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Township of Montclair

CHAPTER 347. ZONING AND LAND USE REGULATIONS

With Proposed Amendments

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Chapter 347. Zoning and Land Use Regulations

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ARTICLE I: GENERAL PROVISIONS

§ 347-1 Purpose.

This chapter is designed to encourage the most appropriate use of land throughout the Township of Montclair in accordance with the land use element of the Master Plan as adopted by the Township Planning Board. This chapter is adopted pursuant to the Municipal Land Use Law of 1975 (N.J.S.A. 40:55D-1 et seq.), and subsequent amendments and supplements thereto, in order to promote and protect the public health, safety, morals and general welfare.

§347-1.1 Chapter Organization

This chapter is divided into ten principal sections, as follows:

Article I: General Provisions

Article II: Zoning Districts, Rules and Regulations

Article III: Supplementary Zoning Regulations

Article IV: Historic Preservation

Article V: Inclusionary Zoning

Article VI: Stormwater Control

Article VII: Site Plan Design Requirements

Article VIII: Subdivision Design Requirements

Article IX: Land Use Procedures

Article X: Administration, Enforcement, Violations and Penalties

§ 347-2 Definitions of terms.

Whenever a term is used in this chapter, which is defined in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., such term is intended to have the meaning set forth in the definition of such term found in said statute, unless a contrary intention is clearly expressed from the context of this chapter. The term "administrative officer" for all purposes under the Municipal Land Use Law and under this chapter shall mean the Secretary of the Planning Board or the Secretary of the Zoning Board of Adjustment, as the case may be, unless another official is specified herein. The following definitions shall be used in the interpretation and construction of this chapter:

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ACCESSORY BUILDING OR USE

A building or use subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building, but in no event shall a trailer be used as an accessory building and no dwelling unit or guest quarters shall be located in an accessory building with the exception of carriage houses pursuant to § 347-14.2.

ADULT ENTERTAINMENT

An establishment offering entertainment of a sexual nature.

ALLEY or SERVICE WAY

Any public or private way open to public vehicular use less than 21 feet in width.

ANTENNA

A device used to receive or transmit electromagnetic waves. Examples include, but are not limited to, whip antennas, panel antennas and dish antennas.

ANTENNA, DISH

A dish or parabolic-shaped device designed for the purpose of receiving electromagnetic waves.

APARTMENT

A portion of a building consisting of a group of rooms used as a dwelling for a family, including bath and cooking or kitchen facilities, and set apart as a separate unit from other units or portions of the building.

ART GALLERY

A commercial establishment that engages in the sales, loan, and/or display of paintings, sculpture, photography, video art, or other works of art. An art gallery does not include uses such as a library, museum or noncommercial gallery that may also display paintings, sculpture, video art or other works of art.

ART STUDIO

A studio for artist activities, such as paintings, sculpture, photography, video art, and the creation of artisan-related crafts, such as metalworking, glassblowing, furniture making, pottery, leathercraft and related items.

ART STUDIO, COMMERCIAL

A commercial establishment where an art, type of exercise, or activity is taught, practiced or studied, such as dance, martial arts, photography, music, painting, gymnastics, or yoga.

ASSISTED-LIVING FACILITY

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A facility licensed by the New Jersey Department of Health to provide apartment-style housing, congregate dining and personal services available when needed for four or more elderly persons unrelated to the proprietor. Apartment units offer at a minimum one unfurnished room, private bathroom, kitchenette without stove and lockable entrance door.

AUTOMOBILE RENTAL

An establishment primarily engaged in the renting of automobiles or other vehicles to the public.

AUTOMOBILE SALES

The use of any building, land area or other premises for the display and sale of automobiles, vans and trucks but not recreational vehicles, including, as an accessory use, warranty repair work and service.

AUTOMOBILE WASH

Any establishment used for the washing of automobiles or any other vehicles.

AVERAGE FRONT YARD SETBACK

The average setback shall be calculated using the front yard setbacks of the four nearest principal structures, two on either side of the lot in question, and within the same block and zoning district. For corner lots, the average front yard setback shall be calculated using the front yard setbacks of the two nearest principal structures on each street.

BAKERIES

An establishment that prepares baked goods for sale principally within the establishment and not for the wholesale trade or other off-site premises.

BANK, DRIVE-THROUGH

A bank where transactions are made to customers within an automobile outside the confines of a building.

BANK

A business establishment authorized to perform financial transactions, such as receiving and lending money.

BANNER

Any lightweight plastic, fabric or other material, whether or not containing a message of any kind, suspended from a rope, wire or string, or otherwise affixed to the structure.

BARE-BULB ILLUMINATION

A series of light bulbs, whether flashing or non-flashing, which frame any part of a building front or window area, not including holiday decorative lighting.

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BASEMENT

That portion of a building that is partly or completely below grade. A basement shall be considered as a story above grade where the finished surface of the floor above the basement is more than six feet above grade.

BATHROOM

A room in a dwelling containing a toilet **or** bathing facilities.

BEACON

Any light with one or more beams directed into the atmosphere or directed at one or more points not on the same lot as the light source.

BUILDING SIGN LOCATION BAND

The space on the building face within which the building sign text and sign field must be placed.

BEDROOM

A room in a dwelling in which one or more persons normally sleep.

BILLIARD/POOL HALL

An establishment open to the public offering billiards or pool for recreation purposes for a fee.

BLOCK

A parcel of land designated and numbered on the latest Tax Maps of the Township of Montclair.

BOARD

The Planning Board or the Board of Adjustment of the Township. Where permitted by the Municipal Land Use Law, P.L. 1975, c. 291, the Board of Adjustment may exercise those functions herein delegated to the Planning Board.

BOARDING HOME FOR SHELTERED CARE

Any private establishment which furnishes food and shelter to four or more adult persons unrelated to the proprietor and which also provides some personal care or service beyond food, shelter and laundry, but does not give nursing care.

BOARDINGHOUSE

Any building in which three or more persons not related to the owner or operator of such business are lodged and served with meals from one kitchen by the owner or operator for compensation.

BODY ART STUDIO

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Any establishment where tattooing, permanent make-up and/or body piercing (other than ear piercing) takes place and that meets the requirements of NJAC 8:27-1 et seq. This definition does not include practices that are considered medical procedures by the New Jersey Board of Medical Examiners.

BOWLING ALLEY

An establishment containing alleys for bowling open to the public for recreation purposes for a fee.

BREW PUB

A restaurant with a Restricted Brewery License from the State of New Jersey that prepares handcrafted beer intended for consumption on the premises as an accessory use and sells beer directly to consumers and wholesalers.

BREWERY, LIMITED

A commercial facility, which shall not sell or serve food or operate a restaurant, which brews any malt alcoholic beverage in quantities for which it is licensed by the Alcoholic Beverage Commission pursuant to N.J.S.A. 33:1-10. The limited brewery may sell the product at retail to consumers on the licensed premises of the brewery for consumption on the premises but only in connection with tours of the brewery, or for consumption off-premises in a quantity of not more than 15.5 fluid gallons per person, and to offer samples for sampling purposes only.

BUILDING

A structure having a roof supported by columns, posts or walls, used or intended to be used for the shelter or enclosure of persons, animals or property.

BUILDING, PRINCIPAL

A building in which is conducted the principal use of the lot on which it is located.

BUILDING COVERAGE

The ratio of the horizontal area measured from the exterior surface of the exterior walls of the principal building on a lot, plus horizontal areas covered by decks and staircases, to the total lot area.

BUILDING SUPPLY

A retail or wholesale establishment supplying building or lumber materials to the public or to contractors.

CARRIAGE HOUSE

An accessory building originally constructed at or about the same time as the principal single-family dwelling and used for storage and for second floor occupancy by one or more employees of the property owner and consisting minimally of a bathroom and one or more bedrooms.

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CEMETERY

Property used for the interment of the dead.

COMMERCIAL RECREATION FACILITY

A building or group of buildings used for recreational purposes and operated as a business and open to the public for a fee, including theaters, movie theaters, museums, art galleries and amusement centers.

COMMON OWNERSHIP

Ownership by one person or by two or more persons owning property jointly or in common or any other form of ownership where two or more persons own a separate parcel of real property and each has an estate or interest in all of said parcel.

COOKING FACILITY

A stove, microwave, hot plate or other appliance used for the preparation of food.

CORNER LOT

A lot at the junction of and fronting on two or more intersecting streets. The frontage orientation of a "corner lot" to a street shall be upon that street on which the lesser dimension of the lot exists. The long dimension of such a lot shall be its depth, the less dimension its width.

COURT

An open, unoccupied space enclosed or partially enclosed by three intersecting walls of a building or buildings on the same lot. For the purpose of this chapter, the space included between two walls which intersect at an angle of less than 90° shall be considered a court.

CURB LEVEL

The permanently established grade of street in front of the lot. Where the lot level is higher than curb level, the average level of the former along the wall in question may be taken as the base for measuring the height of a wall adjacent to a yard or court.

CUL-DE-SAC

A short dead-end street not over 600 feet in length with a turnaround at the end.

DOCTOR

A person licensed by the State of New Jersey to practice medicine, dentistry, osteopathy or chiropractic.

DORMER

An extension or gable projecting out from a sloping roof which may include a vertical window.

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DRAINAGE RIGHT-OF-WAY

The lands required for the installation of stormwater 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 New Jersey Revised Statutes.

DWELLING UNIT

A dwelling or portion thereof providing complete living facilities for one family.

EATING AND DRINKING PLACES

An establishment serving prepared food or drink within an enclosed building for consumption within a building or off the premises, including restaurants, lunch counters, ice cream and pizza parlors, delicatessens, luncheonettes, coffee bars and cafes, but excluding drive-in or drive-through restaurants.

EDUCATIONAL PLAY CENTER

A multipurpose children's activity space devoted to learning, recreation and entertainment, which may include related retail sales and no more than three automatic amusement games, pursuant to § 78-26 et seq. of the Code of the Township of Montclair.

ESTABLISHED LOT DEPTH

The average lot depth of the four nearest lots, two on either side of the lot in question, and within the same block and zoning district.

FAMILY

One or more persons living together as a single, nonprofit housekeeping unit whose relationship is of a permanent and domestic character, together with no more than two boarders or roomers who are tenants of the family occupant and whose rent shall be paid to the family occupant. Accommodations for boarders or roomers shall not include cooking or kitchen facilities. The existence of a fraternity, sorority, club, religious order or similar relationship shall not alone be sufficient to qualify as a family hereunder. Also permitted are children placed with a family in a dwelling by the Division of Youth and Family Services in the Department of Institutions and Agencies or duly incorporated child-care agency or children placed pursuant to law in single-family dwellings.

FINAL PLAT

The final map of all or a portion of the subdivision which is presented to the Board for final approval.

FITNESS CENTER

An enclosed building or structure containing facilities for conducting recreational activities such as aerobic exercises, running and jogging, exercise equipment, sports courts and swimming facilities. This use also includes establishments for group fitness instruction such as yoga, Pilates, karate and dance studios, as well as boxing

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gyms. This use may include accessory saunas, showers, massage rooms and lockers, snack bars providing non-alcoholic drinks and pre-packaged snacks not prepared on the premises, and sports equipment and clothing shops.

FLAG

Any fabric containing distinctive colors, patterns or symbols which does not deliver a commercial message or advertisement. Flags of any country, state, county, municipality or governmental agency are not included.

FLAG LOT

A lot which consists of a narrow portion of the property ("staff") leading from a street to an interior lot with no other frontage, whose width may or may not meet minimum lot width requirements. Minimum yard requirements are determined without including the staff portion of the lot.

FUNERAL HOME

A building used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation.

GARDEN APARTMENT

A building consisting of three or more dwelling units not over 2-1/2 stories in height, each having direct access to the outside with or without use of a common hall or passageway, and so laid out that dwelling units are not susceptible to sale on individual lots.

GARDEN CENTER

A retail establishment providing plants, trees, flowers and other landscaping and gardening materials primarily to the public.

GENERAL or BUSINESS OFFICE

A room or group of rooms used for the offices of business, service or industry.

GROSS FLOOR AREA

The sum of the gross horizontal areas of all enclosed floors of a building, including cellars, basements, mezzanines, penthouses, corridors and lobbies, from the exterior face of exterior walls, or from the centerline of a common wall separating two buildings, but excluding any area with a floor-to-ceiling height of less than six feet, six inches.

GROUP HOME

A nonprofit or for-profit home for the sheltered care of persons with special needs, which, in addition to providing food and shelter, may also provide some combination of personal care, social or counseling services, and transportation. Group homes and community residences for the developmentally disabled, as regulated in N.J.S.A. 40:55D-66.1, are permitted uses in all residential zone districts and are excluded from this definition.

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HARDWARE STORE

A retail establishment providing building materials, tools and supplies primarily to the public.

HEAD SHOP

A retail business that sells any type of syringe, needle, eye dropper, spoon, pipe, testing kit, rolling paper or other paraphernalia or appliances designed for or ordinarily used in smoking, testing, weighing, measuring, injecting, cooking or sniffing marijuana, cocaine, opium, hashish or other controlled dangerous substances as defined by N.J.S.A. 24:21-1 et seq.

HEIGHT OF A FENCE, WALL OR RETAINING WALL

The vertical distance from the natural grade surrounding the base of the fence, wall or retaining wall to the highest point of the fence, wall or retaining wall.

HEIGHT OF BUILDING

The vertical distance from the mean natural grade surrounding the building to the highest point of a flat roof or the highest point of a sloped roof. The mean grade shall be calculated using the existing natural grade at ten-foot intervals at the building foundation walls. If soil or rock removal lowers the ground elevation around the perimeter of the foundation walls, building height shall be based on the lowered elevation. If the placement of soil or other materials raises the ground elevation around the perimeter of the foundation walls, building height shall be based on the elevation as it existed prior to the placement of soil or other material.

HELIPORT

An area used by helicopters or by other steep-gradient aircraft, which area includes passenger and cargo facilities, maintenance and overhaul, fueling service, storage space, tie-down space, hangars and other accessory buildings and open space.

HELISPOT

An area on a roof or on the ground used by helicopters or steep-gradient aircraft for the purpose of picking up or discharging passengers or cargo, but not including fuel service, maintenance or overhaul.

HOUSE OF WORSHIP

A building that is designed and particularly adapted for the primary use of conducting formal religious services on a regular basis.

IMPERVIOUS COVERAGE

That part of the lot that is covered by impervious surfaces.

IMPERVIOUS SURFACE

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

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INNER COURT

An open, unoccupied space substantially enclosed on all sides by the walls of any building or buildings erected on the same lot.

INTERIOR LOT

Any lot other than a corner lot.

KITCHEN FACILITY

Any room or part thereof containing apparatus used for the cooking or preparation of food, including a stove, microwave, hot plate, frying pan or other appliance and/or sink with cabinets used in conjunction therewith.

LEAST DIMENSION OF A COURT OR YARD

The least of the horizontal dimensions of such court or yard.

LOGO

Any symbol, graphic or lettering which represents or stands for a business name, service or product.

LOT

A parcel of land in common ownership and occupied or intended to be occupied by one principal building or group of principal buildings and their accessories, including the required open spaces.

LOT DEPTH

The distance from the center point of a street line of a lot to the center of the opposite line to the rear.

LOT FRONTAGE

The length of the front lot line measured at the street right of way line.

LOT WIDTH

The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line.

LOT LINE

Any boundary line of a lot that divides one lot from another lot or from a public or private street or any other public space.

MANUFACTURING ESTABLISHMENT

An establishment engaged in the transformation of substances into new products, including assembling of component parts, the manufacture of products and the blending of materials.

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MEDICAL OFFICE

The office of medical practitioners, including but not limited to medical doctors, dentists, veterinarians, chiropractors, podiatrists, psychologists and licensed therapists.

MOON TUBING

Illuminated tubes which frame any portion of a glass front of a building.

MOTOR VEHICLE REPAIR STATION

Any land, building or part of a building used for repairing motor vehicles, such as engine overhaul, body repairs, replacement of parts, painting of motor vehicles or any part thereof and other repairs of a major character. Any such land, building or part thereof where vehicles are also supplied with gasoline or other motor fuels shall be classified as also a motor vehicle service station.

MOTOR VEHICLE SERVICE STATION

Any building, land area or other premises or portion thereof used primarily or intended to be used for the retail dispensing or sales of vehicular fuels and including, as an accessory use, minor repairs and the sale of and installation of lubricants, tires, batteries and similar accessories.

MOVIE STUDIO

Facilities for the production of motion pictures and films, including stages, film laboratories, sound recording facilities, construction, repair and storage facilities, and accessory fabrication activities.

MULTIFAMILY DWELLING

A building containing three or more apartments, except that a multifamily dwelling shall not be deemed to include a hospital, convent, monastery, asylum or public institution.

MUSEUM

An organized and permanent nonprofit institution, essentially educational or aesthetic in purpose, with professional staff, which owns and utilizes tangible objects, cares for them and exhibits them to the public on some regular schedule.

NONCONFORMING BUILDING OR USE

One that does not conform to the regulations of the zone in which it is situated.

NONPROFIT INSTITUTIONAL USE

A nonprofit, religious or public use.

NURSING HOME

A privately-operated establishment, whether operated for profit or not, which maintains and operates facilities for the treatment, care or nursing of two or more nonrelated individuals suffering from illness, injury, infirmity or deformity, or which provides convalescent or other medical or nursing care. Nothing contained herein shall be

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construed to imply or permit the practice of general hospital functions, such as surgical operations, the establishment of a home or hospital for persons suffering from mental illness, mental retardation or mental deficiency or the rendering of services beyond nursing care.

OCCUPIED or USED

As applied to any building, except for carriage houses, shall be construed as though followed by the words "or intended, arranged or designed to be occupied or used" or "structurally altered or enlarged with the intention or design of using."

OFF-STREET PARKING

Surfaced areas, not including driveways, designed for the parking of motor vehicles.

OUTER COURT

A court of which at least one end or side is not enclosed by the walls of any building or buildings erected on the same lot.

PAPER FRAMING

Paper devices which adhere to the window surface to frame it.

PARKING DECK

A deck, building or structure or part thereof used or intended to be used for the parking or storage of vehicles.

PARKLET

The conversion of a small number of on-street parking spaces or other small sites in the public right-of-way into "public park" space, with such improvements as seating, tables and landscaping.

PAWN SHOP

A business establishment in which money is lent at interest on pledged personal property.

PENNANT

Any lightweight plastic, fabric or other material suspended from a rope, wire or string, or otherwise affixed to a structure, designed to move in the wind.

PERMITTED WIDTH OF A PRINCIPAL STRUCTURE

The width of a structure as measured to the width of the lot at the widest point measured parallel to the street line. For building additions which widen the existing principal structure, the permitted width shall apply to the width of the expanded structure, including the addition. For building additions which do not widen the existing principal structure, the permitted width shall apply to the building addition only.

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PITCHED ROOF

One which shall have no less slope than four vertical units to 12 horizontal units.

PLAT

The map or maps of a subdivision.

PREMISES

Land with its appurtenances, whether accessory to the principal building or not.

PROFESSIONAL OFFICE

The office of a recognized professional, including but not limited to an accountant, attorney at law, architect, engineer and realtor.

PUBLIC VIEW

Visible from a public thoroughfare, public lands or buildings, public pathways, trails or bicycle paths.

REAR YARD

A yard situated between the principal building or buildings nearest the rear line of the lot and extending for the full width of the lot.

RECORDING STUDIO

A facility for sound recording and mixing and/or rehearsal space.

RESEARCH AND DEVELOPMENT

An establishment engaged in the investigation of the natural, physical or social sciences or engineering and development as an extension of such activities, with the objective of creating end products or processes.

RESTAURANT

An establishment where food and drinks are prepared, served and consumed within an enclosed building, and wherein food is primarily served only to be consumed by customers seated at tables on the premises.

RESTAURANT, DRIVE-IN

An establishment where food is served for immediate consumption outside the confines of a building and where all or part of consumption occurs outside the confines of the building.

RESTAURANT, DRIVE-THROUGH

An establishment where food or drink is served for immediate consumption outside the confines of a building to a customer in an automobile for consumption off the premises.

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RESTAURANT, FAST-FOOD

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

RETAIL FOOD ESTABLISHMENT

Any fixed facility in which food or drink is sold primarily for off-premises preparation and consumption.

RETAIL SALES

Establishments engaged in the selling or rental of goods or merchandise (usually to the general public for personal use or household consumption, although they may also serve business and institutional clients) and in rendering services incidental to the sale of such goods.

RETAIL SERVICES

Establishments providing services, as opposed to products, to the general public for personal or household use, including barbershops, beauty parlors, nail salons, dry-cleaning establishments, laundries, copy or printing establishments, tailors, household and electronic repair establishments and travel agencies.

RETAIL STORE, CONVENIENCE

A retail establishment of up to 5,000 square feet selling primarily food products, beverages, newspapers and magazines, candy, cigarettes, household items or a limited supply of freshly prepared foods, such as sandwiches and salads for off-premises consumption.

ROOMING HOUSE

A building in which lodgers rent one or more rooms without separate cooking or kitchen facilities for one or more nights, and sometimes for extended periods of time.

SENIOR CITIZEN HOUSING

Housing designed for, and occupied by, at least one person fifty-five years of age or older per dwelling unit, and which has significant facilities and services specifically designed to meet the physical or social needs of older persons.

SIGN

Any device, fixture, placard or structure that uses any color, form, graphic, illumination, symbol or writing to advertise, announce the purpose of or identify the purpose of a person or entity or to communicate information of any kind to the public.

SIGN, ADVERTISING

A billboard or other sign which directs attention to a business commodity, service or entertainment not conducted, provided or sold on the premises on which such sign is located.

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SIGN, AWNING

A sign painted on an awning.

SIGN, BUILDING

The main business sign affixed parallel to but projecting not further than six inches from the building face.

SIGN, BUSINESS

A sign which directs attention exclusively to a permitted business or industry conducted upon the premises on which the sign is located or to a product, service or commodity sold or provided by such business or industry.

SIGN, CANOPY

A sign painted on a canopy.

SIGN, CONSTRUCTION

A temporary sign which identifies architects, builders or contractors on the premises on which a principal or accessory building is being constructed, altered, repaired, refurbished or demolished.

SIGN, DIRECTIONAL

A sign which regulates pedestrian or vehicular traffic within the boundaries of a property, such as enter, exit and reserved-parking signs.

SIGN, DIRECTORY

A sign attached to the facade of a building listing the tenants or occupants thereof and their professions or business activities.

SIGN, FLASHING OR MOVING

A sign with movement or appearance of movement, with changing illumination or color, or with a changeable message.

SIGN, FREESTANDING

Any sign supported by structures that are placed on or anchored in the ground and that are independent from any building or other structure.

SIGN, MARQUEE

A business sign on a marquee with no more than two sides designed for interchangeable panels or letters directing attention to a theater and theater events.

SIGN, NEON

Illuminated tubes formed to serve as a sign.

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SIGN, POLE

A sign mounted on a pole.

SIGN, POLITICAL

A sign which directs attention to a political organization, party, individual or group for the purpose of announcing or inviting attention to the candidacy or candidates for nomination, election, referendum or political platform, or a sign which advances, advocates or calls attention to a cause subject to political judgment.

SIGN, PRICE

A sign indicating the price of any item sold in the business establishment.

SIGN, PROJECTING

Any sign affixed perpendicular to the wall of a building in such a manner that its leading edge extends more than six inches beyond the surface of such building or wall.

SIGN, REAL ESTATE

A temporary sign announcing that the premises on which it is located is available for sale or rent, specifically excluding "sold" and "under contract" signs.

SIGN, ROOF

Any sign erected and constructed wholly on and over the roof of a building and extending vertically above the highest portion of the roof.

SIGN, SIDEWALK

A movable, freestanding sign, such as but not limited to an A-frame type of support.

SIGN, TEMPORARY BUSINESS

Any sign that is used for a limited time and is not permanently mounted.

SIGN, WARNING

A sign erected by a governmental agency or by a public utility for the purpose of warning the public of an existing danger or a danger associated with a structure or a use in the area.

SIGN, WINDOW GLASS

Any permanent business sign visible from the exterior that is painted on, affixed to or hung at most 18 inches behind a window.

SITE DEVELOPMENT

Consists of any one of the following:

- A. Construction of any building or addition to a building having a **gross** floor area of over 100 square feet; and/or

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- B. The conversion of any existing building to more dwelling units, other than detached one-family or two-family dwellings or buildings accessory to one-family or two-family dwellings; and/or
- C. The construction or redesign of parking areas and driveways for more than two vehicles, except in connection with a detached one-family or two-family dwelling; and/or
- D. The regrading, removal of vegetation or displacement of soil in an area of over 5,000 square feet.

SITE PLAN, MAJOR

Any site plan that is not a minor site plan.

SITE PLAN, MINOR

A site plan of one or more lots, excluding a single lot with a single one-family or two-family dwelling, for approval of:

- A. Any change in use that triggers an increase in intensity of use as defined by the number of parking spaces required; and/or
- B. Erection or replacement or relocation of a fence or retaining wall, excluding exact replacement of existing walls and fences; and/or
- C. Outdoor installation or relocation of:
 - (1) A refuse or solid waste storage and collection area and its screening; or
 - (2) An emergency power generator or condensing unit; or
 - (3) Freestanding signs; and/or
- D. Redesign of the layout or internal traffic flow of an existing parking area; and/or
- E. Site improvements to provide, increase or improve barrier free access for persons with disabilities, provided always that such site plan contains the information reasonably required in order to make an informed determination as to whether the requirements established by ordinance for approval of a minor site plan have been met and does not involve approval of:
 - (1) A use or other variance;
 - (2) A planned development;
 - (3) Any new street or extension of any off-tract improvement which is to be prorated pursuant to N.J.S.A. 40:55D-42 or ordinance.

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STORY

That part of any building comprised between any floor and the floor or roof next above. A half story is a story under a sloping roof at the top of a building, the floor of which is not more than two feet below the plate. Where parking is contained either within or underneath a building, each parking level above grade shall be considered to be a story.

STREET

Any vehicular way that is (1) an existing state, county or municipal roadway; (2) shown upon a plat approved pursuant to law; (3) approved by other official action; (4) 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; (5) shown on the official map or adopted master plan. It includes the land between the street lines, whether improved or unimproved.

STREET LINE

The dividing line between the street and the lot.

STRUCTURE

Anything constructed, the use of which requires permanent location on the ground or attachment to something having permanent location on the ground, including central air-conditioning units, stationary and portable carports, but excluding paved parking areas, driveways and walkways.

SUBDIVIDER

Any person commencing proceedings under this chapter to effect a subdivision of land hereunder.

SUBDIVISION

The division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development. The following shall not be considered subdivisions within the meaning of this chapter if no new streets are created: divisions of land found by the Planning Board or Subdivision Committee thereof appointed by the Chair to be for agricultural purposes where all resulting parcels are five acres or larger in size; divisions of property by testamentary or intestate provisions; divisions of property upon court order; and conveyances so as to combine existing lots by deed or other instrument. The term "subdivision" shall also include the term "resubdivision."

SUBDIVISION, MAJOR

Any subdivision not classified as a minor subdivision.

SUBDIVISION, MINOR

Any subdivision of a tract or parcel of land which does not involve the creation of more than two lots fronting on a public street, a planned development, any new street or the extension of any off-tract improvement.

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SURFACED AREA

An area that has a paved surface of bituminous or Portland cement composition.

TAXI STAND

The use of any building, land area or other premises for the parking, storage or standing of automobiles or other vehicles that carry passengers for a fare.

THROUGH LOT

A lot that fronts upon two parallel streets or fronts upon two streets that do not intersect at the boundaries of the lot. A through lot has two front yards at each street line. The remaining yards are side yards. There is no rear yard.

TOP PLATE or WALL PLATE

The horizontal member of a frame wall to which rafters or upper floor joists are fastened.

TOWNHOUSE

A building containing three or more dwelling units, wherein each unit has its own front and rear access to the outside, no unit is located over another unit and each is separated from the other by one or more common vertical walls.

TRAILER

Any enclosure designed to be used for living, sleeping, hauling, business or storage purposes, having no foundation other than wheels, blocks, skids, jacks, horses or skirting; or any enclosure designed to be used for living, sleeping, hauling, business or storage purposes which has or may be equipped with wheels or other devices for transporting the enclosure from place to place.

TRAVEL AGENCY

An establishment that arranges, organizes or contracts travel or touring for the public.

TRUCK OR BUS DEPOT

Any area, lot, parcel, building or structure or part thereof used for the storage of trucks or buses.

VENDING MACHINE

Any self-service device offered for public use which dispenses a product, makes a service available or provides entertainment or amusement, except that for the purpose of this chapter the term "vending machine" shall not be construed as including publicly owned parking meters or change makers.

VOCATIONAL, TECHNICAL OR BUSINESS SCHOOL

A secondary or higher educational facility primarily teaching usable skills to prepare students in a trade or business.

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WAREHOUSE

A building used primarily for the storage of goods and materials.

WHOLESALE TRADE OR STORAGE

Establishments engaged in the storage or selling of merchandise for/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.

WIDTH OF A COURT

The least dimension between opposite walls, except that the width of a triangular court shall be measured between the midpoints of the opposing walls (width of a lot, or frontage, is specified separately by zones).

WIRELESS TELECOMMUNICATIONS ANTENNAS AND EQUIPMENT

Structures used for the delivery of low-power wireless radio communication through a network

WIRELESS TELECOMMUNICATION SERVICES

A licensed wireless telecommunication service, including but not limited to cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging and similar services that are marketed to the general public.

WIRELESS TELECOMMUNICATION SITE

A facility operated by a licensed wireless telecommunication service provider which consists of the equipment and structures involved in receiving or transmitting electromagnetic waves associated with wireless telecommunication services.

YARD

An open, unoccupied space on the same lot with a building, situated between the street or other lot line and the parts of the main building, exclusive of cornices, chimneys, eaves and uncovered porches, and handicapped ramps or lifts, setting back from and nearest to such line.

YARD, FRONT

A yard situated between the principal building nearest the street line and the street line, extending for the full width of the lot. Corner lots shall have one front yard along each street frontage.

YARD, SIDE

A yard situated between the principal building or buildings on the side line of the lot and extending through from the front yard to the rear yard.

YARD, REAR

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A space extending across the full width of the lot between the principal building and the rear lot line and measured perpendicular to the building to the closest point of the rear lot line. For corner lots, the rear yard shall be opposite the street frontage of least dimension.

ARTICLE II: ZONING DISTRICTS, RULES AND REGULATIONS

§ 347-3 Applicability.

No building shall be erected or altered and no land shall be used for any purpose other than for an allowed use permitted in the zone in which such building or land is located. No building or part of a building shall be erected or altered, except in conformity with the regulations herein prescribed for the zone in which such building is located.

§ 347-4 Zoning districts.

The Township of Montclair is hereby divided into classes of districts or zones as follows:

A. Residence and office buildings.

R-O Mountainside Zone

R-O(a) One-Family Zone

R-1 One-Family Zone

R-2 Two-Family Zone

RM-2 Garden Group Zone

ORM-2 Garden Apartment and Office Building Zones

RM-3 Three-Story Apartment Zone

ORM-3 Three-Story Apartment and Office Building Zone

B. Commercial and limited residential.

CBD-4C Central Business District Zone – 4 Stories (Central Area)

CBD-4E Central Business District Zone – 4 Stories (Edge Area)

CBD-3 Central Business District Zone – 3 Stories

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CI-3 General Business and Light Manufacturing Zone

NCD-3 Neighborhood Commercial Zone – 3 Stories

C. Public uses.

P Public Zone

D. Local historic buildings, structures, objects, sites and districts.

TCHD Town Center Historic District

Pine Street Historic District

Upper Montclair Historic Business District

Watchung Plaza Historic District

IHL Individual Historic Landmark Overlay Zone (as listed in § 347-37.2 of the Montclair Code)

§ 347-4.1 Interpretation of boundaries.

- A. The boundaries of each of these zones as created by this chapter are shown on the Zoning Map, Township of Montclair, as prepared by the Montclair Township Department of Planning and Community Development and amended through December 2017, which is hereby adopted and made a part of this chapter.
- B. Zone boundary lines are intended generally to follow municipal boundary lines, street center lines or lot lines as they are shown on the Zoning Map. In cases of uncertainty or disagreement as to the exact location of any zoning boundary line, the determination thereof shall be by the Zoning Board of Adjustment.

§ 347-4.2 Lot partly in adjoining municipality.

Where a lot is traversed by a municipal boundary line, any building erected in whole or in part on the portion of the lot in Montclair shall be in compliance with the requirements of any ordinance of the neighboring municipality applicable to said lot prescribing minimum yards, courts and area of lot occupied by buildings, and shall not have a roof which rises above the maximum height of buildings permitted for such lot by the ordinances of the neighboring municipality, unless the requirements of this chapter with respect to minimum yards, courts, the area of lot occupied by buildings and the height of buildings are more restrictive than such requirements of the ordinances of the neighboring municipality, in which case the more restrictive requirements of this chapter shall control.

§ 347-4.3 Street vacations.

Where a street is vacated and it is abutted on both sides by the same zone district, the land shall be deemed to be in that zone. Where different zone districts abut the street being

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vacated, the **Zoning Map** shall be amended to designate an appropriate zone for the land before any private use is established.

§ 347-4.4 Amendment procedure.

The Township Council may from time to time on its own motion or on petition, after public notice and hearing, amend, supplement or change the regulations and zones herein established. Whenever the owners of 50% or more of the frontage in any zone or part thereof shall present a petition duly signed and acknowledged to the Council, requesting an amendment, supplement, change or repeal of the regulations prescribed for such zone or part thereof, it shall be the duty of the Council to vote upon said petition within 90 days after the filing of the same by the petitioners with the Municipal Clerk. All zoning amendments shall be referred to the Planning Board for a recommendation.

§ 347-4.5 Change in zone boundaries.

If any lot is hereafter transferred to another zone by a change in zone boundaries by an amendment as above provided, the provisions of this chapter in regard to buildings or premises existing at the time of the passage of this chapter shall apply to buildings or premises existing at the time of passage of such amendment in such transferred area.

§ 347- 5 Residential Districts

§ 347-5.1 Allowed Uses.

Allowed uses include principal uses, accessory uses, conditional uses and temporary uses as identified in Table 1. Uses listed in Table 1 as “Conditional (C)” are allowed, provided that they conform to the conditions set forth in § 347-14. Uses that are not identified in Table 1 or are shown as “Not Allowed (N)” are prohibited.

| Table 1: List of Allowed Uses – Residential Districts | | | | | | | |
|--------------------------------------------------------------------------|-------------------|--------|-----|-----|------|------|-----------------------|
| Uses | Residential Zones | | | | | | Special Use Standards |
| | R-O | R-O(a) | R-1 | R-2 | RM-2 | RM-3 | |
| Principal Uses | | | | | | | |
| Single-family dwelling, non-attached | P | P | P | P | P | P | |
| Two-family dwelling | N | N | N | P | P | P | |
| Townhouses | N | N | N | N | P | P | |
| Multi-family dwellings | N | N | N | N | P | P | |
| Parks and open space | P | P | P | P | P | P | |
| Group homes | N | N | N | N | N | N | |
| Senior citizen housing | N | N | N | N | P | P | |
| Conversion of one-family dwellings to two-family dwellings | N | N | N | P | C | C | § 347-14.10 |
| Accessory Uses | | | | | | | |
| Uses customarily incidental and associated with permitted principal uses | A | A | A | A | A | A | |

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| Table 1: List of Allowed Uses – Residential Districts | | | | | | | |
|----------------------------------------------------------------------------------------------------------|-------------------|--------|-----|-----|------|------|-----------------------|
| Uses | Residential Zones | | | | | | Special Use Standards |
| | R-O | R-O(a) | R-1 | R-2 | RM-2 | RM-3 | |
| Boats and trailers | A | A | A | A | A | A | § 347-13.4 |
| Dish antennas | A | A | A | A | A | A | § 347-13.5 |
| Family daycare | A | A | A | A | A | A | § 347-13.3 |
| Fences and walls | A | A | A | A | A | A | § 347-18 |
| Home occupations | A | A | A | A | A | A | § 347-13.2 |
| Swimming pools | A | A | A | A | A | A | |
| Tennis and basketball courts | A | A | A | A | A | A | § 347-13.1 |
| Parking | A | A | A | A | A | A | § 347-19 |
| Signs | A | A | A | A | A | A | § 347-20 |
| Conditional Uses | | | | | | | |
| Accessory dwellings for caregivers | C | C | C | N | N | N | § 347-14.1 |
| Accessory dwellings in carriage houses | C | C | C | C | C | C | § 347-14.2 |
| Assisted-living facilities | N | N | N | N | C | C | § 347-14.14 |
| Boarding or rooming house | N | N | N | N | C | C | § 347-14.11 |
| Boarding homes for sheltered care | N | N | N | N | C | C | § 347-14.12 |
| Cemetery | N | N | C | N | N | N | § 347-14.18 |
| Houses of worship | N | N | N | C | C | C | § 347-14.3 |
| Museums | N | C | N | N | N | N | § 347-14.8 |
| Nursing homes | N | N | N | N | C | C | § 347-14.13 |
| Schools, public and private | C | C | C | C | C | C | § 347-14.4 |
| Vending machines | C | C | C | C | C | C | § 347-14.5 |
| Wireless telecommunication facilities | C | C | C | C | C | C | § 347-14.7 |
| KEY: P = Principal permitted uses A = Accessory uses C = Conditional uses N= Not Allowed | | | | | | | |

§ 347-5.2 R-O Mountainside Zone

A. Lot Requirements

- (1) Minimum lot area: 20,000 square feet.
- (2) Minimum lot frontage: The minimum lot frontage shall be as follows, except that existing lots under separate ownership with lesser frontages at the time this ordinance is adopted are permitted.

| | |
|------------------|------------------|
| <u>R-O (100)</u> | <u>R-O (150)</u> |
| 100 feet | 150 feet |

- (3) Minimum lot depth: Where the existing street pattern has been established and there is no opportunity for interior block subdivision, the depth of all newly created lots shall be in keeping with the established lot depth as defined in § 347-2. Where the existing street pattern has not been established and where a subdivision will involve a new street, lots shall have a minimum depth of 140 feet.

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B. Principal Building

- (1) Maximum building height: 35 feet
- (2) Maximum number of stories: 2-1/2 stories
- (3) Minimum front yard setback:
 - (a) Interior lots: 50 feet, except that where the average front yard setback of existing buildings as defined in § 347-2 is greater than 50 feet, the greater setback shall apply.
 - (b) Corner lots. 50 feet from each street, except that where the average front yard setback of existing structures as defined in § 347-2 is greater, such greater setback shall apply. Corner lots shall have front yard setbacks along each frontage.
- (4) Minimum side yard setback.
 - (a) One side: 12 feet.
 - (b) Other side: 18 feet.
 - (c) Minimum side yard setback for corner lots: 12 feet.
- (5) Minimum rear yard setback: 30 feet or 30 percent of the depth of the lot, whichever is greater.
- (6) Maximum width of principal structure: 65 percent of the width of the lot, as defined in § 347-2.
- (7) Maximum building coverage: 20%

C. Accessory Buildings

- (1) Maximum height: 15 feet
- (2) Minimum side yard
 - (a) For interior lots: 12 feet for one side yard and 18 feet for the other side yard.
 - (b) For corner lots: 12 feet for one side yard and 55 feet for the yard adjacent to the side street.
- (3) Minimum rear yard: 10 feet.
- (4) No accessory structure or any off-street parking area, whether or not within a garage, shall be located between the main building and the curb of the street on which the building fronts; provided, however, that a driveway leading to a garage which is in, beside or behind the main building shall be permissible.

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§ 347-5.3 R-O(a) One Family Zone

A. Lot Requirements

- (1) Minimum lot area: 20,000 square feet and each lot shall have a minimum area of 13,000 square feet within 130 feet of the street line.
- (2) Minimum lot frontage: 150 feet. Lots where more than ½ of the total frontage of the lot is on an arc or street curvature the radius of which is not more than 150 feet, the lot frontage may be not less than 55 feet and the lot width not less than 100 feet.
- (3) Minimum lot depth: 100 feet

B. Principal Building

- (1) Maximum building height: 35 feet
- (2) Maximum number of stories: 2-1/2 stories
- (3) Minimum front yard setback:
 - (a) For properties south of Bloomfield Avenue:
 - (i) Interior lots: 50 feet, except that where the average front yard setback of existing buildings as defined in § 347-2 is greater than 50 feet, the greater setback shall apply.
 - (ii) Corner lots: 50 feet from each street, except that where the average front yard setback of existing structures as defined in § 347-2 is greater, such greater setback shall apply. Corner lots shall have front yard setbacks along each frontage.
 - (b) For properties north of Bloomfield Avenue:
 - (i) Interior lots: 35 feet, except that where the average front yard setback of existing buildings as defined in § 347-2 is greater than 35 feet, the greater setback shall apply.
 - (ii) Corner lots: 35 feet from each street, except that where the average front yard setback of existing buildings as defined in § 347-2 is greater, such greater setback shall apply. Corner lots shall have front yard setbacks along each frontage.
- (4) Minimum side yard setback.
 - (a) One side: 12 feet.
 - (b) Other side: 18 feet.
 - (c) Minimum side yard setback for corner lots: 12 feet.
- (5) Minimum rear yard setback: 30 feet or 30 percent of the depth of the lot, whichever is greater.

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- (6) Maximum width of principal structure: 65 percent of the width of the lot, as defined in § 347-2.
- (7) Maximum building coverage: 20%

C. Accessory Buildings

- (1) Maximum height: 15 feet
- (2) Minimum side yard
 - (a) For interior lots: 12 feet for one side yard and 18 feet for the other side yard.
 - (b) For corner lots: 12 feet for one side yard and 55 feet for the yard adjacent to the side street.
- (3) Minimum rear yard: 10 feet.
- (4) No accessory structure or any off-street parking area, whether or not within a garage, shall be located between the main building and the curb of the street on which the building fronts; provided, however, that a driveway leading to a garage which is in, beside or behind the main building shall be permissible.

§ 347-5.4 R-1 One Family Zones

A. Lot Requirements

- (1) Minimum lot frontage. The minimum lot frontage shall be as follows, except that existing lots under separate ownership with lesser frontages at the time this ordinance is adopted are permitted.

| <u>R-1 (40)</u> | <u>R-1(50)</u> | <u>R-1 (60)</u> | <u>R-1 (70)</u> | <u>R-1(80)</u> | <u>R-1 (90)</u> |
|-----------------|----------------|-----------------|-----------------|----------------|-----------------|
| 40 feet | 50 feet | 60 feet | 70 feet | 80 feet | 90 feet |

- (2) Minimum lot depth: Where the existing street pattern has been established and there is no opportunity for interior block subdivision, the depth of all newly created lots shall be in keeping with the established lot depth as defined in § 347-2. Where the existing street pattern has not been established and where a subdivision will involve a new street, lots shall have the minimum depth stated below:

| <u>R-1 (40)</u> | <u>R-1(50)</u> | <u>R-1 (60)</u> | <u>R-1 (70)</u> | <u>R-1(80)</u> | <u>R-1 (90)</u> |
|-----------------|----------------|-----------------|-----------------|----------------|-----------------|
| 100 feet | 110 feet | 110 feet | 110 feet | 120 feet | 125 feet |

B. Principal Building

- (1) Maximum building height: 35 feet
- (2) Maximum number of stories: 2-1/2 stories
- (3) Minimum front yard setback:

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- (a) Interior lots: 25 feet, except that where the average front yard setback of existing buildings as defined in § 347-2 is greater than 25 feet, the greater setback shall apply.
- (b) Corner lots: 25 feet from each street, except that where the average front yard setback of existing structures as defined in § 347-2 is greater than 25 feet, such greater setback shall apply. Corner lots shall have front yard setbacks along each street frontage.

(4) Minimum side yard setback.

| | | <u>R-1 (40)</u> | <u>R-1 (50)</u> | <u>R-1 (60)</u> | <u>R-1 (70)</u> | <u>R-1(80)</u> | <u>R-1 (90)</u> |
|-------------------|------------|-----------------|-----------------|-----------------|-----------------|----------------|-----------------|
| a) Interior lots: | One yard | 4 ft | 6 ft. | 6 ft. | 6 ft | 6 ft | 6 ft |
| | Other yard | 10 ft | 10 ft. | 10 ft. | 10 ft | 10 ft | 10 ft |
| b) Corner lots: | | 4 ft | 6 ft. | 6 ft. | 6 ft | 6 ft | 6 ft |

(5) Minimum rear yard setback: 25 feet or 25 percent of the depth of the lot, whichever is greater.

(6) Maximum width of principal structure: Sixty-five percent (65%) of the width of the lot, as defined in § 347-2.

(7) Maximum building coverage: 25%

C. Accessory Buildings

(1) Maximum height: 15 feet

(2) Minimum side yard:

| | | <u>R-1 (40)</u> | <u>R-1(50)</u> | <u>R-1(60)</u> | <u>R-1 (70)</u> | <u>R-1(80)</u> | <u>R-1 (90)</u> |
|-------------------|-------------|-----------------|----------------|----------------|-----------------|----------------|-----------------|
| a) Interior lots: | | 4 ft | 6 ft | 6 ft | 6 ft | 6 ft | 6 ft |
| b) Corner lots: | One yard | 4 ft | 6 ft | 6 ft | 6 ft | 6 ft | 6 ft |
| | Street yard | 28 ft. | 28 ft | 28 ft | 28 ft | 28 ft | 28 ft |

(3)

(a) Interior lots: 6 feet

(b) Corner lots: 6 feet for one yard and 28 feet for the yard adjacent to the street.

(4) Minimum rear yard: 6 feet

(5) No accessory structure or any off-street parking area, whether or not within a garage, shall be located between the main building and the curb of the street on which the

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building fronts; provided, however, that a driveway leading to a garage which is in, beside or behind the main building shall be permissible.

§ 347-5.5 R-2 Two-Family Zones

A. Lot Requirements. The minimum lot requirements shall be as follows, except that existing lots under separate ownership with lesser dimensions at the time this ordinance is adopted are permitted.

| | <u>R-2 (40)</u> | <u>R-2 (60)</u> |
|---------------------------|-----------------|-----------------|
| (1) Minimum lot area: | 4,000 | 6,000 |
| (2) Minimum lot frontage: | 40 feet | 60 feet |
| (3) Minimum lot depth: | 100 | 110 |

B. Principal Building

- (1) Maximum building height: 35 feet
- (2) Maximum number of stories: 2-1/2 stories
- (3) Minimum front yard setback:
 - (a) 25 feet, except that where the average front yard setback of existing buildings as defined in § 347-2 is greater than 25 feet, the greater setback shall apply.
 - (b) Corner lots: 25 feet from each street, except that where the average front yard setback of existing structures as defined in § 347-2 is greater than 25 feet, such greater setback shall apply. Corner lots shall have front yard setbacks along each street frontage.
- (4) Minimum side yard setback.

| | | <u>R-2 (40)</u> | <u>R-2 (60)</u> |
|-------------------|------------|-----------------|-----------------|
| a) Interior lots- | One yard | 4 ft | 6 ft |
| | Other yard | 10 ft | 10 ft |
| b) Corner lots: | | 6 ft | 6 ft |

- (5) Minimum rear yard setback: 25 feet or 25 percent of the depth of the lot, whichever is greater.
- (6) Maximum width of principal structure: 65 percent (65%) of the width of the lot, as defined in § 347-2.
- (7) Maximum building coverage: 25%

C. Accessory Buildings

- (1) Maximum height: 15 feet

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(2) Minimum side yard:

| | <u>R-2 (40)</u> | <u>R-2 (60)</u> |
|-------------------|-----------------|-----------------|
| a) Interior lots: | 4 ft | 6 ft |
| b) Corner lots: | One yard | 4 ft |
| Street yard | 28 ft. | 6 ft 28 ft |

(3) Minimum rear yard: 6 feet

(4) No accessory structure or any off-street parking area, whether or not within a garage, shall be located between the main building and the curb of the street on which the building fronts; provided, however, that a driveway leading to a garage which is in, beside or behind the main building shall be permissible.

