

LAND USE

Part III

Borough

of

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PART III, LAND USE

Consisting of:

- Ch. 275, Affordable Housing
- Ch. 281, Flood Damage Prevention
- Ch. 285, Housing Rehabilitation
- Ch. 291, Land Use Procedures
- Ch. 297, Soil Removal
- Ch. 301, Stormwater Control
- Ch. 305, Subdivision of Land and Site Plan Review
- Ch. 310, Zoning

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AFFORDABLE HOUSING.

Chapter 275

AFFORDABLE HOUSING

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§ 275-1

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[HISTORY: Adopted by the Mayor and Council of the Borough of New Providence: Art. I, 3-28-1988 as Ord. No. 88-5; Art. II, 3-28-1988 as Ord. No. 88-6. Amendments noted where applicable.]

GENERAL REFERENCES

Housing rehabilitation — See Ch. 285.

Subdivision and site plan review — See Ch. 305.

Zoning — See Ch. 310.

ARTICLE I

Affordable Housing Board

[Adopted 3-28-1988 as Ord. No. 88-5]

§ 275-1. Title. [Amended 10-10-1989 by Ord. No. 89-18]

This Article shall be known as the "Affordable Housing Board Ordinance" of the Borough of New Providence.

§ 275-2. Purpose.

The purpose of this Article is to create the administrative mechanisms needed for the execution of the Borough of New Providence's responsibility to assist in the provision of affordable housing pursuant to the Fair Housing Act of 1985.¹

¹ Editor's Note: See N.J.S.A. 52:27D-301 et seq.

§ 275-3

AFFORDABLE HOUSING

§ 275-3

§ 275-3. Word usage.

All definitions found in the Municipal Land Use Law and the Zoning Ordinance of the Borough of New Providence² shall apply to this Article.

(Cont'd on page 27503)

² Editor's Note: See N.J.S.A. 40:55D-1 et seq. and Ch. 310, Zoning, respectively.

27502.1

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§ 275-4. Board established; membership; terms of office; powers and duties.

- A. Establishment of Affordable Housing Board.** There is hereby established an Affordable Housing Board, which shall consist of five (5) members appointed by the Mayor, with the advice and consent of the Borough Council. The members shall serve without compensation.
- B. Membership of Board and terms of office.** The Board shall be composed of one (1) member of the Borough Council, who shall not also be a member of the Planning Board, whose appointment shall be for one (1) year; a Class IV member of the Planning Board, whose appointment shall be for three (3) years or the duration of the term on the Planning Board, whichever terminates first; and three (3) additional residents of the Borough, whose terms shall be for three (3) years each, except that when the Board is initially appointed, one (1) resident member shall be appointed for one (1) year, one (1) member for two (2) years and the third member for three (3) years. Appointments to fill vacancies resulting from resignations or removal from office shall be for the departing member's unexpired term.
- C. Powers of Affordable Housing Board.** The powers of the Board shall be as follows:
 - (1) To recommend to the Borough Council the adoption of rules and regulations to:
 - (a) Govern the sale or rental of affordable housing units to lower-income persons pursuant to the Affordable Housing Ordinance of the Borough of New Providence³ and the substantive rules issued by the Council on Affordable Housing.
 - (b) Assure that the housing units built or rehabilitated for affordable housing pursuant to the Affordable Housing Ordinance and the Zoning Ordinance⁴ will remain available to lower-income persons for the appropriate period of time as required by the

³ Editor's Note: See Art. II, Procedures, of this chapter.

⁴ Editor's Note: See Art. II, Procedures, of this chapter and Ch. 310, Zoning, respectively.

substantive rules issued by the Council on Affordable Housing.

- (c) Establish eligibility criteria for persons wishing to purchase or rent affordable housing in the borough in accordance with the Affordable Housing Ordinance and the substantive rules issued by the Council on Affordable Housing, provided that no eligibility priorities shall be established other than those specifically set forth in the Affordable Housing Ordinance.
- (d) Establish screening mechanisms to ensure that all affordable housing units are occupied only by lower-income households.
- (e) Administer all funds made available to the borough's Housing Fund from developer contributions or from public sources.
- (f) Regulate the resale of affordable housing units so as to allow lower-income households to recoup the value of any improvements to the units while providing for the recapture by the borough of any windfall profits from the resale of the units, consistent with the Affordable Housing Ordinance.
- (g) Regulate the calculation of rents and other charges for affordable housing rental units for the purposes of ensuring that affordable housing rental units are rented only to and remain occupied only by lower-income households.⁵
- (h) Carry out such additional responsibilities as may be necessary to fulfill the borough's affordable housing program in accordance with the Fair Housing Act of 1985 and amendments thereto,⁶ and the substantive rules issued by the Council on Affordable Housing.⁷

⁵ Editor's Note: Original Article 4, Subdivision C1(h), which immediately followed this subsection and dealt with the disbursement of funds from the Housing Fund, was deleted 10-1989 by Ord. No. 89-18.

⁶ Editor's Note: See N.J.S.A. 52:27D-301 et seq.

⁷ Editor's Note: Original Article 4, Subdivision C2, which immediately followed this subsection and dealt with conducting a survey to ascertain the extent and location of substandard housing, was deleted 10-10-1989 by Ord. No. 89-18.

- (2) Seek out sources of government funding that will assist the borough in meeting its goals of supplying affordable housing as set forth in the Housing Plan Element of the Master Plan and, upon authorization by the Borough Council, to prepare and submit applications to secure such funding.
- (3) Prepare an annual budget for the Affordable Housing Board, including salaries and expenditures incurred in administering the affordable housing regulations of the Zoning Ordinance and the Affordable Housing Ordinance, exclusive of expenditures for rehabilitation. The budget shall be prepared in accordance with proper borough accounting procedures and submitted to the Borough Council for approval as part of the borough budget.⁸
- (4) Recommend to the Borough Council reasonable fees to be charged to developers of affordable housing units to offset the costs to the borough related to the inspection and monitoring of sales and rentals of affordable housing units but not related to any salaries or expenditures for such items as housing surveys or preparation of grant applications.
- (5) Undertake such other activities as may be authorized by law to carry out the obligations of the borough to assist in providing affordable housing in accordance with the Fair Housing Act of 1985 and amendments thereto⁹ and the substantive rules issued by the Council on Affordable Housing.¹⁰

⁸ Editor's Note: Original Article 4, Subdivision C5, which immediately followed this subsection and dealt with recommendations to disburse funds from the Housing Fund, was deleted 10-10-1989 by Ord. No. 89-18.

⁹ Editor's Note: See N.J.S.A. 52:27D-301 et seq.

¹⁰ Editor's Note: Original Article 5, Action by Borough Council, and Article 6, Housing Fund, which immediately followed this subsection, were deleted 10-10-1989 by Ord. No. 89-18.

§ 275-5. Housing Officer.

- A. Establishment of position of Housing Officer. There is hereby established the position of Housing Officer for the Borough of New Providence. The Housing Officer shall be appointed by the Borough Council and may be a full- or part-time Borough employee, a consultant, an authority or a government or other agency contracted by the borough to perform the duties and functions of the Housing Officer.
- B. Compensation. Compensation shall be fixed by the Borough Council at the time of the appointment of the Housing Officer, upon recommendation of the Affordable Housing Board.
- C. Powers and duties. It shall be the responsibility of the Housing Officer to:
 - (1) Administer the affordable housing program of the Borough in accordance with this Article, the Affordable Housing Ordinance, the Zoning Ordinance¹¹ and the rules and regulations of the Affordable Housing Board.
 - (2) Maintain waiting lists of households which may be eligible to rent or purchase affordable dwelling units or to obtain funding from the Housing Fund or from such other government-funded programs as may be available to qualified applicants.
 - (3) Advertise the initial availability of affordable housing units when they become available, which advertising shall be in addition to any advertising done by a developer.
 - (4) Advertise the availability of funds for housing rehabilitation, if and when such funds are available, or for such other affordable housing programs as may be authorized by the Borough Council.
 - (5) Maintain an up-to-date record of all deed-restricted affordable housing units in the borough.

¹¹ Editor's Note: See Art. II, Procedures, of this chapter and Ch. 310, Zoning, respectively.

- (6) Monitor all transfers of ownership and changes of occupancy of all deed-restricted affordable housing units, to oversee the placement of qualified households in affordable housing units and to enforce the provisions of the Affordable Housing Ordinance and the Zoning Ordinance,³ performing all of the administrative duties and functions outlined therein.
- (7) Advise the Planning Board and the Board of Adjustment with respect to their approvals of affordable housing units and as to required developer contributions to the Housing Fund.
- (8) Maintain detailed records of income to and expenditures from the Housing Fund and accounts for any government grant moneys received.
- (9) Perform the administrative functions associated with the borough's affordable housing program, including its housing rehabilitation program. [Amended 10-10-1989 by Ord. No. 89-18]
- (10) Arrange for inspections of affordable housing units as necessary to carry out the requirements of this Article, the Affordable Housing Ordinance, an Ordinance to Provide for and Facilitate the Voluntary Rehabilitation of Certain Existing Physically Substandard Housing Units of the Borough of New Providence⁴ and the rules and regulations promulgated by the Affordable Housing Board. [Amended 10-10-1989 by Ord. No. 89-18]
- (11) Carry out such additional duties as may be required of the Housing Officer by the rules and regulations promulgated by the Affordable Housing Board.

³ Editor's Note: See Art. II, Procedures, of this chapter and Ch. 310, Zoning, respectively.

⁴ Editor's Note: See Art. II, Procedures, of this chapter and Ch. 285, Housing Rehabilitation, respectively.

ARTICLE II
Procedures

[Adopted 3-28-1988 as Ord. No. 88-6]

§ 275-6. Title.

This Article shall be known as the "Affordable Housing Ordinance" of the Borough of New Providence.

§ 275-7. Purpose. [Amended 9-13-1993 by Ord. No. 93-12]

The purpose of this Article is to specify the affordable dwelling units to be constructed, to define the eligibility standards and to establish the rules and regulations governing the construction, sales and rentals of affordable housing units, pursuant to the Fair Housing Act of 1985.⁵ The further purpose of this Article is to establish standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules. 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.

§ 275-8. Word usage; definitions. [Amended 9-13-1993 by Ord. No. 93-12]

All definitions found in the Municipal Land Use Law and the Zoning Ordinances of the Borough of New Providence⁶ shall apply to this Article, and in addition, the following definitions shall apply:

COAH — The New Jersey Council on Affordable Housing.

DEVELOPMENT FEES — Money paid by an individual, person, partnership, association, company or corporation

⁵ Editor's Note: See N.J.S.A. 52:27D-301 et seq.

⁶ Editor's Note: See N.J.S.A. 40:56D-1 et seq. and Ch. 810, Zoning, respectively.

for the improvement of property as permitted in COAH's rules.

EQUALIZED ASSESSED VALUE — The value of a property determined by the Municipal Tax Assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of building permit may be obtained by the Tax Assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the Municipal Tax Assessor.

SUBSTANTIVE CERTIFICATION — A determination by the Council approving a municipality's housing element and fair share plan, in accordance with the provisions of the Act and the rules and criteria as set forth herein. A grant of substantive certification shall be valid for a period of six (6) years in accordance with the terms and conditions contained therein.

§ 275-9. Required affordable dwelling units. [Amended 10-10-1989 by Ord. No. 89-17; 8-10-1992 by Ord. No. 92-12]

- A. All developments in the A1, A2 and A3 Zoning Districts shall be required to provide housing affordable to lower-income households at the rate of twenty percent (20%) of the number of dwelling units constructed. [Amended 9-13-1993 by Ord. No. 93-12]
- B. Size. A minimum of fifteen percent (15%) of the affordable housing units shall be three-bedroom units, and a minimum of thirty-five percent (35%) of the affordable units shall be two-bedroom units. No more than twenty percent (20%) of the affordable units shall be efficiency units. At least one-half (1/2) of all two-bedroom and one-half (1/2) of all three-bedroom affordable units shall be for very low (low) income as opposed to low (moderate) income occupancy. If a

percentage yields one-half (1/2) or more, the number shall be rounded up to the next whole number. If a required percentage yields a fraction of less than one-half (1/2), the number may be rounded down to the next whole number. Odd units shall be considered very low (low) income units.

C. Restriction on age. Up to twenty-five percent (25%) of the affordable housing units constructed on any site may be restricted for occupancy by households in which at least one (1) member is aged sixty-five (65) years or older.

§ 275-10. Eligibility standards.

One-half (1/2) of all affordable housing units shall be priced so as to be eligible for rent or purchase by very low (low) income households earning between a floor of forty percent (40%) and a ceiling of fifty percent (50%) of the median household income for the region, and one-half (1/2) of all affordable units shall be priced so as to be eligible for rent or purchase by low (moderate) income households earning between a floor of fifty percent (50%) and a ceiling of eighty percent (80%) of the median household income for the region. Such housing units shall be priced to be affordable to households representing a reasonable cross section of households within the above-stated income ranges, using the following distribution of prices for each twenty (20) affordable units:

A. Low:

- (1) One (1) at forty percent (40%) through forty-two and five-tenths percent (42.5%).
- (2) Three (3) at forty-two and six-tenths percent (42.6%) through forty-seven and five-tenths percent (47.5%).
- (3) Six (6) at forty-seven and six-tenths percent (47.6%) through fifty percent (50%).

B. Moderate:

- (1) One (1) at fifty and one-tenth percent (50.1%) through fifty-seven and five-tenths percent (57.5%).
- (2) One (1) at fifty-seven and six-tenths percent (57.6%) through sixty-four and five-tenths percent (64.5%).
- (3) One (1) at sixty-four and six-tenths percent (64.6%) through sixty-eight and five-tenths percent (68.5%).
- (4) One (1) at sixty-eight and six-tenths percent (68.6%) through seventy-two and five-tenths percent (72.5%).
- (5) Two (2) at seventy-two and six-tenths percent (72.6%) through seventy-seven and five-tenths percent (77.5%).
- (6) Four (4) at seventy-seven and six-tenths percent (77.6%) through eighty percent (80%).

§ 275-11. Determination of affordability.

Affordable housing costs shall not exceed twenty-eight percent (28%) of the monthly household income for sale housing, after a down payment of ten percent (10%), and not more than thirty percent (30%) of the monthly household income for rental housing, considering the following:

A. Rental units: gross rent.

B. Sale units:

- (1) Principal and interest.
- (2) Insurance.

(Cont'd on page 27511)

- (3) Taxes.
- (4) Condominium or homeowners association fees.
- C. In determining affordable rents and sales prices, the following criteria shall be used to establish the applicable uncapped, Section 8 income limits by housing-unit size:
 - (1) Efficiency units shall be affordable to one-person households.
 - (2) One-bedroom units shall be affordable to two-person households.
 - (3) Three-bedroom units shall be affordable to five-person households.
 - (4) Four-bedroom units shall be affordable to seven-person households.

§ 275-12. Relief. [Amended 10-10-1989 by Ord. No. 89-17]

In the event that an affordable unit cannot be sold or rented, as applicable within ninety (90) days of notifying the Housing Officer of the availability of the unit, the borough may purchase the unit pursuant to N.J.A.C. 5:92-12.7. If the borough does not purchase the unit, the seller may apply to the Affordable Housing Board for relief. The application shall provide evidence of the seller's having undertaken an affirmative marketing effort, consistent with the affirmative marketing program developed by the Affordable Housing Board, to sell or rent the unit. Relief to the seller shall not include exempting the unit from the required low (moderate) or very low (low) income sales price or rent level, nor shall relief include exempting the unit from restrictions on appreciation allowable upon resale or restrictions on escalation allowable upon rental. The Affordable Housing Board may, however, allow the seller to sell or rent the subject unit to a household whose income exceeds that otherwise required, provided that in no event shall an affordable housing unit be sold or rented to a household earning in excess of eighty percent (80%) of the applicable median income.

§ 275-13. Government subsidies.

Government subsidies may be used at the discretion of the applicant and are encouraged. The borough shall cooperate in obtaining such subsidies by making application for assistance either in concert with or on behalf of a private developer, if requested to do so, and by providing a resolution of need and authorization of tax abatement, where required, to facilitate obtaining such subsidies. The lack of said subsidies shall in no way alter or diminish the affordable housing requirements of this Article and the Zoning Ordinance.¹⁶

§ 275-14. Covenants and restrictions on sales and rentals.

- A. Covenant required. All affordable dwelling units shall be covered by covenant, with the borough as a party beneficiary, to ensure that, in all initial sales and rentals and in all subsequent resales and rerentals, the units will continue to remain available and affordable to the lower-income households for which they were intended. All such covenants shall be approved by the Borough Attorney.
- B. New units. The application for the issuance of a certificate of occupancy for any newly designated affordable housing unit shall include certification by the Housing Officer to the Affordable Housing Board documenting the eligibility of the unit and the qualification of the new purchaser and/or occupant as a lower-income household.
- C. Resale, transfer or change. Prior to any resale or transfer of ownership or change of occupancy of a designated affordable housing unit, application shall be made for a new certificate of occupancy. The application for a certificate of occupancy shall include certification by the Housing Officer to the Affordable Housing Board documenting the continued eligibility of the unit and the qualification of the new purchaser and/or occupant as a lower-income household.¹⁷

¹⁶ Editor's Note: See Ch. 810, Zoning.

¹⁷ Editor's Note: Original Article 9, Subdivision D, Lease periods, which immediately followed this subsection, was deleted 10-10-1989 by Ord. No. 89-17.

- D. Requests for certification. All requests for certification shall be made by the seller or owner in writing, and the Housing Officer shall grant or deny such certification within thirty (30) days of the receipt of the request.
- E. Administrative procedures. The borough shall develop reasonable administrative procedures for qualifying the occupants of affordable housing. Procedures shall be directed and administered by the Affordable Housing Board and the Housing Officer as set forth in this Article.
- F. Priority of borough residents. Lower-income employees of the borough and lower-income residents of the Borough shall have first priority over the first fifty percent (50%) of the affordable housing units constructed in the borough during the initial phase of occupancy. [Amended 10-10-1989 by Ord. No. 89-17]
- G. Adjustments. Each year, sales prices and rents may be increased over the original levels in accordance with the percentage increase in median income for each housing region as determined by applicable uncapped Section 8 income limits, published by the Department of Housing and Urban Development. In the case of a transfer of ownership of a sales unit, the seller shall also be eligible for reimbursement for documented monetary outlays for capital improvements that render the unit suitable for a larger household, increased over the original costs in accordance with the Annual Metropolitan New York Regional Consumer Price Index for Housing of the Department of Labor, plus reimbursements for reasonable costs incurred in selling the unit, less withholdings for the current costs of essential maintenance not undertaken by the owner, provided that in no case shall the maximum price of the improved unit exceed the limits of affordability for the larger household.
- H. Removal of restrictions. After twenty (20) years from the date of its initial occupancy, an affordable housing unit may be sold or rented without restrictions; provided, however, that at the time of the removal of the deed restriction, the owner of a rental unit shall convey to the Housing Fund of the borough the difference between the appraised value of the unit (as

determined by an independent appraisal by an appraiser agreed upon by the Borough Council and the unit owner) and the affordable rent level then applicable to the housing unit. With sales units, the difference between the actual sales price of the unit and the affordable sales price shall be conveyed to the Housing Fund at the time of the first transfer of ownership following the removal of the deed restriction.

I. Rental units. Rental units may be converted for sale as condominium or fee-simple units, but any sale of converted units shall continue to be restricted as to purchase price and occupancy to persons meeting the income eligibility standards as set for the particular unit until the twenty-year restriction period has passed.

J. Construction phases.

(1) The construction of the affordable housing units shall be phased in accordance with the following schedule:

Maximum Percentage of Total Market Dwelling Units	Minimum Percentage of Affordable Dwelling Units
25	0
25 + 1 unit	10
50	50
75	75
90	100
100	100

(2) The developer may construct the first twenty-five percent (25%) of the market units without constructing any affordable housing units. No certificates of occupancy shall be issued for any of the second twenty-five percent (25%) of the market units until ten percent (10%) of the affordable units [of which one-half (%) must be very low income] shall have been issued certificates of occupancy. No certificates of occupancy shall be issued for any of the third twenty-five percent (25%) of the market units until at least fifty percent (50%) of the affordable units [of which one-half (%) must be very low income] have been issued certificates of occupancy. No certificates of

occupancy shall be issued for any of the final twenty-five percent (25%) of the market units until at least seventy-five percent (75%) of the affordable units [of which one-half (1/2) must be very low income] have been issued certificates of occupancy. Before the last ten percent (10%) of the market units have been issued certificates of occupancy, one hundred percent (100%) of the required affordable units shall have been issued certificates of occupancy.

K. Location and exterior. The affordable dwelling units shall have compatible exteriors to the market units and shall be located so that they have comparable access to that of the market units to all common elements within the development.

L. Fees.

- (1) Notwithstanding any other requirement of the borough, the following fees shall be waived for every unit designated as an affordable housing unit and only for those units designated as affordable housing units:
 - (a) Sewer connection fees applicable to affordable housing units.
 - (b) Subdivision and site plan application fees applicable to affordable housing units.
 - (c) Building permit fees, except state and third-party fees, applicable to affordable housing units.
 - (d) Certificate of occupancy fees applicable to affordable housing units.
- (2) The borough shall not oppose an application to the Board of Public Utilities Commissioners for waiver of water connection fees.

§ 275-15. Foreclosure. [Amended 10-10-1989 by Ord. No. 89-17]

- A. An action of foreclosure by a financial institution regulated by state and/or federal law shall extinguish controls on affordable housing units. Notice of foreclosure shall allow the borough to purchase the affordable housing unit at the maximum permitted sales price and to reinstate the affordability controls.
- B. In the event of a foreclosure sale, the purchaser of the affordable housing unit shall be obligated to pay to the Borough Housing Fund the difference between the maximum price permitted at time of foreclosure and the amount necessary to redeem the debt to the financial institution, with foreclosure costs, and the borough shall be obligated to replace the unit pursuant to N.J.A.C. 5:92-12.9.

§ 275-16. Residential development fees. [Added 9-13-1993 by Ord. No. 93-12]

Within Zoning Districts A1, A2 and A3 developers shall pay a development fee of one-half of one percent ($\frac{1}{2}$ of 1%) of the equalized assessed value of any eligible residential activity pursuant to § 275-19.

§ 275-17. Nonresidential development fees. [Added 9-13-1993 by Ord. No. 93-12]

Developers within OR, C, C1, C2, RL and LI Zoning Districts shall pay a fee of one percent (1%) of equalized assessed value for eligible nonresidential activities pursuant to § 275-19.

§ 275-18. Exemptions. [Added 9-13-1993 by Ord. No. 93-12]

- A. Developers of low- and moderate-income units shall be exempt from paying development fees.

- B. Developers that expand an existing structure shall pay a development fee. The development fee shall be calculated based on the increase in the equalized assessed value of the improved structure.
- C. Developers that have received preliminary or final approval prior to the effective date of this section shall be exempt from paying a development fee unless the developer seeks substantial change in the approval.

§ 275-19. Assessment and collection of fees. [Added 9-13-1993 by Ord. No. 93-12]

- A. Developers shall pay fifty percent (50%) of the calculated development fee to the Borough of New Providence at the issuance of building permits. The development fee shall be estimated by the Tax Assessor prior to the issuance of building permits.
- B. Developers shall pay the remaining fee to the Borough of New Providence at the issuance of certificates of occupancy, the Tax Assessor shall calculate the equalized assessed value and the appropriate development fee. The developer shall be responsible for paying the difference between the fee calculated at certificate of occupancy and the amount paid at building permit.

FLOOD DAMAGE PREVENTION

Chapter 281

FLOOD DAMAGE PREVENTION

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[**HISTORY:** Adopted by the Mayor and Council of the Borough of New Providence 9-28-1987 by Ord. No. 87-10; amended in its entirety 12-10-2001 by Ord. No. 2001-5. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Uniform construction codes — See Ch. 129.
Soil removal — See Ch. 297.
Stormwater control — See Ch. 301.
Subdivision of land and site plan review — See Ch. 305.
Zoning — See Ch. 310.

§ 281-1. Statutory authorization.

The Legislature of the State of New Jersey has, in N.J.S.A. 40:48-1 et seq., delegated the responsibility to local governmental units to adopt regulations designed to promote public health, safety, and general welfare of its citizenry. Therefore, the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey, does ordain as follows:

§ 281-2. Findings of fact.

- A. The flood hazard areas of the Borough of New Providence are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

§ 281-3. Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- A. To protect human life and health;
- B. To minimize expenditure of public money for costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. To insure that potential buyers are notified that property is in an area of special flood hazard; and
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 281-4. Methods of reducing flood losses.

In order to accomplish its purposes, this chapter includes methods and provisions for:

- A. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities;

- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers which help accommodate or channel flood waters;
- D. Controlling filling, grading, dredging, and other development which may increase flood damage; and,
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

§ 281-5. Definitions and word usage.

- A. Unless specifically defined below, words or phases 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.
- B. As used in this chapter, the following terms shall have the meanings indicated:

APPEAL — A request for a review of the Borough Administrator's interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING — A designated AO or AH Zone on a community's Flood Insurance Rate Map with a 1% or greater chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

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BASE FLOOD — The flood having a one percent chance of being equaled or exceeded in any given year.

BASEMENT — Any area of the building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL — A wall that is part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

ELEVATED BUILDING — A nonbasement building built, in the case of a building in an area of special flood hazard, to have the top of the elevated floor elevated above the ground level by means of piling, columns (posts and piers), or shear walls parallel to the flow of the water and adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In an area of special flood hazard, elevated building also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters.

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

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

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

FLOOD INSURANCE STUDY (FIS) — The official report provided in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Insurance Rate Map and the water surface elevation of the base flood.

FLOODPLAIN MANAGEMENT REGULATIONS — Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 0.2 foot.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE — Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district

preliminarily determined by the Secretary to qualify as a registered historic district;

- (3) Individually listed on a State inventory of historic places in States with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (a) By an approved state program as determined by the Secretary of the Interior; or
 - (b) Directly by the Secretary of the Interior in states without approved programs.

LOWEST FLOOR — The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, useable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a buildings lowest floor, provided that such enclosure is not built so to render the structure in violation of other applicable nonelevation design requirements.

MANUFACTURED HOME — A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a recreation vehicle.

MANUFACTURED HOME PARK or MANUFACTURED HOME SUBDIVISION — A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective date of a floodplain regulation adopted by a community

and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by the municipality.

RECREATIONAL VEHICLE — A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the longest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

START OF CONSTRUCTION — For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. No. 97-348), includes substantial improvements and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or

walkways, nor does it include excavation for a basement, footings or piers, or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE — A walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground.

SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

VARIANCE — A grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

§ 281-6. Applicability.

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the Borough of New Providence.

§ 281-7. Basis for establishing areas of special flood hazard.

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the Borough of New Providence" dated December 20, 2001, with accompanying Flood Insurance Rate Maps is hereby adopted by reference and declared to be a part of this chapter. The Flood Insurance Study is on file in the office of the Borough Clerk, Municipal Center, 360 Elkwood Avenue, New Providence, New Jersey.

§ 281-8. Violations and penalties.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500 or imprisoned for not more than 30 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Borough of New Providence from taking such other lawful action as is necessary to prevent or remedy any violation.

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§ 281-9. Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

§ 281-10. Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and,
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

§ 281-11. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Borough of New Providence, any officer or employee thereof or the Federal Insurance Administration for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

§ 281-12. Development permit.

- A. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in § 281-7. Application

for a development permit shall be made on forms furnished by the Borough Construction Official and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials and drainage facilities; and the location of the foregoing.

B. Specifically, the following information is required:

- (1) Elevation, in relation to mean sea level, of the lowest floor (including basement) of all structures;
- (2) Elevation, in relation to mean sea level, to which any structure has been floodproofed.
- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in § 281-17B; and,
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

§ 281-13. Borough Construction Official designated as enforcing official.

The Borough Construction Official is hereby appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

§ 281-14. Duties and responsibilities of Borough Construction Official.

Duties of the Borough Construction Official shall include, but not be limited to:

A. Permit review. The Borough Construction Official shall:

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- (1) Review all development permits to determine that the permit requirements of this chapter have been satisfied.
- (2) Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
- (3) Review all development permits to determine if the proposed development is located in the floodway; assure that the encroachment provisions of § 281-18A are met.

B. Use of other base flood and floodway data. When base flood elevation and floodway data has not been provided in accordance with § 281-7, Basis for establishing areas of special flood hazard, the Borough Construction Official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer § 281-17A, Residential Construction, and § 281-17B, Nonresidential construction.

C. Information to be obtained and maintained. The Borough Construction Official shall:

- (1) Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor, including basement, of all new or substantially improved structures and whether or not the structure contains a basement.
- (2) For all new or substantially improved floodproofed structures:
 - (a) Verify and record the actual elevation, in relation to mean sea level; and
 - (b) Maintain the floodproofing certifications required in § 281-12B(3).
- (3) Maintain for public inspection all records pertaining to the provisions of this chapter.

D. Alteration of watercourses. The Borough Construction Official shall:

- (1) Notify adjacent communities and the state coordinating agency prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Insurance Administration.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so the flood-carrying capacity is not diminished.

E. Interpretation of firm boundaries. The Borough Construction Official shall make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in § 281-15.

§ 281-15. Variance procedure.

A. Appeal Board.

- (1) The Planning Board, as established by the Borough of New Providence, shall hear and decide appeals and requests for variances from the requirements of this chapter.
- (2) The Planning Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Borough Construction Official in the enforcement or administration of this chapter.
- (3) Those aggrieved by the decision of the Planning Board or any taxpayer may appeal such decision to the Mayor and Borough Council.

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(4) In passing upon such applications, the Planning Board or the Board of Adjustment, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

- (a) The danger that materials may be swept onto other lands to the injury of others;
- (b) The danger to life and property due to flooding or erosion damage;
- (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (d) The importance of the services provided by the proposed facility to the community;
- (e) The necessity to the facility of a waterfront location, where applicable;
- (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (g) The compatibility of the proposed use with existing and anticipated development;
- (h) The relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
- (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and,
- (k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.

- (5) Upon consideration of the factors of Subsection A(4) and the purposes of this chapter, the Planning Board or the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- (6) The Borough Construction Official shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.

B. Conditions for variances.

- (1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of $\frac{1}{2}$ acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in Subsection A(4)(a) through (j) have been fully considered. As the lot size increases beyond the $\frac{1}{2}$ acre, the technical justification required for issuing the variance increases.
- (2) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (3) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Variances shall only be issued upon:
 - (a) A showing of good and sufficient cause;

- (b) A determination, that failure to grant the variance, would result in exceptional hardship to the applicant; and,
- (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Subsection A(4), or conflict with existing local laws or ordinances.
- (d) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

§ 281-16. General standards.

In all areas of special flood hazards, the following standards are required:

A. Anchoring.

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- (2) All manufactured homes shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

B. Construction materials and methods.

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

C. Utilities.

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.
- (3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (4) Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

D. Subdivision proposals.

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed

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development which contain at least 50 lots or five acres, whichever is less:

E. Enclosure openings. All new construction and substantial improvements having fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- (2) The bottom of all openings shall be no higher than one foot above grade.
- (3) Openings may be equipped with screens, louvers, or other covering or devices, provided that they permit the automatic entry and exit of floodwaters.

§ 281-17. Specific standards.

In all areas of special flood hazards where base flood elevation data have been provided as set forth in § 281-7, Basis for establishing areas of special flood hazard or in § 281-14B, Use of other base flood and floodway data, the following standards are required:

A. Residential construction.

- (1) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.

- (2) Within any AO Zone on the municipality's FIRM, all new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two feet if no depth number is specified), and adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures and required.

B. Nonresidential construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation or, together with the attendant utility and sanitary facilities, shall:

- (1) Within any AO or AH Zone on the municipality's FIRM, require all new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two feet if no depth number is specified) and require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.
- (2) Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water.
- (3) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (4) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall

§ 281-17 FLOOD DAMAGE PREVENTION § 281-19

be provided to the Borough Construction Official as set forth in § 281-14C(2).

C. Manufactured homes.

- (1) Manufactured homes shall be anchored in accordance with § 281-16A(2).
- (2) All manufactured homes to be placed or substantially improved within an area of special flood hazard shall be elevated on a permanent foundation such that the top of the lowest floor is at or above the base flood elevation.

§ 281-18. Floodways.

Located within areas of special flood hazard established in § 281-7 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- A. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- B. If Subsection A is satisfied, all new construction and substantial improvements must comply with §§ 281-16, 281-17, and 281-18.

§ 281-19. Provisions for flood hazard reduction.

In all areas of special flood hazard in which base flood elevation data has been provided and no floodway has been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than 0.2 of a foot at any point.

HOUSING REHABILITATION

Chapter 285

HOUSING REHABILITATION

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- § 285-15. Action by COAH.

[HISTORY: Adopted by the Mayor and Council of the Borough of New Providence 9-25-1989 as Ord. No. 89-12. Amendments noted where applicable.]

GENERAL REFERENCES

Uniform construction codes — See Ch. 129.
Fire prevention — See Ch. 155.
Property maintenance — See Ch. 207.
Affordable housing — See Ch. 275.
Zoning — See Ch. 310.
Sanitary standards — See Ch. 333.

ARTICLE I
Title and Purpose

§ 285-1. Title.

This chapter shall be known and shall be cited as the "Rehabilitation Ordinance of the Borough of New Providence."

§ 285-2. Purpose.

The purpose of this chapter is to provide for and facilitate the voluntary rehabilitation of existing, physically substandard housing units occupied by low- and moderate-income households in order that the borough may, satisfy the indigenous portion of its precredited housing need up to the year 1993, as established by the New Jersey Council on Affordable Housing (COAH). According to COAH estimates, twenty-two (22) such housing units exist. The borough will guarantee the funding of low-interest loans and/or grants to eligible homeowners for rehabilitation of up to twenty-two (22) units through the issuance of municipal bonds or such other sources as may become available. As a further guaranty of funding, the borough commits itself to providing an appropriated amount to the New Providence Housing Fund each year as follows:

Date	Amount
December 1990	\$44,000.00
December 1991	44,000.00
December 1992	44,000.00
December 1993	44,000.00
December 1994	44,000.00

ARTICLE II
Terminology

§ 285-3. Definitions and word usage.

- A. Definitions pertaining to fair share housing not found below are the same as those definitions that appear in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., or the rules and regulations adopted by the Council on Affordable Housing in N.J.A.C. 5:91 or 5:92.
- B. For the purposes of this chapter, certain terms are defined as follows:

APPLICANT — The person or persons applying for technical or financial assistance for housing rehabilitation or conversion in accordance with the provisions of this chapter.

COAH — The New Jersey Council on Affordable Housing. [Added 9-13-1993 by Ord. No. 93-11]

CONSTRUCTION OFFICIAL — The Construction Official of the Borough of New Providence.

CONVERSION — The conversion of an existing dwelling unit to provide a low- or moderate-income unit in accordance with the provisions of this chapter and applicable zoning provisions.

COUNCIL ON AFFORDABLE HOUSING — The Council established by the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

DEFICIENT UNIT — A housing unit that is not decent, safe or sanitary as determined in N.J.A.C. 5:92-5.2 and § 285-4 of this chapter.

DEVELOPMENT FEES — Money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules. [Added 9-13-1993 by Ord. No. 93-11]

EQUALIZED ASSESSED VALUE — The value of a property determined by the Municipal Tax Assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of building permit may be obtained by the Tax Assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the Municipal Tax Assessor. [Added 9-13-1993 by Ord. No. 93-11]

FAIR HOUSING PROGRAM — The procedures and provisions of this chapter to provide technical and financial assistance for rehabilitation or conversion.

HOUSING OFFICER — A person appointed by the borough to perform the duties listed in § 285-8 of this chapter.

INDIGENOUS NEED — Deficient housing units occupied by low- and moderate-income households within a municipality.

LOW-INCOME HOUSEHOLD — A household with a gross household income equal to fifty percent (50%) or less of the median gross household income for households of the same size within the housing region in which the housing is located, as determined by the Council on Affordable Housing in N.J.A.C. 5:92 or subsequent rules and regulations.

LOW-INCOME HOUSING — Housing affordable, according to the Federal Department of Housing and Urban Development or other recognized standards, for home ownership and rental costs and occupied or reserved for occupancy by a low-income household.

MODERATE-INCOME HOUSEHOLD — A household with a gross household income equal to or more than fifty percent (50%) but less than eighty percent (80%) of the median gross household income for households of the same size within the housing region in which the

housing is located, as determined by the Council on Affordable Housing in N.J.A.C. 5:92 or subsequent rules and regulations.

MODERATE-INCOME HOUSING — Housing affordable, according to the Federal Department of Housing and Urban Development or other recognized standards, for home ownership and rental costs and occupied or reserved for occupancy by a moderate-income household.

NEW PROVIDENCE HOUSING FUND — The fund established in § 285-11 of this chapter.

REHABILITATION — The restoration of a deficient unit to a decent, safe and sanitary unit, as provided for by this chapter.

SUBSTANTIVE CERTIFICATION — A determination by the Council approving a municipality's housing element and fair share plan in accordance with the provisions of the Act and the rules and criteria as set forth herein. A grant of substantive certification shall be valid for a period of six (6) years in accordance with the terms and conditions contained therein. [Added 9-13-1993 by Ord. No. 93-11]

ARTICLE III General Provisions

§ 285-4. Eligibility.

Only owners of houses or structures within the Borough of New Providence are eligible for the technical or financial assistance made available through this chapter. Eligibility is further determined by the following criteria:

- A. The homeowner must either live in a low- or moderate-income household or must agree to rent the house or structure to be rehabilitated or converted to a low- or

moderate-income household. Proof of income will be required by the Housing Officer.

B. A house that is proposed to be rehabilitated must be considered deficient in accordance with N.J.A.C. 5:92. Determination of deficiency will be made by the Construction Official. To qualify as deficient, the unit must have a minimum of two (2) of the following characteristics:

- (1) Constructed prior to 1940.
- (2) One and one-hundredth (1.01) or more persons per room.
- (3) The absence of a private entranceway to dwelling unit.
- (4) The absence of exclusive access to complete plumbing facilities.
- (5) The absence of adequate kitchen facilities, that is, a sink with piped water, a stove and a refrigerator.
- (6) Structural weaknesses that violate the Construction Code.¹

C. The rehabilitation or conversion plan will, upon completion, result in the improvement of all deficient components of the eligible unit. The adequacy of the plan will be initially determined by the Borough Construction Official and finally determined by the Affordable Housing Board.

D. The homeowner must agree, in writing, to comply with all the requirements of this chapter.

§ 285-5. Effect of assistance on homeowner.

A. Homeowners who receive technical or financial assistance under the provisions of this chapter shall be

¹ Editor's Note: See Ch. 128, Construction Codes, Uniform.

entitled to special property-tax-assessment treatment in accordance with the recommendations of COAH.

B. Homeowners who receive technical or financial assistance under the provisions of this chapter shall place a deed restriction on the property to specify that only a low- or moderate-income household may occupy the housing unit. The deed restriction shall be prepared by the Borough Attorney. The deed restriction shall take effect as soon as an application

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HOUSING REHABILITATION

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has been approved and money has been made available for the rehabilitation project. The deed restriction shall be in effect for six (6) years subsequent to satisfactory completion of a rehabilitation unit. Sale of the deed-restricted dwelling shall not affect the deed restriction.

