property that includes 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 Union. A copy of the filed document shall be provided to the administrative agent within 30 days of the receipt of a certificate of occupancy.
- c. A restricted rental unit shall remain subject to the affordability controls of this chapter, despite the occurrence of any of the following events:
 - i. Sublease or assignment of the lease of the unit
 - ii. Sale or other voluntary transfer of the ownership of the unit
 - iii. The entry and enforcement of any judgment of foreclosure

H. Price restrictions for rental units; leases.

- a. 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.

- b. No additional fees or charges shall be added to the approved rent (except in the case of units in an assisted living residence to cover the customary charges for food and services) without the express written approval of the administrative agent.
- c. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls applicable to the unit as set forth in this chapter.

I. Tenant income eligibility.

- a. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - i. Very low income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income
 - ii. Low income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income
 - iii. Moderate income rental units shall be reserved for households with a gross household income less than 80% of median income
- b. The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very low income, low income or 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:
 - i. 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
 - ii. 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
 - iii. The household is currently in substandard or overcrowded living conditions
 - iv. The household documents the existence of assets with which the household proposes to supplement the rent payments
 - v. 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
- c. The applicant shall file documentation sufficient to establish the existence of the circumstances in I(2)(a) through (e) above with the administrative agent, who shall counsel the household on budgeting.

J. Administration.

- a. The position of Municipal Housing Liaison (MHL) for the Borough of Mountainside is established by this chapter. The Borough of Mountainside shall make the actual appointment of the MHL by means of a resolution.
 - i. The MHL must be either a full-time or part-time employee of the Borough of Mountainside.

- ii. The person appointed as the MHL must be reported to COAH for approval.
- iii. The MHL must meet all COAH requirements for qualifications, including initial and periodic training.
- iv. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Mountainside, including the following responsibilities which may not be contracted out to the administrative agent:
 - 1. Serving as the municipality's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents and interested households
 - 2. The implementation of the affirmative marketing plan and affordability controls
 - 3. When applicable, supervising any contracting administrative agent
 - 4. Monitoring the status of all restricted units in the Borough of Mountainside's Fair Share Plan
 - 5. Compiling, verifying and submitting annual reports as required by COAH
 - 6. Coordinating meetings with affordable housing providers and administrative agents, as applicable
 - 7. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH
- b. The Borough of Mountainside shall designate by resolution of the Township Council, subject to the approval of COAH, one or more administrative agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:93, N.J.A.C. 5:93 and UHAC.
- c. 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 COAH. 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).
- d. 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, 26.16 and 26.18 thereof, which includes:
 - i. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH
 - ii. Affirmative marketing
 - iii. Household certification
 - iv. Affordability controls
 - v. Records retention
 - vi. Resale and re-rental
 - vii. Processing requests from unit owners
 - viii. Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality
 - ix. The administrative agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities hereunder

K. Enforcement of affordable housing regulations.

- a. 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.

- b. After providing written notice of a violation to an owner, developer or tenant of a low or moderate income unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - i. 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 \$1,000. 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 Borough of Mountainside 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
 - ii. 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.
- c. 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.
- d. 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 Sheriff's 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.

- e. 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 Sheriff's 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 Sheriff's sale shall not be entitled to any right of redemption.
 - f. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the 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.
 - g. Failure of the low and moderate income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low and moderate income unit as permitted by the regulations governing affordable housing units.
 - h. 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.
- L. Appeals. Appeals from all decisions of an administrative agent designated pursuant to this chapter shall be filed in writing with the Executive Director of COAH.

Section 2.

A new section of the Code, to be entitled "Affirmative Action Marketing Plan," shall be added to the Land Use Ordinance of the Borough, directly following the "Housing Element and Fair Share Plan," as follows:

1. Purpose

- A. The Borough of Mountainside has a total fair share obligation of 123 units as calculated by COAH (published October 20, 2008) for the period 1987-1999. These affirmative marketing regulations shall apply to all developments that contain low and moderate income housing units.

- B. 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 Borough of Mountainside is in the housing region consisting of Essex, Morris, Union and Warren Counties.

2. Advertising

The affirmative marketing plan is a continuing program and shall meet the following requirements:

- A. The Borough of Mountainside shall adopt by resolution an Affirmative Marketing Plan compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- B. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is 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 COAH Housing Region 2 and covers the period of deed restriction.
- C. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 2 comprised of Essex, Union, Warren and Morris counties.
- D. The Administrative Agent designated by the Borough of Mountainside shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- E. In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements and landlord/tenant law.
- F. The affirmative marketing process for available affordable units shall begin at least four (4) months prior to the expected date of occupancy.
- G. 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 Borough of Mountainside.
- H. Affordable housing applications, brochures, announcements and/or posters will be forwarded to and posted at the following locations:
 - i. Developer's sales office
 - ii. Municipal Building and Library
 - iii. County Library
- I. Quarterly informational circulars and applications shall be sent to each of the following agencies for publication in their journals and for circulating among their members:
 - i. Board of Realtors in Essex County
 - ii. Board of Realtors in Morris County
 - iii. Board of Realtors in Union County

iv. Board of Realtors in Warren County

- J. Additional quarterly informational circulars and applications shall be sent to the nonprofit, religious, governmental, fraternal, civic, community action agencies in Essex, Morris, Union and Warren Counties:
- K. The following is a description of the random selection method that will be used to select occupants of low and moderate income housing: The random selection method to be used will be a lottery based upon a categorization of the number of bedroom units, and whenever there are more applicants in a particular category than units, the random selection method will be utilized.

3. Administrative Agency

- A. NJ Housing and Mortgage Finance Agency (HMFA) will be the agency under contract with the Borough of Mountainside to administer the affordable housing units. Each developer has the responsibility to advertise, to 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. HMFA 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.
- B. In addition, the Borough of Mountainside is designating the Borough Administrator and assigns as "housing officer" to act as liaison between COAH, the municipality and HMFA. The municipal liaison will be responsible for tracking the progress of affordable housing, fielding inquiries regarding affordable housing from the public and COAH, complying with COAH monitoring and reporting requirements as per N.J.A.C. 5:93-11.6 and 5:93-12.1.

4. Developer Responsibilities

- A. Developers/builders/sponsors of low and moderate income housing units shall be required by the Borough of Mountainside to provide the advertising of affordable units in their respective developments in accordance with the preceding sections. Such advertising must be coordinated with the housing officer and is subject to the approval of the Borough of Mountainside.
- B. Borough of Mountainside, in conjunction with HMFA, may delegate other specific tasks to a developer/building/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 HMFA for reporting purposes and to aid with future resales.

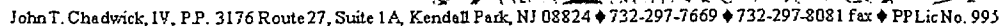
5. Preference to Region 2 Residents

Households who live or work in the housing region of Essex, Morris, Union and Warren Counties may 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. Borough of Mountainside intends to comply with N.J.A.C. 5:93-11.7.