§ 347-5.6 RM-2 Garden Group Zone

A. Lot Requirements

(1) One- and two-family homes

(a) Minimum lot area: 6,000 square feet

(b) Minimum lot frontage: 60 feet

(2) Multifamily dwellings

(a) Minimum lot area: 12,000 square feet

(b) Minimum lot frontage: 75 feet

(3) Townhouses

(a) Minimum lot area: 20,000 square feet

(b) Minimum lot frontage: 100 feet

B. Principal Building

(1) One- and two-family dwellings.

(a) Maximum building height: 35 feet

(b) Maximum number of stories: 2-1/2 stories

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- (c) Minimum front yard setback:
 - (i) Interior lots: 25 feet, except that where the average front yard setback of existing buildings as defined in § 347-2 is greater than 25 feet, the greater setback shall apply.
 - (ii) Corner lots: 25 feet from each street, except that where the average front yard setback of existing structures as defined in § 347-2 is greater, such greater setback shall apply. Corner lots shall have front yard setbacks along each street frontage.
 - (d) Minimum side yard setback.
 - (i) Interior lots: 6 feet for one yard and 10 feet for the other yard.
 - (ii) Corner lots: 6 feet.
 - (e) Minimum rear yard setback: 25 feet or 25 percent of the depth of the lot, whichever is greater.
 - (f) Maximum width of principal structure: 65 percent of the width of the lot, as defined in § 347-2.
 - (g) Maximum building coverage: 25%
- (2) Multifamily dwellings.
- (a) Maximum density: 18 units per acre.
 - (b) Maximum building height: 40 feet. No dwellings or parts of dwellings, except for storage and utilities areas, shall be located more than two feet below the adjoining general grade level, with light wells not counted as part of the adjoining grade level.
 - (c) Maximum number of stories: 2-1/2 stories.
 - (d) Minimum front yard: 40 feet, except that where the average setback of existing buildings as defined in § 347-2 is less than 40 feet, the average setback so determined shall apply, down to a minimum of 30 feet. A corner lot and through lot shall provide such required minimum front yard for each street frontage.
 - (e) Minimum side yard: 18 feet, except that where buildings extend for a length of more than 80 feet along the side line, section or sections over 80 feet in length shall have a minimum setback of 30 feet, and if there is more than one building section with a length of up to 80 feet with a minimum setback, these sections shall be separated by a distance of at least 50 feet.
 - (f) Minimum rear yard: 40 feet.
 - (g) Maximum building coverage: 20%.

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- (h) No principal building shall be designed or occupied by more than 24 families.
- (i) No building shall exceed 160 feet in length at its longest dimension.
- (j) No wall of a principal building fronting on a street shall exceed 100 feet in length.
- (k) All multifamily buildings shall provide not less than two exterior exposures for each family unit, the same properly pierced by windows or other openings so as to provide through ventilation or cross ventilation for the unit.
- (l) Distance between buildings.
 - (i) The minimum distance between principal buildings shall be the average height of such buildings at the point where the buildings are nearest to each other, except that the minimum distance between the ends of buildings shall be 20 feet.
 - (ii) The minimum width of a court shall be 45 feet, and the depth of a court shall not exceed its width.
 - (iii) The minimum distance between a principal building and a one-story accessory building shall be 20 feet.
 - (iv) The minimum distance between two accessory buildings shall be 10 feet.
 - (v) At the inner angles of a court, the distance between windows of bedrooms, living rooms and kitchens shall be not less than 12 feet, measured diagonally across the court.
- (m) All areas not covered by buildings, parking areas or walkways shall be suitably landscaped and improved for maximum outdoor living use, including gardens and recreation areas, where appropriate.

(3) Townhouses

- (a) Maximum density: 10 units per acre or 12 units per acre if an existing building on the property is preserved and converted to residential use.
- (b) Maximum building height: 35 feet. No dwellings or parts of dwellings, except for storage and utilities areas, shall be located more than two feet below the adjoining general grade level, with light wells not counted as part of the adjoining grade level.
- (c) Maximum number of stories: 2 ½ stories.
- (d) The minimum front yard setback shall be equal to the average front yard setback of existing buildings as defined in § 347-2, with a minimum setback of no less than 30 feet. A corner lot and a through lot shall provide such required minimum front yard for each street frontage.

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- (e) The minimum side yard setback shall be 18 feet, except that where buildings extend for a length of more than 80 feet along the side line, a section or sections over 80 feet in length shall have a minimum setback of 30 feet, and if there is more than one building section with a length of up to 80 feet with a minimum setback, these sections shall be separated by a distance of at least 50 feet.
- (f) Minimum rear yard setback: 40 feet.
- (g) Maximum building coverage: 20%.
- (h) Maximum impervious coverage: 50%.
- (i) No building shall exceed 100 feet in length at its longest dimension.
- (j) The minimum width of each townhouse unit shall be 20 feet.
- (k) All townhouses shall provide not less than two exterior exposures for each family unit, the same properly pierced by windows or other openings so as to provide through ventilation or cross-ventilation for the unit.
- (l) The maximum number of adjoining townhouse units in a row shall be five.
- (m) Distance between buildings.
 - (i) The minimum distance between principal buildings shall be 25 feet.
 - (ii) The minimum width of a court shall be 45 feet, and the depth of a court shall not exceed its width.
 - (iii) The minimum distance between a principal building and a one-story accessory building shall be 20 feet.
 - (iv) The minimum distance between two accessory buildings shall be 10 feet.
- (n) At the inner angles of a court, the distance between windows of bedrooms, living rooms and kitchens shall be not less than 12 feet, measured diagonally across the court.
- (o) All areas not covered by buildings, parking areas or walkways shall be suitably landscaped and improved for maximum outdoor living use, including gardens and recreation areas, where appropriate.

C. Accessory structures and parking

- (1) For one- and two-family homes:
 - (a) Maximum height: 15 feet
 - (b) Minimum side yard

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- (i) For interior lots: 6 feet
 - (ii) For corner lots: 6 feet for one side yard and 28 feet for the yard adjacent to the side street.
 - (c) Minimum rear yard: 6 feet.
 - (d) No accessory structure or any off-street parking area, whether or not within a garage, shall be located between the main building and the curb of the street on which the building fronts; provided, however, that a driveway leading to a garage which is in, beside or behind the main building shall be permissible.
- (2) For multifamily uses:
- (a) No accessory structure nor any off-street parking area, whether or not within a garage, shall be located between the main building or buildings and the curb of the street on which the building or buildings front.
 - (b) No accessory structure, off-street parking or driveway shall be located within six feet of any principal building, except where the accessory structure, driveway or parking area extends to or into a garage located in the principal building and all accessory structures, driveways and parking areas shall be set back at least four feet from the property lines, except at driveway entrances.
 - (c) Garages may be located under principal buildings, provided that at least half the height is below the adjoining grade level.
 - (d) Garages with four or more parking spaces shall be grouped in motor courts enclosed on all sides except for necessary driveway entrances and exits and shall be located at least 60 feet from the front street line of the property and more than 10 feet from any adjoining property line.

§ 347-5.7 RM-3 Three-Story Apartment Zone

A. Lot Requirements

- (1) One- and two-family homes
 - (a) Minimum lot area: 6,000 square feet, except that existing lots under separate ownership may have a minimum lot size of 4,000 square feet.
 - (b) Minimum lot frontage: 60 feet, except that existing lots under separate ownership may have a minimum lot frontage of 40 feet.
- (2) Multifamily dwellings up to 2-1/2 stories in height
 - (a) Minimum lot area: 12,000 square feet
 - (b) Minimum lot frontage: 75 feet

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- (3) Three-story multi-family dwellings
 - (a) Minimum lot area: 15,000 square feet
 - (b) Minimum lot frontage: 150 feet
- (4) Townhouses
 - (a) Minimum lot area: 20,000 square feet
 - (b) Minimum lot frontage: 100 feet

B. Principal Building

- (1) One- and two-family dwellings.
 - (a) Maximum building height: 35 feet
 - (b) Maximum number of stories: 2-1/2 stories
 - (c) Minimum front yard setback:
 - (i) Interior lots: 25 feet, except that where the average front yard setback of existing buildings as defined in § 347-2 is greater than 25 feet, the greater setback shall apply.
 - (ii) Corner lots: 25 feet from each street, except that, where the average front yard setback of existing buildings as defined in § 347-2 is greater, such greater setback shall apply. Corner lots shall have front yard setbacks along each street frontage.
 - (d) Minimum side yard setback.
 - (i) Interior lots: 6 feet for one yard and 10 feet for the other yard.
 - (ii) Corner lots: 6 feet.
 - (e) Minimum rear yard setback: 25 feet or 25 percent of the depth of the lot, whichever is greater.
 - (f) Maximum width of principal structure: 65 percent of the width of the lot, as defined in § 347-2.
 - (g) Maximum building coverage: 25%
- (2) Multifamily dwellings.
 - (a) Maximum density: 28 units per acre.
 - (b) Maximum building height: 42 feet.

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- (c) Maximum number of stories: 3 stories.
 - (d) Minimum front yard: 30 feet.
 - (e) Minimum side yard: 20 feet.
 - (f) Minimum rear yard: 25 feet.
 - (g) Maximum building coverage: 30%.
 - (h) No building shall exceed 200 feet in length at its longest dimension.
 - (i) Each room shall have at least one window, and each dwelling unit shall either have two exposures to provide through ventilation or cross ventilation or be supplied with mechanical ventilating equipment of sufficient capacity to provide at least six air changes per hour. No dwelling units shall be located in the basement.
 - (j) Distance between buildings. At least 35 feet, or 25 feet between ends of buildings. Courts shall have a minimum width of 35 feet and the depth shall be no greater than the width.
 - (k) In an inner angles of a court, windows shall be no less than 12 feet apart, measured diagonally across the angle.
- (3) Townhouses
- (a) Maximum density: 10 units per acre or 12 units per acre if an existing building on the property is preserved and converted to residential use.
 - (b) Maximum building height: 35 feet. No dwellings or parts of dwellings, except for storage and utilities areas, shall be located more than two feet below the adjoining general grade level, with light wells not counted as part of the adjoining grade level.
 - (c) Maximum number of stories: 2 ½ stories.
 - (d) The minimum front yard setback shall be equal to the average front yard setback of existing buildings as defined in § 347-2, with a minimum setback of no less than 30 feet. A corner lot and a through lot shall provide such required minimum front yard for each street frontage.
 - (e) The minimum side yard setback shall be 18 feet, except that where buildings extend for a length of more than 80 feet along the side line, a section or sections over 80 feet in length shall have a minimum setback of 30 feet, and if there is more than one building section with a length of up to 80 feet with a minimum setback, these sections shall be separated by a distance of at least 50 feet.
 - (f) Minimum rear yard setback: 40 feet.

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- (g) Maximum building coverage: 20%.
- (h) Maximum impervious coverage: 50%.
- (i) No building shall exceed 100 feet in length at its longest dimension.
- (j) The minimum width of each townhouse unit shall be 20 feet.
- (k) All townhouses shall provide not less than two exterior exposures for each family unit, the same properly pierced by windows or other openings so as to provide through ventilation or cross-ventilation for the unit.
- (l) The maximum number of adjoining townhouse units in a row shall be five.
- (m) Distance between buildings.
 - (i) The minimum distance between principal buildings shall be 25 feet.
 - (ii) The minimum width of a court shall be 45 feet, and the depth of a court shall not exceed its width.
 - (iii) The minimum distance between a principal building and a one-story accessory building shall be 20 feet.
 - (iv) The minimum distance between two accessory buildings shall be 10 feet.
- (n) At the inner angles of a court, the distance between windows of bedrooms, living rooms and kitchens shall be not less than 12 feet, measured diagonally across the court.
- (o) All areas not covered by buildings, parking areas or walkways shall be suitably landscaped and improved for maximum outdoor living use, including gardens and recreation areas, where appropriate.

C. Accessory structures and parking

- (1) For one- and two-family homes:
 - (a) Maximum height: 15 feet
 - (b) Minimum side yard
 - (i) For interior lots: 6 feet.
 - (ii) For corner lots: 6 feet for one side yard and 28 feet for the yard adjacent to the side street.
 - (c) Minimum rear yard: 6 feet.

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(d) No accessory structure or any off-street parking area, whether or not within a garage, shall be located between the main building and the curb of the street on which the building fronts; provided, however, that a driveway leading to a garage which is in, beside or behind the main building shall be permissible.

(2) For multifamily uses:

(a) No accessory structure nor any off-street parking area, whether or not within a garage, shall be located between the main building or buildings and the curb of the street on which the building or buildings front.

(b) No accessory structure, off-street parking or driveway shall be located within six feet of any principal building, except where the accessory structure, driveway or parking area extends to or into a garage located in the principal building and all accessory structures, driveways and parking areas shall be set back at least four feet from the property lines, except at driveway entrances.

(c) Garages may be located under principal buildings, provided that at least half the height is below the adjoining grade level.

(d) Garages with four or more parking spaces shall be grouped in motor courts enclosed on all sides except for necessary driveway entrances and exits and shall be located at least 60 feet from the front street line of the property and more than 10 feet from any adjoining property line.

§ 347-6 Commercial Districts

§ 347-6.1 Allowed Uses

A. Allowed uses include principal uses, accessory uses, conditional uses and temporary uses as identified in Table 2. Uses listed in Table 2 as “Conditional (C)” are allowed, provided that they conform to the conditions set forth in § 347-14. Uses that are not identified in Table 1 or are shown as “Not Allowed (N)” are prohibited.

| Table 2: Allowed Uses, Commercial Districts | | | | | | | | |
|---------------------------------------------|------------------|--------|-------|------|-------|--------------------------|-------|-----------------------|
| Uses | Commercial Zones | | | | | Office/Residential Zones | | Special Use Standards |
| | CBD-4C | CBD-4E | CBD-3 | CI-3 | NCD-3 | ORM-3 | ORM-2 | |
| Principal Use – Residential | | | | | | | | |
| Single-family dwelling, non-attached | N | N | N | P | P | P | P | |
| Two-family dwelling, detached | N | N | N | P | P | P | P | |
| Townhouse | N | N | N | N | N | P | P | |
| Multi-family dwellings | P | P | P | P | P | P | P | |
| Senior citizen housing | P | P | P | P | N | P | P | |
| Assisted-living facilities | P | P | P | P | N | C | C | § 347-14.14 |
| Principal Use - Nonresidential | | | | | | | | |

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| Table 2: Allowed Uses, Commercial Districts | | | | | | | | |
|---------------------------------------------------------------------------------------------------------------|------------------|--------|-------|------|-------|--------------------------|-------|-----------------------|
| Uses | Commercial Zones | | | | | Office/Residential Zones | | Special Use Standards |
| | CBD-4C | CBD-4E | CBD-3 | CI-3 | NCD-3 | ORM-3 | ORM-2 | |
| Adult entertainment | N | N | N | N | N | N | N | |
| Art galleries & art studios | P | P | P | P | P | P | P | |
| Automobile sales, service stations, repair & washing establishments | N | N | N | P | N | N | N | |
| Banks | P | P | P | P | P* | N | N | |
| Body art studio | P | P | P | P | P | N | N | |
| Bowling alleys, billiard or pool halls | P | P | P | P | P | N | N | |
| Brewery, limited | P | P | P | P | P | N | N | |
| Brewpubs | P | P | P | P | P | N | N | |
| Check-cashing shops | N | N | N | N | N | N | N | |
| Child care center | P | P | P | P | P | P | P | |
| Commercial recreation facilities | P | P | P | P | P | N | N | |
| Drive-through service | N | N | N | N | N | N | N | |
| Educational or quasi-educational establishments | C | C | C | C | C | N | N | § 347-14.17 |
| Educational play centers | C | C | C | C | C | N | N | § 347-14.17 |
| Fast-food restaurant, bar or tavern | C | C | C | P | C | N | N | § 347-14.16 |
| Fitness centers | C | C | C | C | C | N | N | § 347-14.17 |
| Funeral homes | N | N | N | N | N | P | P | |
| Garden centers and building supply stores | C | C | C | C | C | N | N | § 347-14.15 |
| Head shops | N | N | N | N | N | N | N | |
| Heliports & helistops | N | N | N | N | N | N | N | |
| Houses of worship | N | N | N | N | P | N | N | § 347-14.3 |
| Light manufacturing | N | N | N | P | N | N | N | |
| Manufacturing, research and development, wholesale trade or warehouse establishments and bus and truck depots | N | N | N | P | N | N | N | |
| Mixed use (residential with commercial) | P | P | P | P | P | N | N | |
| Mixed-use (residential with offices) | P | P | P | P | P | C | C | § 347-14.19 |
| Motor vehicle rentals | C | C | C | P | C | N | N | § 347-14.6 |
| Movie and recording studios | P* | P* | P* | P | P* | N | N | |
| Municipal facilities | P | P | P | P | P | P | P | |
| Non-profit institutional uses | P* | P | P* | P | P* | C | C | § 347-14.9 |
| Offices and office buildings | P* | P | P* | P | P* | P | P | |
| Offices, medical | P* | P | P* | P | P* | P | P | |
| Offices, real estate | P* | P | | P | P* | P | P | |
| Pawn shops | N | N | N | N | N | N | N | |
| Parks and open space | P | P | P | P | P | P | P | |
| Personal service establishment | P | P | P | P | P | N | N | |

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| Table 2: Allowed Uses, Commercial Districts | | | | | | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|--------|-------|------|-------|--------------------------|-------|-----------------------|
| Uses | Commercial Zones | | | | | Office/Residential Zones | | Special Use Standards |
| | CBD-4C | CBD-4E | CBD-3 | CI-3 | NCD-3 | ORM-3 | ORM-2 | |
| Restaurants and eating and drinking establishments | P | P | P | P | P | N | N | |
| Retail/wholesale sale of weapons or firearms | N | N | N | N | N | N | N | |
| Retail, convenience | P | P | P | P | P | N | N | |
| Retail food establishment | P | P | P | P | P | N | N | |
| Retail sales | P | P | P | P | P | N | N | |
| Retail, specialty | P | P | P | P | P | N | N | |
| Schools, public and private | C | C | C | C | C | C | C | § 347-14.4 |
| Storage establishments, including mini-storage | N | N | N | P | N | N | N | |
| Vending machines | C | C | C | C | C | C | C | § 347-14.5 |
| Warehouse & wholesale distribution | N | N | N | P | N | N | N | |
| Wireless telecommunication facilities | C | C | C | C | C | C | C | § 347-14.7 |
| Accessory Uses | | | | | | | | |
| Accessory uses customarily incidental and associated with permitted principal uses. | A | A | A | A | A | A | A | |
| Fences and walls | A | A | A | A | A | A | A | § 347-18 |
| Parking | A | A | A | A | A | A | A | § 347-19 |
| Parking deck | A | A | A | A | A | A | A | § 347-13.19 |
| Signs | A | A | A | A | A | A | A | § 347-20 |
| KEY: P = Principal permitted uses A = Accessory uses C = Conditional uses N= Not Allowed *Denotes uses not permitted on the first floor. | | | | | | | | |

§ 347-6.2 CBD Central Business District Zones

A. Lot size requirements.

- (1) Multifamily buildings containing apartment units exclusively.
 - (a) Minimum lot area: 20,000 square feet.
 - (b) Minimum lot width: 100 feet.

- (2) Mixed-use buildings containing multifamily dwellings and no less than 1,000 square feet of floor area used for commercial uses.
 - (a) Minimum lot area: 10,000 square feet.
 - (b) Minimum lot width: 60 feet.

- (3) Nonresidential buildings.

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- (a) Minimum lot area: 10,000 square feet.
- (b) Minimum lot width: 60 feet.
- (c) Previously existing lots which are less than 60 feet wide and 10,000 square feet in area may be used for nonresidential uses.

B. Principal Building.

| | <u>CBD-4C</u> | <u>CBD-4E</u> | <u>CBD-3</u> |
|--------------------------------|-------------------|-------------------|-------------------|
| (1) Maximum building height. | 47 feet | 47 feet | 37 feet |
| (2) Maximum number of stories. | 4 stories | 4 stories | 3 stories |
| (3) Maximum density. | 55 units per acre | 55 units per acre | 40 units per acre |

(4) The maximum building coverage in the CBD-3 zone is seventy-five percent (75%).

(5) There is no maximum density for lots under 20,000 square feet that exist as of the date of adoption of this ordinance.

(6) Minimum front yard setback: 0 feet

(7) Maximum front yard setback: No building shall be set back further than the greater setback of buildings on the adjoining lots.

(8) Minimum side yard setback: 0 feet, except that where a side yard is provided, such side yard shall be a minimum of six feet.

(9) Minimum rear yard setback:

- (a) Mixed-use and commercial buildings: 10 feet
- (b) Residential buildings: 30 feet.

(10) For all street-facing facades, the fourth floor shall be stepped back at least ten (10) feet with respect to the facades of the lower stories.

C. Mixed-use buildings.

- (1) Commercial uses in a mixed-use building shall contain no less than 1,000 square feet of area and shall maintain the commercial use along all facades of the building that face a street at a minimum depth of 20 feet. Breaks in the retail facade are permitted to allow vehicular ingress and egress to the site.
- (2) Residential uses shall not be permitted on the first floor, and all regular and emergency accessways to residential uses shall be enclosed within the exterior walls of the building.

D. Accessory structures

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- (1) No parking or accessory structure shall be permitted in the front yard.
- (2) Maximum height: 15 feet
- (3) Minimum side yard setback: four feet.
- (4) Minimum rear yard setback: four feet.
- (5) Parking decks shall be setback at least 15 feet from all property lines.
- (6) Where off-street loading presently exists, subsequent development shall continue to require off-street loading.

§ 347-6.3 CI-3 General Business and Light Manufacturing Zone

A. Lot size requirements.

- (1) One- and two-family homes
 - (a) Minimum lot area: 6,000 square feet, except that existing lots under separate ownership may have a minimum lot size of 4,000 square feet.
 - (b) Minimum lot frontage: 60 feet, except that existing lots under separate ownership may have a minimum lot frontage of 40 feet.
- (2) Multifamily dwellings up to 2-1/2 stories in height
 - (a) Minimum lot area: 12,000 square feet
 - (b) Minimum lot frontage: 75 feet
- (3) Three-story multi-family dwellings
 - (a) Minimum lot area: 15,000 square feet
 - (b) Minimum lot frontage: 150 feet
- (4) Nonresidential buildings.
 - (a) Minimum lot area: 10,000 square feet.
 - (b) Minimum lot frontage: 100 feet.
 - (c) Existing lots which are less than 100 feet wide and 10,000 square feet in area, down to a minimum frontage of 50 feet and a minimum lot area of 6,000 square feet, may continue to be used for nonresidential uses.

B. Principal Building.

- (1) One- and two-family dwellings.

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- (a) Maximum building height: 35 feet
 - (b) Maximum number of stories: 2-1/2 stories
 - (c) Minimum front yard setback:
 - (i) Interior lots: 25 feet, except that where the average front yard setback of existing buildings as defined in § 347-2 is greater than 25 feet, the greater setback shall apply.
 - (ii) Corner lots: 25 feet from each street, except that, where the average front yard setbacks of existing structures as defined in § 347-2 is greater, such greater setback shall apply. Corner lots shall have front yard setbacks along each street frontage.
 - (d) Minimum side yard setback.
 - (i) Interior lots: 6 feet for one yard and 10 feet for the other yard.
 - (ii) Corner lots: 6 feet.
 - (e) Minimum rear yard setback: 25 feet or 25 percent of the depth of the lot, whichever is greater.
 - (f) Maximum width of principal structure: 65 percent of the width of the lot, as defined in § 347-2.
 - (g) Maximum building coverage: 25%
- (2) Multifamily dwellings.
- (a) Maximum density: 28 units per acre.
 - (b) Maximum building height: 42 feet.
 - (c) Maximum number of stories: 3 stories.
 - (d) Minimum front yard: 30 feet.
 - (e) Minimum side yard: 20 feet.
 - (f) Minimum rear yard: 25 feet.
 - (g) Maximum building coverage: 30%.
 - (h) No building shall exceed 200 feet in length at its longest dimension.
 - (i) Each room shall have at least one window, and each dwelling unit shall either have two exposures to provide through ventilation or cross ventilation or be supplied with mechanical ventilating equipment of sufficient capacity to

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provide at least six air changes per hour. No dwelling units are permitted in basements.

- (j) Distance between buildings. At least 35 feet, or 25 feet between ends of buildings. Courts shall have a minimum width of 35 feet and the depth shall be no greater than the width.
- (k) In an inner angles of a court, windows shall be no less than 12 feet apart, measured diagonally across the angle.

(3) Nonresidential Uses

- (a) Minimum front yard setback: 30 feet, except that where the average front yard setback of existing buildings as defined in § 347-2 is less, such lesser front yard setback shall apply.
- (b) Minimum side yard setback: 0 feet, except that where a side yard is provided, such side yard shall be a minimum of six feet.
- (c) Minimum rear yard setback: 20 feet.
- (d) Maximum building height: 35 feet.
- (e) Maximum number of stories: 3.

(4) Mixed-use buildings.

- (a) Commercial uses in a mixed-use building shall contain no less than 1,000 square feet of area and shall maintain the commercial use along all facades of the building that face a street at a minimum depth of 20 feet. Breaks in the retail facade are permitted to allow vehicular ingress and egress to the site.
- (b) Residential uses shall not be permitted on the first floor, and all regular and emergency accessways to residential uses shall be enclosed within the exterior walls of the building.

C. Accessory structures

- (1) No parking or accessory structure shall be permitted in the front yard.
- (2) Maximum height: 15 feet
- (3) Minimum side yard setback: four feet.
- (4) Minimum rear yard setback: four feet.
- (5) Parking decks shall be setback at least 15 feet from all property lines.
- (6) Where off-street loading presently exists, subsequent development shall continue to require off-street loading.

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§ 347-6.4 NC-3 Neighborhood Commercial Zone

A. Lot size requirements.

(1) One- and two-family homes

- (a) Minimum lot area: 6,000 square feet, except that existing lots under separate ownership may have a minimum lot size of 4,000 square feet.
- (b) Minimum lot frontage: 60 feet, except that existing lots under separate ownership may have a minimum lot frontage of 40 feet.

(2) Multifamily dwellings up to 2-1/2 stories in height

- (a) Minimum lot area: 12,000 square feet
- (b) Minimum lot frontage: 75 feet

(3) Three-story multi-family dwellings

- (a) Minimum lot area: 15,000 square feet
- (b) Minimum lot frontage: 150 feet

(4) Nonresidential and mixed-use buildings.

- (a) Minimum lot area: 6,000 square feet.
- (b) Minimum lot width: 60 feet.
- (c) Previously existing lots which are less than 60 feet wide and 10,000 square feet in area may be used for nonresidential uses, down to a minimum lot width of 40 feet and a minimum lot size of 4,000 square feet.

B. Principal Building.

(1) One- and two-family dwellings.

- (a) Maximum building height: 35 feet
- (b) Maximum number of stories: 2-1/2 stories
- (c) Minimum front yard setback:
 - (i) Interior lots: 25 feet, except that where the average front yard setback of existing buildings as defined in § 347-2 is greater than 25 feet, the greater setback shall apply.
 - (ii) Corner lots: 25 feet from each street, except that, where the average front yard setback of existing buildings as defined in §

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347-2 is greater, such greater setback shall apply. Corner lots shall have front yard setbacks along each street frontage.

- (d) Minimum side yard setback.
 - (i) Interior lots: 6 feet for one yard and 10 feet for the other yard.
 - (ii) Corner lots: 6 feet.
- (e) Minimum rear yard setback: 25 feet or 25 percent of the depth of the lot, whichever is greater.
- (f) Maximum width of principal structure: 65 percent of the width of the lot, as defined in § 347-2.
- (g) Maximum building coverage: 25%

(2) Multifamily dwellings.

- (a) Maximum density: 28 units per acre.
- (b) Maximum building height: 36 feet.
- (c) Maximum number of stories: 3 stories.
- (d) Minimum front yard: 30 feet.
- (e) Minimum side yard: 20 feet.
- (f) Minimum rear yard: 25 feet.
- (g) Maximum building coverage: 75%.**
- (h) No building shall exceed 200 feet in length at its longest dimension.
- (i) Each room shall have at least one window, and each dwelling unit shall either have two exposures to provide through ventilation or cross ventilation or be supplied with mechanical ventilating equipment of sufficient capacity to provide at least six air changes per hour. No dwelling units are permitted in the basement.
- (j) Distance between buildings. At least 35 feet, or 25 feet between ends of buildings. Courts shall have a minimum width of 35 feet and the depth shall be no greater than the width.
- (k) In an inner angles of a court, windows shall be no less than 12 feet apart, measured diagonally across the angle.

(3) Mixed-use buildings.

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- (a) Maximum building height: 36 feet.
 - (b) Maximum number of stories: 3 stories.
 - (c) Maximum density: 28 units per acre.
 - (d) **Maximum building coverage: 75%.**
 - (e) Minimum front yard setback: 20 feet, except that where an existing building is being replaced, the new setback is not required to be larger, and where the lot is adjoined by a building or buildings with a lesser setback, such lesser existing setback shall apply.
 - (f) Minimum side yard setback:
 - (i) Adjacent to a residential zone: 8 feet.
 - (ii) Adjacent to all other zones: 0 feet, except that where a side yard is provided, such side yard shall be a minimum of six feet.
 - (g) Minimum rear yard setback: 20 feet.
 - (h) Commercial uses in a mixed-use building shall contain no less than 1,000 square feet of area and shall maintain the commercial use along all facades of the building that face a street at a minimum depth of 20 feet. Breaks in the retail facade are permitted to allow vehicular ingress and egress to the site.
 - (i) Residential uses shall not be permitted on the first floor, and all regular and emergency accessways to residential uses shall be enclosed within the exterior walls of the building.
- (4) Commercial buildings.
- (a) Maximum building height: 24 feet.
 - (b) Maximum number of stories: 2 stories.
 - (c) **Maximum building coverage: 75%.**
 - (d) Minimum front yard setback: 20 feet, except that where an existing building is being replaced, the new setback is not required to be larger, and where the lot is adjoined by a building or buildings with a lesser setback, such lesser existing setback shall apply.
 - (e) Minimum side yard setback:
 - (i) Adjacent to a residential zone: 8 feet.
 - (ii) Adjacent to all other zones: 0 feet, except that where a side yard is provided, such side yard shall be a minimum of six feet.

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- (f) Minimum rear yard setback: 20 feet.
- (5) Accessory structures.
 - (a) Accessory structures shall comply with the height and setback requirements in the NC zone.
 - (b) Parking areas and driveways shall be set back at least four feet from side and rear property lines.
 - (c) No parking area shall be permitted between any building and the front property line (or front property lines in the case of corner lots) nor within 10 feet of a front property line, with such interval to be appropriately landscaped.

§ 347-6.5 Office and Residential Multifamily (ORM) Zone Districts

A. In the ORM-2 Historic district, office uses are only permitted if the existing residential structure is maintained. Any addition to the existing structure must not be visible from a public street and must adhere to the Design Guidelines adopted by the Historic Preservation Commission.

B. Lot Requirements

- (1) One- and two-family homes
 - (a) Minimum lot area: 6,000 square feet
 - (b) Minimum lot frontage: 60 feet
- (2) Multifamily dwellings
 - (a) Minimum lot area: 12,000 square feet
 - (b) Minimum lot frontage: 75 feet
- (3) Townhouses
 - (a) Minimum lot area: 20,000 square feet
 - (b) Minimum lot frontage: 100 feet
- (4) Office buildings.

| | <u>ORM-2</u> | <u>ORM-3</u> |
|--------------------------|--------------------|--------------------|
| (a) Minimum lot area | 12,000 square feet | 15,000 square feet |
| (b) Minimum lot frontage | 75 feet | 150 feet |

C. Principal Building

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(1) One- and two-family dwellings.

- (a) Maximum building height: 35 feet
- (b) Maximum number of stories: 2-1/2 stories
- (c) Minimum front yard setback:
 - (i) Interior lots: 25 feet, except that where the average front yard setback of existing buildings as defined in § 347-2 is greater than 25 feet, the greater setback shall apply.
 - (ii) Corner lots: 25 feet from each street, except that, where the average front yard setbacks of existing buildings as defined in § 347-2 is greater, such greater setback shall apply. Corner lots shall have front yard setbacks along each street frontage.
- (d) Minimum side yard setback.
 - (i) Interior lots: 6 feet for one yard and 10 feet for the other yard.
 - (ii) Corner lots: 6 feet.
- (e) Minimum rear yard setback: 25 feet or 25 percent of the depth of the lot, whichever is greater.
- (f) Maximum width of principal structure: 65 percent of the width of the lot, as defined in § 347-2.
- (g) Maximum building coverage: 25%

(2) Multifamily dwellings.

- (a) Maximum density: 18 units per acre.
- (b) Maximum building height: 40 feet. No dwellings or parts of dwellings, except for storage and utilities areas, shall be located more than two feet below the adjoining general grade level, with light wells not counted as part of the adjoining grade level.
- (c) Maximum number of stories: 2-1/2 stories.
- (d) Minimum front yard: 40 feet, except that where the average front yard setback of existing buildings as defined in § 347-2 is less than 40 feet, the average setback so determined shall apply, down to a minimum of 30 feet. A corner lot and through lot shall provide such required minimum front yard for each street frontage.
- (e) Minimum side yard: 18 feet, except that where buildings extend for a length of more than 80 feet along the side line, section or sections over 80 feet in length shall have a minimum setback of 30 feet, and if there is more than one building

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section with a length of up to 80 feet with a minimum setback, these sections shall be separated by a distance of at least 50 feet.

- (f) Minimum rear yard: 40 feet.
 - (g) Maximum building coverage: 20%.
 - (h) No principal building shall be designed or occupied by more than 24 families.
 - (i) No building shall exceed 160 feet in length at its longest dimension.
 - (j) No wall of a principal building fronting on a street shall exceed 100 feet in length.
 - (k) All multifamily buildings shall provide not less than two exterior exposures for each family unit, the same properly pierced by windows or other openings so as to provide through ventilation or cross ventilation for the unit. No dwelling units are permitted in the basement.
 - (l) Distance between buildings.
 - (i) The minimum distance between principal buildings shall be the average height of such buildings at the point where the buildings are nearest to each other, except that the minimum distance between the ends of buildings shall be 20 feet.
 - (ii) The minimum width of a court shall be 45 feet, and the depth of a court shall not exceed its width.
 - (iii) The minimum distance between a principal building and a one-story accessory building shall be 20 feet.
 - (iv) The minimum distance between two accessory buildings shall be 10 feet.
 - (v) At the inner angles of a court, the distance between windows of bedrooms, living rooms and kitchens shall be not less than 12 feet, measured diagonally across the court.
 - (m) All areas not covered by buildings, parking areas or walkways shall be suitably landscaped and improved for maximum outdoor living use, including gardens and recreation areas, where appropriate.
- (3) Townhouses
- (a) Maximum density: 10 units per acre or 12 units per acre if an existing building on the property is preserved and converted to residential use.
 - (b) Maximum building height: 35 feet. No dwellings or parts of dwellings, except for storage and utilities areas, shall be located more than two feet below the adjoining general grade level, with light wells not counted as part of the adjoining grade level.

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- (c) Maximum number of stories: 2 ½ stories.
 - (d) The minimum front yard setback shall be equal to the average front yard setback of existing buildings as defined in § 347-2, with a minimum setback of no less than 30 feet. A corner lot and a through lot shall provide such required minimum front yard for each street frontage.
 - (e) The minimum side yard setback shall be 18 feet, except that where buildings extend for a length of more than 80 feet along the side line, a section or sections over 80 feet in length shall have a minimum setback of 30 feet, and if there is more than one building section with a length of up to 80 feet with a minimum setback, these sections shall be separated by a distance of at least 50 feet.
 - (f) Minimum rear yard setback: 40 feet.
 - (g) Maximum building coverage: 20%.
 - (h) Maximum impervious coverage: 50%.
 - (i) No building shall exceed 100 feet in length at its longest dimension.
 - (j) The minimum width of each townhouse unit shall be 20 feet.
 - (k) All townhouses shall provide not less than two exterior exposures for each family unit, the same properly pierced by windows or other openings so as to provide through ventilation or cross-ventilation for the unit.
 - (l) The maximum number of adjoining townhouse units in a row shall be five.
 - (m) Distance between buildings.
 - (i) The minimum distance between principal buildings shall be 25 feet.
 - (ii) The minimum width of a court shall be 45 feet, and the depth of a court shall not exceed its width.
 - (iii) The minimum distance between a principal building and a one-story accessory building shall be 20 feet.
 - (iv) The minimum distance between two accessory buildings shall be 10 feet.
 - (n) At the inner angles of a court, the distance between windows of bedrooms, living rooms and kitchens shall be not less than 12 feet, measured diagonally across the court.
 - (o) All areas not covered by buildings, parking areas or walkways shall be suitably landscaped and improved for maximum outdoor living use, including gardens and recreation areas, where appropriate.
- (4) Office buildings.

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- | | <u>ORM-2</u> | <u>ORM-3</u> |
|-------------------------------|--------------|--------------|
| (a) Maximum building height | 35 feet | 42 feet |
| (b) Maximum number of stories | 2 | 3 |
- (c) Minimum front yard setback: 40 feet, except that where the average front yard setback of existing buildings as defined in § 347-2 is less than 40 feet, the average setback so determined shall apply, down to a minimum of 30 feet. A corner lot and through lot shall provide such required minimum front yard for each street frontage.
- (d) Minimum side yard setback: 20 feet.
- (e) Minimum rear yard setback: 25 feet.
- (f) Maximum lot coverage: 40 percent.
- (g) Maximum impervious surface coverage: 70 percent.
- (h) Distance between buildings. If there is more than one building on a site, the minimum distance between such buildings shall be 25 feet in the ORM-2 zone and 35 feet in the ORM-3 zone.

D. Accessory structures and parking

(1) For one- and two-family homes:

- (a) Maximum height: 15 feet
- (b) Minimum side yard
- (i) For interior lots: 6 feet.
- (ii) For corner lots: 6 feet for one side yard and 28 feet for the yard adjacent to the side street.
- (c) Minimum rear yard: 6 feet.
- (d) No accessory structure or any off-street parking area, whether or not within a garage, shall be located between the main building and the curb of the street on which the building fronts; provided, however, that a driveway leading to a garage which is in, beside or behind the main building shall be permissible.

(2) For garden apartments:

- (a) Garages may be located under principal buildings, provided that at least half the height is below the adjoining grade level, or, where in separate structures, may be up to 10 feet in height and shall not be located nearer than 60 feet to the front street line of the properties nor less than 10 feet from any adjoining property line.

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- (b) Garages may be erected in any part of a rear yard, a side yard or court where no portion of the roof is higher than the first level of the principal building and the garage roof is designed for use as an open terrace or a principal yard space.
 - (c) Except as provided in Subsections (a) and (b), garages shall be grouped in motor courts enclosed on all sides except for necessary driveway entrances and exits. No garage building shall be located nearer than 60 feet to the front street line of the property or less than 10 feet from any adjoining property line.
- (3) For other multi-family structures:
- (a) No accessory structure or any off-street parking area, whether or not within a garage, shall be located between the main building or buildings and the curb of the street on which the building or buildings front.
 - (b) No accessory structure, off-street parking or driveways shall be located within six feet of any principal building, except where the accessory structure, driveway or parking area extends to or into a garage located in the principal building.
 - (c) All accessory structures, driveways and parking areas shall be set back at least four feet from the property lines, except at driveway entrances.
- (4) For office uses:
- (a) No off-street parking area shall be located within a required front yard
 - (b) No parking area or driveways shall be located within three feet of the building, unless located within or under the building.
 - (c) The minimum setback for parking areas and driveways from the property lines shall be four feet, except at driveway entrances.
 - (d) No accessory uses shall be permitted outside such buildings, except outdoor automobile parking.
 - (e) Outdoor and indoor parking facilities are permitted as accessory uses. A parking facility accessory to one use may be used for parking accessory to other uses expressly permitted in the ORM Zone. However, it may not be used to fulfill a parking requirement for such other uses.

§ 347-7 Public Use Zone

§ 347-7.1 Permitted uses.

This zone applies to areas owned and occupied by the Township, county, state or agencies thereof on a permanent basis for public purposes. Permitted uses shall include public buildings and uses. Agencies as used herein shall be deemed to include not-for-profit corporations under lease or contract with the municipality to perform services deemed to accomplish a public purpose.

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| Uses | Public (P) |
|-------------------------------------------------------------------------------------|------------|
| Principal Uses | |
| Municipal facilities | P |
| Parks and open space | P |
| Public off-street parking | P |
| School, public | P |
| Wireless telecommunication facilities | C |
| Accessory Uses | |
| Accessory uses customarily incidental and associated with permitted principal uses. | A |

§ 347-7.2 Standards and Requirements.

Standards and requirements for public schools of elementary and high school grade shall be the same as specified for private schools in § 347-14. No specific requirements are established for other public uses, but Planning Board site plan review shall take into account the adequacy of setbacks from adjoining buildings and areas, of off-street parking and provisions for traffic circulation and of landscaping and screening from residential areas.

§ 347-7.3 Zoning in event of reversion to private use.

If the public use of any areas in the P Public Zone is discontinued and the property reverts to private ownership or use, no new use shall be established until another zone district is applied to this property by the Township, following the submission of a recommendation by the Planning Board.

§ 347-8 Reserved

§ 347-9 Reserved

ARTICLE III: SUPPLEMENTARY ZONING REGULATIONS

§ 347-10 Purpose

Article III sets forth regulations for the development or change in use of all buildings, structures or uses. Any application not in accordance with the regulations contained in Article III shall require a variance pursuant to N.J.S.A. 40:55D-70.

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§ 347-11 Formation of new lots.

- A. When a new lot is formed from part of a parcel of land on which there is an existing building, the lot size, setback and bulk requirements must be maintained for the existing building. The new lot and any proposed new buildings must also comply with these requirements.
- B. In no case shall a new lot be formed from part of a parcel of land on which there exists a principal residential building in any single- or two-family zone if the lot is to be positioned so that a structure erected thereon would disturb the uninterrupted frontage of the existing residential building to the street on which said new lot or lots are to front.

§ 347-12 Exceptions and supplemental regulations to bulk and area regulations.

§ 347-12.1 Number of dwellings on lot.

For one- and two-family dwellings, there shall be no more than one principal building per lot, and each lot shall front on a public street, except for carriage houses as provided in § 347-14.

§ 347-12.2 Yards and courts; window exposure.

- A. Unless otherwise expressly provided, the terms "rear yard," "front yard," "side yard" and "court," when used in this chapter, shall be deemed to refer only to a rear yard, front yard, side yard or court required by this chapter. No lot area shall be so reduced or diminished that the yards, courts or open spaces shall be smaller than prescribed by this chapter. No existing building shall be altered, enlarged or rebuilt except in conformity with the regulations herein prescribed.
- B. Except as otherwise provided in this chapter, every room in which persons live, sleep, work or congregate shall have at least one window or ventilating skylight opening directly either upon a street or upon a rear yard, front yard, side yard or court located upon the same lot and conforming to the requirements prescribed by this chapter as to its minimum area and least dimensions. The provisions of this chapter shall not be deemed to apply to courts or shafts for bathrooms, hallways or stairways.
- C. The area required in a court or yard at any given level shall be open from such level to the sky, unobstructed except for the ordinary projections of skylights and parapets above the bottom of such courts or yard and except for the ordinary projections of windowsills, belt courses, cornices and other ornamental features to the extent of not more than four inches.
- D. An open or lattice-enclosed iron fire escape, fireproof outside stairway or solid-floored balcony may project four feet into a rear yard or a side yard.
- E. A corner of a court or yard may be cut off between walls of the same building, provided that the length of the wall of such cutoff does not exceed seven feet, and further provided that the required area of the court or yard is not diminished.

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- F. Windows opening on a recess to a court, yard or common shall be deemed to comply with the provisions of this chapter, provided that such recess is no longer in any part than 1/2 of its width on the open side.

§ 347-12.2 Height exceptions.

- A. The height provisions of this chapter shall not apply to the erection of church spires, belfries, towers designed exclusively for ornamental purposes, chimneys or flues. The height provisions of this chapter shall, moreover, not apply to bulkheads, elevator enclosures, stairway heads, cooling towers or water tanks occupying in the aggregate less than 10% of the area of the roof on which they are located.
- B. Nothing in this chapter shall prevent the erection above the height limit of a parapet wall or cornice extending above such height limit not more than five feet.
- C. A dormer/dormers in a half story that is not/are not more than 50% of the width of the facade at their widest point shall not result in the half story counting as a full story.

§ 347-12.3 Minimum yards for corner lots.

Corner lots shall have one front yard along each street frontage. The rear yard shall be opposite the street frontage of least dimension. The remaining yard or yards shall be minimum side yards.

§ 347-12.4 Security gates or doors.

Rolling, swinging, sliding or accordion garage-type security gates or doors, whether solid or not solid, shall not be permitted on or in any building so as to be visible from a street or municipal parking area, except that such gates or doors may be used to cover the vehicular entrance to a building.

§ 347-12.5 Soil removal.

No earth, rock, gravel or topsoil shall be removed from any lands in any zone without the permission of the Planning Board, except as hereinafter provided:

- A. Earth, rock, gravel and topsoil may be moved by the owner or occupant of land, or adjoining land in common ownership, to another part of the same land owned or occupied by him or her.
- B. The owner or developer of a subdivision or development, the map of which has been approved by the Planning Board, shall not be prohibited by this section from removing any earth, rock, gravel and topsoil from the right-of-way of a proposed street or road shown on such map in the construction or building of such street or road.
- C. In the construction of any structure or building, the owner or builder thereof shall not be prohibited by this section from removing earth, rock, gravel and topsoil coming from the excavations made for such structure or building and which earth, rock, gravel and topsoil the Construction Official deems surplus materials and not necessary for such structure or building or the lands whereon erected.

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§ 347-13 Accessory buildings, structures and uses.

§ 347-13.1 Tennis, platform and basketball courts

Tennis courts and platform tennis courts are permitted accessory uses in residential zone districts. Lighting for night use is not permitted unless completely shielded from public streets and other residential properties.

§ 347-13.2 Home Occupations

Home occupations not involving the servicing of customers or clients on the premises, and subject to the following regulations, to assure that such accessory use remains incidental to the principal use and will not adversely affect the residential character of the area:

- (1) Any such occupation shall not substantially alter or change the character of the premises or give an appearance that the premises are being used for other than residential occupancy. Physical features or arrangements not customary in buildings intended for residential use only are not permitted.
- (2) The parking of automobiles caused by such use shall not interfere with the public use of adjoining streets and shall not be sufficient to inconvenience the neighbors by occupying a large part of nearby curb space.
- (3) Such use shall be limited to 15% of the total floor area of the principal building or not more than 25% of the area of any one floor.
- (4) There shall be no display of any commodity or advertising on the premises, nor shall any commodity be sold from the premises.
- (5) No manufacturing of goods or storage of material shall take place on the premises.
- (6) It shall not be permissible to stock or store any type of merchandise.
- (7) The maximum permissible employment shall be one part-time (not over 30 hours per week) person, employed only in conjunction with the operation of a professional practice.
- (8) Not more than two resident occupants of the dwelling may be employed in the operation of any domestic craft.
- (9) No sign will be permitted or other indication of the nature of the accessory use.
- (10) The operation or use of machinery for other than customary household purposes shall not be permitted.
- (11) Clerical work from the home in connection with an insurance, real estate or similar business is not considered an accessory use, unless the occupant has a legally established office elsewhere which is in regular use for this business, and under no circumstances shall the address of the business be established as the home address.

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- (12) The following occupations carried on commercially, among others, shall be excluded from the classification of accessory uses:
- (a) Experimentation within a structure or on the premises by use of chemicals or other means which may be hazardous.
 - (b) Operation of a job (carpentry, plumbing, electrical or other similar business) from within a structure or from or on the premises; photographic studio.
 - (c) Repairing of automobiles or other vehicles, furniture, radios, doing carpentry or similar work and the repairing of mechanical equipment.