C. Homeowners who receive technical or financial assistance under the provisions of this chapter and who rent the units to someone else shall agree to rent control restrictions on the rehabilitated unit. The annual rent shall not exceed more than thirty percent (30%) of the household's gross annual income. The restriction shall be in effect for six (6) years in the case of converted units. Increases in rent during the period of rent control may be granted so long as the tenant household is not required to pay more than thirty percent (30%) of its gross annual income.

§ 285-6. Phasing.

The borough will guarantee financial assistance to eligible and interested homeowners for no less than four (4) units for each of the next five (5) years, beginning with 1990.

§ 285-7. Priorities for financial assistance.

In the event that financial assistance is not available for every eligible applicant, fifty percent (50%) of the available assistance shall be awarded to applications that will result in low-income housing in preference to those that will result in moderate-income housing.

ARTICLE IV
Administration

§ 285-8. Staff and funding.

A. The Housing Officer and the Construction Official of the Borough of New Providence shall be responsible for the administration and enforcement of this chapter and shall have the following duties relative to this chapter.

B. The duties of the Housing Officer shall include:

- (1) Affirmative marketing of the borough's Rehabilitation Program through:
 - (a) At least once annually for the years of 1990, 1991, 1992, 1993 and 1994, a direct mailing to all the borough's homeowners announcing the Rehabilitation Program and explaining the eligibility requirements for participation in the program and the procedures for applying for assistance under the provisions of this chapter.
 - (b) At least one (1) well-publicized public meeting to answer questions about the Rehabilitation Program.
 - (c) A poster highlighting the main features of the Rehabilitation Program to be hung in the Borough Hall at all times.
 - (d) The issuance of periodic press releases to inform the public of news related to the Rehabilitation Program and to promote interest in the program.
 - (e) Preparation of information and application packets for distribution to interested homeowners.
- (2) Development of necessary application and financial statement forms to be used by homeowners interested in applying for participation in the Rehabilitation Program. The application will clearly state that any homeowner who receives financial assistance under the provisions of this chapter will agree to resale or rent controls for the property for six (6) years. The application shall require proof of ownership and general information on the property to be rehabilitated, as well as a description and estimated cost of the work needed to improve the unit to meet the parameters of the Rehabilitation Program. The financial statement form shall indicate that the information submitted will be kept strictly confidential. These forms shall be approved by the Borough Council prior to distribution to applicants.

- (3) Determination of eligibility of the applicant based on the requirements of this chapter.
- (4) Maintenance of a comprehensive file of all sources of financial assistance from federal and state programs for housing rehabilitation. The file on each program shall include eligibility requirements, several copies of application forms for the program, application filing procedures and deadlines, the total appropriation for the program and funding limitations for individual projects.
- (5) Technical assistance to eligible applicants for the Borough Rehabilitation Program to apply for financial assistance from appropriate federal and state programs for housing rehabilitation by low- and moderate-income households.
- (6) Technical assistance to eligible applicants for the Borough Rehabilitation Program to apply for a grant or loan from the borough upon a determination that financial assistance for housing rehabilitation or conversion will not be available from federal or state programs.
- (7) Preparation and presentation of a report on each eligible application to the Affordable Housing Board for a grant or loan from the borough.
- (8) Preparation and presentation of an annual report to the Borough Council at the close of each fiscal year. The report shall compare the borough's rehabilitation objectives with the accomplishments of each year. The report shall indicate the status, including any information available from the Construction Official, of the condition of each unit that has been or will be rehabilitated or converted and shall include a full financial accounting for the program. The report shall also contain recommendations for improving either the administrative or substantive elements of the program.

C. The Housing Officer shall establish specific, regular hours to meet with interested homeowners at the Borough Hall.

D. The Construction Official shall have the following duties:

- (1) Determination of the deficiency of an applicant's unit under the provisions of this chapter. The Construction Official's evaluation of deficiency shall be reported in writing to the Housing Officer.
- (2) Determination of whether or not the proposed description and cost of work needed to rehabilitate or convert the subject structure will meet the parameters of the Rehabilitation Program. The Construction Official's report on the description and cost of work shall be made in writing to the Housing Officer.
- (3) Inspection and, when completed, certification of the rehabilitation. The certification shall bear the date of the inspection and shall be indicated by a written report to the Housing Officer.

E. The borough shall include in its annual budget sufficient funds to pay for the costs of administering the Rehabilitation Program. The money expended for preparing and implementing the Rehabilitation Program shall, in accordance with the Fair Housing Act,² be considered a mandated expenditure exempt from the limitations on final appropriation imposed pursuant to P.L. 1976, c. 68 (N.J.S.A. 40A:4-45.1 et seq.). For the first year of the program (1990), the amount budgeted for administration shall be ten percent (10%) of the average estimated cost of rehabilitating, four (4) units [at ten thousand dollars (\$10,000.) per unit] or four thousand dollars (\$4,000.). For subsequent years, the budget will be determined based on the experience of the previous year.

§ 285-9. Application review and approval.

- A. Interested homeowners will be able to secure information and application packets from the Housing Officer by calling or visiting the Borough Hall during the Housing Officer's regularly scheduled office hours.
- B. Interested homeowners will submit a completed application to the Housing Officer.

² Editor's Note: See N.J.S.A. 52:27D-801 et seq.

- C. The Housing Officer will review the application for completeness and, once an application is complete, determine whether the applicant meets income eligibility requirements.
- D. Upon determination that the applicant is eligible, the Construction Official will inspect the property to rule on whether it qualifies as deficient under the provisions of this chapter and whether or not the proposed description and cost of work needed to improve the unit will meet the parameters of the Rehabilitation Program. The Construction Official's determination will be submitted in writing to the Housing Officer.
- E. If the Construction Official determines that the unit qualifies as deficient but recommends an amended description and cost estimate of the work necessary to rehabilitate or convert the unit, the applicant will be asked to revise the application to address satisfactorily the comments of the Construction Official.
- F. If the Construction Official determines that the unit qualifies as deficient and that the proposed description and cost estimate of the work necessary to rehabilitate or convert the unit is satisfactory, the Housing Officer will determine whether or not the applicant is eligible for financial assistance to complete the work from a federal or state program and whether there is a realistic chance of the applicant's receiving assistance from the program.
- G. If the Housing Officer determines that the applicant is eligible for financial assistance to complete the work from a federal or state program and that there is a realistic chance for the applicant to receive such assistance, the Housing Officer will offer as much technical assistance as the applicant desires and as the Housing Officer can reasonably provide to prepare an application(s) for the relevant programs.
- H. If the Housing Officer determines that the applicant is not eligible for financial assistance to complete the work from a federal or state program or that there is no

realistic chance for the applicant to receive such assistance or the application for such assistance is denied by the relevant state or federal agency (agencies), then at the applicant's request, the Housing Officer will forward the application to the Affordable Housing Board for a loan or grant from borough funds. The Housing Officer shall be available to discuss the application with the Affordable Housing Board at the time of its formal consideration.

- I. If the Affordable Housing Board approves the application, the rehabilitation may begin as soon as the applicant and the appropriate representative of the Affordable Housing Board have signed all necessary agreements. The Affordable Housing Board shall arrange for payment of the rehabilitation to be made to the appropriate party (parties) upon securing a guaranty that the money will go toward payment of the work included in the application.
- J. If the Affordable Housing Board denies the application, the specific reasons for rejection shall be given. The Affordable Housing Board may deny an application only if it can be shown that the applicant is ineligible or that the proposed work plan is insufficient to bring the building into conformance with the parameters of the Rehabilitation Program.
- K. After construction for rehabilitation of the housing unit is completed, the Borough Construction Official will inspect the unit and, if appropriate, certify that the work has been completed in accordance with the approved work plan. If the work is incomplete or for some reason unsatisfactory, the Construction Official shall so inform the Housing Officer, who will then work with the Affordable Housing Board to find a suitable remedy.

ARTICLE V
Housing Fund

§ 285-10. Housing fund created; development fees.
[Amended 9-13-1993 by Ord. No. 93-11]

- A. There is hereby created an interest-bearing housing trust fund in the Summit Bank for the purpose of receiving development fees from residential and nonresidential developers. All development fees paid by developers pursuant to this chapter shall be deposited in this fund. No money shall be expended from the housing trust fund unless the expenditure conforms to a spending plan approved by COAH.
- B. If COAH determines that the Borough of New Providence is not in conformance with COAH's rules on development fees, COAH is authorized to direct the manner in which all development fees collected pursuant to this chapter shall be expended. Such authorization is pursuant to this chapter, COAH's rules on development fees and the written authorization from the governing body to the Summit Bank.

§ 285-11. Sources of funding.

The source of funding to administer and implement this fund and to fund this source shall be as follows:

- A. State and federal program funds.
- B. Funds collected from developers pursuant to the Zoning Ordinance.²
- C. Borough budget appropriations.
- D. Moneys received from municipal bonds, if any, issued specifically to provide funds for the implementation of this chapter.

² Editor's Note: See Ch. 310, Zoning.

§ 285-11.1. Use of funds. [Added 9-13-1993 by Ord. No. 93-11]

- A. Money deposited in a housing trust fund may be used for any activity approved by COAH for addressing the Borough of New Providence's low- and moderate-income housing obligation. Such activities may include, but are not necessarily limited to: housing rehabilitation; new construction; regional contribution agreements; the purchase of land for low- and moderate-income housing; extensions and/or improvements of roads and infrastructure to low- and moderate-income housing sites; assistance designed to render units to be more affordable to low- and moderate-income people; and administrative costs necessary to implement the Borough of New Providence's housing element. The expenditure of all money shall conform to a spending plan approved by COAH.
- B. At least thirty percent (30%) of the revenues collected shall be devoted to render units more affordable. Examples of such activities include, but are not limited to: down payment assistance; low-interest loans and rental assistance.
- C. No more than twenty percent (20%) of the revenues shall be expended on administrative costs necessary to develop, revise or implement the housing element. Examples of eligible administrative activities include: personnel; consultant services; space costs; consumable supplies and rental or purchase of equipment.
- D. Development fee revenue shall not be expended to reimburse the Borough of New Providence for housing activities that preceded substantive certification.

§ 285-12. Low-interest rehabilitation loans.

An eligible applicant shall, upon the applicant's request and approval by the Affordable Housing Board, receive a low-interest loan from the borough for the purposes herein provided.

The loan shall be awarded at an interest rate to be agreed upon mutually by the applicant and the Affordable Housing Board in accordance with the provisions of this chapter. The loan shall constitute a lien on the subject property, and the property owners shall execute such documentation as may be required by the Borough Attorney to ensure the appropriate recording of said lien. The Housing Officer and the applicant will prepare a realistic repayment schedule, which shall be incorporated in the loan documents. In the event that the applicant does not meet the scheduled payments, the borough will collect the principal balance of the loan, together with all accumulated interest compounded annually at the time of the sale of the property. The borough may increase the interest rates on delinquent loans to an amount equal to the prime rate as published by the Wall Street Journal on the first business day of January of the year in which the default occurs.

§ 285-13. Terms of loans.

Based on the appropriations specified in § 285-11, loans will be made available from the borough to eligible applicants under the terms specified below.

A. Rental rehabilitation. The following terms will apply to loans made for units that are owned by households who do not qualify as low- or moderate-income but who will agree to rent the property to low- or moderate-income households.

- (1) The borough will make a loan to the applicant for the total amount of the cost of rehabilitation. Although the loan will be made to the applicant, the proceeds of the loan will be paid to the individual(s) or business(es) who sell the material and/or labor for the project. Homeowners who contribute sweat equity will not receive financial remuneration for their efforts.
- (2) The interest rate will be fixed at an annual rate of two (2) points below prime or one (1) point above the

borough's interest rate on bonds sold for such purpose, whichever is less, at the time the loan originates. The interest rate on bonds will be established and made public at the time of the sale and all prospective borrowers will be notified in writing of the respective rates.

- (3) Payments on the loan principal will be deferred for a ten-year period. Payments on interest will be made in equal monthly payments during this ten-year period or until the loan is paid in full, if paid before the end of this period. No interest will be charged after the 10th year if the owner chooses to defer repayment in exchange for extending affordability controls.
- (4) Repayment of the loan principal will become payable in full at the end of ten (10) years unless the owner elects to continue affordability controls. Sixty (60) days prior to the end of the loan's ten-year life, the borough's Housing Officer will submit a letter to the owner indicating the date on which the loan principal will become due, when the borough expects payment and the circumstances under which repayment may continue to be deferred.
- (5) Repayment of the loan principal may be extended beyond the first ten-year period if and only if the owner agrees to continue renting to a low- or moderate-income household. If the owner wants to take this option, he or she shall notify the borough's Housing Officer in writing of his or her intentions within thirty (30) days of receipt of notification from the borough that the loan principal will become due within sixty (60) days.
- (6) If an owner plans to extend participation in the Fair Share Program through the option listed in the preceding Subsection A(5), he or she must sign an agreement with the borough to extend the deed restriction and renew the lien placed on the property

upon first entering the program. The agreement will thereafter be renewable annually. Each year, at the time of rental, the owner must demonstrate that the unit continues to be occupied by a low- or moderate-income household.

B. Owner-occupied, units. The following terms will apply to units that are owner-occupied by low- or moderate-income households.

- (1) The borough will make a loan to the applicant for the total amount of the cost of rehabilitation. Although the loan will be made to the applicant, the proceeds of the loan will be paid to the individual(s) or business(es) who sell the material and/or labor for the projection. Homeowners who contribute sweat equity will not receive financial remuneration.
- (2) The interest rate will be fixed at an annual rate of two (2) points below prime, as published by the Wall Street Journal on the first day of January or the borough's interest rate on bonds sold for such purpose, whichever is less, compounded. The interest rate on bonds will be established and made public at the time of sale, and all prospective borrowers will be notified in writing of the respective rates. Interest is chargeable for a period of six (6) years unless the loan is repaid sooner.
- (3) Deferred payments on the principal and interest will be made available to the applicant as explained below.
- (4) Repayment of the loan will not be required until the sale of the property. At the time of sale, the unpaid principal, plus accrued interest, shall be paid to the borough, except that no interest shall be charged beyond the sixth year. Repayment of the loan will be required in the event that the dwelling becomes no longer owner-occupied and is not rented to a person or persons qualified as a low- or moderate-income household.

- (5) Prepayment of the principal balance of the loan in multiples of one hundred dollars (\$100.) may be payable without penalty at any time, as may accrue interest. Payments received shall first be credited to the payment of interest and then to reduction of principal.
- (6) Interest shall be compounded annually, and unpaid interest shall be added to and become a part of the principal of said loan.
- (7) Payment of the principal and interest may continue to be deferred beyond the sale of the property if and only if the property is sold to another low- or moderate-income household. If the owner elects this option, the sale price must be calculated consistent with the Council's affordability standards. The new owner will be required to continue the deed restriction and assume the lien on the property.

ARTICLE VI Violations and Penalties

§ 285-14. Violations and penalties.

No financial assistance shall be made available to homeowners without full compliance with the terms of this chapter and other applicable regulations. Any person who violates this chapter or fails to comply with any of its requirements shall be penalized no more than one thousand dollars (\$1,000.) or be jailed for no more than one (1) year and, as part of the penalty, shall make restitution of any or all funds paid by the borough under the provisions of this chapter. Nothing herein contained shall prevent the Borough of New Providence from taking such other lawful action as is necessary to prevent or remedy any violation.

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HOUSING REHABILITATION

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ARTICLE VII.

Substantive Certification

[Amended 9-13-1993 by Ord. No. 93-11]

§ 285-15. Action by COAH..

- A. COAH dismisses or denies the Borough of New Providence's petition for substantive certification.
- B. COAH revokes substantive certification or its certification of this chapter.

28519

9-25-95

LAND USE PROCEDURES

Chapter 291

LAND USE PROCEDURES

- § 291-1. Title.
- § 291-2. Purpose.
- § 291-3. Word usage.
- § 291-4. Planning Board.
- § 291-5. Zoning Board of Adjustment.
- § 291-6. Powers and duties of Planning Board and Zoning Board of Adjustment.
- § 291-7. Conduct of meetings; fees; referrals; conflicts of interest.
- § 291-8. Application.
- § 291-9. Review of submissions; approval or denial; expiration of variances.
- § 291-10. Appeals.
- § 291-11. Master Plan.
- § 291-12. Pending applications.

[HISTORY: Adopted by the Mayor and Council of the Borough of New Providence 3-28-1988 as Ord. No. 88-4. Amendments noted where applicable.]

GENERAL REFERENCES

Subdivision of land and site plan review — See Ch. 305.
Zoning — See Ch. 310.

§ 291-1. Title.

This chapter shall be known and may be cited as the "Land Use Procedures Ordinance" of the Borough of New Providence.

§ 291-2. Purpose.

The purpose of this chapter is as follows: to establish a Planning Board and Zoning Board of Adjustment, to define the powers and responsibilities of each Board and to specify the procedures for making application to these Boards in accordance with the Municipal Land Use Law (MLUL), the Zoning Ordinance and the Subdivision and Site Plan Ordinance of the Borough of New Providence.¹

§ 291-3. Word usage.

All definitions found in the MLUL and the Zoning Ordinance of the Borough of New Providence² shall apply to this chapter.

§ 291-4. Planning Board.

A. Establishment. A Planning Board is hereby established pursuant to the MLUL, N.J.S.A. 40:55D-23 and 55D-23.1, consisting of seven (7) members and two (2) alternate members.

B. Members.

- (1) The membership of the Planning Board shall consist of, for convenience in designating the manner of appointment, the four (4) following classes:
 - (a) Class I: the Mayor.
 - (b) Class II: one (1) of the officials of the borough other than a member of the Borough Council, to be appointed by the Mayor.

¹ Editor's Note: See N.J.S.A. 40:55D-1 et seq., Ch. 310, Zoning, and Ch. 305, Subdivision of Land and Site Plan Review, respectively.

² Editor's Note: See N.J.S.A. 40:55D-1 et seq. and Ch. 310, Zoning, respectively.

- (c) Class III: a member of the Borough Council, to be appointed by it.
- (d) Class IV: four (4) other citizens of the borough, to be appointed by the Mayor.

(2) The members of Class IV shall hold no other borough office, position or employment. Membership on a borough 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 borough office. If there is established an Environmental Commission, a member of the Commission shall be a Class IV member of the Planning Board as required by Section 1 of P.L. 1968, c. 245 (N.J.S.A. 40:56A-1), unless there is among the alternate members both a member of the Board of Adjustment of Historic Preservation Commission and a member of the Board of Education, in which case the member common to the Planning Board and Environmental Commission shall be deemed a Class II member.

C. Alternate members.

- (1) An alternate member shall hold no other municipal office except for membership on discretionary advisory boards as permitted for regular Class IV members and except that one (1) alternate may be a member of the Board of Adjustment or Historic Preservation Commission and one alternate may be a member of the Board of Education.
- (2) Alternate members shall be designated at the time of appointment by the Mayor as "Alternate No. 1" and "Alternate No. 2." The 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.

D. Terms. Terms of the members shall be as follows and shall run from January 1 of the year in which the appointment is made:

- (1) Class I: Correspond to official tenure.
- (2) Class II: One (1) year or terminate at the completion of the term in office.
- (3) Class III: One (1) year or terminate at the completion of the term in office.
- (4) Class IV: Four (4) years, except for members of an Environmental Commission, whose term shall be three (3) years or terminate at the completion of their term of office as a member of the Environmental Commission, whichever occurs first.
- (5) Alternate member: two (2) years.

E. Removal. Any member other than a Class I member, after a public hearing if he requests one, may be removed by the Borough Council for cause.

F. Vacancies. If a vacancy in any class, including an alternate member, shall occur otherwise than by expiration of the Planning Board term, it shall be filled by appointment, as above provided, for the unexpired term.

G. Organization. The Planning Board shall elect a chairman and vice chairman from the members of Class IV.

H. Staff.

- (1) Secretary. The Planning Board shall select a secretary, who may or may not be a member of the Planning Board or a borough employee.
- (2) Attorney. There is hereby created the office of Planning Board Attorney, who shall not be the Borough Attorney. The compensation of the Planning Board Attorney shall be fixed annually.
- (3) Experts, staff and services. The Planning Board may also employ or contract for the services of experts and other staff and services as it may deem necessary. The compensation shall not exceed, exclusive of gifts or

grants, the amount appropriated by the Borough Council for the Board's use.

§ 291-5. Zoning Board of Adjustment.

- A. Establishment. A Zoning Board of Adjustments is hereby established pursuant to the MLUL, N.J.S.A. 40:55D-69, consisting of seven (7) regular members and two (2) alternate members.
- B. Members. Members shall be appointed by the Mayor with the advice and consent of the Borough Council. No member may hold any elective office or position under the borough.
- C. Alternate members. Alternate members shall be designated at the time of appointment by the Mayor as "Alternate No. 1" and "Alternate No. 2." The 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.
- D. Terms. The term of each regular member shall be four (4) years, and the term of the alternate members shall be two (2) years.
- E. Removal. A member may, after public hearing if he requests it, be removed by the Borough Council for cause.
- F. Vacancies. The Mayor shall nominate a candidate to fill a vacancy within thirty (30) days after a position on the Board becomes vacant. If the Mayor fails to nominate within the thirty (30) days or if the Borough Council fails to confirm any nomination made by the Mayor, then, after the expiration of the thirty (30) days, the Council shall appoint the new member. No such appointment shall be made except by the vote of a majority of the members of the Council present at the meeting, provided that at least three (3) affirmative votes shall be required for such purpose, the Mayor to have no vote thereon except in case of a tie. A vacancy occurring otherwise

than by expiration of term shall be filled for the unexpired term only.

G. Organization. The Board of Adjustment shall elect a chairman and vice chairman from its members.

H. Staff.

- (1) Secretary. The Board of Adjustment shall select a secretary, who may or may not be a member of the Board of Adjustment or a borough employee.
- (2) Attorney. There is hereby created the office of Zoning Board of Adjustment Attorney who shall not be the Borough Attorney. The compensation of the Board of Adjustment Attorney shall be fixed annually.
- (3) Experts, staff and services. The Board of Adjustment may also employ or contract for the services of experts and other staff and services as it may deem necessary. The compensation shall not exceed, exclusive of gifts or grants, the amount appropriated by the Borough Council for the Board's use.

I. Compensation. The compensation of the Zoning Board of Adjustment members shall be fixed by the Borough Council annually.

§ 291-6. Powers and duties of Planning Board and Zoning Board of Adjustment.

A. General.

- (1) Derivation. The powers of the Planning Board shall be in accordance with the MLUL (N.J.S.A. 40:55D-23 et seq.) and amendments and supplements thereto and with the provisions of this chapter. The powers of the Zoning Board of Adjustment shall be in accordance with the MLUL (N.J.S.A. 40:55D-69 et seq.) and amendments and supplements thereto and with the provisions of this chapter. It is the intent of this chapter to confer upon the Planning Board and the Board of Adjustment as full and complete powers as may lawfully be conferred upon these

Boards, including, not by way of limitation, the authority, in connection with any case, action or proceeding before either Board, to interpret and construe the provisions of this chapter or any term, clause, sentence or word thereof and the Zoning Map,³ in accordance with the general rule of construction, applicable to legislative enactments.

- (2) Power to grant variances. The Planning Board and the Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, grant variances from the terms of this chapter in accordance with the general or specific rules contained herein and with the general rules hereby laid down so that equity will be done in cases where the strict construction of the provisions of this chapter would work undue hardship.
- (3) Reservation of power. Any power expressly authorized by this chapter or the Zoning Ordinance⁴ to be exercised by the Planning Board or the Board of Adjustment shall not be exercised by any other body.

B. Joint powers. Both the Planning Board and the Board of Adjustment shall have power over matters listed in this section except as noted herein.

- (1) Subdivision and site plan review. The power to administer the provisions of the Subdivision and Site Plan Ordinance of the Borough of New Providence⁵ in accordance with the provisions of said ordinance and the MLUL (N.J.S.A. 40:55D-87, et seq.) is reserved to the Planning Board except when the proposed development requires approval by the Board of Adjustment of a variance pursuant to § 291-6D(1) of this chapter (MLUL N.J.S.A. 40:55D-70d).
- (2) Conditional use. The power to approve conditional use applications in accordance with the provisions of the Zoning Ordinance⁶ and the MLUL (N.J.S.A. 40:55D-67) is reserved to the Planning Board except when the proposed

³ Editor's Note: The Zoning Map is located at the end of Ch. 310, Zoning.

⁴ Editor's Note: See Ch. 310, Zoning.

⁵ Editor's Note: See Ch. 305, Subdivision of Land and Site Plan Review.

⁶ Editor's Note: See Ch. 310, Zoning.

development requires approval by the Board of Adjustment for a D variance pursuant to § 291-6D(1) of this chapter (MLUL N.J.S.A. 40:55D-70d).

(3) C variances. A variance to allow departure from the regulations of the Zoning Ordinance may be granted:

(a) Where:

- [1] By reason of exceptional narrowness, shallowness or shape of a specific piece of property;
- [2] By reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property; or
- [3] 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 the Zoning Ordinance and Article 8 of the MLUL would result in peculiar and exceptional practical difficulties or exceptional and undue hardship upon the developer of such property. 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 may be granted.

(b) Where, in an application or an appeal relating to a specific piece of property the purposes of the MLUL would be advanced by a deviation from the Zoning Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment. A variance to allow departure from regulation pursuant to the Zoning Ordinance and Article 8 of the MLUL may be granted; provided, however, that no D variance from those departures enumerated in the MLUL (N.J.S.A. 40:55D-70d) shall be granted under this subsection. This power is reserved to the Board of Adjustment except when the proposed development requires subdivision, site plan or

conditional use approval in conjunction with the granting of the a variance in accordance with this subsection, in which case the Planning Board has exclusive power. No variance or other relief may be granted under the terms of this subsection unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the Zone Plan and Zoning Ordinance.

- (4) Location of buildings or structures in reserved areas. Whenever one (1) or more parcels of land upon which is located the bed of a mapped street or public drainage way, flood control basin or public area reserved pursuant to Chapter 310, Zoning, § 310-8, and the MLUL (N.J.S.A. 40:55D-32) cannot yield a reasonable return to the owner, unless a building permit is granted, the Board of Adjustment may, in a specific case, by an affirmative vote of a majority of the full authorized membership of the Board, direct the issuance of a permit for a building or structure in the bed of such mapped street or public drainage way or flood control basin or public area reserved pursuant to Chapter 310, Zoning, § 310-8, which will, as little as practicable, increase the cost of opening such street or tend to cause a minimum change of the Official Map, and the Board shall impose reasonable requirements as a condition of granting the permit so as to promote the health, morals, safety and general welfare of the public. The procedures of this chapter shall apply to applications or appeals pursuant to this subsection. This power is reserved to the Board of Adjustment, except when the proposed development requires approval, pursuant to the Subdivision and Site Plan Ordinance, of a subdivision or site plan or, pursuant to the Zoning Ordinance, of a conditional use but not a D variance, pursuant to the MLUL (N.J.S.A. 40:55D-70d), the Planning Board shall have the power to grant building permits to the same extent and subject to the same restrictions as the Board of Adjustment.

(5) Location of buildings or structures not related to a street. Where the enforcement of Chapter 310, Zoning, § 310-19 (MLUL, N.J.S.A. 40: 55D-35), would entail practical difficulty or unnecessary hardship or where the circumstances of the case do not require the building or structure to be related to a street, the Board of Adjustment may, upon application or appeal, vary the application of § 310-19 and direct the issuance of a permit subject to conditions that will provide adequate access for fire-fighting equipment, ambulances and other emergency vehicles necessary for the protection of health and safety and that will protect any future street layout shown on the Official Map or on a general circulation plan element of the Borough Master Plan pursuant to § 291-11 of this chapter (MLUL, N.J.S.A. 40:55D-28b). The procedures of this chapter shall apply to applications or appeals pursuant to this subsection. This power is reserved to the Board of Adjustment except when the proposed development requires approval pursuant to the Subdivision and Site Plan Ordinance of a subdivision or site plan or, pursuant to the Zoning Ordinance, of a conditional use but not a D variance, pursuant to MLUL (N.J.S.A. 40:55D-70d), the Planning Board shall have the power to grant building permits to the same extent and subject to the same restrictions as the Board of Adjustment.

C. Planning Board. The following powers and duties are reserved exclusively to the Planning Board:

- (1) Master Plan. To make and adopt and from time to time amend a Master Plan for the physical development of the borough in accordance with the provisions of § 291-11 of this chapter and the MLUL, Article 3 (N.J.S.A. 40:55D-28).
- (2) Official Map. Prior to the hearing on the adoption or amendment of an Official Map by the Borough Council, the Planning Board shall review said Map for conformance with the appropriate provisions of the Master Plan.

- (3) Capital projects. Before the Borough Council or other public agency having jurisdiction over the subject matter takes action necessitating the expenditure of any public funds, incidental to the location, character or extent of such project, the Council or agency shall refer the action involving such specific project to the Planning Board for review and recommendation in conjunction with the Master Plan and shall not act thereon without such recommendation or until forty-five (45) days have elapsed after such reference without receiving such recommendation. This requirement shall apply to action by a housing, parking, highway, special district or other authority, redevelopment agency; school board or other similar public agency, state, county or municipal.
- (4) Ordinance review. Prior to the adoption of a development regulation, revision or amendment thereto, the Planning Board shall make and transmit to the Borough Council, within thirty-five (35) days after referral, a report, including identification of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the Master Plan and recommendations concerning those inconsistencies and any other matters as the Board deems appropriate. Failure of the Planning Board to transmit its report within the thirty-five-day period shall relieve the Borough Council from the requirements of the MLUL (N.J.S.A. 40:55D-26) to act upon the recommendations of the Planning Board in regard to development regulations but not from these requirements in connection with the approval of the Official Map or an amendment or revision thereto nor to the approval of a zoning ordinance inconsistent with the land use plan element or the housing plan element of the Master Plan or an amendment or revision thereto.
- (5) Miscellaneous duties. The Planning Board may participate in the preparation and review of programs or plans required by state or federal law or regulation, assemble data on a continuing basis as part of a continuous planning process and perform such other advisory duties as are assigned to it by ordinance or resolution of the

Borough Council for the aid and assistance of the Council or other agencies or officers. When the Borough Council, by ordinance, provides for the reference of any matter or class of matters to the Planning Board before final action thereon by a borough body or borough official having final authority thereon and the Planning Board shall have made a recommendation regarding a matter authorized by the MLUL⁷ to another borough body, such recommendation may be rejected only by a majority of the full authorized membership of such other body.

D. Board of Adjustment. The following powers and duties are reserved exclusively to the Board of Adjustment:

- (1) D variance. In particular cases and for special reasons, the Board of Adjustment shall have the power to grant a variance to allow departure from regulations pursuant to Article 8 of the MLUL 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 pursuant to the MLUL (N.J.S.A. 40:55D-67) and the Zoning Ordinance⁸ pertaining solely to a conditional use, an increase in the permitted floor area ratio, as defined in the MLUL (N.J.S.A. 40:55D-4) and the Zoning Ordinance, an increase in the permitted density as defined in the MLUL (N.J.S.A. 40:55D-4), except as applied to the required lot area for a lot or lots for detached as one- or two-dwelling unit buildings which lot or lots are either an isolated, undersized lot or lots resulting from a minor subdivision. A variance under this subsection shall be granted only by affirmative vote of at least five (5) members. No variance or other relief may be granted under the terms of this subsection unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the Zone Plan and Zoning Ordinance.

⁷ Editor's Note: See N.J.S.A. 40:55D-1 et seq.

⁸ Editor's Note: See Ch. 310, Zoning.

- (2) Appeals. The Board of Adjustment shall have the power to 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, the Zoning Ordinance. It shall also have the power to hear and decide requests for interpretation of the Zoning Map or Zoning Ordinance⁹ or for decisions upon other special questions upon which such the Board of Adjustment is authorized to pass by the Zoning Ordinance in accordance with the MLUL and the Zoning Ordinance. No variance or other relief may be granted under the terms of this subsection unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the Zone Plan and Zoning Ordinance. Section 291-10 of this chapter shall apply to appeals pursuant to this subsection.
- (3) Report on variances heard. The Board of Adjustment shall, at least once a year, review its decisions on applications and appeals for variances and prepare and adopt by resolution a report of its findings on Zoning Ordinance provisions which were the subject of variance requests and its recommendations for Zoning Ordinance amendment or revision, if any. The Board of Adjustment shall send copies of the report and resolution to the Borough Council and Planning Board.

§ 291-7. Conduct of meetings; fees; referrals; conflicts of interest.

A. Meetings.

- (1) Regular meetings. Meetings of both the Planning Board and the Board of Adjustment shall be scheduled no less than once a month and any meeting so scheduled shall be held as scheduled unless canceled for lack of applications for development to process.

⁹ Editor's Note: The Zoning Map is included at the end of Ch. 310, Zoning.

- (2) Special meetings. Special meetings, at the call of the Chairman or on the request of any two (2) of its members, shall be held on notice to its members and the public in accordance with all applicable legal requirements.
- (3) Quorum. No actions shall be taken at any meeting without a quorum being present.
- (4) Open to public. 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 of the Laws of 1975.¹⁰ An executive session for the purpose of discussing and studying any matters to come before the Board shall not be deemed a regular or special meeting within the meaning of this chapter and the MLUL.¹¹

B. 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 Borough Clerk. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceedings concerning the subject matter of such minutes. Such interested party may be charged a reasonable fee for reproduction of the minutes for his use as provided for in the rules of the Board.

C. Rules. The Planning Board and the Board of Adjustment shall adopt and may amend reasonable rules and regulations not inconsistent with the MLUL or this chapter, the Zoning or the Subdivision and Site Plan Ordinances¹² for the administration of their functions, powers and duties and shall furnish a copy thereof to any person upon request and may charge a reasonable fee for such copy. In the issuance of subpoenas,

¹⁰ Editor's Note: See N.J.S.A. 10:4-1 et seq.

¹¹ Editor's Note: See N.J.S.A. 40:55D-1 et seq.

¹² Editor's Note: See N.J.S.A. 40:55D-1 et seq., Ch. 310, Zoning, and Ch. 305, Subdivision of Land and Site Plan Review, respectively.

administration of oaths and taking of testimony, the provision of the County and Municipal Investigations Law of 1953 (N.J.S.A. 2A:67A-1 et seq.) shall apply. Copies of all such rules and regulations and amendments thereto shall be maintained in the office of the Borough Clerk.

D. Fees. Fees to be charged an applicant for review of an application for development by the Planning Board or the Board of Adjustment and an appellant to the Borough Council pursuant to § 291-10 of this chapter and the MLUL (N.J.S.A. 40:55D-17) shall be reasonable and shall be established by ordinance. The ordinance may exempt, according to uniform standards, charitable, philanthropic, fraternal and religious nonprofit organizations holding a tax-exempt status under the Federal Internal Revenue Code of 1954 [26 U. S. C. § 501(c) or (d)] from the payment of any fee charged under this chapter and the MLUL. A developer shall not be required to submit any fees for an informal review of a concept plan for a development for which the developer intends to prepare and submit an application for development.

E. Referrals. An application to the Board of Adjustment to hear and decide appeals or to hear and decide requests for interpretations pursuant to § 291-6D(2), to grant D variances pursuant to § 291-6D(1), or applications to the Planning Board or the Board of Adjustment to grant C variances pursuant to § 291-6B(3) may be referred to any appropriate person or agency for its report, provided that such reference shall not extend the period of time within which the Board shall act.

F. Approval.

(1) Votes required for approval. All actions of the Planning Board and the Board of Adjustment shall be taken by a majority vote of the members of the Board present at the meeting, except that a majority of the full authorized membership is required to approve applications for relief from the provisions of this chapter and the Zoning Ordinance¹³ pertaining to building of structures in the bed of any street or public drainage way, flood control basin or public area [§ 291-6B(4)]; and the rejection of

¹³ Editor's Note: See Ch. 310, Zoning.

recommendations of the Planning Board when an application has been referred to said Board, [§ 291-6C(5)]; and except that approvals of D variances require the affirmative vote of at least five (5) members. 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.

- (2) Voting eligibility. A member of a Board who was absent for one (1) or more of the meetings at which a hearing was held shall be eligible to vote on the matter upon which the hearing was conducted, notwithstanding his absence from one (1) or more of the meetings; provided, however, that such Board member has available to him the transcript or recording of all of the hearing from which he was absent and certifies, in writing, to the Board that he has read such transcript or listened to such recording.
- G. Conflict of interest. No member of the Planning Board or the Board of Adjustment shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest.

§ 291-8. Application.

A. Type.

- (1) The following applications and checklists shall be used for applications for development, appeals or requests for interpretations:
 - (a) Subdivision.
 - (b) Site plan.
 - (c) Variance.
 - (d) Conditional use.
- (2) These forms and checklists are hereby made a part of this section, and the forms and required plats, plans and engineering documents shall, when applicable, be completed and submitted in the number and type of

copies specified of the forms as part of an application. The applicant shall obtain application forms and associated checklists from the Borough Clerk. A written request for waiver of one (1) or more of the checklist submission requirements may be submitted with the application.

B. Time.

- (1) Documents on file. Any maps and documents for which approval is sought at a hearing on an application for development or adoption, revision or amendment of the Master Plan shall be on file and available for public inspection at least ten (10) days before the date of the public hearing during normal business hours in the office of the Borough Clerk. The applicant may produce other documents, records or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.
- (2) Review period. All complete applications for development, as defined in Subsection C following, shall be granted or denied approval by the Planning Board or the Board of Adjustment within the time period specified in Chapter 305, Subdivision of Land and Site Plan Review, § 305-8, unless an extension of the period to act has been granted, in writing, by the applicant. Failure to act within the prescribed period will constitute approval as defined in Chapter 305, Subdivision of Land and Site Plan Review, § 305-8B(3).
- (3) Effect of legal action. In the event that, during the period of approval heretofore or hereafter granted to an application for development, the developer is barred or prevented, directly or indirectly, from proceeding with the development otherwise permitted under such approval by a legal action instituted by any state agency, political subdivision or other party to protect the public health and welfare or by a directive or order issued by any state agency, political subdivision or court of competent jurisdiction to protect the public health or welfare and the developer is otherwise ready, willing and

able to proceed with said development, the running of the period of approval under this chapter and the MLUL¹⁴ or under any ordinance repealed by this chapter, as the case may be, shall be suspended for the period of time any legal action is pending or such directive or order is in effect.

C. Completeness. An application for development shall be complete for purposes of commencing the applicable time period for action by the Planning Board or Board of Adjustment when so certified by the Construction Official. In the event that the Construction Official does not certify the application to be complete within forty-five (45) days of the date of its submission, the application shall be deemed complete upon the expiration of the forty-five-day period for purposes of commencing the applicable time period unless the application lacks information indicated on the checklist specified in Subsection A above which shall be provided to the applicant and the Construction Official has notified the applicant, in writing, as to the deficiencies in the application within forty-five (45) days of submission of the application. The applicant may request that one (1) or more of the submission requirements be waived, in which event the Board shall grant or deny the request within forty-five (45) days. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that he is entitled to approval of the application. The Board may subsequently require correction of any information found to be in error and submission of additional information not specified in this chapter or any revisions in the accompanying documents as are reasonably necessary to make an informed decision as to whether the requirements necessary for approval of the application for development have been met. The application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents so required by the Board.