6. Effective Date of Affirmative Action Marketing Plan

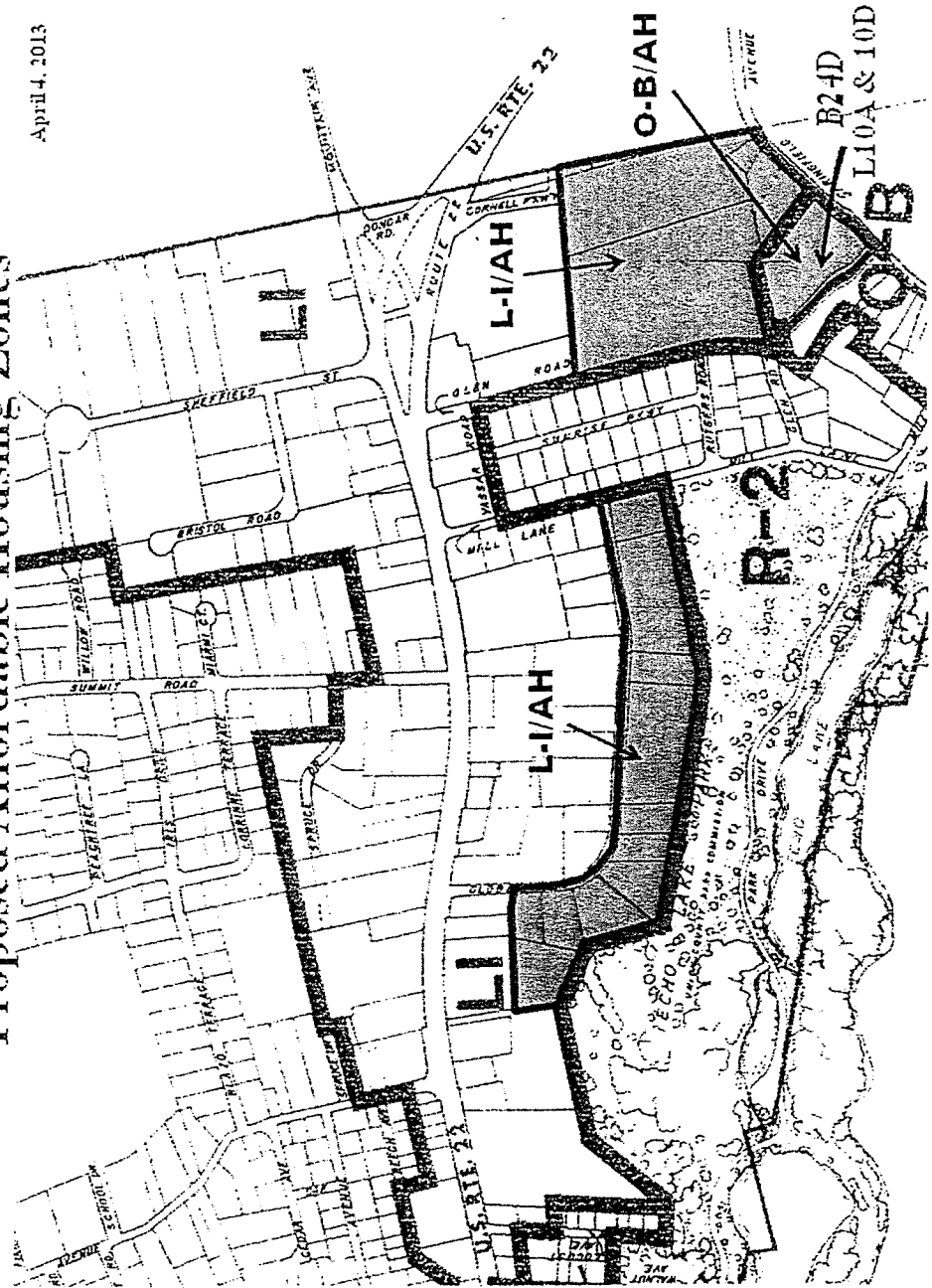
The affirmative marketing plan for new units shall commence 120 days before the issuance of either temporary or permanent certificates of occupancy. Affirmative marketing shall continue until all low and moderate income housing units are initially occupied. Affirmative marketing for existing units shall continue on an as-needed basis for as long as affordable units are deed restricted.

April 4, 2013



April 4, 2013

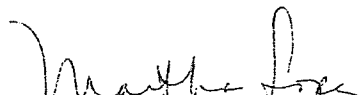
Proposed Affordable Housing Zones

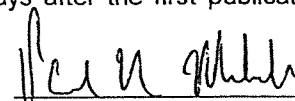


John T. Chadwick, IV, P.P. 3176 Route 27, Suite 1A, Kendall Park, NJ 08824 ♦ 732-297-7669 ♦ 732-297-8081 fax ♦ PPLir No. 995

Section 3.

This ordinance shall take effect twenty days after the first publication hereof after final passage.


Martha Lopez, Borough Clerk


Paul N. Mirabelli, Mayor

FIRST READING

Introduced by: Councilman Mortimer
Seconded by: Councilman Turner
Roll call vote: Ayes: 6 Nays: 0
Absent:
Date: May 20, 2014

SECOND READING

Councilman Lane
Councilman Turner
Ayes: 4 Nays: 0
Councilman Dierkes & Mortimer
June 17, 2014

ORDINANCE 1220-2014

AN ORDINANCE CREATING A DEVELOPMENT FEE, AND ESTABLISHING STANDARDS FOR THE COLLECTION, MAINTENANCE, AND EXPENDITURE OF DEVELOPMENT FEES

WHEREAS, the Mayor and Council of the Borough of Mountainside, County of Union, and State of New Jersey, as a result of a builders remedy suit filed against the Borough, have been working with a Special Master to create an approved affordable housing plan for the Borough; and

WHEREAS, the Mayor and Council of the Borough of Mountainside have determined that the adoption of a Development Fee to coincide with such affordable housing plan is in the interest of the Borough.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council as follows:
_____, a new section of the Borough Code is hereby adopted as follows:

1. Purpose

a) 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.

b) Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.

c) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of the rules on development fees, codified at N.J.A.C. 5:97-8.

2. Basic requirements

a) This ordinance shall not be effective until approved by the COAH pursuant to N.J.A.C. 5:96-5.1.

b) The Borough of Mountainside 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.

3. Definitions

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

i. "Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

ii. "COAH" or the "Council" means the New Jersey Council on Affordable Housing established under the Fair Housing Act which previously had primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

iii. "Development fee" means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

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

v. "Equalized assessed value" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

vi. "Green building strategies" means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

4. Residential Development fees

a) Imposed fees

i. Within the affordable housing district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1% of the equalized assessed value for residential development provided no increased density is permitted.

ii. 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.

b) Eligible exactions, ineligible exactions and exemptions for residential development

i. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.

ii. 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.

iii. Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.

iv. 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.

5. Collection procedures

a) 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.

i Appeal of development fees

1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Borough. 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, R.S. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

2) A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Borough. 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, R.S. 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.