§ 347-13.3 Family day-care home

A family day-care home for children, provided that such home has been registered with the State of New Jersey Division of Youth and Family Services pursuant to the Family Day Care Provider Registration Act of 1987 and subject to the following regulations to assure that such accessory use will not adversely affect the residential character of the area:

- (1) Any such occupation shall not substantially alter or change the character of the premises or give an appearance that the premises are being used for other than residential occupancy. Physical features or arrangements not customary in buildings intended for residential use only are not permitted.
- (2) The parking of automobiles caused by such use shall not interfere with the public use of adjoining streets and shall not be sufficient to inconvenience the neighbors by occupying a large part of the nearby curb space.
- (3) No sign or other indication of the nature of the accessory use will be permitted.

§ 347-13.4 Boats and Trailers

- A. An automobile trailer or boat designed to be used for human habitation may be stored or parked on a permanent basis in any residence or residence and office zone, provided that such a trailer or boat is parked or stored inside a building and that in no case shall such trailer or boat be used for living quarters, storage or any other use. In the event of destruction of a residential building by fire or any other act of God, the restrictions of this section may be waived by the governing body of the Township for a period not to exceed four months.
- B. An automobile trailer, such as utility or rental cargo trailer of the type and size normally towed by passenger cars, or a similar type of vehicle for which the gross weight and the load (as determined by the New Jersey State Motor Vehicle Division for establishing a license fee) is not in excess of 2,000 pounds, or a boat not exceeding 18 feet in length, with or without its accompanying trailer, is deemed to be an accessory use and may be kept in open storage on a lot in a residence or residence and office zone, subject to the following conditions:
 - (1) Such a vehicle or boat may only be stored in the rear yard of a lot.

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- (2) The owner of the vehicle or boat must either reside as a tenant on the property or be the owner-occupant of the property on which such vehicle or boat is stored.
- (3) There must be a principal building on the lot on which any such vehicle or boat is stored.
- (4) Only one such vehicle or boat shall be permitted to be stored in the open on any lot; provided, however, a boat on its trailer shall be considered as one unit.
- (5) The trailer or boat shall not be connected to any utilities or be serviced (other than for maintenance purposes) with gas, water, electricity or sewerage (including septic tank), and under no circumstances shall either be used for living purposes, storage purposes or any other use.

§ 347-13.5 Dish antennas.

- A. Freestanding dish antennas are permitted in any zone only as an accessory use, subject to the following standards:
 - (1) No more than one dish antenna per lot shall be permitted.
 - (2) Dish antennas shall be located only in rear yards and shall comply with the minimum side and rear yard setbacks for principal structures or with setbacks equal to the height of the antenna structure, whichever is greater.
 - (3) No dish antenna structure shall exceed 11 feet as measured from the average ground elevation below the structure to the highest point of the structure, and no dish receiver shall exceed a diameter or dimension of seven feet or an area of 40 square feet.
 - (4) Dish antennas shall be screened from the view from abutting private or public properties and streets by natural evergreen landscaping. Such plantings shall be a minimum of five feet high at the time of planting and spaced to create an effective visual screen.
- B. Dish antennas mounted on principal or accessory buildings are permitted in any zone, subject to the following standards:
 - (1) No more than one dish antenna per lot shall be permitted.
 - (2) The dish antenna shall be considered part of the building upon which it is mounted and shall comply with all height, setback and other regulations applicable to the building.
 - (3) No dish receiver shall exceed a diameter of 3.3 feet or an area of 8.6 square feet.

§ 347-13.6 Parking decks

Parking decks are permitted as an accessory use in the CBD-4C, CBD-4E, and CBD-3 Central Business District zones, subject to the following conditions:

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- A. Maximum height: 40 feet.
- B. Maximum number of stories or levels: two.
- C. Parking below buildings is only permitted if it is fully screened or enclosed so as not to be visible from any public area and is accessed via a side street or parking lot, not Bloomfield Avenue or Glenridge Avenue.
- D. A parking facility accessory to one use may be used for parking accessory to other uses expressly permitted in the CBD-4C, CBD-4E and CBD-3 Zones.
- E. No parking decks shall have frontage on Bloomfield Avenue.
- F. A setback of at least 15 feet shall be provided from all property lines. Within such setback areas, vegetative plantings shall be provided to screen the deck from adjacent properties and from the public street.
- G. The facade of the parking deck facing a public street or an adjacent residential use or zone boundary shall have an architectural finish in keeping with the commercial or residential character of the surrounding area.
- H. In order to maintain the commercial streetscape, commercial uses shall be maintained at the ground level of the parking deck on a public street for a minimum depth of 20 feet. Breaks in the retail facade are permitted to allow vehicular ingress and egress to the site.

§ 347-14. Conditional Uses

§ 347-14.1 Accessory dwelling unit for relatives or caregivers.

- A. The Planning Board may grant a conditional use so as to permit within a single dwelling unit the establishment of accommodations for one additional housekeeping group, with separate kitchen and bathroom facilities, for use by the relative(s) or caregiver/care recipient of one of the owner-occupants or tenant-occupants if, after a public hearing, the Board finds and requires that an application complies with the following:
 - (1) The exception requested is for the purpose of accommodating not more than two members of a family who are relatives or caregivers/care recipients of one of the owner-occupants or tenant-occupants of the dwelling unit and who are of such an age or of such condition of health as to require special consideration.
 - (2) No rent is to be made or collected by the owner-occupants or tenant-occupants of the dwelling unit from the parent or parents accommodated by the exception and affidavits so stating shall be submitted annually by both parties at the time of application for certificate of occupancy renewal.
 - (3) The additional housekeeping accommodations are to be established in a manner consistent with the appearance of a single-family residence.
 - (4) The dwelling unit, building and premises will comply with all other laws and ordinances in all respects if the application is granted.

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- (5) The said owners will prepare and enter into a written agreement with the Township of Montclair, in form sufficient for recording in the office of the Register of Essex County, which said agreement shall be subject to the approval of the Township Counsel, whereby the said owners will agree that such use of the premises shall terminate at such time as the applicant no longer owns or occupies the said premises.
 - (6) The owner will obtain a certificate of occupancy for the conditional use and renew said occupancy certificate once a year in the month of January for the duration of the use, presenting at the time of such renewal proof in the form of an affidavit that the circumstances for which the conditional use was granted have not changed.
 - (7) The application, if granted, will not have any substantial adverse effect upon the neighborhood.
- B. The grant of such conditional use shall not become effective and a certificate of occupancy shall not be issued until such time as the owner has delivered to the Township Counsel the agreement required under Subsection A(5), duly executed, together with the funds necessary to cover the cost of the recording of said agreement with the Register of Essex County.
- C. A use permitted by this section shall be deemed abandoned when at any time any of the above requirements cease to be complied with.

§ 347-14.2 Accessory dwelling use of carriage houses.

The occupancy and continued use of carriage houses in all residential zones as one-family dwellings prior to January 23, 1978, shall be permitted to be continued. The establishment or reestablishment of carriage houses as single-family residences shall be permitted in any residential zone as a conditional use subject to the following:

- A. The carriage house is on the same property as the original principal dwelling.
- B. The property has a minimum area of 20,000 square feet and a minimum width of 150 feet.
- C. Residential use of the carriage house shall not be permitted on the first floor.
- D. The minimum habitable floor area for conversions shall be 500 square feet.
- E. The gross floor area of the carriage house shall not be expanded, except that dormers may be added to provide additional light, ventilation and access.
- F. At least four on-site parking spaces, two of which shall be enclosed, shall be available for use by occupants of the carriage house and principal dwelling.

§ 347-14.3 Houses of worship and religious institutions.

Houses of worship are permitted in separate buildings, subject to the following conditions:

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- A. The premises shall have frontage on a street having pavement width of at least 30 feet.
- B. The premises shall have a minimum lot area of 10,000 square feet.
- C. Off-street parking shall be provided in the amount of at least one space for every eight seats, or one space for each 16 feet of seating capacity if benches rather than seats are used, with adequate landscaped screening from adjoining residential properties.
- D. The proposed use will not have a substantial adverse effect on the adjoining residential properties or on the traffic circulation in the area.
- E. A church may maintain on its premises such activities affiliated with said church as are reasonably related to traditional church use, such as but not limited to worship services, religious education programs, church social activities and such similar organizations or functions, all of which are hereby expressly deemed to be accessory uses.
- F. A church may also maintain on its premises the following nonaccessory uses, provided that notice in writing is sent to the Construction Code Official within 30 days prior to commencement of such use, and further provided that they do not otherwise violate use regulations:
 - (1) Schools for teaching of the arts, such as music, dancing, sculpture, painting or similar cultural form.
 - (2) Child day-care centers in compliance with applicable local and state regulations.
 - (3) Performing arts, including theater, music and dance.
 - (4) Such other similar civic or community-oriented activities which are conducted not-for-profit, provided that they comply with applicable local and state regulations.

§ 347-14.4 Private and public schools.

- A. Private and public schools of elementary and high school grade not operated for profit, schools for children with special needs which are operated for profit and customary accessory uses are permitted as a conditional use, subject to the following conditions:
 - (1) The aggregate site area of the school, in addition to the area of the site covered by buildings, shall not be less than 250 square feet per student.
 - (2) The total area of building space used for classrooms, exclusive of auditorium, gymnasium or similar areas for assembly purposes, shall have an average of not less than 28 square feet per student.
 - (3) The property on which the school is located shall have a minimum lot size of 1.75 acres and a minimum street frontage of 300 feet.
 - (4) The lot shall have frontage on a street having a paved width of at least 35 feet.

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- (5) No building on the property shall exceed the height limitations of the zoning district.
 - (6) There shall be two separate driveways, each providing ingress and egress to the school, and the driveways shall be separated by at least 150 feet. No driveway shall open into a street or road within 200 feet of an intersection of such street or road with another street or road.
 - (7) All buildings shall have a minimum side yard setback of 50 feet, a minimum rear yard setback of 100 feet and a minimum front yard setback in compliance with the requirement of the zoning district.
 - (8) All outdoor play areas shall be set back a minimum of 50 feet from any street or property line.
 - (9) On-site parking shall be provided at the rate of one space for every full-time or full-time equivalent staff member or employee, and one space for every four students eligible to drive. Visitor parking shall be provided at the rate of two spaces per elementary and intermediate classroom.
 - (10) The maximum permitted impervious surface coverage shall be 70%.
 - (11) The sum of all areas covered by all principal and accessory buildings shall not exceed 25% of the area of the lot.
 - (12) Parking areas and driveways shall be set back at least 15 feet from property lines, with the intervening areas landscaped to provide an effective visual screen at the time of planting.
 - (13) A parking study shall be submitted pursuant to Subsection **B** below which shall conclude that the roadways and intersections leading to and from the site are capable of handling the expected traffic demands generated by the school. In assessing the capacity of such roadways and intersections to handle the expected traffic demands to be generated by the school, the traffic report shall apply "Level of Service C," as defined in the "Highway Capacity Manual" published by the Transportation Research Board, Washington, D.C.
- B. Site plan approval shall be required for all schools subject to this chapter, which approval may be granted upon review of a completed site plan, including (unless waived by the Planning Board or Board of Adjustment) a traffic study prepared by a licensed professional engineer which assesses existing traffic conditions, projected traffic volumes and distribution patterns, a landscaping plan providing for adequate screening and buffers, a parking plan with designated loading and unloading areas, and an adequate on-site play area for students under the age of 10. If the Planning Board or Board of Adjustment recommends improvements in the public right-of-way, Township Council approval of the recommendations shall be required and the cost of such improvements shall be paid by the property owner on a pro rata basis in accordance with N.J.S.A. 40:55D-42 and applicable Township ordinances.

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§ 347-14.5 Vending machines.

A. Vending machines may be installed in residential and residential-office zones only under one of the following conditions:

- (1) If located wholly within and accessible only from within a building for the sole use of residents and occupants of the building.
- (2) Upon explicit authorization by the Planning Board to provide a service but not to vend a product or an amusement, provided that the Planning Board shall find that the installation is desirable for the convenience of the community and that it meets all requirements for vending machines in commercial zones.
- (3) Within any nonconforming commercial or industrial building, provided that they meet all requirements for vending machines in commercial zones.

B. Vending machines may be installed in commercial zones, including the NCD-3, CBD-4C, CBD-4E, CBD-3 and CI-3 Zones, under the following conditions:

- (1). Within a building, provided that all times when an attendant is not present said building shall be lighted from within in such manner that from the nearest street there is a clear and uninterrupted view of the entire interior portion thereof which is open and accessible to the public.
- (2) Other than within a building, only provided that the following requirements are met:
 - (a) All parts of the installation, including any booth or housing, shall be so located that no operation, maintenance or servicing will take place on or from any public street or municipal parking lot or plaza; provided, however, that the Township Engineer may waive this requirement in any case in which he or she finds that the location is such that no interference will be caused to either street or pedestrian traffic.
 - (b) No part of the installation is closer to the sidewalk or street than the average distance therefrom of buildings or structures on the same side of the street within 200 feet of such installation or construction, including buildings and structures on the property affected.
 - (c) The approach to the machine is paved and unobstructed and occupies the entire area from the front of the installation to any street, parking lot or other public place from which the installation has access. If the front of an installation does not face a street, parking lot or other public place, there shall be an unobstructed space not less than 25 feet in depth on the same lot between the front face of the installation and the nearest property line, building or structure which is opposite the face of the installation, which open space shall extend without interruption from the point of such installation most remote from the street, parking lot or other public place from which access is had to said installation to said street, parking lot or other public place.

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- (d) The height of the machine or booth in which it is installed is not in excess of 10 feet and there are end walls and a back wall extending the full height of the machine and a complete roof.
- (e) The height of the machine is substantially the same as the height of every other vending machine in any group of machines of which the installation is or will be a part, and the front face of the machine forms a generally continuous surface with the fronts of any such other machines.
- (f) Adequate lighting is mounted in the lower surface of any overhanging shelter and all lighting is so arranged that the source of illumination is not visible beyond 10 feet from the installation at a height greater than seven feet from the ground.
- (g) Adequate lighting is provided between the installation and the street, parking lot or other public place from which public access is had to such installation.

§ 347-14.6 Motor vehicle rentals.

- A. The Planning Board may grant a conditional use so as to permit the rental of automobiles, vans and trailers, hereinafter referred to as "rental units," on the premises of a motor vehicle service station if, after a public hearing, the Board finds that the following conditions are met:
 - (1) The area of the lot of the motor vehicle service station is no less than 10,000 square feet.
 - (2) The area proposed for outdoor parking and storage of rental units will not exceed 10% of the lot not covered by buildings and other structures or include any area restricted to another use.
 - (3) The parking area or areas for rental units will be located on the lot in a way that will not create dangerous impediments to traffic visibility or result in interference with normal traffic flow onto, within or from the lot.
 - (4) Rental units shall not be parked in any portion of the lot set aside for required off-street parking.
 - (5) Parking or storage space for rental units shall be on a hard-surface area marked by clearly visible boundaries, and rental units parked or stored outdoors shall be within such boundaries except when being serviced.
 - (6) The application, if granted, shall not have any substantial adverse effect upon the neighborhood.
- B. For the purpose of this chapter, rental units shall be limited to:
 - (1) Utility trailers of the type and size normally towed by passenger cars, or similar type of vehicle for which the gross weight and the load (as determined by the New

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Jersey State Motor Vehicle Division for establishment of a license fee is not in excess of 2,000 pounds.

- (2) Automotive passenger vehicles.
- (3) Vehicles normally referred to as a "van" or "pickup," the rated maximum gross vehicle weight of which does not exceed 8,000 pounds.

§ 347-14.7 Telecommunications.

A. Purpose.

- (1) Advances in wireless telecommunications technology have resulted in a new generation of telecommunication services. These new services transmit electromagnetic waves of such a frequency and power that will likely require additional antenna locations. These antennas may be located on buildings, water towers and other similar structures. This requires that the Township of Montclair regulate these wireless communication system facilities in a different manner than conventional television and radio transmission towers which are able to transmit their signals at much greater distances.
- (2) The intent of this section is to comply with all applicable regulations of the Federal Telecommunications Act of 1996 and to provide regulation for the establishment and or expansion of wireless telecommunication services within the Township of Montclair while protecting neighborhoods and minimizing the adverse visual and operational effects of wireless telecommunications facilities through careful design, siting and screening. More specifically, this regulation has been developed in order to:
 - (a) Encourage the utilization of existing structures, such as tall buildings, bell towers and municipal structures, to mount and install wireless telecommunications antennae and equipment.
 - (b) Minimize the location of facilities in visually sensitive areas.
 - (c) Encourage creative design measures to camouflage facilities.
 - (d) Protect historic and residential areas from potential adverse impacts of communication equipment.

B. Location preferences.

- (1) The locations for siting the equipment involved in receiving or transmitting electromagnetic waves associated with wireless telecommunication services are listed in Subsection **C(1)(a)** through **(c)** below, in order of preference:
 - (a) Municipal structures.
 - (b) Buildings in the C1, C2 and NC Zones.

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- (c) Bell towers, institutional facilities and structures which exceed 60 feet in all residential and office/residential zones.
- (2) Exemptions. Equipment used for the following purposes is hereby specifically exempted from the requirements of this section. However, all other applicable sections do apply:
 - (a) Citizen band operation.
 - (b) Amateur operation.
 - (c) Public safety operations, including but not limited to communications for the federal, county, state or municipal government.
- (3) Application process.
 - (a) Municipal structures. The installation and operation of wireless telecommunications antennas and equipment mounted on municipal structures shall only require administrative review from the Planning Department. Approval shall be given subject to the following conditions:
 - [1] The applicant shall provide a report prepared by a qualified and licensed professional engineer indicating the existing structure or building's structural integrity to accept the antenna and equipment and the proposed method of affixing the antenna to the structure. Complete details of all fixtures and couplings and the precise points of attachment shall be indicated.
 - [2] All wireless telecommunications equipment shall be painted or otherwise colored to minimize the equipment's visible impact.
 - [3] All accompanying equipment buildings or boxes shall be screened from view in the public right-of-way.
 - [4] All appropriate building permits are received.
 - [5] All appropriate lease and sublease agreements have been received and signed by the Township Manager or Mayor.
- (4) CBD, CI and NC Zones. The installation and operation of wireless telecommunications antennas and equipment shall be a conditional use in the , CBD, CI and NC Zones subject to the following conditions:
 - (a) Documentary evidence shall be presented regarding the need for an additional wireless telecommunications antennas in the Township of Montclair. This information shall identify the telecommunications network layout and coverage areas to demonstrate such need within the Township.
 - (b) All wireless telecommunications equipment shall be painted or otherwise colored to minimize the equipment's visible impact.

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- (c) The height of the antenna shall not exceed the top of the parapet wall, penthouse or chimney to which it is attached.
 - (d) All accompanying equipment buildings or boxes shall be screened from the public view and shall not exceed the maximum height for a principal building in the zone.
- (5) RO, R1, R2, RM-2, RM-3, ORM-2 and ORM-3 Zones. The installation and operation of wireless telecommunications antennas and equipment shall be a conditional use in the RO, R1, R2, RM-2, RM-3, ORM-2 and ORM-3 Zones, subject to the following conditions:
- (a) The building or structure which the wireless telecommunications antenna and equipment is mounted on measures in height a minimum of 60 feet, such as a bell tower, apartment building or institutional facilities.
 - (b) Documentary evidence, from a licensed engineer, shall be presented regarding the need for additional antennas in the Township of Montclair. This information shall identify the telecommunications network layout and coverage areas to demonstrate such need within the Township.
 - (c) All wireless telecommunications equipment shall be painted or otherwise colored or camouflaged to minimize the equipment's visible impact.
 - (d) The height of the antenna shall not exceed the top of the parapet wall, penthouse or chimney to which it is attached.
 - (e) No changes shall be made to the height of such structure or significantly alter its appearance.
 - (f) No panel antenna shall exceed 72 inches in height and 24 inches in width.
 - (g) No dish antenna shall exceed three feet in diameter.
 - (h) All accompanying equipment buildings or boxes shall be screened from the public view and shall not exceed the maximum height for a principal building in the zone.
- C. Inspection, abandonment and penalties.
- (1) Every year after approval, the applicant shall provide a report prepared by a qualified and licensed professional engineer indicating the safety and structural integrity of the installed telecommunications equipment and structure which they are mounted on.
 - (2) Wireless telecommunication equipment not in use for 12 consecutive months shall be removed by the building owner. This removal shall occur within 90 days of the end of such twelve-month period. Upon removal the site shall be restored to its previous appearance and where appropriate revegetated to blend with the surrounding area.

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- (3) A copy of the relevant portions of a signed lease which requires the applicant to remove the wireless telecommunications antenna and equipment and associated facilities upon cessation of operations at the site shall be submitted at the time of the building permit application. A copy of relevant portions of any lease renewals shall be provided to the Township Planning Department thereafter.
- (4) In the event that wireless telecommunications antennas and equipment are not removed within the abandonment time frame specified above, the wireless telecommunications antennas and equipment may be removed by the Township and the costs of removal assessed against the property in addition to other penalties proscribed by the chapter for violations of the provision of this article.

§ 347-14.8 Museums.

Museums, subject to the following conditions:

- (1) Minimum lot size of one acre.
- (2) Minimum off-street parking for assembly areas:
 - (a) With fixed seating: one space per three seats.
 - (b) With no fixed seating: one space per 20 square feet net floor area.
- (3) Parking areas and driveways shall be set back at least 10 feet from property lines, with the intervening areas landscaped with evergreens to form an effective visual screen at the time of planting.
- (4) Parking areas shall not be lit except during the time of use of assembly facilities.
- (5) The property shall front on a street having a pavement width of at least 38 feet.

§ 347-14.9. Non-profit institutional uses, except hospitals.

Charitable institutions except hospitals, subject to the following conditions:

- A. The use will not have a substantial adverse effect on the adjacent residential properties.
- B. The traffic generated by the use will not have a substantial adverse effect on the traffic pattern in the area.
- C. Off-street parking shall be provided for at least the staff members of the institution, with adequate landscaped screening from adjoining residential properties.

§ 347-14.10 Conversion of existing one-family dwellings to two dwellings.

- A. Conversion of existing one-family dwellings to provide two dwelling units for the use of two families, provided that:

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- (1) The size and arrangement of the dwelling units is adequate under the United States Department of Housing and Urban Development Minimum Property Standards, Volume 1 (1973), Chapter 4.]
 - (2) Adequate arrangements are made for off-street parking and driveways so as not to create a substantial adverse effect on the residential character of the site or adjoining properties.
 - (3) The lot frontage is at least 50 feet and the lot size is at least 5,000 square feet.
 - (4) Access to all dwelling units within a converted building shall be provided by a common entrance situated in the wall of the building facing the street on which the lot has frontage.
- B. An existing principal residential building may be converted to provide more than two dwelling units for use by more than two families, provided that the entire building when so converted shall comply with all requirements of the Building Code of the Township of Montclair which are applicable to newly constructed multifamily dwellings; and provided, further, that:
- (1) The floor area of each dwelling unit, measured from the inside of the building walls and exclusive of stairs, basements, utility rooms and porches, shall be not less than 800 square feet.
 - (2) The principal building on a lot shall occupy not more than 1/4 of the ground area of the lot.
 - (3) The ground coverage of the building, exclusive of open porches, garages or any other area not within the area occupied by normal living quarters, shall be not less than 1,250 square feet; the area of the lot on which the building is erected shall not be less than 15,000 square feet within 150 feet of the front street line; and the density shall not be greater than 24 units per acre.
 - (5) Fire escapes or stairway leading to the second or any higher floor shall be completely enclosed within the building walls.
 - (6) The interior design and arrangement of the dwelling units shall be consistent with United States Department of Housing and Urban Development Minimum Property Standards, Volume 2 (1973), Chapter 4.
 - (7) Access to all dwelling units within a converted building shall be provided by a common entrance situated in the wall of the building facing the street on which the lot has frontage.

§ 347-14.11 Boarding and rooming houses.

Boarding and rooming houses, provided that:

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- A. Adequate space and facilities are provided for the proposed uses in accordance with the United States Department of Housing and Urban Development Minimum Property Standards, Volume 2 (1973), Chapter 4.
- B. Adequate off-street parking space is provided for the use of projected occupants of the building as demonstrated by the applicant. Any off-street parking facilities proposed shall be suitably arranged and provided with landscaped screening so as not to substantially affect the residential character of the adjoining properties.
- C. Minimum lot size and frontage shall be subject to individual determination by the Planning Board, but in no case shall the lot frontage be less than 60 feet or the lot size less than 6,000 square feet.

§ 347-14.12 Boarding homes for sheltered care

Boarding homes for sheltered care, subject to the following:

- A. The building and use shall comply with all regulations of Article VI, §§ 153-31 through 153-33 of the Code of the Township of Montclair.
- B. Adequate off-street parking is available for the staff and for a reasonable number of visitors, suitably arranged and provided with landscaped screening so as not to substantially affect the residential character of the adjoining properties.
- C. Minimum lot size and frontage shall be subject to individual determination by the Planning Board, but in no case shall the lot frontage be less than 60 feet or the lot size less than 6,000 square feet.

§ 347-14.13 Nursing homes

Nursing homes, subject to the following conditions:

- A. The lot area shall be not less than 20,000 square feet.
- B. Adequate off-street parking shall be provided as required under § 347-19, suitably arranged and provided with landscaped screening so as not to substantially affect the character of adjoining properties.
- C. The entire sides and rear of the property, where deemed necessary by the Board, shall be screened from adjoining residential uses.
- D. Where it is proposed to convert a structure originally designed and built for another use, the structure must be adaptable to the proposed use, with consideration to public health and safety.
- E. The Board shall determine the appropriateness of the location of the use in regard to the nature and intensity of the use, nearness of the building to adjoining lots and residential uses, access to the lot from the street or streets and the need for and probable economic viability of the proposed use.

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- F. The use, if granted, will not substantially injure or detract from the principal use of the adjacent properties or be a substantial detriment to the character of the neighborhood.
- G. Minimum lot size and frontage shall be subject to individual determination by the Planning Board, but in no case shall the lot frontage be less than 60 feet or the lot size less than 6,000 square feet.

§ 347-14.14 Assisted- living facilities

Assisted-living facilities, subject to the following conditions:

- A. Maximum density. 32 units per acre, except that the density may be increased to 55 units per acre in the CBD zones.
- B. Off-street parking shall be provided pursuant to § 347-19 of this chapter.
- C. Site plan approval shall be required.
- D. Maximum height.
 - (1) Three stories or 35 feet in residential and office districts.
 - (2) Four stories or 45 feet in the CBD and CI-3 districts.
- E. Setbacks.
 - (1) In residential and office districts the setback-to-height ratio for the front and rear yards shall be no less than one to one and the minimum side yard setback shall be equal to 1/2 the building height.
 - (2) In commercial districts, the minimum front yard setback shall be zero feet. The minimum side yard setback shall be zero feet. The minimum rear yard setback shall be 10 feet.
- F. The applicant shall provide evidence of a license issued by the New Jersey State Department of Health pursuant to N.J.A.C. 8:36-1 through 8:36-16.
- G. The maximum impervious surface coverage shall be 70%.
- H. The maximum building coverage shall be 20%.
- I. Minimum lot size and frontage shall be subject to individual determination by the Planning Board, but in no case shall the lot frontage be less than 60 feet or the lot size less than 6,000 square feet.
- J. If located in the CBD-3 and CBD-4C, the assisted-living facility shall not occupy the first floor.

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§ 347-14.15 Garden centers and building supply establishments

Garden centers and building supply establishments, subject to the following conditions:

- A. Such uses shall be permitted in the CBD-4E Central Business District Zone only.
- B. Sufficient space shall be provided on the site for loading operations.
- C. Loading areas and outdoor storage areas shall be set back at least 25 feet from a residential zone boundary or an existing residential use, and separated from such areas by a buffer strip at least 15 feet in width with a screening at least six feet high comprised of a berm, fence or evergreen vegetation or a combination thereof.
- D. The facade of any building devoted to such uses which faces the street shall have the appearance of a commercial or residential building.

§ 347-14.16 Fast-food restaurants, bars and taverns

Fast-food restaurants, bars and taverns, subject to the following conditions:

- A. No fast-food restaurant or bar or tavern shall be located closer than 750 feet to property occupied by another such establishment in the CBD-4C, CBD-4E, CBD-3 Zone.
- B. Minimum on-site parking of one space per two seats or one space per (50) square feet of gross floor area, whichever is greater, shall be provided.
- C. Consumption of food and drink outdoors or in the accessory parking lot shall be prohibited.
- D. A buffer strip of at least (15) feet in width shall be established adjacent to any residential or office uses and to any residential zone boundary. The buffer strip shall be appropriately landscaped with evergreens supplemented by fencing to shield adjacent properties.

§ 347-14.17 Educational and quasi-educational uses, educational play centers and fitness centers

Educational or quasi-educational establishments such as business, vocational or technical schools; educational play centers; and fitness centers are permitted on any floor above the first floor. If located on the first floor, it is only permitted if the use does not occupy space that fronts on a public street.

§ 347-14.18 Cemeteries

Cemeteries, subject to the following conditions:

- A. Minimum lot size: 10 acres.
- B. Accessory uses include those uses customarily incidental to cemeteries such as mausoleums, storage vaults, chapels and columbaria. Crematoria are prohibited.

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C. Building requirements:

- (1) Maximum height: 25 feet.
- (2) Minimum setback from property line: 50 feet.

§ 347-14.19 Mixed-use buildings (residential and office)

Residential use mixed with business offices and professional offices, subject to the following conditions:

- A. Building facades and front yard areas shall have a residential appearance.
- B. Residential uses shall not be permitted on the first floor, and all regular and emergency accessways to residential uses shall be enclosed within the exterior walls of the building.
- C. Off-street parking shall be equal to that required for either the residential or the nonresidential use, whichever is greater, as specified in § 347-19 of this chapter.

§ 347-15 Temporary uses and structures.

§ 347-15.1 Christmas trees.

The Zoning Officer may issue a zoning permit to any business or nonprofit organization for the sale of Christmas trees and/or wreaths under the following conditions:

- A. The location of such sale shall occur in a commercial zone and shall be limited to six weeks, including any time necessary to set up the sales area.
- B. The business or nonprofit organization shall provide the Zoning Officer with a sketch indicating the location on the property where the sale is to be conducted and must show any other ancillary outdoor activity on the property that will be held in conjunction with the sale.
- C. In the event electricity or some other power source is needed in conjunction with the sale, the Zoning Officer shall be informed of this fact, and the nonprofit organization must apply to the Construction Code Official for an appropriate permit prior to the installation of an electrical supply or other power source.
- D. The Zoning Officer is empowered to impose any reasonable conditions on the issuance of the permit that are consistent with protecting the public health, safety and welfare, including but not limited to restricting the location, duration of the sale, ingress and egress to the premises, traffic patterns and flow on the property.

§ 347-15.2 Vestibules and storm enclosures.

The Zoning Officer may issue a zoning permit for the temporary installation of vestibules and storm enclosures within the public right-of-way under the following conditions:

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- A. Vestibules and storm enclosures shall not be erected for a period of time exceeding six months in any one year.
- B. Vestibules and storm enclosures shall not encroach more than three feet nor more than 1/4 the width of the sidewalk beyond the street lot line to maintain a four-foot pedestrian passageway unobstructed by trees, light poles, trash receptacles, parking meter posts, planters and similar structures.
- C. Temporary entrance awnings shall be erected with a minimum clearance of seven feet to the lowest portion of the hood or awning where supported on removable steel or other approved noncombustible support.
- D. Vestibules and storm enclosures are only permitted to cover the public entrance doors for eating and drinking establishments.
- E. Applicants are solely responsible to design doors and vestibules that comply with American with Disabilities Act and Uniform Construction Code regulations.
- F. No permit shall be issued unless the applicant has posted in advance a certificate of insurance listing the Township as an additional insured.

§ 347-16 Prohibited Uses

Any use not permitted in the ordinance is not allowed. The following uses are specifically prohibited

- A. Heliports and helistops.
- B. Drive-in or drive-through restaurants.
- C. Adult entertainment.
- D. Tattoo parlors, including body piercing establishments.
- E. New and use automobile sales, automobile rentals, motor vehicle service stations, repair establishments and automobile washing establishments.
- F. Manufacturing, research and development, wholesale trade or warehouse establishments and bus and truck depots.
- G. Storage establishments, including mini-storage warehouses.
- H. Pawn shops.
- I. Check-cashing shops.
- J. The retail or wholesale sale of weapons or firearms, as the same are defined in N.J.S.A. 2C:39-1.
- K. Drive-through or drive-in banks.

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L. Head shops.

M. Group homes, as defined in § 347-2, are prohibited in all single-family residential zone districts.

§ 347-17 Nonconforming lots, uses and structures

- A. Continuation of use. Any lawful nonconforming use or structure existing at the time of the passage of this chapter may be continued upon the lot or in the structure so occupied, and any such structure may be restored or repaired in the event of partial destruction thereof. The nonconforming use of a conforming or a nonconforming structure shall not be expanded, increased or enlarged. A nonconforming structure designed, arranged or devoted to a nonconforming use shall not be structurally enlarged unless the structure is changed to a conforming structure, and provided that the nonconforming use thereof is either expanded, increased or enlarged. A nonconforming structure which complies with the use requirements of this chapter and is nonconforming because of height, area or yard regulations may be enlarged, provided that the height, area or yard regulations are not further violated.
- B. Change of use. A nonconforming use in existence at the time of the passage of this chapter shall not be permitted to be changed to any use other than a conforming use.
- C. Abandonment of use. In the event that there is a cessation of operation of any nonconforming use for a period of 12 consecutive calendar months for any reason other than a national emergency or act of God, the same shall be deemed to be an abandonment of such nonconforming use. Any subsequent exercise of such abandoned nonconforming use shall be deemed a violation of the terms of this chapter
- D. Existing building permits. Nothing in this chapter shall require any change in plans, construction or designated use of a structure for which a building permit has been lawfully heretofore issued when construction has been diligently prosecuted within six months of the date of issuance of such permits.
- E. Reconstruction of nonconforming use. A building permit for the reconstruction of any nonconforming use must be applied for within 12 months from the time of partial destruction. Nothing in this chapter shall prevent the restoration of a structure declared unsafe by any governmental authority.
- F. Changes in regulations. The forgoing provisions of this article shall also apply to building structures, land or uses which hereafter become nonconforming due to any reclassification of zone districts under this chapter or any subsequent change in the regulations of this chapter
- G. Violations of prior regulations. Nothing in this chapter shall be interpreted as authorization for or approval of the continuance of the use of a structure or premises in violation of zoning regulations in effect at the time of the effective date of this chapter.

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§ 347-18 Fences and Walls.

§ 347-18.1 Fences

- A. In all zones, except the R-O, R-O(a) and CI-3 Zones:
- (1) On interior lots, fences or walls other than retaining walls shall not exceed 4 1/2 feet in height when built in front of the extreme rear corner(s) of the principal building and shall not exceed seven feet in height when built on the remainder of the lot.
 - (2) On corner lots, fences or walls other than retaining walls shall not exceed 4 1/2 feet in height when built between the street line upon which the principal building fronts and the extreme rear corner(s) of the principal building or between the side street line and the setback of the principal building. On the remainder of the lot, fences or walls shall not exceed seven feet in height.
- B. In the R-O and R-O(a) Zones:
- (1) On interior lots, open fences (defined as having 25% or less solid areas or voids of dimension not less than two inches) shall not exceed 4 1/2 feet in height, and solid walls, other than retaining walls, shall not exceed three feet in height when built in front of the extreme rear corner(s) of the principal building. Stockade and other solid fences are not permitted in this area. On the remainder of the lot, fences or walls shall not exceed seven feet in height.
 - (2) On corner lots, open fences (defined as having 25% or less solid areas or voids of dimension not less than two inches) shall not exceed 4 1/2 feet in height and solid walls other than retaining walls shall not exceed three feet in height when built between the street line upon which the principal building fronts and the extreme rear corner(s) of the building or between the side street line and the setback of the principal building. Stockade and other solid fences are not permitted in this area. On the remainder of the lot, fences or walls shall not exceed seven feet in height.
- C. In the CI-3 Zone, fences or walls other than retaining walls shall not exceed seven feet in height.
- D. Open fences (defined as having 25% or less solid areas, or voids of dimension not less than two inches) not exceeding six feet in height may be erected on the property of any church, school, cemetery or public playground.
- E. On corner lots no fence or wall shall exceed 2.5 feet in height when built in a triangular area, the two sides of which are formed by twenty-five-foot lengths of street lines intersecting at an angle or, if the corner is rounded, by the extension of the street lines to form such an angle.
- F. All fences shall be situated on a lot in such a manner that the finished side of the fence shall face adjacent properties or the street.

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- G. Partition fences or walls topped with barbed wire or similar hazardous elements shall not be permitted unless their erection is consented to in writing by the adjacent land owner.
- H. Fences enclosing tennis courts in side or rear yards may exceed seven feet in height but shall not be higher than 10 feet. Such fences shall not be closer than 20 feet to property lines, except that a minimum fence setback of 10 feet shall be permitted if a hedge or row of dense shrubs at least four feet high at the time of planting is maintained between the fence and the respective property line.

§ 347-18.2 Retaining walls.

- A. Retaining walls may abut property lines without any required setback.
- B. On interior lots, retaining walls shall not exceed 4.5 feet in height when built in front of the extreme rear corner(s) of the principal building and shall not exceed seven feet in height when built on the remainder of the lot.
- C. On corner lots, retaining walls shall not exceed 4.5 feet in height when built between the street line upon which the principal building fronts and the extreme rear corner(s) of the principal building or between the side street line and the setback of the principal building. On the remainder of the lot, retaining walls shall not exceed seven feet in height.
- D. On corner lots no retaining wall shall exceed 2.5 feet in height when built in a triangular area, the two sides of which are formed by twenty-five-foot lengths of street lines intersecting at an angle or, if the corner is rounded, by the extension of the street lines to form such an angle.
- E. In the event that a guard rail, fence or wall other than a retaining wall is provided at the top of the retaining wall, the wall height shall be measured to the top of the guard rail, fence or wall on top of the retaining wall.
- F. When the overall height of the retaining wall and guard rail, fence or wall on top of the retaining wall exceeds the maximum permitted height, the guard rail, fence or wall other than the retaining wall must be set back from the top of the retaining wall by one foot for every foot of height of the guard rail, fence or wall on top of the retaining wall.
- G. Terraced retaining walls involving more than one section of wall above or below each other shall be construed as one wall unless the base of the upper wall is separated from the face of the lower wall by at least four feet, measured horizontally.
- H. In the event that a retaining wall is permitted by variance to exceed the maximum permitted height, the Board granting the variance may require an appropriate guard rail, fence or wall in order to protect persons from falling over the edge of the retaining wall.
- I. Every retaining wall over four feet in height must be designed by a licensed professional engineer.

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§ 347-19 Off-street parking requirements.

§ 347-19.1 Minimum Required Number of Spaces.

Off-street parking shall be required for all new buildings, additions to buildings and conversions to a greater residential density or conversions to other uses which require more off-street parking in accordance with the following schedule. In the , CBD-4C, CBD-4E and CBD-3 Zones, additions of less than 15% of the existing building's total square footage which do not reduce the number of off-street parking spaces that serve the property, and conversions to more intensive uses, have a one-time exemption from the off-street parking requirement.

| Use | Minimum Number of Spaces |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Amusement centers | 1 per 50 square feet of gross floor area |
| Assisted living facility | 1 parking space for every 3 beds, plus 1 parking space for each staff person on the maximum shift |
| Automobile service or repair station | 6 off-street parking spaces for the first lift, wheel alignment pit or similar work area and an additional 3 spaces for each additional work area; for service stations also dispensing fuels, 1 additional space for every 2 pumps |
| Automotive sales | 1 per 200 square feet of indoor sales, plus 1 per 1,000 square feet of outdoor sales area |
| Ballet or dance studios or martial arts schools | 1 per 100 square feet of gross floor area |
| Banks | 1 per 200 square feet of gross floor area |
| Bars and taverns | 1 per 2 seats |
| Billiard or pool halls | 2 per table |
| Bowling alleys | 4 per lane |
| Club | 1 for each 100 square feet of floor area available to members and guests |
| Commercial recreation centers | 1 per 200 square feet of gross floor area |
| Drive-through banks | 1 per 250 square feet of gross floor area |
| Educational play centers | 1 per 200 square feet of gross floor area |

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| Use | Minimum Number of Spaces |
|---------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Fast-food restaurants | 1 per 2 seats |
| Funeral home | 1 each per 10 square feet in main chapel or parlor |
| Furniture store | 1 per 500 square feet of gross floor area |
| General or business or municipal or governmental office | 1 per 250 square feet of gross floor area |
| Hotel, motel or rooming house | 1 per guest room, except that this requirement may be reduced by the Planning Board where occupancy is totally or partially restricted to elderly or other persons without automobiles |
| Houses of worship | 1 per 8 seats or each 16 feet of seating capacity if benches rather than seats are used |
| Medical offices | 1 per 150 square feet of gross floor area |
| Multifamily dwelling, other than townhouses | New Jersey Residential Site Improvement Standards (R.S.I.S.) apply; provided, however, that, with the exception of multifamily dwellings created through conversions, not less than 1/3 of all such parking must be within a garage building and/or within the principal building or buildings |
| Nursing home | 1 per every 3 beds, plus 1 per every 3 employees in the maximum work shift |
| One-family house | New Jersey Residential Site Improvement Standards (R.S.I.S.) apply; however, not more than 4 spaces |
| Professional offices | 1 per 250 square feet of gross floor area |
| Restaurants and eating and drinking establishments | 1 per 3 seats, plus 1 per 2 seats in lounge or bar areas |
| Retail trade, including bakeries | 1 per 200 square feet of gross floor area |

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| Use | Minimum Number of Spaces |
|--------------------------------------------|--------------------------------------------------------------------|
| Senior citizen housing | 1/2 parking space per dwelling unit |
| Service retail, including travel agencies | 1 per 200 square feet of gross floor area |
| Sports or health clubs or gyms | 1 per 200 square feet of gross floor area |
| Storage establishment | 1 per 1,000 square feet of gross floor area |
| Theaters, including movie theaters | 1 per 4 seats |
| Townhouses | New Jersey Residential Site Improvement Standards (R.S.I.S.) apply |
| Two-family house | New Jersey Residential Site Improvement Standards (R.S.I.S.) apply |
| Vehicle rental business | 1 per rental vehicle on site |
| Vocational, technical or business school | 1 per 100 square feet of gross floor area |
| Warehousing, wholesaling and manufacturing | 1 per 750 square feet of gross floor area |
| Uses not listed above | According to that category which most nearly approximates that use |
| More than 1 use on the premises | The sum of the component requirements |

§ 347-19.2 Design of parking spaces and access.

- A. Required garages and parking areas and spaces shall be paved with a hard surface paving and shall be accessible from similarly paved areas (herein called "aisles") which must be connected directly or by means of a similarly paved driveway to a public street. Any driveway used as an aisle must satisfy the aisle width requirements. All such paving shall be drained and properly maintained. For single- and two-family dwellings, gravel may be used in lieu of hard-surface paving for parking areas and driveways or aisles.
- B. Each required parking space for one- and two-family dwellings shall consist of a rectangular area having dimensions no less than nine feet by 19 feet and a gradient of not over 6%. Dimensions for other uses shall be as provided in § 347-66 of the Code of the Township of Montclair.
- C. Driveways shall have a minimum width of 10 feet and a maximum gradient of 10% within 20 feet of the property line.

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§ 347-19.3 Residential zones

- A. No off-street parking area, whether or not within a garage, shall be located between the main building and the curb of the street on which the building fronts; provided, however, that a driveway leading to a garage which is in, beside or behind the main building shall be permissible.
- B. Off-street parking for not more than four vehicles is permitted as an accessory use for single-family detached dwellings.
- C. No private driveway or walk giving access to a residential use in a less restricted zone shall be permitted over land in a more restricted zone.

§ 347-19.4 Nonresidential zones

- A. No parking area or driveways shall be located within three feet of the building, unless located within or under the building
- B. The minimum setback for parking areas and driveways from the property lines shall be four feet, except at driveway entrances.
- C. No parking shall be permitted in front yards.

§ 347-19.5 Off-street loading.

- A. Off-street loading space shall be provided for all nonresidential uses, except that for office buildings and other situations where off-street loading would not be practical, loading at the curb may be permitted.
- B. Loading areas shall be located at the rear of all nonresidential buildings. Exceptions may be granted for existing buildings where no such loading or unloading is provided for or for new buildings where rear access from public streets is not available.
- C. Where off-street loading presently exists, subsequent development shall continue to require off-street loading.

§ 347-19.7 Parking area and driveway setbacks.

All off-street parking areas shall be set back a minimum distance of four feet from property lines, with the intervening space appropriately landscaped. All driveways shall be set back a minimum distance of one foot from property lines.

§ 347-20 Signs

§ 347-21 General regulations.

§ 347-21.1 Calculation of sign dimensions, area, height and setback.

For purposes of administering this article, sign dimensions and area shall be calculated as set forth below:

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- A. The dimensions of a sign shall be construed to include the sign message and any background to such message. Excluded from the foregoing calculation shall be any base, frame, minor decorative elements or similar structures, provided such features are used only for supporting the sign and are not used as a sign background or for attracting attention.
- B. The terms "area" or "display area" as used in this article shall be construed to include the sign message and any background to such message. The area of signs shall be calculated as follows:
 - (1) In cases where a sign has a clearly defined border or edge, the area shall be calculated as the plane surface within such border or edge.
 - (2) In cases where a sign does not have a clearly defined border or edge, the area shall be calculated by multiplying the greatest vertical dimension of the sign by the greatest horizontal dimension of the sign.
 - (3) In cases other than set forth in Subsection **B(1)** or **(2)** above, the area shall be calculated by the Zoning Officer, who shall determine the area based upon the visual effect of the sign.
 - (4) If a sign contains two sides as permitted herein, only one side shall be used in the calculation of sign area.
- C. The term "height" as used in this article refers to the distance between the highest elevation of any part of the sign structure or message and normal grade at the base of said sign, whereas the term "vertical dimension" refers to the distance between the highest and lowest elevations of a portion of the sign, such as the sign background, sign panel, sign letters, numbers and symbols, all as indicated in the respective provisions.
- D. The setback of a sign shall be measured to the nearest part of the sign, including any base, frame, or decorative elements.

§ 347-21.2 Freestanding signs.

Where permitted by this article, freestanding signs shall be subject to the following regulations, in addition to any other applicable requirements:

- A. No freestanding sign shall be located or designed so as to interfere with adequate sight distance at street intersections, driveway entrances and exits at the street, or at the intersection of internal driveways and access aisles.
- B. Freestanding signs shall be located so as to not block the view of other freestanding signs on the subject property or on other properties in the vicinity. The Board shall make this determination as part of the required site plan review for the freestanding sign.
- C. No freestanding sign shall contain more than two display faces. If a sign has two display faces, the angle of intersection of the two faces shall not exceed 30° and the design of each face shall be identical.

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§ 347-21.3 Wall signs.

Where permitted by this article, signs attached to walls shall be subject to the following regulations, in addition to any other applicable requirements:

- A. Wall signs installed at a height of seven feet or more shall not project more than eight inches from the building wall to which it is affixed. Wall signs installed at a height of below seven feet shall not project more than two inches from the building wall to which it is affixed.
- B. No wall sign shall be placed or oriented with the display face perpendicular to the wall to which it is affixed; signs shall be placed flat against the wall.
- C. Wall signs shall not project above the top or beyond the ends of the wall surface upon which they are placed, nor shall wall signs be placed on a parapet or similar architectural device such that the sign would project above the elevation of the roof behind such parapet or other device. No sign shall be placed on the lower slope of a mansard roof.
- D. Signs attached to the same building must be of similar shape, size, color and height.
- E. Signs shall be attached in a manner that minimizes damage to facades, such as installing attachments at grout or mortar lines.
- F. Signs located within the confines of a building or structure shall be subject to the requirements of this article in the same manner as exterior wall signs if both of the following conditions exist:
 - (1) The signs are located so as to be visible from outside the building through a window or door; and
 - (2) The signs are located within 12 feet of said window or door.