D. Application by corporation or partnership.

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

- (1) List of stockholders or partners. A corporation or partnership applying to the Planning Board or the Board of Adjustment for permission to subdivide a parcel of land into six (6) or more lots or applying for a variance to construct a multiple dwelling of twenty-five (25) or more family units or for approval of a site to be used for commercial purposes shall list the names and addresses of all stockholders or individual partners owning at least ten percent (10%) of its stock of any class or, at least ten percent (10%) of the interest in the partnership, as the case may be.
- (2) Corporation or partnership ownership. If a corporation or partnership owns ten percent (10%) or more of the stock of a corporation or ten-percent or greater interest in a partnership, subject to disclosure pursuant to Subsection D(1) above, then that corporation or partnership shall list the names and addresses of its stockholders holding ten percent (10%) or more of its stock or of ten-percent or greater interest in the partnership, as the case may be; and this requirement shall be followed by every corporate stockholder or partner in a partnership, until the names and addresses of the noncorporate stockholders and individual partners exceeding the ten-percent ownership criterion established in the section have been listed.
- (3) Failure to comply. The Planning Board and the Board of Adjustment shall not approve the application of any corporation or partnership which does not comply with this section.
- (4) Penalties. Any corporation or partnership which conceals the names of the stockholders owning ten percent (10%) or more of its stock or of the individual partners owning a ten-percent or greater interest in the partnership, as the case may be, shall be subject to a fine of one thousand dollars (\$1,000.) to ten thousand dollars (\$10,000.), which shall be recovered in the name of the borough in any court of record in the state in a summary manner pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-1 et seq.).

E. Payment of taxes. Pursuant to the provisions of this MLUL (N.J.S.A. 40:55D-39e and 55D-65h), every application for development, appeal or interpretation shall be accompanied by proof that no taxes or assessments for local improvements are due or delinquent on the property for which any application is made.

§ 291-9. Review of submissions; approval or denial; expiration of variances.

A. Notices.

- (1) Who. Notices for development pursuant to this section shall be given by the applicant. Notices concerning the Master Plan and development regulations pursuant to this section shall be given by the Secretary of the Planning Board.
- (2) When. Notices pursuant to this section shall be given at least ten (10) days prior to the date of the hearing.
- (3) Content. Notices pursuant to this section shall state the date, time and place of the hearing, the nature of the matters to be considered and, in the case of an application for development, an identification of the property proposed for development by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the Borough Assessor's office and the location and times at which any maps and documents for which approval is sought are available.
- (4) When required:
 - (a) Development application. Public notice of a hearing on an application for development shall be given except that the reviewing agency may waive the notice requirements of this chapter for minor applications and no notice shall be required for informal applications, provided that public notice shall be given in the event that relief is requested as part of an application for development otherwise excepted herein from public notice for.

- [1] C variances.
- [2] D variances.
- [3] Applications for buildings or structures in the bed of a mapped street or public drainage way, flood control basin or reserved public area.
- [4] Applications for buildings or structures not related to a street.
- (b) Master Plan. Public notice of a hearing on adoption, revision or amendment of the Master Plan is required.
- (c) Development regulation. Public notice of a hearing on the adoption, revision or amendment of a development regulation is required.
- (5) To whom:
 - (a) Development application. Notices for applications for development shall be given to adjoining property owners, including adjoining municipalities. Notice shall be given to the County Planning Board of a hearing on an application for development of property adjacent to an existing county road or proposed road shown on the Official County Map or on the County Master Plan, adjoining other county land or situated within two hundred (200) feet of a borough boundary.
 - (b) Master Plan. Notice of all hearings on adoption, revision or amendment of a Master Plan involving property situated within two hundred (200) feet of an adjoining municipality shall be given to such municipality and to the County Planning Board, and in the latter case, such notice shall include a copy of any such proposed Master Plan or any revision or amendment thereto.
 - (c) Development regulation. Notice of all hearings on the adoption, revision or amendment of a development regulation involving property situated within two hundred (200) feet of another municipality shall

be given to such municipality and to the County Planning Board, and in the latter case, such notice shall include a copy of the proposed development regulation or any proposed revision or amendment thereto, as the case may be.

(6) How:

- (a) Newspaper. Public notice shall be given by publication in the official newspaper of the borough, if there is one, or in a newspaper of general circulation in the borough.
- (b) Personal service or certified mail.
 - [1] Notice shall be given to adjoining property owners, adjoining municipalities and the County Planning Board, when required by this section, by personal service or certified mail. This requirement shall be satisfied, as regards adjoining property owners, by serving a copy of the notice on the property owner as shown on said current tax duplicate or his agent in charge of the property or by mailing a copy thereof by certified mail to the property owner at his address as shown on said current tax duplicate.
 - [2] 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 or secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within two hundred (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 ele-

ments or areas. Notice to adjoining municipalities shall be to the Municipal Clerk.

(7) Adjoining property owners.

(a) Definition. For the purposes of this section, "adjoining property owners" shall be defined as the owners of all real property as shown on the current tax duplicate, located in the state and within two hundred (200) feet in all directions of the property which is the subject of such hearing, provided that this requirement shall be deemed satisfied by notice to the condominium association, in the case of any unit owner whose unit has a unit above or below it; or horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it.

(b) List. Upon the written request of an applicant, the Borough Assessor shall, within seven (7) days, make and certify a list from said current tax duplicates of the names and addresses of the adjoining property owners to whom the applicant is required to give notice. The applicant shall be entitled to rely upon the information contained in such list, and failure to give notice to any owner not on the list shall not invalidate any proceeding. A sum not to exceed ten dollars (\$10.) may be charged for such list.

(8) Conditional use applications. Whenever approval of a conditional use is requested by the developer pursuant to the Zoning Ordinance, the Subdivision and Site Plan Ordinance¹⁵ and this chapter, notice of the hearing on the application shall include a reference to the request for such conditional use.

(9) Variance applications and direction for issuance of permits. Whenever relief is requested for the issuance of a permit for a building or structure in the bed of a mapped street or public drainage way, flood control basin or reserved public area or for a building or structure not

¹⁵ Editor's Note: See Ch. 310, Zoning, and Ch. 365, Subdivision of Land and Site Plan Review, respectively.

related to a street, notice of the hearing on the site plan or subdivision application shall include a reference to the request for a variance or direction for issuance of a permit, as the case may be.

- (10) **Effect of mailing notice.** Any notice made by certified mail pursuant to this section shall be deemed complete upon mailing.
- (11) **Affidavit.** If notice is required by this section, the applicant shall file an affidavit of proof of service with the Board holding the hearing on the application for development.

B. Hearings.

- (1) **Required.** The Planning Board or Board of Adjustment shall hold a hearing on each application for development, and the Planning Board shall hold a hearing on the adoption, revision or amendment of the Master Plan or on the adoption, revision or amendment of a development regulation.
- (2) **Rules.** The Planning Board and the Board of Adjustment shall make rules governing such hearings.
- (3) **Power of presiding officer.** The officer presiding at the hearing or such person as he may designate shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties; and the provisions of the County and Municipal Investigations Law, P.L.1958, c. 38 (N.J.S.A. 2A:67A-1 et seq.), shall apply.
- (4) **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.

- (5) Rules of evidence. Technical rules of evidence shall not be applicable to the hearing, but the Board may exclude irrelevant, immaterial or unduly repetitious evidence.
- (6) Recording. The Board shall provide for the verbatim recording of the proceedings by either stenographer or mechanical or electronic means. The Board shall furnish a transcript, or duplicate recording in lieu thereof, on request to any interested party at his expense, provided that the Borough Council may provide by ordinance for the borough to assume the expense of any transcripts necessary for appeal to the Borough Council of a decision by the Zoning Board of Adjustment pursuant to D variances, up to a maximum amount as specified by the ordinance. The Board, in furnishing a transcript of the proceedings to an interested party at his expense, shall not charge such interested party more than the maximum permitted in N.J.S.A. 2A:11-15. Said transcript shall be certified, in writing, by the transcriber to be accurate.

C. Decisions. The Planning Board or the 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 Board shall provide the findings and conclusions through a resolution adopted at a meeting held within the time period provided in the Subdivision and Site Plan Ordinance¹⁶ for action by the Board on the application for development or a memorializing resolution adopted at a meeting held not later than forty-five (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. The failure of a vote 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

¹⁶ Editor's Note: See Ch. 305, Subdivision of Land and Site Plan Review.

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 mailing, filings and publications required by this section. 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 conclusion to writing within a stated time, and the cost of the application, including attorney's fees, shall be assessed against the borough.

D. Publication.

(1) Copies.

- (a) Development application. A copy of the decision on an application for development shall be mailed by the Board within ten (10) days of the date of decision to the applicant of, if represented, then to his attorney, without separate charge, and to all who request a copy of the decision for a reasonable fee. A copy of the decision shall also be filed by the Board in the Borough Clerk's office. The Borough Clerk shall make a copy of such filed decision available to any interested party for a reasonable fee and available for public inspection at his office during reasonable hours.
- (b) Master Plan. A copy of the Master Plan adopted, revised or amended shall be provided to the County Planning Board by personal service or certified mail not more than thirty (30) days after the date of such adoption, revision or amendment.
- (c) Development regulation. Development regulations, except for the Official Map, shall not take effect until a copy thereof shall be filed with the County Planning Board. The Zoning Ordinance¹⁷ or amendment or revision thereto which, in whole or in part, is inconsistent with or not designed to effectuate the

¹⁷ Editor's Note. See Ch. 810, Zoning.

land use element of the Master Plan shall not take effect until a copy of the resolution by the Borough Council required by the MLUL (N.J.S.A. 40:55D-62) shall be filed with the County Planning Board. The Official Map of the borough shall not take effect until filed with the County Recording Officer.

- (2) Notice. A brief notice of the decision on an application for development shall be published in the official newspaper of the borough, if there is one, or in a newspaper of general circulation in the borough. Such publication shall be arranged by the applicant.

E. Conditional approvals.

- (1) With legal action pending. In the event that a developer submits an application for development proposing a development that is barred or prevented, directly or indirectly, by a legal action instituted by any state agency, political subdivision or other party to protect the public health and welfare or by a directive or order issued by any state agency, political subdivision or court of competent jurisdiction to protect the public health and welfare, the Board shall process such application for development in accordance with this chapter and the MLUL, and if such application for development complies with borough development regulations, the Board shall approve such application conditioned on removal of such legal barrier to development.
- (2) Requiring additional approval. In the event that development proposed by an application for development requires an approval by a governmental agency other than the Planning Board or the Board of Adjustment, the Board shall, in appropriate instances, condition its approval upon the subsequent approval of such governmental agency, provided that the Board shall make a decision on any application for development within the time period provided in the Subdivision and Site Plan Ordinance or within an extension of such period as has been agreed to by the applicant, unless the Board is

prevented or relieved from so acting by the operation of law.

F. Approval because of failure to act. An applicant shall comply with the provisions of this subsection whenever the applicant wishes to claim approval of his application for development by reason of the failure of the Planning Board or the Board of Adjustment to grant or deny approval within the time period provided in the MLUL and Chapter 305, Subdivision of Land and Site Plan Review, § 305-8.

- (1) Notice. The applicant shall provide notice of the default approval to the Planning Board or the Board of Adjustment and to all those entitled to notice by personal service or certified mail of the hearing on the application for development; but for purposes of determining who is entitled to notice, the hearing on the application for development shall be deemed to have required public notice pursuant to § 291-9A (MLUL, N.J.S.A. 40:55D-12) of this chapter.
- (2) Publication. The applicant shall arrange publication of a notice of the default approval in the official newspaper of the borough, if there is one, or in a newspaper of general circulation in the borough.
- (3) Proof of service. The applicant shall file an affidavit of proof of service and publication with the Borough Clerk.

G. Separate applications. The developer may elect to submit a separate application requesting approval of a variance or direction of the issuance of a permit for a building or structure in the bed of a mapped street or public drainage way, flood control basin or reserved public area or for a building or structure not related to a street 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 Board. No 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 purposes of the Zone Plan and Zoning Ordinance. In the case of a D

variance, the number of votes of Board of Adjustment 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 § 291-7F(1) shall not be required.

H. Expiration of variances. Any variance from the terms of the Zoning Ordinance, the Subdivision and Site Plan Ordinance¹⁸ or this chapter granted by the Planning Board or the Board of Adjustment permitting the erection or alteration of any structure or building 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 six (6) months from the date of publication of the notices of judgment or determination of the Board, except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal of a decision until the termination in any manner of such appeal.

§ 291-10. Appeals.

The period of time in which an appeal of a decision may be made shall run from the first publication of the decision.

A. To Planning Board or Board of Adjustment.

(1) Reasons. Appeals to the Planning Board or the Board of Adjustment may be taken in accordance with the provisions of § 291-6 of this chapter by any interested party affected by any decision of the Borough Zoning Officer, based on or made in the enforcement of the Zoning Ordinance or Official Map; an application for a building or structure in the bed of a mapped street or public drainage way, flood control basin or reserved public area; or an application for a building or structure not related to a street. Appeals may be made to the Board of Adjustment by applicants denied certification of the

¹⁸ Editor's Note: See Ch. 310, Zoning, and Ch. 306, Subdivision of Land and Site Plan Review, respectively.

existence of a nonconforming use or structure prior to the adoption of the Zoning Ordinance¹⁹ which rendered the use or structure nonconforming. A developer may file an application for development with the appropriate board for action under any of its powers without prior application to the Zoning Officer.

- (2) **Filing procedures.** Appeals shall be taken within twenty (20) days by filing a notice of appeal with the Zoning Officer specifying the grounds of such appeal. The Zoning Officer shall immediately transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- (3) **Time for decision.** The board receiving the appeal shall render a decision not later than one hundred twenty (120) days after the date an appeal is taken from the decision of the Zoning Officer or the submission of a complete application for development if the developer files a direct application pursuant to Subsection A(1) above. Failure of the board to render a decision within such one-hundred-twenty-day period or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant.
- (4) **Modification on appeal.** The reviewing board may reverse or affirm, wholly or in part, or may modify the action, order, requirement, decision, interpretation or determination appealed from and, to that end, have all the powers of the Zoning Officer from whom the appeal is taken.
- (5) **Stay of proceedings.** An appeal shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made unless the Zoning Officer from whose action the appeal is taken certifies to the board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by an order of the Superior Court upon notice

¹⁹ Editor's Note: See Ch. 310, Zoning.

to the Zoning Officer from whom the appeal is taken and on due cause shown.

B. To Borough Council.

- (1) Right of appeal. Any interested party may appeal to the Borough Council any final decision of the Board of Adjustment approving an application for development which requires a D variance. Such appeal shall be made within ten (10) days of the date of publication of such final decision. The appeal to the Borough Council shall be made by serving the Borough Clerk in person or by certified mail with a notice of appeal specifying the grounds thereof and the name and address of the appellant and name and address of his attorney, if represented. Such appeal shall be decided by the Borough Council only upon the record established before the Board of Adjustment.
- (2) Notice of meeting. Notice of the meeting to review the record shall be given by the Borough Council by personal service or certified mail to the appellant, to all those who requested a copy of the decision and to the Board of Adjustment at least ten (10) days prior to the date of the meeting. The parties may submit oral and written argument on the record at such meeting, and the Borough Council shall provide for verbatim recording and transcripts of such meeting.
- (3) Responsibilities of applicant. The appellant shall, within five (5) days of service of the notice of the appeal, arrange for ten (10) copies of a transcript of the hearing before the Board of Adjustment for use by the Borough Council and pay a deposit of fifty dollars (\$50.) or the estimated cost of such transcription, whichever is less, or within thirty-five (35) days of service of the notice of appeal, submit ten (10) copies of a transcript as otherwise arranged to the Borough Clerk; otherwise, the appeal may be dismissed for failure to prosecute.
- (4) Period for review. The Borough Council shall conclude a review of the record not later than ninety-five (95) days from the date of publication of notice of the decision by

the Board of Adjustment unless the applicant consents, in writing, to an extension of such period. Failure of the Borough Council to hold a hearing and conclude a review of the record and to render a decision within such specified period shall constitute a decision affirming the action of the Board.

- (5) **Result of review.** The Borough Council may reverse, remand or affirm, with or without the imposition of conditions, the final decision of the Board of Adjustment approving a D variance. The review shall be made on the record made before the Board of Adjustment.
- (6) **Majority vote required.** The affirmative vote of a majority of the full authorized membership of the Borough Council shall be necessary to reverse, remand or affirm, with or without conditions, any final action of the Board of Adjustment.
- (7) **Stay of proceedings.** An appeal to the Borough Council shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made unless the Board of Adjustment certifies to the Borough Council that, by reasons of facts stated in the certificate, a stay would, in its opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by an order of the Superior Court on application upon notice to the Board of Adjustment and on good cause shown.
- (8) **Publication of decision.** The Borough Council shall mail a copy of the decision to the appellant or, if represented, then to his attorney, without separate charge, and for a reasonable charge to any interested party who has requested it not later than ten (10) days after the date of the decision. A brief notice of the decision shall be published in the official newspaper of the borough, if there is one, or in a newspaper of general circulation in the borough. Such publication shall be arranged by the applicant. The period of time in which an appeal to a court of competent jurisdiction may be made shall run from the first publication.

C. To court. Nothing in this chapter or the MLUL shall be construed to restrict the right of any party to obtain a review of the decision of the Board of Adjustment on an application for development requiring a variance by any court of competent jurisdiction according to law.

§ 291-11. Master Plan.

A. Preparation; contents; modification.

- (1) Preparation. The Planning Board may prepare and, after public hearing adopt or amend a Master Plan, or component parts thereof, to guide the use of lands within the Borough in a manner which protects public health and safety and promotes the general welfare.
- (2) Zoning Ordinance.²⁰ The Zoning Ordinance shall be adopted after the Planning Board has adopted the land use element and the housing plan element of the Master Plan, and all of the provisions of the Zoning Ordinance or any amendment or revision thereto shall either be substantially consistent with the land use plan element and the housing plan element of the Master Plan or designed to effectuate such plan elements.
- (3) Content. The Master Plan shall generally comprise a report or statement and land use and development proposals, with maps, diagrams and text, presenting, where appropriate, the elements specified in Article 3 of the MLUL (N.J.S.A. 40:55D-28).
- (4) Relation to other master plans. The Master Plan shall include a specific policy statement indicating the relationship of the proposed development of the borough as developed in the Master Plan to the master plans of contiguous municipalities, the Master Plan of Union County and any comprehensive guide plan pursuant to Section 15 of P.L. 1961, c. 47 (N.J.S.A. 13:1B-15.52).

²⁰ Editor's Note: See Ch. 310, Zoning.

- B. Periodic examination. The Borough Council shall, at least every six (6) years, provide for a general reexamination of the Master Plan and development regulations by the Planning Board, which shall prepare and adopt, by resolution, a report on the findings of such reexamination, a copy of which report and resolution shall be sent to the County Planning Board and the Municipal Clerks of each adjoining municipality. A reexamination shall be completed by August 1, 1988. Thereafter, a reexamination shall be completed at least once every six (6) years from the previous reexamination. The reexamination report shall contain information as specified in the MLUL (N.J.S.A. 40:55D-89). The absence of the adoption by the Planning Board of a reexamination report pursuant to this subsection shall constitute a rebuttable presumption that the borough development regulations are no longer reasonable.
- C. Stormwater management plan. If the borough is required to prepare a stormwater management plan and a stormwater control ordinance pursuant to sections of the MLUL covering such areas (N.J.S.A. 40:55D-93 to 55D-99), such a stormwater management plan shall be an integral part of the Master Plan.

§ 291-12. Pending applications.

All applications for development filed prior to the effective date of this chapter may be continued, but any appeals arising out of decisions made on any such application shall be governed by the provisions of this chapter.

§ 297-1

SOIL REMOVAL

§ 297-1

Chapter 297

SOIL REMOVAL

- § 297-1. **Findings.**
- § 297-2. **Definitions.**
- § 297-3. **Permit required.**
- § 297-4. **Permit application; fee.**
- § 297-5. **Permit issuance; term.**
- § 297-6. **Performance bond.**
- § 297-7. **Conduct of permittee.**
- § 297-8. **Exempt activities.**

[**HISTORY:** Adopted by the Mayor and Council of the Borough of New Providence 5-29-1973 by Ord. No. 73-7 as Ch. 22 of the 1973 Code of Ordinances. Amendments noted where applicable.]

GENERAL REFERENCES

- Violations and penalties — See Ch. 1, Art. II.
- Uniform construction codes — See Ch. 129.
- Streets and sidewalks — See Ch. 225.
- Flood damage prevention — See Ch. 281.
- Stormwater control — See Ch. 301.
- Subdivision of land and site plan review — See Ch. 305.
- Zoning — See Ch. 310.

§ 297-1. Findings.

The Mayor and Council do hereby find and determine that:

- A. The unregulated and uncontrolled removal of soil from lands in the borough by certain persons has resulted in conditions detrimental to the public safety, health and general welfare, substantially hampering and deterring the efforts of the

borough to effectuate the general purpose of municipal planning.

B. Continuation of the unregulated and uncontrolled removal of soil from lands in the borough will result in serious and irreparable damage to the public welfare by soil erosion; inadequate and improper surface drainage; the decrease or destruction of the fertility of the soil; the removal of lateral supports for abutting streets, lands and properties; the creation of dust and creation of mosquito breeding places; the creation of dangerous depressions or pits; the deterioration of property values; the rendering of lands unfit or unsuitable for their most appropriate use; and the creation of other factors and elements hampering and deterring the coordinated, adjusted and harmonious physical development of the borough.

§ 297-2. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

OWNER — Any person having title to any lot, plot, piece or parcel of land or having such other interest or estate therein as will permit the exercise of effective possession thereof or dominion thereover.

REMOVE — To remove from the lot, plot, parcel or premises upon which the soil is situated to any other lot, plot, parcel or premises not contiguous to or a part of the premises from which the soil is removed.

SOIL — Any earth, sand, clay, loam, gravel, humus, rock or dirt without regard to the presence or absence therein of organic matter.

TOPSOIL — Soil that, in its natural state, constitutes the top layer of earth and is composed of two percent (2%) or more, by weight, of organic matter and has the ability to support vegetation.

§ 297-3

SOIL REMOVAL

§ 297-6

§ 297-3. Permit required.

No person, except those persons referred to in § 297-8, shall move or cause, allow, permit or suffer to be removed any soil without a permit therefor issued by the Borough Clerk.

§ 297-4. Permit application; fee.

Any person who desires to remove soil from premises in the borough shall apply for a permit therefor to the Borough Clerk and file with him a map of the premises showing the proposed contour lines and proposed grades resulting from such removal in relation to the existing topography of the premises and adjacent premises. When the application for a permit is filed, there shall be paid to the Clerk a fee in the sum of twenty-five dollars (\$25.).

§ 297-5. Permit issuance; term.

No permit for soil removal shall be issued unless the Borough Engineer approves the contour lines and grades as shown on the map filed, makes a physical examination of the lands involved and is satisfied that the removal of soil, pursuant to the permit, will not cause any of the undesirable conditions set forth in § 297-1. Upon such approval by the Borough Engineer and upon filing the bond as set forth in § 297-6, the Borough Clerk may issue a soil removal permit to the applicant. The permit shall be valid for ninety (90) days, unless extended by the Clerk for an additional period of ninety (90) days.

§ 297-6. Performance bond.

The applicant shall file with the borough a performance bond running in favor of the borough, in form and with surety acceptable to the borough, in an amount to be determined after report by the Borough Engineer as to the necessities and requirements of the undertaking. The bond shall be conditioned that the work of soil removal shall comply with this chapter in all respects and shall be done in proper manner in accordance with the grades and contour lines approved by the Borough Engineer.

§ 297-7. Conduct of permittee.

- A. In conducting operations under the permit, the holder thereof shall see to it that there shall be no sharp declivities, pits or depressions and that the area shall be properly leveled off, cleared of debris and graded to conform with the contour lines and grades approved by the Borough Engineer.
- B. He shall not take away the top layer of arable soil for a depth of four (4) inches, but such arable soil shall be set aside for retention on the premises. Such soil shall be respread equally when the rest of the soil has been removed, pursuant to levels and contour lines approved by the Borough Engineer.
- C. The permit holder shall make use of only such streets for transportation of soil as are designated for that purpose by the Borough Engineer.

§ 297-8. Exempt activities.

Nothing contained in this chapter shall prohibit the transportation of topsoil or soil into the borough from other municipalities or prohibit topsoil or soil from being transported from one (1) lot to another within an area owned or developed, if transported in accordance with an approved map, or prevent any person in connection with the construction of a building or street from moving or excavating soil from the premises or prohibit any person in connection with the construction of a building or street from excavating and grading the premises. In all such cases there shall be compliance with Chapter 305, Subdivision of Land and Site Plan Review.

Chapter 301

STORMWATER CONTROL

§ 301-1. Findings; purpose.

§ 301-2. Definitions.

§ 301-3. Standards.

§ 301-4. Violations and penalties.

[HISTORY: Adopted by the Mayor and Council of the Borough of New Providence 10-27-1975 as Ord. No. 75-23 (Ch. 28, Art. VIII, of the 1973 Code of Ordinances). Amendments noted where applicable.]

GENERAL REFERENCES

Uniform construction codes — See Ch. 129.

Flood damage prevention — See Ch. 281.

Soil removal — See Ch. 297.

Subdivision of land and site plan review — See Ch. 305.

Zoning — See Ch. 310.

§ 301-1. Findings; purpose.

A. It is hereby found that certain areas within the Borough of New Providence are subject to recurrent flooding, that such flooding endangers life and damages public and private property and facilities, that all developments contribute to the condition by increasing local storm runoff and erosion and that the most appropriate method of alleviating such condition is through regulation of such developments. It is therefore determined that the special and paramount public interest in the control of storm drainage justifies the regulation of storm drainage for the entire municipal area, as provided in this chapter, which is in the exercise of the police power of the municipality, for the protection of the persons and property of

its inhabitants and for the preservation of the health, safety and general welfare.

B. Among the purposes of this chapter are to:

- (1) Prevent loss of life.
- (2) Protect the public health and promote public safety and welfare.
- (3) Minimize losses and damages to public and private property due to inundation and siltation caused by floodwaters and storm runoff.
- (4) Prevent installation of structures which cause increases in flood heights and/or velocities, erosion and siltation.
- (5) Prevent increased volume and rate of surface runoff due to development.
- (6) Reduce public expenditures for emergency operations, evacuations and restorations.
- (7) Prevent damage to transportation and utility systems.

§ 301-2. Definitions.

For the purposes of this chapter, unless the context clearly indicates otherwise, the following words shall mean:

CHANNEL — The bed and banks of a stream which convey the normal flow of the stream that occurs most of the time.

DEPARTMENT — The State Department of Environmental Protection, Division of Water Resources.

DEVELOPMENT — Any man-made change to real estate, whether by construction, excavation or change of any topographical feature or surface condition.

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

FLOOD DAMAGE POTENTIAL — The susceptibility of a specific land use at a particular site to damage by potential floods at that site, as well as increased off-site flooding or flood-related damages caused by such land use.

FLOOD HAZARD AREA — That portion of the floodplain (floodway) not occupied or required for the floodway in which land can be used, subject to detail analysis and design and construction controls.

FLOODPLAIN — The relatively flat area adjoining the channel which has been or may be hereafter covered by floodwater of the stream; also the area of inundation occasioned by a one-hundred-year-frequency flood based on water surface profiles and generally labeled as "floodway" in the flood report. "Floodplain" includes the terms "channel," "floodway" and "flood hazard area."

FLOODWAY — The channel of a natural stream or man-made channel and portions of the adjoining floodplain reasonably required to pass the active discharge of a one-hundred-year-frequency storm with not more than one-foot rise in water surface elevation above that called for by conditions existing on the date of passage of this chapter.

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

PERCOLATION TEST — A test designed to determine the ability of ground to absorb water. The test shall be performed by a licensed professional engineer with proven competency in the field of soils engineering and shall be in accordance with acceptable engineering standards and practices. A detailed report of the test shall be submitted to the Planning Board and Municipal Engineer for review.

PERSON — Corporations, companies, associations, societies, firms, partnerships and joint-stock companies, as well as individuals, the state and all political subdivisions of the state or any agencies or instrumentalities thereof.

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

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

STRUCTURE — Any assembly of materials above or below the surface of land or water, including but not limited to buildings, fences, dams, levees, bulkheads, dikes, jetties, embankments, wharves, piers, docks, landings, obstructions, pipelines, causeways, culverts, roads, railroads, bridges and the facilities of any utility or municipality.

§ 301-3. Standards.

- A. No construction or development shall take place within the municipal boundaries unless a drainage site plan and any other required information shall have been submitted to the Planning Board of the Borough of New Providence for its review and approval.
- B. Construction and development resulting in three (3) or fewer new lots for one- or two-family structures shall be exempt from the provisions of this chapter.
- C. Said site plan shall be drawn to a scale not smaller than one (1) inch equals fifty (50) feet and shall show, in addition to the information required under other ordinances, the following information:
 - (1) The existing and proposed principal building or structure and all accessory buildings or structures, if any.
 - (2) The proposed finished grade elevations at the corners of any structure or structures.

- (3) Existing topography and proposed grading at contour intervals of two (2) feet or less.
- (4) The lowest elevation subject to floodwaters within any proposed structure after its completion.
- (5) The location, type and size of all existing and proposed storm drainage facilities and other utilities servicing and to service the premises in question.
- (6) The location, size and nature of all existing and proposed drainage rights-of-way or easements and the location, size and description of any lands to be dedicated to the municipality or county.
- (7) The layout and size of existing and proposed public streets.
- (8) The elevation of any existing or proposed pumping facilities.
- (9) The nature and extent of any construction alterations or repairs.
- (10) The location of the proposed and existing buildings on the site.
- (11) The location, size and nature of the entire lot or lots in question and any contiguous lots owned by the applicant or in which the applicant has a direct or indirect interest.
- (12) Proof of stream encroachment lines obtained from the Department.
- (13) The extent of filling of the land, if any.
- (14) The location, type and size of all existing and proposed erosion and siltation control measures, such as slope protection, soil stabilization, sedimentation basins, sediment traps, headwalls, aprons and the like.
- (15) Any and all other information and data necessary to meet any of the requirements of this chapter.

D. In addition, where required by the Planning Board, the developer shall furnish information relating to subsurface conditions, based on percolation tests and soil borings or probes.

E. In reviewing any proposed construction or development, the Planning Board shall be reasonably assured that any structure, when built or altered, can be occupied without peril to the health or safety of the occupant and that the proposed land use:

- (1) Has an inherent low flood damage potential.
- (2) Either acting alone or in combination with existing or future uses, does not unreasonably obstruct flood flows or increase flood heights and/or velocities.
- (3) Does not affect adversely the water-carrying capacity of any delineated floodway and/or channel.
- (4) Does not measurably increase local runoff and erosion.
- (5) Does not unduly stress the natural environment of the floodplain or degrade the quality of surface or the quality and quantity of groundwaters.
- (6) Does not require channel modification or relocation, beyond that indicated by the proposal.

F. The Planning Board shall act upon any site plan provided for in Sec. IV within forty-five (45) days of the date of filing thereof or the date of approval by the Department, whichever is later, or other extension of time agreed to by the applicant. Failure of the Planning Board to act within the time limit or limits shall be deemed a denial of any site plan submitted under this chapter. Planning Board disapproval shall include findings upon any site plan element found contrary to the provisions or intent of this chapter.

G. No land area shall be developed by any person such that:

- (1) The volume and/or rate of stormwater runoff occurring at the area is increased over what occurs there under existing conditions.

- (2) The drainage during and after development is increased over what naturally occurs there.
- (3) Soil erosion during and after development is increased over what naturally occurs there.
- (4) The natural drainage pattern of the area is significantly altered.

H. In order to duplicate, as nearly as possible, natural drainage conditions, regulation and control of stormwater runoff and erosion for any land area to be developed shall incorporate but shall not be limited to the following:

- (1) Detention areas, which may be depressions in parking areas, excavated basins, basins created through use of curbs, stabilized earth berms or dikes or any other form of grading which serves to temporarily impound and store water.
- (2) Rooftop storage through temporary impoundment and storage of stormwater on flat or slightly pitched building rooftops by use of drain outlets which restrict the stormwater runoff from the roof surface.
- (3) Any system of porous media, such as gravel trenches, drained by porous wall or perforated pipe, which temporarily store and dissipate stormwater through ground absorption.
- (4) Any combination of the above-mentioned techniques or others which serve to limit stormwater runoff from a given site to what presently occurs there.

I. Stormwater detention facilities shall be designed to contain an amount equal to the increase in volume of runoff which would result from development of any site. The volume of runoff shall be computed on the basis of the total rainfall for the one-hundred-year storm in the area involved and shall be equivalent to the rainfall excess, as previously defined. The total rainfall which produced the one-hundred-year storm shall be determined from the report of the Federal Insurance Administration, Type 15 Flood Insurance Study, Borough of New Providence, New Jersey, 1973.

J. The rainfall excess shall be computed for each site using accepted, published runoff percentages which reflect land use and topography. Acceptable runoff percentages currently in practice include but are not limited to the following:

Land Use Type	Runoff Percentage (total runoff = 1.0)
Business:	
Downtown areas	0.70 to 0.95
Neighborhood areas	0.50 to 0.70
Residential:	
Single-family areas	0.80 to 0.50
Multi-units, detached	0.40 to 0.60
Multi-units, attached	0.60 to 0.75
Residential (suburban)	0.25 to 0.40
Apartment dwelling areas	0.50 to 0.70
Industrial:	
Light areas	0.50 to 0.80
Heavy areas	0.60 to 0.90
Parks and cemeteries	0.10 to 0.25
Playgrounds	0.20 to 0.35
Railroad yard areas	0.20 to 0.40
Unimproved areas	0.10 to 0.80
Surface Type	Runoff Percentage (total runoff = 1.0)
Streets:	
Asphaltic	0.70 to 0.95
Concrete	0.80 to 0.95
Brick	0.70 to 0.85
Drives and walks	0.75 to 0.85
Roofs	0.75 to 0.95
Lawns, sandy soil:	
Flat, 2%	0.05 to 0.10
Average, 2% to 7%	0.10 to 0.15
Steep, 7%	0.15 to 0.20

Surface Type	Runoff Percentage (total runoff = 1.0)
Lawns, heavy soil:	
Flat, 2%	0.13 to 0.17
Average, 2% to 7%	0.18 to 0.22
Steep, 7%	0.25 to 0.35

- K. The range of percentages for each land use and surface type reflects difference in land slope, intensity of development, amount of impervious surface and degree of ground saturation due to antecedent precipitation.
- L. The runoff percentages shall be determined for each site for both existing and proposed conditions, and the difference in the two shall be used to compute the volume of rainfall excess for design of stormwater facilities.
- M. Existing downstream facilities may have been designed for five-year, ten-year- or fifteen-year-frequency rainfalls. The design of any upland drainage facility shall include an analysis of these facilities and provide sufficient on-site storage, detention and other controls to ensure that a one-hundred-year-frequency storm shall not overtax these structures.
- N. In the case of detention facilities utilizing porous media for ground absorption, such as drywells, porous pavement or the like, the volume of the porous media shall be large enough to contain the volume of rainfall excess within the voids. Ground absorption systems shall be used only where the infiltration rate of the receiving soil is acceptable as determined by percolation tests and soil borings or as determined by information in the office of the Engineer. Provisions shall be made to contain overflow of such systems on site or to surface drain the overflow in such a way as not to adversely affect any other property.
- O. If detention facilities utilizing surface impoundment, such as detention basins or rooftop storage, are used, sufficient volume to fully contain the total volume of rainfall excess shall be provided. The outlets of such facilities shall be designed to the maximum discharge rate of stormwater runoff to what occurs

at the site under existing conditions and shall discharge in such a way as to not adversely affect any other property. If rooftop storage is proposed, the weight of the impounded water on the roof shall be accounted for in the structural design and the roof shall be designed to provide maximum protection against leakage. If earth berms or dikes are used to create the impounding area, they shall adequately be stabilized and the slopes protected with vegetation cover, paving or rip rap to protect against failure or breaching.

- P. If a combination of different stormwater detention techniques is used, the combined volume of the systems shall be large enough to fully contain the total volume of rainfall excess.
- Q. Stormwater detention facilities shall be maintained regularly by the owner to ensure continual functioning of the systems at design capacity and to prevent the health hazards associated with debris build up and stagnant water. In no case shall water be allowed to remain in any facility long enough to constitute a mosquito-breeding, disease or any other type of health problem. Stormwater detention facilities shall be maintained by the owner of the land unless the responsibility has been accepted or assigned by deed, easement, agreement or other legal vehicle to others, including the Borough of New Providence.
- R. Detention and sediment and erosion control facilities shall be designed in conformance with the principles of Standards for Soil Erosion and Sediment Control in New Jersey of the New Jersey State Soil Conservation Committee and administered by the Somerset-Union Soil Conservation District, except where the Planning Board, on the advice of the Municipal Engineer, has determined that conditions peculiar to a certain site warrant exception.
- S. Sediment and erosion control measures shall be installed prior to any other site development, shall apply to all aspects of the proposed development and shall be in operation during all stages of development. Increased runoff and sediment resulting from modified soil and surface conditions caused by the proposed development shall be minimized and, where possible, retained on site.

SUBDIVISION AND SITE PLAN

Chapter 305

SUBDIVISION OF LAND AND SITE PLAN REVIEW

- § 305-1. Title.
- § 305-2. Purpose.
- § 305-3. Word usage.
- § 305-4. Required approvals; exceptions.
- § 305-5. Approving agencies.
- § 305-6. Application requirements.
- § 305-7. Review procedures.
- § 305-8. Time periods for submission and review.
- § 305-9. Approval of applications.
- § 305-10. Subdivision design standards.
- § 305-11. Site plan review standards.
- § 305-12. Design standards for planned developments, residential clusters and affordable housing.
- § 305-13. Public areas.
- § 305-14. Off-tract improvements.
- § 305-15. Guarantees, fees and other charges.
- § 305-16. Violations and penalties; civil penalties.
- § 305-17. Site plan details.
- § 305-18. Plat details.
- § 305-19. Construal of provisions.

[HISTORY: Adopted by the Mayor and Council of the Borough of New Providence 3-28-1988 as Ord. No. 88-3. Amendments noted where applicable.]

GENERAL REFERENCES

Uniform construction codes — See Ch. 129.
Fees and licenses — See Ch. 147.
Fire prevention — See Ch. 155.
Garbage, rubbish and refuse — See Ch. 161.
Recycling — See Ch. 218.
Sewers and sewage disposal — See Ch. 219.
Streets and sidewalks — See Ch. 225.
Trees and shrubs — See Ch. 247.
Affordable housing — See Ch. 275.
Flood damage prevention — See Ch. 281.
Housing rehabilitation — See Ch. 288.
Land use procedures — See Ch. 291.
Soil removal — See Ch. 297.
Stormwater control — See Ch. 301.
Zoning — See Ch. 310.
Sanitary standards — See Ch. 332.

§ 305-1. Title.

This chapter shall be known as the "Subdivision and Site Plan Ordinance" of the Borough of New Providence.

§ 305-2. Purpose.

The purpose of this chapter shall be to provide rules, regulations and standards to guide land use and development in the Borough of New Providence in order to promote the public health, safety, convenience and general welfare of the Borough. It shall be administered to ensure the orderly growth and development, conservation, protection and proper use of land and adequate provision for circulation, utilities and services.

§ 305-3. Word usage.

All definitions found in the Municipal Land Use Law and the Zoning Ordinance of the Borough of New Providence¹ shall apply to this chapter.

¹ Editor's Note: See N.J.S.A. 40:55D-1 et seq. and Ch. 810, Zoning, respectively.