6. Affordable Housing trust fund

a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

1. payments in lieu of on-site construction of affordable units;
2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
3. rental income from municipally operated units;
4. repayments from affordable housing program loans;
5. recapture funds;
6. proceeds from the sale of affordable units; and
7. any other funds collected in connection with the Borough's affordable housing program.

c) Within seven days from the opening of the trust fund account, the Borough shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).

d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

8. Use of funds

a) 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 COAH to address the Borough's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: 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 non-residential 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 8.9 and specified in the approved spending plan.

b) Funds shall not be expended to reimburse the Borough for past housing activities.

c) At least 30 percent 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 percent or less of median income by region.

i. 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.

ii. Affordability assistance to households earning 30 percent 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 percent or less of median income.

iii. 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.

d) The Borough 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.

e) No more than 20 percent 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 percent 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.

9. Monitoring

a) The Borough shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Borough's housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court. All monitoring reports shall be completed on forms designed by COAH.

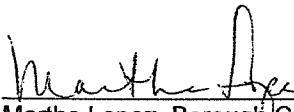
10. Ongoing collection of fees

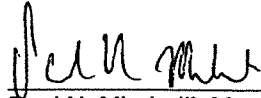
a) The ability for the Borough to impose, collect and expend development fees shall expire with its judgment of compliance unless the Borough has filed an adopted Housing Element and Fair Share Plan with the COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If the Borough fails to renew its ability to impose and collect development fees prior to the expiration of the judgment of compliance, 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 (C. 52:27D-320). The Borough 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 the Borough retroactively impose a development fee on such a development. The Borough shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

AND BE IT FURTHER ORDAINED THAT all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.


Martha Lopez, Borough Clerk


Paul N. Mirabelli, Mayor

Introduced by:

Seconded by

Roll call vote: Ayes: Nays: Ayes: Nays:

Absent:

Date:

ORDINANCE 1221-2014

AN ORDINANCE TO AMEND THE LAND USE ORDINANCE OF THE BOROUGH OF MOUNTAINSIDE ARTICLE 10, SECTION 1013, L-I LIMITED INDUSTRIAL DISTRICT

WHEREAS, the Mayor and Council of the Borough of Mountainside, County of Union, State of New Jersey, have determined that that it is in the public interest to add additional permitted uses to the L-I Limited Industrial District.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council of the Borough of Mountainside as follows:

Section 1.

Article 10, Section 1013 (a) is deleted and the following is inserted:

- a. Primary Intended Uses. The uses in this zoning district are business, professionals, executive or administrative office purposes, scientific or research laboratories, warehousing and limited industrial and manufacturing, fabrication and assembly uses, the nature of such industrial and manufacturing uses being dependent upon their compliance to performance standards of Section 1010 (d), commercial uses of a strictly wholesale sales and service nature, private membership, non-profit and/or recreational facilities open to the general public which provide indoor facilities for swimming, tennis, raquetball, handball, baseball, softball, soccer, lacrosse, golf, exercise and fitness training. Educational and training facility not including outdoor facilities equipment, data processing center, television and radio studios not including transmission antenna, physical rehabilitation and therapy uses not including patient housing. The intensity of operations shall not exceed the limitations imposed by the performance standards set forth in Section 1013 (d).

In addition, retail sales or service establishments are prohibited in the L-I zone, as is any use that is prohibited in the B zone with the exception of those listed in Section 1011 (b) (7) and (9) which are permitted as regulated by this Section.

Before issuance of a building or occupancy permit, the Planning Board shall ascertain that all the requirements of this Section are complied with. All uses permitted shall be conducted wholly within a completely enclosed building except for loading and unloading operations, on-site parking of delivery vehicles and the storage of any products (such as propane) which are required to be located outside an enclosed building. No display of wares shall be visible from the outside of the building.

Section 2.

The following is inserted at the end of Article 10, Section 1013 (d):

- (9) Any activity which is detrimental to the health, safety, morals, general welfare or aesthetics of neighboring properties of the Borough of Mountainside is prohibited.

Section 3.

This ordinance shall take effect twenty days after the first publication hereof after final passage.

Paul N. Mirabelli, Mayor

Martha Lopez, Borough Clerk

FIRST READING

SECOND READING

Introduced by: Councilman Messler
Seconded by: Councilman Turner
Roll call vote: Ayes: 6 Nays: 0
Absent:
Date: September 16, 2014

Councilman Messler
Councilman Dierkes
Ayes: 4 Nays: 0
Andre, Lane
November 25, 2014

ORDINANCE 1227-2014 (AMENDED)

AN ORDINANCE AMENDING ARTICLE 10, SECTIONS 1008(c), 1009(c), AND 1010(c) OF THE LAND USE ORDINANCE OF THE BOROUGH OF MOUNTAINSIDE

WHEREAS, the Mayor and Council of the Borough of Mountainside, County of Union, and State of New Jersey have determined that there is a need to amend the Floor Area Ratio ("FAR") and side yard setback standards for the residential zoning districts in the Borough; and

WHEREAS, the Borough Planner has made certain recommendations to amend the Borough Code to incorporate these changes; and

WHEREAS, previously by Ordinance 1210-2013, the Borough amended the Borough Code to amend the FAR to .225 for the residential zoning districts in the Borough; and

WHEREAS, upon further recommendation by the Borough Planner, the Mayor and Council have determined that it is in the interest of the Borough to amend the Required Conditions for the residential zoning districts to allow a range of FAR provided certain side yard setback conditions are met; and

NOW THEREFORE BE IT ORDAINED by the Mayor and Council as follows: Article 10, Section 1003 of the Borough Code be and the same is hereby amended by adding new subsection (aa):

(aa) Floor Area Ratio Regulation. A floor area ratio is calculated by dividing the habitable floor area of a dwelling by the lot area. Habitable floor area shall not include garage space, basement whether finished or unfinished, attic space, an open porch or breezeway.

AND BE IT FURTHER ORDAINED THAT Subsection 1008 (c) (3) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1008(c)(3):

(3) Side Yard. There shall be two (2) side yards, neither of which shall be less than ten (10) feet or ten percent (10%) of the lot width, whichever is greater except that for a single-family dwelling having a FAR of 0.225 or greater but in no event greater than 0.24, shall have a side yard setback of 15 feet or 15% of the lot width, whichever is greater.

AND BE IT FURTHER ORDAINED THAT Subsection 1008 (c) (8) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1008(c)(8):

(8) Floor Area Ratio. A standard floor area ratio for the R-1 Zone shall be .225. However, for certain applications for single family dwellings having a proposed FAR of greater than 0.225 but in no event greater than 0.24, the side yard setback requirements shall be as determined in section three (3) above.

AND BE IT FURTHER ORDAINED THAT Subsection 1009(c)(3) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1009(c)(3):

(3) Side Yard. There shall be two (2) side yards, neither of which shall be less than ten (10) feet or ten percent (10%) of the lot width, whichever is greater except that for a single-family dwelling having a FAR of 0.225 or greater but in no event greater than 0.24, shall have a side yard setback of 15 feet or 15% of the lot width, whichever is greater.

AND BE IT FURTHER ORDAINED THAT Subsection 1009 (c) (8) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1009(c)(8):

(8) Floor Area Ratio. A standard floor area ratio for the R-1 Zone shall be .225. However, for certain applications for single family dwellings having a proposed FAR of greater than 0.225 but in no event greater than 0.24, the side yard setback requirements shall be as determined in section three (3) above.