§ 347-21.4 Sign illumination.

All permitted exterior signs may be illuminated only by an external light source, unless otherwise provided herein. The following requirements shall apply:

- A. Internally illuminated signs of any kind, whether freestanding or wall-mounted, shall be prohibited unless specifically permitted herein. The foregoing shall not be construed to prohibit "halo" signs utilizing a hidden light source which illuminates only the wall or other background to the sign message but not the face of the sign message.
- B. The light source of illuminated signs shall be shielded so that the light source shall not be visible.
- C. No illuminated sign shall be of such a color or located in such a manner as to be confused with or to diminish or detract in any way from the effectiveness of any traffic signal or similar official safety or warning device.

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- D. No sign illumination or other illumination shall be used or designed for use as an attraction device in itself, but shall be used and designed for use solely to illuminate the sign to which it is accessory. The foregoing shall be construed to prohibit light bulbs, singly or in combination, used as an attraction device; strobe lights; black (i.e., ultraviolet) lights; string lights; flashing or moving lights of any kind; and similar uses of illumination as attraction devices.

§ 347-21.5 Signs for schools and houses of worship.

Signs for schools and houses of worship are as follows:

- A. Identification signs, provided that such signs shall identify such entity by name or initials only, and provided further that:
 - (1) Only one such sign shall be permitted on each street frontage of the premises.
 - (2) No such sign shall exceed 12 square feet in area.
 - (3) Such sign, unless affixed to the principal building, shall be set back from the property line a distance of not less than 10 feet and shall not be higher than six feet from the ground at its highest point.
- B. Signs announcing programs or activities, provided that:
 - (1) Only one sign shall be permitted.
 - (2) No such sign shall exceed 12 square feet in area.
 - (3) Such sign, unless affixed to the principal building, shall be set back from the property line a distance of not less than 10 feet and shall not be higher than six feet from the ground at its highest point.

§ 347-21.6 Signs for motor vehicle service stations.

Signs for motor vehicle service stations are as follows:

- A. Wall-mounted business signs, subject to the regulations contained in § 347-24.1 of this chapter. If a retail building is located on the site, a wall-mounted business sign shall also be permitted identifying that use, subject to the same regulations.
- B. Canopy structures over pump islands shall have a maximum sign area equal to 30% of the permitted sign text for the wall-mounted business sign identifying the service station.
- C. Window glass signs, subject to the regulations contained in § 347-24.2 of this chapter.
- D. "Price," "Full Service" and "Diesel" signs shall be permitted on the dispensing pumps or canopy structure supports only. "Air" and "Water" signs mounted on the building or a freestanding pole no higher than four feet shall be permitted.

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- E. A single, nonilluminated credit card sign not exceeding four square feet in size shall be permitted on or near the pump.
- F. One wall-mounted sign advertising rental vehicles shall be permitted having a maximum sign area of eight square feet.
- G. Pole or pylon business signs shall not be permitted.

§ 347-21.7 Flags.

Flags of the United States, New Jersey, the Township of Montclair, foreign nations, other flags adopted or sanctioned by an elective legislative body of competent jurisdiction and flags flown in conjunction with the flag of the United States are permitted in all districts pursuant to the following:

- A. Such flag does not exceed 20 square feet in area and is not flown from a pole in excess of 40 feet in height.
- B. Not more than three flags may be flown from any one pole.
- C. The statutory requirements associated with flags and generally accepted standards of flag display etiquette shall be observed.

§ 347-22 Prohibited signs.

All signs not specifically listed as permitted signs are prohibited. Prohibited signs include but are not limited to the following:

- A. Advertising signs.
- B. Flashing or moving signs, including time-and-temperature signs.
- C. Internally illuminated signs.
- D. Neon framing, paper or fabric framing, tubing and bare-bulb illumination. This does not include neon wall-mounted signs containing the name of the business and/or the business logo.
- E. Roof signs.
- F. Pennants and banners, except as provided under Montclair Code § 347-24.6A.
- G. Any sign in the public right-of-way, except as provided under §§ 277-1 and 347-24.4 of the Code of the Township of Montclair.
- H. Any sign using exposed light-emitting diodes (LEDs), other than price signs associated with gasoline service stations.
- I. Signs affixed to trees, fences or utility poles without approval from the Township Council.

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§ 347-23 Signs permitted in all zones.

The following signs shall be permitted in all zones:

§ 347-23.1 Historic marker signs.

- A. Historic markers shall be post-mounted or applied to solid walls. It is preferred that historic markers be pole-mounted where front yard area is adequate.
- B. Historic markers shall not be mounted lower than four feet above grade or higher than six feet above grade.
- C. Wall-mounted historic markers shall project no more than two inches from the facade.
- D. Historic markers shall be limited to two square feet in area.
- E. Historic markers shall not be erected on any wall of a building unless such wall fronts on and is immediately adjacent to a public street, public parking lot or parking lot servicing the building on which it is placed.
- F. Historic markers shall not be illuminated.
- G. Historic markers shall be of a permanent material, e.g., bronze, aluminum, or steel.
- H. Materials and design of historic marker signs shall conform to applicable local, county, state, and federal regulations and standards concerning historical markers as may be required.
- I. Materials and design of historic marker signs shall complement the building's architecture and shall not cover or intrude upon any specific architectural feature of the building.
- J. Historic marker sign attachments shall not damage historic architectural materials.
- K. One historic marker sign shall be permitted per property.

§ 347-23.2 Mandatory signs for capital projects.

- A. The owner of any property on which a government-sponsored or government-funded project is under construction shall, during construction of the project, post and maintain on the property a sign which complies with the following requirements:
 - (1) The sign shall have dimensions of six feet by eight feet, with a height of eight feet above grade.
 - (2) The sign shall be located in the front yard of the property and shall be set back a minimum of 10 feet and a maximum of 25 feet from property lines.
 - (3) The sign design and location shall be depicted on plans submitted in support of applications for construction permits.

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- (4) The sign shall be erected no later than the start of construction.
- (5) The sign shall contain the title of the project, the name and telephone number of the project sponsor, the total cost of the project, the name of the governmental or public entity or agency sponsoring or funding any part of the project, the architect's name and telephone number, the general contractor's name and telephone number, and the estimated project completion date.

B. This section shall only apply to government-sponsored or government-funded capital projects in excess of \$100,000.

§ 347-23.3 Temporary signs.

Temporary signs are permitted as follows:

- A. Signs announcing that the premises on which the signs are located is available for sale or rent, provided that:
 - (1) Only one sign shall be permitted for each street frontage of the premises, except that, if under condominium or cooperative ownership, one sign is permitted for each realtor.
 - (2) Such sign, unless affixed to a principal building, shall be set back from the front property line a distance of not less than 10 feet and shall not be higher than six feet from the ground at its highest point.
 - (3) No artificial illumination shall be used.
 - (4) No such sign shall exceed four square feet in area.
 - (5) Such sign shall be displayed only for as long as such premises is in fact available for sale or rental. "Sold," "Too Late," "Under Contract" or similarly worded signs shall not be permitted.
 - (6) In addition to "For Sale" signs and subject to the same number, height, setback and size restrictions, "Open House" signs shall be permitted during the time period of the open house.
- B. Signs identifying architects, builders or contractors on premises on which a principal or accessory building is being constructed, altered, repaired, refurbished or demolished, provided that:
 - (1) No such sign shall be displayed on any one premises for a period exceeding the time required for such construction, alteration, repair, refurbishing or demolition or one year, whichever is less.
 - (2) No such sign shall exceed six square feet in area.

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- (3) Such sign, unless affixed to a principal building, shall be set back from the property line a distance of not less than 10 feet and shall not be higher than six feet from the ground at its highest point.
 - (4) No artificial illumination shall be used.
- C. Signs identifying a real estate development involving the construction of single-family dwellings in a subdivision, a multifamily development of more than four units or a nonresidential building, provided that:
- (1) Only one sign shall be permitted on each street frontage of the premises.
 - (2) No such sign shall exceed 24 square feet in area.
 - (3) Such sign, unless affixed to a principal building, shall be set back from the property line a distance of not less than 10 feet and shall have a height of not more than six feet.
 - (4) No artificial illumination shall be used.
 - (5) Such sign shall be displayed only for such period of time as there are any homes, apartments, nonresidential space or lots remaining unsold or unrented but such period of time shall in no event exceed two years from the start of construction.
- D. Signs erected by a governmental agency or by a public utility or pursuant to statute for the purpose of warning the public of an existing danger or a danger associated with a structure or a use in the area.
- E. Political signs in conformity with the following regulations:
- (1) Such signs shall be affixed to a principal building on the property or set back at least 10 feet from all property lines and shall not be higher than six feet from the ground at its highest point.
 - (2) Political signs shall not exceed four square feet in area.
 - (3) No political sign shall be erected or displayed on public property, including public rights-of-way and the area extending from the street line or nub to a public sidewalk.
 - (4) Political signs shall not be artificially illuminated.

§ 347-23.4 Other signs.

Other signs are permitted as follows:

- A. Directional signs at driveway entrances and within a parking area to regulate traffic flow within the boundaries of a lot, provided that such signs shall not exceed three square feet in area and three feet in height.

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- B. Identification signs for apartments, condominium and cooperative buildings, charitable institutions and nursing homes, provided that:
- (1) Only one such sign shall be permitted for each street frontage of such premises.
 - (2) No such sign shall exceed six square feet in area.
 - (3) Such sign, unless affixed to a principal building, shall be set back from the property line a distance of not less than 10 feet and shall not be higher than six feet from the ground at its highest point.

§ 347-24 Signs permitted in nonresidential zone districts.

The following signs are permitted in nonresidential zone districts:

§ 347-24.1 Wall-mounted business signs.

- A. Wall-mounted business signs are permitted, provided that:
- (1) Such signs meet the general requirements set forth in § 347-21.3.
 - (2) Such signs shall not extend beyond the portion of the building occupied by the referenced business.
 - (3) Such signs shall be mounted flat on the building facade facing a street or municipal parking lot. The painting of a sign directly on a building shall not be permitted.
 - (4) The aggregate sign area for a first-floor business on any one store/office front shall not exceed one square foot for each foot of width of the respective store/office front.
 - (5) Such sign shall not exceed 24 inches in height. The portion of a wall sign containing logos and similar graphics shall not exceed 30 inches in height.
 - (6) Such sign shall be placed within the building sign location band and shall not extend beyond the boundaries of the sign location band. If the building does not have a sign location band, then the top of the sign shall not exceed the height of the ground floor, or 12 feet, whichever is greater.
 - (7) Sign materials and design shall complement the building's architecture and shall not cover or intrude upon any specific architectural feature of the building. Multitenant buildings shall have complementary wall signage.
 - (8) Only one wall-mounted sign shall be permitted per business unless the business has two frontages on a public street, public parking lot or parking lot servicing the building on which it is placed, in which case a sign is permitted on each frontage.
 - (9) A wall sign must not be erected on any wall of a building unless such wall fronts on and is immediately adjacent to a public street, public parking lot or parking lot servicing the building on which it is placed.

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- B. Wall-mounted plaque signs shall be permitted where a typical sign band does not exist, provided that:
- (1) Wall-mounted plaque signs shall be applied to solid walls. Such signs shall not be mounted lower than four feet above grade or higher than seven feet above grade.
 - (2) Wall-mounted plaque signs shall project no more than two inches from the facade.
 - (3) Wall-mounted plaque signs shall be limited to four square feet in area.
 - (4) Wall-mounted plaque signs shall not be erected on any wall of a building unless such wall fronts on and is immediately adjacent to a public street, public parking lot or parking lot servicing the building on which it is placed. One sign shall be permitted per business.
 - (5) Materials and design of wall-mounted plaque signs shall complement the building's architecture and shall not cover or intrude upon any specific architectural feature of the building.
 - (6) Wall-mounted plaque signs attachments shall not damage architectural materials.
 - (7) One wall-mounted plaque sign shall be permitted per business.
- C. Wall-mounted business directory signs, provided that:
- (1) Only one sign shall be permitted for each principal building entrance.
 - (2) The maximum sign area shall be six square feet.
 - (3) All listings shall be of a relatively uniform size and design.

§ 347-24.2 Window signs.

Window-glass signs are permitted, provided that:

- A. Such signs shall not extend beyond the portion of the building occupied by the referenced business.
- B. Such signs shall be placed only in windows facing a street or municipal parking lot.
- C. The maximum permitted sign area shall be 20% of the area of each window.
- D. Neon signs are subject to the same requirements as window glass signs.
- E. In addition to the sign permitted in Subsection **B**, a business hours sign, painted on the glass storefront or affixed to the door and inscribed in a polygon no larger than 18 inches by 24 inches, shall be permitted.
 - (1) All windows must be transparent and may not be covered by opaque material, with the exception of the area containing the window sign.

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§ 347-24.3 Freestanding signs.

In place of wall-mounted and window-glass signs, as regulated in §§ 347-24.1 and 347-24.2 above, freestanding signs are permitted in front yard areas, provided that:

- A. The sign meets the requirements set forth in § 347-21.2.
- B. Only one such sign shall be permitted for each principal building.
- C. The principal building has a front yard setback of at least 15 feet.
- D. Such sign shall be set back at least five feet from the closest property line.
- E. The maximum sign area shall be 8 square feet, and the maximum sign height shall be 12 feet.

§ 347-24.4 Sidewalk signs.

Sidewalk signs are permitted, provided that the following requirements are met:

- A. All sidewalk signs must receive a sign permit from the Zoning Officer before installation.
- B. No more than one sidewalk sign is permitted per business.
- C. All signs shall be of an A-frame design and shall be no more than two feet wide and three feet high.
- D. The sign must be placed so that a five-foot-wide, unobstructed path shall be maintained at all times on the sidewalk.
- E. The sign must be constructed from durable materials such as wood, metal and chalkboard. Plastic and "Reader board" signs with removable slide-in letters and stenciled or spray-painted signs are not permitted.
- F. The sidewalk sign shall only be located in front of the building on which the retail establishment is located.
- G. The sidewalk sign must be taken indoors at the close of business each day.
- H. No permit shall be issued unless the applicant has posted in advance a certificate of insurance listing the Township as an additional insured.

§ 347-24.5 Other signs.

Other signs are permitted as follows:

- A. Awning and canopy signs, provided that:
 - (1) Awnings and canopies conform to Montclair Code Chapter 297, Article V.

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- (2) Sign text shall be painted on the area of the lowest 12 inches of an awning or canopy, and such text shall not be higher than six inches.
 - (3) No illumination shall be directed on the awning sign.
- B. Marquee signs, provided that:
- (1) Only one sign per principal building is permitted.
 - (2) Such sign shall be located over the principal entrance to a theater or group of theaters, and the sign area for each side shall not exceed 100 square feet.
- C. Flags, provided that:
- (1) Only one flag shall be permitted for each business.
 - (2) Such flag shall have maximum dimensions of four feet by six feet.
 - (3) Such flag shall be mounted so as not to constitute a safety hazard.
- D. Projecting signs, provided that:
- (1) One projecting sign is permitted for each retail business per facade.
 - (2) All parts of such signs shall be located at least eight feet above the road or sidewalk surface.
 - (3) Such signs shall not extend more than three feet from the building facade and may not exceed 12 square feet in area.
 - (4) No part of the sign or the installation hardware shall extend above the height of the building wall.
 - (5) Such signs do not interfere with any pedestrian, vehicular, utility, or municipal use of the public right-of-way.
 - (6) Sign materials and design shall complement the building's architecture and shall not cover or intrude upon any specific architectural feature of the building.

§ 347-24.6 Temporary signs.

Temporary signs are permitted as follows:

- A. Banner signs. Banner signs, as defined in § 347-2, shall meet the following requirements:
- (1) Prior to installing a banner sign, a signage permit must be obtained from the Montclair Township Zoning Officer.
 - (2) Banner signs may be displayed for up to 30 days.

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- (3) One thirty-day extension is allowed.
 - (4) The maximum size of the banner sign shall not exceed the maximum sign area permitted on the premises for a permanent sign.
- B. "Grand Opening" signs. A temporary sign advertising the opening of a new establishment shall meet the following requirements:
- (1) A permit must be obtained from the Montclair Township Zoning Officer prior to installing the "Grand Opening" sign.
 - (2) The signs shall be located entirely on the subject premises and shall not be connected to anything in the public right-of-way.
 - (3) The "Grand Opening" sign shall be displayed for no more than 14 days.
 - (4) The maximum size of the "Grand Opening" sign shall not exceed the maximum sign area permitted on the premises for a permanent sign.
 - (5) Large inflatable objects suspended in the air, metallic reflective glitter, search lights or beacons shall not be permitted.
 - (6) Balloons, streamers, banners and pin wheels will be allowed as part of the "Grand Opening" sign but must be removed when the "Grand Opening" sign is removed.
- C. Signs affixed to the interior of windows referencing sales and services, provided that:
- (1) Such signs shall not extend beyond the portion of the building occupied by the referenced business.
 - (2) Such signs shall be placed only in windows facing a street or municipal parking lot.
 - (3) The total sign area in any one window shall not exceed 20% of the window's area.
 - (4) Temporary signs shall be removed within 30 days of the date of placement, and the message of such signs shall not be replaced for a period of at least 30 days.

§ 347-25 Sign permit.

All signs are subject to the following general requirements:

- A. Sign permits. It shall be unlawful for any person, firm or corporation to erect, paint, alter, locate or relocate, reconstruct or change in any manner, by rewording or otherwise, any permanent sign or sign structure without first having obtained a sign permit from the Zoning Officer.
- B. Sign permit exemptions. Exemptions shall not be construed as relieving the owner of such signs from the responsibility of complying with applicable provisions of this chapter. The exemption shall apply to the requirement for a sign permit only. No sign permit shall be required for the following signs:

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- (1) Any public notice or warning required by a valid and applicable federal, state, county or local law, regulation or ordinance.
 - (2) Holiday lights and decorations with no commercial message, excluding holiday inflatable decorations.
 - (3) Traffic control signs on private property, the face of which meets the Department of Transportation standard, and which contain no commercial message of any sort.
 - (4) Flags of the United States, New Jersey, the Township of Montclair, foreign nations, other flags adopted or sanctioned by an elective legislative body of competent jurisdiction, and flags flown in conjunction with the flag of the United States.
 - (5) Signs or banners advertising public or quasi-public events that are posted with the permission of the Township Council or of any person to whom the Township Council has delegated this authority according to guidelines set by the Township Council.
 - (6) Pump-mounted fuel price informational signs, subject to the following:
 - (a) Only one fuel price informational sign shall be permitted per fuel pump.
 - (b) Fuel price informational signs shall be limited in size to an area of 216 square inches in accordance with state and federal regulations.
 - (c) Each fuel price informational sign shall be affixed directly and firmly to a fuel pump and shall be stationary.
 - (d) Nothing herein shall be construed to prohibit the advertisement of fuel prices on any other sign meeting the requirements of this section.
 - (7) United States postal regulation mailboxes.
- C. Permit procedure. No sign except those exempted by Subsection **B** above shall be placed, constructed, erected or modified unless a sign permit shall have been obtained from the Zoning Officer and, where required by the New Jersey Uniform Construction Code, a building permit shall have been obtained from the Construction Official and, if in the Historic District, been approved by the Historic Preservation Commission. Signs which are not specifically allowed by this subsection shall be prohibited.
- D. Master signage plan.
- (1) A master signage plan shall accompany:
 - (a) Any application for a sign permit; or
 - (b) Any application for development filed with the Planning Board or the Zoning Board of Adjustment which involves installation or modification of any sign.

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- (2) The master signage plan shall contain the following information for each existing and proposed sign:
 - (a) Size (i.e., length, height, area, thickness, number of faces).
 - (b) Letter style and size.
 - (c) Illumination.
 - (d) Colors (letter, background, trim), including PMS color samples.
 - (e) Construction materials, structural integrity and installation details.
 - (f) Window size (if applicable).
 - (g) Location (i.e., height above grade, distance from roofline, building width, location from sides).
- (3) The master signage plan graphically depicting the sign shall be prepared by the applicant or a sign professional. The master signage plan application shall include a sketch or photograph showing the dimensions of each facade, window and canopy of the building to which a sign is to be attached, in sufficient detail to clearly indicate the location, dimension and area of all existing and proposed permanent signs affixed to the walls, windows and canopies of the building. These dimensions shall either be shown on the sketch or photograph or on an attached table. Samples of construction materials shall be submitted.
- (4) In the case of a freestanding sign, a minor site plan shall be required as part of the master signage plan, showing the location of buildings, parking lots, driveways, landscaped areas and all other existing and proposed signs.
- (5) The applicant shall provide any additional information which may be deemed necessary to determine whether the signage plan complies with the purpose of the sign regulations.

§ 347-26 Enforcement.

- A. When installation or modification of a sign has been approved by the Planning Board or Zoning Board of Adjustment as part of a development application, the Zoning Officer shall issue a sign permit only if the proposed sign is consistent with the reviewing board's approval.
- B. Maintenance. All signs, together with all their supports, shall be of substantial and sturdy construction, shall be kept in good repair and shall be painted, repainted or cleaned as often as necessary to maintain a clean, neat, legible, safe and orderly appearance. When lighting is provided, all lighting elements shall be kept in good working order. The area surrounding freestanding signs must be kept neat and clean. The owner of the property upon which a sign is located shall be responsible for maintaining the sign and the condition of the surrounding area.

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C. Safety.

- (1) All signs shall conform to the requirements of the New Jersey Uniform Construction Code.
- (2) Applicants are solely responsible for providing proper foundations, anchorage, attachments and other structural support of signs, sign structures and awnings. Such installations are subject to Building Department review and may require the submission of signed and sealed plans and/or details and/or calculations from a professional engineer, based on such review.
- (3) Applicants whose signs, sign structures and awnings extend over/into the public right-of-way must include the Township of Montclair as an additional insured under their insurance policy and maintain such insurance for the life of the installation. A copy of the current certificate of insurance shall be provided to the Township on an annual basis.

D. Nonconforming signs. No nonconforming sign may be enlarged or altered in a way which would increase its nonconformity. Existing nonconforming permanent signs may continue to exist; however, when the sign is modified either in shape, size, illumination or structure, the sign shall be altered to conform to the provisions of this section.

E. Damaged signs. Any sign damaged, destroyed or deteriorated in any condition whatsoever shall be removed or reconstructed in accordance with the provisions in this article.

F. Abandoned signs. At the termination of any professional, commercial or industrial use of any premises, the permission to display signs associated with that use shall forthwith terminate, and all such signs shall be removed from the premises within 30 days from the date of termination of such use.

ARTICLE IV HISTORIC PRESERVATION

§ 347-30 Title.

This article shall be known by and may be referred to by the short title of the "Historic Preservation Ordinance of the Township of Montclair."

§ 347-30.1 Purpose.

The provisions of this article are intended to effect and accomplish the protection, enhancement and perpetuation of especially noteworthy examples or elements of the Township's environment in order to:

- A. Safeguard the heritage of Montclair by preserving resources within the Township which reflect elements of its cultural, social, economic and architectural history.

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- B. Encourage the continued use of historic and/or noteworthy buildings, structures, objects and sites and to facilitate their appropriate reuse.
- C. Maintain and develop an appropriate and harmonious setting for the historic and architecturally significant buildings, structures, sites and districts within the Township.
- D. Stabilize and improve property values within the Township.
- E. Foster civic pride in the history and architecture of the Township.
- F. Encourage proper maintenance of and reinvestment in buildings and structures within the Township.
- G. Regulate appropriate alteration of historic sites as well as new construction within or near historic districts to ensure compatibility with the existing built environment and the Master Plan of the Township.
- H. Discourage the unnecessary demolition or other destruction of historic resources.
- I. Further the public's knowledge of the history and development of the Township as well as its appreciation of the Township's historic sites.
- J. Enhance the visual and aesthetic character, diversity, continuity and interest in the Township and its neighborhoods.
- K. Encourage beautification and private investment in the Township.
- L. Promote the economic welfare of the Township through the preservation of its historic sites and landscapes.

§ 347-30.2 Definitions.

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

ADDITION

An extension or increase in building size, floor area or height.

ADMINISTRATIVE OFFICER

The Construction Official.

ALTERATION

Any change in the exterior architectural features of any improvement or addition.

APPLICATION

A request to the Commission made pursuant to this article for the purposes of obtaining a certificate of appropriateness or other action by the Commission hereunder specified.

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APPLICATION FOR DEVELOPMENT

The application form and all accompanying documents required by ordinance to the Planning Board or the Zoning Board of Adjustment of the Township for approval of a major or minor subdivision plat, site plan, planned development, conditional use, zoning variance or the direction of the issuance of a permit pursuant to Section 25 or 27 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-34 or 40:55D-36).

BUILDING

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

CERTIFICATE OF APPROPRIATENESS (or C/A)

That document issued by the Historic Preservation Commission required before work commences on any landmark or any building, structure, site or object located within a landmark district.

COMMISSION

The Historic Preservation Commission established pursuant to the provisions of this article.

CONSTRUCTION OFFICIAL

The officer in charge of the granting of building or construction permits in the Township.

DEMOLITION

The partial or total razing, dismantling or destruction, whether entirely or in significant part, of any building, structure, object or site. "Demolition" includes the removal of a building, structure or object from its site or the removal or destruction of the facade or surface.

DESIGNATED PROPERTY OR DISTRICT

An individual building, structure, site, object or district which has been designated as having historical, architectural, cultural, aesthetic or other significance pursuant to the provisions of this article.

DEVELOPMENT

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

DISTRICT

See "landmark district," as defined herein.

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HISTORIC

Having historical, architectural, cultural, aesthetic or other significance, as defined by the provisions of this article.

IMPROVEMENT

A building or other structure or any work constituting a man-made alteration of or addition to any site.

INTEGRITY

The authenticity of the historic identity of a building, structure, site, object or district evidenced by the survival of the physical characteristics that existed during its historic or prehistoric period.

INTERESTED PARTY

Any person whose right to use, acquire or enjoy property is affected by any action taken under this article or whose rights to use, acquire or enjoy property under this article or under any other 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 article.

INVENTORY

A list of historic properties determined to meet specified criteria of significance.

LANDMARK

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

LANDMARK DISTRICT or DISTRICT

One or more historic sites and intervening or surrounding property significantly affecting or affected by the quality and character of the historic site or sites.

MASTER PLAN

The Master Plan of the Township of Montclair, as amended from time to time, compiled pursuant to the Municipal Land Use Law.

MINOR APPLICATION

Any application for a certificate of appropriateness which:

- A. Does not involve demolition, relocation or removal of an historic landmark or a key or contributing resource in an historic district;
- B. Does not involve an addition to an historic landmark or a property in an historic district or new construction in an historic district;

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- C. Is a request for approval of fences, signs, awnings, lighting, paving or streetscape work which, in the opinion of the Minor Application Subcommittee, will not substantially affect the characteristics of the historic landmark or the historic district; or
- D. Is a request for a field change for a certificate of appropriateness which has already been issued and which meets the criteria of Subsection C above.

MUNICIPAL LAND USE LAW

The Municipal Land Use Law of the State of New Jersey, P.L. 1975, c. 291 (N.J.S.A. 40:55D-1 et seq.), as amended from time to time.

OBJECT

A material thing of functional, aesthetic, cultural, historic, scenic or scientific value that may be, by nature or design, movable, yet related to a specific setting or environment.

ORDINANCE

A legislative act of the governing body of a municipality adopted in accordance with statutory requirements as to notice, publicity and public hearing as required by law.

OWNER

Any person having a right, title or interest in any property so as to be legally entitled, upon obtaining such permits and other authorizations as may be required pursuant to law, to perform construction, alteration, removal, demolition or other work with respect to such property.

PERMIT

Any Township approval for exterior work to be performed on any landmark or on any building, structure, object or site located within a landmark district, which exterior work will be subject to public view. Said permit shall include but not be limited to a building permit, a demolition permit or a permit to move, convert, relocate or remodel or to change the use or occupancy of any landmark or any building, structure, object or site located within a landmark district. "Permit" shall also include all exterior work to be performed on fences, signs, porches, railings, steps, lighting and sidewalks and any other work subject to public view which would alter the exterior appearance of landmarks or properties located within a landmark district or their sites.

REHABILITATION

Any repair or alteration that preserves significant historical or architectural features.

RESTORATION

The historically accurate repair or replacement of architectural features.

SITE

Any real property, whether public or private, with or without improvements, which is the location of a significant event or series of events, a prehistoric or historic occupation

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or activity, or a building, structure or object or any configuration, portion or group of the foregoing which has been designated by the Commission as having historical, archaeological, cultural, scenic or architectural significance pursuant to the provisions of this article.

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.

SURVEY

The survey of buildings, structures, objects, sites and districts located within the Township of Montclair which is conducted by the Commission for the ascertainment of their historical, architectural, aesthetic, cultural or other significance pursuant to the provisions of this article.

VIEW or PUBLIC VIEW

The view by the public of a building, structure, object or site from any point on a street or walkway which is used as a public thoroughfare, either vehicular and/or pedestrian.

§ 347-31 Historic Preservation Commission.

- A. Creation. There is hereby created the Montclair Township Historic Preservation Commission, whose members shall serve without compensation. The Commission shall be comprised of seven regular members and two alternates.
- B. Regular members. At least one member shall be appointed from each of the following classes, including no fewer than a total of three members from Classes A and B:
 - (1) Class A: a person who is knowledgeable in building design and construction or architectural history and who may reside outside the Township.
 - (2) Class B: a person who has demonstrated a knowledge of or who has displayed an interest in local history and who may reside outside the Township.
 - (3) Class C: a person who is a citizen of the Township, who holds no other municipal office, position or employment, and who professes an interest in local history and/or historic preservation.
- C. Alternate members. Two alternate members shall also serve on the Commission. They must qualify as Class C members and shall be designated as "Alternate No. 1" or "Alternate No. 2" at the time of appointment. Alternate members may participate in all Commission discussions during proceedings but may not vote except in the absence or disqualification of a regular member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote. A vote shall not be delayed in order that a regular member may vote instead of an alternate member.

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§ 347-31.1 Appointment of Commission members; terms; vacancies.

- A. The Mayor shall appoint all members of the Commission and shall designate at the time of appointment the regular members by class and the alternate members as "Alternate No. 1" and "Alternate No. 2."
- B. The terms of the members first appointed shall be so determined that, to the greatest practicable extent, the expiration of the terms shall be distributed, in the case of regular members, evenly over the first four years after their appointment and, in the case of alternate members, evenly over the first two years after their appointment, provided that the initial term of no regular member shall exceed four years and that the initial term of no alternate member shall exceed two years. Thereafter, the term of a regular member shall be four years, and the term of an alternate member shall be two years.
- C. A vacancy occurring otherwise than by expiration of a term shall be filled within 60 days for the unexpired term only.
- D. The presence of four members, which may include alternate members filling vacancies of regular members, at a meeting shall constitute a quorum.
- E. A member of the Commission may, after a public hearing if he or she requests it, be removed for cause by a majority vote of the Township Council.

§ 347-31.2 Officers.

The officers of the Commission shall be as follows:

- A. The Commission shall elect a Chairperson and Vice Chairperson from its members.
- B. The Commission shall employ, designate or elect a person to serve as Secretary, who need not be a member of the Commission. The Secretary shall keep the minutes and records of all meetings and proceedings of the Commission, including voting records, attendance, resolutions, findings, determinations and decisions.

§ 347-31.3 Commission rules and organization.

The Commission shall have the authority to adopt all rules and regulations necessary to carry out its functions under the provisions of this article, including but not limited to maintenance of records and procedures, subject to the following:

- A. No Commission member shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest, as herein defined.
- B. The Commission shall establish a regular schedule of meetings at least once every month. Additional meetings may be called by the Chairperson or Vice Chairperson as required to fulfill its obligations under this article.
- C. All Commission minutes and records shall be public records.
- D. All rules and regulations adopted by the Commission shall be subject to the approval of the Township Council.

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§ 347-31.4 Appropriations to fund; employment of experts and staff.

- A. The Township Council shall make provision in its budget and appropriate funds for the expenses of the Commission. The Commission may employ, contract for and fix the compensation of experts and other staff and services as it shall deem necessary. The Commission shall obtain its legal counsel from the Municipal Attorney at the rate of compensation determined by the Township Council, unless the Council has, by appropriation, provided for separate legal counsel for the Commission. Expenditures pursuant to this subsection shall not exceed, exclusive of gifts or grants, the amount appropriated by the Township Council for the Commission's use.
- B. The Township's Planning and Construction Officials shall provide such technical assistance as the Commission shall require.

§ 347-31.5 Powers and duties of Commission.

The powers and duties of the Commission shall be as follows:

- A. To survey buildings, structures, objects, sites and districts located within the Township and to research and evaluate them for their significance in accordance with the criteria established as set forth in § 347-32 of this article.
- B. To maintain and expand, when appropriate, a comprehensive inventory of such buildings, structures, objects, sites and districts which are worthy of designation under the provisions of this article.
- C. To propose to the Township Council those buildings, structures, objects, sites and districts located within the Township which it has found to be worthy of landmark designation and hence should be subject to the provisions and of this article. Actual nomination to, a finding of eligibility for or listing on the National or State Register of Historic Places is not necessary for the provisions of this article to take effect once a property has been designated as significant by the Commission.
- D. To nominate buildings, structures, objects, sites and districts for inclusion in the National and/or the State of New Jersey Register of Historic Places.
- E. To make recommendations to the Planning Board and the Township Council in the preparation and periodic updating of the historic preservation element of the Master Plan for the Township, including but not limited to the addition or deletion of historic sites and districts identified in the Township's Master Plan.
- F. To make recommendations to the Planning Board and the Township Council on the historic preservation implications of any proposed or adopted zoning or development ordinance(s) or proposed or adopted element(s) of the Township's Master Plan.
- G. To advise and assist Township officers, employees, boards and other bodies, including those at the county, state and federal levels, on all matters which have potential impact on the historic buildings, structures, objects, sites or districts in the Township or on the physical character and ambience of any portion of the Township or region.

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- H. To approve or disapprove applications for certificates of appropriateness pursuant to the provisions of this article.
- I. To provide to the Planning Board written reports of all actions taken by the Commission pursuant to the provisions of this article and which are not governed by time requirements for notice or action herein specified.
- J. To employ, contract for and fix the compensation of such other staff and services as the Commission shall deem necessary, subject to the provisions of § 347-31.4 of this article.
- K. To draft and/or recommend to the Township Council and the Planning Board ordinances or amendments to existing ordinances that would resolve any conflicts which may exist between the design standards of this article and the building or zoning regulations of the Township.
- L. To advise the Township Council and the Planning Board on the relative merits of proposals involving the use of public funds to restore, preserve and protect historic buildings, structures, objects and sites, including the preparation of the long-range plans therefor; to secure state, federal and/or other grants or assistance in support of such projects; and to monitor such projects once underway.
- M. To increase public awareness of the value of historic, architectural and cultural preservation by developing and participating in public information programs.
- N. To cooperate with local, county, state or national historical societies, governmental bodies and organizations to maximize the contributions of the Commission in accordance with the intent and purposes of historic preservation.
- O. To make information available to residents of historic buildings or districts concerning guidelines for rehabilitation and design criteria for new construction established under this article.
- P. To seek any benefits which may be granted under the National Historic Preservation Act, as amended, or any other state or federal legislation, including but not limited to the benefits which flow to communities under the certified local government program with regard to training, grant funding and technical assistance; and, in furtherance thereof, to take any steps necessary to assist the Township of Montclair in the preparation and submission of any documents needed for certification of the Township as a certified local government under said National Historic Preservation Act.

§ 347-32 Designation of buildings, structures, objects, sites and districts as historic.

- A. Criteria for designation. The Commission shall consider as worthy of designation those buildings, structures, objects, sites and districts that have integrity of location, design, setting, materials, workmanship, feeling and association and that meet one or more of the following criteria:
 - (1) Are associated with events that have made a significant contribution to the broad patterns of our history.

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- (2) Are associated with the lives of persons significant in our past.
 - (3) Embody distinctive characteristics of a type, period or method of construction; that represent the work of a master; that possess high artistic values; or that represent a significant and distinguishable entity whose components may lack individual distinction.
 - (4) Have yielded or may be likely to yield information important to prehistory or history.
 - (5) Are otherwise of particular historic significance to the Township of Montclair by reflecting or exemplifying the broad cultural, political, economic or social history of the nation, state, region or community.
- B. Procedures for designation. Proposals to designate a property as historic pursuant to this article may be made by the Township Council, the Commission, the Planning Board or by the verified application of the owner(s) or authorized agent(s) of the individual property to be designated or, in the case of a proposed district, by the verified application of 10% of the owners of record or persons residing within the district or by verified application of any organization with a recognized interest in historic preservation, in accordance with the following procedures:
- (1) Nomination proposals. The party proposing property for designation under this section shall prepare and submit to the Commission a nomination report for each proposed property, site or district. For historic district designations, the report shall include a building-by-building inventory of all properties within the district, photographs of representative properties within the district, a property map of the district showing boundaries, and a physical description and statement of significance for the district. For individual landmark designations, the report shall include one or more photographs, the tax lot and block number of the property as designated on the Official Tax Map of the Township and a physical description and statement of significance and proposed utilization of the site.
 - (2) Notice. The Commission shall schedule a public hearing on the proposed designation of a landmark or landmark district. At least 20 days prior to the hearing, the Commission shall, by personal service or certified mail:
 - (a) Notify the owner(s) of record of a property that has been proposed for designation or of property within a district that has been proposed for designation that the property is being considered for such designation and the reasons therefor.
 - (b) Advise the owner(s) of record of the significance and consequences of such designation and of the rights of the owner(s) of record to contest such designation under the provisions of this article.
 - (c) Notify the owner(s) of record of the date, time and location of the hearing concerning the proposed designation of the property.

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- (d) Serve any notices further required under the provisions of the Municipal Land Use Law.
- (3) Public notice of hearing. Public notice of the hearing shall be given at least 20 days prior to the hearing by publication in the official newspaper of the Township. A copy of the nomination report shall also be made available for public inspection in the Municipal Clerk's office at least 20 days prior to the hearing.
- (4) Hearing. At a public hearing scheduled in accordance with this article, the Commission shall review the nomination report and accompanying documents. Interested persons shall be entitled to comment on the proposed nominations for designation. Those persons who intend to file a formal protest against a proposed designation under Subsection **B(5)** of this section must submit their protest, in writing, to the Commission in accordance with the provisions of that section of this article.
- (5) Protests. A protest against landmark designation signed by the owners of record of 30% or more of the properties within a proposed landmark district or by the owner(s) of record of a proposed landmark may be filed with the Commission 10 days prior to the scheduled hearing date of the proposed designation before the Commission. Protests must be in writing, must contain the reason(s) for the protest and must bear the verified signatures of the owner(s) joining in such a protest.
- (6) Commission report. Upon Commission review and public hearing, the Commission shall forward to the Township Council its report, which shall contain a statement of its recommendations and the reasons therefor with regard to proposed designations considered at the hearing, including a list and map of properties approved for designation.
- (7) Referral to Planning Board. The Township Council shall refer the report to the Planning Board, which in turn shall report to the Township Council as soon as possible, but within 60 days. Failure of the Planning Board to transmit its report within the sixty-day period provided herein shall relieve the Township Council of its obligations relating to the referral of such a report to the Planning Board. Township Council action on landmark or landmark district designations shall be otherwise subject to those procedures and statutes which apply to a change of a zoning designation and the adoption, revision or amendment of any development regulation.
- (8) Final designation. As soon as possible after its receipt of the report of the Planning Board or the expiration of the period allowed for Planning Board comment on designations pursuant to Subsection **B(7)** of this section, the Township Council shall act upon the proposed designation list and map and may approve, reject or modify by ordinance the designation recommendations made by the Planning Board. In the event that the Township Council votes to reject or modify any Planning Board recommendations for a proposed designation, the Council shall record in its minutes the reasons for not following such recommendation. All action taken by the Council on proposed designations shall become effective upon a favorable vote of a majority of its full authorized membership, except, in cases in which a protest has been filed in accordance with Subsection **B(5)** of this section, a

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proposed designation shall require a favorable vote of 2/3 of the members of the Council.

- (9) Public notice of designation. Notice of designation shall be made public by publication in the official newspaper of the Township and by distribution to all municipal agencies reviewing development applications and permits. A certificate or letter of designation shall be sent to the owner(s) of record.
- (10) Incorporation of designated landmarks into Township records. Upon adoption, the designation list and map shall be incorporated by reference into the Master Plan and Zoning Ordinance of the Township as required by the provisions of the Municipal Land Use Law. Designated properties shall also be noted as such on the records for those properties maintained by the offices of the Township Tax Assessor and the Municipal Clerk.
- (11) Amendments. Landmark and landmark district designations may be amended in the same manner as they were adopted in accordance with the provisions of this article.

§ 347-33 Certificates of appropriateness: actions requiring review.

- A. Actions requiring review. A certificate of appropriateness (hereinafter "C/A") issued by the Commission shall be required before a permit is issued for any of the following or, in the event that no other type of permit is required, before any work can commence on any of the activities listed below in this subsection involving any landmark or any building, structure, site or object located within a landmark district. Work associated with a development application approved by the Planning Board or Zoning Board of Adjustment is exempt from this requirement.
 - (1) Demolition or improvement.
 - (2) Relocation.
 - (3) Change in the exterior elevation or any improvement by addition, alteration or replacement.
 - (4) Any new construction of a principal or accessory structure.
 - (5) Any change in existing, or addition of new, signs or exterior lighting.
- B. Actions not requiring review. A certificate of appropriateness is not required for:
 - (1) Changes to interiors.
 - (2) Changes not visible to the public other than relocation or demolition.
 - (3) Repair or exact replacement of any existing improvement, provided that the work does not alter the exterior appearance. The following activities are permitted as repairs:
 - (a) Identical replacement of existing windows and doors.

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- (b) Repairs of existing windows and doors and the installation of storm doors and windows that do not change their design, scale or appearance.
 - (c) Maintenance and repair of existing roofing materials involving no change in the design, scale or appearance of the structure.
 - (d) Structural repairs which do not alter the exterior appearance.
 - (e) Replacement of existing clapboards, shingles or other siding with identical material.
 - (f) Maintenance and repair of existing clapboards, shingles or other siding (including masonry) involving no change in the design, scale or appearance.
 - (g) Exterior or interior painting.
- C. Emergency repairs. When a landmark or a building, structure, object or site located within a landmark district requires immediate repair to preserve its continued habitability and/or the health and safety of its occupants or others, emergency repairs may be performed in accordance with Township codes without first obtaining a certificate of appropriateness. Under such circumstances, the repairs performed shall be only such as are necessary to protect the health and safety of its occupants or others and/or to maintain habitability. A request for the Commission's review shall be made simultaneously with the onset of emergency work, and no work in addition to the emergency repairs shall be performed on the structure until an appropriate request for approval is made and approval is obtained in accordance with the procedures set forth in this article. All work done under this section shall conform to the standards for rehabilitation set forth in § 347-33.2 herein.
- D. Informal review of concept plan for proposed undertakings. At the request of applicants considering action that may require Commission review, the Commission shall grant an informal review of a concept plan for the proposed undertaking. Neither the applicant nor the Commission shall be bound by any informal review.

§ 347-33.1 Minor applications.

Minor applications, as defined in this article, may be reviewed and approved by the Minor Application Subcommittee without holding a public hearing. The Minor Application Subcommittee shall be comprised of a designated member of the Historic Preservation Commission, the Director of Planning and Community Development, and the Zoning Officer. If the Minor Application Subcommittee finds the application appropriate, the Subcommittee may act in place of the full Commission without the necessity of a public hearing and is authorized to issue a certificate of appropriateness to the Construction Official for said minor work. The Construction Official shall then authorize the applicant to proceed and issue any required permit associated therewith. If the Minor Application Subcommittee does not find the application appropriate, the application shall be scheduled for a public hearing before the full Commission.

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§ 347-33.2 Standards for review.

- A. General criteria for review. In reviewing an application for its effect on a landmark or a building, structure, object or site located within a landmark district, the following criteria shall be used by the Commission, the Planning Board, the Zoning Board of Adjustment, the Township Council and all other officials and agencies of the Township responsible for the administration of this article. The criteria set forth in this subsection relate to all projects affecting landmarks and any buildings, structures, objects and sites located within landmark districts; and with regard to such proposed projects, the following factors shall be considered:
- (1) The impact of the proposed change on the historic, architectural and/or cultural significance of the landmark or landmark district.
 - (2) The importance of the landmark or the building, structure, object or site to the nation, state, region or municipality and the extent to which its historic or architectural interest would be adversely affected to the detriment of the public interest.
 - (3) The use of any landmark or landmark district involved in the proposed change.
 - (4) The extent to which the proposed action would adversely affect the public's view from the street of a landmark or building, structure, object or site located within a landmark district.
 - (5) The impact the proposed change would have on the architectural or historic significance of the landmark or landmark district and the visual compatibility of the proposed change with adjacent buildings, structures, objects and sites in accordance with the requirements for design compatibility set forth in Subsection C of this section.
- B. Rehabilitation of existing buildings, structures, objects and sites. In reviewing any application for a certificate of appropriateness, the Commission shall make its determination as to whether any application should be approved, approved with conditions or denied on the basis of the purposes of this section, the provisions of this article and the following standards for review, which are identical to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings:
- (1) Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building, structure, object or site and its environment or to use a property for its originally intended purpose.
 - (2) The distinguishing original qualities or character of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
 - (3) All buildings, structures, objects and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.

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- (4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, object or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
 - (5) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, object or site shall be treated with sensitivity.
 - (6) Deteriorated architectural features shall be repaired rather than replaced whenever possible. In the event that replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
 - (7) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
 - (8) Every reasonable effort shall be made to protect and preserve archaeological resources affected by or adjacent to any project.
 - (9) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
 - (10) Whenever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.
- C. Design criteria; new construction. In assessing the design of any proposed addition or new construction, the Commission shall consider the following design criteria in conjunction with the standards of rehabilitation and review criteria set forth above. These design criteria shall be used to analyze the appropriateness of new construction in the form of additions and alterations to landmarks or new construction, additions or alterations to buildings, structures, objects or sites located within landmark districts.
- (1) Height. The height of the proposed structure shall be visually compatible with adjacent buildings.
 - (2) Proportion of the facade. The relationship of the width of the building to the height of the front elevation shall be visually compatible with adjacent buildings and places.
 - (3) Proportion of the openings. The relationship of the width of windows to the height of windows in a building shall be visually compatible with adjacent buildings and places.

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- (4) Rhythm of solids. The relationship of solids to voids in the facade of a building shall be visually compatible with adjacent buildings and places.
 - (5) Rhythm of spacing. The relationship of the building to the open space between it and adjoining buildings shall be visually compatible with adjacent buildings and places.
 - (6) Rhythm of entrances. The relationship of entrances and porches to the street shall be visually compatible to adjacent buildings and places.
 - (7) Relationship of materials. The relationship of materials, texture and tone of the facade and roof of a building shall be visually compatible with the predominate materials used in adjacent buildings.
 - (8) Roof. The roof shape of a building shall be visually compatible with adjacent buildings.
 - (9) Continuity of walls. Walls and open fencing shall maintain visual compatibility with adjacent buildings and places.
 - (10) Scale. The size of a building mass in relation to open spaces, window and door openings, porches and balconies shall be visually compatible with adjacent buildings and places.
 - (11) Directional expression. A building shall be visually compatible with adjacent buildings and places in its directional character, whether this be vertical, horizontal or nondirectional.
 - (12) Windows. The type of glazing and muntin used in windows and doors shall be visually compatible with adjacent buildings.
- D. Review criteria for demolition. With regard to applications to demolish a landmark or any building, structure, object or site located within a landmark district, the following matters shall be considered:
- (1) Its historical, architectural, cultural and aesthetic significance.
 - (2) Its use, its intended use and/or the use for which the building, structure, object or site was originally designed and the feasibility of the continuation of its designed use.
 - (3) Its importance to the Township and the extent to which its historical or architectural value is such that its removal will be detrimental to the landmark district and/or to the public interest.
 - (4) The extent to which it is of such old, unusual or uncommon design, craftsmanship, texture or material that it could not be reproduced or could be reproduced only with great difficulty.