§ 305-4. Required approvals; exceptions.**A. Required approvals.**

- (1) Review and approval of subdivision plats shall be required prior to the filing of the plats with the county recording officer.
- (2) Site plan review and approval shall be required before any change of use or addition of use or before any excavation, removal of soil, clearing of a site or placing of any fill on lands in New Providence. Except as herein-after provided, no construction permit shall be issued for any structure or use or reduction or enlargement in size or other alteration of any structure or use or change in use of any structure, including accessory structures, unless a site plan is first submitted and approved. No certificate of occupancy shall be given unless all construction and development conform to the site plan as approved.

B. Exemptions and exceptions.

- (1) Subdivision or individual lot applications for detached one- or two-dwelling unit buildings or any uses accessory thereto, such as a private garage or storage shed incidental to residential uses, shall be exempt from site plan review and approval, but this shall not limit the requirements for submission and approval of site plans and subdivision plats as otherwise required by this chapter.
- (2) When acting upon applications for preliminary or minor subdivision approval or preliminary site plan approval, the reviewing board shall have the power to grant such exceptions from the requirements for subdivision or site plan approval as may be reasonable and within the general purpose and intent of the provisions of this chapter, if the literal enforcement of one (1) or more provisions of this chapter is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

(3) No amendment shall be required to any subdivision or site plan application submitted before the effective date of this chapter.

§ 305-5. Approving agencies.

A. Planning Board. The approval provisions of this chapter shall be administered by the Planning Board of the Borough of New Providence.

B. Board of Adjustment. 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 whenever the proposed development requires approval by the Board of Adjustment of a D variance pursuant to Municipal Land Use Law, N.J.S.A. 40:55D-70d (Chapter 291, Land Use Procedures, § 291-6D).

§ 305-6. Application requirements.

All subdivision and site plan applications shall conform to the applicable provisions of the Zoning Ordinance, the Land Use Procedures Ordinance² and this chapter.

A. Informal. Developers are encouraged to request an informal review of a concept plan for a development for which the developer intends to prepare and submit an application. The developer shall not be bound by any concept plan for which review is requested, and the reviewing board shall not be bound by any such review.

B. Minor.

(1) Applications for development that conform to the definition of "minor subdivision" or "minor site plan" shall be classified as minor applications.

(2) Sketch plats shall be required for minor subdivision applications. Other plats and engineering documents required for major subdivisions shall not be required.

² Editor's Note: See Ch. 310, Zoning, and Ch. 291, Land Use Procedures, respectively.

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C. Site plan and major subdivision.

- (1) Applications not conforming to the definitions for minor site plan or minor subdivision shall be classified as site plan and major subdivision applications, respectively.
- (2) Subdivision plats and site plans shall contain the information specified in §§ 305-17 and 305-18 of this chapter and shall be submitted to the secretary of the reviewing board, in conformance with the requirements of the Land Use Procedures Ordinance.³
- (3) Additional information required to make an informed decision as to whether the application meets the requirements of this chapter are specified on the application forms and in their instructions and shall be submitted along with the site plan and plats.
- (4) The principles and standards to be used in evaluating an application are specified in §§ 305-10, 305-11 and 305-12 of this chapter.
- (5) Subdivision plats, site plans and any engineering documents may be submitted in tentative form for discussion purposes for preliminary approval. All architectural plans submitted for preliminary site plan approval shall be sufficient if they contain preliminary plans and elevations.
- (6) If the reviewing board requires any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing, an amended application shall be submitted and processed, as in the case of the original application for development.

D. Planned developments.

- (1) Applications for development that conform to the definition for planned commercial development, planned development, planned unit development, planned unit residential development or residential cluster shall be classified as planned development applications.

³ Editor's Note: See Ch. 291, Land Use Procedures.

- (2) Subdivision plats and site plans for planned developments shall include all information required for site plan and major subdivision applications.
- (3) Additional information required to make an informed decision as to whether the application meets the requirements of this chapter and the Zoning Ordinance⁴ are specified on the application forms and in their instructions and shall be submitted along with the site plans and plats.
- (4) Applications for final approval for planned unit developments, planned unit residential developments or residential clusters may include minimal deviations from the conditions of preliminary approval necessitated by change of conditions beyond the control of the developer since the date of preliminary approval. The developer, in these situations, shall not be required to submit another application for development for preliminary approval.

§ 305-7. Review procedures.

A. Submission requirements.

- (1) Applications for subdivision and site plan review and approval shall be submitted in accordance with the requirements of the Land Use Procedures Ordinance of the Borough of New Providence.⁵
- (2) Each application for subdivision approval, where required pursuant to Section 5 of P.L. 1968, c. 285 (N.J.S.A. 40:27-6.3), and each application for site plan approval, where required pursuant to Section 8 of P.L. 1968, c. 285 (N.J.S.A. 40:27-6.6), shall be submitted by the applicant to the Union County Planning Board for review or approval, as required by the aforesaid sections. The New Providence 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 Union County Planning Board or approval by the Union County

⁴ Editor's Note: See Ch. 310, Zoning.

⁵ Editor's Note: See Ch. 291, Land Use Procedures.

Planning Board by its failure to report thereon within the required time period.

- (3) The applicant shall submit copies of the site plan application to the Somerset-Union County Soil Conservation District office.
- (4) No application for site plan approval shall be deemed complete in the absence of proof that a plan for soil erosion and sedimentation control has been submitted as required above or proof that such a plan is not required for the particular application. If the Conservation District has failed to grant or deny certification of the erosion plan at the time of preliminary approval of applicant's site plan, preliminary approval shall be conditioned on certification of the applicant's erosion plan.
- (5) No application for development for a structure within the area which would be inundated by the one-hundred-year design flood of any nondelineated stream or for a change in land use within a delineated floodway or any state-administered and delineated flood fringe area, when such change would require approval by the Department of Environmental Protection, may be granted by the New Providence Planning Board or Board of Adjustment to any person without application to and approval by said Department as required pursuant to N.J.S.A. 58:16A-55.3.
- (6) No application after July 1, 1988, for development in an area designated as a freshwater wetland nor after July 1, 1989, for development in a transition or buffer area adjacent to a freshwater wetland may be granted by the New Providence Planning Board or Board of Adjustment to any person without application to and approval by the Department of Environmental Protection as required pursuant to the New Jersey Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.).

B. Notice requirements.

- (1) Notice of hearings on all applications for both preliminary and final approval are required as are hearings on all application covered by § 305-8E.
- (2) The reviewing board may waive the notice requirements of this chapter for minor applications, and no notice shall be required for informal applications.
- (3) Notice of a hearing shall be made in accordance with the requirements of the Land Use Procedures Ordinance of the Borough of New Providence.⁶

C. Public hearings.

- (1) The Planning Board or Board of Adjustment shall hold a hearing on each application for development.
- (2) The reviewing board may waive the requirement for a public hearing for minor applications, and no public hearing shall be required for informal applications.
- (3) Public hearings shall be held in accordance with the requirements of the Land Use Procedures Ordinance of the Borough of New Providence.⁷

§ 305-8. Time periods for submission and review.

A. Submissions. Applications for subdivision and site plan review and approval shall be submitted in accordance with the requirements of the Land Use Procedures Ordinance of the Borough of New Providence.⁸

B. Review.

(1) Time period for filing.

- (a) The Planning Board or Board of Adjustment shall have the number of days specified in this section from the filing of a complete application, as defined in the Land Use Procedures Ordinance,⁹ to grant or deny an application unless:

⁶ Editor's Note: See Ch. 291, Land Use Procedures.

⁷ Editor's Note: See Ch. 291, Land Use Procedures.

⁸ Editor's Note: See Ch. 291, Land Use Procedures.

⁹ Editor's Note: See Ch. 291, Land Use Procedures.

- [1] The applicant consents to further time for review of the application; or
- [2] The applicant is also seeking conditional use approval or variance relief from the conditions of the Zoning Ordinance.¹⁰

(b) In the former case, the reviewing board shall have as long to complete its review as agreed to by the applicant. In the latter case, the review period shall be the longer period specified in this section.

(2) If the applicant has requested simultaneous approval of conditional uses or site plans with subdivision approval, the longest time period for action by the reviewing board, whether it is for subdivision, conditional use or site plan approval, shall apply.

(3) Failure of the reviewing board to act within the period prescribed shall constitute approval of the application, and a certificate of the Borough Clerk as to the failure of the board to act shall be issued on request to 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. Forty-five-day review period. The review period for the following types of applications shall be forty-five (45) days, except as noted in Subsection B(1) above: minor site plan, minor subdivision, preliminary site plan which involves ten (10) acres of land or less than ten (10) dwelling units or fewer, preliminary major subdivision of ten (10) or fewer lots, final approval of site plan and final approval of major subdivision.

D. Ninety-five-day review period. The review period for the following types of applications shall be ninety-five (95) days except as noted in Subsection B(1) above: preliminary site plan which involves more than ten (10) acres or more than ten (10) dwelling units, preliminary subdivision of more than ten (10) lots and site plan review required as part of an application for conditional use.

¹⁰ Editor's Note: See Ch. 310, Zoning.

E. One-hundred-twenty-day review period.

- (1) The review period for an application for approval of a subdivision plat or a site plan which includes a request for relief for any of the reasons specified below shall be one hundred twenty (120) days: the Zoning Ordinance¹¹ prohibition of a building or structure in the bed of a mapped street or public drainageway, flood control basin or public area identified on the Official Map; the Zoning Ordinance prohibition of a building or structure not related to a street; an application to the Planning Board or Board of Adjustment for a C variance pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-70c; an application to the Board of Adjustment for a D variance pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-70d; an appeal of any decision by the Zoning Officer; or a direct application which, if submitted to the Zoning Officer, would result in a disapproval.
- (2) In the event that the developer elects to submit to the Planning Board or Board of Adjustment separate consecutive applications for any condition of Subsection E(1) above or to the Board of Adjustment for a D variance, the one-hundred-twenty-day review period shall apply to the application for approval of the variance or building or structure location. The period for granting or denying and subsequent approval of the subdivision plat or site plan shall be as specified in Subsections C and D of this section.
- (3) The Board of Adjustment may refer applications with a one-hundred-twenty-day period to the Planning Board for its report, provided that such reference shall not extend the period of time within which the Board of Adjustment shall act.

¹¹ Editor's Note: See Ch. 310, Zoning.

§ 305-9. Approval of applications.

A. Minor applications.

- (1) Approval of a minor application shall be deemed to be final approval of the application, provided that the applicant shall be required to provide all applicable improvements required in this chapter.
- (2) The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor subdivision or minor site plan approval was granted shall not be changed for a period of two (2) years after the date of approval, provided that the approved minor subdivision shall have been duly recorded as provided in this section.
- (3) Approval of a minor subdivision shall expire one hundred ninety (190) days from the date of board approval unless within such period a plat in conformity with such approval and the provisions of the Map Filing Law¹² or a deed clearly describing the approved minor subdivision is filed by the developer with the county recording officer, the Borough Engineer and the Borough Tax Assessor. Any such plat or deed accepted for such filing shall have been signed by the chairman and secretary of the reviewing board. In reviewing the application for development for a proposed minor subdivision, the Planning Board or Board of Adjustment may accept a plat not in conformity with the Map Filing Law, provided that, if the developer chooses to file the minor subdivision as provided therein by plat rather than deed, such plat shall conform with the provisions of said law.

B. Preliminary approval.

- (1) The Planning Board or Board of Adjustment shall, if the proposed subdivision or site plan complies with this chapter and the requirements set forth in the Municipal Land Use Law, grant preliminary approval to the subdivision or site plan.

¹² Editor's Note: See N.J.S.A. 46:2B-9.9 et seq.

- (2) Preliminary approval of a major subdivision or of a site plan shall confer upon the applicant the following rights for a three-year period from the date of the preliminary approval:
 - (a) The general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and off-tract improvements and, in the case of a site plan, natural resources to be preserved on the site; vehicular and pedestrian circulation; parking and loading; screening; landscaping; location of structures; and exterior lighting, both for safety reasons and streetlighting; except that nothing herein shall be construed to prevent the borough from modifying by ordinance such general terms and conditions of preliminary approval as relate to the 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 subdivision plat or site plan, as the case may be.
 - (c) The applicant may apply for and the approving board may grant extensions on such preliminary approval for additional periods of at least one (1) year but not to exceed a total expansion of two (2) years, provided that if the design standards have been revised by ordinance, such revised standards may govern.

C. Final approval.

- (1) Final approval shall be granted if the detailed drawings, specifications and estimates of the application for final approval conform to the standards of §§ 305-17 and 305-18 of this chapter, the conditions of preliminary approval and, in the case of a major subdivision, the standards prescribed by the Map Filing Law.¹³

¹³ Editor's Note: See N.J.S.A. 46:2B-9.9 et seq.

- (2) The zoning requirements applicable to the preliminary approval first granted and all other rights conferred upon the developer pursuant to this section, whether conditionally or otherwise, shall not be changed for a period of two (2) years after the date of final approval, provided that, in the case of a major subdivision, the rights conferred by this section shall expire if the plat has not been duly recorded within the time period provided in this section. If the developer has followed the standards prescribed for final approval and, in the case of a subdivision, has duly recorded the plat as required, the approving agency may extend such period of protection for extensions of one (1) year but not to exceed three (3) extensions. Notwithstanding any other provisions of this chapter, the granting of final approval terminates the time period of preliminary approval pursuant to this section for the section granted final approval.
- (3) All development shall be substantially in accordance with the final development plan, provided that the reviewing board may permit a deviation from the final plan if caused by change of conditions beyond the control of the developer since the date of final approval and the deviation would not substantially alter the character of the development or substantially impair the intent and purpose of the Master Plan and Zoning Ordinance.¹⁴
- (4) All on-site and off-tract improvements that may be required pursuant to §§ 305-10, 305-11 and 305-12 of this chapter shall be completed either prior to or subsequent to final approval of the subdivision or site plan, provided that all improvements to be completed subsequent to final approval may be subject to a performance guaranty as provided for in § 305-15.
- (5) Final approval may, at the request of the developer, be by stages or sections of the development. A floor of a multifloor structure may be considered a stage or section of the development.

¹⁴ Editor's Note: See Ch. 310, Zoning.

- (6) Final approval of a major subdivision shall expire ninety-five (95) days from the date of signing of the plat unless within such period the plat shall have been duly filed by the developer with the county recording officer. The approving board may, for good cause shown, extend the period for recording for an additional period not to exceed one hundred ninety (190) days from the date of signing of the plat.
- (7) No subdivision plat shall be accepted for filing by the county recording officer until it has been approved by the Planning Board or Board of Adjustment as indicated on the instrument by the signature of the chairman and secretary of the approving board or a certificate has been issued in accordance with § 305-8B(3) of this chapter. The signatures of the chairman and secretary of the approving board shall not be affixed until the developer has posted the guaranties required pursuant to § 305-15 of this chapter.

D. Simultaneous approval.

- (1) The Planning Board and the Board of Adjustment shall have the power to grant preliminary and final approval simultaneously, provided that all application requirements have been met.
- (2) The Planning Board and the Board of Adjustment shall have the power to review and approve or deny conditional uses or site plans simultaneously with review for subdivision approval without the developer being required to make further application to the reviewing board or that board being required to hold further hearings.

E. Planned developments. In order to grant subdivision or site plan approval for a planned development, the Planning Board or the Board of Adjustment shall find the following facts and conclusions:

- (1) Departures by the proposed development from zoning regulations otherwise applicable to the subject property conform to standards for Planned Development contained in the Zoning Ordinance¹⁵ and in § 305-12 of this chapter.
- (2) The proposals for maintenance and conservation of the common open space are reliable, and the amount, location and purpose of the common open space are adequate.
- (3) Provision, through the physical design of the proposed development, for public services, control over vehicular and pedestrian traffic and the amenities of light and air, recreation and visual enjoyment are adequate.
- (4) The proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established.
- (5) In the case of a proposed development which contemplates construction over a period of years, the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate.
- (6) All other requirements of this chapter for preliminary and final approval shall apply.

§ 305-10. Subdivision design standards.

The subdivider shall observe the following requirements and principles of land subdivision in the design of each subdivision or portion thereof:

- A. General. The subdivision plat shall conform to design standards that will encourage good development patterns within the borough and shall conform to the proposals and conditions shown in the Master Plan and the Official Map. The streets, drainage, rights-of-way, school sites, public parks and playgrounds shown in the Master Plan or on the Official Map shall be considered in the approval of subdivision plats.

¹⁵ Editor's Note: See Ch. 310, Zoning.

B. Streets. Streets shall be such as to lend themselves to the harmonious development of the borough and enhance the public welfare in accordance with the following design standards:

- (1) The arrangement of streets not shown on the Master Plan or Official Map shall be such as to provide for the appropriate extension of existing streets.
- (2) Minor streets shall be so designed as to discourage through traffic.
- (3) Subdivisions abutting arterial streets shall provide a marginal service road or reverse frontage with a buffer strip for planting or some other means of separation of through and local traffic as the reviewing board may determine appropriate.
- (4) The right-of-way width for all streets shall be measured from lot line to lot line and shall not be less than fifty (50) feet, except that the right-of-way width for minor streets, internal roads and alleys shall be determined on an individual basis and shall in all cases be of sufficient width and design to safely accommodate the maximum traffic, parking and loading needs and maximum access for fire-fighting equipment.
- (5) No subdivision showing reserve strips controlling access to streets shall be approved except where the control and disposal of land comprising such strips has been placed with the Mayor and Borough Council under conditions approved by the reviewing board.
- (6) Subdivisions that adjoin or include existing streets that do not conform to widths as shown on the Master Plan or the Official Map or the street width requirements of this chapter shall dedicate additional width along one (1) or both sides of said streets. If the subdivision is along one (1) side of said street only, one-half (%) of the required extra width shall be dedicated.
- (7) Grades of arterial and collector streets shall not exceed four percent (4%). Grades on other streets shall not exceed ten percent (10%). No street shall have a minimum grade

less than one-half of one percent ($\frac{1}{2}$ of 1%). Maximum grade within any intersection shall not exceed three percent (3%), and approaches to any intersection shall follow a straight course within one hundred (100) feet of the intersection. Streets shall follow the contours of the land wherever possible.

- (8) Street intersections shall be as nearly at right angles as is possible and in no case shall be less than sixty degrees (60°). The block corners of intersections shall be rounded at the curbline with a curve having a radius of not less than twenty (20) feet and shall have a clear sight angle of not less than thirty (30) feet at the street and lot line.
- (9) Street jogs with center line offsets of less than one hundred twenty-five (125) feet shall be prohibited.
- (10) A tangent at least one hundred (100) feet long shall be introduced between reverse curves on arterial and collector streets.
- (11) When connecting street lines deflect from each other at any one point by more than ten degrees (10°) and not more than forty-five degrees (45°), they shall be connected by a curve with a radius of not less than one hundred (100) feet for minor streets and three hundred (300) feet for arterial and collector streets.
- (12) All changes in grade shall be connected by vertical curves with a rate of change not to exceed four percent (4%) per one hundred (100) feet of road, provided that the following clear sight distance is maintained at all points on the road:
 - (a) For arterial streets: three hundred (300) feet.
 - (b) For all other streets: two hundred (200) feet.
- (13) Dead-end streets.
 - (a) Dead-end streets (culs-de-sac) shall be no longer than six hundred (600) feet and shall provide a turnaround at the end with a radius of not less than fifty (50) feet and tangent whenever possible to the right side of the street.

- (b) If a dead-end street is of a temporary nature, a similar turnaround shall be provided and provisions made for future extension of the street and reversion of the excess right-of-way to the adjoining properties.
- (14) No street shall have a name which will duplicate or be so nearly duplicate as to be confused with the names of existing streets. The continuation of an existing street shall have the same name, unless the reviewing board waives this requirement. All street names shall be subject to approval by the reviewing board.

C. Blocks.

- (1) Block length and width or acreage within bounding roads shall be such as to accommodate the size of the lot required in the area by the Zoning Ordinance¹⁶ and to provide for convenient access, circulation control and safety of street traffic.
- (2) Pedestrian crosswalks.
 - (a) In blocks over one thousand (1,000) feet long, pedestrian crosswalks may be required in locations deemed necessary by the reviewing board.
 - (b) Such walkway shall be ten (10) feet wide and be straight from street to street.
- (3) For commercial, group-housing or industrial use, block size shall be sufficient to meet all area and yard requirements for such use.

D. Lots.

- (1) Lot dimensions and area shall not be less than the requirements of the Zoning Ordinance.¹⁷
- (2) In so far as is practical, side lot lines shall be at right angles to straight streets and radial to curved streets.
- (3) Each lot must front upon an approved street at least fifty (50) feet in width.

¹⁶ Editor's Note: See Ch. 310, Zoning.

¹⁷ Editor's Note: See Ch. 310, Zoning.

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- (4) Where extra width has been dedicated for the widening of existing streets, lots shall begin at such extra wide line, and all setbacks shall be measured from such line.
- (5) Where there is a question as to the suitability of a lot or lots for their intended use due to factors such as rock formations, flood conditions or similar circumstances, the reviewing board may, after adequate investigation, withhold approval of such lots.

E. Public use and service areas.

- (1) In large-scale developments, easements along rear property lines or elsewhere for utility installation may be required. Such easements shall be at least fifteen (15) feet wide and located in consultation with the companies and borough departments concerned.
- (2) Where a subdivision is traversed by a watercourse, public drainageway channel or street, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of such watercourse and such further width or construction, or both, as will be adequate for the purpose.
- (3) Natural features, such as trees, brooks and land contours, shall be preserved whenever possible in designing any subdivision containing such features.

F. Other requirements. Any required walkways, curbs, gutters, streetlights, shade trees, fire hydrants and water, drainage and sewerage facilities and other improvements as shall be found necessary shall be provided as required by the Borough Engineer.

G. Flexible designs. A developer may submit a subdivision application for a conventional subdivision varying the lot areas and dimensions and yards and setbacks otherwise required by the Zoning Ordinance¹⁸ in such a way that the average lot areas and dimensions, yards and setbacks within the subdivision conform to the conventional norms so that the flexibility, economy and environmental soundness in layout

¹⁸ Editor's Note: See Ch. 310, Zoning.

the design of the plan shall minimize any adverse impact on these elements.

- J. Flood areas. Developments in land designated as subject to flooding to avoid danger to life or property.
- K. Conservation of energy. Conservation of energy and use of renewable energy sources.
- L. Recycling. Provisions for recycling of reusable materials in conformance with borough ordinances.

§ 305-12. Design standards for planned developments, residential clusters and affordable housing.

- A. Density or intensity of land use. The Planning Board or Board of Adjustment may, subject to the limitations of Chapter 310, Zoning, §§ 310-22 and 310-46, allow for a greater concentration of density or intensity of land use within a section or sections of development. If a greater concentration of density or intensity of land use for any section of a development is permitted, it shall be offset by a smaller concentration in another or other sections to provide common open space.
- B. Procedure for reviewing applications. In reviewing all applications for planned developments, the reviewing board shall consider a general development plan of the proposed project. The development plan shall show the proposed use, dimensions and locations of proposed structures and of areas to be reserved for vehicular and pedestrian circulation, parking, public uses such as schools and playgrounds, landscaping and other open spaces. The board shall review architectural drawings and sketches demonstrating the design, character of the proposed uses and physical relationship of the uses and such other pertinent information as may be necessary. The board shall review such plans to determine that the standards set forth herein are adhered to.
- C. Spacing and orientation of residential building groups. Spacing between buildings and orientation in multiple-dwelling structures shall conform to the standards of Chapter 310, Zoning, § 310-22.

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D. Vehicular and pedestrian circulation.

- (1) There shall be adequate, safe and convenient arrangement of pedestrian circulation facilities, roadways, driveways, off-street parking and loading space.
- (2) There shall be adequate and suitably located pedestrian walks and landscaped spaces to discourage pedestrian use of the roadways, driveways and parking spaces used for vehicular circulation.

E. Paving and drainage. There shall be adequate design of grades, paving, gutters, drainage and treatment of turf to handle stormwaters and prevent erosion and formation of dust.

F. Signs and lighting. Signs and lighting shall be so installed as to eliminate any nuisance to adjoining properties or roadways and streets.

G. Open space.

- (1) The amount and location of any common open space shall be determined according to Chapter 310, Zoning, §§ 310-46 and 310-52.
- (2) Open space resulting from a planned development may at any time, and from time to time, be accepted by the Borough Council for public use and maintenance.
- (3) Open space resulting from all planned developments, except planned commercial developments, not dedicated to the borough shall be assigned for ownership and maintenance to an organization provided for this purpose by the developer. Such organization shall not be dissolved and shall not dispose of any open space, by sale or otherwise, except to an organization which is conceived and established to own and maintain the open space for the benefit of such development and which thereafter shall not be dissolved or dispose of any of its open space without first offering to dedicate the same to the borough. The developer shall be responsible for the maintenance of any such open space until such time as the organization established for its ownership and maintenance shall be formed and functioning and shall be required to furnish a

performance guaranty for such maintenance for a period of two (2) years after the date of acceptance of all public streets in the development.

- (4) All documents pertaining to any organization established to own and maintain common open space shall be subject to review and approval of the Borough Attorney, who shall require that all portions thereof be recorded as covenants running with the land.

H. Failure to maintain open space.

- (1) In the event that the organization shall fail to maintain the open space in reasonable order and condition, the Zoning Officer shall serve written notice upon such organization or upon the owners of the development setting forth the manner in which the organization or the owner has failed to maintain the open space in reasonable condition and demanding that such deficiencies be cured within thirty-five (35) days. This notice shall also state the date and place of a hearing thereon, which shall be held within fifteen (15) days of the date of the notice. At such hearing, the board which granted approval of the development may modify the terms of the original notice as to deficiencies and may give an extension of time not to exceed sixty-five (65) days within which they shall be remedied. If the deficiencies set forth in the original notice or in the modification thereof shall not be remedied within thirty-five (35) days of the date of the notice or within the period of any extension granted, the borough, in order to preserve the open space and maintain the same for a period of one (1) year, may enter upon and maintain such land. Said entry and maintenance shall not vest in the public any rights to use the open space except when the same is voluntarily dedicated to the public by the owners and is accepted by the borough.
- (2) Hearing.
 - (a) Before the expiration of said year, the reviewing board shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the open space, call a public hearing

upon fifteen (15) days' written notice to such organization and the owners of the development, to be held by the board, at which hearing such organization and the owners of the development shall show cause why such maintenance by the borough shall not, at the discretion of the borough, continue for a succeeding year.

- (b) If the board shall determine that such organization is ready and able to maintain such open space in reasonable condition, the borough shall cease to maintain said open space at the end of said year. If the board shall determine such organization is not ready and able to maintain said open space in a reasonable condition, the borough may, in its discretion, continue to maintain said open space during the next succeeding year, subject to a similar hearing and determination, in each year thereafter.
- (3) The decision of the reviewing board in any case shall constitute a final administrative decision subject to judicial review.
- (4) The cost of such maintenance by the borough shall be assessed pro rata against the properties within the development that have a right of enjoyment of the open space in accordance with assessed value at the time of imposition of the lien and shall become a lien and tax on such properties and be added to and be a part of the taxes to be levied and assessed thereon.

I. Affordable housing:

- (1) In reviewing all applications for developments that include affordable housing dwelling units, the reviewing board shall favorably consider requests for variances from the standards of this chapter and the Zoning Ordinance,¹⁹ provided that the applicant has shown that:
 - (a) The resulting change will satisfy the intent of the standard;

¹⁹ Editor's Note: See Ch. 310, Zoning.

- (b) The resulting change will be designed in accordance with acceptable engineering and/or architectural practices;
- (c) The resulting change will not have adverse health and/or safety impacts on the residents of the borough or the surrounding area; and
- (d) The resulting change will not reduce the useful life of the improvement.

- (2) Should a particular project require construction not covered in the borough standards, the proposed design will be evaluated on the basis of normally accepted engineering and/or architectural design practices. In the case of nonconstruction-related items, the proposed design will be evaluated on the basis of normally accepted engineering, architectural and/or planning practices.
- (3) In particular, the requirements of Chapter 310, Zoning, § 310-19D, and § 305-B(3) of this chapter shall not apply, subject to the above conditions.

§ 305-13. Public areas.

A. General requirements. If the Master Plan or the Official Map provide for the reservation of designated streets, public drainageways, flood control basins or public areas within the proposed development, before approving a subdivision or a site plan, the reviewing board shall require that such streets, ways, basins or areas be shown on the plat or site plan in locations and sizes suitable to their intended uses. The reviewing board may reserve the location and extent of such streets, ways, basins or areas shown on the plat for a period of one (1) year after the approval of the final plat or within such further time as may be agreed to by the developer. Unless during such period or extension thereof the borough shall have entered into a contract to purchase or institute condemnation proceedings according to law for the fee or a lesser interest in the land comprising such streets, ways, basins or areas, the developer shall not be bound by such reservations shown on the plat and

may proceed to use such land for private use in accordance with applicable development regulations.

- B. **Applicability.** The provision of this section shall not apply to streets and roads, flood control basins or public drainageways necessitated by the subdivision or land development and required for final approval.
- C. **Compensation.** The developer shall be entitled to just compensation for actual loss found to be caused by such temporary reservation and deprivation of use. In such instances, unless a lesser amount has previously been mutually agreed upon, just compensation shall be deemed to be the fair market value of an option to purchase the land reserve for the period of reservation, provided that determination of such fair market value shall include but not be limited to consideration of the real property taxes apportioned to the land reserved and prorated for the period of reservation. The developer shall be compensated for the reasonable increased cost of legal, engineering or other professional services incurred in connection with obtaining subdivision approval or site plan approval, as the case may be, caused by the reservation.

§ 305-14. Off-tract improvements.

- A. As a condition for approval of a subdivision or site plan, a developer may be required by the reviewing board to pay his pro-rata share of the cost of providing reasonable and necessary street improvements and water, sewerage and drainage facilities and easements therefor and other improvements deemed necessary located outside the property limits of the subdivision or development but necessitated or required by construction or improvements within such subdivision or development.
- B. Requirements for providing off-street improvements shall be based on the circulation and utility service plan elements of the Borough Master Plan. The pro-rata amount of the cost of such facilities that shall be borne by each developer or owner within a related and common area shall be determined by the reviewing board in accordance with the following standards:

- (1) Street improvements. The developer's share shall be based on the average daily traffic generated by the proposed development as a proportion of total estimated average daily traffic on the street based on complete development under existing zoning.
- (2) Water, sewer and drainage improvements. The developer's share shall be based on capacity required by the development in question as a proportion of total capacity for the service area in which the development is located.
- (3) Other improvements.
 - (a) The developer's share shall be determined by the Borough Engineer.
 - (b) Where a developer pays the amount determined as his pro-rata share under protest, he shall institute legal action within one (1) year of such payment in order to preserve the right to a judicial determination as to the fairness and reasonableness of such amount.

§ 305-15. Guaranties, fees and other charges.

A. Before final approval. Before recording of final subdivision plats or as a condition of final plan approval, the reviewing board may require and shall accept in accordance with the standards adopted by this chapter for the purpose of assuring the installation and maintenance of on-tract improvements:

- (1) The furnishing of a performance guaranty to be posted with the Borough Council in favor of the borough in an amount not to exceed one hundred twenty percent (120%) of the cost of installation for improvements it may deem necessary or appropriate, including streets, grading, pavement, gutters, curbs, sidewalks, streetlighting, shade trees, surveyor's monuments as shown on the final map and required by the Map Filing Law, water mains, culverts, storm sewers, sanitary sewers or other means of sewage disposal, drainage structures, erosion control and sedimentation control devices, public improvements of

open space and, in the case of site plans only, other on-site improvements and landscaping, provided that no more than ten percent (10%) of the total performance guarantees shall be in cash and the balance shall be in the form of a bond from a bonding company approved by the borough.

- (2) An itemization and cost estimate to be submitted by the developer, and the Borough Engineer shall review the improvements and cost estimates for reasonableness. Said itemization shall be the basis for determining the amount of performance guaranty and maintenance guaranty required by the reviewing board. The Borough Engineer shall forward his estimate of the cost of improvements to the applicant within thirty (30) days of the date of receipt of a request sent by certified mail for said estimate.
- (3) The furnishing of a maintenance guaranty to be posted with the Borough Council for a period not to exceed two (2) years after final acceptance of the improvement, in an amount not to exceed fifteen percent (15%) of the cost of the improvement. In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by performance or maintenance guaranty to another governmental agency, no performance or maintenance guaranty, as the case may be, shall be required for such utilities or improvements.

B. Extensions.

- (1) The time allowed for installation of the improvements for which the performance guaranty has been provided may be extended by the Borough Council by resolution.
- (2) The amount of any performance guaranty may be reduced by the Borough Council, by resolution, when portions of the improvements have been certified by the Borough Engineer to have been completed.

C. Default. If the required improvements are not completed or corrected in accordance with the performance guaranty, the obligor and surety, if any, shall be liable thereon to the

borough for the reasonable cost of the improvements not completed or corrected, and the borough may either prior to or after receipt of the proceeds thereof complete such improvements.

- D. Completion. When all of the required improvements have been completed, the obligor shall notify the Borough Council, in writing, by certified mail addressed in care of the Borough Clerk, of the completion of said improvements and shall send a copy thereof to the Borough Engineer. Thereupon, the Borough Engineer shall inspect all of the improvements and shall file a detailed report, in writing, with the Borough Council, indicating either approval, partial approval or rejection of the improvements with a statement of reasons for any partial approval or rejection. If partial approval is indicated, the cost of the improvements rejected shall be set forth.
- E. Council review. The Borough Council shall either approve, partially approve or reject the improvements on the basis of the report of the Borough Engineer and shall notify the obligor in writing, by certified mail, of the contents of said report and the action of Borough Council with relation thereto, not later than sixty-five (65) days after receipt of the notice from the obligor of the completion of the improvements. When partial approval is granted, the obligor shall be released from all liability pursuant to its performance guaranty, except for the portion adequately sufficient to secure provision of the improvements not yet approved, provided that thirty percent (30%) of the amount of the performance guaranty posted may be retained to ensure completion of all improvements. Failure of the Borough Council to send or provide such notification to the obligor within sixty-five (65) days shall be deemed to constitute approval of the improvements, and the obligor and surety, if any, shall be released from all liability, pursuant to such performance guaranty.
- F. Rejection. If any portion of the required improvements are rejected, the Borough Council may require the obligor to complete such improvements and, upon completion, the same procedure of notification as set forth in this section shall be followed.

- G. Legal review. Nothing herein, however, shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the Borough Council or the Borough Engineer.
- H. Inspection fees. The obligor shall reimburse the borough for all reasonable inspection fees paid to the Borough Engineer for the foregoing inspection of improvements, provided that the borough may require the developer to post a deposit for all or a portion of the reasonably anticipated fees to be paid to the Borough Engineer for such inspection.
- I. Staged development. The provisions of this section shall apply to staged or section approval as permitted in § 305-9C.
- J. Contributions to housing fund.
 - (1) Before final approval. Prior to the granting of final approval to a development application, the reviewing board, in consultation with the Housing Officer, shall determine the amount of the contribution to the Housing Fund payable by the applicant in accordance with Chapter 310, Zoning, § 310-35.
 - (2) Resolution. The resolution adopted by the approving board shall condition its final approval on payment of the required fee at the time a building permit is issued for the approved use. A copy of the resolution of final approval shall be supplied to both the Construction Official and the Housing Officer.

§ 305-16. Violations and penalties; civil penalties.

A. Transfer before final subdivision approval.

- (1) If, before final subdivision approval has been granted, any person transfers or sells, or agrees to transfer or sell, except pursuant to an agreement expressly conditioned on final subdivision approval, as owner or agent, any land which forms a part of a subdivision for which approval is required pursuant to this chapter, such person shall be subject to a penalty not to exceed one thousand dollars (\$1,000.), and each lot disposition so made may be deemed

a separate violation. In addition to the foregoing, the borough may institute and maintain a civil action:

- (a) For injunctive relief; and
- (b) To set aside and invalidate any conveyance made pursuant to such a contract of sale if a certificate of compliance has not been issued in accordance with Chapter 310, Zoning, § 310-57.

(2) In any such action, the transferee, purchaser or grantee shall be entitled to a lien upon the portion of land from which the subdivision was made that remains in the possession of the developer or his assigns or successors to secure the return of any deposits made or purchase price paid and also a reasonable search fee, survey expense and title closing expense, if any. Any such action must be brought within two (2) years after the date of the recording of the instrument of transfer, sale or conveyance of said land or within six (6) years, if unrecorded.

(3) In addition to the foregoing, if the streets in the subdivision are not such that a structure on said land in the subdivision would meet the requirements for a building permit under Section 10 of the Official Map and Building Permit Act (1953) (N.J.S.A. 40:55-1.39), the Borough of New Providence may institute and maintain a civil action.

B. Right of purchase. Any person who shall acquire for a valuable consideration or interest in the lands covered by any certificate as to approval of subdivision of land issued pursuant to Chapter 310, Zoning, § 310-57, in reliance upon the information therein contained shall hold such interest free of any right, remedy or action which could be prosecuted or maintained by the borough pursuant to the preceding Subsection A. The same exemption from remedy or action by the borough applies if the Zoning Officer fails to issue the certificate within fifteen (15) days of the receipt of an application and fees as specified in Chapter 310, Zoning, § 310-57. Such application addressed to the Borough Clerk shall be deemed to be addressed to the Zoning Officer.

§ 305-17. Site plan details.

- A. Preparation. The site plan and its separate elements shall be prepared by a professional engineer, land surveyor, architect, landscape architect or professional planner. The site plan shall be based on the latest Tax Map information and shall be of a standard size as required by the Map Filing Law.²⁰ The site plan shall consist of a location map, site plan map(s) of the affected property and such other maps and information as specified in the site plan application checklist and shall conform with the provisions of §§ 305-11 and 305-12 of this chapter. The Planning Board or Board of Adjustment may, at the request of the developer, waive any of the various requirements of the maps and submissions.
- B. Other information. The reviewing board may require other information and data for specific site plans. This data may include but is not limited to geologic information, water yields, flood data, environmental information, traffic counts, road capacities, market information, economic data of proposed business or activity, hours of operation, and similar information.
- C. Certification. The site plan application shall include certification that no taxes on the property are delinquent.

§ 305-18. Plat details.

- A. Sketch plat. The sketch plat shall be based on Tax Map information or some other similarly accurate base at a scale [preferably not less than four hundred (400) feet to the inch] to enable the entire tract to be shown on one (1) sheet and shall show or include the information specified in the subdivision application checklist.
- B. Preliminary plat. The preliminary plat shall be clearly and legibly drawn or reproduced at a scale of not less than one (1) inch equals one hundred (100) feet and shall be clearly marked "Preliminary plat." Preliminary plats shall be designed and drawn by a licensed (New Jersey) land surveyor, licensed

²⁰ Editor's Note: See N.J.S.A. 48:23-9.9 et seq.

engineer or licensed planner. The plat shall be designed in compliance with the provisions of §§ 305-10 and 305-12 of this chapter and shall show or be accompanied by the checklist information specified in the subdivision application checklist.

- C. Final plat. The final plat shall be in compliance with all the provisions of the Map Filing Law,²¹ and it shall be clearly marked "final plat." The final plat shall show or be accompanied by the checklist information specified in the subdivision application checklist.
- D. Certification. All plats shall include certification that no taxes on the property are delinquent.

§ 305-19. Construal of provisions.