AND BE IT FURTHER ORDAINED THAT Subsection 1010(c)(3) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1010(c)(3):

(3) Side Yard. There shall be two (2) side yards, neither of which shall be less than ten (10) feet or ten percent (10%) of the lot width, whichever is greater except that for a single-family dwelling having a FAR of 0.225 or greater but in no event greater than 0.24, shall have a side yard setback of 15 feet or 15% of the lot width, whichever is greater.

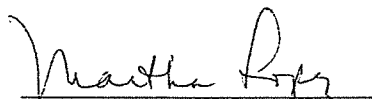
AND BE IT FURTHER ORDAINED THAT Subsection 1010(c) (8) of the Borough Code be and the same is hereby deleted and that there be substituted the following new Section 1010(c)(8):

(8) Floor Area Ratio. A standard floor area ratio for the R-1 Zone shall be .225. However, for certain applications for single family dwellings having a proposed FAR of greater than 0.225 but in no event greater than 0.24, the side yard setback requirements shall be as determined in section three (3) above.

AND BE IT FURTHER ORDAINED THAT any structure conforming to the bulk requirements of the land use ordinance in effect prior to the adoption of Ordinance No. 1210-2013, initially creating the FAR for the Borough, shall not be rendered non-conforming by adoption of Ordinance No. 1210-2013. Should such a structure be more than partially destroyed after the adoption of Ordinance No.1210-2013, the property owner shall be entitled to rebuild a structure which is substantially the same as the destroyed structure so long as it conforms to the bulk requirements of land use ordinance in effect prior to the adoption of Ordinance No. 1210-2013.

AND BE IT FURTHER ORDAINED THAT all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.


Martha Lopez, Borough Clerk


Paul N. Mirabelli, Mayor

Noise Ord.

FIRST READING

Introduced by: Dr. Joseph Calderone
Seconded by: Charles Medallis
Roll call vote: Ayes: 6 Nays: 0
Absent: Dr. Dunne, Diane Olock
Date: November 8, 1999

SECOND READING

Dr. Joseph Calderone
Diane Olock
Ayes: 7 Nays: 0
Dr. Dunne
December 13, 1999

PUBLIC NOTICE

Public notice is hereby given that an Ordinance of which the following is a copy was introduced, read and passed on second reading by the Mountainside Board of Health, at a regular meeting held on December 13, 1999.

Ordinance #003-99 MOUNTAINSIDE BOARD OF HEALTH

An Ordinance by the Board of Health of the Borough of Mountainside entitled "A Model Ordinance as approved by the Department of Environmental Protection, State of New Jersey Regulating Noise."

1. Definitions

The following words and terms, when used in this ordinance, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this ordinance have the same meaning as those defined in N.J.A.C. 7:29.

"Construction" means any site preparation, assembly, erection, repair, alteration or similar action, including demolition of buildings or structures.

"Demolition" means any dismantling, destruction or removal of buildings, structures, or roadways.

"Department" means the New Jersey Department of Environmental Protection.

"Emergency work" means any work or action necessary to deliver essential public services including, but not limited to, repairing water, gas, electricity, telephone, sewer facilities, or public transportation facilities, removing fallen trees on public rights-of-way, dredging navigational waterways, or abating life-threatening conditions.

"Impulsive sound" means either a single pressure peak or a single burst (multiple pressure peaks) that has a duration of less than one second.

"Motor vehicle" means any vehicle that is propelled other than by human or animal power on land.

“Muffler” means a properly functioning sound dissipative device or system for abating the sound of escaping gasses on equipment where such a device is part of the normal configuration of the equipment.

“Multi-dwelling unit building” means any building comprising two or more dwelling units, including, but not limited to, apartments, condominiums, co-ops, multiple family houses, townhouses, and attached residences.

“Multi-use property” means any distinct parcel of land that is used for more than one category of activity. Examples include, but are not limited to:

1. A commercial, residential, industrial or public service property having boilers, incinerators, elevators, automatic garage doors, air conditioners, laundry rooms, utility provisions, or health and recreational facilities, or other similar devices or areas, either in the interior or on the exterior of the building, which may be a source of elevated sound levels at another category on the same distinct parcel of land; or
2. A building, which is both commercial (usually on the ground floor) and residential property, located above, behind, below or adjacent.

“Noise control officer” means an employee of: (1) a local, county or regional health agency which is certified pursuant to the County Environmental Health Act (N.J.S.A. 26:3A2-21 et. seq.) to perform noise enforcement activities; or (2) a municipality with a Department approved noise control ordinance and the employee has received noise enforcement training and is currently certified in noise enforcement. The employee must be acting within his or her designated jurisdiction and must be authorized to issue a summons in order to be considered a noise control officer.

“Plainly audible” means any sound that can be detected by a person using his or her unaided hearing faculties. As an example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the detection of the rhythmic bass component of the music is sufficient to verify plainly audible sound. The noise control officer need not determine the title, specific words, or the artist performing the song.

“Private right-of-way” means any street, avenue, boulevard, road, highway, sidewalk, alley or easement that is owned, leased, or controlled by a non-governmental entity.

“Public right-of-way” means any street, avenue, boulevard, road, highway, sidewalk, alley or easement that is owned, leased, or controlled by a governmental entity.

“Public space” means any real property or structures thereon that are owned, leased, or controlled by a governmental entity.

“Real property line” means either (a) the imaginary line including its vertical extension that separates one parcel of real property from another; (b) the vertical and horizontal boundaries of a dwelling unit that is part of a multi-dwelling unit building; or (c) on a multi-use property, the interface between the two portions of the property on which different categories of activity are being performed (e.g., if the multi-use property is a building which is residential upstairs and commercial downstairs, then the real property line would be the interface between the residential area and the commercial area).

“Weekday” means any day that is not a federal holiday, and beginning on Monday at 7:00 A.M. and ending on the following Friday at 6:00 P.M.

“Weekends” means beginning on Friday at 6:00 P.M. and ending on the following Monday at 7:00 A.M.

II. Applicability

(A) This model noise ordinance applies to sound from the following property categories:

- 1. Industrial facilities;**
- 2. Commercial facilities;**
- 3. Public service facilities;**
- 4. Community service facilities**
- 5. Residential properties;**
- 6. Multi-use properties;**
- 7. Public and private right-of-ways;**
- 8. Public spaces; and**
- 9. Multi-dwelling unit buildings.**

(B) This model noise ordinance applies to sound received at the following property categories:

- 1. Commercial facilities;**
- 2. Public service facilities;**
- 3. Community service facilities;**
- 4. Residential properties;**
- 5. Multi-use properties; and**
- 6. Multi-dwelling unit buildings.**

(C) Sound from stationary emergency signaling devices shall be regulated in accordance with N.J.A.C. 7:29-1.3, except that the testing of the

electromechanical functioning of a stationary emergency signaling device shall not meet or exceed 10 seconds.

III. Declaration of Findings and Policy

Whereas excessive sound is a serious hazard to the public health, welfare, safety, and the quality of life; and Whereas a substantial body of science and technology exists by which excessive sound may be substantially abated; and, Whereas the people have a right to, and should be ensured of, an environment free from excessive sound,

Now, Therefore, it is the policy of the Borough of Mountainside to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality of life.