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- (5) The extent to which its retention would promote business, create new positions, attract tourists, students, writers, historians, artists or artisans, encourage study and interest in American history, stimulate interest and study in architecture and design, educate citizens in American culture and heritage or make the Township a more attractive and desirable place in which to live.
 - (6) The probable impact of its removal upon the ambience of the landmark district.
 - (7) The structural soundness and integrity of the building, structure, object or site and the economic feasibility of its restoration or rehabilitation so as to allow for its reasonable use.
 - (8) The threat to the public health and safety as a result of deterioration or disrepair of the building, structure, object or site.
 - (9) The technological feasibility of structural rehabilitation.
 - (10) The interference with the charitable purposes of any nonprofit or charitable organization if demolition is not permitted.
- E. Criteria regarding relocation of historic buildings or structures. The following factors shall be considered with regard to an application to move to a new location or site any landmark or any building, structure or object located within a landmark district:
- (1) The impact of the loss of integrity suffered as a result of removal from the original and/or historic location; and, if located within a historic district, the impact of that loss of integrity upon the district as a whole.
 - (2) The relative value to the applicant of the proposed relocation contrasted to the value to the community as a whole in allowing it to remain at its original and/or historic site.
 - (3) The compatibility, nature and character of the areas adjacent to both the present site and the proposed site as they relate to the protection of historic properties and districts as regulated by this article.
 - (4) In the event that a proposed new location is in an historic district, the impact on the visual compatibility of adjacent buildings, structures, objects or sites as set forth in Subsection C(1) through (12), inclusive, of this section as herein set forth.
 - (5) The likelihood of significant damage to the physical integrity of the building, structure or object itself.

§ 347-33.3 Certificates of appropriateness; application procedures; fees.

- A. The administrative officer shall refer all applications for permits pertaining to regulated activities involving landmarks or any buildings, structures, objects and sites located within landmark districts to the Commission for a written report on the application of the Zoning Ordinance provisions concerning historic preservation to any of those aspects of the changes proposed which were not determined by approval of an application for

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development by a municipal agency pursuant to the Municipal Land Use Law. A certificate of appropriateness (hereinafter "C/A") issued by the Commission in accordance with the procedures of this article is required prior to the commencement of any activities involving landmarks or properties within landmark districts which are governed by the provisions of this article.

- B. Applications shall be made on forms available in the office of the administrative officer in the Montclair Municipal Building. Completed applications shall be delivered or mailed to the administrative officer at the Montclair Municipal Building. All such applications shall include payment of a filing fee in the amount of \$100.
- C. Upon receipt of a complete application for a certificate of appropriateness, the Commission shall schedule a hearing for the purpose of reviewing said application and shall advise the applicant(s), in writing, of the time, date and place of said hearing. For minor applications, five copies of the complete application must be submitted to the administrative officer. For all other applications, 15 copies of the complete application must be submitted to the administrative officer.
- D. A complete application for a certificate of appropriateness shall include the following items:
 - (1) All applications must include properly completed application forms which contain the following information:
 - (a) Property information, including the zone of the property and block/lot.
 - (b) Applicant and owner information.
 - (c) Application fee and escrow fee (if required), paid to the Township of Montclair.
 - (d) Applicant's verification signature and owner's authorization signature.
 - (e) Photographs showing the existing condition of the entire building facade.
 - (f) Close-up photographs showing details of the area of work.
 - (2) Signage and awning applications must also include the following:
 - (a) Photomontage with the sign or awning drawn or photo-manipulated/photoshopped in the exact location proposed (see Figure 1).

[\[Image\]](#)

Figure 1: Example of Photomontage for Signage Applications

- (b) Proposed sign material noted (i.e., wood, acrylic, PVC) or awning fabric sample and measured drawings showing the height and width dimensions of the proposed sign or awning (see Figure 2).

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- (c) Section drawing showing the side view and projection of the proposed sign or awning from the building facade and the method of installation of the sign or awning onto the storefront or sign band (see Figure 2). Note the storefront material. (For brick buildings, signs should be attached in the mortar.)

[\[Image\]](#)

Figure 2: Sample of Section Drawing Showing Proposed Signage and Method of Installation

- (d) Dimensions and size calculations of proposed signage for zoning compliance.
- (3) Lighting applications must also include the following:
- (a) Detail photographs of the area of attachment.
 - (b) Manufacturer's information/cut sheets of the type of fixture to be used.
 - (c) Photomontage of proposed lighting, showing where it attaches to the building.
 - (d) Details showing dimensions of proposed light fixtures, including the distance the lights will project from the facade, height above the street or sidewalk, any supports or framing, the location of electrical conduits, and how the light fixtures will be mounted to the exterior wall (see Figure 3).

[\[Image\]](#)

Figure 3: Sample of Lighting Details

- (4) Window applications must also include the following:
- (a) Photographs of each existing window to be altered.
 - (b) Note if the replacement proposed is of the entire window frame or sash only.
 - (c) Photo or drawing showing as-built/existing windows to be replaced, including a cross-section of existing windows as-built, showing head, jamb and sill.
 - (d) Details showing proposed windows, including a cross-section of proposed windows showing head, jamb and sill (manufacturer's cut sheets are fine if they show dimensions) (see Figure 4).

[\[Image\]](#)

Figure 4: Sample of Window Details

- (e) Documentation about the original windows, photographs or typical windows for the historic period (if available and only necessary if the existing are not historic windows).

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- (f) Conditions statement describing the type and extent of deterioration justifying the window removal.
- (5) Applications for new storefronts, facade alternations/restorations or new construction/additions must also include the following:
 - (a) Existing site plan or detailed survey drawing.
 - (b) Proposed site plan with color graphics to differentiate new from existing.
 - (c) Photographs of the existing structure, with "detail" photos of the specific facades and architectural features (doors, windows, railings, siding, roofing, paving, etc.) that are to be altered or repaired. If the proposed project is within any historic district, applicants must include photographs of adjacent structures and the existing streetscape taken from across the street.
 - (d) Existing exterior elevation drawings.
 - (e) A complete set of working drawings for the proposed project and, in the case of an addition, elevation drawings that show the proposed addition together with the existing structure; scaled construction drawings showing proposed alterations of the relevant facade(s) and architectural features. If the proposed project is located within an historic district, applicants must include a streetscape elevation and color rendering showing the new development in the context of neighboring buildings, structures, and sites. Three-dimensional models are optional.
 - (f) Photomontage, renderings, and color elevation drawings of the proposed facade(s).
 - (g) Descriptions of the materials, size, and spacing of architectural features that are to be altered or repaired, their present condition, and the reasons for their proposed alteration or repair.
 - (h) Detailed specifications, cut sheets, manufacturer's product information, and mock-up boards for all proposed exterior materials and color palettes, including dimensions, compositions, application methods, and recommended uses. Samples of the proposed materials may be required.
 - (i) Specifications, cut sheets, and manufacturer's product information for all exterior lighting proposed.
 - (j) Specifications for any proposed masonry patching, brick repointing, mortar analysis, brick replacement, and facade cleaning.
 - (k) Specifications, cut sheets, and manufacturer's product information for any proposed exterior coatings, waterproofing measures, or chemical solutions to be applied.
 - (l) Scaffolding drawings (if applicable).

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(6) Relocation of existing structures:

- (a) Photographs of the existing structure and adjacent buildings and the proposed relocation site and its adjacent buildings.
- (b) Statement of the need/purposes for the proposed relocation and any alternatives to relocation that were considered by the applicant.
- (c) Estimated damage to the structure or loss of any of its architectural elements that may result from the proposed relocation. (If any alterations are proposed to the structure after relocation, the applicant must meet the requirements of the sections above.)
- (d) Description of the relocation process and time frame, including moving the building intact, numbering and disassembling, and storage security before reassembly.
- (e) Site plan for the existing structure, as well as the site plan for the structure on the proposed relocation site.

(7) Demolition of structures:

- (a) Complete photography record of all exterior elevations, interior spaces, and important details of all existing structures and any adjacent properties.
- (b) Statement of the need/purposes for the proposed demolition.
- (c) In any instance where there is a claim of no other alternative to demolition, the applicant shall provide written documentation of good-faith attempts to sell the building at a reasonable and comparable amount or to offer it without charge to purchasers willing to move the building to another location and preserve, rehabilitate, relocate, or restore the building. A reasonable and comparable sales price shall be indicated by providing evidence such as recent appraisals, comparable values of properties similar to the building proposed to be demolished or other evidence the HPC deems acceptable.
- (d) Written and pictorial record of the building's history and architectural features for archival purposes, including, without limitation, the dates of original construction of the building or structure to be demolished; original documents, maps, drawings, and photographs; the square footage or dimensions of the building or structure to be demolished; a brief description of the materials, configuration and use of the existing building or structure; significant events and occupants associated with the history of the building or property; architectural features; and a description of the building through photographs, plans, and maps.
- (e) Archaeological study of the property before and/or during demolition if the property falls within the area demonstrated to have a medium or high probability to contain archaeological resources.

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- (f) Preservation or salvage of architectural elements and photographic documentation. The Planning Office will provide applicants with local service directories of centers.

§ 347-33.4 Commission review of applications for certificates of appropriateness.

- A. The Commission shall review applications for certificates of appropriateness at a public hearing. The applicant(s) shall be required to appear or to be represented at any meeting of the Commission at which the Commission will consider his or her (their) application for a certificate of appropriateness, regardless of the ultimate findings and report of the Commission.
- B. As soon as possible, but no later than 45 days after the administrative officer has referred the application to the Commission, the Commission shall return to the administrative officer its written report granting or denying the application, which report may be stated in resolution form. The Commission shall file said report with the administrative officer, together with the certificate of appropriateness if granted, within 10 days of the Commission's decision on the application and, on the same date, shall forward a copy of the report and the certificate of appropriateness to the applicant by personal service or by certified mail, return receipt requested.
- C. If, within the above forty-five-day period, the Commission has denied the issuance of a certificate of appropriateness required for the issuance of a permit or recommended that conditions be met prior to the issuance of a permit, the administrative officer shall deny issuance of the permit or include the conditions in the permit, as the case may be.
- D. Failure of the Commission to report within the forty-five-day period shall be deemed to constitute a report in favor of issuance of the permit and without the recommendation of conditions to the permit.
- E. Nothing herein shall prohibit an extension of time by mutual agreement of the applicant and the Commission.
- F. After a certificate of appropriateness has been issued by the Commission, the administrative officer shall, from time to time, inspect the work approved by the Commission and report to the Commission any work not in accordance with such resolution of approval and the corresponding certificate of appropriateness.
- G. A certificate of appropriateness shall be valid for a period of one year from the date of its issuance unless reasonable extensions are granted by the Commission.

§ 347-33.5 Grant or denial of certificates of appropriateness.

- A. Purposes. The purpose of this section is the furtherance of the purposes of this article by affording the Township, interested persons and historical societies or organizations the opportunity to acquire or to arrange for the preservation of landmarks or buildings, structures, objects or sites located within historic districts.
- B. Approval. Issuance of an approval of a permit shall be deemed to be final approval pursuant to this article. Such approval shall neither cause nor prevent the filing of any

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collateral application or other proceeding required by any other Township ordinance to be made prior to undertaking the action requested concerning landmarks or any buildings, structures, objects or sites located in a landmark district.

- C. Denial. Denial of a certificate of appropriateness shall be deemed to preclude the applicant from undertaking the activity applied for.
- (1) Denial in applications for demolition. In the event that the Commission disapproves an application for a permit to demolish a landmark or any building, structure, object or site located within a landmark district, the owner shall, nevertheless, as a matter of right, be entitled to raze or demolish the same, provided that all of the following requirements have been fully met:
- (a) Permit procedure compliance. The owner has applied for the necessary permit and has received notice of denial of the same from the Commission and has appealed said denial to the Zoning Board of Adjustment, which has affirmed the denial.
- (b) Notice requirements. The owner has met the following notice requirements:
- [1] Notice of the proposed demolition has been posted on the premises of the building, structure, object or site throughout the notice period, set forth herein in Subsection **C(1)(b)[2]** and **[3]** of this section, in a location that it is clearly readable from the street.
- [2] The applicant has published a notice in the official newspaper of the Township within the first 10 days of the notice period, within not less than 10 nor more than 15 days prior to the expiration of the notice, and at least once each 90 days between the above first and last notifications, if the notice period is nine months or longer.
- [3] The period of time during which notice must be given in the manner herein set forth shall be known as the "notice period." It shall commence on the 10th day following the date of the notice of denial received from the Zoning Board of Adjustment after an appeal has been decided, and such notice period shall run for a period of time of nine months.
- [4] The owner has, during the notice period and at a price reasonably related to its fair market value, made a bona fide offer to sell such building, structure, object or site and the land pertaining thereto to any person or organization, government or agency thereof or political subdivision or agency thereof which gives reasonable assurances that it is willing to preserve the building, structure, object or site and the land pertaining thereto.
- [5] The owner shall not have been a party to any bona fide contract binding upon all parties thereto for the sale of any such building, structure, object or site and the land pertaining thereto executed prior to the expiration of the notice period except a contract made in accordance with Subsection **C(1)(b)[4]** of this section.

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- (2) Alternatives to demolition. During the notice period, the Commission shall consult with the Township Council, the New Jersey Department of Environmental Protection or other similarly qualified organizations to ascertain how the Township may preserve the premises to be demolished. The Commission shall be empowered to assist the owner in developing plans to preserve the building, structure, object or site when the moving or demolition thereof would be a loss to the Township. The Commission shall be empowered to negotiate with the applicant to see if an alternative to demolition can be found and may require the applicant to prepare a financial analysis which may include any or all of the following:
 - (a) Amount paid for the property, date of purchase and the name of the party from whom purchased, including a description of the relationship, whether business and/or familial, if any, between the owner and the person from whom the property was purchased.
 - (b) Assessed value of the land and improvements thereon according to the most recent assessment.
 - (c) For depreciable properties, a pro forma financial statement prepared by an accountant or broker of record.
 - (d) All appraisals obtained by the owner in connection with his or her purchase or financing of the property or during his or her ownership of the property.
 - (e) Bona fide offers for the property for sale or rent, price asked and offers received, if any.
 - (f) Any consideration given by the owner as to profitable, adaptive uses for the property.
- (3) Change in circumstances. The Commission may, if a significant change in circumstances occurs at any time during such notice period, approve a permit for demolition, in which event the permit shall be issued within 10 days thereafter.

§ 347-33.6 Effect of grants or denials of permits; appeals.

- A. Effect. Issuance of an approval of a permit shall be deemed to be a final approval pursuant to this article. Such approval shall neither cause nor prevent the filing of any collateral application or other proceeding required by any other Township ordinance to be made prior to undertaking the action requested concerning the landmark or any building, structure, object or site located within a landmark district. The denial of a permit shall be deemed to preclude the applicant from undertaking the activity applied for.
- B. Statutory rights retained. The granting or denial of a permit may be appealed to the Board of Adjustment in the same manner as an appeal is taken pursuant to the provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-70a. Nothing herein shall be deemed to limit the right of judicial review of the Township action after an appeal is concluded by the Board of Adjustment. The appellant shall pay all costs for copies of any transcript(s) required for appeal.

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§ 347-34 Development in historic zoning districts or sites; informational copies of applications from Planning Board or Board of Adjustment.

The Planning Board and the Board of Adjustment shall refer to the Commission every application submitted to either Board for development in historic zoning districts or on historic sites designated on the Zoning or Official Map or identified in any component element of the Master Plan. The referral shall be made when the application for development is deemed complete or is scheduled for a hearing, whichever occurs sooner. Failure to refer the application as required shall not invalidate any hearing or proceeding. The Commission may provide its advice, which shall be conveyed through its delegated members or staff, who shall testify orally at the hearing and explain any written report which may have been submitted by the Commission regarding the application. The Commission shall make available to the applicant a copy of its written report concerning said application for development.

§ 347-35 Enforcement

- A. Priority. Recognizing the need for preventive maintenance to ensure the continued useful life of historic buildings, structures, objects and sites, the Township Council hereby declares that code enforcement for such designated properties is a high municipal priority.
- B. Notice of violation. In the event that any landmark or any building, structure, object or site located within a landmark district deteriorates to the point that, in the best estimate of the administrative officer, the cost of correcting the outstanding code violations equals more than 25% of the cost of replacing the entire building, structure, object or site on which the violation occurs, the administrative officer shall serve personally or by certified mail, return receipt requested, a notice on the owner of the property listing the violations, the estimate for their abatement and the replacement cost of the improvements and stating that, if the owner does not take all necessary remedial action within 60 days, or such extensions as the administrative officer shall grant for good cause, the Township of Montclair's designated official may, at the expiration of said 60 days, enter upon the property and abate such violations and cause the cost thereof to become a lien on the property.
- C. Hearing. Upon receipt of such notice, the owner may, within 20 days after such receipt, notify the administrative officer of his or her intentions to have a hearing as to the allegations and estimates set forth in the notice. Such hearing shall be conducted by the Commission and shall, so far as possible, be a formal adversary proceeding in which the administrative officer shall establish the matters alleged in the notice by a preponderance of the evidence. If a hearing is requested, the administrative officer will, within 10 days following the hearing, serve on the owner an opinion, in writing, setting forth his or her conclusions and the reasons therefor.
- D. Action without a hearing. If the owner does not request a hearing, the findings of the administrative officer set forth in the notice issued in § 347-35B shall be binding, and the administrative officer may take such necessary action as granted by the provisions of this article.

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- E. Right of abatement. If the owner does not comply with the findings of the administrative officer, the administrative officer may enter onto the premises and, by use of municipal labor or outside contractors, or both, perform such work as is necessary to abate all violations.
- F. Costs. The administrative officer shall then certify to the Township Council the cost of such work performed, plus all administrative, clerical and legal costs and overhead attributable thereto, and shall present the same to the Township Council.
- G. Lien. The Township Council may, by resolution, vote to cause the sum so certified to become a lien upon the property, payable with the next quarter's property taxes and, if not then paid, bearing interest at the same rate as delinquent taxes.

§ 347-35.1 Municipal responsibility.

It shall be the duty of all municipal officials of the Township of Montclair reviewing all permit applications involving real property or improvements thereon to determine whether such application involves any activity which should also be the subject of an application for a permit and, if it should be, to inform the Secretary of the Commission, the administrative officer and the applicant of the same.

§ 347-35.2 Rules of interpretation.

This article shall be liberally construed in order to affect the purposes set forth herein. In the event that this article conflicts with state law, state law shall take precedence.

§ 347-36 Historic Districts

Standards and requirements for the development and the review of development of properties within the Town Center Historic District, the Pine Street Historic District and the Upper Montclair Historic District shall be as specified in this Article.

§ 347-36.1 Underlying zoning district regulations to remain in full force and effect.

All properties within the Town Center Historic District, the Pine Street Historic District and the Upper Montclair Historic District shall also be subject to all underlying zoning district regulations.

§ 347-36.2 Historic districts designated.

- A. The Town Center Historic District shall be designated as an historic district and shall consist of those properties, or parts thereof, designated in Ordinance No. 02-38, Ordinance No. 03-47 and Ordinance No. 05-13.
- B. The Pine Street Historic District shall be designated as an historic district and shall consist of those properties, or parts thereof, designated in Ordinance No. 05-59.
- C. The Upper Montclair Historic Business District shall be designated as an historic district and shall consist of those properties, or parts thereof, designated in Ordinance No. 06-56.

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D. The Watchung Plaza Historic Business District shall be designated and shall consist of those properties, or parts thereof, designated in Ordinance No. O-13-73.

§ 347-37 Historic District Landmark Overlay Zone.

Standards and requirements for the development and the review of development of properties within the Individual Historic Landmark Overlay Zone shall be as specified in Article IV, Historic Preservation.

§ 347-37.1 Underlying zoning district regulations to remain in full force and effect.

All properties within the Individual Historic Landmark Overlay Zone shall also be subject to all underlying zoning district regulations.

§ 347-37.2 Historic landmarks designated.

The following properties shall be included in the Historic Landmark Overlay Zone:

| Name of Property | Location | Designated as Historic Landmark by |
|-----------------------------------|----------------------------------------------|------------------------------------|
| Charles Schultz House | 30 North Mountain Avenue, Block 1401, Lot 2 | Ord. No. O-13-28 |
| Clark House | 108 Orange Road, Block 1304, Lot 11 | Ord. No. 07-42 |
| Crawford Crews building | 210 Bloomfield Avenue, Block 3102, Lot 21 | Ord. No. 02-44 |
| Dittig-Walther House | 474 Upper Mountain Avenue, Block 802, Lot 26 | Ord. No. 07-14 |
| Georgian Inn | 37 North Mountain Avenue, Block 1507, Lot 20 | Ord. No. 08-41 |
| Goodwillie House | 17 Wayside Place, Block 1102, Lot 49 | Ord. No. 09-01 |
| Huestis House | 4 Duryea Road, Block 3602, Lot 16 | Ord. No. 06-51 |
| Israel Crane House | 110 Orange Road, Block 1304, Lot 12 | Ord. No. O-13-28 |
| James Howe House | 369 Claremont Avenue, Block 405, Lot 1.01 | Ord. No. 07-51 |
| Kohout House | 323 Claremont Avenue, Block 1507, Lot 19 | Ord. No. 08-41 |
| Lawrence Carmichael Earle House | 48 Walnut Crescent, Block 4308, Lot 34 | Ord. No. O-17-005 |
| Montclair Heights Reformed Church | 71 Mt. Hebron Road, Block 2806, Lot 1 | Ord. No. O-13-72 |
| Montclair Women's Club | 82 Union Street, Block 2108, Lot 4 | Ord. No. O-16-006 |
| Mountain Avenue Train Station | 451 Upper Mountain Avenue, | Ord. No. 07-14 |

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| Name of Property | Location | Designated as Historic Landmark by |
|--------------------------|----------------------------------------------|------------------------------------|
| | Block 1801, Lot 54 | |
| Nathaniel Crane House | 110 Orange Road, Block 1304, Lot 12 | Ord. No. O-13-28 |
| Sigler Farm House | 109 Alexander Avenue, Block 3802, Lot 20 | Ord. No. 07-11 |
| Social Services Building | 60 South Fullerton Avenue, Block 2202, Lot 6 | Ord. No. O-16-007 |
| Van-Reyper Bond House | 848 Valley Road, Block 1005, Lot 8 | Ord. No. 07-42 |
| Watchung Train Station | 580 Park Street, Block 3403, Lot 1 | Ord. No. 07-14 |
| Welsh House | 24 Upper Mountain Avenue, Block 405, Lot 1 | Ord. No. 07-14 |

§ 347-38 Reserved

§ 347-39 Reserved

ARTICLE V

INCLUSIONARY ZONING

§ 347-40 Title and Applicability.

This article shall be known and may be referred to as the "Inclusionary Zoning Ordinance of the Township of Montclair."

§ 347-40.1 Definitions.

The following definitions shall apply to the interpretation and construction of this article:

AFFORDABLE HOUSING FUND

A fund established for the receipt and management of cash-in-lieu contributions received by the Township in accordance with the provisions of this article. The affordable housing fund shall be utilized solely for the rehabilitation, construction, acquisition and maintenance of affordable housing and for the cost of administering programs consistent with the purposes of this article.

AFFORDABLE UNIT

A unit (as defined below) that is pledged to remain affordable in perpetuity to eligible households (as defined below).

COAH

The New Jersey Council on Affordable Housing.

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 or the construction of any residential building within the Township, including, without limitation, a planned unit development or approved subdivision.

ELIGIBLE HOUSEHOLD

Any household whose total income does not exceed the designated percentage of the median income for households as determined in accordance with COAH regulations and guidelines.

HOUSING DEVELOPER

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Any person who seeks a permit or approval for the construction of a development which includes one or more residential dwelling units.

§ 347-40.2 Scope.

- A. To ensure the sufficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, this article shall apply to all residential development that generates an additional growth share affordable housing obligation under COAH regulations set forth in N.J.A.C. 5:94-1 et seq. located in those zones which permit a minimum residential density of eight units per acre, specifically the RM-2, ORM-2, RM-3, ORM-3, NCD-3, CBD-4C, CBD-4E, CBD-3 and CI-3 zones, and in any other zone where a particular development yields eight units per acre.
- B. This article shall not apply to residential expansions, renovations, replacement residences or other residential development that does not result in a net increase in the number of dwelling units. Furthermore, it shall not apply to developments containing four or fewer dwelling units. All subdivision and site plan approvals of qualifying residential developments in the aforementioned zones shall be conditioned upon compliance with this article. Where a developer demolishes existing dwelling units and builds new dwelling units on the same site, this article shall apply only if the net number of dwelling units is five or more.

§ 347-40.3 Certificates of occupancy.

No certificate of occupancy will be issued for any housing unit, whether market-rate or affordable, within the development unless the following items have been completed and submitted to the Township:

- A. A description of the number of affordable units in the development, the number of bedrooms per unit, the location of all affordable units, and the projected sales prices or rents of each affordable unit.
- B. A deed restriction in a form approved by the Township Attorney executed and recorded in the Essex County Registrar's office. For ownership units, the deed restriction shall include a covenant in favor of the Township limiting the initial sale and subsequent resale of affordable units to eligible households. For rental units, the deed restriction shall include a covenant limiting the rental of affordable units to eligible households.

§ 347-40.4 Restrictions on affordable units.

No person shall sell, lease or rent an affordable unit except to eligible households.

§ 347-40.5 Developments of five or more dwelling units.

- A. Any development containing five or more dwelling units is required to include at least 20% or one in five of the total number of units within the development as affordable units.

- (1) The following criteria apply:

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- (a) At least half of the affordable units within each bedroom distribution shall be low-income units, and the remainder may be moderate-income units. If there is only one affordable unit in the development, it must be a low-income unit.
- (b) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - [1] The combined number of efficiency and one-bedroom units is no greater than 20% of the affordable units.
 - [2] At least 30% of the affordable units are two-bedroom units.
 - [3] At least 20% of the affordable units are three-bedroom units.
 - [4] The remainder may be allocated at the discretion of the developer.
- (2) For developments containing three affordable units, two shall be two-bedroom units and one shall be a three-bedroom unit. For developments containing four affordable units, two shall be two-bedroom units and two shall be three-bedroom units. For developments containing five affordable units, one shall be a one-bedroom unit, three shall be two-bedroom units, and one shall be a three-bedroom unit.
- B. When the total number of units in the development divided by five results in a fraction, the developer shall provide an additional affordable unit on site, or an affordable unit off-site in a location approved by the Montclair Housing Commission, or a cash-in-lieu financial contribution to the Affordable Housing Trust Fund as set forth in § 347-43 to fulfill the fractional obligation. For example, if the total number of units in the development is eight, there would be an obligation to provide one affordable unit on-site and the obligation to provide an additional affordable unit on-site or off-site or a cash-in-lieu payment for the fractional obligation.

§ 347-41 Design and construction of affordable units.

Affordable units provided on-site shall be reasonably dispersed throughout the development and shall be designed and constructed to resemble as nearly as possible (from the exterior) the market-rate units being constructed within the development. All affordable units shall comply with COAH rules and guidelines pertaining to the phasing, integration, low/moderate-income split, controls on affordability, bedroom distribution, affirmative marketing, heating source and administration of the affordable units, as set forth in N.J.A.C. 5:94-4.4, 5:80-26.1 and elsewhere in COAH rules.

§ 347-41.1 Completion schedule.

Affordable units shall be built in accordance with the following schedule:

| Percent of Market-Rate Units Completed | Minimum Percentage of Low/Moderate-Income Units Completed |
|----------------------------------------|-----------------------------------------------------------|
| 25% | 0% |

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| Percent of Market-Rate Units Completed | Minimum Percentage of Low/Moderate-Income Units Completed |
|----------------------------------------|-----------------------------------------------------------|
| 25% + 1 unit | 10% |
| 50% | 50% |
| 75% | 75% |
| 90% | 100% |

§ 347-41.2 Townhouse units.

The first floor of all townhouse dwelling units and other multistory dwelling units shall comply with N.J.A.C. 5:97-3.14.

§ 347-42 Provision of affordable housing off-site.

If a developer is permitted to meet its obligations under this article by providing affordable units off-site, the developer may join with others to provide the units in the same ward as the development or at a reasonably comparable location (to be determined by the Montclair Housing Commission). Off-site affordable units shall be substantially similar in size and quality to on-site affordable units that otherwise would be required under this article.

§ 347-43 Cash-in-lieu contributions to Affordable Housing Fund.

Whenever this article permits a cash-in-lieu contribution, the contribution shall be calculated based on the amount of the subsidy determined by COAH to make one housing unit affordable pursuant to COAH's third round regulations for Region 2 municipalities. For the year 2009, COAH has established the required subsidy to be \$148,683. The subsidy amount may be revised periodically by COAH. Accordingly, the cash-in-lieu contribution for 2009 shall be 1/4 of \$148,683 or \$37,170 for single-family houses and townhouses. The cash-in-lieu contribution for 2009 shall be 1/8 of \$148,683 or \$18,585 for apartments or condominium units. For example, for a seven-unit townhouse development, there would be an obligation to provide one on-site affordable unit and a fractional obligation of two requiring a cash-in-lieu contribution of \$74,340 to the Affordable Housing Trust Fund.

§ 347-44 Administration

§ 347-44.1 Right of first refusal on initial sale of affordable units.

Each developer shall adhere to the following provisions with respect to the initial offering of affordable units for sale:

- A. Township notification. The developer shall notify the Township Department of Planning and Community Development of the prospective availability of any affordable units at the time a building permit is issued for such units.
- B. Option. Upon receipt of the aforesaid notification, the Township shall have an exclusive option for 60 days to agree to purchase each affordable unit offered for sale by the developer unless waived or assigned.
- C. Waiver. If the Township fails to exercise its option to purchase or fails to negotiate and sign a purchase and sale agreement for the affordable units, or if the Township declares

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its intent not to exercise its option, the developer shall offer the units for purchase or rent to eligible households consistent with the Township's Affirmative Marketing Plan. If requested by the developer, the Township shall execute documents that may be recorded to evidence its waiver of the purchase option.

- D. Time of closing. The closing on affordable units purchased by the Township shall occur on the later of a permanent certificate of occupancy or within 60 days of the Township's exercise of its right of first refusal. If the Township fails to close on the affordable units within the time set forth herein, the developer shall offer the units for purchase or rent to eligible households consistent with the Township's Affirmative Marketing Plan.
- E. Transfer of option. The Township may assign its option under this section to any not-for-profit corporation, in which event it shall notify the developer of the name of the assignee and thereafter the assignee shall deal directly with the developer, and shall have all of the rights of the Township as provided under this section.

§ 347-44.2 Purchasers of permanently affordable units.

A purchaser of an affordable unit shall occupy the purchased unit as his or her primary residence.

§ 347-44.3 Resale restrictions applicable to affordable units.

All ownership affordable units developed under this article shall be subject to the following resale restrictions:

- A. Approved purchasers for resale of permanently affordable units. All purchasers of affordable units shall be eligible households. A seller of a permanently affordable unit must select an eligible household purchaser by a method that complies with the marketing and selection process approved by the Department of Planning and Community Development and any applicable COAH rules or guidelines.
- B. Resale price for affordable units. The resale price of any affordable unit shall be determined in accordance with N.J.A.C. 5:80-26.6 and any other applicable COAH rules or guidelines.

§ 347-44.4 Continuing requirements.

All affordable units shall be subject to the following requirements to ensure the continued affordability of affordable units provided under this article:

- A. Rent increases. Rent increases for affordable units shall be determined in accordance with N.J.A.C. 5:80-26.12 and any other applicable COAH rules or guidelines.
- B. Continuing purchase options. The Township or its designee shall have an exclusive option to purchase any affordable unit offered for resale in accordance with **§ 347-44.1**.

§ 347-44.5 Administrative regulations.

To the extent the Department of Planning and Community Development deems necessary, and to keep current and compliant with COAH regulations, rules pertaining to this article will

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be developed, maintained and enforced in order to implement the goals and objectives of this article.

§ 347-44.6 Monitoring.

- A. At the conclusion of each calendar year, the Department of Planning and Community Development will present sufficient information to the Township Council so that it can effectively review the operation of this article and determine whether any of the provisions of this article should be amended, modified or deleted.
- B. Such information should be sufficient to enable the Township Council to fairly evaluate the following:
 - (1) The effectiveness of this article in contributing to the goals and objectives sought to be advanced by the ordinance;
 - (2) Any demographic trends affecting housing affordability which indicate the need for amendments or modifications to this article; and
 - (3) The level of integration of the provisions of this article with other tools utilized by the Township as part of a comprehensive approach toward attaining the goals of this article.

§ 347-44.7 Developer's fee credit.

A developer who complies with its obligations under this article by providing the required number of affordable units on-site or off-site and pays any required cash-in-lieu contribution shall be exempt from payment of the developer's fee provided in Montclair Code § 347-85.4.

§ 347-45 Severability.

If any provision of this article is determined to be invalid by a court of competent jurisdiction, then such provisions shall be severed and the remaining provisions of this article shall continue to be valid.

§ 347-46 Reserved

§ 347-47 Reserved

§ 347-48 Reserved

§ 347-49 Reserved

ARTICLE VI. STORMWATER CONTROL

§ 347-50 Scope and purpose.

Stormwater management measures for "major development," as defined in § 347-50.1, shall be established to meet the erosion control, groundwater recharge, stormwater runoff quantity and stormwater quality standards in accordance with the Municipal Stormwater Regulation Program, established by the State of New Jersey and in this section.

- A. Policy statement. Flood control, groundwater recharge and pollutant reduction through nonstructural or low-impact techniques shall be explored before relying on structural best management practices (BMPs). Structural BMPs should be integrated with nonstructural stormwater management strategies and proper maintenance plans. Nonstructural strategies include both environmentally sensitive site design and source controls that prevent pollutants from being placed on the site or from being exposed to stormwater. Source control plans should be developed based upon physical site conditions and the origin, nature and the anticipated quantity or amount of potential pollutants. Multiple stormwater management BMPs may be necessary to achieve the established performance standards for water quality, quantity and groundwater recharge.

Note: Municipalities are encouraged to participate in the development of regional stormwater management plans and to adopt and implement ordinances for specific drainage area performance standards that address local stormwater management and environmental characteristics.

- B. Purpose. It is the purpose of this chapter to establish minimum stormwater management requirements and controls for "major development," as defined in § 347-50.1.
- C. Applicability.
- (1) This chapter shall be applicable to all site plans and subdivisions for the following major developments that require preliminary or final site plan or subdivision review:
 - (a) Nonresidential major developments; and
 - (b) Aspects of residential major developments that are not preempted by the Residential Site Improvement Standards at N.J.A.C. 5:21.
 - (2) This chapter shall also be applicable to all major developments undertaken by the Township of Montclair.
- D. Compatibility with other permit and ordinance requirements. Development approvals issued for subdivisions and site plans pursuant to this chapter are to be considered an integral part of development approvals under the subdivision and site plan review process and do not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated by any other applicable code, rule, act or ordinance. In their interpretation and application, the provisions of this chapter shall be held to be the

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minimum requirements for the promotion of the public health, safety and general welfare. This chapter is not intended to interfere with, abrogate or annul any other ordinances, rule or regulation, statute or other provision of law except that, where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule or regulation or other provision of law, the more restrictive provisions or higher standards shall control.

§ 347-50.1 Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application. The definitions below are the same as or based on the corresponding definitions in the Stormwater Management Rules at N.J.A.C. 7:8-1.2.

CAFRA PLANNING MAP

The geographic depiction of the boundaries for Coastal Planning Areas, CAFRA Centers, CAFRA Cores and CAFRA Nodes pursuant to N.J.A.C. 7:7E-5B.3.

CAFRA CENTERS, CORES OR NODES

Those areas within boundaries accepted by the Department pursuant to N.J.A.C. 7:8E-5B.

COMPACTION

The increase in soil bulk density.

CORE

A pedestrian-oriented area of commercial and civic uses serving the surrounding municipality, generally including housing and access to public transportation.

COUNTY REVIEW AGENCY

An agency designated by the County Board of Chosen Freeholders to review municipal stormwater management plans and implementing ordinance(s). The county review agency may either be:

- A. A county planning agency; or
- B. A county water resource association created under N.J.S.A 58:16A-55.5, if the ordinance or resolution delegates authority to approve, conditionally approve or disapprove municipal stormwater management plans and implementing ordinances.

DEPARTMENT

The New Jersey Department of Environmental Protection.

DESIGNATED CENTER

A state development and redevelopment plan center as designated by the State Planning Commission such as urban, regional, town, village or hamlet.

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DESIGN ENGINEER

A person professionally qualified and duly licensed in New Jersey to perform engineering services that may include, but not necessarily be limited to, development of project requirements, creation and development of project design and preparation of drawings and specifications.

DEVELOPMENT

The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure, any mining excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, by any person, for which permission is required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. In the case of development of agricultural lands, development means any activity that requires a state permit; any activity reviewed by the County Agricultural Board (CAB) and the State Agricultural Development Committee (SADC); and municipal review of any activity not exempted by the Right to Farm Act, N.J.S.A 4:1C-1 et seq.

DRAINAGE AREA

A geographic area within which stormwater, sediments or dissolved materials drain to a particular receiving water body or to a particular point along a receiving water body.

ENVIRONMENTALLY CRITICAL AREAS

An area or feature which is of significant environmental value, including but not limited to stream corridors; natural heritage priority sites; habitat of endangered or threatened species; large areas of contiguous open space or upland forest; steep slopes; and wellhead protection and groundwater recharge areas. Habitats of endangered or threatened species are identified using the Department's Landscape Project as approved by the Department's Endangered and Nongame Species Program.

EMPOWERMENT NEIGHBORHOOD

A neighborhood designated by the Urban Coordinating Council in consultation and conjunction with the New Jersey Redevelopment Authority pursuant to N.J.S.A 55:19-69.

EROSION

The detachment and movement of soil or rock fragments by water, wind, ice or gravity.

IMPERVIOUS SURFACE

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

INFILTRATION

The process by which water seeps into the soil from precipitation.

MAJOR DEVELOPMENT

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Any development that provides for ultimately disturbing one or more acres of land. "Disturbance," for the purpose of this rule, is the placement of impervious surface or exposure and/or movement of soil or bedrock or clearing, cutting or removing of vegetation.

MUNICIPALITY

Any city, borough, town, township or village.

NODE

An area designated by the State Planning Commission concentrating facilities and activities which are not organized in a compact form.

NUTRIENT

A chemical element or compound, such as nitrogen or phosphorus, which is essential to and promotes the development of organisms.

PERSON

Any individual, corporation, company, partnership, firm, association the Township of Montclair or political subdivision of this state subject to municipal jurisdiction pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

POLLUTANT

Any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, medical wastes, radioactive substance [except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)] thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, agricultural and construction waste or runoff, or other residue discharged directly or indirectly to the land, groundwaters or surface waters of the state, or to a domestic treatment works. Pollutant includes both hazardous and nonhazardous pollutants.

RECHARGE

The amount of water from precipitation that infiltrates into the ground and is not evapotranspired.

SEDIMENT

Solid material, mineral or organic, that is in suspension, is being transported or has been moved from its site of origin by air, water or gravity as a product of erosion.

SITE

The lot or lots upon which a major development is to occur or has occurred.

SOIL

All unconsolidated mineral and organic material of any origin.

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STATE DEVELOPMENT AND REDEVELOPMENT PLAN METROPOLITAN PLANNING AREA (PA1)

An area delineated on the State Plan Policy Map and adopted by the State Planning Commission that is intended to be the focus for much of the state's future redevelopment and revitalization efforts.

STATE PLAN POLICY MAP

The geographic application of the State Development and Redevelopment Plan's goals and statewide policies, and the official map of these goals and policies.

STORMWATER

Water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface or is captured by separate storm sewers or other sewage or drainage facilities or conveyed by snow removal equipment.

STORMWATER RUNOFF

Water flow on the surface of the ground or in storm sewers resulting from precipitation.

STORMWATER MANAGEMENT BASIN

An excavation or embankment and related areas designed to retain stormwater runoff. A stormwater management basin may either be normally dry (that is, a detention basin or infiltration basin), retain water in a permanent pool (a retention basin) or be planted mainly with wetland vegetation (most constructed stormwater wetlands).

STORMWATER MANAGEMENT MEASURE

Any structural or nonstructural strategy, practice, technology, process, program or other method intended to control or reduce stormwater runoff and associated pollutants, or to induce or control the infiltration or groundwater recharge of stormwater or to eliminate illicit or illegal nonstormwater discharges into stormwater conveyance.

TIDAL FLOOD HAZARD AREA

A flood hazard area, which may be influenced by stormwater runoff from inland areas, but which is primarily caused by the Atlantic Ocean.

URBAN COORDINATING COUNCIL EMPOWERMENT NEIGHBORHOOD

A neighborhood given priority access to State resources through the New Jersey Redevelopment Authority.

URBAN ENTERPRISE ZONES

A zone designated by the New Jersey Enterprise Zone Authority pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq.

URBAN REDEVELOPMENT AREA

Previously developed portions of areas:

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- A. Delineated on the State Plan Policy Map (SPPM) as the Metropolitan Planning Area (PA1), Designated Centers, Cores or Nodes;
- B. Designated as CAFRA Centers, Cores or Nodes;
- C. Designated as Urban Enterprise Zones; and
- D. Designated as Urban Coordinating Council Empowerment Neighborhoods.

WATERS OF THE STATE

The ocean and its estuaries, all springs, streams, wetlands and bodies of surface or ground water, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

WETLANDS or WETLAND

An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as "hydrophytic vegetation."

§ 347-51 General standards.

- A. Design and performance standards for stormwater management measures.
 - (1) Stormwater management measures for major development shall be development to meet the erosion control, groundwater recharge, stormwater runoff quantity and stormwater runoff quality standards in § 347-51.1. To the maximum extent practicable, these standards shall be met by incorporation nonstructural stormwater management strategies into the design. If these strategies alone are not sufficient to meet these standards, structural stormwater management measures necessary to meet these standards shall be incorporated into the design.
 - (2) The standards in this chapter apply only to new major development and are intended to minimize the impact of stormwater runoff on water quality and water quantity in receiving water bodies and maintain groundwater recharge. The standards do not apply to new major development to the extent that alternative design and performance standards are applicable under a regional stormwater management plan or water quality management plan adopted in accordance with Department rules.

Note: Alternative standards shall provide at least as much protection from stormwater-related loss of groundwater recharge, stormwater quantity and water quality impacts of major development projects as would be provided under the standards in N.J.A.C. 7:8-5.

§ 347-52 Stormwater management requirements for major development.

- A. The development shall incorporate a maintenance plan for the stormwater management measures incorporated into the design of a major development in accordance with § 347-58.

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- B. Stormwater management measures shall avoid adverse impacts of concentrated flow on habitat for threatened and endangered species as documented in the Department's Landscape Project or Natural Heritage Database established under N.J.S.A. 13:1B-15.147 through 13:1B-15.150, particularly *Helonias bullata* (swamp pink) and/or *Clemmys muhlenbergi* (bog turtle).
- C. The following linear development projects are exempt from the groundwater recharge, stormwater runoff quantity and stormwater runoff quality requirements of Subsections **F** and **G**:
- (1) The construction of an underground utility line, provided that the disturbed areas are revegetated upon completion;
 - (2) The construction of an aboveground utility line, provided that the existing conditions are maintained to the maximum extent practicable; and
 - (3) The construction of a public pedestrian access, such as a sidewalk or trail with a maximum width of 14 feet, provided that the access is made of permeable material.
- D. A waiver from strict compliance from the groundwater recharge, stormwater runoff quantity and stormwater runoff quality requirements of Subsections **F** and **G** may be obtained for the enlargement of an existing public roadway or railroad, or the construction or enlargement of a public pedestrian access, provided that the following conditions are met:
- (1) The applicant demonstrates that there is a public need for the project that cannot be accomplished by any other means;
 - (2) The applicant demonstrates through an alternatives analysis, that through the use of nonstructural and structural stormwater management strategies and measures, the option selected complies with the requirements of Subsections **F** and **G** to the maximum extent practicable;
 - (3) The applicant demonstrates that, in order to meet the requirements of Subsections **F** and **G**, existing structures currently in use, such as homes and building, would need to be condemned; and
 - (4) The applicant demonstrates that it does not own or have other rights to areas, including the potential to obtain through condemnation lands not falling under Subsection **D(3)** above within the upstream drainage area of the receiving stream, that would provide additional opportunities to mitigate the requirements of Subsections **F** and **G** that were not achievable on-site.
- E. Nonstructural stormwater management strategies.
- (1) To the maximum extent practicable, the standards in Subsections **F** and **G** shall be met by incorporating nonstructural stormwater management strategies set forth at § 347-52E into the design. The applicant shall identify the nonstructural measures incorporated into the design of the project. If the applicant contends that it is not feasible for engineering, environmental or safety reasons to incorporate any

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nonstructural stormwater management measures identified in Subsection **E(2)** below into the design of a particular project, the applicant shall identify the strategy considered and provide a basis for the contention.

- (2) Nonstructural stormwater management strategies incorporated into site design shall:
- (a) Protect areas that provide water quality benefits or areas particularly susceptible to erosion and sediment loss.
 - (b) Minimize impervious surfaces and break up or disconnect the flow of runoff over impervious surfaces.
 - (c) Maximize the protection of natural drainage features and vegetation.
 - (d) Minimize the decrease in the time of concentration from preconstruction to post construction. "Time of concentration" is defined as the time it takes for runoff to travel from the hydraulically most distant point of the watershed to the point of interest within a watershed.
 - (e) Minimize land disturbance, including clearing and grading.
 - (f) Minimize soil compaction.
 - (g) Provide low-maintenance landscaping that encourages retention and planting of native vegetation and minimizes the use of lawns, fertilizers and pesticides.
 - (h) Provide vegetated open-channel conveyance systems discharging into and through stable vegetated areas.
 - (i) Provide other source controls to prevent or minimize the use or exposure of pollutants at the site in order to prevent or minimize the release of those pollutants into stormwater runoff. Such source controls include, but are not limited to:
 - (i) Site design features that help to prevent accumulation of trash and debris in drainage systems, including features that satisfy Subsection **E(3)** below;
 - (ii) Site design features that help to prevent discharge of trash and debris from drainage systems;
 - (iii) Site design features that help to prevent and/or contain spills or other harmful accumulations of pollutants at industrial or commercial developments; and
 - (iv) When establishing vegetation after land disturbance, applying fertilizer in accordance with the requirements established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., and implementing rules.
- (3) Site design features identified under Subsection **E(2)(i)[2]** above shall comply with the following standard to control passage of solid and floatable materials through storm drain inlets. For purposes of this Subsection, "solid and floatable materials"

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means sediment, debris, trash and other floating, suspended or settleable solids. For exemptions to this standard see Subsection **E(3)(c)** below.