These rules, regulations and standards shall be considered the minimum requirements for the protection of the public health, safety and welfare of the citizens of the Borough of New Providence. Any action taken by the Planning Board, Board of Adjustment or the Mayor and Borough Council under the terms of this chapter shall be given primary consideration to the above-mentioned matters and to the welfare of the entire community.

²¹ Editor's Note: See N.J.S.A. 46:23-9.9 et seq.

ZONING

Chapter 310

ZONING

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Schedule I: Permitted Uses

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Zoning Map

[HISTORY: Adopted by the Mayor and Council of the Borough of New Providence 3-28-1988 as Ord. No. 88-2 (Ch. 28 of the 1973 Code of Ordinances). Amendments noted where applicable.]

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GENERAL REFERENCES

Uniform construction codes — See Ch. 129.
Earth terminal antennas — See Ch. 141.
Permits and licenses — See Ch. 147.
Sewers and sewage disposal — See Ch. 219.
Streets and sidewalks — See Ch. 225.
Affordable housing — See Ch. 275.
Flood damage prevention — See Ch. 281.
Housing rehabilitation — See Ch. 285.
Land use procedures — See Ch. 291.
Soil removal — See Ch. 297.
Stormwater control — See Ch. 301.
Subdivision of land and site plan review — See Ch. 303.
Swimming pools — See Ch. 337.

ARTICLE I
General Provisions

§ 310-1. Title.

This chapter shall be known and cited as the "Zoning Ordinance" of the Borough of New Providence.

§ 310-2. Intent.

The intent of this chapter is to establish a precise and detailed plan for the use of land in the borough based on the Master Plan for the borough, and this chapter is enacted in order to promote and to protect the public health, safety, morals and general welfare of the people.

§ 310-3. Purpose.

Regulations are deemed necessary to achieve the following purposes:

- A. To protect the character and maintain the stability of all zoning districts within the borough, and to promote the orderly and beneficial development of such areas.
- B. To limit congestion in the public streets and to protect the public health, safety, convenience and the general welfare by providing for off-street parking of motor

vehicles and for the loading and unloading of commercial vehicles.

- C. To provide protection against fire, flood, explosion, noxious fumes and other hazards in the interest of the public health, safety, comfort and the general welfare.
- D. To regulate the intensity of use of land and to determine the area of open spaces surrounding buildings, which spaces shall be necessary to provide adequate light and air, privacy and convenience of access to property and to protect the public health.
- E. To establish building lines and the location of buildings designed for residential, commercial, laboratory, light industrial or other uses within such lines.
- F. To fix reasonable standards to which buildings or structures shall conform.
- G. To prohibit uses, buildings or structures which are incompatible with the character of development, the permitted uses within specified zoning districts or the purposes of the Master Plan.
- H. To prevent such additions to and alterations or remodeling of existing buildings or structures as would not comply with the restrictions and limitations imposed hereunder.
- I. To conserve the taxable value of land and buildings throughout the borough.
- J. To encourage planned developments which incorporate the best features of design and relate the type, design and layout of residential and commercial development to the particular site.
- K. To encourage senior citizen community housing construction.
- L. To promote the conservation of energy resources and the utilization of renewable energy sources.

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- M. To promote the conservation of historic sites and districts.
- N. To encourage the development of certain vacant tracts in a manner which incorporates the best features of design and regulates the type, design and layout of residential development to the particular site, and, at the same time, to provide the realistic opportunity for affordable housing to be constructed in accordance with the guidelines set forth in the Fair Housing Act, as interpreted by the Council on Affordable Housing.
- O. To promote the maximum practical recovery from solid waste through recycling of recyclable materials.

§ 310-4. Construal of provisions; greater restrictions to prevail.

The interpretation and the application of the provisions of this chapter shall be held to be the minimum requirements for the promotion of the health, safety, morals and general welfare and shall be considered liberally to effect the purposes thereof. This chapter is not intended to interfere with, abrogate or annul other rules, regulations or ordinances, provided that where this chapter imposes greater restrictions upon the use of buildings or premises or upon the height or bulk of a building or requires larger open spaces, the provisions of this chapter shall apply.

ARTICLE II.
Terminology

§ 310-5. Word usage.

Unless the context clearly indicates a different meaning, the following definitions shall be used in the interpretation and construction of this chapter: words used in the present tense include the future; the singular number shall include the plural, and the plural the singular; the word "used" shall include "arranged, designed, constructed, altered, converted,

rented, leased or intended to be used;" the word "shall" is mandatory and not discretionary; and the word "may" indicates a permissive action.

§ 310-6. Definitions.

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

ACCESSORY USE OR STRUCTURE — A use or structure subordinate to the principal use or structure on the same lot and serving a purpose customarily incidental to the use of the principal building or premises. When an accessory structure is attached to a principal building, it shall be considered part of the principal building.

ADMINISTRATIVE OFFICER — The Borough Clerk or such person designated by the Borough Council.

AFFORDABLE HOUSING — Newly constructed or rehabilitated housing units meeting the criteria promulgated by the Council on Affordable Housing for affordability to low- or moderate-income households.

AGENT — Any person who can show written proof that he has authority to act for the property owner.

ALTERATION, STRUCTURAL — See "structural alteration."

APARTMENT — A dwelling unit for rent in a structure that has more than two dwelling units.

APPLICANT — A developer submitting an application for development.

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

from restrictions on the location of buildings as specified in this chapter and the Subdivision and Site Plan Ordinance.¹

APPROVING AUTHORITY — The Planning Board or Board of Adjustment of the Borough of New Providence as specified in Chapter 291, Land Use Procedures, § 291-6.

AUTOMOBILE REPAIR ESTABLISHMENT — A building or place of business where mechanical repair of motor vehicles, not including auto body repair or metal refinishing, is performed.

AUTOMOBILE SERVICE STATION — A building or place of business where gasoline, oil and greases, batteries, tires and automobile accessories are supplied and dispensed directly to the motor vehicle trade at retail, and where minor repair service may be performed, but excluding body work, painting and major overhaul.

BASEMENT or CELLAR — That portion of a building which is partly or completely below grade.

BOARD — The Board of Adjustment and/or the Planning Board of the Borough of New Providence, as applicable.

BOARD OF ADJUSTMENT — The Zoning Board of Adjustment of the Borough of New Providence.

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

BUILDING, HEIGHT OF — [Amended 10-7-2003 by Ord. No. 2003-12]

A. The vertical distance measured from grade to:

- (1) The deckline in the case of mansard roofs (which may not extend above the deckline more

¹ Editor's Note: See Ch. 305, Subdivision of Land and Site Plan Review.

than 10% of the building height) with no other structures thereon except chimneys; or,

- (2) To the mean level of the slope of the roof in the case of gabled, hip, and gambrel roofs with no other structures thereon except chimneys; or
- (3) The top of any and all other types of roof surfaces, including flat roofs, or any structure on the roof, including but not limited to elevators, escalator penthouses, cooling towers, or structure to house mechanical or other equipment.

B. Unless otherwise provided in this chapter, the maximum height of a building or structure will be 30 feet.

C. Notwithstanding the above, any fill material placed within 10 feet of the perimeter of the foundation walls that increases the outside finished ground elevation shall not be considered when computing the building height.

BUILDING PERMIT — See "construction permit."

BUILDING, PRINCIPAL — A structure in which is conducted the principal use of the site on which it is situated. In any residential district, any dwelling shall be deemed to be a principal building on the lot on which it is located.

CAPITAL IMPROVEMENT — A governmental acquisition of real property or a major construction project.²

CERTIFICATE OF OCCUPANCY — A certificate signed by the Construction Official provided for in N.J.S.A. 52:27D-133 indicating that the construction authorized by the construction permit has been completed in

² Editor's Note: The definition of Cellular Towers, added 6-9-1997 by Ord. No. 97-7, which immediately followed this definition, was repealed 10-27-1997 by Ord. No. 97-13.

accordance with the construction permit, the State of New Jersey Uniform Construction Code and any other ordinance implementing said code.³

CHILD-CARE CENTER — A facility designed to provide care and/or instruction for children, including a nursery school, operated on a regular basis and licensed and certified by the New Jersey State Department of Human Services.

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

COMMERCIAL PARKING AREA — See "parking area, commercial."

COMMERCIAL VEHICLE — See "vehicle, commercial."

COMMON OPEN SPACE — See "open space, common."

COMMUNITY RESIDENCE FOR THE DEVELOPMENTALLY DISABLED:

A. Any community residential facility licensed pursuant to P.L. 1977, c.448 (N.J.S.A. 30:11B-1 et seq.), providing food, shelter and personal guidance, under such supervision as required, to not more than 15 developmentally disabled or mentally ill persons, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to: group homes, halfway houses, intermediate-care facilities, supervised apartment living arrangements and hostels. Such a residence shall not be considered a health-care facility within the meaning of the

³ Editor's Note: See Ch. 128, Construction Codes, Uniform.

Health Care Facilities Planning Act, P.L. 1971, c.136 (N.J.S.A. 26:2H-1 et seq.).

B. In the case of such a community residence housing mentally ill persons, such residence shall have been approved for a purchase of service contract or an affiliation agreement pursuant to such procedures as shall be established by the Division of Mental Health and Hospitals of the Department of Human Services.

COMMUNITY SHELTER FOR VICTIMS OF DOMESTIC VIOLENCE — Any shelter approved for a purchase of service contract and certified pursuant to standards and

(Cont'd on page 31011)

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2004-13**

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY
OF UNION, STATE OF NEW JERSEY AMENDING AND
SUPPLEMENTING CHAPTER 291 OF THE CODE OF THE BOROUGH
OF NEW PROVIDENCE PERTAINING TO THE ESTABLISHMENT OF
THE HISTORIC PRESERVATION COMMISSION**

HISTORIC PRESERVATION COMMISSION.

1. Creation.

There is hereby created in and for the Borough of New Providence a Historic Preservation Commission (the "Commission"). The powers of the Commission shall be strictly limited to those expressly set forth in this section. The section is enacted under the authority of the Borough to regulate the use of land for the public health, safety and welfare pursuant to N.J.S.A. 40:48-1, N.J.S.A. 40:48-2 and N.J.S.A. 40:55D-107 through 40:55D-112.

2. Membership.

a. The Commission shall consist of five (5) regular members and may have not more than two (2) alternate members of the following three classes:

1. Class A: a person who is knowledgeable in building design and construction or architectural history and who may reside outside the Borough of New Providence.

2. Class B: a person who is knowledgeable or with a demonstrated interest in local history and who may reside outside the Borough.

3. Class C: a citizen of the Borough of New Providence who shall hold no other municipal office, position or employment, except for membership on the Planning Board or Board of Adjustment.

4. There shall be at least one (1) regular member from each class.

b. Alternate members shall meet the qualifications of Class C members.

3. Appointment and Terms of Members; 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, if any, as "Alternate No. 1" and "Alternate No. 2".

- b. Terms.
 - 1. The terms of the members first appointed shall expire in the following manner:
 - (a) The first appointed Class A member shall serve an initial term of four (4) years. Thereafter, the Class A member shall serve a term of four (4) years.
 - (b) The first Class B member shall serve an initial term of three (3) years. Thereafter, the Class B member shall serve a term of four (4) years.
 - (c) One (1) Class C member shall serve an initial term of four (4) years, one (1) Class C member shall serve an initial term of three (3) years, one (1) Class C member shall serve an initial term of two (2) years. Thereafter, each Class C member shall serve a term of four (4) years.
 - (d) One (1) alternate member shall serve an initial term of two (2) years, and one (1) alternate member shall serve an initial term of one (1) year. Thereafter, each alternate member shall serve a term of two (2) years.

c. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term only and done so by the Mayor within thirty (30) days of the vacancy. Notwithstanding any other provision therein, the term of any member common to the Commission and the Planning Board shall be for the term of membership on the Planning Board, and the term of any member common to the Commission and the Board of Adjustment shall be for the term of membership on the Board of Adjustment.

4. Officers.

The Commission shall annually elect a Chairman and Vice Chairman from its members, and annually select a Secretary, who may or may not be a member of the Commission or a municipal employee.

5. Rules and Procedures.

The Commission shall create rules and procedures for the transaction of its business, subject to the following regulations:

- a. A quorum for the transaction of business shall consist of three (3) of the Commission's members, including the Chairman or, in his or her absence, the Vice-Chairman.
- b. The Secretary shall keep minutes and records of all meetings and proceedings, including voting records, attendance, resolutions, findings, determinations and decisions. All such material shall be public records.
- c. All meetings shall comply with the Open Public Meetings Act (N.J.S.A. 10:4-6, et seq.)

d. 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.

e. No member of the Commission shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest.

f. A member of the Commission may, after public hearing if he or she requests it, be removed by Borough Council for cause.

6. Compensation for Members.

The Commission members shall serve without compensation.

7. Powers and Duties.

The Commission shall have the responsibility to:

a. Prepare, maintain and update from time to time a survey of historic sites of the Borough;

b. Make recommendations to the Planning Board on the historic preservation plan element of the Master Plan and on the implications for preservation of historic sites of any other Master Plan elements;

c. Advise the planning board on the inclusion of historic sites in the recommended capital improvement plan;

d. Advise Borough Council, the Planning Board and Board of Adjustment on applications for development or other matters concerning historic preservation when requested or directed by Borough Council, the Planning Board or Board of Adjustment;

d. Report annually to the Mayor and Borough Council on the state of historic preservation in the Borough and recommend measures to improve same;

e. Provide written reports on the application of zoning ordinance provisions concerning historic preservation;

f. Advise the Construction Code Official (or other designated Administrative Officer) on applications for construction permits;

g. Carry out such other advisory, educational and informational functions as will promote historic preservation in the municipality.

8. Advice on Certain Applications.

The planning board and board of adjustment shall refer to the historic preservation commission every application for development 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. This 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 historic preservation commission may provide its advice, which shall be conveyed through its delegation of one of its members or staff to testify orally at the hearing on the application and to explain any written report which may have been submitted.

9. Reports on Certain Applications.

(a) Applications to the Construction Code Official (or other designated Administrative Officer) for the issuance of permits for development, including demolition, renovation, alteration, reconstruction or additions to existing buildings and structures within historic areas, historic districts or historic sites, shall be referred by the Officer to the Historic Preservation Commission for a written report prior to the issuance of such permits.

(b) The Historic Preservation Commission shall review applications for the above-mentioned permits for compliance with the Borough's Land Use Development and/or Zoning ordinance provisions concerning historic preservation with respect to any of those aspects of the change proposed, pursuant to the Municipal Land Use Law (N.J.S.A. 40: 55d-1 et seq.).

(c) The Historic Preservation Commission shall advise the Construction Code Official (or other designated Administrative Officer) by way of written report as to whether or not the application for the permit is in compliance.

(d) In the case of an application for a construction permit, the Historic Preservation Commission shall report, in writing, to the Construction Code Official (or other designated Administrative Officer) within forty-five (45) days of his/her referral of the application to the Historic Preservation Commission. The Historic Preservation Commission shall give the applicant written notice of date, time and place of meeting prior to the Historic Preservation Commission meeting. If the Historic Preservation Commission recommends to the Construction Code Official (or other designated Administrative Officer) against the issuance of the permit or recommends conditions to the permit to be issued, the Construction Code Official (or other designated Administrative Officer) shall deny issuance of the permit or include the conditions in the permit as the case may be.

(e) In the case of a referral by the Planning Board or Board of Adjustment, the Historic Preservation Commission shall report to the particular board in question, in writing, within forty-five (45) days of the referral by the board to the Historic Preservation Commission.

(f) Failure of the Historic Preservation Commission to report within the time periods specified in this ordinance shall be deemed to constitute a report in favor of issuance of the permit and without the recommendations of conditions to the permit.

(g) Appeals of the decisions of the Construction Code Official (or other designated Administrative Officer) based on the recommendations of the Historic Preservation Commission shall be made to the Zoning Board of Adjustment in accordance with the Municipal Land Use Law and the New Providence Land Use Ordinance.

(h) Appeals of the decisions of the Board of Adjustment or Planning Board based on the recommendations of the Historic Preservation Commission may be made as provided by law.

10. Historic Areas.

The requirements of this section shall apply to all development including demolition, renovation, reconstruction and additions to existing buildings or structures that may be situated within those areas designated as "Historic Sites" on the Community Facilities Plan Map included in the 1978 Master Plan and as referenced and incorporated in the Master Plan adopted on May 6, 2004, and potentially eligible sites of historical significance.

This Ordinance shall become effective immediately upon final adoption and publication required by law. It shall also be filed with the Union County Planning Board.

This Ordinance repeals all prior ordinances or portions of ordinances inconsistent herewith.

If any portion of this Ordinance shall be deemed invalid, such portion shall not affect the validity of the remainder of the ordinance.

Introduced: September 27, 2004

Adopted: October 12, 2004

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2005-5**

**"AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE COUNTY OF UNION,
STATE OF NEW JERSEY, AMENDING ZONING ORDINANCE"**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey as follows:

SECTION 1. Section 310-6 of Article II of Chapter 310 of the Code of the Borough of New Providence entitled "Definitions" is amended to read as follows

ACCESSORY USE OR STRUCTURE – A use or structure subordinate to the principal use or structure on the same lot and serving a purpose customarily incidental to the use of the principal building or premises. When an accessory structure is attached to a principal building, it shall be considered part of the principal building. Accessory structures, in all residential zones, shall include, but not necessarily be limited to, garages, garden sheds, and pool cabanas, but shall not include fences.

CENTRAL COMMERCIAL DISTRICT – This geographical area is the historic center of commerce in the Borough of New Providence. This zone is envisioned to provide a wide variety of retail uses, professional office space, restaurants. The zone is designed to encourage retail and personal services oriented to pedestrian shopping on the ground floor and other commercial uses and service on the second floor.

SECTION 2. Section 310-7 of Article III of Chapter 310 of the Code of the Borough of New Providence entitled "Districts Established" is amended to read as follows:

For the purposes of this chapter, the borough is hereby divided into thirteen (13) districts, differentiated according to use and building regulations and designated as follows:

- R1 Single-Family District
- R2 Single Family District
- R3 Two-Family District
- R4 Multifamily District
- OR Office and Residential District
- ~~C Central Business District~~
- CCD Central Commercial District

- C1 **Specialty Commercial District**
- C2 **Neighborhood Commercial District**
- RL **Research Laboratory District**
- LI **Light Industrial District**
- A1 **Affordable Housing District**
- A2 **Affordable Housing District**
- A3 **Affordable Housing District**

SECTION 3. Section 310-11 of Article IV of Chapter 310 of the Code of the Borough of New Providence entitled "Applicability" is amended to read as follows:

- C. No structure shall be erected, altered, enlarged or rebuilt, nor shall any open space surrounding any structure, including areas above existing roofs, be encroached upon or reduced in any manner, except in conformity to the yard, lot area, and structure location regulations designated for the district in which such structure or open space is located."
- E. No structure, shall be altered, enlarged or rebuilt without first accommodating those elements of design required by zoning Ordinance. Such requirements of design, include, but are not limited to garages and driveways."

SECTION 4. Section 310-20 of Article IV of Chapter 310 of the Code of the Borough of New Providence entitled "Off-street parking requirements" is amended to read as follows:

- D. Access.
 - (4) All access driveways and or driveways to one and two family homes shall be paved to the standards of the Borough Engineering Department.
- E. Standards for areas for three (3) or more vehicles.
 - (2) All parking area lighting shall be designed for convenience and safety and operated so as not to reflect or shine on adjacent properties. Parking spaces, driveways and pathways shall be clearly marked. For safety and fire-fighting purposes, free access to adjacent parking areas shall be provided.

- a. All off-street parking areas shall be adequately and properly lighted as follows:
 1. An evenly distributed 0.5 foot candles shall be maintained throughout the parking lots.
 2. An evenly distributed 0.5 foot candles shall be maintained in pedestrian walkways areas.
 3. Illumination level of not more than 20 foot candles shall be permitted at gas station pump island service areas.
- b. Light fixtures and poles shall be in accordance with the Borough design standards.
- c. Light sources shall comply with the following:
 1. All light sources shall be shielded or positioned so as to prevent direct glare to adjacent properties or the traveling public.
 2. Poles in pedestrian walkway areas shall not be greater than 15 feet in height and shall utilize underground wiring.
 3. Poles in all other areas shall not exceed 20 feet in height and shall utilize underground wiring.
 4. Light sources on structures shall not exceed 20 feet or the height of the structure whichever the lesser.
- d. All utility improvements, such as transformer compounds, external heating and cooling equipment and refuse areas, etc. shall be screened from adjacent properties and public right of ways.

SECTION 5. Section 310-27 of Article V of Chapter 310 of the Code of the Borough of New Providence entitled "Landscaping requirements" is amended to read as follows:

A. C-1, C-2 and OR Districts. Any commercial use, when abutting or adjacent to a residential district, shall be screened from the residential property by a dense visual screen consisting of evergreen hedges or shrubs maintained in good condition and which shall be at least four (4) feet high at the time of planting and which shall attain a height within three (3) growing seasons of at least eight (8) feet. If fencing

is provided or required, it shall be screened by the landscaping determined to be suitable by the reviewing board.

C. Landscaping and Screening for CCD

1. All off-street parking areas shall be effectively screened from public or private right of ways by a decorative fence or wall, landscaped berm or a densely planted evergreen material sufficient to reduce headlight glare.
2. All parking areas shall be screened from adjacent residential dwelling areas by a solid and continuous fence, wall, landscaped berm or evergreen plant material not less than six feet in height.
3. All off-street loading and accessory trailer parking areas shall be screened with a decorative fence and/or evergreen plant material to screen vehicles within the areas, from public rights of ways and any point within a residential use or zone.
4. All outdoor storage shall be enclosed by a solid continuous decorative fence, wall or evergreen plant material to screen such activity from adjacent properties and public right of ways.
5. All utility improvements, such as transformer compounds, external heating and cooling equipment and refuse areas, etc. shall be screened from adjacent properties and public right of ways.
6. A minimum of one major shade tree shall be provided per 10 parking stalls or one shade tree per 3,000 square feet of parking area whichever is greater.

SECTION 6. Schedule IV of Chapter 310 of the Code of the Borough of New Providence entitled "Minimum Required Off-Street Parking" is amended to add the following:

Nonresidential Uses

CCD District only 1 for each 250 square feet of gross floor area for all uses.

SECTION 7. Chapter 310 of the Code of the Borough of New Providence entitled "Zoning" is amended as follows:

Change all references from the "C" district to "CCD" as appropriate throughout the chapter, including the legend on the zoning map.

SECTION 8. Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION 9. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as to the extent of such inconsistency.

SECTION 10. This ordinance shall take effect immediately upon adoption and publication according to law.

Introduced: April 25, 2005

Adopted: May 9, 2005

BOROUGH OF NEW PROVIDENCE
STATE OF NEW JERSEY
COUNTY OF UNION

Allen Morgan
Mayor

Attest:

Wendi B. Barry
Borough Clerk

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2005-8**

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE COUNTY OF
UNION, STATE OF NEW JERSEY, AMENDING ZONING ORDINANCE BY
ADDING NEW ZONE R2A**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey as follows:

SECTION I. Section 310-6 of Article II of Chapter 310 of the Code of the Borough of New Providence entitled "Definitions" is amended as follows:

Add "R2A" to the definition as follows:

NONRESIDENTIAL DISTRICT -- Any district other than the A1, A2, A3, R1, R2, R2A, R3, R4 and RS, as authorized by the Planning Board.

SECTION II. 310-7 of Article III of Chapter 310 of the Code of the Borough of New Providence entitled "Districts Established" is amended as follows:

Add new district – "R2A single family district" after R2 and before R3

SECTION III. 310-8 of Article III of Chapter 310 of the Code of the Borough of New Providence entitled "Zoning Map" is amended as follows:

Change zone designation from R2 to R2A for the following areas as shown on the attached Exhibits I, II, III and IV.

B171, Lots 3-9 (Exhibit I)
B180, Lots 3-9 (Exhibit II)
B190, Lots 4-22 (Exhibit III)
B270, Lots 9-21 (Exhibit IV)

SECTION III. 310-10 of Article IV of Chapter 310 of the Code of the Borough of New Providence entitled "Schedules" is amended as follows:

Amend Schedule I – Permitted Uses, by adding new R2A zone as follows:

R2A District:

Single-Family District

Principal permitted uses R1 permitted principal uses

Permitted accessory uses R1 permitted accessory uses

Conditional uses R1 conditional uses

Amend Schedule II – Lot and Yard Requirements by adding new R2A zone standards as follows:

R2A District: Single-Family District

<u>Dimension</u>	<u>Requirement</u>
Minimum Lot Area	18,000 square feet
Minimum Yards	
Front	40 feet
Rear	40 feet
Side	
One	12 feet
Both	30 feet
Minimum Lot Width	
Interior	
At setback line	80 feet
At right of way line	60 feet
Corner	
At setback line	110 feet
At right of way line	70 feet
Minimum Lot Depth	200 feet

SECTION IV. Add R2A references as appropriate to 310-19C, 310-21 A, 310-30(1), and any other general reference to the residential districts throughout the chapter.

SECTION V. Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION VI. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as to the extent of such inconsistency.

SECTION VI. This ordinance shall take effect immediately upon adoption and publication according to law.

Introduced: May 9, 2005

Adopted: June 27, 2005

Attest:

Wendi B. Barry, Clerk

BOROUGH OF NEW PROVIDENCE,
COUNTY OF UNION, STATE OF
NEW JERSEY

By: _____
Allan Morgan, Mayor

EXHIBIT I
PROPOSED ZONING PLAN AMENDMENT

Change to R-1A

John T. Chadwick, IV, P.P.
Professional Planner
3086 Route 27, Suite 1
Kendall Park, New Jersey 08824
732-297-7669

EXHIBIT II
PROPOSED ZONING PLAN AMENDMENT

三

EXCELSIOR

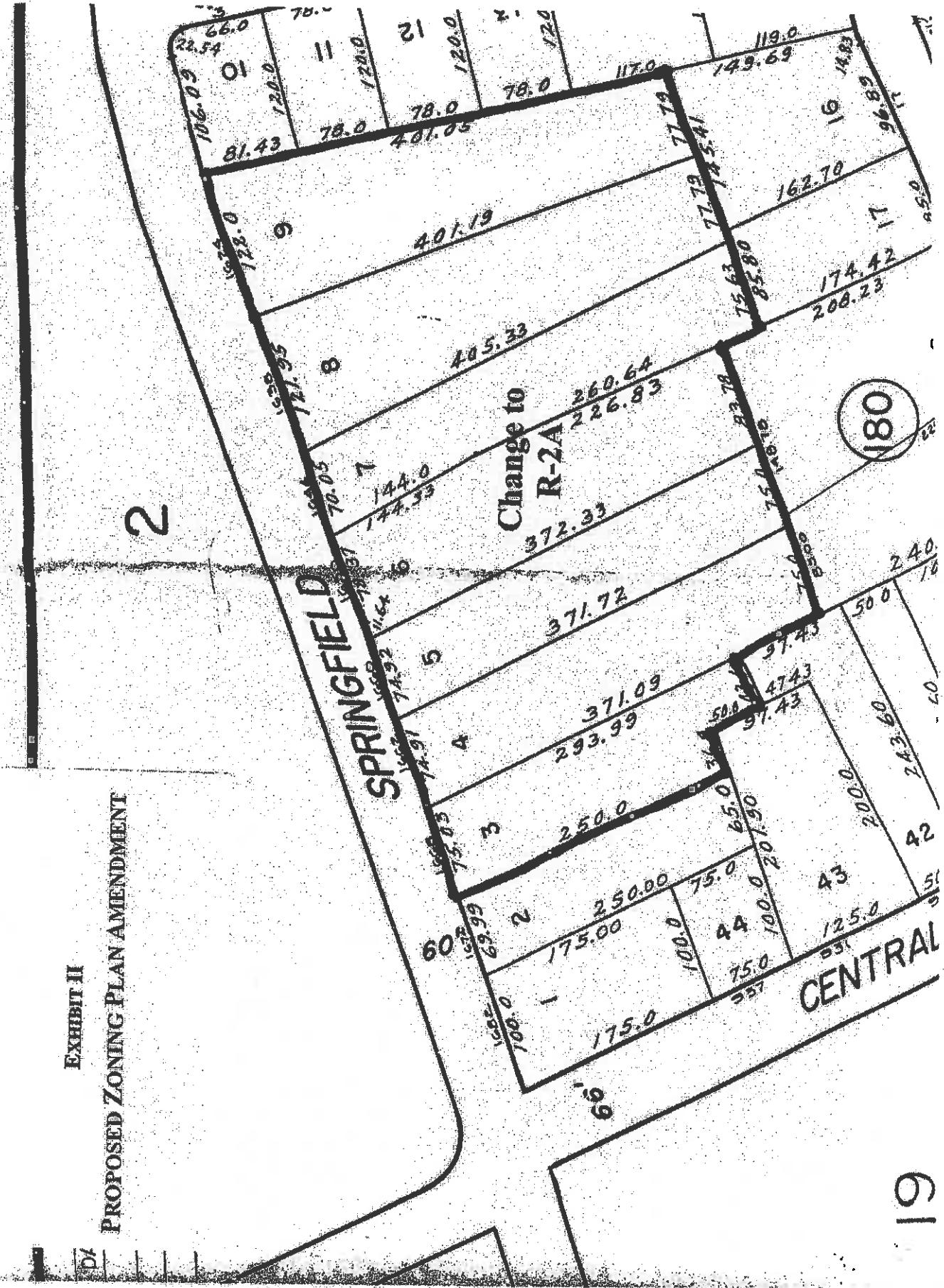


EXHIBIT III

PROPOSED ZONING PLAN AMENDMENT

SPRINGFIELD AVE

Page 1818
Springfield

Change to R-2A

OF
THE
WORLD

John T. Chadwick, IV, P.P.
Professional Planner
3086 Route 27, Suite 1
Kendall Park, New Jersey 08824
732-297-7669

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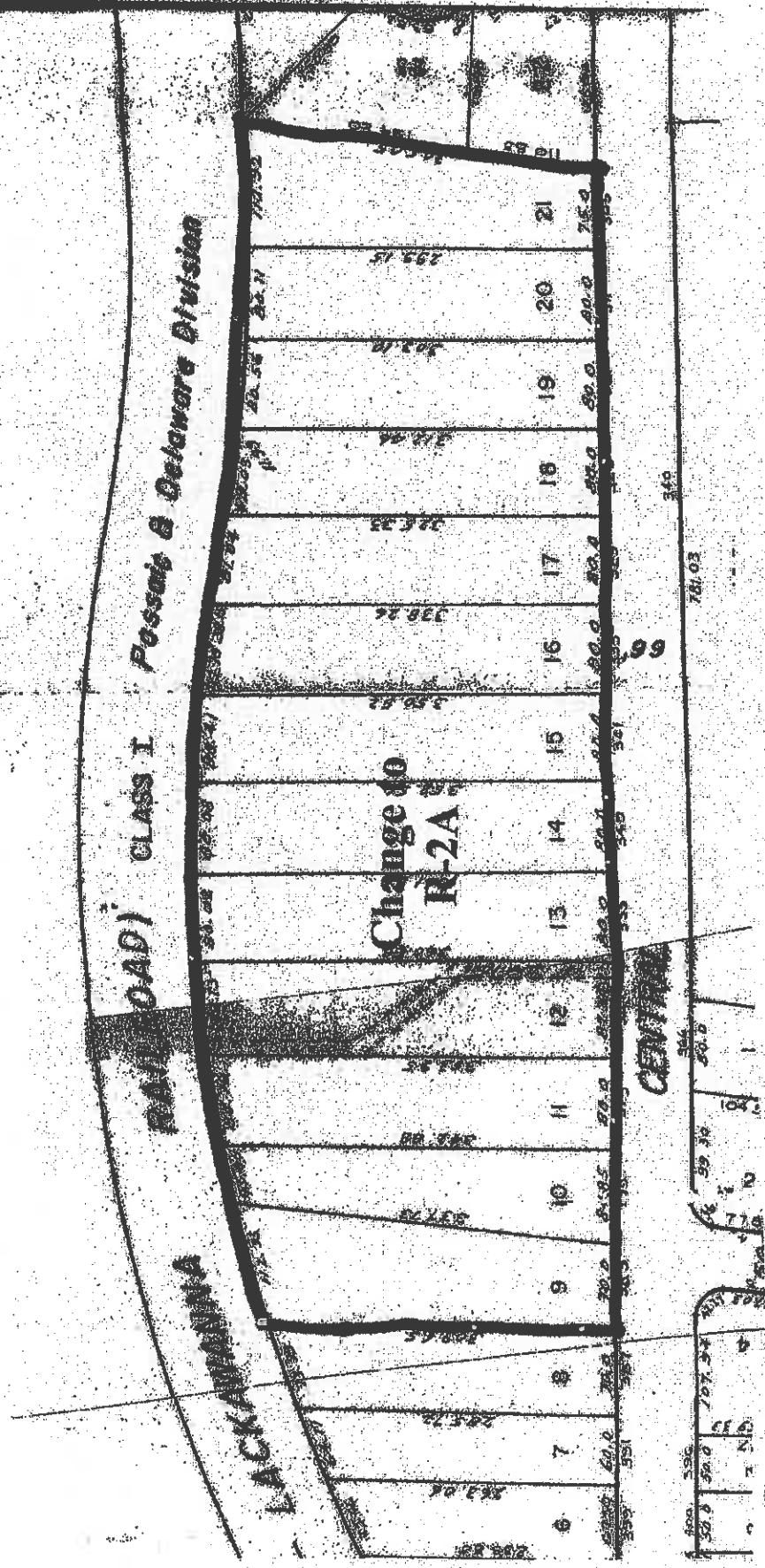
EXHIBIT IV

PROPOSED ZONING PLAN AMENDMENT

24

040) CLASS I
Planning & Zoning Division

Change 10
R-2A



John T. Chadwick, I.K. P.P.
Professional Planner
3086 Route 27, Suite 1
Kendall Park, New Jersey 08824

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2005-9**

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION,
STATE OF NEW JERSEY, AMENDING ZONING ORDINANCE BY ESTABLISHMENT
OF FLOOR AREA RATIO FOR RESIDENTIAL DEVELOPMENT**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey as follows:

SECTION I. Section 310-6 of Article II of Chapter 310 of the Code of the Borough of New Providence entitled "Definitions" is amended as follows:

Add the following definition:

FLOOR AREA, GROSS -- The total floor area of a building computed by measuring the horizontal dimensions of the outside walls of all enclosed portions of the building, including halls, enclosed porches, and garages but not including attic or basement.

SECTION II. Section 310-10 of Article IV of Chapter 310 of the Code of the Borough of New Providence entitled "Schedules" is amended as follows:

Add new subsection at the end of the Schedule III:

Floor Area Ratio (FAR) Standard for the R1, R2, R2A, R3, R4 and OR Zones.

The maximum permitted floor area for residential use by lot size shall be as follows:

LOT SIZE	FAR
4,999 sq ft and	0.275
5,000-5,999 sq ft	0.275
6,000-6,999 sq ft	0.271
7,000-7,999 sq ft	0.267
8,000-8,999 sq ft	0.263
9,000-9,999 sq ft	0.260
10,000-10,999 sq ft	0.256
11,000-11,999 sq ft	0.252
12,000-12,999 sq ft	0.248
13,000-13,999 sq ft	0.244
14,000-14,999 sq ft	0.240
15,000-15,999 sq ft	0.237
16,000-16,999 sq ft	0.233
17,000-17,999 sq ft	0.229
18,000 sq ft and over	0.225

SECTION III. Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION IV. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as to the extent of such inconsistency.

SECTION VI. This ordinance shall take effect immediately upon adoption and publication according to law.

Introduced: May 9, 2005
Adopted: May 23, 2005

BOROUGH OF NEW PROVIDENCE,
COUNTY OF UNION, STATE OF
NEW JERSEY

By: _____
Allan Morgan, Mayor

Attest:

Wendi B. Barry
Borough Clerk

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2005-10**

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION,
STATE OF NEW JERSEY AMENDING THE ZONING ORDINANCE AS RESPECTS
PROJECTIONS INTO REQUIRED YARDS**

BE IT ORDAINED by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey as follows:

SECTION 1. Section 310-23 of Article V of Chapter 310 of the Code of the Borough of New Providence entitled "Projections into Required Yards" is hereby amended to read as follows:

§310-23. Projections into required yards.

- A. Subject to the conditions hereinafter set forth, the following additions may be permitted to extend into required yards in residential districts:
 - (1) Fireplaces.
 - (2) Bay windows.
 - (3) Replacement of existing front, side or back stoops.
 - (4) Overhanging second floors, but not to exceed two-foot intrusions.
 - (5) Expansion of an existing structure which is nonconforming as a result of the establishment of this chapter and which did not result from a granting of a variance to this chapter. The proposed expansion may not extend further into required yards than the existing structure.
 - (6) A roof with unenclosed sides over an entrance platform of a dwelling or portico, may project up to five (5) feet into the required front yard, provided that the roof over an entrance platform shall not extend beyond the platform and steps, nor shall the total area of the extension into the front yard exceed twenty-five (25) square feet.
 - (7) Freestanding flagpoles, children's playground equipment, sandboxes, outdoor fireplaces, patios, and yard clotheslines and posts, but they must be set back at least five (5) feet from any

property line. Except for freestanding flagpoles, such structures shall not be located in the front yard.

(8) Residential heating and cooling units.

B. Said additions must meet the following conditions:

(1) (No change).

(2) (No change).

(3) Except as provided in subsections §310-23.A.4 and 6, extension of the building or structure shall in no case exceed four (4) feet into the front or side yard or ten (10) feet into the rear yard.

(4) (No change).

SECTION II. Each clause, section or subsection of this ordinance shall be deemed a separate provision so that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION III. All ordinances or parts thereof inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

SECTION IV. This ordinance shall take effect immediately upon adoption and publication according to law.

Introduced: May 9, 2005

Adopted: May 23, 2005

Attest:

BOROUGH OF NEW PROVIDENCE,
COUNTY OF UNION, STATE OF
NEW JERSEY

Wendi B. Barry, Clerk

By:

Allan Morgan, Mayor

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2005-13**

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE COUNTY OF UNION,
STATE OF NEW JERSEY, AMENDING ZONING ORDINANCE BY ADDING NEW
ZONE R3A**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey as follows:

SECTION I. Section 310-6 of Article II of Chapter 310 of the Code of the Borough of New Providence entitled "Definitions" is amended as follows:

Add "R3A" to the definition as follows:

NONRESIDENTIAL DISTRICT – Any district other than the A1, A2, A3, R1, R2, R2A, R3, R3A, R4 and RS, as authorized by the Planning Board.

SECTION II. 310-7 of Article III of Chapter 310 of the Code of the Borough of New Providence entitled "Districts Established" is amended as follows:

Add new district – "R3A Single Family and Two Family District" after R3 and before R4

SECTION III. 310-8 of Article III of Chapter 310 of the Code of the Borough of New Providence entitled "Zoning Map" is amended as follows:

Change zone designation from R3 to R3A for the following areas as shown on the attached Exhibit I.