This ordinance shall apply to the control of sound originating from sources within the Borough of Mountainside.

IV. Noise Control Officers

- (A) The provisions of this ordinance shall be enforced by noise control officers. A person shall be qualified to be a noise control officer if the person meets the criteria set forth in the definition above and completes, at a frequency specified by the Department in N.J.A.C. 7:29-2.11, a noise certification and re-certification course which are offered by the Department of Environmental Sciences of Cook College, Rutgers, the State University of New Jersey or any other noise certification or re-certification course, which is offered by an accredited university and approved by the Department.**
- (B) Sound measurements made by a noise control officer shall conform to the procedures set forth at N.J.A.C. 7:29-2, except that the interior sound level measurements shall also conform with the procedures set forth in sections V(B) and V(C) of this regulation and with the definition of "real property line" as contained herein.**
- (C) Noise control officers shall have the power to:**
 - 1. Coordinate the noise control activities of all departments in the Borough of Mountainside and cooperation with all other public bodies and agencies to the extent Practicable;**
 - 2. Review the actions of the Borough of Mountainside and advise of the effect, if any, of such actions on noise control;**

2. When octave measurements are made, the sound from the source must be constant in level and character. If octave band sound pressure level variations exceed plus or minus 2 dB in the bands containing the principal source frequencies, discontinue the measurement.

Receiving Property	Residential property, or residential portion of a multi-use property		Residential property, or residential portion of a multi-use property		Commercial facility, public service facility, non-residential portion of a multi-use property or community service facility	Commercial facility or non-residential portion of a multi-use property
	OUTDOORS		INDOORS		OUTDOORS	INDOORS
Octave Band Center Frequency, Hz.	Octave Band Sound Pressure Level, dB		Octave Band Sound Pressure Level, dB		Octave Band Sound Pressure Level, dB	Octave Band Sound Pressure Level, dB
Time	7 AM-10 PM	10 PM-7 AM	7 AM-10 PM	10 PM-7 AM	4 Hours	24 Hours
31.5	96	86	86	76	96	86
63	82	71	72	61	82	72
125	74	61	64	51	74	64
250	67	53	57	43	67	57
500	63	48	53	38	63	53
1,000	60	45	50	35	60	50
2,000	57	42	47	32	57	47
4,000	55	40	45	30	55	45
8,000	53	38	43	28	53	43

*In those instances when a commercial facility shares a common wall/ceiling/floor with another commercial facility that is producing the sound.

VI. Restricted Uses and Activities

- (A)1. Except as provided in (B) below, the provisions of this ordinance shall not apply to the exceptions listed at N.J.A.C. 7:29-1.4.
2. Construction and demolition activities are exempt from the sound level limits set forth in Tables I and II, except as provided for in (B) below.

Notwithstanding the provisions of Tables I and II, the following standards shall apply to the activities or sources of sound set forth below:

1. Non-commercial or non-industrial power tools and landscaping and yard maintenance equipment shall not be operated between the hours of 8:00 PM and 8:00 AM, unless such activities can meet the applicable limits set forth in Tables I and II. All motorized equipment used in these activities shall be operated with a muffler. At all other times, the limits set forth in Tables I and II do not apply to non-commercial or non-industrial power tools and landscaping and yard maintenance equipment;

2. Commercial or industrial power tools and landscaping and yard maintenance equipment, excluding emergency work, shall not be operated on a residential property or within 250 feet of a residential property line when operated on commercial or industrial property, between the hours of 6:00 PM and 7:00 AM on weekdays, or between the hours of 6:00 PM and 9:00 AM on weekends or federal holidays, unless such activities can meet the limits set forth in Tables I and II.

In addition, commercial or industrial power tools and landscaping and yard maintenance equipment, excluding emergency work, utilized on commercial or industrial property shall meet the limits set forth in Tables I and II between the hours of 10 PM and 7 AM. All motorized equipment used in these activities shall be operated with a muffler. At all other times, the limits set forth in Tables I and II do not apply to commercial or industrial power tools and landscaping and yard maintenance equipment;



3. Construction and demolition activity, excluding emergency work, shall not be performed between the hours of 6:00 PM and 7:00 AM on weekdays, or between the hours of 6:00 PM and 9:00 AM on weekends and federal holidays, unless such activities can meet the limits set forth in Tables I and II. All motorized equipment used in construction and demolition activity shall be operated with a muffler. At all other times, the limits set forth in Tables I and II do not apply to construction and demolition activities;
4. Motorized snowblowers, snow throwers, and lawn equipment with attached snowplows shall be operated at all times with a muffler. At all times, the limits set forth in Tables I and II do not apply;
5. An exterior burglar alarm of a building or motor vehicle must be activated in such a manner that the burglar alarm terminates its operation within five (5) minutes for continuous airborne sound and fifteen (15) minutes for impulsive sound after it has been activated. At all times, the limits set forth at Tables I and II do not apply;
6. Personal or commercial vehicular music amplification or reproduction equipment shall not be operated in such a manner that it is plainly audible at a residential property line between the hours of 10:00 PM and 8:00 AM;
7. Personal vehicular music amplification equipment shall not be operated in such a manner as to be plainly audible at a distance of 50 feet in any direction from the operator between the hours of 8:00 AM and 10:00 PM;
8. Self-contained, portable, hand-held music or sound amplification or reproduction equipment shall not be operated on a public space or public right-of-way in such a manner as to be plainly audible at a distance of 50

feet in any direction from the operator between the hours of 8:00 AM and 10:00 PM. Between the hours of 10:00 PM and 8:00 AM, sound from such equipment shall not be plainly audible by any person other than the operator;

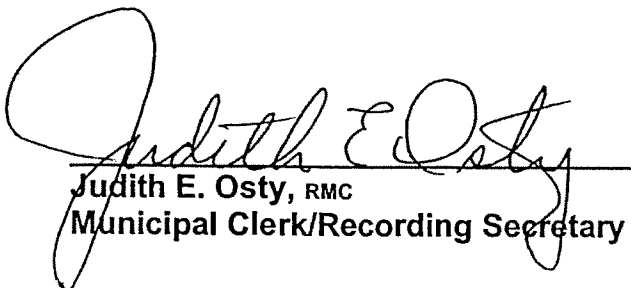
9. Sound levels exceeding the limits set forth in Table I, and Table II shall be prohibited between residential units within the same multi-dwelling unit building. Measurements shall be taken indoors as per Section V (B) and V(C).

VII. Enforcement

- (A) Violation of any provision of this ordinance shall be cause for an enforcement document to be issued to the violator by the noise control officer according to procedures set forth at N.J.A.C. 7:29-1.6. The recipient of an enforcement document shall be entitled to a hearing in municipal court having jurisdiction to contest such action.
- (B) Any person who violates any provision of this ordinance shall be subject to a civil penalty for each offense of not more than \$3,000. If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate, and distinct offense.
- (C) No provision of this ordinance shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this ordinance or from other law.

VIII. Severability and Repealer

- (A) If any provision or portion of a provision of this Ordinance is held to be unconstitutional, preempted by Federal or State law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the Ordinance shall not be invalidated.
- (B) All Ordinances or parts of Ordinances which are inconsistent with any provisions of this Ordinance are hereby repealed as to the extent of such inconsistencies.