- (a) Design engineers shall use either of the following grates whenever they use a grate in pavement or another ground surface to collect stormwater from that surface into a storm drain or surface water body under that grate:
 - (i) 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
 - (ii) A different grate, if each individual clear space in that grate has an area of no more than seven square inches or is no greater than 0.5 inches across the smallest dimension. Examples of grates subject to this standard include grates in grate inlets, the grate portion (non-curb-opening portion) of combination inlets, grates on storm sewer manholes, ditch grates, trench grates and grates of spacer bars in slotted drains. Examples of ground surfaces include surfaces of roads (including bridges), driveways, parking areas, bikeways, plazas, sidewalks, lawns, fields, open channels and stormwater basin floors.
- (b) Whenever design engineers use a curb-opening inlet, the clear space in that curb opening (or each individual clear space, if the curb opening has two or more clear spaces) shall have an area of no more than seven square inches or be no greater than two inches across the smallest dimension.
- (c) This standard does not apply:
 - (i) Where the review agency determines 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;
 - (ii) Where flows from the water, quality design storm as specified in Subsection **G(1)** are conveyed through any device (e.g., end of pipe netting facility, manufactured treatment device or a catch basin hood) that is designed, at a minimum, to prevent delivery of all solid and floatable materials that could not pass through one of the following:
 - (a) A rectangular space four and five-eighths inches long and 1 1/2 inches wide (this option does not apply for outfall netting facilities); or
 - (b) A bar screen having a bar spacing of 0.5 inches.
 - (iii) Where flows are conveyed through a trash rack that has parallel bars with one-inch spacing between the bars, to the elevation of the water quality design storm as specified in Subsection **G(1)**; or
 - (iv) Where the New Jersey Department of Environmental Protection determines, pursuant to the New Jersey Register of Historic Places rules at N.J.A.C. 7:4-7.2(c), that action to meet this standard is an undertaking that constitutes an

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encroachment or will damage or destroy the New Jersey Register listed historic property.

- (4) Any land area used as a nonstructural stormwater management measure to meet the performance standards in Subsections **F** and **G** shall be dedicated to a government agency, subjected to a conservation restriction filed with the appropriate County Clerk's office or subject to an approved equivalent restriction that ensures that measure or an equivalent stormwater management measure approved by the reviewing agency is maintained in perpetuity.
- (5) Guidance for nonstructural stormwater management strategies is available in the New Jersey Stormwater Best Management Practices Manual. The BMP Manual may be obtained from the address identified in § **347-55** or found on the Department's website at www.njstormwater.org.

F. Erosion control, groundwater recharge and runoff quantity standards.

- (1) This subsection contains minimum design and performance standards to control erosion, encourage and control infiltration and groundwater recharge and control stormwater runoff quantity impacts of major development.
 - (a) The minimum design and performance standards for erosion control are those established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., and implementing rules.
 - (b) The minimum design and performance standards for groundwater recharge are as follows:
 - (i) The design engineer shall, using the assumptions and factors for stormwater runoff and groundwater recharge calculations at § **347-53**, either.
 - (a) Demonstrate through hydrologic and hydraulic analysis that the site and its stormwater management measures maintain 100% of the average annual preconstruction groundwater recharge volume for the site; or
 - (b) Demonstrate through hydrologic and hydraulic analysis that the increase of stormwater runoff volume from preconstruction to post construction for the two-year storm is infiltrated.
 - (ii) This groundwater recharge requirement does not apply to projects within the urban redevelopment area, or to projects subject to Subsection **F(1)(b)[3]** below.
 - (iii) The following types of stormwater shall not be recharged:
 - (a) Stormwater from areas of high pollutant loading. "High pollutant loading areas" are areas in industrial and commercial developments where solvents and/or petroleum products are loaded/unloaded, stored or applied; areas where pesticides are loaded/unloaded or stored; areas where hazardous materials are expected to be present in greater than "reportable quantities"

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as defined by the United States Environmental Protection Agency (EPA) at 40 CFR 302.4; areas where recharge would be inconsistent with Department-approved remedial action work plan or landfill closure plan; and areas with high risks for spills of toxic materials, such as gas stations and vehicle maintenance facilities; and

- (b) Industrial stormwater exposed to source material. "Source material" means any material(s) or machinery, located at an industrial facility, that is directly or indirectly related to process, manufacturing or other industrial activities, which could be a source of pollutants in any industrial stormwater discharge to groundwater. Source materials include, but are not limited to, raw materials; intermediate products; final products; waste materials; by-products; industrial machinery and fuels; and lubricants, solvents and detergents that are related to process, manufacturing or other industrial activities that are exposed to stormwater.
- (iv) The design engineer shall assess the hydraulic impact on the groundwater table and design the site so as to avoid adverse hydraulic impacts. Potential adverse hydraulic impacts include, but are not limited to, exacerbating a naturally or seasonally high-water table so as to cause surficial ponding, flooding of basements or interference with the proper operation of subsurface sewage disposal systems and other subsurface structures in the vicinity or downgradient of the groundwater recharge area.
- (c) In order to control stormwater runoff quantity impacts, the design engineer shall, using the assumptions and factors for stormwater runoff calculations at § 245-5, complete one of the following:
 - (i) Demonstrate through hydrologic and hydraulic analysis that for stormwater leaving the site, post construction runoff hydrographs for the two-, ten-, and one-hundred-year storm events do not exceed, at any point in time, the preconstruction runoff hydrographs for the same storm events;
 - (ii) Demonstrate through hydrologic and hydraulic analysis that there is no increase, as compared to the preconstruction condition, in the peak runoff rates of stormwater leaving the site for the two-, ten-, and one-hundred-year storm events and that the increased volume or change in timing of stormwater runoff will not increase flood damage at or downstream of the site. This analysis shall include the analysis of impacts of existing land uses and projected land uses assuming full development under existing zoning and land use ordinances in the drainage area;
 - (iii) Design stormwater management measures so that the post construction peak runoff rates for the two-, ten- and one-hundred-year storm events are 50%, 75% and 80%, respectively, of the preconstruction peak runoff rates. The percentages apply only to the post construction stormwater runoff that is attributable to the portion of the site on which the proposed development or project is to be constructed. The percentages shall not be applied to post construction stormwater runoff into tidal flood hazard areas if the increased

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volume of stormwater runoff will not increase flood damages below the point of discharge; or

- (iv) In tidal flood hazard areas, stormwater runoff quantity analysis in accordance with Subsection **F(1)(c)** [1], [2] and [3] above shall only be applied if the increased volume of stormwater runoff could increase flood damages below the point of discharge.

- (2) Any application for a new agricultural development that meets the definition of major development at § **347-50.1** shall be submitted to the appropriate Soil Conservation District for review and approval in accordance with the requirements of this section and any applicable Soil Conservation District guidelines for stormwater runoff quantity and erosion control. For the purposes of this subsection, "agricultural development" means land uses normally associated with the production of food, fiber and livestock for sale. Such uses do not include the development of land for the processing or sale of food and the manufacturing of agriculturally related products.

G. Stormwater runoff quality standards.

- (1) Stormwater management measures shall be designed to reduce the post construction load of total suspended solids (TSS) in stormwater runoff by 80% of the anticipated load from the developed site, expressed as an annual average. Stormwater management measures shall only be required for water quality control if an additional 1/4 acre of impervious surface is being proposed on a development site. The requirement to reduce TSS does not apply to any stormwater runoff in a discharge regulated under a numeric effluent limitation for TSS imposed under the New Jersey Pollution Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A, or in a discharge specifically exempt under a NJPDES permit from this requirement. The water quality design storm is 1.25 inches of rainfall in two hours. Water quality calculations shall take into account the distribution of rain from the water quality design storm, as reflected in Table 1. The calculation of the volume of runoff may take into account the implementation of nonstructural and structural stormwater management measures.

Table 1: Water Quality Design Storm Distribution

| Time (minutes) | Cumulative Rainfall (inches) | Time (minutes) | Cumulative Rainfall (inches) |
|-------------------|---------------------------------|-------------------|---------------------------------|
| 0 | 0.0000 | 65 | 0.8917 |
| 5 | 0.0083 | 70 | 0.9917 |
| 10 | 0.0166 | 75 | 1.0500 |
| 15 | 0.0250 | 80 | 1.0840 |
| 20 | 0.0500 | 85 | 1.1170 |

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Table 1: Water Quality Design Storm Distribution

| Time (minutes) | Cumulative Rainfall (inches) | Time (minutes) | Cumulative Rainfall (inches) |
|---------------------------|-----------------------------------------|---------------------------|-----------------------------------------|
| 25 | 0.0750 | 90 | 1.1500 |
| 30 | 0.1000 | 95 | 1.1750 |
| 35 | 0.1330 | 100 | 1.2000 |
| 40 | 0.1660 | 105 | 1.2250 |
| 45 | 0.2000 | 110 | 1.2334 |
| 50 | 0.2583 | 115 | 1.2417 |
| 55 | 0.3583 | 120 | 1.2500 |
| 60 | 0.6250 | — | — |

- (2) For purposes of TSS reduction calculations, Table 2 below presents the presumed removal rates for certain BMPs designed in accordance with the New Jersey Stormwater Best Management Practices Manual. The BMP Manual may be obtained from the address identified in § 347-55, or found on the Department's website at www.njstormwater.org. The BMP Manual and other sources of technical guidance are listed in § 347-55. TSS reduction shall be calculated based on the removal rates for the BMPs in Table 2 below. Alternative removal rates and methods of calculating removal rates may be used if the design engineer provides documentation demonstrating the capability of these alternative rates and methods to the review agency. A copy of any approved alternative rate or method of calculating the removal rate shall be provided to the Department at the following address: Division of Watershed Management, New Jersey Department of Environmental Protection, PO Box 418, Trenton, New Jersey 08625-0418.
- (3) If more than one BMP in series is necessary to achieve the required eighty-percent TSS reduction for a site, the applicant shall utilize the following formula to calculate TSS reduction:

$$R = A + B - (AXB)/100$$

Where

R = total TSS percent load removal from application of both BMPs, and

A = the TSS percent removal rate applicable to the first BMP

B = the TSS percent removal rate applicable to the second BMP

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Table 2: TSS Removal Rates for BMPs

| Best Management Practice | TSS Percent Removal Rate |
|---------------------------------|---------------------------------|
| Bioretention systems | 90 |
| Constructed stormwater wetland | 90 |
| Extended detention basin | 40 to 60 |
| Infiltration structure | 80 |
| Manufactured treatment device | See § 347-54C |
| Sand filter | 80 |
| Vegetative filter strip | 60 to 80 |
| Wet pond | 50 to 90 |

- (4) If there is more than one on-site drainage area, the eighty-percent TSS removal rate shall apply to each drainage area, unless the runoff from the subareas converge on site, in which case the removal rate can be demonstrated through a calculation using a weighted average.
- (5) Stormwater management measures shall also be designed to reduce, to the maximum extent feasible, the post construction nutrient load of the anticipated load from the developed site in stormwater runoff generated from the water quality design storm. In achieving reduction of nutrients to the maximum extent feasible, the design of the site shall include nonstructural strategies and structural measures that optimize nutrient removal while still achieving the performance standards in Subsections **F** and **G**.
- (6) Additional information and examples are contained in the New Jersey Stormwater Best Management Practices Manual, which may be obtained from the address identified in § 347-55.
- (7) In accordance with the definition of FW1 at N.J.A.C. 7:9B-1.4, stormwater management measures shall be designed to prevent any increase in stormwater runoff to waters classified as FW1.
- (8) Special water resource protection areas shall be established along all waters designated Category One at N.J.A.C. 7:9B, and perennial or intermittent streams that drain into or upstream of the Category One waters as shown on the USGS Quadrangle Maps or in the County Soil Surveys, within the associated HUC14 drainage area. These areas shall be established for the protection of water quality, aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance and exceptional fisheries significance of those established Category One waters. These areas shall be designated and protected as follows:
 - (a) The applicant shall preserve and maintain a special water resource protection area in accordance with one of the following:

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- (i) A three-hundred-foot special water resource protection area shall be provided on each side of the waterway, measured perpendicular to the waterway from the top of the bank outwards or from the center line of the waterway where the bank is not defined, consisting of existing vegetation or vegetation allowed to follow natural succession is provided.
 - (ii) Encroachment within the designated special water resource protection area under Subsection **G(8)(a)[1]** above shall only be allowed where previous development or disturbance has occurred (for example, active agricultural use, parking area or maintained lawn area). The encroachment shall only be allowed where applicant demonstrates that the functional value and overall condition of the special water resource protection area will be maintained to the maximum extent practicable. In no case shall the remaining special water resource protection area be reduced to less than 150 feet as measured perpendicular to the top of bank of the waterway or center line of the waterway where the bank is undefined. All encroachments proposed under this subsection shall be subject to review and approval by the Department.
- (b) All stormwater shall be discharged outside of and flow through the special water resource protection area and shall comply with the Standard for Off-Site Stability in the Standards for Soil Erosion and Sediment Control in New Jersey, established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq.
- (c) If stormwater discharged outside of and flowing through the special water resource protection area cannot comply with the Standard For Off-Site Stability in the Standards for Soil Erosion and Sediment Control in New Jersey, established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., then the stabilization measures in accordance with the requirements of the above standards may be placed within the special water resource protection area, provided that:
- (i) Stabilization measures shall not be placed within 150 feet of the Category One waterway;
 - (ii) Stormwater associated with discharges allowed by this section shall achieve a ninety-five-percent TSS post construction removal rate;
 - (iii) Temperature shall be addressed to ensure no impact on the receiving waterway;
 - (iv) The encroachment shall only be allowed where the applicant demonstrates that the functional value and overall condition of the special water resource protection area will be maintained to the maximum extent practicable;
 - (v) A conceptual project design meeting shall be held with the appropriate Department staff and Soil Conservation District staff to identify necessary stabilization measures; and
 - (vi) All encroachments proposed under this Subsection shall be subject to review and approval by the Department.

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- (d) A stream corridor protection plan may be developed by a regional stormwater management planning committee as an element of a regional stormwater management plan or by a municipality through an adopted municipal stormwater management plan. If a stream corridor protection plan for a waterway subject to Subsection **G(8)** has been approved by the Department of Environmental Protection, then the provisions of the plan shall be the applicable special water resource protection area requirements for that waterway. A stream corridor protection plan for a waterway subject to Subsection **G(8)** shall maintain or enhance the current functional value and overall condition of the special water resource protection area as defined in Subsection **G(8)(a)[1]** above. In no case shall a stream corridor protection plan allow the reduction of the special water resource protection area to less than 150 feet as measured perpendicular to the waterway subject to this subsection.
- (e) Subsection **G(8)** does not apply to the construction of one individual single-family dwelling that is not part of a larger development on a lot receiving preliminary or final subdivision approval on or before February 2, 2004, provided that the construction begins on or before February 2, 2009.

§ 347-53 Calculation of stormwater runoff and groundwater recharge.

A. Stormwater runoff shall be calculated in accordance with the following:

- (1) The design engineer shall calculate runoff using one of the following methods:
 - (a) The USDA Natural Resources Conservation Service (NRCS) methodology, including the NRCS Runoff Equation and Dimensionless Unit Hydrograph, as described in the NRCS National Engineering Handbook Section 4 — Hydrology and Technical Release 55 — Urban Hydrology for Small Watersheds; or
 - (b) The Rational Method for peak flow and the Modified Rational Method for hydrograph computations.
- (2) For the purpose of calculating runoff coefficients and groundwater recharge, there is a presumption that the preconstruction condition of a site or portion thereof is a wooded land use with good hydrologic condition. The term "runoff coefficient" applies to both the NRCS methodology at Subsection **A(1)(a)** and the Rational and Modified Rational Methods at Subsection **A(1)(b)**. A runoff coefficient or a groundwater recharge land cover for an existing condition may be used on all or a portion of the site if the design engineer verifies that the hydrologic condition has existed on the site or portion of the site for at least five years without interruption prior to the time of application. If more than one land cover have existed on the site during the five years immediately prior to the time of application, the land cover with the lowest runoff potential shall be used for the computations. In addition, there is the presumption that the site is in good hydrologic condition (if the land use type is pasture, lawn or park), with good cover (if the land use type is woods) or with good hydrologic condition and conservation treatment (if the land use type is cultivation).
- (3) In computing preconstruction stormwater runoff, the design engineer shall account for all significant land features and structures, such as ponds, wetlands, depressions,

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hedgerows or culverts, that may reduce preconstruction stormwater runoff rates and volumes.

- (4) In computing stormwater runoff from all design storms, the design engineer shall consider the relative stormwater runoff rates and/or volumes of pervious and impervious surfaces separately to accurately compute the rates and volume of stormwater runoff from the site. To calculate runoff from unconnected impervious cover, urban impervious area modifications as described in the NRCS Technical Release 55 — Urban Hydrology for Small Watersheds, and other methods may be employed.
- (5) If the invert of the outlet structure of a stormwater management measure is below the flood hazard design flood elevation as defined at N.J.A.C. 7:13, the design engineer shall take into account the effects of tailwater in the design of structural stormwater management measures.

B. Groundwater recharge may be calculated in accordance with the following:

- (1) The New Jersey Geological Survey Report GSR-32, A Method for Evaluating Ground-Water Recharge Areas in New Jersey, incorporated herein by reference as amended and supplemented. Information regarding the methodology is available from the New Jersey Stormwater Best Management Practices Manual, at <http://www.state.nj.us/dep/njgs/>, or at New Jersey Geological Survey, 29 Arctic Parkway, P.O. Box 427, Trenton, New Jersey 08625-0427; (609) 984-6587.

§ 347-54 Standards for structural stormwater management measures.

A. Standards for structural stormwater management measures are as follows:

- (1) Structural stormwater management measures shall be designed to take into account the existing site conditions, including, for example, environmentally critical areas; wetlands; flood-prone areas; slopes; depth to seasonal high-water table; soil type, permeability and texture; drainage area and drainage patterns; and the presence of solution-prone carbonate rocks (limestone).
- (2) Structural stormwater management measures shall be designed to minimize maintenance, facilitate maintenance and repairs and ensure proper functioning. Trash racks shall be installed at the intake to the outlet structure, as appropriate, and shall have parallel bars with one-inch spacing between the bars to the elevation of the water quality design storm. For elevations higher than the water quality design storm, the parallel bars at the outlet structure shall be spaced no greater than 1/3 the width of the diameter of the orifice or 1/3 the width of the weir, with a minimum spacing between bars of one inch and a maximum spacing between bars of six inches. In addition, the design of trash racks must comply with the requirements of § 347-56D.
- (3) Structural stormwater management measures shall be designed, constructed and installed to be strong, durable and corrosion resistant. Measures that are consistent with the relevant portions of the Residential Site Improvement Standards at N.J.A.C. 5:21-7.3, 5:21-7.4 and 5:21-7.5 shall be deemed to meet this requirement.

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- (4) At the intake to the outlet from the stormwater management basin, the orifice size shall be a minimum of 2 1/2 inches in diameter.
- (5) Stormwater management basins shall be designed to meet the minimum safety standards for stormwater management basins at § 347-56.
- B. Stormwater management measure guidelines are available in the New Jersey Stormwater Best Management Practices Manual. Other stormwater management measures may be utilized, provided the design engineer demonstrates that the proposed measure and its design will accomplish the required water quantity, groundwater recharge and water quality design and performance standards established by § 347-52 of this chapter.
- C. Manufactured treatment devices may be used to meet the requirements of § 347-52 of this chapter, provided the pollutant removal rates are verified by the New Jersey Corporation for Advanced Technology and certified by the Department.

§ 347-55 Sources for technical guidance.

- A. Technical guidance for stormwater management measures can be found in the documents listed at Subsection A(1) and (2) below, which are available from Maps and Publications, New Jersey Department of Environmental Protection, 428 East State Street, P.O. Box 420, Trenton, New Jersey 08625; telephone (609) 777-1038.
 - a. Guidelines for stormwater management measures are contained in the New Jersey Stormwater Best Management Practices Manual, as amended. Information is provided on stormwater management measures such as bioretention systems, constructed stormwater wetlands, dry wells, extended detention basins, infiltration structures, manufactured treatment devices, pervious paving, sand filters, vegetative filter strips and wet ponds.
 - b. The New Jersey Department of Environmental Protection Stormwater Management Facilities Maintenance Manual, as amended.
- B. Additional technical guidance for stormwater management measures can be obtained from the following:
 - a. The Standards for Soil Erosion and Sediment Control in New Jersey promulgated by the State Soil Conservation Committee and incorporated into N.J.A.C. 2:90. Copies of these standards may be obtained by contacting the State Soil Conservation Committee or any of the Soil Conservation Districts listed in N.J.A.C. 2:90-1.3(a)4. The location, address and telephone number of each Soil Conservation District may be obtained from the State Soil Conservation Committee, P.O. Box 330, Trenton, New Jersey 08625; (609) 292-5540;
 - b. The Rutgers Cooperative Extension Service, 732-932-9306; and
 - c. The Soil Conservation Districts listed in N.J.A.C. 2:90-1.3(a)4. The location, address and telephone number of each Soil Conservation District may be

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obtained from the State Soil Conservation Committee, P.O. Box 330, Trenton, New Jersey 08625; (609) 292-5540.

§ 347-56 Safety standards for stormwater management basins.

- A. This section sets forth requirements to protect public safety through the proper design and operation of stormwater management basins. This section applies to any new stormwater management basin.

Note: The provisions of this section are not intended to preempt more stringent municipal or county safety requirements for new or existing stormwater management basins. Municipal and county stormwater management plans and ordinances may, pursuant to their authority, require existing stormwater management basins to be retrofitted to meet one or more of the safety standards in Subsection **B(1)**, **(2)** and **(3)** for trash racks, overflow grates and escape provisions at outlet structures.

- B. Requirements for trash racks, overflow grates and escape provisions.

(1) A "trash rack" is a device designed to catch trash and debris and prevent the clogging of outlet structures. Trash racks shall be installed at the intake to the outlet from the stormwater management basin to ensure proper functioning of the basin outlets in accordance with the following:

- (a) The trash rack shall have parallel bars, with no greater than six-inch spacing between the bars.
- (b) The trash rack shall be designed so as not to adversely affect the hydraulic performance of the outlet pipe or structure.
- (c) The average velocity of flow through a clean trash rack is not to exceed 2.5 feet per second under the full range of stage and discharge. Velocity is to be computed on the basis of the net area of opening through the rack.
- (d) The trash rack shall be constructed and installed to be rigid, durable and corrosion resistant, and shall be designed to withstand a perpendicular live loading of 300 lbs./ft.sq.

(2) An overflow grate is designed to prevent obstruction of the overflow structure. If an outlet structure has an overflow grate, such grate shall meet the following requirements:

- (a) The overflow grate shall be secured to the outlet structure but removable for emergencies and maintenance.
- (b) The overflow grate spacing shall be no less than two inches across the smallest dimension.
- (c) The overflow grate shall be constructed and installed to be rigid, durable and corrosion resistant, and shall be designed to withstand a perpendicular live loading of 300 lbs./ft.sq.

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(3) For purposes of this Subsection **B(3)**, "escape provisions" means the permanent installation of ladders, steps, rungs or other features that provide easily accessible means of egress from stormwater management basins. Stormwater management basins shall include escape provisions as follows:

(a) If a stormwater management basin has an outlet structure, escape provisions shall be incorporated in or on the structure. With the prior approval of the reviewing agency identified in Subsection **C**, a freestanding outlet structure may be exempted from this requirement.

(b) Safety ledges shall be constructed on the slopes of all new stormwater management basins having a permanent pool of water deeper than 2 1/2 feet. Such safety ledges shall be comprised of two steps. Each step shall be four feet to six feet in width. One step shall be located approximately 2 1/2 feet below the permanent water surface, and the second step shall be located one to 1 1/2 feet above the permanent water surface. See Subsection **D** for an illustration of safety ledges in a stormwater management basin.

(c) In new stormwater management basins, the maximum interior slope for an earthen dam, embankment or berm shall not be steeper than three horizontal to one vertical.

C. Variance or exemption from safety standards. A variance or exemption from the safety standards for stormwater management basins may be granted only upon a written finding by the appropriate reviewing agency (municipality, county or Department) that the variance or exemption will not constitute a threat to public safety.

D. Illustration of safety ledges in a new stormwater management basin.

[\[Image\]](#)

§ 347-57 Requirements for a site development stormwater plan.

A. Submission of site development stormwater plan.

(1) Whenever an applicant seeks municipal approval of a development subject to this chapter, the applicant shall submit all of the required components of the checklist for the site development stormwater plan at Subsection **C** below as part of the submission of the applicant's application for subdivision or site plan approval.

(2) The applicant shall demonstrate that the project meets the standards set forth in this chapter.

(3) The applicant shall submit three copies of the materials listed in the checklist for site development stormwater plans in accordance with Subsection **C** of this chapter.

B. Site development stormwater plan approval. The applicant's site development project shall be reviewed as a part of the subdivision or site plan review process by the municipal board or official from which municipal approval is sought. That municipal board or

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official shall consult the engineer retained by the Planning and/or Zoning Board (as appropriate) to determine if all of the checklist requirements have been satisfied and to determine if the project meets the standards set forth in this chapter.

C. Checklist requirements. The following information shall be required:

- (1) Topographic base map. The reviewing engineer may require upstream tributary drainage system information as necessary. It is recommended that the topographic base map of the site be submitted which extends a minimum of 200 feet beyond the limits of the proposed development, at a scale of one inch equals 200 feet or greater, showing two-foot contour intervals. The map, as appropriate, may indicate the following: existing surface water drainage, shorelines, steep slopes, soils, erodible soils, perennial or intermittent streams that drain into or upstream of the Category One waters, wetlands and floodplains along with their appropriate buffer strips, marshlands and other wetlands, pervious or vegetative surfaces, existing man-made structures, roads, bearing and distances of property lines and significant natural and man-made features not otherwise shown.
- (2) Environmental site analysis. A written and graphic description of the natural and man-made features of the site and its environs. This description should include a discussion of soil conditions, slopes, wetlands, waterways and vegetation on the site. Particular attention should be given to unique, unusual or environmentally sensitive features and to those that provide particular opportunities or constraints for development.
- (3) Project description and site plan(s). A map (or maps) at the scale of the topographical base map indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural facilities for stormwater management and sediment control and other permanent structures. The map(s) shall also clearly show areas where alterations occur in the natural terrain and cover, including lawns and other landscaping, and seasonal high groundwater elevations. A written description of the site plan and justification of proposed changes in natural conditions may also be provided.
- (4) Land use planning and source control plan. This plan shall provide a demonstration of how the goals and standards of §§ 347-51 through 347-54 are being met. The focus of this plan shall be to describe how the site is being developed to meet the objective of controlling groundwater recharge, stormwater quality and stormwater quantity problems at the source by land management and source controls whenever possible.
- (5) Stormwater management facilities map. The following information, illustrated on a map of the same scale as the topographic base map, shall be included:
 - (a) Total area to be paved or built upon, proposed surface contours, land area to be occupied by the stormwater management facilities and the type of vegetation thereon and details of the proposed plan to control and dispose of stormwater.
 - (b) Details of all stormwater management facility designs, during and after construction, including discharge provisions, discharge capacity for each outlet at different levels of detention and emergency spillway provisions with maximum discharge capacity of each spillway.

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- (6) Calculations.
 - (a) Comprehensive hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms specified in § 347-58 of this chapter.
 - (b) When the proposed stormwater management control measures (e.g., infiltration basins) depends on the hydrologic properties of soils, then a soils report shall be submitted. The soils report shall be based on on-site boring logs or soil pit profiles. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soils present at the location of the control measure.
- (7) Maintenance and repair plan. The design and planning of the stormwater management facility shall meet the maintenance requirements of § 347-58.
- (8) Waiver from submission requirements. The municipal official or board reviewing an application under this chapter may, in consultation with the Municipal Engineer, waive submission of any of the requirements in Subsection C(1) through (6) of this chapter when it can be demonstrated that the information requested is impossible to obtain or it would create a hardship on the applicant to obtain and its absence will not materially affect the review process.

§ 347-58 Maintenance and repair.

- A. Applicability. Projects subject to review as in § 347-50C of this chapter shall comply with the requirements of Subsections B and C.
- B. General maintenance.
 - (1) The design engineer shall prepare a maintenance plan for the stormwater management measures incorporated into the design of a major development.
 - (2) The maintenance plan shall contain specific preventative maintenance tasks and schedules; cost estimates, including estimated cost of sediment, debris or trash removal; and the name, address and telephone number of the person or persons responsible for preventative and corrective maintenance (including replacement). Maintenance guidelines for stormwater management measures are available in the New Jersey Stormwater Best Management Practices Manual. If the maintenance plan identifies a person other than the developer (for example, a public agency or homeowners' association) as having the responsibility for maintenance, the plan shall include documentation of such person's agreement to assume this responsibility, or of the developer's obligation to dedicate a stormwater management facility to such person under an applicable ordinance or regulation.
 - (3) Responsibility for maintenance shall not be assigned or transferred to the owner or tenant of an individual property in a residential development or project unless such owner or tenant owns or leases the entire residential development or project.

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- (4) If the person responsible for maintenance identified under Subsection **B(2)** above is not a public agency, the maintenance plan and any future revisions based on Subsection **B(7)** below shall be recorded upon the deed of record for each property on which the maintenance described in the maintenance plan must be undertaken.
- (5) Preventative and corrective maintenance shall be performed to maintain the function of the stormwater management measure, including repairs or replacement to the structure; removal of sediment, debris, or trash; restoration of eroded areas; snow and ice removal; fence repair or replacement; restoration of vegetation; and repair or replacement of nonvegetated linings.
- (6) The person responsible for maintenance identified under Subsection **B(2)** above shall maintain a detailed log of all preventative and corrective maintenance for the structural stormwater management measures incorporated into the design of the development, including a record of all inspections and copies of all maintenance-related work orders.
- (7) The person responsible for maintenance identified under Subsection **B(2)** above shall evaluate the effectiveness of the maintenance plan at least once per year and adjust the plan and the deed as needed.
- (8) The person responsible for maintenance identified under Subsection **B(2)** above shall retain and make available, upon request by any public entity with administrative, health, environmental or safety authority over the site, the maintenance plan and the documentation required by Subsection **B(6)** and **(7)** above.
- (9) The requirements of Subsection **B(3)** and **(4)** do not apply to stormwater management facilities that are dedicated to and accepted by the municipality or another governmental agency.

Note: It may be appropriate to delete requirements in the maintenance and repair plan that are not applicable if the ordinance requires the facility to be dedicated to the municipality. If the municipality does not want to take this responsibility, the ordinance should require the posting of a two-year maintenance guarantee in accordance with N.J.S.A. 40:55D-53. Guidelines for developing a maintenance and inspection program are provided in the New Jersey Stormwater Best Management Practices Manual and the NJDEP Ocean County Demonstration Study, Stormwater Management Facilities Maintenance Manual, dated June 1989 available from the NJDEP, Watershed Management Program.

§347-59 Reserved

ARTICLE VII. SITE PLAN DESIGN REQUIREMENTS

§ 347-60 Application

Any deviation from the provisions of this Article shall require a waiver by the reviewing board from the specific design standard.

§ 347-61 Design standards.

The purpose of good site design is to create a functional, sustainable, and attractive development, to minimize adverse impacts, and to ensure a project will be an asset to the community. In project design and in reviewing project applications, the following principles of site design shall apply and shall be deemed to be the minimum standards and prerequisites for Board approval.

§ 347-61.1 General design standards.

Each site plan shall provide for the following:

- A. Environmental impact. The site design and arrangement of streets, lots, parking areas, buildings, and units shall minimize cut and fill, reduce unnecessary impervious cover, and mitigate adverse effects of shadow, noise, odor, traffic, transportation, drainage, and utilities on neighboring properties.
- B. Energy conservation. To the extent consistent with the reasonable use of land, site design shall promote the conservation of energy through the use of planning practices designed to reduce energy consumption and to provide the maximum utilization of renewable energy sources. Significant solar access to roads and buildings are possible with variations from east/west orientations of up to 25%. Storm drainage facilities shall be designed as an integral part of the development, and arrange the design to use as much of the natural drainage as possible.
- C. Neighborhood context. The arrangement of buildings and structures on the site shall be designed so as to create a harmonious appearance with respect to each other and with existing structures in the immediate neighborhood. Consideration shall be given to topographic conditions, the relationship of open space between buildings both on and off the site and the effect the plan will have on properties in the immediate neighborhood. The use of different textures, complementary colors, detailing and contrasting shapes to create an appealing facade is strongly encouraged. The use of single colors and blank walls is discouraged. Each phase of a phased development project should be able to stand alone as architecturally and visually complete.
- D. Utilities. The site plan shall provide adequate water supply connections, drainage, sewage connections, electric and telephone lines and other utilities necessary for essential service

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to residents and occupants. Electric and telephone lines shall be installed underground unless waived by the Planning Board or the Board of Adjustment.

- E. Soil conservation. The site plan shall provide adequate protection and conservation of soils through an erosion and sedimentation control plan where over 5,000 square feet of ground area is being disturbed.
- F. Other improvements. Standards for the grading, improvement and construction of streets or driveways and for walkways, curbs, gutters, streetlights, screening, fire hydrants and water, drainage, sewerage facilities and other improvements found necessary shall be as required by the Township Engineer. Such improvements shall be installed by the developer and shall be subject to performance guaranty requirements and maintenance guaranty requirements before issuance of a building permit and a certificate of occupancy. Where certain utilities to be installed are under other governmental authority or jurisdictions, their requirements shall be adhered to by the developer. A letter approving the proposed installations and a statement as to who will carry out the construction shall be required.
- G. Exterior garbage and recycling storage areas. Exterior garbage and recycling storage areas for multifamily and commercial developments shall be screened around their perimeter by wood fence enclosures with a roof or by solid walls of compatible design with the adjacent facade materials. Chain link fences are not permitted. Such enclosures shall have a minimum height of five feet and a maximum height of seven feet and shall extend on three sides of the area with a wooden gate or solid door on the fourth side. The storage area shall have a concrete pad as its surface and shall be safely and easily accessible by recycling personnel and vehicles. The design and dimensions should be consistent with anticipated usage, current methods of garbage and recycling collection and any district recycling plan adopted pursuant to N.J.S.A. 13:1E-99.
- H. Rooftop equipment. All rooftop equipment shall be screened from view of public streets and adjoining properties.

§ 347-61.2 Sustainable building and design standards.

- A. The Township shall incorporate the “Leadership in Energy & Environmental Design Rating System,” Version 4 (LEED v4), adopted July 2013, which includes rating systems promulgated by the US Green Building Council.
- B. The Sustainability Checklist form shall incorporate proposed green energy and water conservation measures including:
 - (1) The name of any LEED Accredited Professionals working on the project.
 - (2) A list of appliances, fixtures, and construction techniques that meet the U.S. EPA’s Energy Star and WasterSense standards.
 - (3) A list of green and recycled building materials to be used in construction, renovation, and maintenance.

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- (4) A Waste Management Plan for recycling or reusing 60 percent of all construction and demolition waste generated in projects larger than \$25,000 outlining where waste will be sent for recycling, reuse, reprocessing, or disposal, together with a letter from each of the recipient facilities.
 - (5) Use of any waster efficient landscaping.
 - (6) Use of any on-site renewable energy systems, such as:
 - (a) Solar
 - (b) Wind
 - (c) Geothermal
 - (7) Details of roofing materials designed to reduce the urban heat island effect such as:
 - (a) Construction of roof top gardens to reduce solar gain in summer and insulate in winter
 - (b) Use of roofing materials that are no darker than a light gray or demonstrate how alternate roofing materials reduce the urban heat island effect
 - (8) Details of any sustainable stormwater systems employed, such as:
 - (a) Bioswales / raingardens
 - (b) Permeable surfaces
 - (c) Grey water systems
 - (d) Retention and detention facilities
 - (e) Continuous trenching
 - (9) A list of native and well-adapted species used in landscaping to eliminate the need for fertilization and pesticides.
- C. All Township-funded building projects, including the design and construction of new buildings and major renovations and additions to Township-funded projects, shall complete a Sustainability Checklist (§347-61.2) incorporating the LEED rating system.
- (1) The Township shall incorporate lifecycle and total cost accounting in the design, construction, and maintenance of all Township-owned and -financed buildings.
 - (2) Township-funded building projects shall meet a minimum LEED “Silver” rating.
 - (3) The first LEED project shall be viewed as a pilot for this initiative and will be evaluated to make further recommendations to the Township Council.

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§ 347-62 Landscaping and street trees.

Each site plan shall provide for the following:

- A. General provisions. The following general provisions shall apply to the installation and design of landscapes and streetscapes:
- (1) All land areas not covered with buildings, parking, or other impervious surfaces shall be landscaped with suitable materials. Landscaping shall consist of trees, shrubs, ground cover, perennials, and annuals singly or in common as well as other inanimate materials such as rocks, water, sculpture, art, walls, fences, and paving materials.
 - (2) A landscape design shall be provided as part of site plan and subdivision submissions. Every applicant for subdivision or site plan approval shall comply with the minimum standards as set forth in this section.
 - (3) The approving authority may require additional plant material to create an appropriate landscaping scheme for the site given the nature of the site and the proposed development.
 - (4) Where subdivisions only are applied for the minimum standards shall apply only to street trees and to common open space and areas proposed to be dedicated to the public.
 - (5) All landscape plants shall be typical in size and weight for their species and shall conform to the standards of the American Association of Nurserymen for quality and installation.
 - (6) Plants with pervasive root systems shall not be located where they may cause damage to drainage pipes or other underground utilities and stormwater management facilities and should generally be no closer than 10 feet, measured horizontally.
 - (7) All plants shall be tolerant of specific site conditions. The use of indigenous species is strongly encouraged. Exotic, nonnative invasive plant species shall not be permitted.
- B. Landscape design guidelines. The following guidelines are to be used when designing the landscape plan:
- (1) Landscaping shall be designed to achieve a thorough integration of the various elements of site design, including building and parking placement, the natural features of the site and the preservation of pleasing or aesthetic views. Landscaping shall be used to accent and complement the form and type of building(s) proposed.
 - (2) Every possible consideration shall be given and every possible measure taken in the interest of retaining all standing live trees with special emphasis on trees in excess of six inches diameter breast height (d.b.h.). All dead or diseased trees shall be removed.
 - (3) Landscaping shall be located to provide effective climatic control. The east and west walls of a building should be the most heavily vegetated to shade for summer sun and

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the north to northwest area for winter prevailing winds. The southerly facing side of a building should be shaded from summer sun but open for solar gain during the winter.

- (4) Plants' susceptibility to disease, their colors, textures, shapes, blossoms, foliage characteristics and drought tolerance shall be considered in the overall design of a landscape plan.
- (5) Local soil conditions and water availability shall be considered in the choice of landscaping.
- (6) In the design process, the eventual maturity of the plant shall be considered for its effect on circulation patterns, solar access, site lighting, drainage, emergency access and relationship to buildings and the streetscape.

C. Street trees. The following street tree standards shall be met in any application for development:

- (1) Location. Street trees shall be installed on both sides of all streets in accordance with an approved landscape plan, unless off tract. Trees shall be spaced evenly along the street between the curb or edge of cartway and sidewalk or bikeway.
- (2) Spacing. Street trees should be planted at predetermined intervals along streets depending on the size of the tree.
 - (a) Street trees shall be planted to meet the following planting intervals:
 - (b) Trees may be planted closer together in order to avoid interference with utilities, roadways, sidewalks, sight easements, and streetlights. Street tree species shall be as approved by the Township Arborist.

| Tree size at Maturity (height in feet) | Planting Interval (in feet) |
|---------------------------------------------------|----------------------------------------|
| Large trees (45+) | 40 |
| Medium trees (30 to 45) | 30 |
| Small trees (less than 30) | 20 |

- (3) Planting specifications. All street trees shall be deciduous varieties and have a minimum caliper as noted in § 347-62E. Street trees shall be substantially uniform in size and shape and shall have straight trunks. Trees shall be properly planted and staked in accordance with ANSI or American Association of Nurserymen. Provision shall be made by the developer for regular watering and maintenance until the street trees are established. Dead or dying trees shall be replaced by the developer during the next suitable planting season.

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- D. Landscape buffers. Landscaping buffers are areas that are required to minimize and visually screen any adverse impacts or nuisances from a site or from any adjacent area.
- (1) Landscape buffers shall consist of a combination of deciduous trees, conifers, shrubs, berms and, if appropriate, fences or walls in sufficient quantities and sizes designed to continuously limit the view of and/or sound from the site to adjacent sites or properties. Fences and walls may only be used for decoration or as supplements to required landscaping to achieve a higher degree of visual blocking.
 - (2) Landscape buffers shall be continuous except for access drives as approved by the approving authority.
- E. Minimum planting sizes. The following minimum plant sizes shall be required:
- (1) Deciduous trees. The minimum planting size (measured in calipers) shall be three inches for large trees, 2 1/2 inches for medium-sized trees and two inches for small trees, balled and burlapped.
 - (2) Coniferous and evergreen trees. The minimum planting size shall be five feet to six feet, except that, when used as a landscape buffer, plant material between residential and nonresidential uses shall be increased to a minimum planting size of six feet to eight feet.
 - (3) Large evergreen and deciduous shrubs. The minimum planting size for large evergreen and deciduous shrubs shall be three feet to four feet, except that arborvitae shall be a minimum of five feet to six feet in height.
 - (4) Small evergreen and deciduous shrubs. The minimum planting size for small evergreen and deciduous shrubs shall be 18 inches to 24 inches.

§ 347-63 Lighting.

Each site plan shall provide for the following:

- A. Lighting plan. A lighting plan prepared by a qualified individual shall be provided with all major subdivision and site plan applications.
- B. Street lighting. Street lighting of a type supplied by or approved by the utility and of a type and number approved by the Board shall be provided for all street intersections and along all arterial, collector and local streets as deemed necessary for safety reasons. Wherever electric utility installations are required to be underground, the applicant shall provide for underground service for street lighting.
- C. Parking areas.
 - (1) All parking areas and walkways thereto and appurtenant passageways, building entrances, loading areas and driveways required for nonresidential or multifamily uses shall be adequately illuminated during the hours of operation which occur after sunset.

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- (2) Any adjacent residential zone or use shall be shielded from the glare of illumination from site lighting and automobile headlights.
 - (3) Freestanding lights within parking lots shall be protected to avoid being damaged by vehicles. Freestanding lights at the perimeter of parking lots shall be aligned with the parking stall striping and located a minimum of 2 1/2 feet to the edge of curb. The exposed concrete light foundation shall not exceed two inches above grade or six inches above grade if located within a lawn area.
- D. Security lighting. With the exception of light sources with twenty-four-hour businesses, commercial property shall provide security lighting required for safety not to exceed 40% of the site lighting or those required for safety as determined by the Montclair Township Police Department. Lighting in mixed or residential use areas shall be turned off between 11:00 p.m. and 6:00 a.m. in residential or mixed-use areas. This shall also apply to signage lighting. Provisions shall be made for reduction in the intensity of illumination to the minimum need for security purposes when a facility is not in operation.
- E. Lighting intensity.
- (1) The lighting plan shall show the proposed light intensity (including fixtures noted to remain) at ground level indicated where 0.5 foot-candles occur.
 - (2) Dimensioned manufacturer's lighting details and specifications including foot-candle distributions shall be provided.
 - (3) All lights shall be concealed source nonglare lighting and shall be focused downward so that the direct source of light is not visible from adjoining streets or properties. No light shall shine into building windows or onto streets and driveways so as to interfere with or distract driver vision.
 - (4) The lens of the light shall be flush with the fixture housing and shall be parallel to the ground. Movable fixture housings are prohibited.
 - (5) The minimum foot-candle in areas used by the public shall be 0.5; the maximum foot-candle is two. The light intensity shall not exceed 0.3 foot-candles along any property line and shall be so arranged and shielded to reflect the light away from adjoining streets or properties.
- F. Height of fixture. Lighting shall be provided by fixtures with a mounting height not more than 15 feet or the height of the building, whichever is less, measured from the ground level to the centerline of the light source.
- G. Style. The style of any light or light standard shall be consistent with the architectural style of the principal building and, where appropriate, the architectural character of the surrounding area.
- H. Other.
- (1) Freestanding lights or light fixtures attached to utility poles are prohibited within the road right-of-way with the exception of street lights.

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- (2) Any other outdoor lighting, such as building and sidewalk illumination, driveways with no adjacent parking, the lighting of signs and ornamental lighting, shall be shown on the lighting plan, in sufficient detail to allow a determination of effects upon adjacent properties, traffic safety and overhead sky glow.
- (3) To achieve the above requirements, the intensity of light sources, light shielding and similar characteristics shall be subject to site plan approval.
- (4) Shade trees shall be planted a minimum of 10 feet from any freestanding lighting fixture.

§ 347-64 Residential site and building design standards.

Each site plan shall provide for the following:

A. Multifamily residential design.

- (1) Each dwelling unit and combined complex of dwelling units shall have a compatible architectural theme with variations in design to provide an attractive development. The design shall include landscaping techniques, building orientation to the site and to other structures, topography and natural features.
- (2) The exterior of each building wall shall be of brick or stone facing, solid brick or stone, or some other accepted durable material; provided, however, asbestos shingle or cinder block as an exterior finish is prohibited.
- (3) In addition to any storage area contained inside individual dwelling units, there shall be provided for each dwelling unit 200 feet of storage area in a convenient, centrally located area in the basement or ground floor of the existing dwelling structure or elsewhere where personal belongings and effects may be stored without constituting a fire hazard and where the said belongings and effects may be kept locked and separated from the belongings of other occupants. There shall be a further minimum common storage area in each building for bicycles, strollers and similar types of equipment of 50 cubic feet per dwelling unit.
- (4) Service features, garages and parking areas shall, where possible, be located on a side of the individual lot having access to an interior street or road.
- (5) Building entrances units shall be oriented towards existing streets.

B. Townhouse design standards.

- (1) Each dwelling unit and combined complex of dwelling units shall have a compatible architectural theme with variations in design to provide an attractive development. The design shall include landscaping techniques, building orientation to the site and to other structures, topography and natural features.
- (2) Individual dwelling unit design features shall include staggering unit setbacks, providing changing roof lines and roof designs, altering building heights and shutters,

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doors, porches, colors and vertical or horizontal orientation of the facades, singularly or in combinations for each dwelling unit.

- (3) No more than two adjacent dwelling units may be constructed without providing a front wall offset of not less than two feet.
- (4) Each building shall contain eight dwelling units or less.
- (5) All exterior and party walls of each dwelling unit shall be of masonry construction.
- (6) All side and rear elevations shall be faced with brick or quarried stone; the balance of such area shall be faced with material suitable in terms of quality, durability and appearance, as approved by the Board; provided, however, asbestos shingle or cinder block as an exterior is prohibited.
- (7) Not less than 50% of the total area of front elevation in each group of dwelling units shall be faced with brick or quarried stone; the balance of such area shall be faced with material suitable in terms of quality, durability and appearance, as approved by the Board; provided, however, asbestos shingle or cinder block as an exterior is prohibited.
- (8) Building entrances units shall be oriented towards existing streets.

§ 347-65 Commercial design standards.

The following standards apply upon construction or alteration of, or addition to, any business building or a facade of such building.

A. Entrances.

- (1) All building entrances shall be oriented to the public street. On corner lots, building entrances shall be located at or near the corner.
- (2) Building entrances shall be emphasized through use of distinctive architectural treatment and/or awnings.

B. Windows.

- (1) A minimum of 60% of the street-facing facade must be transparent glass.
- (2) Opaque, dark-tinted or reflective glass is not permitted. Reflective glass with 50% tinting may be used to reduce sun glare.
- (3) Windows must be transparent and may not be covered with opaque material.
- (4) Through window/wall air-conditioning units may not be installed at any facade that faces the street or parking area.
- (5) Storefront windows shall provide interior visibility or merchandise display. Paper signs are not allowed except for advertising sales or special promotions on a

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temporary basis. They may be up for no longer than 21 business days and must be professionally designed.

- (6) Window display areas shall remain lighted from dusk until at least store closing or 10:00 p.m., whichever is later.

C. Awnings and canopies.

- (1) Canvas color-fast awnings, standing seam/metal or weathercoated fabric-like plastic awnings and glass canopies are the recommended materials.
- (2) Awnings and canopies must be mounted below the retail sign board if there is one. Internally illuminated awnings are prohibited.
- (3) Product brand advertising is not permitted on awnings or canopies.

D. Planters and greenery. All permanent (stay-out-overnight) pots and planters must be a minimum of 1.5 feet in height.

E. Sidewalk furniture. Outdoor furniture must be weighted or fixed to the ground to avoid pilferage or movement from the wind. All furniture should be made of metal, wood or of some combination of these materials.

F. Facade and building renovations; new construction applicability. All renovations and additions to business buildings and establishments, whether undertaken by an owner or tenant, construction of new buildings for business purposes. Construction of additions to buildings used for business purposes.