B233, Lots 1-12 (Exhibit I)

SECTION IV. 310-10 of Article IV of Chapter 310 of the Code of the Borough of New Providence entitled "Schedules" is amended as follows:

Amend Schedule I – Permitted Uses, by adding new R3A zone as follows:

R3A District: Single-Family and Two Family District

Principal permitted uses	R3 permitted principal uses
Permitted accessory uses	R3 permitted accessory uses
Conditional uses	R1 conditional uses

Amend Schedule II – Lot and Yard Requirements by adding new R3A zone standards as follows:

R3A District: Single Family and Two Family District

<u>Dimension</u>	<u>Requirement</u>
Minimum Lot Area	
Single Family	10,000 square feet
Two Family	15,000 square feet
Minimum Yards	
Front	30 feet
Rear	40 feet
Side	
One	12 feet
Both	30 feet
Minimum Lot Width	
Single Family	
At the Setback Line	80 feet
At the Right-of-way Line	80 feet
Two Family	
At the Setback Line	100 feet
At the Right-of-way Line	100 feet
Minimum Lot Depth	
Single Family	125 feet
Two Family	150 feet

SECTION V. Add R3A references as appropriate to 310-19C, 310-21A, 310-30A(2), and any other general reference to the residential districts throughout the chapter.

SECTION VI. Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION VII. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as to the extent of such inconsistency.

SECTION VIII. This ordinance shall take effect immediately upon adoption and publication according to law.

Introduced: July 25, 2005

Adopted: August 8, 2005

Attest:

Wendi B. Barry, Clerk

#264423

N:\\ordinances\\

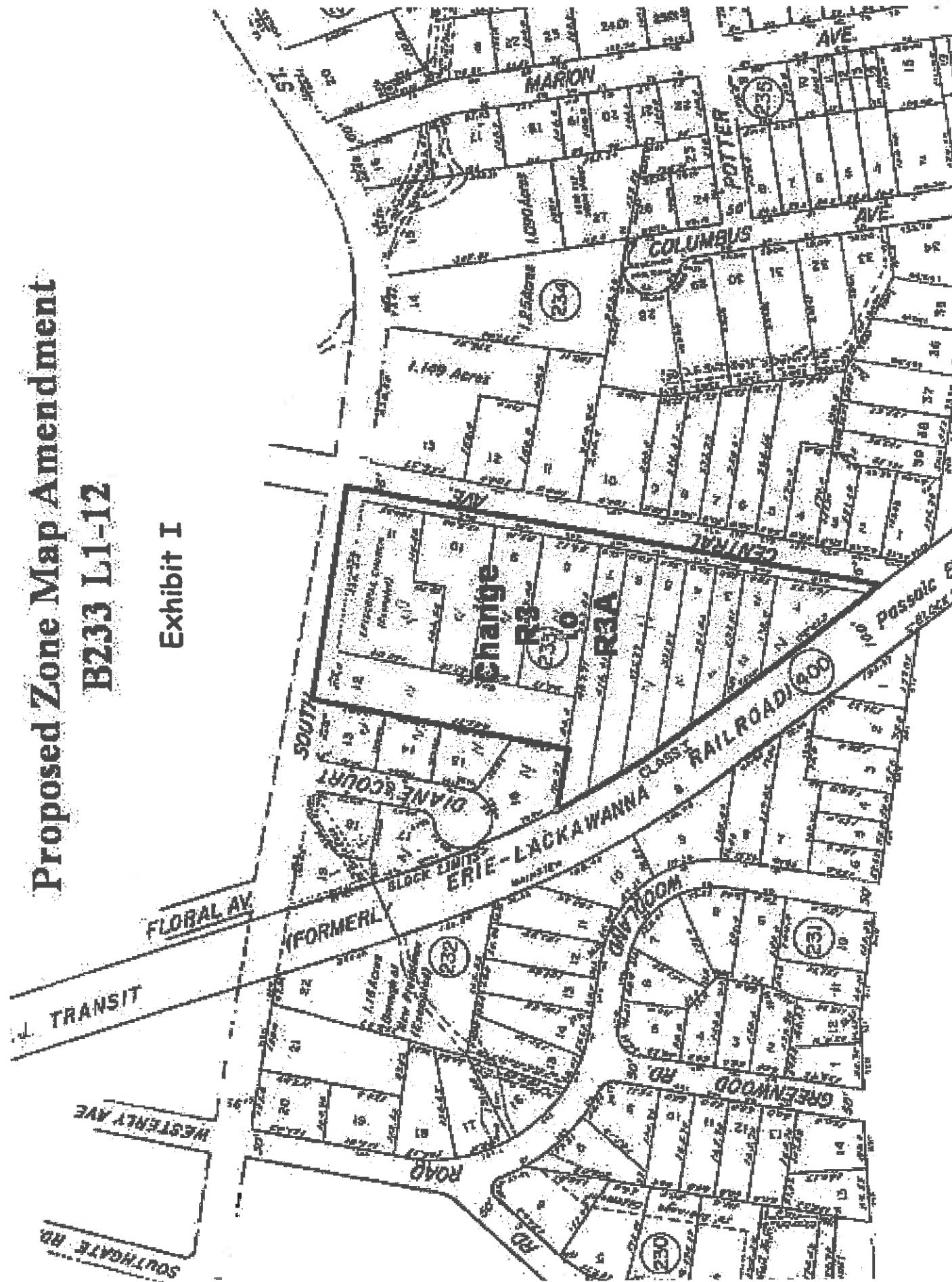
BOROUGH OF NEW PROVIDENCE,
COUNTY OF UNION, STATE OF
NEW JERSEY

By:

Allan Morgan, Mayor

**Proposed Zone Map Amendment
B233 L1-12**

Exhibit I



Borough of New Providence

ORDINANCE 2005-18

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION,
STATE OF NEW JERSEY, ADOPTING LOT GRADING REGULATIONS**

BE IT ORDAINED by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey that the Code of the Borough of New Providence is amended to add Chapter 298, Lot Grading Plans, as follows:

1. CHAPTER 298 - LOT GRADING PLANS.

298-1. *Applicability.* In order to provide against the adverse consequences of uncontrolled surface water drainage, prevent the increase in stormwater runoff from a site and to prevent soil erosion and control sediment deposition associated with land disturbance including but not limited to construction activities, a lot grading plan shall be submitted and approved prior to the issuance of a construction/zoning permit for the following activities:

A. The erection of any new structure, any addition, repair or renovation to an existing structure involving an extension of the foundation of the existing structure, any of which is not shown upon an approved site plan; or

B. Any of the following activities, if not shown upon an approved site plan:

(1) Land disturbance, except for the purposes of turf replacement, of one thousand (1,000) square feet, or greater;

(2) Placement of more than twenty (20) cubic yards of fill, excluding mulching, or

(3) Land disturbance of less than one thousand (1,000) square feet or placement of less than twenty (20) cubic yards of material if the project affects any critical areas, or

(4) Land disturbance within five (5) feet of the property line that impacts drainage.

(5) Removal of more than three (3) trees.

298-2. Waiver.

A. Notwithstanding the foregoing, the Borough Construction Official may grant a waiver from the requirements of this subsection with respect to an addition to a single-family dwelling if the Borough Construction Official determines that the project involves less than one thousand (1,000) square feet of impervious coverage, does not affect any drainage or critical areas, and does not require any significant changes in the existing grading of the lot. Any such determination shall be made upon the basis of the construction plans and such further information as may be requested from the owner of the property by the Borough Construction Official.

298-3. Lot Grading Plan Details. A lot grading plan showing the proposed final grading of the lot shall be reviewed and approved by the Borough Engineer in accordance with the provisions of this subsection and more specifically as follows:

A. The lot grading plan shall be approved by the Borough Engineer prior to the issuance of a construction permit.

B. Upon construction of the foundation, and prior to framing or other further construction, the applicant shall submit an "as-built" foundation survey confirming that the first floor elevation of the building is within the eighteen (18) inches of the first floor elevation as shown on said approved subdivision plat. If the property is not the subject of a grading plan on an approved subdivision plat, the "as-built" foundation survey shall confirm that the first floor elevation is located within eighteen (18) inches of the elevation as shown on the lot grading plan.

C. Following the completion of construction, the owner shall provide an as-built survey of the site for approval by the Borough Engineer.

D. The plan shall be prepared by a professional engineer licensed in New Jersey and shall be drawn to a scale of not less than one (1) inch equals fifty (50) feet, but may be supplemented by a key map of smaller scale, and shall be prepared in sufficient detail to show the following:

(1) The existing surface drainage pattern as it affects the subject property and all abutting land;

(2) The elevation of the street at each limit of the frontage of the subject property and a permanent feature such as a manhole rim or set corner or similar structure;

- (3) The location of any existing streams, watercourses, ponds, storm sewers or drainage facilities which relate to drainage of surface waters from the subject property;
- (4) Any proposed storm sewers, ditches or other drainage facilities which will receive surface waters from the subject property;
- (5) The proposed location of the structure for which a construction permit is being sought;
- (6) The elevation of the finished garage floor, top of foundation, first floor of the structure, and top of finished roof ridge proposed for the subject property, and the proposed lowest elevation within fifteen (15) feet of the proposed structure;
- (7) The proposed location of all roof leader drains, driveways, dry wells, utility lines below ground and any individual sewage disposal system;
- (8) The outer limits of all areas in which any grading or filling is proposed on the subject property;
- (9) Any proposed changes in the existing surface drainage pattern which will result from the construction proposed for the subject property including any proposed changes on abutting lands;
- (10) All existing trees with trunks exceeding four (4) inches in diameter measured at a point four (4) feet above the existing ground level, which trees are

located within the outer limits of the areas mentioned in paragraph (h) above as well as within ten (10) feet of the outer limits of any such areas.

- (11) Topography reflecting contours at two (2) foot intervals.
- (12) Top of wall and toe of wall elevations of all proposed retaining walls shall be clearly delineated at regular intervals on the plan.

298-4. Fees. Three (3) copies of each required lot grading plan shall be filed with the Borough Construction Official, together with an application fee as determined below:

- A. Four hundred (\$400.00) dollars for a lot grading plan.
- B. An additional application fee of \$50.00 must be submitted for each substantively revised plan as determined by the Borough Engineer.
- C. An escrow fee of \$500.00 shall be posted with the Borough to cover the inspections of the property by the Borough Engineer for purposes of determining compliance with the approved plan. At a minimum three (3) inspections will be performed; one (1) prior to construction; one (1) during construction; one (1) after the completion of construction.

298-5. Review by Borough Engineer. The lot grading plan shall be filed with the Construction Official and shall be reviewed by the Zoning Officer for zoning compliance. Upon the filing of a lot grading plan, the receipt of the required fee, and completion of Zoning Officer review, the Borough Construction Official shall submit one (1) copy of the plan to the Borough Engineer.

298-6. *Standards for Approval.* The Borough Engineer shall not approve a lot grading plan or revised plan unless he determines that the plan is designed to control surface waters in a manner that will minimize the adverse effects of such waters upon the subject property and abutting lands. In addition, a lot grading plan shall not be approved unless the following conditions are met:

- A. Driveway grades shall not exceed fifteen (15%) percent, except that under unusual conditions and for short distances the Borough Engineer may approve grades not exceeding eighteen (18%) percent, provided the average centerline grade of the driveway does not exceed fifteen (15%) percent.
- B. There shall be no change in existing grade that raises the elevation of the lot within five (5) feet of a property line. Furthermore, there shall be no change in existing grade, which raises any portion of the lot within fifteen (15) feet of a property line to an elevation that is more than four (4) feet above the existing ground level at the property line. Any new grade shall be at an even slope with the toe of the slope at the ground level which exists at five (5) feet inside the property line, provided, however, that, when necessary, swales shall be created in order to control surface waters in a manner that will protect abutting lands. Retaining walls shall not exceed six (6) feet in height provided that for each six (6) inches in height above the pre- or post- construction grade at the toe of the wall, a retaining wall shall be set back one (1) foot from the property line to which it is adjacent. Distances from property lines shall be measured at right angles to straight portions and radial to curved portions.

C. Grades steeper than 1 (vertical) to 3 (horizontal) should be avoided.

In cases where these grades are unavoidable, provisions for soil stabilization, access and maintenance of those areas must be provided to the Borough Engineer for approval.

D. An area of at least ten (10) feet in width around the foundation of any building shall be graded downward, away from the foundation, in accordance with the requirements of the New Jersey Uniform Construction Code.

E. Roof runoff from any roofed area shall be in accordance with the New Jersey Uniform Construction Code.

F. Dry wells, or other infiltration facilities acceptable to the Borough Engineer, are required for all new structures and for additions to structures involving a roof area greater than one thousand (1,000) square feet and/or a total of one thousand (1,000) square feet of additional impervious cover. The design of the infiltration facilities must, at a minimum, be for three (3) inches of rainfall over the area of the roof of the new structure or addition to a structure. Design of these facilities must be based on appropriate site specific tests certified by the applicant's engineer and submitted and approved by the Borough Engineer. Should site specific conditions obviate the use of infiltration facilities, an alternative means, acceptable to the Borough Engineer, for management of stormwater runoff must be provided.

G. If the lot grading plan contains a structural retaining wall, a copy of the structural calculations, signed and sealed by an engineer or architect licensed in the State of New Jersey shall accompany the plans.

298-7. *Temporary Measures.* Whenever the Borough Engineer considers it necessary or appropriate, he may require that a lot grading plan include temporary measures to be taken during the performance of any construction work to prevent adverse effects upon abutting lands.

298-8. *Violations.* The failure of an owner of property to comply with an approved lot grading plan for such property, including any temporary measures to be taken during the performance of construction work, shall subject the owner to a maximum fine of \$500.00 per violation.

298-9. *Soil Erosion and Sediment Control Standards.* The project shall be designed in accordance with the New Jersey Soil Erosion and Sediment Control Standards.

298-10. *Escrow to Complete Work.* Notwithstanding any other provision of this chapter, the Zoning Officer may issue an occupancy/zoning permit prior to full compliance with a lot grading plan if the Zoning Officer received written evidence of the existence of a cash escrow deposit in the amount of the estimated cost effecting full compliance with the plan as determined by the Borough Engineer, and if the Zoning Officer receives a written statement from any contract-purchaser requesting the issuance of a certificate of occupancy pursuant to the provisions of this section.

If a certificate of occupancy is issued for a property prior to full compliance with a lot grading plan and full compliance is not effected by the date set forth in the report of the Borough Engineer, then continued occupancy of such property after such date shall constitute a use of such property in violation of this chapter.

298-11. *Inspections.* Neither an occupancy/zoning permit nor a certificate of occupancy shall be issued until the Borough Engineer certifies in writing that the property conforms to the lot grading plan. The Borough Engineer shall make and inspection and issue a report within five (5) days after notification from the Construction Official of an application for a certificate of occupancy.

298-12. *Additional Inspections.* In the event that more than two (2) inspections of a property are required to be made by the Borough Engineer either by reason of a provision for temporary measures to prevent adverse effects upon abutting lands or by reason of a failure to comply with an approved lot grading plan, then the owner of the property shall pay to the Borough an inspection fee for each additional inspection which fee shall be calculated in accordance with the schedule of inspection fees established and from time to time amended by the Borough Council pursuant to the provisions of the Zoning Ordinance of the Borough. All fees for any such additional inspections shall be paid to the Borough prior to the issuance of a certificate of occupancy for the new structure or addition.

2. This ordinance shall take effect in accordance with law.

Introduced: November 7, 2005
Adopted: November 21, 2005

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION

Allen Morgan, Mayor

Attest:

Wendi B. Barry, Borough Clerk

**Borough of New Providence
ORDINANCE 2005-20**

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION,
STATE OF NEW JERSEY AMENDING THE ZONING ORDINANCE AS RESPECTS
STEEP SLOPES**

BE IT ORDAINED by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey that the Zoning Ordinance of the Borough is amended to add the following section regulating steep slopes:

1. Section 310-37 (Steep Slopes) is hereby added to read as follows:

§310-37. Steep Slopes.

According to the Soil Conservation Service, United States Department of Agriculture, soils with a slope of fifteen (15%) percent or greater invariably involve severe limitations to development, including but not limited to building and road construction and septic effluent disposal. Moreover, it is found that the removal of vegetation and disturbance of soils in steep slopes by excavation and fill will increase runoff and result in soil erosion and siltation with the resultant pollution of streams as well as the potential danger of flooding and water drainage, thereby having the potential of endangering public and private property and life; and that this condition is aggravated by soil disturbance, construction and development of these slopes which create an additional hazard to the lives and property of those dwelling on the slopes and below them.

Accordingly, it has been determined that a major objective of the Borough's zoning regulations should be the protection of areas of steep slopes. To this end, the following requirements and limitations are established:

- a. *Limits on Disturbance.*

1. Slopes of twenty-five (25%) percent or greater shall remain undisturbed, except that any applicant shall be permitted to disturb slopes of greater than twenty-five (25%) percent in accordance with the following:
 - (a) Each application is permitted to have a disturbance of slopes greater than twenty-five (25%) percent, not to exceed one (1%) percent of the slope area in excess of twenty-five (25%) percent or ten thousand (10,000) square feet whichever is less, except that
 - (b) Notwithstanding paragraph (a) above, each application is permitted to disturb slopes of greater than twenty-five (25%) percent up to five hundred (500) square feet in total area.
2. Not more than twenty (20%) percent of slopes ranging from twenty (20%) percent to twenty-five (25%) percent shall be disturbed and the area of disturbance of such slope area shall not exceed five (5%) percent of the total lot area.
3. Not more than thirty (30%) percent of slopes ranging from fifteen (15%) percent to twenty (20%) percent shall be disturbed and the area of disturbance of such slope area shall not exceed ten (10%) percent of the total lot area.

2. This ordinance shall take effect immediately upon adoption and publication according to law.

Introduced: November 21, 2005
Adopted: December 19, 2005

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION

Allen Morgan, Mayor

Attest:

Wendi B. Barry, Borough Clerk

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2005-23**

**"AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION,
STATE OF NEW JERSEY, ADDING THE DEFINITION OF CRITICAL AREAS TO THE
LOT GRADING ORDINANCE"**

BE IT ORDAINED by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey that the Code of the Borough of New Providence is amended to add Section 298-13, Definitions, to Chapter 298, Lot Grading Plans, as follows:

1. 298-13. Definitions.

Critical Area shall mean an area consisting of wetlands, flood hazard areas, areas of shallow water table soils, recharge soils or steep slopes.

2. This ordinance shall take effect in accordance with law.

Introduced: December 5, 2005

Adopted: December 19, 2005

**BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY**

**Allen Morgan
Mayor**

Attest:

Wendi B. Barry
Borough Clerk

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2006-10**

**"AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION,
STATE OF NEW JERSEY, AMENDING ZONING ORDINANCE BY REVISING FLOOR
AREA RATIO FOR RESIDENTIAL DEVELOPMENT"**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey as follows:

SECTION I. Section 310-10 of Article IV of Chapter 310 of the Code of the Borough of New Providence entitled "Schedules" is amended as follows:

Amend Floor Area Ratio (FAR) table at end of the Schedule III to read as follows:

Floor Area Ratio (FAR) Standard for the R1, R2, R2A, R3, R3A, R4, and OR Zones.

The maximum permitted floor area for residential use by lot size shall be as follows:

Lot Size	FAR
4,999 sq ft and under	0.275
5,000-5,999 sq ft	0.275
6,000-6,999 sq ft	0.271
7,000-7,999 sq ft	0.267
8,000-8,999 sq ft	0.263
9,000-9,999 sq ft	0.260
10,000-10,999 sq ft	0.256
11,000-11,999 sq ft	0.252
12,000-12,999 sq ft	0.248
13,000-13,999 sq ft	0.244
14,000-14,999 sq ft	0.240
15,000-15,999 sq ft	0.237
16,000-16,999 sq ft	0.233
17,000-17,999 sq ft	0.229
18,000-18,999 sq ft	0.225
19,000-19,999 sq ft	0.220
20,000-20,999 sq ft	0.215
21,000-21,999 sq ft	0.210
22,000-22,999 sq ft	0.205
23,000-23,999 sq ft	0.201

Lot Size	FAR
24,000-24,999 sq ft	0.197
25,000-25,999 sq ft	0.193
26,000-26,999 sq ft	0.189
27,000-27,999 sq ft	0.184
28,000-28,999 sq ft	0.180
29,000-29,999 sq ft	0.176
30,000-30,999 sq ft	0.171
31,000-31,999 sq ft	0.166
32,000-32,999 sq ft	0.162
33,000-33,999 sq ft	0.158
34,000-34,999 sq ft	0.154
35,000-35,999 sq ft	0.150
36,000-36,999 sq ft	0.146
37,000-37,999 sq ft	0.142
38,000-38,999 sq ft	0.139
39,000-39,999 sq ft	0.136
40,000-40,999 sq ft	0.133
41,000-41,999 sq ft	0.130
42,000-42,999 sq ft	0.127
43,000 sq ft and over	0.125

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2006-13**

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION,
STATE OF NEW JERSEY AMENDING THE ZONING ORDINANCE AS RESPECTS
FLOOR AREA RATIOS (FAR) IN THE R4 AND OR DISTRICTS**

BE IT ORDAINED by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey as follows:

SECTION 1. Ordinance 2004-5 is hereby repealed in its entirety.

SECTION 2. Section 310-10, Schedule III, Coverage and Living Area

Requirements, of Chapter 310 (Zoning) of the Code of the Borough of New Providence is hereby amended to modify the subsection at the end of Schedule III, added pursuant to Ordinance 2005-9 and modified by Ordinance 2006-10, to read as follows:

**Floor Area Ratio (FAR) Standard for the R1, R2, R2A, R3, R4 and OR
Districts.**

The maximum permitted floor area for residential use by lot size shall be as set forth in the schedule below. FAR requirements shall not apply to multifamily residential use (3 or more units) in the R4 Districts. The FAR requirements for the OR District shall be 0.35.

Lot Size	FAR
4,999 sq ft and under	0.275
5,000-5,999 sq ft	0.275
6,000-6,999 sq ft	0.271
7,000-7,999 sq ft	0.267
8,000-8,999 sq ft	0.263
9,000-9,999 sq ft	0.260
10,000-10,999 sq ft	0.256
11,000-11,999 sq ft	0.252
12,000-12,999 sq ft	0.248
13,000-13,999 sq ft	0.244
14,000-14,999 sq ft	0.240
15,000-15,999 sq ft	0.237
16,000-16,999 sq ft	0.233
17,000-17,999 sq ft	0.229
18,000-18,999 sq ft	0.225
19,000-19,999 sq ft	0.220
20,000-20,999 sq ft	0.215
21,000-21,999 sq ft	0.210
22,000-22,999 sq ft	0.205
23,000-23,999 sq ft	0.201

Lot Size	FAR
24,000-24,999 sq ft	0.197
25,000-25,999 sq ft	0.193
26,000-26,999 sq ft	0.189
27,000-27,999 sq ft	0.184
28,000-28,999 sq ft	0.180
29,000-29,999 sq ft	0.176
30,000-30,999 sq ft	0.171
31,000-31,999 sq ft	0.166
32,000-32,999 sq ft	0.162
33,000-33,999 sq ft	0.158
34,000-34,999 sq ft	0.154
35,000-35,999 sq ft	0.150
36,000-36,999 sq ft	0.146
37,000-37,999 sq ft	0.142
38,000-38,999 sq ft	0.139
39,000-39,999 sq ft	0.136
40,000-40,999 sq ft	0.133
41,000-41,999 sq ft	0.130
42,000-42,999 sq ft	0.127
43,000 sq ft and over	0.125

SECTION 3. Each clause, section or subsection of this ordinance shall be deemed a separate provision so that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION 4. All ordinances or parts thereof inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 5. This ordinance shall take effect immediately upon adoption and publication according to law.

Introduced: June 12, 2006

Amended: August 21, 2006

Adopted: September 5, 2006

BOROUGH OF NEW PROVIDENCE
ORDINANCE 2006-17

**"AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE COUNTY OF UNION,
STATE OF NEW JERSEY, AMENDING CHAPTER 281 OF THE CODE OF THE
BOROUGH 'FLOOD DAMAGE PREVENTION'"**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey as follows:

SECTION 1. Section 5 B of Chapter 281 of the Code of the Borough of New Providence entitled "Definitions and Word Usage" is amended to read as follows:

BREAKAWAY WALL — A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

Section 2. Section 7 of Chapter 281 of the Code of the Borough of New Providence entitled "Basis for establishing areas of special flood hazard" is amended to read as follows:

~~The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the Borough of New Providence" dated December 20, 2001, with accompanying Flood Insurance Rate Maps is hereby adopted by reference and declared to be a part of this chapter. The Flood Insurance Study is on file in the office of the Borough Clerk, Municipal Center, 360 Elkwood Avenue, New Providence, New Jersey.~~

General Provisions

LANDS TO WHICH THIS ORDINANCE APPLIES — This ordinance shall apply to all areas of special flood hazards within the jurisdiction of New Providence, Union County, New Jersey.

BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD — The areas of special flood hazard for the Borough of New Providence, Community No. 345306, are defined on the following documents prepared by the Federal Emergency Management Agency:

- (a) A scientific and engineering report "Flood Insurance Study, Union County, New Jersey (All Jurisdictions)" dated September 20, 2006.

(b) Flood Insurance Rate Map for Union County, New Jersey (All Jurisdictions) as shown on Index and panel numbers 0007, 0008, 0017, 0018; whose effective date is September 20, 2006.

The above documents are hereby adopted and declared to be part of this ordinance. The Flood Insurance Study and maps are on file at 360 Elkwood Ave., New Providence, N.J. 07974

Section 3. Section 14 of Chapter 281 of the Code of the Borough of New Providence entitled "Duties and responsibilities of Borough Construction Official" is amended to read as follows:

Duties of the Borough Construction Official shall include, but not be limited to:

B. Use of other base flood and floodway data. When base flood elevation and floodway data has not been provided in accordance with § 281-7, Basis for establishing areas of special flood hazard, the Borough Construction Official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer § 281-17A, Residential Construction, and § 281-17B, Nonresidential construction.

Section 3. Section 15 of Chapter 281 of the Code of the Borough of New Providence entitled "Variance Procedure" is amended to read as follows:

B. Conditions for variances.

(1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in Subsection A(4)(a) through (k) have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.

Section 4. Section 17 B. (4) of Chapter 281 of the Code of the Borough of New Providence entitled "Specific Standards" is amended to read as follows:

B. (4) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall be provided to the Borough Construction Official as set forth in § 281-14 (2).

Section 4. Section 17 C. (1) of Chapter 281 of the Code of the Borough of New Providence entitled "Specific Standards, Manufactured homes." is amended to read as follows:

C. (1) Manufactured homes shall be anchored in accordance with § 281-16 (2).

Introduced: July 24, 2006

Adopted: August 7, 2006

BOROUGH OF NEW PROVIDENCE
ORDINANCE 2006-21

**"AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE COUNTY OF UNION,
STATE OF NEW JERSEY, AMENDING CHAPTER 310 OF THE CODE OF THE
BOROUGH 'ZONING ORDINANCE'"**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey as follows:

SECTION 1. Article II, Section 6 Chapter 310 of the Code of the Borough of New Providence entitled "Definitions" is amended to read as follows:

HOUSING OFFICER — ~~The employee, consultant, authority or government or other agency charged by the Borough Council with the responsibility of administering the Affordable Housing Program of the Borough.~~

MUNICIPAL HOUSING LIAISON - the employee charged by the Governing Body with the responsibility for oversight and administration of the affordable housing program for the Borough of New Providence.

ADMINISTRATIVE AGENT - the entity responsible for administering the affordability controls of some or all units in the affordable housing program for the Borough of New Providence to ensure that the restricted units under administration are affirmatively marketed and sold or rented, as applicable, only to low and moderate income households.

Section 2. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as to the extent of such inconsistency.

Section 3. This ordinance shall take effect immediately upon adoption and publication according to law.

Introduced: September 11, 2006
Adopted: November 6, 2006

BOROUGH OF NEW PROVIDENCE
STATE OF NEW JERSEY
COUNTY OF UNION

Allen Morgan, Mayor

Attest:

Wendi B. Barry, Borough Clerk

BOROUGH OF NEW PROVIDENCE
ORDINANCE 2007-04

**"AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION,
STATE OF NEW JERSEY, AMENDING ZONING ORDINANCE BY AMENDING
SCHEDULE I — PERMITTED USES IN THE RL AND LI DISTRICTS"**

BE IT ORDAINED by the Mayor and Borough council of the Borough of New Providence, County of Union and State of New Jersey as follows:

SECTION I. Schedule I of Section §310-10 of Article IV of the Code of the Borough of New Providence entitled "Schedule I — Permitted Uses" is amended as follows:

SECTION II.

RL District: Research Laboratory District

Principal permitted uses	Laboratories devoted to research, design or experimentation with fabrication incidental thereto Medical and diagnostic laboratories Commercial, corporate and professional office uses
Permitted accessory uses	Public and private parking and loading Signs Commercial earth terminals Personal earth terminals
Conditional uses	None

LI District: Light Industrial District

Principal permitted uses:	RL permitted uses Manufacturing, processing, producing or fabricating operations which are not productive of injurious or offensive noise, fumes, smoke, odor, sewage effluent or vibrations nor are detrimental to health, safety or property
Permitted accessory uses:	Public and private loading and parking Signs Commercial earth terminals Personal earth terminals

Conditional uses:

Pumping stations and other public and quasi-public uses of this nature
Educational uses
Wireless telecommunication technology

SECTION III. Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION IV. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as to the extent of such inconsistency.

SECTION VI. This ordinance shall take effect immediately upon adoption and publication according to law.

Introduction: February 5, 2007
Public Hearing: February 26, 2007
Adopted: February 26, 2007

BOROUGH OF NEW PROVIDENCE
ORDINANCE 2007-16

"AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 310 OF THE CODE
OF THE BOROUGH OF NEW PROVIDENCE ENTITLED "WIRELESS
TELECOMMUNICATIONS TECHNOLOGY"

BE IT ORDAINED by the Mayor and Borough council of the Borough of New Providence, County of Union and State of New Jersey as follows:

SECTION I. Section §310-47.1 of Article VI of the Code of the Borough of New Providence entitled "Conditional Uses" is amended as follows:

B. General requirements for WT technology.

- (1) **Siting preferences.** Pursuant to the needs analysis required by Subsection E below, an application to install, construct, erect, move, reconstruct or modify any WT antenna shall be subject to siting preferences as follows:
 - (a) If the analysis demonstrates that it is reasonably necessary to install, construct, erect, move, reconstruct or modify a WT antenna within the Borough of New Providence, then, subject to all other permitted conditional use standards, the proposed WT antenna may be located upon an existing building or other structure in a location within the Light Industrial Zone that is uniquely suited to the demonstrated need for service.
 - (b) If the analysis demonstrates that it is not reasonably practicable to install, construct, erect, move, reconstruct, or modify the proposed WT antenna upon an existing building or structure in a location within the Light Industrial Zone that is uniquely suited to the demonstrated need for service, then, subject to all other permitted conditional use standards, the proposed WT antenna may be located or collocated upon an existing WT tower in a location within the Light Industrial Zone that is uniquely suited to the demonstrated need for service.

(c) If the analysis demonstrates that it is not reasonably practicable to install, construct, erect, move, reconstruct and/or modify the proposed WT antenna upon an existing WT tower in a location within the Light Industrial Zone that is uniquely suited to the demonstrated need for service, then, subject to all other permitted conditional use standards, the proposed WT antenna may be located or collocated upon a new WT tower to be constructed in a location within the Light Industrial Zone that is uniquely suited to the demonstrated need for service.

E. Applications requirements for conditional use permits for WT technology. In addition to submission of all applications required by this Chapter 310, Zoning, all applicants for a conditional use permit for the installation, constructing, erection, movement, reconstruction, or modification of any WT technology shall submit the following:

(1) Needs analysis. As used in this ordinance, the term "Significant Gap" shall mean a quality of voice service, exclusive of additional features and services that may be offered by carriers in addition to voice cellular telephone service, that is sufficiently poor as to prevent access to the national telephone network, and which affects a significant number of users. The term "Significant Gap" shall not mean a level of coverage that is merely comprised of de minimis "dead spots" in coverage within a larger service area. No cell tower shall be erected any where in the Borough of New Providence unless a proposed cell tower is necessary to close a Significant Gap in coverage, as defined herein. The needs analysis shall contain documentary evidence and expert testimony demonstrating by clear and convincing evidence that there exists a Significant Gap in the ability of remote users to access the national telephone network, and that the proposed installation, construction, erection, movement, reconstruction or modification of any WT technology within the Borough is uniquely suited to said

demonstrated need for service. This evidence shall include, at a minimum:

- (a) The WT service provider's wireless telecommunications network layout and coverage area for a radius of at least 4 miles from the Light Industrial Zone, identifying all locations:
 - [1] In operation as of the filing date of the conditional use permit application; and
 - [2] Under construction as of the filing date of the conditional use permit application; and
 - [3] Pending approval before any licensing authority as of the filing date of the conditional use permit application.
- (b) All results and, to the extent requested by the land use board having jurisdiction, supporting data derived from tests which must be conducted to determine before and after signal strength plots.

These results and data:

- [1] Shall demonstrate the actual existing signal coverage in effect at the time of application, and the Significant Gap in coverage needed to provide remote users access to the national telephone network contrasted with the proposed signal coverage which would result from the proposed installation, construction, erection, movement reconstruction, or modification of WT technology within the Borough of New Providence; and
- [2] Shall be certified by an independent, licensed, professional engineer, qualified and experienced in the design of cellular communications systems, utilizing radio frequencies, hereinafter "A Radio Frequency Engineer". The borough reserves the right to retain a Radio Frequency Engineer on its own behalf at the applicant's expense to review the results or data submitted by the applicant.

(c) A search ring of the Light Industrial Zone prepared by a licensed professional radio frequency engineer and overlaid on an

appropriate background map demonstrating the area within the Light Industrial Zone where the WT technology needs to be located in order to provide reasonably necessary signal strength required to close the claimed Significant Gap in coverage needed to provide remote users access to the national telephone network, within the target cell.

(d) In connection with the signal strength plots and search ring described above, the applicant must provide a report prepared by a qualified independent professional engineer which explains why the proposed location was selected and which specifically addresses, at a minimum:

- [1] If the applicant proposes to install, construct, erect move, reconstruct or modify a WT antenna upon an existing structure or building, why it is reasonably necessary to locate that WT antenna within the Borough of New Providence to close the Significant Gap in coverage needed to provide remote users access to the national telephone network;
- [2] If the applicant proposes to install, construct, erect, move, reconstruct or modify a WT antenna upon an existing WT tower:
 - [a] Why it is reasonably necessary to locate that WT antenna within the Borough of New Providence to close the Significant Gap in coverage needed to provide remote users access to the national telephone network; and
 - [b] Why it is not reasonably practicable to locate or collocate that WT antenna upon an existing building or structure within the Light Industrial Zone; and
- [3] If the applicant proposes to install, construct, erect, move, reconstruct and/or modify a WT antenna upon a WT tower:
 - [a] Why it is reasonably necessary to locate that WT antenna within the Borough of New Providence to close

the Significant Gap in coverage needed to provide remote users access to the national telephone network;

- [b] Why it is reasonably practicable to locate or collocate that WT antenna upon an existing building or structure within the Light Industrial Zone; and
- [c] Why it is not reasonably practicable to locate or collocate that WT antenna upon an existing WT tower within the Light Industrial Zone.

Introduction: June 11, 2007
Public Hearing: June 25, 2007
Adopted: June 25, 2007

Borough of New Providence
Ordinance No. 2008-22

"An Ordinance For the Establishment of Definitions and Creating Standards for Site lighting"

WHEREAS, the Governing Body of the Borough of New Providence is dedicated to improving and preserving the appearance of the Borough for the betterment of the community;

WHEREAS, this ordinance and standards established herein are intended to encourage reasonable outdoor lighting to provide nighttime safety, security, and enjoyment while preserving the setting of the night. The purpose is to enhance the nighttime environment and:

- 1) Provide lighting in outdoor public places where public health, safety, and welfare are potential concerns.
- 2) Protect drivers and pedestrians from the glare of non-vehicular light sources that shine into their eyes and thereby impair safe traverse.
- 3) Protect neighbors and the night sky from nuisance glare and stray light from poorly aimed, placed, applied, or shielded light sources.
- 4) Promote energy conservation through efficient lighting design.
- 5) Promote efficiencies by limiting the amount of lighting equipment and subsequent maintenance costs.

WHEREAS, the Borough has reviewed existing Code provisions for the Borough of New Providence, with regard to existing conditions.

NOW, WHEREFORE, IT IS HEREBY ORDAINED by the Governing Body of the Borough of New Providence as follows:

Definitions:

IESNA shall refer to The Illuminating Engineering Society of North America.

Sky Glow is light resulting from dust, water vapor, and other particles reflecting and scattering stray and reflected light that is emitted into the atmosphere (IESNA).

Light Trespass is any form of artificial luminance emanating from a light fixture or illuminated sign that penetrates other property and creates a nuisance. It may be caused by unwanted light onto adjacent properties or excessive brightness in the normal field of vision.

Glare is the sensation produced by luminance within the visual field that are sufficiently greater than the luminance to which the eyes are adapted, which causes annoyance, discomfort, or loss in visual performance and visibility.

Footcandle is a measurement of luminance equal to 1 lumen per square foot.

Trespass Lighting is any illumination at the property line exceeding the required horizontal or vertical footcandle requirements; and any light emanating from a fixture which is so positioned or aimed as to produce objectionable glare on any adjacent property;

Nadir is the angle pointing directly downward from a luminary, or 0 degrees.

Horizontal luminance is the amount of light striking a horizontal plane.

Full cut-off means the preventing all upward transmission of light.

Vertical luminance is the amount of light striking a vertical plane.

Lumens are a measurement of brightness of the illumination exiting a bulb.

Light Fixture on Luminary is a complete lighting unit consisting of a lamp or lamps and/or ballast or ballasts, together with the parts designed to distribute the light, to position and protect the lamps, and to connect the lamps to a supply of power.

Light is radiant energy that is capable of exciting the retina and producing a visual sensation.

Light Source is a bulb together with a lens, diffuser, or reflective enclosure.

Visibility is the quality or state of being perceptible by the eye.

§305-11. LIGHTING

Existing §305-11-C in Chapter 305 entitled "Subdivision and Site Plan Review" and entitled "Lighting" and Section 310-20E-2(a) of Article V shall be stricken and replaced by the following:

A. Lighting. Purpose and Intent.

Light pollution contributes to glowing skies and is caused by light aimed up at the sky or by light reflected by the ground or objects.

Except as otherwise provided herein, commercial and recreational lighting shall comport to the standards of the Illuminating Engineering Society of North

America.

No lighting shall shine directly into or reflect into windows or into streets and driveways in such a manner as to interfere with driver vision and negatively impact the public health or safety. The ordinance is intended to encourage reasonable outdoor lighting providing nighttime safety, security, and enjoyment while preserving the setting of the night. The purpose is to enhance the nighttime environment and:

- 1) Provide lighting in outdoor public places where public health, safety, and welfare are potential concerns..
- 2) Protect drivers and pedestrians from the glare of non-vehicular light sources that shine into their eyes and thereby impair safe traverse.
- 3) Protect neighbors and the night sky from nuisance glare and stray light from poorly aimed, placed, applied, or shielded light sources.
- 4) Promote conservation through efficient lighting design.

B. Applicability. Outdoor lighting shall be required for safety and personal security in areas of public assembly and traverse; including but not limited to the following: commercial, industrial, public-recreational, and institutional uses. The board may require lighting be incorporated for other uses or locations, as they deem necessary. The glare-control requirements herein contained apply to lighting in all above mentioned uses as well as, but not limited to, sign, architectural, and landscape.