Judith E. Osty, RMC
Municipal Clerk/Recording Secretary

Joseph Car, President

FIRST READING

SECOND READING

Introduced by: Councilman Dierkes Councilman Turner
Seconded by: Councilman Turner Councilman Mortimer
Roll call vote: Ayes: 4 Nays: 0 Ayes: 5 Nays: 0
Absent: Andre, Lane Councilman Messler
Date: November 25, 2014 December 16, 2014

ORDINANCE 1230-2014

**AN ORDINANCE AMENDING ARTICLE 10, SECTIONS 1003(u)(1) AND
1006(a) OF THE LAND USE ORDINANCE OF THE BOROUGH OF
MOUNTAINSIDE**

WHEREAS, the Mayor and Council of the Borough of Mountainside, County of Union, and State of New Jersey have determined that there is a need to amend sections of the Land Use ordinance to address certain circumstances for when a zoning permit is necessary in the Borough; and

NOW THEREFORE BE IT ORDAINED by the Mayor and Council as follows: Article 10, Section 1003(u)(1) of the Borough Code be and the same is hereby is deleted and replaced by a new section (u)(1):

(u) Fences, Retaining Walls, Driveways, Walkways, Patios

(1) A zoning permit in a form approved by the Zoning Official is required for the construction of any fence 6 feet or less in height. A zoning permit is required for the construction of any retaining wall 4 feet or less in height including multiple stepped walls totaling 4 feet or less in combined height. No fence or wall shall exceed 6 feet in height in a residential zone nor 8 feet in height in nonresidential zones. No fence or wall shall be constructed within 6 inches of a property line or street side line. A zoning permit shall be required for any increase in size above the originally existing and Borough approved footprint, regardless of materials used, for driveways, walkways, and ground level patios.

AND BE IT FURTHER ORDAINED THAT Subsection 1006(a) of the Borough Code be and the same is hereby amended and with the addition of the following new sentence at the end of the subsection as follows:

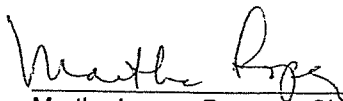
(a) For the construction of sheds or similar structures totaling 100 square feet or less in size and 10 feet or less in height, a zoning permit shall be required in a form approved by the Zoning Official.

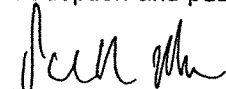
AND BE IT FURTHER ORDAINED THAT the proposed zoning permit application is hereby approved in substantially the same form as the version attached hereto.

AND BE IT FURTHER ORDAINED THAT the application fee for a zoning permit shall be \$50.00.

AND BE IT FURTHER ORDAINED THAT all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.


Martha Lopez, Borough Clerk


Paul N. Mirabelli, Mayor

RESOLUTION
BOROUGH OF MOUNTAINSIDE

Council Meeting Date: April 21, 2015

Title: Redevelopment Plan

Introduced by: Councilman Turner

Seconded by: Councilman Mortimer

Roll Call Vote: Ayes: 4 Nays: 0 Abstain:

Absent: Councilwoman Andre, Councilman Messler

RESOLUTION 60-2015

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. ("Redevelopment Law") provides a mechanism to assist local governments in efforts to promote programs of redevelopment; and

WHEREAS, the Redevelopment Law sets forth the procedures for the Borough to declare an area in need of redevelopment, along with the development and effectuation of a redevelopment plan; and

WHEREAS, pursuant to the required redevelopment procedures, specifically set forth in N.J.S.A. 40A:12A-6, no area of a municipality shall be determined a redevelopment area unless the governing body of the municipality shall, by Resolution, authorize the Planning Board to undertake a preliminary investigation to determine whether a proposed area is a redevelopment area meeting the criteria set forth in N.J.S.A. 40A:12A-5; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-5(a), "[t]he resolution authorizing the planning board to undertake a preliminary investigation shall state whether the redevelopment area determination shall authorize the municipality to use all those powers provided by the Legislature for use in a redevelopment area other than the use of eminent domain (hereinafter referred to as a "Non-Condensation Redevelopment Area") or whether the redevelopment area determination shall authorize the municipality to use all those powers provided by the Legislature for use in a redevelopment area, including the power of eminent domain (hereinafter referred to as a "Condensation Redevelopment Area"); and

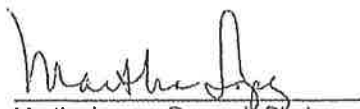
WHEREAS, the Mayor and Council of the Borough of Mountainside find it to be in the best interest of the Borough and its residents to authorize the Borough Planning Board to undertake such preliminary investigation of the study area identified as Block 14, Lot 14 on the Official Tax Map of the Borough of Mountainside, as a Non-Condensation Redevelopment Area; and

WHEREAS, the Mayor and Council wish to direct the Planning Board to undertake a preliminary investigation utilizing Borough Planner John T. Chadwick IV, P.P., to prepare the preliminary investigation, to determine whether the proposed study area, which includes Block 14, Lot 14, qualifies as an area in need of Non-Condensation Redevelopment pursuant to N.J.S.A. 40A:12A-5.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Mountainside, in the County of Union, and State of New Jersey, that the Planning Board is hereby authorized to undertake a preliminary investigation, utilizing John T. Chadwick IV, P.P., to prepare the preliminary investigation, pursuant to the notice, conduct a hearing and comply with other requirements of the Redevelopment Law, N.J.S.A. 40A:12A-1, et seq., as amended, in order to recommend to the Mayor and Council whether the area comprising the study area, Block 14, Lot 14 on the official Tax Map of the Borough of Mountainside, is an area in need of Non-Condensation Redevelopment according to the criteria set forth in N.J.S.A. 40A:12A-5.

BE IT FURTHER RESOLVED that, pursuant to N.J.S.A. 40A:12-6(a), the redevelopment area determination shall authorize the Township to use all the powers provided by the Legislature for use in a Non-Condernation Redevelopment area other than the use of eminent domain.

BE IT FURTHER RESOLVED that the Planning Board shall submit its findings and recommendations to the Mayor and Council in the form of a Resolution with supporting documentation.