(1) Existing facade: windows and doors.

- (a) Existing window openings on facade may not be filled in unless finished materials are made to match adjacent finishes. Leaving brick and stone facades unpainted is encouraged.
- (b) Windows and transoms on the facade(s) that have been blocked and covered over must be made to match adjacent finishes.

(2) Facade divisions. A continuous facade greater than 100 feet and continuous facades created by combining several smaller buildings into one long facade shall be subdivided by smaller vertically oriented sections or vertical relief (i.e., pilaster) expressed as individual buildings of traditional width.

§ 347-66 Parking areas and driveways.

A. Garages and parking spaces shall be paved with a hard-surface paving and shall be accessible from similarly paved areas (herein called "aisles") which must be connected directly or by means of a similarly paved driveway to a public street. Any driveway used as an aisle must satisfy the aisle width requirements. All such paving shall be properly drained and maintained.

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- B. Each parking space shall consist of a rectangular area having minimum dimensions of nine feet by 19 feet. Where vehicle overhang is unobstructed and does not interfere with pedestrian traffic, paved stall lengths may be reduced to 17.5 feet. However, vehicle overhang areas shall not be considered part of required setbacks or required landscaped areas. **[Amended 10-11-1983 by Ord. No. 83-34]**
- C. The required minimum parking space dimensions may be waived and dimensions of eight feet by 17 feet permitted where the approving authority finds that such spaces can reasonably be reserved for use by small cars. Vehicles with lengths of 16 feet or less are considered small cars.
- D. Minimum parking lot aisle widths.

(1) Minimum parking lot aisle widths shall be as follows:

| Parking Angle | Aisle Width (feet) |
|---------------|-----------------------|
| 45° or less | 12 |
| 60° | 18 |
| 90° | 24 |

- (2) Required minimum parking lot aisle widths may be waived and widths of 21 feet and 16 feet permitted for ninety-degree and sixty-degree parking, respectively, where the approving authority finds that the abutting parking spaces can reasonably be reserved for use by small cars.
- E. Parking spaces reserved for small cars shall be delineated by pavement markings or signs not in excess of one square foot indicating "small cars only" or similar words.
- F. All off-street parking areas with provision for more than five vehicles and establishments with loading bays or spaces for the temporary parking of commercial vehicles shall be effectively screened on each side which adjoins a residential district or an institutional premises. Such screening shall be a solid wall or a solid fence not less than five feet in height or a compact evergreen hedge of not less than three feet in height at the time of planting. The fence, wall or hedge shall be maintained in good condition, and no advertising shall be placed thereon. The screening shall be so designed that vehicle sight distance shall not be affected at entrances, exits and street intersections. Where an off-street parking area abuts or adjoins another, a five-foot-wide planting strip maintained in good condition may be used in lieu of the required screening.
- G. All off-street parking areas shall be set back a minimum of four feet from side and rear property lines with the intervening space appropriately landscaped. All off-street parking areas shall be set back a minimum of four feet from front property lines with the intervening space appropriately landscaped. Corner lots shall be considered to have front property lines along each street frontage. **[Amended 10-11-1983 by Ord. No. 83-34]**

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- H. All off-street parking lots or groups of lots on the same property accommodating 50 or more cars in total shall provide landscaped areas within the pavement perimeter amounting to at least 5% of the paved area.
- I. A two-way driveway shall be not less than 18 feet wide, and a one-way driveway shall be not less than 12 feet wide. The maximum driveway gradient shall be 10%.
- J. Each required parking space shall consist of a suitably graded, drained and unobstructed rectangular area in the plane of which no straight line shall have a grade in excess of 6%.
- K. Required parking spaces parallel to or disposed at an angle of less than 30° from the axis of the aisles serving them shall be not less than 22 feet in length.

§ 347-67 Reserved

§ 347-68 Reserved

§ 347-69 Reserved

ARTICLE VIII. SUBDIVISION DESIGN REQUIREMENTS

§ 347-70 Application.

Any deviation from a provision of this Article which is identified as a design standard shall require a waiver from the reviewing board from the specific requirement. Any other deviation from a standard contained in this Article shall require a variance from the specific standard in accordance with the Municipal Land Use Law.

§ 347.71 General design standards.

- A. Subdivision plats shall conform to design standards that will encourage good development patterns within the Township. The streets, drainage rights-of-way, school sites, public parks and playgrounds shown on the Master Plan or Official Map shall be shown on the final plat and shall be such as to lend themselves to the harmonious development of the Township and enhancement of the public welfare in accordance with the design standards set forth in this chapter. The Planning Board shall further require that all lots shown on the plats be adaptable for the intended purposes without danger to health or peril from flood, fire, erosion or other menace.
- B. When the Planning Board has adopted portions of a Master Plan with proposals regarding the street system within a proposed subdivision, the Board may require that the streets shown conform in design and in width to the proposals shown on the Master Plan. In acting upon plats, the Planning Board shall require, among other conditions in the public interest, that the tract shall be adequately drained; that the streets shall be of sufficient width and suitable grade and suitably located to accommodate the prospective traffic and to provide access for fire-fighting equipment to buildings; and that the streets shall be

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coordinated so as to compose a convenient system, conforming to the Official Map or, if there is no Official Map, relating properly to the existing street system. No street of a width greater than 50 feet within the right-of-way lines may be required unless said street already has been shown at the greater width on the Master Plan or the Official Map.

- C. The Planning Board or Subdivision Committee may disapprove an application for the subdivision of land on which there exists a principal building if the application proposes to create a lot or lots on which a building, if erected, could disturb the uninterrupted frontage of the existing building to the street on which said lot or lots are proposed to front.

§ 347-72 Residential streets.

- A. All residential streets other than main traffic arteries shall be designed so as to:
- (1) Provide for the continuation of the principal streets in the adjoining subdivisions where reasonably required for harmonious development.
 - (2) Discourage other than local traffic.
 - (3) Provide for the proper projection when adjoining property is not subdivided, subject to any required access control strip where reasonably required for harmonious development.
 - (4) Provide adequate separation by way of street design from other developments where such is reasonably required to avoid undue traffic on local residential streets.
 - (5) Provide a marginal access road or reverse frontage with a buffer strip for planting or some other means of separation where the subdivision abuts thoroughfares where such marginal access road or reverse frontage is reasonably required to avoid interference with the flow of traffic on the thoroughfare or to preserve the value of property abutting on such thoroughfare.
 - (6) Give adequate recognition to existing topography.
 - (7) Be not only conducive to the proper development of the immediate subdivision but also in a manner which will not adversely affect the neighborhood.
 - (8) Comply with the standards relating to streets set forth in § 347-71.
- B. If a street does not maintain a straight course or alignment between its intersections with another street or streets and if the center line of one straight section thereof, when projected, makes a deflection angle between 10° and 60°, inclusive, with an adjoining straight section thereof, such section shall be connected by a curved street section having a center-line radius of not less than 75 feet. If such deflection angle is in excess of 80°, the curved street section shall have a center-line radius not less than 50 feet.

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§ 347-73 Street requirements

§ 347-73.1 Street widths.

Street widths in residential areas shall be a minimum of 50 feet. The Board may require greater street widths to assure the free flow of traffic where such widths are shown on the Master Plan or the Official Map. Subdivisions which adjoin or include existing streets not conforming to width requirements of this chapter may be required to dedicate lands along either one or both sides of said road for widening. If the subdivision is along one side only, 1/2 of the required extra width may be required to be dedicated.

§ 347-73.2 Street grades.

- A. Grades for main traffic arteries shall not exceed six feet in 100 feet.
- B. Grades for all streets other than main traffic arteries shall not exceed 10 feet in 100 feet.
- C. No street shall have a grade of less than one foot in 100 feet.
- D. A vertical curve shall be provided at each change of grade. Vertical curves shall have a length sufficient to enable a driver with eye at 4 1/2 feet above the street surface to observe a four-inch-high object in the same lane at a distance of not less than 150 feet, but in no case shall the length of a vertical curve be less than 100 feet.

§ 347-73.3 Street intersections.

- A. The intersections of streets shall be at an angle of 90° or as close to such angle as is practicable, but in no case shall an intersection be at an angle of less than 60°.
- B. When two streets of the same general direction intersect another street so as to create a jog, the center lines of such former two streets at their points of intersection with such other street shall be at least 125 feet distant from each other.

§ 347-73.4 Curb and property line radii.

Curbs shall have a minimum radius of 20 feet at street corners. Normally the radius on the property line shall not be less than 10 feet. Longer radii shall be provided when the Planning Board finds it reasonably necessary to accommodate traffic or topographical conditions or when a special feature of a subdivision requires emphasis.

§ 347-73.5 Culs-de-sac; easement to Township.

- A. The maximum length of a cul-de-sac shall be 600 feet, unless topography or lack of other means for providing access to an area would necessitate greater lengths. Culs-de-sac over 600 feet shall conform to requirements for other residential streets.
- B. There shall be a turnaround roadway with a minimum outside radius of 48 feet at the closed end, and additional space subject to the approval of the Township Engineer shall be provided outside the roadway for the removal of snow.

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- C. If in a development a street which is planned for extension in a future development is temporarily dead ended, a temporary turnaround of a minimum outside radius of 48 feet shall be provided at each dead end. In such case, easement shall be granted to the Township for the maintenance thereof until such street is extended and another turnaround or other means of circulation of traffic is provided.

§ 347-73.6 Access to streets; easements.

There shall be no reserve strips controlling access to streets except where the control of such strips is definitely placed with the Township under conditions prescribed by the Planning Board or the Board of Adjustment. The subdivision of the land shall be such as to provide each lot, by means of either a public street or a way of permanent easement, with satisfactory access to an existing public street or one which is to be constructed at the same time as the street or way shown on such subdivision.

§347-73.7 Width of pavement, grass strips and sidewalks.

The street standards with respect to the width of pavement, grass strips and sidewalks shall be as follows:

| Street Width (feet) | Center of Street to Edge of Pavement (feet) | Grass Space (feet) | Sidewalk (feet) | Grass Space (feet) |
|------------------------|---------------------------------------------------|-----------------------|--------------------|-----------------------|
| 50 | 14 | 5 | 4 | 2 |
| 55 | 15 | 5.5 | 4 | 3 |
| 60 | 18 | 5 | 4 | 3 |
| 66 | 20 | 5 | 4 | 4 |

§ 347-73.8 Standards for pavements and curbs.

The subdivider shall construct curbs and pavements in accordance with the provisions of Chapter 297, Streets and Sidewalks, Article I, Curbs, Sidewalks and Driveways, and in compliance with the engineering requirements of the Department of Community Services of the Township.

§ 347-73.9 Service ways.

Service ways shall be provided in business areas no less than 20 feet in width for access to block interiors for off-street loading and parking purposes. Such ways, where adjacent to residential areas, shall be carefully screened from such residential areas by planting or equally suitable means as approved by the Board.

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§ 347-74 Sidewalks and walkways.

- A. Sidewalks shall be required in all subdivisions. Sidewalks shall be four feet wide. The Planning Board, however, may determine that there should be sidewalks on only one side of the street or that no sidewalks should be provided if it finds that one of the following conditions exists and if it further finds that the public safety will not be adversely affected thereby:
- (1) The new street shown on the subdivision plat is an extension of an existing street where there is a sidewalk on only one side or there is no sidewalk, as the case may be.
 - (2) There are other subdivisions in the neighborhood where there are sidewalks on only one side of the street or no sidewalks, and it would be unreasonable to require a sidewalk on more than one side of the street or any sidewalk.
 - (3) The open or rural character of the subdivision development would be best preserved by a sidewalk on only one side of the street or by no sidewalk.
- B. In blocks over 600 feet long, pedestrian walkways may be required in locations deemed necessary by the Board. Such walkways shall be 10 feet wide. The design and direction of such walks shall be such as to provide a most convenient and accessible walkway. Walkways shall be provided with a sidewalk not less than four feet in width, and proper lighting therefor shall be provided. An easement for such walkways shall be dedicated to the Township.

§ 347-75 Trees and shrubs.

- A. Provision shall be made for the planting of shade trees of such type and size and at such reasonable intervals as shall be approved by the Planning Board. Shade trees shall be located on the property line and shall not be planted closer than 25 feet to an existing or proposed street intersection.
- B. Existing trees near street rights-of-way and within the property shall be preserved by the subdivider where practical.
- C. Shade trees will not be required if the Board finds that the trees already existing on the property to be subdivided, and which will not be required to be destroyed by the subdivision, will provide sufficient foliage and that the resulting informal arrangement of trees in the subdivision will be at least equally desirable. In any such instance, the Board may require the planting of such shrubs as it may designate in lieu of such street border trees.

§ 347-76 Street Signs

- A. Street signs shall be installed at all street intersections and shall be in character with and similar to the standard street signs in the immediate area.
- B. No street names shall be used which will duplicate or be confusing phonetically with the names of existing streets in the Township.

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- C. A new street which is an extension of or generally in alignment with an existing street shall bear the name of the existing street.

§ 347-77 Topsoil protection.

No topsoil shall be removed from the site or used as spoil. A minimum depth of six inches of topsoil shall be stabilized and maintained in all open areas. The subdivider shall ensure that no rubbish or debris (dead trees and the like) is left on public land at the completion of the project.

§ 347-78 General design standards for residential lots.

The design of residential lots shall comply with the following standards:

- A. Double frontage shall be avoided.
- B. Side lines of lots shall be approximately at right angles or radial to the street lines unless, in the opinion of the Planning Board, a variation from this requirement will give a better street and lot plan.
- C. Corner lots shall have extra width sufficient to permit maintenance of building lines on both front and side.
- D. Where a subdivision creates a small remnant lot that does not conform to the area width and depth standards of this chapter, such remnant lot shall be added to an adjoining lot or lots; or, if not so added to an adjoining lot or lots, such remnant lot shall not be deemed to be a building lot, shall be so marked on the subdivision plat and shall be left in that status until such time as it is added to such adjoining lot or lots.
- E. Lot lines other than street frontages should be straight lines or follow topographic features, except where existing property lines may require other treatment.
- F. Intersecting property lines on corner lots adjacent to the street lines should be rounded with a curve of suitable radius, in no case less than 10 feet.
- G. Where the Master Plan or the Official Map shows a proposed widening of an existing street upon which lots within a proposed subdivision will front, all setbacks on said lots shall be measured from the new street line as proposed on the Master Plan or the Official Map.

§ 347-79 Utilities.

- A. Where practical on all new streets and on the extension of existing streets, utility mains shall be placed in rights-of-way on the sides of the roadway. Water and storm sewer installations shall be placed on one side and gas and sanitary sewer on the other side to simplify location and repair of the lines if they require attention.
- B. The subdivider shall provide for the disposal of sanitary sewage and stormwater and for the installation of such other utilities as may be necessary.

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- C. The subdivider shall install underground service connections before the street is paved and shall provide extensions to the lot line.
- D. The Board may require easements not exceeding 12 feet in width at the rear lot lines and, additionally, an access easement not exceeding 12 feet in width, unless other access for utilities to the rear lot lines is provided, for poles, wires, conduits, storm and sanitary sewers, gas, water or other utilities. Easements of the same or greater width may be required along the lines of or across lots wherever necessary for the extension of existing or proposed utilities.
- E. All installations of storm drains and sanitary sewers shall be connected with an approved system, shall be adequate for all present and probable future development and shall be made according to the requirements of the Township.
- F. Wherever it is impossible to provide or connect to a sanitary sewer system, the Board may approve an individual sewage disposal system which conforms to all requirements of the Health Code and the Building Code of the Township. In such cases, the subdivision plat shall show the proposed location of the individual sanitary sewage disposal units and system and shall be accompanied by plans for such units and system and by a certified copy of percolation tests which have been made at such proposed locations. No subdivision, or part thereof, shall be approved where results of said percolation tests do not meet with the established requirements of this chapter or other applicable ordinances or regulations, nor shall any subdivision, or part thereof, be approved where other physical characteristics of the land would cause septic conditions unhealthful to the public or which is contrary to the requirements of this chapter or other applicable ordinances or regulations. Any remedy proposed to overcome such situations or conditions shall first be approved by the Health Department of the Township.
- G. Nothing in this section shall be deemed to prohibit or to prevent the Board from requiring the installation of sanitary sewer mains and service connections in cases where it approved an individual sewage disposal system.
- H. The subdivider shall arrange with the Superintendent of the Water Bureau for the installation or water mains and water hydrants.
- I. Telephone and electric lines shall be placed at the rear of lots or underground. Easements therefor shall be provided as set forth in § 347-73.6 in all cases, even though utilities immediately constructed may not be required to follow such easement.
- J. Metal ornamental streetlight poles shall be installed where required, the poles to be of the general design and character of those installed in new residential subdivisions since 1950. Electrical service connections to said poles shall be by underground installations.

ARTICLE IX. LAND USE PROCEDURES

§ 347-80 Planning Board.

§ 347-80.1 Establishment

A. There is hereby established pursuant to P.L. 1975, c. 291, in the Township of Montclair, a Planning Board of nine members consisting of the following four classes:

- (1) Class I: The Mayor or the Mayor's designee in the absence of the Mayor. The Mayor's designee, if any, shall be a resident of the Township of Montclair whose designation shall be made in writing and filed with the Municipal Clerk and the Secretary of the Planning Board.
- (2) Class II: one of the officials of the municipality, other than a member of the governing body, to be appointed by the Mayor, provided that so long as there exists an Environmental Commission in the Township, the member of the Environmental Commission who is also a member of the Planning Board as required by N.J.S.A. 40:56A-1 shall be deemed to be the Class II Planning Board member for purposes of this section in the event that there be among the Class IV or alternated members of the Planning Board both a member of the Zoning Board of Adjustment and a member of the Board of Education.
- (3) Class III: a member of the governing body, to be appointed by it.
- (4) Class IV: six other citizens of the municipality, to be appointed by the governing body. The Class IV members shall hold no other municipal office, position or employment, except that one such member may be a member of the Zoning Board of Adjustment or Historic Preservation Commission and one member may be a member of the Board of Education. So long as there exists a Township Environmental Commission, the member of the Environmental Commission who is also a member of the Planning Board, as required by N.J.S.A. 40:56A-1, shall be a Class IV Planning Board member, unless there be among the Class IV or alternate members of the Planning Board both a member of the Zoning Board of Adjustment or Historic Preservation Commission and a member of the Board of Education, in which case the member common to the Planning Board and Township Environmental Commission shall be deemed a Class II member of the Planning Board. For the purpose of this section, membership on a municipal board or commission whose function is advisory in nature, and the establishment of which is discretionary and not required by statute, shall not be considered the holding of municipal office.

B. Alternate members.

- (1) The governing body shall appoint not more than two alternate members who shall meet the qualifications of Class IV members. Alternate members shall be designated at the time of appointment as "Alternate No. 1" and "Alternate No. 2."

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- (2) No member or alternate shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. Any member other than a Class I member may, after public hearing if he or she request one, be removed by the governing body for cause.
- (3) Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member of any class. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

§ 347-80.2 Terms of office.

- A. The term of the Class I member shall correspond with his/her official tenure. If the Class I member is the Mayor's designee in the Mayor's absence, the designee shall serve at the pleasure of the Mayor during the Mayor's official tenure. The terms of the members composing Class II and Class III shall be for one 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.
- B. The term of a Class IV member who is also a member of the Board of Adjustment, the Historic Preservation Commission or the Board of Education shall terminate whenever he or she is no longer a member of such other body or at the completion of his or her Class IV term, whichever occurs first. The terms of a Class II or Class IV member who is also a member of the Environmental Commission shall be for three years or terminate at the completion of his or her term of office as a member of the Environmental Commission, whichever occurs first.
- C. All Class IV members shall be appointed for terms of four years except as otherwise herein provided. All terms shall run from January 1 of the year in which the appointment was made.
- D. The terms of alternate members shall be for two years, running from January 1 of the year in which the appointment was made, and the term of not more than one alternate member shall expire in any one year. A vacancy occurring otherwise than by expiration of term shall be filled by the appointing authority for the unexpired term only.
- E. If the Planning Board lacks a quorum because any of its regular or alternate members is prohibited from acting on a matter due to the member's personal or financial interests therein, regular members of the Zoning Board of Adjustment shall be called upon to serve, for that matter only, as temporary members of the Planning Board in order of seniority of continuous service to the Board of Adjustment until there are the minimum number of members necessary to constitute a quorum to act upon the matter without any personal or financial interest therein, whether direct or indirect. If a choice has to be made between regular members of equal seniority, the Chair of the Board of Adjustment shall make the choice.

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§ 347-80.3 Vacancies.

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

§ 347-80.4 Organization of Board.

The Planning Board shall elect a Chair and Vice Chair from the members of Class IV and select a Secretary and Assistant Secretary, who may be either members of the Planning Board or municipal employees designated by it.

§ 347-80.5 Planning Board Attorney.

There is hereby created the office of Planning Board Attorney. The Planning Board may annually appoint, fix the compensation of or agree upon the rate of compensation of the Planning Board Attorney, who shall be an attorney other than a member of the Township Law Department.

§ 347-80.6 Experts and staff.

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

§ 347-80.7 Powers and duties generally.

The Planning Board shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this chapter. It shall also have the following powers and duties:

- A. To make and adopt and from time to time amend a Master Plan for the physical development of the municipality, pursuant to N.J.S.A. 40:55D-28, which Master Plan shall give due consideration to the relationship between the proposed physical development of the Township and the Master Plan for those areas outside its boundaries which in the Board's judgment bear essential relation to the planning of the municipality.
- B. To administer the provisions of Chapter 347, Zoning and Land Use Regulations, of the Code of the Township of Montclair, in accordance with the provisions of said chapters and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.
- C. To approve conditional use applications in accordance with the provisions of Chapter 347, Zoning and Land Use Regulations, and N.J.S.A. 40:55D-67.
- D. To participate in the preparation and review of programs or plans required by state or federal law or regulations.
- E. To assemble data on a continuing basis as part of a continuous planning process.
- F. To annually prepare a program of municipal capital improvement projects projected over a term of six years, and amendments thereto, and recommend same to the governing body.

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- G. To consider and make report to the governing body within 35 days after referral as to any proposed development regulation submitted to it pursuant to the provisions of N.J.S.A. 40:55D-26a, and also to review other matters specifically referred to the Planning Board by the governing body pursuant to the provisions of N.J.S.A. 40:55D-26b.
- H. Variances; direction for issuance of certain permits.
- (1) When reviewing applications for approval of subdivision plats, site plans or conditional uses, to grant, to the same extent and subject to the same restrictions as the Zoning Board of Adjustment:
 - (a) Variances pursuant to § **347-81.10A(3)** and N.J.S.A. 40:55D-70c.
 - (b) Direction pursuant to N.J.S.A. 40:55D-34 for issuance of a permit for a building or structure in the bed of a mapped street or public drainageway, flood control basin or public area reserved pursuant to N.J.S.A. 40:55D-32.
 - (c) Direction pursuant to N.J.S.A. 40:55D-36 for issuance of a permit for a building not related to a street.
 - (2) Whenever relief is requested pursuant to this subsection, 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.
 - (3) 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 Chapter **347**, Zoning.
- I. To perform such other advisory duties as are assigned to it by ordinance or resolution of the governing body for the aid and assistance of the governing body or other agencies or officers.
- J. To issue subpoenas, administer oaths and take testimony in accordance with the provisions of the County and Municipal Investigations Law of 1953 (N.J.S.A. 2A:67A-1 et seq.)

§ 347-81 Board of Adjustment

§ 347-81.1 Establishment; composition.

- A. A Zoning Board of Adjustment is hereby established pursuant to N.J.S.A. 40:55D-69 et seq., consisting of seven residents of the Township of Montclair appointed by the governing body to serve for terms of four years from January 1 of the year of their appointment. The terms of the members first appointed shall be so determined that to the greatest practicable extent the expiration of such terms shall be distributed evenly over

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the first four years after their appointment, provided that the initial term of no member shall exceed four years. Thereafter, the term of each member shall be for four years. Nothing in this chapter shall, however, be construed to affect the term of any present member of the Zoning Board of Adjustment, all of whom shall continue in office until the completion of the term for which they were appointed.

- B. No member of the Zoning Board of Adjustment may hold any elective office or position with the municipality.
- C. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term only.
- D. Four alternate members shall also be appointed by the governing body to serve for a term of two years. Alternate members shall be designated by the governing body as "Alternate No. 1," "Alternate No. 2," "Alternate No. 3," and "Alternate No. 4" and shall serve in rotation during the absence or disqualification of any regular member or members. The terms of no more than two alternate members shall expire in the same year. 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.

§ 347-81.2 Officers.

The Board of Adjustment shall elect a Chair and Vice Chair from its members and shall also select a Secretary and Assistant Secretary, who may or may not be Board members or municipal employees.

§ 347-81.3 Board of Adjustment Attorney.

There is hereby created the office of Attorney to the Zoning Board of Adjustment. The Zoning Board of Adjustment may annually appoint, fix the compensation of or agree upon the rate of compensation of the Zoning Board of Adjustment Attorney, who shall be an attorney other than a member of the Township Law Department.

§ 347-81.4 Experts and staff.

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

§ 347-81.5 Rules and regulations.

The Board shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this chapter. In the issuance of subpoenas, administration of oaths and taking of testimony, the provisions of the County and Municipal Investigations Law of 1953 (N.J.S.A. 2A:67A-1 et seq.) shall apply.

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§ 347-81.6 Powers.

- A. The powers of the Zoning Board of Adjustment shall be in accordance with N.J.S.A. 40:55D-69 et seq., and amendments and supplements thereto, and with the provisions of this chapter.
- B. It is further the intent of this chapter to confer upon the Zoning Board of Adjustment as full and complete powers as may lawfully be conferred upon such Board, including, but not by way of limitation, the authority, in connection with any case, action or proceeding before the Board, to interpret and construe the provisions of this chapter or any term, clause, sentence or word hereof and the Zoning Map in accordance with the general rules of construction applicable, to legislative enactments.
- C. The Board may, in appropriate cases and subject to appropriate conditions and safeguards, grant variances from the terms of Chapter 347, Zoning, in accordance with the general or specific rules contained herein and with the general rules hereby laid down, that equity shall be done in cases where the strict construction of the provisions of that chapter would work undue hardship. The powers and duties of the Board having been delegated to and imposed upon it by statute, the Board shall in all cases follow the provisions applicable to it in N.J.S.A. 40:55D-1 et seq. or subsequent statutes in such case made and provided, and it shall from time to time furnish to any person requesting the same a copy of its rules and information as to how appeals or applications may be properly filed with the Board for its decision thereon.

§ 347-81.7 Appeals and application of Zoning Officer.

- A. Appeals to the Board of Adjustment may be taken by any interested party affected by any decision of the Zoning Officer based on or made in the enforcement of Chapter 347, Zoning and Land Use Regulations, or official map. Each appeal shall be taken within the 20 days prescribed by the statute by filing a notice of appeal with the officer from whom the appeal is taken, together with three copies of said notice with the Secretary of the Board of Adjustment. Said notice of appeal shall specify the grounds for said appeal. The officer from whom the appeal is taken shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.
- B. Applications addressed to the original jurisdiction of the Board of Adjustment without prior application to the Zoning Officer shall be filed with the Secretary of the Board of Adjustment at least 25 days before the monthly meeting of the Board. The applicant shall obtain all necessary forms from the Secretary of the Board, who shall inform the applicant of the steps to be taken to initiate application and of the regular meeting dates of the Board. As used in this chapter, a complete application shall mean an application certified as complete by the Secretary of the Board pursuant to § 347-86.1 and § 347-86.2.
- C. An appeal to the Board of Adjustment stays all proceedings in furtherance of the action in respect of 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 or her, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed other than by an order of the Superior Court of New

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Jersey on application or notice to the officer from whose action the appeal is taken and on due cause shown.

§ 347-81.8 Power to reverse or modify decision.

In exercising the above-mentioned power, the Board of Adjustment may, in conformity with the provisions of N.J.S.A. 40:55D-1 et seq., or amendments thereto or subsequent statutes applying, reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from, and make such order, requirement, decision or determination as ought to be made, and to that end have all the powers of the Zoning Officer from whom the appeal was taken.

§ 347-81.9 Expiration of variance.

Any variance from the terms of Chapter 347, Zoning and Land Use Regulations, hereafter granted by the Board of Adjustment, permitting the erection or alteration of any structure or structures or permitting a specified use of any premises, shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance or unless such permitted use has actually been commenced within one year from the date of publication of the notice of the judgment or determination of the Board of Adjustment, except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the Board of Adjustment to the governing body or to a court of competent jurisdiction until the termination in any manner of such appeal or proceeding. The Board of Adjustment or the Planning Board, whichever gave the original approval, may grant an extension of time beyond the one-year limitation upon written request of the owner.

§ 347-81.10 Powers granted by law.

A. The Board of Adjustment shall have such powers as are granted by law to:

- (1) Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of Chapter 347, Zoning and Land Use Regulations.
- (2) Hear and decide requests for interpretation of the Zoning Map or Chapter 347, Zoning and Land Use Regulations, or for decisions upon other special questions upon which such Board is authorized to act by Chapter 347, Zoning and Land Use Regulations.
- (3) Variances.
 - (a) Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to Chapter 347, Zoning and Land Use Regulations, would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship.

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- (b) Where in an application or appeal relating to a specific piece of property the purposes of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) would be advanced by a deviation from the requirements of Chapter 347, Zoning and Land Use Regulations, and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from regulations pursuant to Chapter 347, Zoning and Land Use Regulations; provided, however, that no variance from those departures enumerated in Subsection A(4) 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 § 347- 80.7H(1)(a).
- (4) In particular cases and for special reasons, grant a variance to allow departure from regulations pursuant to Chapter 347, Zoning and Land Use Regulations, to permit a use or principal structure in a district restricted against such use or principal structure, an expansion of a nonconforming use, deviation from a specification or standard pertaining solely to a conditional use, an increase in permitted floor area ratio, an increase in permitted density except as applied to the required lot area for a lot or lots for detached one- or two-dwelling unit buildings, which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision or a height of a principal structure which exceeds by 10 feet or 10% maximum height permitted in the district for a principal structure. A variance under this subsection shall be granted only by affirmative vote of at least five members.
- B. No variance or other relief may be granted under the provisions of this section unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and Chapter 347, Zoning and Land Use Regulations. Any application under any subsection of this section may be referred to any appropriate person or agency, including the Planning Board, for its report, provided that such reference shall not extend the period of time within which the Zoning Board of Adjustment shall act.

§ 347-81.11 Additional powers.

- A. The Board of Adjustment shall in addition to the powers specified in § 347-81.10, have power given by law in accordance with N.J.S.A. 40:55D-76, as amended and supplemented, to:
- (1) Direct issuance of a permit pursuant to N.J.S.A. 40:55D-34 for a building or structure in the bed of a mapped street or public drainageway, flood control basin or public area reserved on the Official Map; or
 - (2) Direct issuance of a permit pursuant to N.J.S.A. 40:55D-35 for a building or structure not related to a street.
- B. The Board of Adjustment shall have the power to grant to the same extent and subject to the same restrictions as the Planning Board, subdivision or site plan approval pursuant to N.J.S.A. 40:55D-37 et seq., or conditional use approval pursuant to N.J.S.A 40:55D-67 whenever the Board is reviewing an application for approval of a use variance pursuant to § 347-81.10A(4) of this chapter.

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- C. The developer may elect to submit a separate application requesting approval of the variance and a subsequent application for any required approval of 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. No such subsequent approval shall be granted unless such 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 Chapter 347, Zoning and Land Use Regulations. The number of votes of Board members required to grant any such subsequent approval shall be as otherwise provided in this chapter for the approval in question, and the special vote pursuant to § 347-71.10A(4) hereof shall not be required.

§ 347-81.12 Time for decision.

- A. The Board of Adjustment shall render decision not later than 120 days after the date an appeal is taken from the decision of the administrative officer or the date of the submission of a complete application for development to the Board pursuant to the provisions of N.J.S.A. 40:55D-72b. Failure of the Board to render a decision within such one-hundred-twenty-day period or within such further times as may be consented to by the applicant shall constitute a decision favorable to the applicant.
- B. In the event that the developer elects to submit separate consecutive applications, the aforesaid provision 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 chapter. Failure of the Board of Adjustment 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 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.
- C. Whenever review or approval of the application by the County Planning Board is required by N.J.S.A. 40:27-6.3, in the case of a subdivision, or N.J.S.A. 40:27-6.6, in the case of a site plan, the 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 by its failure to report thereon within the required time.

§347-82 Provisions applicable to both Planning Board and Zoning Board of Adjustment

§347-82.1 Conflicts of interest.

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

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§ 347-82.2 Meetings.

- A. Meetings of both the Planning Board and Zoning Board of Adjustment shall be scheduled no less often than once a month, and any meeting so scheduled shall be held as scheduled unless canceled for lack of applications for development to process or for lack of a quorum.
- B. Special meetings may be provided for at the call of the Chair or on the request of any two Board members, which shall be held on notice to its members and the public in accordance with all applicable legal requirements.
- C. No action shall be taken at any meeting without a quorum being present.
- D. All actions shall be taken by majority vote of the members present at the meeting except as otherwise required by any provision of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., or this chapter. Failure of a motion to receive the number of votes required to approve an application for development shall be deemed an action denying the application.
- E. All regular meetings and all special meetings shall be open to the public. Notice of all such meetings shall be given in accordance with the requirements of the Open Public Meetings Law, Chapter 231, P.L. 1975.
- F. A member of a Board who was absent for one or more of the meetings at which a hearing was held shall be eligible to vote on the matter upon which the hearing was conducted, notwithstanding his or her absence from one or more of the meetings; provided, however, that such Board member has available to him or her the transcript or recording of all the hearings from which he or she was absent and certifies in writing to the Board that he or she has read such transcript or listened to such recording.

§ 347-82.3 Minutes.

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

§ 347-82.4 Hearings.

- A. Rules. The Planning Board and Zoning Board of Adjustment shall make rules governing the conduct of hearings before such bodies, which rules shall not be inconsistent with the provisions of N.J.S.A. 40:55D-1 et seq., or of this chapter.
- B. Oaths. The officer presiding at the hearing or such person as he or she may designate shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents

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presented by the parties, and the provisions of the County and Municipal Investigations Law (N.J.S.A. 2A:67A-1 et seq.) shall apply.

- C. Testimony. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer and the right of cross-examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.
- D. Evidence. Applicants are encouraged to utilize digital technology, such as PowerPoint, when presenting evidence to the Board. A video screen, laptop and projector will be made available to all applicants at meetings. Technical rules of evidence shall not be applicable to the hearing, but the Board may exclude irrelevant, immaterial or unduly repetitious evidence.
- E. Records. Each Board shall provide for the verbatim recording of the proceedings by either a stenographer or by mechanical or electronic means. The Board shall furnish a transcript or duplicate recording in lieu thereof on request to an interested party at his or her expense. All transcripts shall be certified in writing by the transcriber to be accurate.

§ 347-82.5 Notice of hearing.

- A. Notice of hearing shall be given for the following applications for development:
 - (1) Any request for a variance from the requirements of Chapter 347, Zoning.
 - (2) Any request for conditional use approval.
 - (3) Any request for minor site plan approval or preliminary approval of a major site plan.
 - (4) Any request for preliminary approval of a major subdivision.
 - (5) Any request for the issuance of a permit to build within the bed of a mapped street, public drainageway, flood control basin or public area reserved on the Official Map, or in a lot not abutting a street.
 - (6) Any request for minor subdivision approval.
- B. Whenever notice is required for a hearing on an application for development, the applicant shall give notice thereof as follows:
 - (1) Public notice shall be given by publication in the official newspaper of the municipality at least 10 days prior to the date of the hearing.
 - (2) Notice shall be given to the owners of all real property as shown on the current tax duplicates located within 200 feet in all directions of the property which is the subject of such hearing and all adjoining property which is under common ownership and whether located within or without this municipality. Such notice shall be given by serving a copy thereof on the owner as shown on said current tax duplicate or his or her agent in charge of the property or by mailing a copy thereof by certified mail to

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the property owner at his or her address as shown on said current tax duplicate. A return receipt is not required. 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 limited liability company may be made by service upon any member thereof. 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. The requirement of service shall be satisfied by notice to the condominium association, in the case of any unit owner whose unit is above or below it, or horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it.

- C. Notice of all hearings on applications for development involving property located within 200 feet of an adjoining municipality shall be given by personal service or by certified mail to the Clerk of such municipality, which notice shall be in addition to the notice required to be given pursuant to Subsection **B** of this section to the owners of lands in such adjoining municipality which are located within 200 feet of the subject premises.
- D. Notice shall be given by personal service or certified mail to the Essex 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 situate within 200 feet of a municipal boundary.
- E. Notice shall be given by personal service or certified mail to the Commissioner of Transportation of a hearing on an application for development of property adjacent to a state highway.
- F. Notice shall be given by personal service or certified mail to the State Planning Commission of a hearing on an application for development of property which exceeds 150 acres or 500 dwelling units. Such notice shall include a copy of any maps or documents required to be on file with the Municipal Clerk pursuant to N.J.S.A. 40:55D-10.
- G. All notices hereinabove specified in this section shall be given at least 10 days prior to the date fixed for hearing, and the applicant shall file an affidavit of proof of service with the Board holding the hearing on the application for development. Notice pursuant to Subsections **C**, **D**, **E** and **F** of this section shall not be deemed to be required unless public notice pursuant to N.J.S.A. 40:55D-12a and b is required.
- H. Any notice made by certified mail as hereinabove required shall be deemed to be complete upon mailing in accordance with the provisions of N.J.S.A. 40:55D-14.
- I. Form of notice. All notices required to be given pursuant to the terms of this chapter shall state the date, time and place of the hearing, the nature of the matters to be considered and identification of the property proposed for development by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the Municipal

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Tax Assessor's office and the location and times at which any maps and documents for which approval is sought are available as required by law.

- J. Site plan review. The Planning Board may waive notice and public hearing as to any application for conventional site plan review involving premises having less than 10,000 square feet of building floor area.

§ 347-82.6 List of property owners.

Pursuant to the provisions of N.J.S.A. 40:55D-12c, the Township Planner or the Assistant Township Planner shall, within seven days after receipt of a request therefor and upon receipt of payment of a fee as required in § 347-85.1, make and certify a list from the current tax duplicate of names and addresses of owners to whom the applicant is required to give notice pursuant to § 347-82.5.

§ 347-82.7 Decisions.

- A. The Planning Board and the Zoning Board of Adjustment shall include findings of fact and conclusions based thereon in each decision on any application for development and shall reduce the decision to writing. The municipal agency shall provide the findings and conclusions through:
 - (1) A resolution adopted at a meeting held within the time period provided in the Act for action by the Board on the application for development; and
 - (2) A memorializing resolution adopted at a meeting held not later than 45 days after the date of the meeting at which the Board voted to grant or deny approval. Only the members of the Board who voted for the action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution. An action pursuant to this section (resulting from the failure of a motion to approve an application) shall be memorialized by resolution as provided above, with those members voting against the motion for approval being the members eligible to vote on the memorializing resolution. The vote on any such resolution shall be deemed to be a memorialization of the action of the Board and not to be an action of the Board; however the date of the adoption of the resolution shall constitute the date of the decision for purposes of the mailings, filings and publications required by §§ 347-82.7B and 347-82.8. If the Board fails to adopt a resolution or memorializing resolution as hereinabove specified, any interested party may apply to the Superior Court in a summary manner for an order compelling the Board to reduce its findings and conclusions to writing within a stated time, and the cost of the application, including attorney's fees, shall be assessed against the municipality.
- B. A copy of the decision shall be mailed by the Board within 10 days of the date of decision to the applicant, or if represented, then to his or her attorney, without separate charge. A copy of the decision shall also be mailed to all persons who have requested it and who have paid the fee prescribed by the Board for such service. A copy of the decision shall also be filed in the office of the Planning Board or the Board of Adjustment, which shall make a copy of such filed decision available to any interested party upon payment of a fee

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calculated in the same manner as those established for copies of other public documents in the municipality.

- C. Whenever review or approval of the application by the County Planning Board is required by N.J.S.A. 40:27-6.3, in the case of a subdivision, or N.J.S.A. 40:27-6.6, in the case of a site plan, the Planning Board or 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 by its failure to report thereon within the required time period.

§ 347-82.8 Publication of decision.

A brief notice of every final decision shall be published in the official newspaper of the municipality. Such publication shall be arranged by the Secretary of the Planning Board or Zoning Board of Adjustment, as the case may be.

§ 347-82.9 Payment of taxes.

Pursuant to the provisions of N.J.S.A. 40:55D-39 and N.J.S.A. 40:55D-65, every application for development submitted to the Planning Board or to the Zoning 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; or if it is shown that taxes or assessments are delinquent on said property, any approvals or other relief granted by either Board shall be conditioned upon either the prompt payment of such taxes or assessments or the making of adequate provision for the payment thereof in such manner that the municipality will be adequately protected.

§ 347-82.10 Dismissal of inactive applications.

- A. Applications that have not been deemed complete within six months of the submission date will be dismissed without prejudice.
- B. Applications that have been deemed complete shall be scheduled for a hearing before the appropriate board within the time of action stated in the Municipal Land Use Law. If an applicant fails to appear when scheduled before a board and the time for action pursuant to the Municipal Land Use Law will expire before the next regularly scheduled Planning Board or Board of Adjustment meeting, the application will be dismissed without prejudice.
- C. Extensions on the time for action may be granted for no more than one year from the required time for action, after which the application will be dismissed without prejudice.

§ 347-82.11 Appeals to Zoning Board of Adjustment.

An appeal to the Zoning Board of Adjustment may be taken by any interested party affected by any decision of administrative officer of the municipality based on or made in the enforcement of Chapter 347, Zoning and Land Use Regulations, or Official Map. Such appeal shall be taken within 20 days by filing a notice of appeal in the manner set forth in § 347-81.7A, and in accordance with the provisions of N.J.S.A. 40:55D-72a.

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§347-83 Development Review Committee

- A. A Development Review Committee shall be established to review all site plan applications for development or requests for review presented to the Planning Board and the Board of Adjustment. The Development Review Committee shall consist of five members. The appointees shall be two members from the Planning Board (one of whom may be the Mayor) to be appointed by the Planning Board Chairman; one member from the Zoning Board of Adjustment to be appointed by the Board of Adjustment Chairman; the Planning Director; and the Board Engineer. The Zoning Officer, the Construction Official and other staff and Board consultants may provide advice to the Development Review Committee as required. The terms of all members shall be one year, commencing from the first day of January of the year of appointment. Vacancies shall be filled in the same manner as the original appointment, and those vacancies occurring other than by the expiration of a term shall be filled for the duration of the unexpired term. Members shall continue serving after the expiration of their terms until such time as their successors shall be appointed.
- B. The Development Review Committee shall conduct formal meetings, as required, in order to review site plan applications. Applicants may appear on their own behalf or may appear through an attorney, architect or engineer.
- C. The Development Review Committee shall have the authority to conduct formal hearings, after notice, and approve minor site plans that do not require variances, in accordance with Subsection F, below. At least four members of the Development Review Committee shall conduct the hearing, and the decision to approve a minor site plan by the Development Review Committee shall be unanimous. A record shall be kept of the hearing proceedings.
- D. The Development Review Committee shall have the following responsibilities:
- (1) Determine compliance with the Township's zoning requirements, development regulations and design standards.
 - (2) Make recommendations on the design and technical elements of any application.
 - (3) Conduct formal hearings on minor site plans that do not include any variances.
- E. The report of the Development Review Committee shall be distributed to the Secretary of the Board where the formal application is to be presented and to the applicant. The report shall not be binding upon the Planning Board, the Zoning Board or the applicant, nor shall the applicant be relieved of any requirements or regulations which have not been addressed in the report.
- F. Approval of a minor site plan:
- (1) The Development Review Committee may conduct formal hearings and approve or deny a minor site plan.
 - (2) The Planning Board may choose not to conduct formal hearings and, instead, refer the minor site plan to the Development Review Committee for action.

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- (3) An applicant may, at any time, choose to have the minor site plan application referred to the Planning Board for action. If a minor site plan is denied by the Development Review Committee, the matter shall be automatically referred to the Planning Board for action.
- (4) The Development Review Committee may impose reasonable conditions of approval on any minor site plan. If the applicant disagrees with any condition of approval, the site plan shall be referred to the Planning Board for action.
- (5) Applicants seeking Development Review Committee approval of a minor site plan shall publish notice of the public hearing in the official newspaper of the Township at least 10 days prior to the date of the Development Review Committee hearing.
- (6) In the event there is opposition to the minor site plan, as expressed by opponents appearing before the Development Review Committee, the minor site plan shall not be approved by the Development Review Committee and shall be forwarded to the Planning Board for action.
- (7) In reviewing any minor site plan, the Development Review Committee shall use the standards set forth in Montclair Code **§347- 89**.

§ 347-84 Environmental Commission

- A. Creation. The municipality of Montclair's Environmental Commission is hereby established pursuant to Chapter 245 of the Laws of 1968 (N.J.S.A. 40:56A-1 to 40:56A-12), as amended by Chapter 35, P.L. 1972.
- B. Members.
 - (1) The Commission shall consist of seven members appointed by the Township Council, one of whom shall also be a member of the Planning Board and all of whom shall be residents of the municipality of Montclair; the members shall serve without compensation, but, within budgetary limitations, they may receive reimbursement for actual expenses necessarily incurred in the performance of their duties. The Township Council shall designate one of the members to serve as Chairman and presiding officer of the Commission. The terms of the office of the first Commissioners shall be for one, two or three years, to be designated by the Township Council in making its appointments, and their successors shall be appointed for terms of three years and until the appointment and qualification of their successors. The first members of the Commission shall be appointed for the following terms:
 - (a) Two members for the one-year term expiring December 31, 2002;
 - (b) Two members for the two-year term expiring December 31, 2003;
 - (c) Three members for the three-year term expiring December 31, 2004.
 - (2) The Township Council may appoint not more than two alternate members to the Commission who shall be residents of the municipality of Montclair. Alternate members shall be designated at the time of appointment by the Township Council as

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"Alternate No. 1" and "Alternate No. 2." An alternate member 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 first. The term of the alternate members shall be for two years. The first alternate members of the Commission shall be appointed for the following terms:

- (a) Alternate No. 1 for the two-year term expiring December 31, 2003;
 - (b) Alternate No. 2 for the one-year term expiring December 31, 2002.
- (3) The Commission may establish in its discretion a nonvoting membership of associate members who will participate in meetings and activities of the Commission.
- (4) The Township Council may remove any member, alternate member or advisory member of the Commission for cause, on written charges served upon the member and after the hearing thereon, at which the member shall be entitled to be heard in person or by counsel. A vacancy on the Commission occurring otherwise than by expiration of a term shall be filled for the unexpired term in the same manner as an original appointment. Failure to attend meetings for two consecutive months or two consecutive regular meetings without being excused by the majority of the authorized membership shall result in forfeiture of office by such member.
- C. Powers of Commission. The commission is established for the protection, development or use of natural resources, including water resources, located within territorial limits of the municipality of Montclair. The Commission shall have the power to conduct research into the use and possible use of the open land areas of the municipality and may coordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print, and distribute books, maps, charts, plans and pamphlets which in its judgment it deems necessary for its purposes, within budgetary limitations. It shall keep an index of all open areas, publicly or privately owned, including open marshland, swamps and other wetlands, in order to obtain information on the proper use of such areas and may from time to time recommend to the Planning Board plans and programs for inclusion in the Master Plan and the development and use of such areas. The Commission shall have the power to research, make application for and promote grants and other financial assistance programs which can provide funding to the Commission and/or the Township to fulfill the Commission's duties as set forth herein.
- D. Acquisitions by Commission. The Environmental Commission may, subject to the prior written approval of the governing body, acquire property, both real and personal, in the name of the municipality by gift, purchase, grant, bequest, devise or lease for any of its purposes and shall administer the same for such purposes subject to the terms of the conveyance or gift. Such an acquisition may be to acquire the fee or any lesser interest, development right, easement (including conservation easement), covenant or other contractual right (including a conveyance on conditions or with limitations or reversions) as may be necessary to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve and properly utilize open spaces and other land and water areas in the municipality.