C. Criteria. Illumination Levels except as specifically stated herein, lighting, where required by this Ordinance shall have intensities and uniformity ratios in accordance with the current recommended practices of the Illuminating Engineering Society of North America (IESNA) as contained in the IESNA Lighting Handbook 9th Edition, as amended. Future amendments to aforementioned recommended practices shall become a part of this Ordinance without further action by the Borough.

D. Luminance Requirements

General Parking and Pedestrian Areas		
Level of Activity	Footcandles (min)	Max Uniformity Ratio (Average: Minimum)
High	1.0	4:1
Low	0.5	4:1
Vehicular Use Areas		
High	2.0	3:1
Low	1.0	4:1

NOTES:

1. Maximum illumination level at property line. The level of illumination shall

not exceed 0.5 footcandles at any property line abutting a property used by or zoned for commercial use, and 0.1 footcandles at any property line abutting a property used by or zoned for residential use.

2. Although the footcandles are stated as minimum illumination levels at any point, the average illumination levels shall also not greatly exceed the levels resulting from applying the maximum uniformity ratio to the minimum illumination level. For example, if the minimum illumination level at any point is 0.6 footcandles, and the maximum uniformity ratio is 4:1, the average illumination level for the area shall not greatly exceed 2.4 footcandles ($0.6 \times 4 = 2.4$).
3. For all commercial properties or recreational fields any proposed lighting design must indicate no hot spots on the property.

E. **Fixture Design. Control of Nuisance and Disabling Glare.** All outdoor lighting, whether or not required by this Ordinance; on commercial, industrial, municipal, recreational, or institutional property; shall be aimed, located, designed, fitted, and maintained so as not to present a disabling glare hazard to drivers or pedestrians, or a nuisance glare concern to neighboring properties.

F. Directional fixtures installed on commercial properties and recreational facilities, such as flood lights and spot lights, shall be installed or aimed at an angle no higher than forty-five (45) degrees above straight down (half-way between straight down and straight to the side) so that they do not shine directly into the window of a neighboring building, directly into a roadway, or skyward. In no case shall these lights extend above the lowest eave line. These lighting fixtures shall be full-cutoff lighting fixtures.

G. Unless otherwise permitted or required by the Planning Board, all commercial outdoor lighting shall be controlled by automatic switching devices such as timers, motion detectors, and/or photocells, to extinguish offending sources between 11:00 p.m. to dawn, to mitigate glare and sky-lighting consequences. However in areas where security is a concern, lighting may be maintained throughout the night, with the understanding that the intensity of the illumination level be reduced during that timeframe of operation.

H. Vegetation screens shall not be employed to serve as the primary means for controlling glare. Rather, such control shall be achieved primarily through the use of sharp cut-off fixtures, the appropriate application of mounting height, wattage, aiming angle, fixture placement, and fixture design, etc. and the additions of shields and baffles as necessary.

I. Externally illuminated signs are preferred to be lighted by fixtures mounted at the top of the sign and aimed down rather than by fixtures mounted at the bottom of

the sign and aimed up, however in such cases where it may be necessary for up lighted fixtures, they shall conform to the standards of 6(b) below. Site lighting shall not include any unlighted fixture, except light fixtures used to illuminate the State or the National flag mounted on a pole, pedestal or platform shall use a narrow column beam of light that will not extend beyond the maximum extensions of the illuminated object.

J. Exceptions to Control of Glare.

- 1) Luminaries used for public-roadway illuminations should be installed as required by the Police Department and Engineering Department.
- 2) All temporary emergency lighting needed by the Police or Fire Department or other emergency services, as well as all vehicular Light fixtures shall be exempt from the requirements of this article.
- 3) Luminaries used primarily for sign illuminations may be mounted at any height to a maximum of twenty (20) feet or to the top of the sign, whichever is less.

K. Law Governing Conflicts. Where any provision of federal, state, county, or town statutes, codes, or laws conflicts with any provision of this code, the most restrictive shall govern unless otherwise regulated by law.

L. Installation of Commercial Lighting. Lighting fixtures on properties zoned for commercial use shall be mounted at the top of a pole at heights suitable to provide the best overall lighting design, but in no case shall the lights be mounted in excess of twenty-five (25) feet above grade.

- 1) Electrical feeds to lighting standards shall run underground, not overhead.
- 2) Lighting standards in parking areas shall be placed a minimum of five (5) feet outside the paved area, outside where vehicles may conflict with the placement of the fixture. Where the poles are five (5) feet outside the paved area, the base of the fixture shall be flush mounted with the ground.
- 3) Where, due to restrictions in light locations due to inadequate spacing between vehicle areas and light fixtures, lights may be placed on reinforced concrete pedestals at least thirty (30) inches high above the pavement, or by other acceptable protective means. Above ground mounting of light fixtures is not encouraged or desirable. Where due to space limitations, the concrete footing must extend above grade for protection of the poles, they shall be decoratively treated to complement the building materials.
- 4) Maintenance: Lighting fixture's shall be maintained so as to always meet the requirements of this Ordinance.
- 5) Fixture Location and Placement: The following are requirements for placement of street lighting fixtures:

- a) Any/all non-public roads, designed as a major thoroughfare through the proposed development shall have the placement/location of all fixtures designed to meet the same requirements as specified above.
- b) For the purpose of this Ordinance, any non-public road designed and/or used as a main thoroughfare through a land development shall be considered a public road as it pertains to the interpretation of this Ordinance.

6) Outdoor Advertising, Off-Premise Signs and Ground Signs

- a) Lighting fixtures used to illuminate an outdoor advertising sign shall be mounted on the top of the sign structure. All such fixtures shall be full cut-off fixtures.
- b) Bottom-mounted lighting shall be limited to the illumination of signs, and shall be designed or provided with sharp cut-off capability, and shall be restricted and focused so as to minimize up-light, light spillage, and glare. Outdoor advertising signs of the type constructed of translucent materials and wholly illuminated from within do not require shielding.
- c) Compliance Limit. Existing outdoor advertising structures shall be brought into conformance with the Code at the time of a sign upgrade or a change in occupancy.

7) Recreational Facilities.

- a) Any light source permitted by this Code may be used for lighting of outdoor recreational facilities (public or private), such as, but not limited to, football fields, soccer fields, baseball fields, softball fields, tennis courts, or show areas, provided all of the following conditions are met:
- b) For field sports, including but not limited to football, soccer, baseball, track and field, the maximum pole height shall be 80 feet.
- c) All fixtures used for event lighting shall be fully shielded as defined in this code, or be designed or provided with sharp cut-off capability, so as to minimize up-light, spill-light, and glare.
- d) Trespass lighting shall not be more than 0.1 foot-candle at any adjacent residential property line.
- e) All events requiring field lighting shall be scheduled to commence leaving sufficient time to complete all activity before or as near to 10:00 p.m. as practical. Under no circumstances shall any illuminations of a playing field, court, or track be permitted after 11:00 p.m., except to conclude a scheduled event that was in progress before 11:00 p.m. and circumstances prevented concluding before 11:00 p.m., or except for that lighting which

shall be necessary to ensure public safety following the conclusion of an event.

8). Temporary Outdoor Lighting.

- a) Any temporary outdoor lighting that conforms to the requirements of this Ordinance shall be allowed.
- b) Non-conforming temporary lighting, shall not be utilized past 9:00 p.m. or for more than 3 consecutive hours.
- c) Laser Source Light. The use of laser source light or any similar high intensity light for outdoor advertising or entertainment, when projected above the horizontal is permitted, shall be permitted upon receipt of a temporary event zoning permit.
- d) Searchlights. The operation of searchlights for advertising purposes shall be permitted upon receipt of a temporary event zoning permit.
- e) Compliance Monitoring. Safety Hazards. If the Code Enforcement Officer or Borough Engineer judges that a lighting installation creates a safety or personal security hazard, the person(s) responsible for the lighting shall be notified and requested to timely remedial actions.
- f) Temporary lighting used for educational or recreational purposes shall be exempt from the requirements of this Ordinance. Notwithstanding this exemption, temporary lighting used for educational or recreational purposes shall not be utilized past 10:00 p.m. in the months from the first day of June through the last day of August and 9:30 p.m. for the remaining months of the year."

(9) Plan Submission/Commercial Properties and Recreational Facilities

- a) Description of outdoor light fixtures including component specifications such as amps, reflectors, optics, angle of cutoff, supports, poles and include manufacturers catalog cuts.
- b) Locations and description of every outdoor light fixture and hours of operation and foundation details for light poles.
- c) Lighting plans submitted to the municipality for review and approval shall include a layout of the proposed fixture locations; the average footcandles, minimum footcandles, and maximum footcandles, and the minimal illuminance levels for the activity as recommended by the Illuminating Engineering Society of North America (IESNA).
- d) The horizontal illuminance of the site and the vertical light trespass around the site perimeter shall be provided.

- e) All point method lighting plans shall include all canopy, interior and building lights as well as the site lighting proposed.
- f) All site plans are required to provide a point method lighting plan according to light standards and illumination levels stated in this section.
- g) The photometrics plans shall contain a plan identification symbol or abbreviation, fixture type, lamp type, lamp lumens, lamp degree Kelvin, fixture lens height above lowest adjacent finished grade, and total light loss factor utilized.

M. Lighting Impacting Residential Properties.

- 1.) In addition to the forgoing, any lighting source whether residential, commercial or recreational that impacts residential properties, such as directional fixtures, flood lights and spot lights shall be installed or aimed so that they do not shine directly into the window of a neighboring building, directly into a roadway, or skyward.

INTRODUCED: 12-15-2008

PUBLIC HEARING: 12-29-2008

ADOPTED: 12-29-2008

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

John A. Thoms, Mayor

Attest:

Wendi B. Barry
Borough Clerk

BOROUGH OF NEW PROVIDENCE
Ordinance 2009-16

"AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION, STATE OF NEW JERSEY, AMENDING ZONING ORDINANCE"

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey, as follows:

SECTION I. Section 310-31 of Article V of the Code of the Borough of New Providence entitled "Parking And Storage Of Commercial and Recreational Vehicles" is amended, as follows:

§310-31 Parking Restrictions In Residential Zones.

A. No commercially licensed motor vehicle, truck, van, trailer or other equipment shall be parked on a residential property in a residential zone unless completely housed in a garage and sheltered from public view, except as provided hereunder.

B. Commercially licensed automobiles, station wagons, vans and trucks are permitted to park on a residential property, provided that all of the following conditions are satisfied:

(1) Such vehicle shall have a single chassis body with not more than four wheels and shall not be more than 20 feet long and 8 feet high and shall not exceed 10,100 pounds registered gross vehicle weight (GVWR).

(2) Only one commercially licensed vehicle which meets all of the above criteria shall be permitted to park on a residential property.

C. No trailer designed or used for commercial hauling or transporting, shall be regularly parked or stored on, by or in the vicinity of any lot in any residential district.

Nothing herein shall be deemed to prohibit a person from parking a commercially licensed vehicle on residential property while such vehicle is being used in the transaction of business with the owner or occupant of the residential property.

D. Recreational vehicles shall not be parked or stored on a residential property unless all of the following conditions are satisfied:

(1) Recreational vehicles may be parked or stored in a garage located on the premises, provided that such garage completely enclosed the recreational vehicle.

- (2) If stored outside of a garage, such recreational vehicle shall be stored on a parking area which is in addition to such parking spaces as are required in Schedule IV of this chapter. Such vehicle shall be adequately screened from adjacent properties by a fence, wall, gate, door, hedge, trees, other plant material, landscaping or a combination of such items. Such screening shall be subject to all other regulations set forth in this chapter.
- (3) No recreational vehicle shall be parked or stored in the front yard of any residential property.
- (4) Only one recreational vehicle shall be permitted to be parked or stored on a residential property.
- (5) For the purposes of this section, the term "recreational vehicle" shall mean any motor vehicle or trailer primarily designed and used as a travel trailer, camper, motor home, tent trailer, boat, boat trailer, snowmobile, snowmobile trailer or camping trailer or for any other similar purpose.

Introduced: October 12, 2009
Public Hearing: December 14, 2009
Adopted: December 14, 2009

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

John A. Thoms, Mayor

Attest:

Wendi B. Barry
Borough Clerk

BOROUGH OF NEW PROVIDENCE
Ordinance 2010-2

"AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION, STATE OF NEW JERSEY, AMENDING ORDINANCE 2006-1 "CREATING A BUSINESS IMPROVEMENT DISTRICT AND DESIGNATING A DISTRICT MANAGEMENT CORPORATION "

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey, as follows:

SECTION 1. Section 8 of the Code of the Borough of New Providence entitled "Creating A Business Improvement District And Designating A District Management Corporation " is amended, as follows:

SECTION 8. BOARD OF DIRECTORS

The Board of Directors shall include: (1) a member of the Governing Body appointed by the Mayor with the consent of the Borough Council; (2) a member of the Borough Planning Board appointed by the Mayor with the consent of the Borough Council; (3) one resident of the Borough who shall not be an owner or occupant of commercial property within the District, and who shall be appointed by the Mayor with the consent of the Borough Council. Each of the foregoing appointments shall be for a term of one (1) year expiring on December 31 of the year appointed, or until a successor is appointed. The Board of Directors shall include one (1) non-voting member appointed from each of the following organizations:

New Providence Business & Professional Association

The members appointed by these organizations shall serve at the pleasure of the appointing body.

Four (4) members of the Board of Directors shall consist of owners or occupants of commercial property located within the District. The bylaws shall provide for an election to select the members of the Board of Directors from the owners and/or occupants of commercial property included within the District, which election shall be held within three (3) months from the date of the adoption of this ordinance. Said elections will be for a term of four (4) years, except however at the first election, one (1) member shall be elected for one (1) year; one (1) member shall be elected for two (2) years, one (1) member shall be elected for three (3) years, and one (1) member shall be elected for four (4) years. Any vacancies with regard to these elected members shall be filled by a majority vote of the Board members for the balance of the term.

The Board of Directors shall include one (1) non-voting member appointed from each of the following organizations:

New Providence Business & Professional Association

The members appointed by these organizations shall serve at the pleasure of the appointing body.

The Mayor and Borough Council will appoint a Business Improvement District Steering Committee (Steering Committee), consisting of five (5) members, to act until the Board of Directors shall be appointed, and whose members will carry out the duties of forming the non-profit corporation, to include securing corporate and non-profit status and creation of bylaws, formation of a nominating and election committee. The Steering Committee shall not expend or commit any district management corporation funds without a majority vote of the Steering Committee members. The bylaws shall provide for an election to create the Board of Directors by owners and/or occupants of commercial property included within the District, which election shall be held within three (3) months from the date of the adoption of this ordinance.

Introduced: February 22, 2010
Public Hearing: March 8, 2010
Adopted: March 8, 2010

**BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY**

John A. Thoms, Mayor

Attest:

Wendi B. Barry
Borough Clerk

BOROUGH OF NEW PROVIDENCE
ORDINANCE 2010-7

"AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION, STATE OF NEW JERSEY AMENDING THE BOROUGH CODE AT CHAPTER 141, EARTH TERMINAL ANTENNAS, AS RESPECTS PERSONAL EARTH TERMINAL ANTENNAS"

BE IT ORDAINED by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey that Chapter 141, Earth Terminal Antennas, of the Borough Code, is amended as follows:

1. Section 141-9, Exceptions, at subsection B, is hereby amended to read as follows:

§141-6. Exceptions.

- B. The provisions of this chapter shall also not apply to personal earth terminals having a main reflector of one (1) meter or less in diameter; provided, however, that such personal earth terminals shall not be located in the front yard of any property or on the front of any house or structure, unless any other permitted location on the property, as set forth in the standards established in this chapter, precludes reception of an acceptable quality signal.

2. All other provisions of Chapter 141 shall remain in full force and effect.
3. This ordinance shall take effect in accordance with law.

Introduced: June 29, 2010
Public Hearing: July 12, 2010
Adopted: July 12, 2010

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

John A. Thoms, Mayor

Attest:

Wendi B. Barry, Borough Clerk

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2010-9**

"AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION, STATE OF NEW JERSEY, AMENDING ZONING ORDINANCE BY ADOPTING ZONING MAP DATED MARCH 15, 2010"

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey, as follows:

SECTION I. Section 310e of the Code of the Borough of New Providence entitled "Zoning Map" is amended in full, as follows:
Inclusion of Attached Zoning Map dated March 2010

SECTION II. Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION III. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as to the extent of such inconsistency.

SECTION IV. This ordinance shall take effect immediately upon adoption and publication according to law.

INTRODUCTION: July 26, 2010
PUBLIC HEARING: August 23, 2010
ADOPTION: August 23, 2010

**BOROUGH OF NEW PROVIDENCE
STATE OF NEW JERSEY
COUNTY OF UNION**

John A. Thoms, Mayor

Attest:

Wendi B. Barry, Borough Clerk

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2010-17**

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION,
STATE OF NEW JERSEY AMENDING CHAPTER 310, ZONING, OF THE BOROUGH
CODE TO ADD A NEW SECTION TO REGULATE PORTABLE HOME STORAGE
UNITS (PODS)**

BE IT ORDAINED by the Borough Council of the Borough of New Providence, County of Union, New Jersey as follows:

Section 1. Chapter 310, Zoning, Article V, Supplementary Regulations, is hereby amended to add Section 310-25.1, Portable Home Storage Units (PODS), as follows:

- (1) Portable Home Storage Unit (POD) – A portable shed or storage container, storage unit, shed-like container or other portable structure that can or may be used for the storage of personal property of any kind and which is located for such purposes outside an enclosed building other than an accessory structure.
- (2) A portable home storage unit may be placed upon any property only upon the issuance of a permit by the Zoning Officer.
- (3) Permits will be granted for a period of 90 days. At the expiration of the 90-day period, the permittee may seek one extension of the permit for up to an additional 90 days for an additional fee.
- (4) PODS are prohibited from being placed in streets or in front yards of a property. PODS units must be kept in the driveway of the property at the furthest accessible point from the street. All locations must be paved off-street surfaces. In addition to the permit required above, the applicant must obtain pre-approval from the Zoning Officer in the following situations:
 - [a] If the property does not have a driveway.
 - [b] If the location of the unit in the driveway is in the front yard of the property.
 - [c] If the property is a corner lot.
- (5) This ordinance shall be enforced by the Police Department and the Zoning Officer.

Section 2. Chapter 147, Fees and Licenses, of the Borough Code is hereby amended to add Subsection 147-4(11)(i) as follows:

Portable Home Storage Unit (POD) permit: \$25; Portable Home Storage Unit (POD) permit extension: \$25.

Section 3. All other provisions of Chapters 310 and 147 of the Borough Code shall remain unchanged.

Section 4. This ordinance shall take effect as provided by law.

Introduced: September 13, 2010
Public Hearing: September 27, 2010
Adopted: September 27, 2010

**BOROUGH OF NEW PROVIDENCE,
COUNTY OF UNION
STATE OF NEW JERSEY**

John A. Thoms, Mayor

Attest:

Wendi B. Barry, Borough Clerk

**Borough of New Providence
Ordinance 2011-10**

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE TO HELP THE BOROUGH ADDRESS THE POSITIVE AND NEGATIVE IMPACTS OF DEVELOPMENT ON THE COMMUNITY AS WELL AS PROTECT AND ENHANCE THE CHARACTER, ENVIRONMENT, AND CULTURAL HERITAGE OF THE BOROUGH.

BE IT ORDAINED by the governing body of the Borough of New Providence, Union County, New Jersey, that the Zoning Ordinance of the of the Borough of New Providence is hereby amended to include provisions addressing the impact of larger scaled development. This Ordinance is intended to provide the Board of appropriate jurisdiction with appropriate information to determine whether the proposed development will have any negative impact on the existing community. This Ordinance shall apply except where inconsistent with applicable law.

WHEREAS, the Borough has found that information regarding the impact of larger scale development upon the existing community is vital in order to make a determination as to whether or not the proposed development is compatible with existing land uses;

NOW, WHEREFORE, IT IS HEREBY ORDAINED by the Governing Body of the Borough of New Providence as follows:

Community Impact Statement.

Community Impact Statements, when required, shall conform to the following provisions:

- A. When Required.** All applications for major subdivision approval and all applications for major site plan approval shall be accompanied by a community impact statement analyzing the proposed development and its expected impacts upon existing municipal facilities and services. Individual single family homes shall not be required to submit an impact statement. General development plan applications shall be submitted with an abbreviated community impact statement consisting of items B.1 and B.5, below. The community impact statement shall indicate why, in the applicant's opinion, the proposed development is in the public interest as well as providing data and opinions concerning the impacts in subsection B.
- B. Submission Format.** All community impact statements shall consist of written and graphic materials which clearly present the required information addressing the following areas:

- (1) Population impact. An analysis of the number of people expected to be added to the municipal population as a result of the proposed development, including those attracted to the Borough for the number of projected jobs in non-residential development, according to the following age cohorts: children, adults and other information about age cohorts.
- (2) Schools impact. An analysis of the anticipated number of public school students projected to be added and the ability of the existing public school facilities to absorb the additional population projected ten years into the future. The analysis shall provide data on school facility capacity and existing enrollment, cumulative projections of new students, impacts on facilities, support staff and added costs to the school district. Should expanded or new school facilities or increased teaching staff be required, the projected cost for such additions shall be specified.
- (3) Community facilities impact. An analysis of the existing community facilities and infrastructure available to serve the proposed development and its impact on the adequacy of existing public water facilities, public sewerage facilities; recreational facilities; library facilities, and senior services. Should such facilities be determined inadequate to serve the proposed development, the remedies, either expected or proposed by the applicant, shall be indicated along with the estimated costs for such additional facilities.
- (4) Services impact. An analysis of the existing services provided by the municipality to serve the proposed development and the impact of the development upon services, including police protection, fire protection, emergency services, solid waste disposal and street maintenance services.
- (5) Traffic impact. An analysis of the existing road network available to serve the proposed development, as well as the proposed road network within the development itself and the surrounding road network which will be affected by the proposed development, including the capacity of the existing and proposed roadways; the anticipated traffic volumes as a result of the proposed development; the physical structure of both road networks; and any problem areas in the road network affected by the development, including unsafe intersections and vertical or horizontal alignments.
- (6) Fiscal impact. An analysis of the revenues expected to be generated from the development compared to the anticipated costs which the proposed development is expected to generate. Revenues and costs shall be shown for the municipality, the municipal school system and the municipal library system.

(7) Waiver. The Planning Board or Board of Adjustment may waive one or more provisions of this section if deemed not applicable.

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This ordinance shall take effect upon passage and publication as provided by law.

INTRODUCTION: April 11, 2011
PUBLIC HEARING: May 9, 2011
ADOPTION: May 9, 2011

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

J. Brooke Hern, Mayor

Attest:

Wendi B. Barry, Borough Clerk

Borough of New Providence

Ordinance No. 2011-11

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE TO REGULATE OUTDOOR SEATING TO HELP THE BOROUGH CREATE A POSITIVE AND ENJOYABLE ATMOSPHERE FOR THE CITIZENS AND PATRONS OF THE BOROUGH OF NEW PROVIDENCE AS WELL AS PROTECT AND ENHANCE THE CHARACTER, ENVIRONMENT, AND CULTURAL HERITAGE OF THE BOROUGH

BE IT ORDAINED by the governing body of the Borough of New Providence, Union County, New Jersey, that the Zoning Ordinance of the of the Borough of New Providence is hereby amended to include provisions for outdoor seating at local food and eating establishments.

WHEREAS, the Borough has found that regulating outdoor seating promotes the public health, safety and general welfare by requiring that adequate pedestrian circulation is provided and balanced with adequate outdoor seating for patrons of local food and eating establishments;

NOW, WHEREFORE, IT IS HEREBY ORDAINED by the Governing Body of the Borough of New Providence as follows:

Outdoor Seating.

A. PURPOSE.

The purpose of this ordinance is to permit daytime and early evening outdoor dining on private property and sidewalks adjacent to local food and eating establishments for the enjoyment of restaurant patrons without disturbing the immediate neighborhood or pedestrian traffic. It is intended to permit the tasteful, aesthetic use of tables and chairs on adjacent property and sidewalks of local food and eating establishments under the direction and approval of the New Providence Code Enforcement/Engineering Department. It is the intention of the Borough of New Providence to monitor and review the use of these facilities after the adoption of this ordinance to determine its full impact upon the Borough and the enjoyment of its citizens.

B. APPLICABILITY.

This ordinance applies to all food or eating establishments including restaurants, delis, coffee shops, cafes and similar type uses in the Borough of New Providence.

C. PERMITTED INSTALLATIONS

- (1) Temporary outdoor seating as an accessory use to food or eating establishments shall be permitted and shall not be included in a restaurant's seating or floor area when calculating on-site parking requirements. Outdoor furnishings are limited to tables, chairs, umbrellas, a menu pedestal, a reservation podium and other such furnishings as required to conduct the operation as is conducted in the indoor establishment and shall be stored inside the restaurant after normal operating hours. Advertising or promotional features shall be limited to the name of the restaurant on the permitted outdoor furnishings.
 - (a) All other sales, solicitation of sales, display or storage of merchandise or goods, the performance of any commercial service or the installation or operation of vending machines, other than telephone or postal facilities, shall be conditional uses subject to approval by the Planning Board.
- (2) Outdoor dining shall be subject to the following:
 - (a) Outdoor seating as an accessory use to a restaurant, shall be permitted, provided that it does not impede pedestrian flow by maintaining a minimum pathway of at least five (5) feet that is free of obstacles at all times. A zoning permit and site meeting with the Borough's Code Enforcement Official is required prior to location within the right-of-way private walkways to ensure that the required five (5) foot pedestrian path can be established. Once issued, the zoning permit may be retracted for up to one year by the Code Enforcement Official for failure to maintain the minimum five (5) foot pedestrian pathway.
 - (b) It shall be assumed that an outdoor dining area is a privilege and not a right. The Borough Council or designee shall have the right to prohibit the operation of an outdoor dining area at any time because of anticipated or unanticipated problems or conflicts with the use of the sidewalk area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events, parades, marches, or repairs to the street or sidewalk. To the extent that is possible, the permittee shall be given prior notice of any time period during which the operation of the outdoor dining area be prohibited.
 - (c) Outside seating areas shall be defined by an enclosure of at least three (3) feet in height measured from the ground or sidewalk level, where feasible. Waivers from this requirement based on limited width

can be made during the permit phase. Enclosures shall be designed in compliance with ADA accessibility guidelines and shall provide safe pedestrian access to the public right of way and designated parking spaces. Such enclosure may consist of screens, planters, fencing or other similar materials. The barrier should denote separation of the pedestrian walkway as denoted above.

- (d) The outdoor dining area shall be designed to preserve circulation on the site and any affected Borough right-of-way while also protecting the safety of patrons and pedestrians.
- (e) The owner shall police the area to ensure that it is clean and free of litter and complies with applicable noise standards.
- (f) Outdoor lighting shall be permitted in order to provide safe pedestrian flow and passage. Small individual table lighting and lighting is encouraged. Where additional lighting is required it shall conform to the lighting standards of the Borough of New Providence.
- (g) The hours for outdoor service shall be between 7:00 a.m. and 10:00 p.m. All tables, chairs and equipment shall be removed and placed securely indoors no later than 10:30.
- (h) No heating or cooking of food or open flames shall be allowed in outside seating areas.
- (i) No pets are permitted in areas of outdoor seating.
- (j) The owner of an approved outdoor dining area which is located wholly or in part in the Borough right-of-way shall indemnify and hold harmless the Borough of New Providence and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, arising out of the operation of the outdoor dining area. No such dining area shall be approved, or once approved, permitted to operate, unless the owner has on file with the Borough Clerk a current Certificate of Insurance which certifies that:
 - [1] The owner's obligation to indemnify and hold harmless the Borough as provided herein is insured by an insurance carrier authorized to do business in the State of New Jersey;
 - [2] The Borough of New Providence is named as an additional insured under this insurance with respect to claims, damages, losses and expenses arising out of operation of the outdoor dining area.
- (j) Music for outdoor seating areas is not permitted.

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This ordinance shall take effect upon passage and publication as provided by law.

INTRODUCTION: May 9, 2011
PUBLIC HEARING: June 13, 2011
ADOPTION: June 13, 2011

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

J. Brooke Hern, Mayor

Attest:

Wendi B. Barry, Borough Clerk

Borough of New Providence Ordinance 2011-10

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE TO HELP THE BOROUGH ADDRESS THE POSITIVE AND NEGATIVE IMPACTS OF DEVELOPMENT ON THE COMMUNITY AS WELL AS PROTECT AND ENHANCE THE CHARACTER, ENVIRONMENT, AND CULTURAL HERITAGE OF THE BOROUGH.

BE IT ORDAINED by the governing body of the Borough of New Providence, Union County, New Jersey, that the Zoning Ordinance of the of the Borough of New Providence is hereby amended to include provisions addressing the impact of larger scaled development. This Ordinance is intended to provide the Board of appropriate jurisdiction with appropriate information to determine whether the proposed development will have any negative impact on the existing community. This Ordinance shall apply except where inconsistent with applicable law.

WHEREAS, the Borough has found that information regarding the impact of larger scale development upon the existing community is vital in order to make a determination as to whether or not the proposed development is compatible with existing land uses;

NOW, WHEREFORE, IT IS HEREBY ORDAINED by the Governing Body of the Borough of New Providence as follows:

Community Impact Statement.

Community Impact Statements, when required, shall conform to the following provisions:

- A. When Required.** All applications for major subdivision approval and all applications for major site plan approval shall be accompanied by a community impact statement analyzing the proposed development and its expected impacts upon existing municipal facilities and services. Individual single family homes shall not be required to submit an impact statement. General development plan applications shall be submitted with an abbreviated community impact statement consisting of items B.1 and B.5, below. The community impact statement shall indicate why, in the applicant's opinion, the proposed development is in the public interest as well as providing data and opinions concerning the impacts in subsection B.
- B. Submission Format.** All community impact statements shall consist of written and graphic materials which clearly present the required information addressing the following areas:

- (1) Population impact. An analysis of the number of people expected to be added to the municipal population as a result of the proposed development, including those attracted to the Borough for the number of projected jobs in non-residential development, according to the following age cohorts: children, adults and other information about age cohorts.
- (2) Schools impact. An analysis of the anticipated number of public school students projected to be added and the ability of the existing public school facilities to absorb the additional population projected ten years into the future. The analysis shall provide data on school facility capacity and existing enrollment, cumulative projections of new students, impacts on facilities, support staff and added costs to the school district. Should expanded or new school facilities or increased teaching staff be required, the projected cost for such additions shall be specified.
- (3) Community facilities impact. An analysis of the existing community facilities and infrastructure available to serve the proposed development and its impact on the adequacy of existing public water facilities, public sewerage facilities; recreational facilities; library facilities, and senior services. Should such facilities be determined inadequate to serve the proposed development, the remedies, either expected or proposed by the applicant, shall be indicated along with the estimated costs for such additional facilities.
- (4) Services impact. An analysis of the existing services provided by the municipality to serve the proposed development and the impact of the development upon services, including police protection, fire protection, emergency services, solid waste disposal and street maintenance services.
- (5) Traffic impact. An analysis of the existing road network available to serve the proposed development, as well as the proposed road network within the development itself and the surrounding road network which will be affected by the proposed development, including the capacity of the existing and proposed roadways; the anticipated traffic volumes as a result of the proposed development; the physical structure of both road networks; and any problem areas in the road network affected by the development, including unsafe intersections and vertical or horizontal alignments.
- (6) Fiscal impact. An analysis of the revenues expected to be generated from the development compared to the anticipated costs which the proposed development is expected to generate. Revenues and costs shall be shown for the municipality, the municipal school system and the municipal library system.

(7) Waiver. The Planning Board or Board of Adjustment may waive one or more provisions of this section if deemed not applicable.

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This ordinance shall take effect upon passage and publication as provided by law.

INTRODUCTION: April 11, 2011

PUBLIC HEARING: May 9, 2011

ADOPTION: May 9, 2011

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

J. Brooke Hern, Mayor

Attest:

Wendi B. Barry, Borough Clerk

Borough of New Providence

Ordinance No. 2011-11

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE TO REGULATE OUTDOOR SEATING TO HELP THE BOROUGH CREATE A POSITIVE AND ENJOYABLE ATMOSPHERE FOR THE CITIZENS AND PATRONS OF THE BOROUGH OF NEW PROVIDENCE AS WELL AS PROTECT AND ENHANCE THE CHARACTER, ENVIRONMENT, AND CULTURAL HERITAGE OF THE BOROUGH

BE IT ORDAINED by the governing body of the Borough of New Providence, Union County, New Jersey, that the Zoning Ordinance of the of the Borough of New Providence is hereby amended to include provisions for outdoor seating at local food and eating establishments.

WHEREAS, the Borough has found that regulating outdoor seating promotes the public health, safety and general welfare by requiring that adequate pedestrian circulation is provided and balanced with adequate outdoor seating for patrons of local food and eating establishments;

NOW, WHEREFORE, IT IS HEREBY ORDAINED by the Governing Body of the Borough of New Providence as follows:

Outdoor Seating.

A. PURPOSE.

The purpose of this ordinance is to permit daytime and early evening outdoor dining on private property and sidewalks adjacent to local food and eating establishments for the enjoyment of restaurant patrons without disturbing the immediate neighborhood or pedestrian traffic. It is intended to permit the tasteful, aesthetic use of tables and chairs on adjacent property and sidewalks of local food and eating establishments under the direction and approval of the New Providence Code Enforcement/Engineering Department. It is the intention of the Borough of New Providence to monitor and review the use of these facilities after the adoption of this ordinance to determine its full impact upon the Borough and the enjoyment of its citizens.

B. APPLICABILITY.

This ordinance applies to all food or eating establishments including restaurants, delis, coffee shops, cafes and similar type uses in the Borough of New Providence.

C. PERMITTED INSTALLATIONS

(1) Temporary outdoor seating as an accessory use to food or eating
establishments shall be permitted and shall not be included in a restaurant's seating or floor area when calculating on-site parking requirements. Outdoor furnishings are limited to tables, chairs, umbrellas, a menu pedestal, a reservation podium and other such furnishings as required to conduct the operation as is conducted in the indoor establishment and shall be stored inside the restaurant after normal operating hours. Advertising or promotional features shall be limited to the name of the restaurant on the permitted outdoor furnishings.

(a) All other sales, solicitation of sales, display or storage of merchandise or goods, the performance of any commercial service or the installation or operation of vending machines, other than telephone or postal facilities, shall be conditional uses subject to approval by the Planning Board.

(2) Outdoor dining shall be subject to the following:

(a) Outdoor seating as an accessory use to a restaurant, shall be permitted, provided that it does not impede pedestrian flow by maintaining a minimum pathway of at least five (5) feet that is free of obstacles at all times. A zoning permit and site meeting with the Borough's Code Enforcement Official is required prior to location within the right-of-way private walkways to ensure that the required five (5) foot pedestrian path can be established. Once issued, the zoning permit may be retracted for up to one year by the Code Enforcement Official for failure to maintain the minimum five (5) foot pedestrian pathway.

(b) It shall be assumed that an outdoor dining area is a privilege and not a right. The Borough Council or designee shall have the right to prohibit the operation of an outdoor dining area at any time because of anticipated or unanticipated problems or conflicts with the use of the sidewalk area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events, parades, marches, or repairs to the street or sidewalk. To the extent that is possible, the permittee shall be given prior notice of any time period during which the operation of the outdoor dining area be prohibited.

(c) Outside seating areas shall be defined by an enclosure of at least three (3) feet in height measured from the ground or sidewalk level, where feasible. Waivers from this requirement based on limited width

can be made during the permit phase. Enclosures shall be designed in compliance with ADA accessibility guidelines and shall provide safe pedestrian access to the public right of way and designated parking spaces. Such enclosure may consist of screens, planters, fencing or other similar materials. The barrier should denote separation of the pedestrian walkway as denoted above.

- (d) The outdoor dining area shall be designed to preserve circulation on the site and any affected Borough right-of-way while also protecting the safety of patrons and pedestrians.
- (e) The owner shall police the area to ensure that it is clean and free of litter and complies with applicable noise standards.
- (f) Outdoor lighting shall be permitted in order to provide safe pedestrian flow and passage. Small individual table lighting and lighting is encouraged. Where additional lighting is required it shall conform to the lighting standards of the Borough of New Providence.
- (g) The hours for outdoor service shall be between 7:00 a.m. and 10:00 p.m. All tables, chairs and equipment shall be removed and placed securely indoors no later than 10:30.
- (h) No heating or cooking of food or open flames shall be allowed in outside seating areas.
- (i) No pets are permitted in areas of outdoor seating.
- (j) The owner of an approved outdoor dining area which is located wholly or in part in the Borough right-of-way shall indemnify and hold harmless the Borough of New Providence and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, arising out of the operation of the outdoor dining area. No such dining area shall be approved, or once approved, permitted to operate, unless the owner has on file with the Borough Clerk a current Certificate of Insurance which certifies that:
 - [1] The owner's obligation to indemnify and hold harmless the Borough as provided herein is insured by an insurance carrier authorized to do business in the State of New Jersey;
 - [2] The Borough of New Providence is named as an additional insured under this insurance with respect to claims, damages, losses and expenses arising out of operation of the outdoor dining area.
- (j) Music for outdoor seating areas is not permitted.

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This ordinance shall take effect upon passage and publication as provided by law.

INTRODUCTION: May 9, 2011
PUBLIC HEARING: June 13, 2011
ADOPTION: June 13, 2011

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

J. Brooke Hern, Mayor

Attest:

Wendi B. Barry, Borough Clerk

**Borough of New Providence
Ordinance 2011-12**

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE AMENDING AND
SUPPLEMENTING THE ZONING PROVISIONS OF THE BOROUGH CODE TO
ESTABLISH A SOLAR ENERGY SYSTEMS ORDINANCE**

BE IT ORDAINED by the governing body of the Borough of New Providence, Union County, New Jersey, that the Zoning Ordinance of the of the Borough of New Providence is hereby amended to establish a Solar Energy Systems Ordinance to promote alternative energy systems implementation, clean domestic energy production and a clean, sustainable environment.

WHEREAS, the Borough has found that encouraging solar energy production promotes the public health, safety and general welfare by providing clean energy that can be delivered to the end user efficiently, reducing reliance on fossil fuels and by providing the opportunity for the generation of clean energy at a reduced cost to consumers;

NOW, WHEREFORE, IT IS HEREBY ORDAINED by the Governing Body of the Borough of New Providence as follows:

§ 310-6, entitled "Definitions," is hereby amended to add the following new terms:

Definitions

Solar Energy System: means an energy system which converts solar energy to usable thermal, mechanical, chemical or electrical energy through the use of a solar panel or solar panel array and associated equipment.

Solar Panel: means a photovoltaic panel, or solar shingle or hot air or water panel collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

Solar Panel Array: means a collection of multiple solar panels mounted or arranged together, providing energy to the same primary user, as part of a solar energy system.

The Borough Ordinance is hereby amended to contain the standards for Solar Energy Systems set forth below.