Martha Lopez, Borough Clerk


Paul N. Mirabelli, Mayor

FIRST READING

SECOND READING

Introduced by: Councilman Mortimer

Seconded by: Councilman Turner

Roll call vote: Ayes:5 Nays:0

Ayes: Nays:

Absent: Councilman Lane

Date: November 24, 2015

ORDINANCE 1240-2015

**AN ORDINANCE ADOPTING THE
REDEVELOPMENT PLAN - BARNES TRACT, BLOCK 14, LOT 14**

WHEREAS, on October 6, 2015, the Mayor and Council of the Borough of Mountainside adopted Resolution 97-2015 directing the Planning Board of the Borough of Mountainside, pursuant to N.J.S.A. 40A:12A-5 and 40A:12A-6 of the Local Redevelopment and Housing Law to undertake a preliminary investigation to determine whether the property, identified on the Borough's tax map as Block 14, Lot 14 (hereinafter referred to as the "Barnes Tract"), qualifies as an area in need of Non-Condensation Redevelopment; and

WHEREAS, on November 5, 2015, the Planning Board adopted a Resolution concluding that substantial evidence existed under N.J.S.A. 40A:12A-5(a), (c) and (d) that the Barnes Tract is an "area in need of redevelopment" under the Redevelopment Law and recommending to the Borough Council that the Barnes Tract be determined to be an "area in need of redevelopment;" and

WHEREAS, the Mayor and the Borough Council adopted Resolution 109-2015 accepting the recommendations of the Planning Board and determining the Barnes Tract to be an "area in need of redevelopment;" and

WHEREAS, at the request of the Mayor and Borough Council, John T. Chadwick, IV, P.P. created a proposed redevelopment plan entitled "Redevelopment Plan - Barnes Tract, Block 14, Lot 14;" and

WHEREAS, the Borough Council referred the Redevelopment Plan - Barnes Tract, Block 14, Lot 14 to the Planning Board, pursuant to N.J.S.A. 40A:12A-7(e), for a report and recommendation from the Planning Board concerning the proposed plan, together with an identification of any provisions in the proposed plan that are inconsistent with the master plan and, if so, any recommendations concerning those inconsistencies, and any other matters as the Land Use Board may deem appropriate; and

WHEREAS, this Ordinance will not be effective until the Planning Board has recommended implementation of the Redevelopment Plan - Barnes Tract, Block 14, Lot 14 and reported that said plan is consistent with the Borough Master Plan; and

WHEREAS, this Ordinance will not be effective until the Borough Council has determined that the inclusion of the Redevelopment Plan - Barnes Tract, Block 14, Lot 14 does generally conform with the goals and objectives set forth in the Borough Master Plan and advances the objectives of the Borough Affordable Housing Plan.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL
FOR THE BOROUGH OF MOUNTAINSIDE, NEW JERSEY, THAT:**

Section 1

The Borough Council, after studying and deliberating the contents and substance of the "Redevelopment Plan - Barnes Tract, Block 14, Lot 14," desires to adopt Redevelopment Plan - Barnes Tract, Block 14, Lot 14, which is attached as a part of this ordinance.

- a. This Redevelopment Plan promotes development of a vacant and neglected municipal property and advances the Borough's Affordable Housing Plan.
- b. This Redevelopment Plan permits vacant, neglected and underutilized property to return to full productivity by creating new appropriate development regulations and opportunities.

Section 2

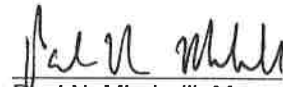
The attached "Redevelopment Plan - Barnes Tract, Block 14, Lot 14" shall regulate development within the affected area under Local Redevelopment and Housing Law.

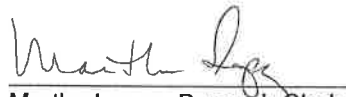
Section 3

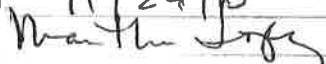
All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 4

This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.


Paul N. Mirabelli, Mayor


Martha Lopez, Borough Clerk

I hereby certify that the foregoing
is a true and correct copy of an
ordinance adopted by the Governing
Body of the Borough of Mountainside
on 11/24/15

Municipal Clerk

FIRST READING

SECOND READING

Introduced by: Councilman Messler
Seconded by: Councilwoman Andre
Roll call vote: Ayes: 5 Nays: 0
Absent: Dierkes
Date: January 19, 2016

Councilman Messler
Councilman Turner
Ayes: 6 Nays: 0
February 16, 2016

ORDINANCE 1241-2016

**AN ORDINANCE TO REPEAL CHAPTER IX BUILDING AND HOUSING
SECTION 9-1.2 OF THE CODE OF THE BOROUGH OF MOUNTAINSIDE
TO REPEAL THE PROVISIONS THEREOF PERTAINING TO THE
CONSTRUCTION BOARD OF APPEALS**

WHEREAS, N.J.S.A. 52:27D-127 provides that there shall be a Construction Board of Appeals for each county to hear appeals from decisions by the Uniform Construction Code Enforcing Agency which shall hear appeals from decisions of the Municipal Uniform Construction Code Enforcing Agency; and

WHEREAS, said statute provides that a municipality may establish its own Construction Board of Appeals to hear appeals from decisions by the municipal enforcing agency; and

WHEREAS, the Mayor and Council of the Borough of Mountainside has determined that the Construction Board of Appeals established by Chapter IX of the Code of the Borough of Mountainside is no longer necessary and that any appeals from decisions of the local enforcing agency may be heard by the Union County Construction Board of Appeals.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Mountainside as follows:

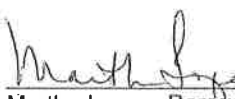
SECTION 1. Chapter IX Building and Housing Section 9-1.2 of the Code of the Borough of Mountainside is hereby repealed and the Mountainside Construction Board of Appeals is hereby abolished.

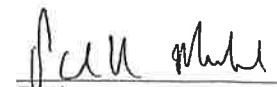
SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION 3. If any portion of this ordinance shall be determined to be invalid, such determination shall not affect the validity of the remaining portions of said ordinance.

SECTION 4. This ordinance shall take effect upon final passage and publication in accordance with law.

SECTION 5. The Municipal Clerk is hereby directed to file a copy of this ordinance with the Office of Regulatory Affairs of the Division of Codes and Standards in the Department of Community Affairs, the Union County Board of Construction Appeals, and the Union County Board of Chosen Freeholders.


Martha Lopez, Borough Clerk


Paul N. Mirabelli, Mayor

FIRST READING

SECOND READING

Introduced by: Councilman Turner Councilman Turner
Seconded by: Councilman Mortimer Councilwoman Andre
Roll call vote: Ayes: 6 Nays: 0 Ayes: 6 Nays: 0
Absent:
Date: April 18, 2017 May 16, 2017

ORDINANCE 1255-2017**AN ORDINANCE ESTABLISHING REGULATIONS FOR THE USE OF CHARITABLE CLOTHING BINS**

WHEREAS, the Union County Prosecutor's Office recently investigated the use of charitable clothing bins and determined that in several instances, the bins were placed in various municipalities for purposes of personal gain; and

WHEREAS, the Union County Prosecutor's Office recommends that all municipalities in Union County adopt an ordinance regulating the use of charitable clothing bins to assure they are put to charitable use, and

WHEREAS, the State has enacted a clothing bin statute, N.J.S.A. 40:48-2.60 et seq., upon which this ordinance is based.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Mountainside, County of Union State of New Jersey as follows:

Section 1.

Chapter IV entitled GENERAL LICENSING AND BUSINESS REGULATIONS is hereby modified with the addition of Section 4-11 entitled "CHARITABLE CLOTHING BINS" as follows:

4-11 CHARITABLE CLOTHING BINS

4-11.1 Definitions

For the purposes of P.L.2007, c. 209 (C.40:48-2.60 et seq.):

"Appropriate Municipal Agency" shall mean the agency determined by resolution by the Mayor and Council of the Borough of Mountainside.