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- E. Records and annual reports. The Environmental Commission shall keep records of its meetings and activities and make an annual report to the governing body. All meetings and conduct of business shall be subject to the Open Public Meetings Act., N.J.S.A. 10:4-1 et seq.
- F. Appropriations. The Commission may appoint such clerks and other employees and incur such expenses as it may from time to time require, providing the same shall be within the limits of funds appropriated to it by the governing body or otherwise available to it.
- G. Studies and recommendations. The Environmental Commission shall have the power to study and make recommendations concerning open space preservation, water resources management, air pollution control, solid waste management, noise control, soil and landscape protection, environmental appearance, and protection of flora and fauna as well as any other appropriate topic upon which the Township Council seeks advice and study.
- H. Availability of applications for development. Whenever the Environmental Commission has prepared and submitted to the Planning Board an index of the natural resources of the municipality, the Planning Board shall make available to the Environmental Commission an informational copy of every application for development to the Planning Board. Failure of the Planning Board to make such informational copy available to the Environmental Commission shall not invalidate any hearing or proceeding.

§347-85 Fees

§ 347-85.1 Application fees.

- A. The following constitutes the Planning Board and Board of Adjustment fee schedule:
 - (1) Subdivisions.
 - (a) Concept plan: \$150.
 - (b) Minor subdivision: \$300.
 - (c) Major subdivision.
 - (i) Preliminary approval: \$500.
 - (ii) Final approval: \$200.
 - (d) Amendments to approved plats: 50% of original application fee.
 - (e) Lot line adjustment: \$300.
 - (2) Site plans.
 - (a) Concept plan: \$250.
 - (b) Minor site plan: \$500.

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- (c) Preliminary major site plan approval: \$500, plus \$25 per housing unit for residential development; and \$500, plus \$10 per 1,000 square feet of building area for nonresidential development.
 - (d) Final major site plan approval: 50% of the fee required for preliminary site plan.
 - (e) Amendments to approved site plans: 50% of application fee.
- (3) Conditional use permit: \$300.
- (4) Variances.
- (a) Use variance for a residential use: \$500.
 - (b) Use variance for a nonresidential use: \$500.
 - (c) Other variances for a single-family residential use: \$200.
 - (d) Other variances for all other uses: \$200 per variance.
- (5) Historic Preservation Commission certificate of appropriateness: \$100.
- (6) Appeal from administrative decision: \$200.
- (7) Request for interpretation of the Zoning Ordinance or other special questions: \$200.
- (8) Direction for issuance of a permit pursuant to maintaining the Official Map (N.J.S.A. 40:55D-34 and 40:55D-36): \$250.
- (9) Certified list of property owners: \$10.
- (10) Reproduction of recorded hearing: \$10 per compact disc.
- (11) Reproduction of transcript: Same as cost to municipality, not to exceed statutory maximum.
- (12) Reproduction records, plus postage.
- (a) Per page, up to 10 pages: \$0.50.
 - (b) Per page, 11 pages or more: \$0.25.
- (13) Special meeting: \$800.
- (14) Zoning permit: \$50.
- (15) Zone change: \$1,000.
- (16) Zoning Map: \$20.

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(17) Master Plan:

- (a) Unified Land Use and Circulation Element: \$100.
- (b) Housing Element and Fair Share Plan: \$10.
- (c) Conservation Element: \$10.
- (d) Stormwater Management Element: \$10.
- (e) Historic Preservation Element: \$10.

B. When an application involves two or more fee categories, the fee shall equal the total of the fees required for each type of application requested.

§ 347-85.2 Escrow deposits.

- A. Escrow deposits. Municipal agencies shall require escrow deposits by an applicant in accordance with the provisions of this section. The escrow deposits shall be in addition to the application fees required in § 347-85.1. Such funds shall be used by the municipal agencies to pay professionals for services rendered to the Township or approving authority for review of applications for development, review and preparation of documents, inspection of improvements or other purposes under the provisions of N.J.S.A. 40:55D-1 et seq. The application review and inspection charges shall be limited only to professional charges for review of applications, review and preparation of documents and inspections of developments under construction and review by outside consultants when an application is of a nature beyond the scope of expertise of the professionals normally utilized by the municipality. The only cost that shall be added to any such charges shall be actual out-of-pocket expenses of such professionals or consultants, including normal and typical expenses incurred in processing applications and inspecting improvements. No applicant shall be charged for any municipal, clerical or administrative functions, overhead expenses, meeting room charges or any of the municipal costs and expenses except as provided for specifically by statute, nor shall a municipal professional add any such charge to his bill.
- B. Scope of reimbursed services. The Township shall be entitled to be reimbursed for the review of applications, both as to completeness and as to content; for the review and preparation of documents, such as, but not limited to, drafting resolutions, developer's agreements and necessary correspondence with applicant or applicant's professionals. Prior to and as a condition of an application being considered complete, an applicant shall submit to the Township of Montclair, to be held in escrow, the amount indicated below. Where more than one fee category applies, the fee shall equal the total of the fees required for each type of application requested.

(1) Subdivisions.

- (a) Concept plans: \$250.
- (b) Minor subdivision: \$1,500.

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- (c) Preliminary plat of a major subdivision: \$2,000, plus \$200 per lot.
 - (d) Final plat of a major subdivision: 1/2 of preliminary fee.
 - (e) Amendment to approved plats: 1/2 of escrow fee.
 - (f) Lot line adjustments: \$500.
- (2) Site plans.
- (a) Concept plans: \$250.
 - (b) Minor site plan: \$750.
 - (c) Preliminary site plan: \$2,000, plus \$200 per dwelling unit (residential), or plus \$100 per 1,000 square feet of building area or portion thereof (nonresidential).
 - (d) Final site plan: 50% of preliminary site plan escrow deposit.
 - (e) If an applicant submits a preliminary and final site plan to be processed simultaneously, the applicant must file the appropriate fees as set forth in Subsection B2(c) and (d) of this section.
 - (f) Amendments to approved site plans: 1/4 of escrow fee.
- (3) Conditional use permit: \$500.
- (4) Variances and appeals.
- (a) Applications pursuant to N.J.S.A. 40:55D-70(a), (b) and (c) for multifamily and nonresidential development: \$250 per variance.
 - (b) Applications pursuant to N.J.S.A. 40:55D-70(a), (b) and (c) for one- and two-family homes: \$250.
 - (c) Use variance application pursuant to N.J.S.A. 40:55D-70(d): \$1,500.
- (5) New or expanded parking lots (for multifamily and nonresidential development): \$1,500.
- (6) New or expanded residential parking areas with five or fewer parking spaces: \$600.
- (7) Applications for properties located in the steep slope area: \$750.
- (8) Applications for wireless telecommunications antenna and equipment: \$1,500.
- (9) Request for an interpretation of the Zoning Ordinance or other special questions: \$1,000.
- (10) Appeal from an administrative decision: \$1,500.

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(11) Historic Preservation Commission certificate of appropriateness:

- (a) Conceptual: \$150.
- (b) Facade improvement: \$500.
- (c) Signage, awnings and awning recoverings: \$150.
- (d) Site plan: \$800.
- (e) Wireless telecommunications and equipment: \$300.

(12) Zone change: \$1,500.

(13) Historic preservation advisory review: \$250.

C. Deposit of escrow funds; refunds. Deposits received from any applicant in excess of \$5,000 shall be held by the Chief Financial Officer in a special interest-bearing deposit account, and, upon receipt of bills from professionals and approval of said bills as hereinafter provided for, the Chief Financial Officer may use such funds to pay the bills submitted by such professionals or experts. The municipality shall not be required to refund an amount of interest paid on a deposit which does not exceed \$100 for the year. If the amount of interest exceeds \$100, the entire amount shall belong to the applicant and shall be refunded to him by the municipality annually or at the time the deposit is repaid or applied for the purposes for which it was deposited, as the case may be, except that the municipality may retain for administrative expenses a sum equivalent to no more than 33 1/3% of that entire amount, which shall be in lieu of all other administrative and custodial expenses. All sums not actually so expended shall be refunded to the applicant within 90 days after the final decision by the appropriate municipal agency with respect to such application, upon certification by the Board Secretary that such application has been finally decided.

D. Payments.

- (1) Each payment charged to the deposit for review of applications, review and preparation of documents and inspection of improvements shall be pursuant to a voucher from the professional which voucher shall identify the personnel performing the service, and each date the services were performed, the hours spent to one-quarter-hour increments, the hourly rate and the expenses incurred. All professionals shall submit vouchers to the Chief Financial Officer. The professional shall send an informational copy of all vouchers or statements submitted to the Chief Financial Officer of the municipality simultaneously to the applicant and the municipal agency for whom said services were performed.
- (2) The Chief Financial Officer shall prepare and send to the applicant a statement which shall include an accounting of funds listing all deposits, interest earnings, disbursements and the cumulative balance of the escrow account. This information shall be provided on a quarterly basis, if monthly charges are \$1,000 or less or on a monthly basis if monthly charges exceed \$1,000. If an escrow account or deposit contains insufficient funds to enable the municipality or approving authority to

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perform required application reviews or improvement inspections, the Chief Financial Officer shall provide the applicant with a notice of the insufficient escrow or deposit balance. In order for work to continue on the development or the application, the applicant shall within a reasonable time period post a deposit to the account in an amount to be agreed upon by the municipality or approving authority and the applicant. In the interim, any required health and safety inspections shall be made and charged back against the replenishment of funds.

- E. Payments required prior to issuance of permits. No zoning permits, building permits, certificates of occupancy or any other types of permits may be issued with respect to any approved application for development until all bills for reimbursable services have been received by the municipality from professional personnel rendering services in connection with such application and payment has been made.
- F. Close-out procedures.
- (1) The following close-out procedures shall apply to all deposits and escrow accounts established under the provisions of N.J.S.A. 40:D-1 et seq. and shall commence after the approving authority has granted final approval and signed the subdivision plat or site plan, in the case of application review escrows and deposits, or after the improvements have been approved in accordance with N.J.S.A. 40:55D-53, in the case of improvement inspection escrows and deposits.
 - (2) The applicant shall send written notice by certified mail to the Chief Financial Officer of the municipality and the approving authority and to the relevant municipal professional, that the application or the improvements, as the case may be, are completed. After receipt of such notice, the professional shall render a final bill to the Chief Financial Officer of the municipality within 30 days and shall send a copy simultaneously to the applicant. The Chief Financial Officer of the municipality shall render a written final accounting to the applicant on the uses to which the deposit was put within 45 days of receipt of the final bill. Any balances remaining in the deposit or escrow account, including interest in accordance with N.J.S.A. 40:55D-53.1, shall be refunded to the developer along with the final accounting.
- G. Scope of charges. All professional charges for review of an application for development, review and preparation of documents or inspection of improvements shall be reasonable and necessary, given the status and progress of the application or construction. Review fees shall be charged only in connection with an application for development presently pending before the approving authority or upon review of compliance with the conditions of approval, or review of requests for modification or amendment made by the applicant. A professional shall not review items which are subject to approval by any state governmental agency and not under municipal jurisdiction except to the extent consultation with a state agency is necessary due to the effect of state approvals on the subdivision or site plan.
- H. Limitation of inspection fees. Inspection fees shall be charged only for actual work shown on a subdivision or site plan or required by an approving resolution. Professionals inspecting improvements under construction shall charge only for inspections that are reasonably necessary to check the progress and quality of the work, and such inspections shall be reasonably based on the approved development plans and documents.

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- I. Substitution of professionals. If the municipality retains a different professional or consultant in the place of a professional originally responsible for development application review, or inspection of improvements, the municipality or approving authority shall be responsible for all time and expenses of the new professional to become familiar with the application or the project, and the municipality or approving authority shall not bill the applicant or charge to the deposit or the escrow account for any such services.
- J. Estimate of cost of improvements. The cost of the installation of improvements for the purposes of N.J.S.A. 40:55D-53 shall be estimated by the Municipal Engineer based on documented construction costs for the public improvements prevailing in the general area of the municipality. The developer may appeal the Municipal Engineer's estimate to the County Construction Board of Appeals, established pursuant to N.J.S.A. 52:27D-127.
- K. Appeals.
 - (1) An applicant shall notify in writing the governing body with copies to the Chief Financial Officer, the approving authority and the professional whenever the applicant disputes the charges made by a professional for a service rendered to the municipality in reviewing applications, for development, review and preparation of documents, inspection of improvements, or other charges made pursuant to N.J.S.A. 40:55D-53.2. The governing body or its designee shall within a reasonable time attempt to remediate any disputed charges. If the matter is not resolved to the satisfaction of the applicant, the applicant may appeal to the County Construction Board of Appeals, established pursuant to N.J.S.A. 52:27D-127, any charge to an escrow account or deposit by any municipal professional or consultant, or the cost of the installation of improvements estimated by the Municipal Engineer pursuant to N.J.S.A. 40:55D-53.4. An applicant or his authorized agent shall submit the appeal in writing to the County Construction Board of Appeals. The applicant or his authorized agent shall simultaneously send a copy of the appeal to the municipality, approving authority, and any professional whose charges are the subject of the appeal. An applicant shall file an appeal within 45 days from receipt of the informational copy of the professional's voucher required by N.J.S.A. 40:55D-53.2(c), except that if the professional has not supplied the applicant with an informational copy of the voucher, then the applicant shall file his appeal within 60 days from receipt of the municipal statement of activity against the deposit or escrow account required by N.J.S.A. 40:55D-53.2(c). An applicant may file an appeal for an ongoing series of charges by a professional during a period not exceeding six months to demonstrate that they represent a pattern of excessive or inaccurate charges. An applicant making use of this provision need not appeal each charge individually.
 - (2) Appeals shall be taken in accordance with the rules and procedures established by the County Construction Board of Appeals. During the pendency of any appeal, the municipality or approving authority shall continue to process, hear and decide the application for development and to inspect the development in the normal course and shall not withhold, delay or deny reviews, inspections, signing of subdivision plats or site plans, the reduction or the release of performance or maintenance guarantees, the issuance of construction permits or certificates of occupancy, or any other approval or permit because an appeal has been filed or is pending under this subsection. The Chief Financial Officer of the municipality may pay charges out of the appropriate escrow

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account or deposit for which an appeal has been filed. If a charge is disallowed after payment, the Chief Financial Officer of the municipality shall reimburse the deposit or escrow account in the amount of any such disallowed charge or refund the amount to the applicant. If a charge is disallowed after payment to a professional or consultant who is not an employee of a municipality, the professional or consultant shall reimburse the municipality in the amount of any such disallowed charge.

§ 347-85.3 Inspection fees.

An applicant shall pay inspection fees equal to the actual expenses incurred with respect to:

- A. The inspection of on-site, on-tract, off-site and off-tract improvements constructed or installed by the applicant in accordance with the terms and conditions of subdivision and/or site plan approval or the grant of a variance;
- B. The testing of materials or construction work performed by the applicant in the event that such testing is deemed necessary by the Township;
- C. Analyses or tests to determine compliance by the applicant with any monitoring standards established by the terms and conditions of subdivision or site plan approval; and
- D. The inspection of improvements constructed or installed by the applicant for purposes of determining compliance with any maintenance obligations of the applicant.
 - (1) The improvements constructed or installed to meet the requirements of subdivision or site plan approval, which are the subject of inspection, include the following: pavement subgrade, base course pavement, surface course pavement, sidewalks, storm drainage facilities, sanitary sewerage facilities, street signs, topsoil and erosion protection, grading, landscaping and monuments. An applicant shall give notice at least 24 hours in advance of the undertaking of any work which is the subject of inspection. Overtime inspection will not be provided unless special arrangements are made therefor prior to the overtime period. Inspection fees shall be calculated in accordance with the actual time required for inspection at rates established annually by the Board of Adjustment and/or the Planning Board.
 - (2) At the time of the granting of final subdivision or site plan approval, or prior to the commencement of any work on subdivision or site plan improvements, if such work is undertaken before final approval, the applicant shall pay to the Township an initial deposit for inspection fees. Such initial deposit shall be in accordance with N.J.S.A. 40:55D-53h and shall be equal to the greater of \$500 or 5% of the estimated costs of improvements. The estimated costs of improvements shall be determined by the Board Engineer based on documented construction costs for public improvements prevailing in the general area of the municipality. For inspection fees less than \$10,000 fees may be paid in two equal installments. For inspection fees over \$10,000, fees may be paid in four equal installments. Whenever the balance falls below 10% of the deposit, the developer shall deposit the next installment.
 - (3) Inspections shall not relieve the applicant from the obligation to perform work strictly in accordance with the approved plans and specifications or the obligation to perform work in a workmanlike manner using first-class materials. Until such time as the

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Township Council shall approve the construction and installation of any improvement by a resolution adopted pursuant to the provisions of N.J.S.A. 40:55D-53e(1), any improvements not in compliance with the aforesaid plans, specifications or standards shall be replaced, reconstructed or repaired by the applicant notwithstanding any previous oversight or error in inspection.

§ 347- 85.4 Development fees

A. Purpose.

- (1) In *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27D-301 et seq., and the state constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- (2) Pursuant to P.L. 2008, c. 46, § 8 (N.J.S.A. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-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 nonresidential development.
- (3) This article establishes standards for the collection, maintenance and expenditure of development fees pursuant to COAH's regulations and in accordance P.L. 2008, c. 46, §§ 8 and 32-38. Fees collected pursuant to this article shall be used for the sole purpose of providing low- and moderate-income housing. This article shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

B. Basic requirements.

- (1) This article shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1.
- (2) Montclair shall not spend development fees until COAH has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

C. Definitions. The following terms, as used in this article, shall have the following meanings:

AFFORDABLE HOUSING DEVELOPMENT

A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one-hundred-percent affordable development.

COAH or THE COUNCIL

The New Jersey Council on Affordable Housing established under the Act, which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the state.

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DEVELOPER

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

DEVELOPMENT FEE

Money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

EQUALIZED ASSESSED VALUE

The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with §§ 1, 5 and 6 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through 54:1-35c).

GREEN BUILDING STRATEGIES

Those strategies that minimize the impact of development on the environment and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

D. Residential development fees.

(1) Imposed fees.

- (a) Within all zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted.
- (b) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of 6% of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application. Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5% of the equalized assessed value on the first two units and 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

(2) Eligible exactions, ineligible exactions and exemptions for residential development.

- (a) Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.

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- (b) Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- (c) Developers that build new buildings, expand existing buildings or make substantial site changes that require site plan approval shall pay development fees. Development fees for building expansions and site changes shall be calculated based on the increase in the equalized assessed value of the improved property.
- (d) Expansions of one-family and two-family properties and minor improvements, such as the installation of fences, air-conditioning units, landscaping and accessory buildings, are exempt from development fees.
- (e) 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.

E. Nonresidential development fees.

(1) Imposed fees.

- (a) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements for all new nonresidential construction on an unimproved lot or lots.
- (b) Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- (c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

(2) Eligible exactions, ineligible exactions and exemptions for nonresidential development.

- (a) The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the development fee of 2.5% unless otherwise exempted below.
- (b) The fee of 2.5% shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- (c) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L. 2008, c. 46, as specified in the Form N-RDF, "State of New Jersey Non-

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Residential Development Certification/Exemption" form. Any exemption claimed by a developer shall be substantiated by that developer.

- (d) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L. 2008, c. 46 shall be subject to it at such time the basis for the exemption no longer applies and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.
- (e) If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by Montclair as a lien against the real property of the owner.

F. Collection procedures.

- (1) Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- (2) For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption," to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the nonresidential developer as per the instructions provided in Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- (3) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- (4) Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- (5) The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- (6) Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- (7) Should Montclair fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b of § 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).
- (8) The developer shall pay 100% of the calculated development fee amount prior to the municipal issuance of a final certificate of occupancy for the subject property.

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(9) Appeal of development fees.

- (a) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by Montclair. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
- (b) A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by Montclair. Appeals from a determination of the Director may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
- (c) A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by Montclair. Appeals from a determination of the Director may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

G. Affordable Housing Trust Fund.

- (1) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.
- (2) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount.
 - (a) Payments in lieu of on-site construction of affordable units;
 - (b) Developer-contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - (c) Rental income from municipally operated units;
 - (d) Repayments from affordable housing program loans;
 - (e) Recapture funds;
 - (f) Proceeds from the sale of affordable units; and
 - (g) Any other funds collected in connection with Montclair's affordable housing program.
- (3) Within seven days from the opening of the trust fund account, Montclair shall provide COAH with written authorization, in the form of a three-party escrow agreement among 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).

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- (4) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

H. Use of Funds.

- (1) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address Montclair's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to, preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable or regional housing partnership programs, conversion of existing nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 5:97-8.9 and specified in the approved spending plan.
- (2) Funds shall not be expended to reimburse Montclair for past housing activities.
- (3) At least 30% of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of median income by region.
 - (a) Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs.
 - (b) Affordability assistance to households earning 30% or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.
 - (c) Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- (4) Montclair may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- (5) No more than 20% of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20% of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring

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the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the Affordable Housing Trust Fund.

- I. **Monitoring.** Montclair shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with Montclair's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.
- J. **Ongoing Collection of Fees.** The ability for Montclair to impose, collect and expend development fees shall expire with its substantive certification unless Montclair has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If Montclair fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund, established pursuant to § 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320). Montclair 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 Montclair retroactively impose a development fee on such a development. Montclair shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

§347-86 Application Procedures

Applications for development shall be filed with the Secretary of the Board at least 25 days before the monthly meeting of the Board. The applicant shall obtain all necessary forms from the Secretary of the Board who shall inform the applicant of the steps to be taken to initiate applications and of the regular meeting dates of the Board. An application for development shall mean an application certified as complete by the Secretary of the Board pursuant to § 347-86.1 and § 347-86.2.

§ 347-86.1 Administrative requirements.

An application for development shall include all of the following items:

- A. Properly completed application forms (20 copies) which contain the following information:
 - (1) The proposal/business overview.
 - (2) Property information, including zone of property and block/lot.
 - (3) Applicant and owner information.
 - (4) Application fee and escrow fee (if required) paid to the Township of Montclair.

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- (5) Proof that taxes have been paid, certified by the Municipal Tax Collector (original).
 - (6) Applicant's verification signature and owner's authorization signature.
 - (7) Proposed signage with the application, including dimensions, proposed materials and a rendering of the sign.
- B. Paper, and digital copies in PDF format, of plans, maps and construction details as required in the appropriate checklist. The requirement for digital copies is optional but strongly encouraged for applications involving one- and two-family homes.
 - C. Corporation or partnership form.
 - D. Affidavit of ownership/authorization form.
 - E. Copies of approvals of other government agencies as may be required or an affidavit indicating that application has been made to such agencies.
 - F. A listing of all variance requests, waiver requests and checklist waiver requests.
 - G. Original survey signed and sealed by a New Jersey licensed land surveyor (20 paper copies and one digital copy in PDF format).
 - H. Paper and digital photos of the building and property.
 - I. Sustainability Checklist as described in §347-61.2(B). For each of the items listed on the Sustainability Checklist, applicants must indicate the extent to which they are incorporating such a measure in the project, or, alternatively, indicate the reason(s) why the measure is not being incorporated in the project.

§ 347-86.2 Checklists.

The following items are required for submission of a complete application to the Board. Some items may not apply to all applications. The applicant may request that certain items be waived by the Board.

- A. Concept plans.
 - (1) Name and address of the applicant and the owner.
 - (2) Name, address and title of the person preparing the plan, maps and accompanying data.
 - (3) Date of preparation and the dates of each revision, where applicable.
 - (4) Signature and certification, as appropriate, by a registered engineer, land surveyor and/or architect, with property survey data to be based on current conditions as they exist.
 - (5) Lot and block number or numbers of the lot or lots from the Township Tax Maps.

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- (6) Length and bearings of the lot lines of the proposed project.
- (7) Map scale and north arrow.
- (8) Zone district in which the lot or lots are located and the zone district or districts of all the immediately adjoining lots.
- (9) All existing structures and wooded areas within the site and within 200 feet thereof.
- (10) Existing contours at sufficient intervals to determine the general slope and natural drainage of the land.
- (11) The original and proposed lot layout, lot dimensions and total area of each lot, if applicable.
- (12) A site illustration, indicating with sufficient accuracy all boundaries of the site with natural features of the land and showing all developed, undeveloped and to-be-developed portions.

B. Variance applications

- (1) Name and address of the applicant and the owner.
- (2) Name, address and title of the person preparing the plan, maps and accompanying data.
- (3) Date of preparation and the dates of each revision, where applicable.
- (4) Signature and certification, as appropriate, by a registered engineer, land surveyor and/or architect, with property survey data to be based on current conditions as they exist.
- (5) Lot and block number or numbers of the lot or lots from the Township Tax Maps.
- (6) Area of lot or lots and the length and bearings of the lot lines of the proposed project.
- (7) Scale and north sign and key map relating the site to the streets in the surrounding area.
- (8) Zone district in which the lot or lots are located and the zone district or districts of all the immediately adjoining lots.
- (9) Existing and proposed principal building or structure and all accessory buildings or structures, if any, with dimensions showing present and finished grade elevations at all corners and entrances of said building or structures, first-floor elevations and the complete floor plans and elevation plans thereof.
- (10) Other information necessary to show the nature and extent of the variance requested.

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C. Minor site plan.

- (1) Name and address of the applicant and the owner
- (2) Name, address and title of the person preparing the plan, maps and accompanying data.
- (3) Date of preparation and the dates of each revision, where applicable.
- (4) Signature and certification, as appropriate, by a registered engineer, land surveyor and/or architect, with property survey data to be based on current conditions as they exist.
- (5) An appropriate place for the signatures of the Chair and Secretary of the Planning Board or Zoning Board of Adjustment and the Township Engineer.
- (6) Lot and block number or numbers of the lot or lots from the Township Tax Maps.
- (7) Area of lot or lots and the length and bearings of the lot lines of the proposed project.
- (8) Scale and north sign and key map relating the site to the streets in the surrounding area.
- (9) Zone district in which the lot or lots are located and the zone district or districts of all the immediately adjoining lots.
- (10) Existing and proposed principal building or structure and all accessory buildings or structures, if any, with dimensions showing present and finished grade elevations at all corners and entrances of said building or structures, first-floor elevations and the complete floor plans and elevation plans thereof.

D. Major site plan and subdivision applications.

- (1) Name and address of the applicant and the owner.
- (2) Name, address and title of the person preparing the plan, maps and accompanying data.
- (3) Date of preparation and the dates of each revision, where applicable.
- (4) Signature and certification, as appropriate, by a registered engineer, land surveyor and/or architect, with property survey data to be based on current conditions as they exist.
- (5) An appropriate place for the signatures of the Chair and Secretary of the Board and the Township Engineer.
- (6) The lot and block number or numbers of the lot or lots from the Township Tax Maps.
- (7) Length and bearings of the lot lines of the proposed project.

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- (8) Scale and north sign and key map relating the site to the streets in the surrounding area.
- (9) Zone district in which the lot or lots are located and the zone district or districts of all the immediately adjoining lots.
- (10) Location, size and nature of all existing and proposed rights-of-way, easements and other encumbrances which may affect the lot or lots in question.
- (11) 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.
- (12) Location, names and pavement and right-of-way widths of all existing and proposed streets abutting the lot or lots in question.
- (13) Property lines of all abutting properties, together with the names and addresses of the owners as disclosed on the Township Tax Maps and tax rolls as of the date of the site plan application, and the location of the existing structures within 100 feet of the property line for properties abutting the site in question.
- (14) Existing and proposed principal building or structure and all accessory buildings or structures, if any, with dimensions showing present and finished grade elevations at all corners and entrances of said building or structures, first-floor elevations and the complete floor plans and elevation plans thereof.
- (15) Present and proposed topography, based on New Jersey Geodetic Control Survey datum, at two-foot contour intervals, including 100 feet outside the site to show the relationship to adjoining properties.
- (16) Existing and proposed setback dimensions, landscaped areas and trees over six inches diameter at breast height.
- (17) Location, type and size of existing and proposed curbs, sidewalks, driveways, street pavement widenings, fences, retaining walls, parking space areas and the layouts thereof and all off-street loading areas, together with the dimensions of all the foregoing, for the site and the nearest portions of properties abutting the site; number of employees, total and maximum, on one shift.
- (18) Location, type and size of existing and proposed catch basins and storm drainage facilities, both frame and invert elevations and all utilities, both above- and below ground.
- (19) 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.
- (20) Soil erosion and sediment control plan for sites where over 5,000 square feet of ground area is being disturbed.

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- (21) Cost estimates and proposed construction and maintenance bonds and construction time schedules related to building construction for any required improvements not proposed to be completed before the issuance of a certificate of occupancy.
- (22) Plans for any off-tract improvements, including cost estimates and calculations of the share to be borne by the developer.
- (23) Any and all other information and data necessary to meet any of the requirements of this chapter not listed above.
- (24) Landscape plans, showing name, quantity, location, size as to caliper and height of existing and proposed trees, shrubs and all plant materials, prepared by an architect, engineer, professional planner or a licensed landscape architect.
- (25) Satisfaction of Chapter 294, Steep Slopes, where applicable.
- (26) A map showing the entire drainage area and the drainage area contributing to each pertinent drainage structure along with drainage tabulation sheets showing calculations for each drainage area.
- (27) A stormwater management plan, if required.
- (28) Streetscape elevations of proposed buildings and buildings immediately adjacent to proposed buildings.
- (29) Exterior garbage and recycling storage areas for multifamily and commercial developments.
- (30) For major site plan applications, colored renderings of the proposed building(s) viewed from two separate perspectives from the adjacent streets.
- (31) For major site plan applications, a digital three-dimensional model showing the massing and design detail of the proposed building from all directions in context with the surrounding buildings within 500 feet of the subject property.

§ 347-87 Subdivision Procedures

§347-87.1 Time for action.

- A. Minor subdivisions. Minor subdivision approvals shall be granted or denied within 45 days of the date of submission of a complete application to the Planning Board or within such further time as may be consented to by the applicant. Failure of the Planning Board to act within the period prescribed shall constitute minor subdivision approval. Approval of a minor subdivision shall expire 190 days from the date of Planning Board approval unless within such period a plat in conformity with such approval and the provisions of the Map Filing Law, or a deed clearly describing the approved minor subdivision, is filed by the developer with the county recording officer, the Municipal Engineer and the Municipal Tax Assessor. Any such plat or deed must be signed by the Chairperson and Secretary of the Planning Board. The Planning Board may extend the one-hundred-ninety-day period for filing a minor subdivision plat or deed if the developer proves to

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the reasonable satisfaction of the Planning Board that the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities and that the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the Planning Board. The developer may apply for the extension either before or after what would otherwise be the expiration date.

- B. Preliminary approval of major subdivisions. Upon submission of a complete application for a subdivision of 10 or fewer lots, the Planning Board shall grant or deny preliminary approval within 45 days of the date of such submission or within such further time as may be consented to by the developer. Upon submission of a complete application for a subdivision of more than 10 lots, the Planning Board shall grant or deny preliminary approval within 95 days of the date of such submission or within such further time as may be consented to by the developer. Otherwise, the Planning Board shall be deemed to have granted preliminary approval for the subdivision.
- C. Ancillary powers. Whenever an application for approval of a subdivision plat, site plan or conditional use includes a request for variance relief or direction for the issuance of a permit pursuant to § 347-80.7H, the Planning Board 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 the variance or direction for issuance of a permit. The period for granting or denying and subsequent approval shall be as otherwise provided by these regulations. 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 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.
- D. Final approval. Application for final subdivision approval shall be granted or denied within 45 days of submission of a complete application or within such further time as may be consented to by the applicant. Failure of the Planning Board to act within the period prescribed shall constitute final 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. Final approval of a major subdivision shall expire 95 days from the date of signing of the plat by the Chair and Secretary of the Board 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. 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. The Planning Board may extend the ninety-five-day or one-hundred-ninety-day period if the developer provides to the reasonable satisfaction of the Planning Board that the developer was barred or prevented, directly or indirectly, from filing because of

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delays in obtaining legally required approvals from other governmental or quasi-governmental entities and that the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the Planning Board. The developer may apply for an extension either before or after the original expiration date.

§ 347-87.2 Conditions of final approval.

- A. Before final approval of any plat, the Planning Board shall require an endorsement on the plat by the Township Engineer approving the design and location of all utilities. No such endorsement of approval shall be made by the Township Engineer until he or she is in receipt of a map showing all utilities in exact location and elevation, identifying those portions already installed, and the subdivider has complied with one of the following:
- (1) Installed all improvements in accordance with the requirements of this chapter.
 - (2) Posted a performance guaranty with the Municipal Clerk, approved as to form by the Township Attorney, in sufficient amount, as determined by the Township Engineer, to assure the completion of all required improvements.
- B. Approval of plats as required by the county land subdivision review regulation must be obtained before filing of the plat.

§ 347-87.3 Plat requirements.

If a plat of a minor subdivision is to be recorded with the county recording officer, the plat shall be clearly drawn and legibly lettered on tracing cloth at a scale not smaller than one inch equals 100 feet. The plat shall be certified by a licensed engineer or land surveyor of New Jersey, shall conform to the requirements of P.L. 1960, c. 141 (N.J.S.A. 46:23-9.9 et seq.), as supplemented and amended, and shall include all of the items required of plats for major subdivisions in § 347-56 that are applicable to said minor subdivision.

§ 347-87.4 Acceptance of deed in lieu of plat.

The Planning Board may accept for review and approval, instead of a plat, a deed clearly describing the minor subdivision.

§ 347-87.5 Expiration of approval; extension; notification of filing.

For major subdivisions, final approval shall expire 95 days from the 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. The plat filed shall have been signed by the Chair and Secretary of the Planning Board. The developer shall notify the Planning Board of such filing by affidavit within the required time period.

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§ 347-87.6 Filing of plat with Township officials.

Upon approval of a plat or, in the case of a minor subdivision, a deed, a print or copy shall be filed by the Planning Board with the Municipal Clerk, Township Engineer, Township Building Inspector and Township Tax Assessor.

§ 347-88 Concept plans.

- A. Applications for development within the jurisdiction of the Planning Board shall be filed with the Secretary of the Planning Board at least 25 days before the monthly meeting of the Board. The applicant shall obtain all necessary forms from the Secretary of the Board who shall inform the applicant of the steps to be taken to initiate applications and of the regular meeting dates of the Board. A complete application shall mean an application certified as complete by the Secretary of the Board pursuant § 347-86.
- B. At the request of the developer, the Planning Board shall grant an informal review of a concept plan for a development for which the developer intends to prepare and submit an application for development. The developer shall not be bound by any concept plan for which review is requested, and the Planning Board shall not be bound by any such review.

§347-89 Site Plan Procedures

§347-89.1 Minor site plan.

- A. A minor site plan application shall contain all data and information required in § 347-86. Minor site plan approval, with or without conditions, shall be deemed to be final approval of the site plan.
- B. Minor site plan approval shall be granted or denied within 45 days of the date of submission of a complete application to the administrative officer, or within such further time as may be consented to by the applicant. Failure of the Planning Board to act within the period prescribed shall constitute minor site plan approval.
- C. Whenever review or approval of the application by the County planning board is required by Section 8 of P.L. 1968, c. 285 (N.J.S.A. 40:27-6.6), 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. The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor site plan approval was granted, shall not be changed for a period of two years after the date of minor site plan approval. The Planning Board shall grant an extension of this period for a period determined by the Board but not exceeding one year from what would otherwise be the expiration date, if the developer proves, to the reasonable satisfaction of the Board, that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued the approvals. A developer shall apply for this extension before: what would otherwise be the expiration date; or the 91st

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day after the date on which the developer receives the last of the legally required approvals from other governmental entities, whichever occurs later.

§ 347-89.2 Site plans.

- A. Any owner or developer of land within the Township of Montclair shall, prior to developing a site as defined in this chapter, submit to the administrative officer of the Planning Board a preliminary site plan and such other information as is required in Article IV below, in tentative form for preliminary approval. If any architectural plans are required, the preliminary plans and elevations shall be sufficient. If the application is found to be incomplete, as not meeting the requirements of § 347-86.2, the applicant shall be notified within a period of 45 days or it shall be deemed to be properly submitted. However, the applicant may confer with and submit sketch plans to the Board for discussion prior to the submission of a formal 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 a hearing, an amended application for development shall be submitted and proceeded upon as in the case of the original application for development, and the time period within which the Planning Board shall be required to make a decision shall be computed from the date of the submission of the amendment to the administrative officer.
- C. The Planning Board shall, following public hearing as required in the ordinance establishing a Planning Board and a Zoning Board of Adjustment, if the proposed development complies with this chapter and N.J.S.A. 40:55D-1 et seq., grant preliminary site plan approval. If the application for development is under the jurisdiction of the Zoning Board of Adjustment, the hearing, review and approval procedures shall be included with and subject to the same requirements as for a zoning variance.
- D. Time limit for approval.
 - (1) Upon submission of a complete application for a site plan, the Planning Board shall grant or deny preliminary approval within the time specified in § 347-87.1, of the Montclair Code. Otherwise, the Planning Board shall be deemed to have granted preliminary approval of the site plan.
 - (2) Upon the submission to the administrative officer of a complete application for a site plan which involves 10 acres of land or less and 10 dwelling units or fewer, the Planning Board shall grant or deny preliminary approval within 45 days of the date of such submission or within such further time as may be consented to by the developer. Upon the submission of a complete application for a site plan which involves more than 10 acres or more than 10 dwelling units, the Planning Board shall grant or deny preliminary approval within 95 days of the date of such submission or within such further time as may be consented to by the developer. Otherwise, the Planning Board shall be deemed to have granted preliminary approval of the site plan.
- E. Whenever review or approval of the application by the County Planning Board is required by N.J.S.A. 40:27-6.6, the Township Planning Board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning

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Board or the failure of such Board to report negatively thereon within the required time period.

- F. The Planning Board may waive in whole or in part the requirements for the submission of a preliminary or final site plan or waive the requirements of a public hearing where it is determined that the site development proposed is of a minor nature not having potentially adverse effects on adjoining properties or on the public health, comfort, safety and general welfare. The Planning Board may also simultaneously grant preliminary and final approval of a site plan based upon application complying with the requirements of § 347-86.
- G. The Planning Board, when acting upon applications for preliminary site plan approval, shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of this chapter if the literal enforcement of one or more provisions of the chapter is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.
- H. The Planning Board shall have the power to review and approve or deny conditional uses or site plans simultaneously with review for subdivision approval without the developer's being required to make further application to the Planning Board or the Planning Board's being required to hold further hearings. The longest time period for action by the Planning Board, whether it be for subdivision, conditional use or site plan approval, shall apply. Whenever approval of a conditional use is requested by the developer pursuant to this subsection, notice of the hearing on the plat shall include reference to the request for such conditional use.

§ 347-89.3 Effect of preliminary site plan approval.

- A. Preliminary approval of a site plan shall protect the applicant, for a three-year period from the date of the preliminary approval, from changes in the general terms and conditions on which preliminary approval was granted, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and off-tract improvements; and any requirements peculiar to such preliminary site plan approval. However, nothing herein shall be construed to prevent the township from modifying by ordinance such general terms and conditions of preliminary approval as relate to public health and safety.
- B. The applicant may submit for final approval on or before the expiration date of preliminary approval the whole or a section or sections of the preliminary site plan.
- C. The applicant may apply for and the Planning Board may grant extensions on such preliminary approval for additional periods of at least one year but not to exceed a total extension of two years, provided that if the design standards have been revised by ordinance, such revised standards shall govern.

§ 347-89.4 Submission of final or combined site plan.

The final site plan shall be submitted to the administrative officer of the Planning Board within the time limit specified in § 347-89.3. If the plan and related information are not complete as specified in § 347-86, the applicant shall be notified within 45 days after the date

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of submission, or the application shall be deemed to be complete. The Planning Board shall act upon the final site plan within 45 days of the submission of a complete application. A public hearing shall not be required, except that if any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing is made or is required, the plan shall again go through the procedure required for preliminary site plans.

§ 347-89.5 Completion and inspection of improvements.

The installation of improvements as required in Article VIII Site Plan Design Requirements hereunder and as included in the site plan shall not commence until after the approval of the final site plan. Such installation shall be subject to inspection by the Township Engineer, and approval shall be revoked if there is significant deviation from the site plan as approved. Performance and maintenance bonds shall be released, subject to approval by the Township Engineer and Township Council. All improvements shall be completed in a timely manner so as not to leave the site in an unfinished or unsightly condition, as determined by the Council, and if this is not done, the final approval shall be deemed to be revoked and the performance and maintenance bonds may be used by the township to restore the site to an acceptable condition. The issuance of building and occupancy permits shall be conditioned on the completion of improvements as specified in the final site plan approval.

ARTICLE X. ADMINISTRATION, ENFORCEMENT, VIOLATIONS AND PENALTIES

§ 347-90 Administration

- A. No land or premises shall be used, and no building or structure shall be erected, raised, moved, extended, enlarged, altered or used, for any purpose other than a purpose permitted therein for the zone district in which it is located, and all construction shall be in conformity with the regulations provided for the zone district in which such building or premises is located.
- B. No building or structure or part thereof shall be erected, constructed, reconstructed, structurally altered or moved until there has been filed with the Construction Official an application in duplicate for a construction permit as follows:
 - (1) All applications shall be filed by the owner or his agent and shall state the intended use of the structure and the land.
 - (2) The application shall be accompanied by detailed plans and specifications, in duplicate, drawn to scale, and a plot plan, drawn to scale, the latter showing the actual dimensions in figures, all open spaces, the established building lines within the block and such other information as may be necessary or desirable to provide for the proper enforcement of this chapter.

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- (3) All plans, specifications and plot plans shall be signed by a duly licensed architect of the State of New Jersey or a duly licensed professional engineer of the State of New Jersey or the owner, if such owner has prepared the plans, specifications and plot plan, in which case such owner shall also file an affidavit to that effect.
- (4) No construction permit shall be issued for the erection, construction, reconstruction, structural alteration or moving of any building or structure or part thereof unless the plans and intended use indicate that such building or structure is designed and intended to conform in all respects to the provisions of this chapter.
- (5) No construction permit, including a demolition permit, shall be issued by the Construction Official unless and until a zoning permit has first been issued by the Zoning Officer.

§347-91 Zoning Permit

- A. A zoning permit issued by the Zoning Officer is required before occupying any nonresidential building or nonresidential tenant space and shall be required before any building permit can be issued. A zoning permit application form shall be prepared by and made available from the Zoning Officer. The Zoning Officer shall grant or deny a zoning permit within 10 business days from the receipt of a complete zoning permit application. If the Zoning Officer fails to act within this time period, the failure shall be deemed to be an approval of the application for a zoning permit.
- B. Except for applications for minor repairs, as defined by the Uniform Construction Code, no construction permit or certificate of occupancy shall be issued unless a zoning permit has been obtained from the Zoning Officer.
- C. Required inspection. Inspection of the subject premises prior to issuance of a zoning permit shall be at the discretion of the Zoning Officer.
- D. Zoning permit exceptions. Pursuant to the above, all applicants for building permits shall apply for a zoning permit. Notwithstanding the foregoing to the contrary, the following items shall not be subject to a zoning permit:
 - (1) Replacement roofing.
 - (2) Replacement siding.
 - (3) Replacement windows and doors, where there is no change in glazing area or opening size.
 - (4) Replacing chimneys and chimney liners, where a new chimney is the same size and material as the original.
 - (5) Interior oil tank replacement.
 - (6) Furnace/boiler replacement.
 - (7) Garage door replacement, same size.

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- (8) Replacement bathroom fixtures.
- (9) Replacement floors/ceilings.
- (10) Replacement kitchen cabinets/fixtures/appliances.
- (11) Installation of radon mitigation systems (interior systems only).
- (12) Installation of commercial carpet for nonresidential uses.
- (13) Minor work or ordinary maintenance as defined by the Uniform Construction Code, N.J.A.C. 5:23-1 et seq.
- (14) Interior electrical work.

§347-92. Completion and Restoration of Existing Buildings

§ 347-92.1 Change in approved plans not required.

Nothing herein contained shall require any change in the plans, construction or designated use of a building for which a building permit has been heretofore issued or plans for which are on file with the Construction Official at the time of the passage of this chapter and a permit for the erection of which is issued within three months of the passage of this chapter and the construction of which, in either case, shall have been diligently prosecuted within a year of the date of such permit, and the ground-story framework of which, including the second tier of beams, shall be completed within such year, and which entire building shall have been completed according to such plans as filed within two years from the date of the passage of this chapter.

§ 347-92.2 Restoration of unsafe wall.

Nothing in this chapter shall prevent the restoration of a wall declared unsafe by the Construction Official or by a Board of Survey.

§ 347-93 Certificates of Occupancy

§ 347-93.1 When required; contents.

It shall be unlawful to use or permit the use of any building, structure or premises or part thereof hereafter created, erected, changed, converted, altered or enlarged, wholly or partly, in its use or structure, until a certificate of occupancy shall have been applied for and issued for such use by the Construction Official. Such certificates shall show that such building, structure or premises or part thereof and the proposed use thereof are in conformity with the provisions of this chapter or a determination of the Board of Adjustment or Planning Board.

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§ 347-93.2 Temporary certificates.

A temporary certificate of occupancy for a part of a building may be issued by the Construction Official as provided by the Building Code.

§ 347-93.3 Certificates for existing buildings.

Upon written request from the applicant, the construction official shall issue a certificate of occupancy for any building or premises existing at the time of passage of this chapter, certifying, after inspection, the extent and kind of use made of the building or premises, including the number of employees and whether such use conforms to the provisions of this chapter.

§347-94 Enforcement

In the enforcement of Chapter 347, the Zoning Officer may apply to the Municipal Court Judge of the Township for a warrant to search and inspect the properties and premises upon which he has reason to believe any violation of these articles 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 chapter.

§347-95 Violations and Penalties

- A. Violations defined. Any person violating any of the provisions of this chapter shall, upon conviction thereof, be subject to the penalties herein. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. Any person who shall undertake any activity without approvals required by this article shall be deemed to be in violation hereof.
- B. Notice of violations. Upon learning of the violation, the administrative officer shall personally serve upon the owner of the property whereon the violation is occurring a notice describing the violation in detail and giving the owner 10 days to abate the violation by restoring the building, structure or site to its condition prior to the violation. If the owner cannot personally be served within the Township with said notice, a copy shall be posted on the property and a copy shall be sent to the owner at his or her last known address.
- C. Injunctive relief. In the event that the violation is not abated within 10 days of service or posting on site, whichever is earlier, the administrative officer shall cause to be instituted any appropriate action or proceeding to prevent such unlawful activity; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or site; or to prevent any illegal act, conduct, business or use in or about such premises as follows:
 - (1) If any person shall undertake any activity requiring a permit and report of the Commission without first having obtained approval, he or she shall be required to immediately stop the activity, apply for approval and take any necessary measures to preserve the affected premises pending such approval. If the work is denied, he or she shall immediately restore the building, structure, object or site to its condition prior to

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any such activity. The administrative officer is hereby authorized to seek injunctive relief regarding a stop action or restoration in the Superior Court not less than 10 days after the delivery of notice pursuant to Subsection **B** hereof.

- (2) In the event of the threat of imminent action for which the necessary approvals have not been granted and which action would permanently and adversely change a landmark or any building, structure, object or site located within a landmark district, the administrative officer is empowered to apply to the Superior Court of New Jersey for injunctive relief as is necessary to prevent such actions.

D. Penalties. In addition to the remedies provided above and notwithstanding § 347-6 of this chapter, a person convicted of a violation of this Article **X** before a court of competent jurisdiction shall be subject to penalties as follows:

- (1) For each day up to 10 days: not more than \$100 per day.
- (2) For each day between 11 and 25 days: not more than \$250 per day.
- (3) For each day beyond 25 days: not more than \$500 per day.
- (4) For each day beyond 25 days: a jail term not to exceed 90 days may be imposed.

Attachments:

Zoning Map

Historic Districts and Landmarks Overlay Zone Map