"Solicitation" or "solicit" shall mean the request, directly or indirectly, for money, credit, property, financial assistance, or other thing of any kind of value. Solicitation shall include, but not be limited to, the use or employment of canisters, cards, receptacles or similar devices for the collection of money or other thing of value. A solicitation shall take place whether or not the person making the solicitation receives any contribution.

4-11.2 Requirements for Placement, Use of Clothing Bins for Solicitation Purposes.

Notwithstanding any other provision of law to the contrary, no person shall place, use, or employ a donation clothing bin, for solicitation purposes, unless all of the following requirements are met:

a. The person has obtained a permit, valid for a specified period of time, from the Appropriate Municipal Agency within the Borough of Mountainside in which the donation clothing bin will be placed, in accordance with the following:

(1) In applying for such a permit, the person shall include:

(a) The location where the bin would be situated, as precisely as possible;

(b) The manner in which the person anticipates any clothing or other donations collected via the bin would be used, sold, or dispersed, and the method by which the proceeds of collected donations would be allocated or spent;

(c) The name, and telephone number of the bona fide office, required pursuant to Section (5)(a), of any entity which may share or profit from any clothing or other donations collected via the bin;

(d) Written consent from the property owner to place the bin on his property;

(e) Written proof of compliance with all other Ordinances of the Borough of Mountainside, including Land Use and Zoning Regulations, if applicable;

(f) The dates between which the bin shall remain at the specific location, but no longer than a one (1) year period at which time a renewal application must be filed; and

(g) Any other information required by the Borough of Mountainside on the Charitable Clothing Bin Application.

(2) The Appropriate Municipal Agency shall not grant an application for a permit to place, use, or employ a donation clothing bin if it determines that the placement of the bin could constitute a safety hazard. Such hazards shall include, but not be limited to, the placement of a donation clothing bin within 100 yards of any place which stores large amounts of, or sells, fuel or other flammable liquids or gases.

(3) The Borough of Mountainside hereby imposes a fee for such application, in the amount of \$25, to offset the costs involved in enforcing P.L.2007, c. 209 (N.J.S.A. 40:48-2.60 et seq.).

(4) An expiring permit for a donation clothing bin may be renewed upon application for renewal and payment of any fee imposed by the Appropriate Municipal Agency for such renewal, not to exceed \$25 annually, to offset the costs involved in enforcing P.L.2007, c. 209 (C.40:48-2.60 et seq.). Such renewal application shall include:

(a) the location where the bin is situated, as precisely as possible, and, if the person intends to move it, the new location where the bin would be situated after the renewal is granted and written consent from the property owner to place the bin on his property;

(b) the manner in which the person has used, sold, or dispersed any clothing or other donations collected via the bin, the method by which the proceeds of collected donations have been allocated or spent, and any changes the person anticipates it may make in these processes during the period covered by the renewal; and

(c) The name and telephone number of the bona fide office required pursuant to subsection 5(b) of this section, of any entity which shared or profited from any clothing or other donations collected via the bin, and of any entities which may do so during the period covered by the renewal.

(5) The permit number and its date of expiration shall be clearly and conspicuously displayed on the exterior of the donation clothing bin, in addition to the information required pursuant to subsection 5(b) of this section:

(a) The person, and any other entity which may share or profit from any clothing or other donations collected via the bin, maintains a bona fide office where a representative of the person or other entity, respectively, can be reached at a telephone information line during normal business hours for the purpose of offering information concerning the person or other entity. For the purposes of this subsection, an answering machine or service unrelated to the person does not constitute a bona fide office; and

(b) The following information is clearly and conspicuously displayed on the exterior of the donation clothing bin:

(i) The name and address of the registered person that owns the bin, and of any other entity which may share or profit from any clothing or other donations collected via the bin;

(ii) The telephone number of the person's bona fide office and, if applicable, the telephone number of the bona fide office of any other entity which may share or profit from any clothing or other donations collected via the bin;

(iii) In cases when any entity other than the person who owns the bin may share or profit from any clothing or other donations collected via the bin, a notice, written in a clear and easily understandable manner, indicating that clothing or other donations collected via the bin, their proceeds, or both, may be shared, or given entirely to, an entity other than the person who owns the bin, and identifying all such entities which may share or profit from such donations; and

(iv) A statement, consistent with the information provided to the Appropriate Municipal Agency in the most recent permit or renewal application pursuant to paragraph a, (4)(b) and paragraph a, (1)(b) indicating the manner in which the person anticipates any clothing or other donations collected via the bin would be used, sold, or dispersed, and the method by which the proceeds of collected donations would be allocated or spent.

4-11.3 Receipt, Investigation of Complaints Relative to Donation Clothing Bin

If the Borough of Mountainside receives complaints from the public about a clothing bin, the Borough shall investigate into such complaints within thirty (30) days from the date the complaint was made. Whenever it appears to the Borough of Mountainside that a person has engaged in, or is engaging in any act or practice in violation of Section 2 of P.L.2007, c. 209 (N.J.S.A. 40:48-2.61), the person who placed the bin shall be issued a warning, stating that if the violation is not rectified or a hearing with the Borough of Mountainside is not requested within forty-five (45) days, the bin will be seized or removed at the expense of the person who placed the bin, and any clothing or other donations collected via the bin will be sold at public auction or otherwise disposed of. In addition to any other means used to notify the person who placed the bin, such warning shall be affixed to the exterior of the bin itself.

In the event that the person who placed the bin does not rectify the violation or request a hearing within forty-five (45) days of the posting of the warning, the Borough of Mountainside may seize the bin, remove it, or have it removed, at the expense of the person who placed the bin, sell at public auction or otherwise dispose of any clothing or other donations collected via the bin. Any proceeds from the sale of the donations collected via the bin shall be paid to the Chief Financial Officer of the Borough of Mountainside.

4-11.4 Additional Penalties, Remedies.

In addition to any other penalties or remedies authorized by the law of this State, any person who violates any provision of P.L.2007, c. 209 (N.J.S.A. 40:48-2.60 et seq.) which results in seizure of the donation clothing bin shall be:

a. Subject to a penalty of up to twenty thousand (\$20,000) dollars for each violation. The Borough of Mountainside may bring this action in the Municipal Court or Superior Court as a summary proceeding under the "Penalty Enforcement Law of 1999," P.L. 1999 c. 274 (N.J.S.A. 2A:58-10 et seq.), and any penalty monies collected shall be paid to the Chief Financial Officer of the Borough of Mountainside.

b. If a person is deemed ineligible to place, use, or employ a donation clothing bin for solicitation purposes pursuant to Section 2 of P.L. 2007, c.209 (N.J.S.A. 40:48-2.61), that person may apply to the Borough of Mountainside to have that their eligibility restored. The Borough of Mountainside may restore the eligibility of a person who:

- (i) Acts within the public interest; or
- (ii) Demonstrates that they made a good faith effort to comply with the provisions of P.L. 2007, c.209 (N.J.S.A. 40:48-2.60 et seq.) and all other applicable laws and regulations, or had no fraudulent intentions.

Section 2:

Any ordinances or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

Section 3:

If any provision of this Ordinance or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

Section 4:

This ordinance shall take effect immediately upon its passage and adoption according to law.


Martha Lopez, Borough Clerk


Paul N. Mirabelli, Mayor