Purpose; requirements; applicability

The primary purpose of the solar energy system will be to provide power for the principal use of the property whereon the said system is to be located and shall not be for the generation of power for commercial purposes for resale, other than as permitted by net metering laws. Solar Energy systems shall be permitted as a conditional use in all the zones in the Borough of New Providence in accordance with the following standards:

(A) Residential Zones

- (1) Ground-mounted solar energy can be located in the residential zones in accordance with the following:**
 - (a) Shall not be located within any front yard, easements or utility line or, along the front wall of the principal building.**
 - (b) Such systems shall maintain the side and rear yard setbacks as stipulated within the respective zoning district.**
 - (c) Ground-mounted solar energy systems shall not exceed 400 square feet.**
 - (d) Such systems shall not exceed ten (10) feet in height.**
 - (e) Adequate screening in form of four seasons planting shall be provided along the property line.**
 - (f) Ground mounted solar energy systems shall not be categorized as accessory buildings.**
 - (g) Systems shall be located and installed so that the sun glare is directed from an adjoining property line or public right of way.**
 - (h) System shall be designed by using materials, colors, textures, screening and landscaping that will blend into the natural setting and existing environment.**
- (2) Roof-mounted solar energy systems, shall be permitted as on a conforming single-family, two-family residential building provided the systems are in accordance with the following:**
 - (a) In no event shall the placement of the solar panels result in the total height, including the building and panels, exceeding what is permitted in the zoning district.**
 - (b) In no instance shall any part of the system extend beyond the edge of the roof.**
 - (c) If solar systems are attached to accessory buildings, then such systems shall not be located in the front yard and shall not be less than six (6) feet from any side or rear property line.**
 - (d) Rooftop installations must not interfere with any operation of plumbing fixtures protruding from the rooftop level as required by the New Jersey Plumbing Codes.**
- (3) Utility notifications and interconnection. Solar systems that connect to the electric utility shall comply with the New Jersey's Net Metering and Interconnection Standards for Class I Renewable Energy Systems at N.J.A.C 14:4-9.**

(B) Non-residential zones

- (1) Roof mounted solar energy system in non-residential zones shall be in accordance with the following**
 - (a) In no instance shall any part of the system extend beyond the peak of the roof, extend beyond the maximum height of the roof line or exceed**

the maximum height permitted for principal building in the respective zone.

- (b) The design of solar energy systems shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend into the natural setting and existing environment.
- (c) Rooftop installations must not interfere with any operation of plumbing fixtures protruding from the rooftop level as required by the New Jersey Plumbing Codes.
- (d) All applicable building codes must be followed.
- (e) If located on a flat roof, then adequate screening should be provided in order to not be visible from the public right-of-way, parking lots and adjacent property. Sight line drawings depicting the visual sight lines from the right-of-way, parking lot and adjacent properties should be provided at the time of Site Plan Review.

(2) Ground-mounted solar energy systems provided:

- (a) Solar panels may be installed on a ground-mounted apparatus only on lots with a minimum lot size of five (5) acres.
- (b) Shall not be located within the front yard, easements or utility line and along the front façade of the building.
- (c) Such systems shall not exceed ten (10) feet in height.
- (e) Systems shall be located and installed so that the sun glare is directed from an adjoining property line or public right of way.
- (f) Systems shall be designed by using materials, colors, textures, screening and landscaping that will blend into the natural setting and existing environment.

(C) Solar energy commercial operations are prohibited as a principal use. These are systems whose main purpose is to generate energy back into the energy grid systems rather than being consumed on site.

(D) Signs. There shall be no signs that are visible from any public road posted on a solar energy system or any associated building, except for the manufacturer's or installer's identification in accordance with Subsection H below, appropriate warning signs or owner identification. Solar energy systems shall not be used for displaying any advertising except for small and reasonable identification of the manufacturer or operator of the system. In no case shall any identification sign be visible from a property line.

(E) Utility notifications and interconnection. Solar systems that connect to the electric utility shall comply with the New Jersey's Net Metering and Interconnection Standards for Class I Renewable Energy Systems at N.J.A.C 14:4-9.

(F) Labeling requirements.

(1) A minimum of one sign shall be posted near ground level on the interconnection cabinet warning of high voltage. In addition, the following information shall be posted on a label or labels on the interconnection cabinet of the solar energy system:

- (a) The maximum power output of the system.
- (b) Nominal voltage and maximum current.
- (c) Manufacturer's name, address and telephone number, serial number and model number.
- (e) Emergency and normal shutdown procedures.

(2) Should the solar energy system interconnection cabinet be located on the inside of a structure, a sign notifying the existence of a solar energy system shall be placed on the outside of the building, near the electrical and/or gas meter in order to notify emergency personnel of the solar energy system.

H. Standards for and regulation of Solar Energy System.

- (1) **Construction.** Solar energy system construction shall be in accordance with the appropriate sections of the Basic Building Code as adopted and as currently amended, by the State of New Jersey and any future amendments and/or revisions to same.
- (2) The installation of a solar energy system shall conform to the National Electric Code as adopted by the NJDCA and/or any other applicable agency with jurisdiction. The installation of a solar energy system is subject to any and all the electric utility company's requirements for interconnection, its successors and assigns, and/or designated by state authority, in perpetuity.
- (3) The design of any solar energy system shall be signed and sealed by a professional engineer, licensed in the State of New Jersey, certifying that the design complies with all the standards set forth for safety and stability in all applicable codes then in effect in the State of New Jersey and all sections referred to hereinabove.
- (4) **Utility company notification.** The appropriate electric utility company, its successors and assigns, and/or as designated by state authority, shall be notified in writing by the applicant of any proposed interface to the company's grid prior to installing such interface and shall conform to any legislated requirements governing installations of solar energy systems so as to comply with the utility tariff specifications. Evidence of such notification shall be submitted at time of application for conditional use approval and building permit.

I. All electric/utility lines shall be located underground. All electric and utility lines leading down the side of the structure from rooftop installations shall be placed and tacked as aesthetically as possible.

J. Any approval of a solar energy system does not create any actual or inferred solar energy system easement against adjacent property and/or structures. The owner and/or property owner of a solar energy system shall not infer or claim any rights to protective writs to any caused shadows or operating ineffectiveness against future development adjacent to or higher than the property location of the solar energy system. Although the Borough of New Providence may to an extent possible attempt to mitigate or prevent the occurrence or cause shadows or operating ineffectiveness of existing solar energy systems, the approval of any solar energy system granted by the Borough of New Providence under this article shall not

create any future liability or infer any vested rights to the owner and/or property owner of the solar energy system on the part of the Borough of New Providence or by any other officer or employee thereof for any future claims against said issuance of approval of the solar energy system that results from reliance on this article or any administrative decision lawfully made there under.

K. No equipment, framing or other materials directly related to solar operations for any residential or commercial use shall be abandoned in place and whereby after a unit is non-functional or no longer in use, it must be dismantled and removed in its entirety within 120 days.

L. Approval Requirements.

(1) Site Plan Approval. Site Plan approval from the Planning Board or Board of Adjustment, as appropriate, shall be required for the installation of a solar energy system.

(2) Documents. The Site Plan application shall be accompanied by a plot plan, which includes the following:

- (a) Property lines and physical dimensions of the property;
- (b) Location of the proposed solar energy system;
- (c) The right-of-way of any public road that is contiguous with the property;
- (d) Any overhead utility lines;
- (e) Manufacturer solar energy system specification/cut sheets certified by a licensed New Jersey Engineer, including manufacturer and model;
- (f) A visual site distance analysis must be submitted, including all photos of the subject property, that graphically simulates the appearance of any proposed solar energy system and indicating its view from at least five (5) locations around the property.
- (g) Notification of utility company for interconnection purposes.
- (h) The documents and plans shall contain enough information and accurately depict the installation of the solar energy system for the Borough of New Providence to make a formal decision on the application. The amount of information and accuracy of information shall be in the sole judgment of the Administrative Officer.

M. Expiration. A permit issued for an application approved by the Planning Board or Zoning Board of Adjustment, if appropriate, shall expire if:

- (1) The solar energy system is not installed and functioning within 12 months from the date the permit is issued; or
- (2) The solar energy system is out of service or otherwise unused for a continuous 12 month period.

N. Administration and Enforcement.

- (1) This ordinance shall be administered by the Administrative Officer or other official as designated.
- (2) The Administrative Officer may enter any property for which a permit has been applied for and/or issued under this ordinance to conduct an inspection to determine whether the conditions stated in the permit have been met.
- (3) At the discretion of the Administrator and/or Borough of New Providence Construction Office for which a zoning, building and/or electrical permit was obtained, as applicable, the Borough reserves the right to require the applicant to obtain and submit an "as-built" survey upon completion of the solar energy system evidencing the exact location and height of the structures to ensure said installation is made in accordance with the requirements of the Borough of New Providence.
- (4) The Administrative Officer may issue orders to abate any violation of this ordinance.
- (5) The Administrative Officer may issue a citation for any violation of this ordinance.
- (6) The Administrative Officer may refer any violation of this ordinance to legal counsel for enforcement.

O. Violations.

- (1) It is unlawful for any person to construct, install, or operate a solar energy system that is not in compliance with this ordinance.
- (2) Any person who fails to comply with any provision of this article shall be subject to enforcement and penalties as stipulated in this chapter and article.
- (3) Nothing in this section shall be construed to prevent the Borough Council and/or administrative officers of the Borough of New Providence from using any other lawful means to enforce this article.
- (4) Any solar energy systems installed prior to the adoption of this ordinance are exempt from the provisions of this chapter.

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This ordinance shall take effect upon passage and publication as provided by law.

INTRODUCTION: April 11, 2011

PUBLIC HEARING: May 9, 2011

ADOPTION: May 9, 2011

I, Wendi B. Barry, Borough Clerk of the Borough of New Providence, hereby certify that the above titled ordinance was duly passed on final reading at a regular Borough Council meeting held on Monday, May 9, 2011.

Wendi B. Barry

BOROUGH OF NEW PROVIDENCE

Ordinance 2011-14

AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE AMENDING AND SUPPLEMENTING THE ZONING PROVISIONS OF THE BOROUGH CODE TO ESTABLISH A SMALL WIND ENERGY SYSTEMS ORDINANCE

BE IT ORDAINED by the governing body of the Borough of New Providence, Union County, New Jersey, that the Zoning Ordinance of the of the Borough of New Providence is hereby amended to include provisions for small wind energy systems.

WHEREAS, the Borough has found that regulating wind energy systems promotes the public health, safety and general welfare by requiring that adequate standards be established for residential and commercial uses;

NOW, WHEREFORE, IT IS HEREBY ORDAINED by the Governing Body of the Borough of New Providence as follows:

Definitions

“Meteorological Tower or Met Tower” means a structure designed to support the gathering of wind energy resource data, and includes the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.

“Owner” means an individual or entity that intends to own and operate the small wind energy system in accordance with this section.

“Rotor diameter” means the cross-sectional dimension of the circle swept by the rotating blades of a wind-powered energy generator.

“Small Energy System” means wind energy system, that is used to generate electricity; has a nameplate capacity of 100 kilowatts or less;

“Total Height” in relation to a wind energy system means the vertical distance from the ground to the tip of a wind generator blade when the tip is at its highest point.

"Total Roof Mounted Structure Height" means the highest point above the main roof structure, not including architectural features such as a chimney, cupola and similar type features, reached by a rotor blade in the vertical position, or any other part of the structure.

"Tower" means a monopole, freestanding, or guyed structure that supports a wind generator.

"Wind Energy System" means a wind generator and all associated equipment, including any base, blade, foundation, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries or other component necessary to fully utilize the wind generator.

"Wind Generator" means equipment that converts energy from the wind into electricity. This term includes the rotor, blades and associated mechanical and electrical conversion components necessary to generate, store and/or transfer energy.

Purpose; requirements; applicability

A small wind energy system shall be permitted as a conditional use in all the zones in the Borough of New Providence in accordance with the following standards:

(A) Residential Zones

- (1) Ground-mounted wind energy systems are not permitted in any residential zones.
- (2) Roof-mounted wind energy systems, whose primary purpose is to provide power for the principal use of the property whereon the said system is to be located and shall not be for the generation of power for commercial purposes for resale, can be located in residential zones in accordance with the following:
 - (a) The minimum distance between a roof-mounted wind energy system and a property line shall be equal or greater than the minimum front, side or rear yard setback applicable to the main building.
 - (b) The total height of the roof mounted structure shall not exceed five (5) feet above the ridge of the roof. The said system shall not be placed on top of any architectural features such as cupola, chimney etc.

- (c) Wind energy system shall not be artificially lighted.
- (d) No portion of the roof mounted wind energy system shall extend beyond the edge of the building to which it is attached.
- (3) Small decorative wind turbines: Small wind turbines less than one meter in diameter that use direct current solely for decorative or yard lighting are exempt from the above-mentioned requirements.

(B) Non-residential Zones

- (1) Minimum Lot Size. The minimum lot size for a small wind energy system shall be 5 acres.
- (2) Setbacks. A wind tower for a small wind energy system shall not be located within any front yard, easements or utility line, and shall maintain a setback of the underlying zone. No portion of the wind generator shall extend beyond the setback line, or into the following:
 - (a) Any public road right-of-way.
 - (b) Any overhead utility lines, unless written permission is granted by the utility that owns and/or controls the lines.
- (3) Pole mounted wind towers shall not be higher than 25 feet from existing grade.
- (4) Access.
 - (a) All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
 - (b) The tower shall be designed and installed so as to not provide step bolts, a ladder, or other publicly accessible means of climbing the tower, for a minimum height of eight feet above the ground.

(C) Electrical Wires. All wires associated with a small wind energy system, other than wires necessary to connect the wind generator to the tower wiring, the tower wiring to the disconnect junction box, and the grounding wires shall be located underground.

- (D) Lighting. A wind tower and generator shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration, and is subject to Planning Board and Board of Adjustment approval as part of the site plan process.
- (E) Appearance, Color and Finish. The wind generator and tower shall be non-obtrusive and shall be painted or finished so as to minimize their visual impact on the surrounding landscape.
- (F) Signs. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower building, or other structure associated with a small wind energy system visible from any public road shall be prohibited. Small wind energy systems shall not be used for displaying any advertising except for small and reasonable identification of the manufacturer or operator of the system. In no case shall any identification sign be visible from a property line.
- (G) Code Compliance. A small wind energy system including tower shall comply with all applicable construction and electrical codes, and the National Electrical Code.
- (H) Utility notification and interconnection. Small wind energy systems that connect to the electric utility shall comply with the New Jersey's Net Metering and Interconnection Standards for Class I Renewable Energy Systems.
- (I) Met towers shall be permitted under the same standards, permit requirements, restoration requirements and permit procedures as a small wind energy system.
- (J) For wind speeds in the range of 0-25 mph, the noise level of any small wind energy system shall not
 - (1) Exceed 60 dBA measured from any property line; or
 - (2) Be in the excess of 5 dBA above the background noise, whichever is greater, as measured at the closest neighboring inhabited dwelling. The measurement will be taken downwind of the turbine to account for the cancelling effect of the sound of the wind itself. The provisions within this section shall not be applicable to the increased sound levels during the occurrence of short-term events such as storms and utility outages.
- (K) Approval Requirements.

- (1) Site Plan Approval. Site Plan approval from the Planning Board or Board of Adjustment, as appropriate, shall be required for the installation of a small wind energy system.
- (2) Documents. The Site Plan application shall be accompanied by a plot plan, which includes the following:
 - (a) Property lines and physical dimensions of the property;
 - (b) Location, dimensions and types of existing structures on the property;
 - (c) Location of the proposed small wind energy system;
 - (d) The right-of-way of any public road that is contiguous with the property;
 - (e) Any overhead utility lines;
 - (f) Small wind energy system specifications, including manufacturer and model, rotor diameter, tower height, tower type;
 - (g) Stamped, engineered tower and tower foundation drawings;
 - (h) Noise levels of the proposed wind energy system at all property lines and at the closest neighboring inhabited dwelling.
 - (i) A visual site distance analysis must be submitted, including all photos of the subject property, that graphically simulates the appearance of any proposed small wind energy system and indicating its view from at least five (5) locations around and within one (1) mile of the proposed tower.

(L) Expiration. A permit issued for an application approved by the Planning Board or Zoning Board of Adjustment, if appropriate, shall expire if:

- (1) The small wind energy system is not installed and functioning within 24 months from the date the permit is issued; or
- (2) The small wind energy system is out of service or otherwise unused for a continuous 12 month period.

(M) Abandonment

- (1) A small wind energy system that is out of service for a continuous 18-month period will be deemed to have been abandoned.
- (2) The Administrative Officer may issue a Notice of Abandonment to the owner of a small wind energy system that is deemed to have been abandoned. The notice shall be sent return receipt requested.
- (3) The Owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date.
- (4) If the owner provides information that demonstrates the small wind energy system has not been abandoned, the Administrative Officer shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn.
- (5) If the Administrative Officer determines that the small wind energy system has been abandoned, the Owner of the small wind energy system shall remove the wind generator from the tower at the Owner's sole expense within six (6) months after the Owner receives the Notice of Abandonment.
- (6) If the Owner fails to remove the wind generator from the tower in the time allowed under (e) above, the Administrative Officer may pursue legal action to have the wind generator removed at the Owner's expense.

(N) Violations. It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance.

(O) Administration and Enforcement.

- (1) This ordinance shall be administered by the Administrative Officer or other official as designated.
- (2) The Administrative Officer may enter any property for which a permit has been issued under this ordinance to conduct an inspection to determine whether the conditions stated in the permit have been met.
- (3) The Administrative Officer may issue orders to abate any violation of this ordinance.

- (4) The Administrative Officer may issue a citation for any violation of this ordinance.
- (5) The Administrative Officer may refer any violation of this ordinance to legal counsel for enforcement.

(P) Penalties.

- (1) Any person who fails to comply with any provision of this ordinance shall be subject to enforcement and penalties as stipulated in chapter and section of the appropriate zoning code.
- (2) Nothing in this section shall be construed to prevent the appropriate Borough of New Providence Board from using any other lawful means to enforce this ordinance.

(Q) Severability. The provisions of this ordinance are severable, and the invalidity of any section, subdivision, paragraph, or other part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

INTRODUCTION: May 9, 2011

PUBLIC HEARING: June 13, 2011

ADOPTION: June 13, 2011

**BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY**

J. Brooke Hem, Mayor

Attest:

Wendi B. Barry, Borough Clerk

Borough of New Providence, Union County

Ordinance No. 2011-15

AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE AMENDING AND SUPPLEMENTING § 310-6 ENTITLED "DEFINITIONS," § 310-7 ENTITLED "DISTRICTS ESTABLISHED," § 310-8 ENTITLED "ZONING MAP," § 310A SCHEDULE I ENTITLED "PERMITTED USES," AND § 310E ENTITLED "ZONING MAP," OF THE ZONING PROVISIONS OF THE BOROUGH CODE TO REZONE CERTAIN LOTS TO THE NEWLY ESTABLISHED TECHNOLOGY AND BUSINESS INNOVATION ZONES I AND II.

BE IT ORDAINED by the governing body of the Borough of New Providence, Union County, New Jersey, that the Zoning Ordinance of the Borough of New Providence is hereby amended to establish Technology and Business Innovation Zones I and II. This Ordinance is intended to encourage low/medium density commercial development for the purpose of high technology, medical, educational, office and related facilities in a campus-like setting.

WHEREAS, the Borough Council undertook a review of the land use provisions of the Borough Code governing the Research Laboratory ("RL") and Light Industrial ("LI") Districts in order to, among other things, replace uses contained therein to promote commercial development within these areas; and

WHEREAS, the Borough Council has determined that it is appropriate and necessary to amend the Borough Ordinance to delete the RL and LI Districts and replace them with the newly established Technology and Business Innovation Zones I and II, and in so doing, to provide new permitted, conditional and accessory uses within these zones.

NOW, WHEREFORE, IT IS HEREBY ORDAINED by the Governing Body of the Borough of New Providence as follows:

§ 310-6, entitled "Definitions," is hereby amended to add the following new terms:

AMBULATORY HEALTH CARE FACILITY: An establishment where patients are admitted for examination and treatment on an outpatient basis by physicians, dentists, or other medical personnel, psychologists or social workers and where such examination and treatment generally requires a stay of less than 24 hours. Medical offices for employees that are incidental to the primary use of the facility as an ambulatory health care facility are permitted.

ARTS CENTER: A structure or complex of structures for the visual and or performing arts.

COLOCATION CENTER: This use is a type of data centre where multiple customers locate network, server and storage gear and interconnect to a variety of telecommunications and other network service provider(s) with a minimum of cost and complexity.

DATA CENTER: A data center is a facility used to house computer systems and associated components, such as telecommunications and storage systems. It generally includes redundant or backup power supplies, redundant data communications connections, environmental controls (e.g., air conditioning, fire suppression) and security devices.

HEALTH CARE TESTING SERVICE FACILITY: An establishment where health care services such as blood tests and similar health care tests and services are administered to patients. Medical offices for employees that are incidental to the primary use of the facility as a health care service facility are permitted.

HIGH-TECHNOLOGY INCUBATOR BUSINESS: Such businesses are, in the view of the Board, consistent with the aim of developing and nurturing start-up, high-technology businesses. The Board shall use the North American Industry Classification System (NAICS) descriptions, or its equivalent, in assisting them in determining if a particular Use is in keeping with the intent of the regulation. Some examples include, but are not limited to the research and development of computer software, fuel cells, "green" products, solar cells, semiconductors, optical scanning devices, information technology, digital animation, computer hardware, computer facilities management and information retrieval services.

HOTEL/ CONFERENCE FACILITIES: These facilities must be developed as one facility, including convenience commercial uses and restaurants which are related to a hotel convention/conference facility.

LIGHT INDUSTRIAL USE: This use includes manufacturing, fabricating, processing, converting, altering, packaging, bottling or assembling of products, the operations of which are conducted solely within an enclosed building or group of buildings, which are not productive of injurious or offensive noise, fumes, smoke odor, sewage effluent or vibrations nor are detrimental to health, safety, or property.

PROFESSIONAL OFFICE: An office of a member of a recognized profession, maintained for the conduct of their profession. Such professions shall be limited to those of law, architecture, engineering, art, religion, music, accounting, insurance services, real estate brokers, and other professions which require a small degree of formal training and experience.

RECREATION/SPORTS FACILITY: Indoor recreational facilities including, but not limited to health and racquet clubs, fitness centers, sports training centers, tennis courts, party and play facilities, and batting cages shall be permitted uses. Pro shop and

education and training facilities for indoor recreational uses shall be permitted in conjunction with indoor use.

SERVICED OFFICE: A serviced office also known as an "executive suite" or "executive space" is an office or office building that is fully equipped and managed by a facility management company, which then rents individual offices or floors to other companies.

TELECOM HOTEL: A building that is constructed or rebuilt for datacenters. Also known as a carrier hotel, co-location center or internet datacenter, telecom hotels typically house hundreds and thousands of web servers for web hosting organizations, large enterprises and other service organizations.

WELLNESS AND LIFESTYLE CENTERS: A building or facility that is devoted towards the promotion of healthy living as well as the prevention of illness and disease run by any number of physicians who can practice a wide variety of medicine. These facilities promote health care through fitness, dietary needs, psychological aid, and other more direct medical practices, where a patron can sometimes talk to a physician directly for a diagnosis of a specific problem, or can arrange for a treatment such as massage from a qualified and trained therapist.

WHOLESALE BUSINESS: Any building, premises, or land in which or upon which, the principal business, operation, or industry involves any handling and resale of goods in comparatively large quantities to others, but not usually to the ultimate consumer of an individual unit.

§ 310-7 entitled "Districts Established," § 310-8 entitled "Zoning Map," and § 310e entitled "Zoning Map" are hereby amended to delete the existing Research Laboratory ("RL") District in its entirety and replace it with the newly established Technology and Business Innovation Zone I ("TBI-1").

§ 310-7 entitled "Districts Established," § 310-8 entitled "Zoning Map," and § 310e entitled "Zoning Map" are hereby amended to delete the existing Light Industrial ("LI") District in its entirety and replace it with the newly established Technology and Business Innovation Zone II ("TBI-2").

§ 310a Schedule I entitled "Permitted Uses" is hereby amended to delete all information pertaining to the Research Laboratory ("RL") District in its entirety and replace it with the permitted uses for the newly established Technology and Business Innovation Zone I ("TBI-1") as set forth below.

TECHNOLOGY AND BUSINESS INNOVATION ZONE I

Purpose and Intent: Technology and Business Innovation Zone I (TBI-1) (FORMER RL DISTRICT)

The purpose and intent of the TBI-1 zone is to encourage low/medium density commercial development for the purpose of high technology facilities, medical, educational, office and related facilities in a campus-like setting. This zone shall be combined with a design review district to ensure a high quality, aesthetic environment. The land use mix is intended to be developed on larger lots of a five (5) acre minimum.

A. The principal uses set forth below are permitted in the Technology and Business Innovation Zone I District subject to conditions provided herein and subject to obtaining Site Development Plan approval, if required.

(1) More than one of these principal uses may be permitted within the same structure or building subject to the following:

(a) The minimum usable gross floor area of each such use shall be computed as either a) 2,000 square feet or b) five percent (5%) of the structure's or building's total usable gross floor area, whichever is greater.

(b) The maximum number of tenants allowed shall be six (6).

(2) Principal Permitted Uses.

(a) Laboratory devoted to research, design, and experimentation with fabrication incidental thereto.

(b) Commercial, corporate and professional office uses.

(c) Serviced office.

(d) Health care testing facility.

(e) Ambulatory health Care Facility.

(f) Headquarters mixed use complex, including executive offices, laboratories and research facilities.

i. Parking shall be calculated separately and added to the parking requirements of the other uses.

(g) High-Technology Incubator Business and Professional Center, provided such businesses are, in the view of the Board, consistent with the aim of developing and nurturing start-up, high-technology businesses. The Board shall use NAICS descriptions, or its equivalent, in assisting them in determining if a particular Use is in keeping with the intent of the regulation.

(h) Inbound and outbound call centers.

(i) Recreation/sports facility.

(j) Eating facility for the accommodation of persons employed on the premises and for visitors but not open to the general public.

(k) Hotel/conference facilities

- i. Hotel/Conference centers are permitted when both uses are developed in conjunction with one another. Stand alone hotels or conference facilities are not permitted uses in this zone.
- ii. Parking spaces shall be provided to meet the individual standards for all the activities to be conducted on the site.
- iii. No sleeping unit, including bathroom and other appurtenances facilities shall be smaller than 300 square feet, and shall be accessed through a center hallway.
- iv. No hotel/conference center shall contain less than 75 sleeping units.
- v. The building shall be placed on the lot so that the shadow of the building at noon on December 22 will not extend onto any other property, excepting public streets, farther than the required setback lines on the property in accordance with the zoning regulations applicable.
- vi. Parking shall not be permitted in the front yard setback.
- vii. The area, yard and building requirements are as follows:
 - a. Min Lot Area – 10 acres
 - b. Maximum Height – 65 feet
 - c. Lot depth – 500 feet
 - d. Lot width
 - a. 500 feet at setback line
 - b. 500 feet at right-of-way
 - e. Front Yard – 100 feet
 - f. Side Yard – 50 feet for each side yard
 - g. Rear Yard – 50 feet, plus an additional 4 feet for each foot of building height in excess of 45 feet. This additional footage shall be included in the required 30 foot buffer area.
 - h. Maximum improved lot coverage – 80 %
 - i. Floor Area ratio: 0.40
- viii. The following parking standards are required:
 - a. Guest Room: 1.25 parking spaces per room

- b. Restaurant/lounge: 10 parking spaces per 1,000 square feet of gross leasable area
 - c. Conference rooms: 0.5 parking spaces per seat
- (l) Building with mixed uses, including those required for the offices or outpatient clinics or dentists physicians or other health practitioners.
 - i. Parking shall be calculated separately and added to the parking requirements of the other uses.
- (m) Educational Services, such as service training schools, data processing schools, business and secretarial schools and job training and vocational rehabilitation services.
- (n) Public facilities (Operated by the Borough).
- (o) Wellness and Lifestyle Centers.
- (p) Veterinary center.
- (q) Child day-care services and children's play areas, in accordance with N.J.A.C. 10:122 Manual of Requirements for Child Care Centers.
- (r) Arts center.
- (s) Data Center.
- (t) Telecom Hotel.

(3) Permitted Accessory Uses.

- (a) Public and private parking and loading.
- (b) Parking deck structures.
 - i. Parking decks should be hidden by the building on site or have the facade architecturally incorporated.
 - ii. The structured parking structure should not dominate the building site.
 - iii. Setbacks shall be the same as the permitted use
- (c) Signs.
- (d) Commercial earth terminals.
- (e) Personal earth terminals.
- (f) Ground and roof mounted solar arrays as per the current solar ordinance.

(4) Conditional Uses.

(a) Planned Developments in accordance with 310-46. (excluding planned residential development).

(5) Zoning Requirements

The following standards apply except where noted elsewhere:

- a. Minimum Lot area: 5 acres
- b. Min Front yard: 100 feet
- c. Min Rear yard: None, except as required by 310-19c and 310-21
- d. Min Side yard: 50 feet for each side yard, except as required by 310-19c and 310-21.
- e. Min lot width:
 - i. 300 feet at setback line
 - ii. 300 feet at right-of-way
- f. Maximum building height:
 - i. Principal use: 3 stories not to exceed 45 feet
 - ii. Accessory structure: 45 feet
- g. Maximum Impervious lot coverage: 80%
- h. Maximum Floor Area ratio (FAR): 0.35

§ 310a Schedule I Entitled "Permitted Uses" is hereby amended to delete the information pertaining to the Light Industrial ("LI") District in its entirety and replace it with the permitted uses for the newly established Technology and Business Innovation Zone II ("TBI-2") as set forth below.

TECHNOLOGY AND BUSINESS INNOVATION ZONE II

Purpose and Intent: Technology and Business Innovation Zone II (TBI-2) (FORMER LI District)

The purpose and intent of the TBI-2 zone is to encourage low density light industrial and commercial development for the location of high technology, educational and related facilities. This zone shall be combined with a design review district to ensure a high quality, aesthetic environment.

A. The following principal uses are permitted in the Technology and Business Innovation Zone II District subject to conditions provided herein and subject to obtaining Site Development Plan approval, if required.

(1) Principal Permitted Uses.

- (a) Laboratory devoted to research, design, and experimentation with fabrication incidental thereto.
- (b) Commercial, corporate and professional office uses.
- (c) Health care testing facility.
- (d) Ambulatory health care facility.
- (e) Light industrial use.
- (f) High-Technology Incubator Business and Professional Center provided such businesses are, in the view of the Board, consistent with the aim of developing and nurturing start-up, high-technology businesses. The Board shall use NAICS descriptions, or its equivalent, in assisting them in determining if a particular use is in keeping with the intent of the regulation.
- (g) Wholesale business (excluding perishable items).
- (h) Veterinary hospital.
- (i) Educational services, such as service training schools, data processing schools, business and secretarial schools and job training and vocational rehabilitation services.
- (j) Printing and/or publishing establishment.
- (k) Recreation/sports facility.
- (l) Public facilities (Operated by the Borough).
- (m) Child day-care services and children's play areas, in accordance with N.J.A.C. 10:122 Manual of Requirements for Child Care Centers.
- (n) Inbound and outbound call centers.
- (o) Data Center.
- (p) Telecom Hotel.

(2) Permitted accessory uses.

- (a) Retail as an accessory use to permitted uses provided that the retail use meets the following requirements:
 - (i) The maximum permitted floor area for the accessory retail use is limited to 2,000 square feet or five (5) percent of the gross floor area, whichever is less and be included in the footprint of the primary structure.
 - (ii) No outdoor sale of goods shall be permitted.

- (iii) The accessory retail use must be clearly incidental to the principal use.
- (iv) The products sold must be produced by or related to the principal use.
- (v) A designated parking area shall be provided for the retail use. This parking area shall provide a clearly marked pedestrian access route to the retail portion of the structure that does not intersect with the travel path of any vehicles that serve the principal business.

(b) Public and private parking and loading.

(c) Signs.

(d) Recycling containers within enclosures.

(e) Commercial earth terminals.

(f) Personal earth terminals.

(g) Ground and roof-mounted solar arrays as per the current solar ordinance.

(h) Pumping stations and other public quasi public uses of this nature.

(i) Wireless Technology.

(j) Educational Facilities.

(3) Zoning Requirements

The following standards apply except where noted elsewhere:

- a. Minimum Lot area: 100,000 square feet
Planned commercial developments: 5 acres
- b. Min Front yard: 100 feet
- c. Min Rear yard: None, except as required by 310-19c and 310-21
- d. Min Side yard: 50 feet for each side yard, except as required by 310-19c and 310-21.
- e. Min lot width:
 - i. 300 feet at setback line
 - ii. 300 feet at right-of-way
- f. Maximum building height:

- iii. Principal use: 40 feet
- iv. Accessory structure: 35 feet
- g. Maximum Impervious lot coverage: 80%
- h. Maximum Floor Area ratio (FAR): 0.40 (TB-1 uses 0.35)

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This ordinance shall take effect upon passage and publication as provided by law.

INTRODUCTION: May 9, 2011
PUBLIC HEARING: June 13, 2011
ADOPTION: June 13, 2011

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

J. Brooke Hern, Mayor

Attest:

Wendi B. Barry, Borough Clerk

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2011-16**

**"AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION, STATE
OF NEW JERSEY, AMENDING AND SUPPLEMENTING 310D SCHEDULE IV ENTITLED
"MINIMUM REQUIRED OFF STREET PARKING" OF THE ZONING ORDINANCE OF THE
BOROUGH OF NEW PROVIDENCE"**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey, as follows:

SECTION I. Section 310d of the Code of the Borough of New Providence entitled "Schedule VI, Minimum Required Off-Street Parking" is amended in full, as follows:

Schedule of Parking Requirements	
Type of Use	Required Off-Street Parking
Residential Uses	
Single Family Building	2 for each dwelling unit, one of which shall be in the garage
Two Family dwelling	1 1/2 for each 1-bedroom unit; 2 for all other dwelling units; 1 space per unit shall be in a garage, except in affordable housing districts
Townhouse	Same as 2-Family
Garden Apartment	Same as 2-Family
Rooming or Boarding House	1 for each guest room, plus 1 for owner
Non Residential Uses	
Ambulatory Health Care Facility	10 per building plus 1 per 200 square feet
Assembly hall, auditorium, community center building, theatre and public meeting room	1 for each 100 square feet of gross floor area; or 1 for each 3 seats, whichever is greater
Auto repair and gasoline stations	4 for each bay: plus 1 for every 1 1/2 employees, plus 10%

Banks	1 per 300 square feet
Buildings with mixed uses	Calculated separately and added to the parking requirement of the other uses
Commercial Office	1 Per 300 square feet
Coporate Office	1 per 250 square feet of gross floor area; or 1 for every 1/1/2 employees, plus 10% whichever is greater; plus 6 for visitors
Child day-care services	1 per employee plus 1 per 10 children or fraction thereof for freestanding uses
Club or Lodge	20 plus 1 additional space for each 200 square feet of gross floor area
Data Center	1 per space per employee plus 4 visitors
Educational services, such as service training schools, data processing schools, business and secretarial schools and job training and vocational rehabilitation services but excluding primary and secondary schools and colleges	1 per employee and 0.9 per student
Electronic computer and data processing services	1 per employee or 1 per 350 square feet, whichever is greater
Fast food restaurant	1 for each 2 seats devoted to service, or 1 for each 125 square feet of gross floor arera,, whichever is greater; plus 1 for every 1 1/2 employees, plus 10%
Headquarters mixed used complex, including offices, laboratories, and research facilities	Calculated separately and added to the parking requirement of the other uses
Health Care Testing Service Facility	10 per building plus 1 per 150 square feet
Hotel/Conference Center	1.25 per sleeping room and 1 per employee; 0.5 spaces per seat (conference rooms); 10 spaces per 1,000 SF of gross leasible area (restaurant)
Inbound and outbound call centers	1 per space per employee plus 4 visitors
Light industry/ Manufacturing	1 for each 800 square feet of gross floor area; or 1 for every 1 1/2 employees on maximum shift, plus 10%, whichever is greater; plus 6 visitors

Nursing Homes	1 for each 2 beds
Personal Services	1 per employee or 1 per 350 square feet, whichever is greater
Professional offices	1 per 300 square feet
Recreation, Sports Facility	5 per 1,000/Square feet (Fitness centers)
	1 per 50 square feet of land and water (swimming pools)
	1 per employee and 3 per court (tennis or badminton courts, shuffleboard courts, and handball or squash)
	4 per 1,000/ SF (Recreation Center)
	14 per 1,000/SF (Multi-Purpose Recreation Center)
Religious uses	1 for each 3 seats or 72 inches of seating spaces when benches rather than seats are used.
Restaurants and taverns (excluding fast food service restaurants)	1 for each 2 seats, plus 1 for every 2 employees
Retail sales and service businesses	1 per 250 square feet
School, Elementary	2 for each classroom and 2 for every 8 seats in auditorium and or assembly halls; or 1 space for each teacher and employee, plus 10%, whichever is greater
School, Secondary	10 for each classroom
Scientific engineering and/or research laboratories devoted to research, design, and/or experimentation and processing and fabrication incidental thereto	1 per employee or 1 per 350 square feet, whichever is greater, plus 6 for visitors
Telecom Hotel	1 per 300 square feet
Unlisted Uses	Determined by the approving authority, as applicable, pursuant to site plan review criteria ad considering the nature and intensity of the proposed use and its impact on the surrounding areas.
Veterinary Center	1 per 400 square feet
Wellness and Lifestyle center	Calculated seperately and added to the parking requirement of the other uses
Wholesale business	1 per employee or 1 per 350 square feet, whichever is greater

SECTION II. Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION III. All ordinances or parts of ordinances inconsistent with this ordinance area hereby repealed as to the extent of such inconsistency.

SECTION IV. This ordinance shall take effect immediately upon adoption and publication according to law.

INTRODUCTION: May 9, 2011
PUBLIC HEARING: June 13, 2011
ADOPTION: June 13, 2011

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

J. Brooke Hern, Mayor

Attest:

Wendi B. Barry, Borough Clerk

Borough of New Providence

Ordinance No. 2011-20

AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE AMENDING AND SUPPLEMENTING § 310-6 ENTITLED "DEFINITIONS" AND § 310-33 ENTITLED "SIGNS" OF THE ZONING PROVISIONS OF THE BOROUGH CODE TO PROVIDE NEW DEFINITIONS AND REQUIREMENTS FOR SIGNS.

BE IT ORDAINED by the governing body of the Borough of New Providence, Union County, New Jersey, that the Zoning Ordinance of the of the Borough of New Providence is hereby amended to delete the existing definitions and requirements for signs and replace them with new definitions and requirements that are more user friendly and provide added protections to prohibit the implementation of nuisance signs, promote the implementation of signs that are necessary for the public health, safety and welfare, promote signage that is properly sized for optimal viewing by motorists and pedestrians and promote signage that is aesthetically pleasing.

WHEREAS, the Planning Board desires to provide enhanced guidelines for the regulation of signs that consider the character of New Providence. The goals of this ordinance are as follows:

- 1) Provide signs in outdoor public places where public health, safety, and welfare are potential concerns
- 2) Allow drivers and pedestrians the ability to utilize signs to safely negotiate passage and inform.
- 3) Protect neighbors from nuisances such as glare from poorly placed, applied, or unshielded light sources upon signs.
- 4) Promote visual aesthetic through efficient sign support,

WHEREAS, the Borough has reviewed existing Code provisions for the Borough of New Providence, and found that the existing definitions and ordinance that pertain to signs is outdated and lacking in the protections desired for sign regulation;

NOW, WHEREFORE, IT IS HEREBY ORDAINED by the Governing Body of the Borough of New Providence as follows:

§ 310-6, entitled "Definitions," is hereby amended to delete all existing definitions pertaining to "signs" and replace them with the new definitions set forth below.

Abandoned Sign: A sign no longer used for its original intent or a sign on a vacant, unoccupied, or abandoned property.

Awning and Canopy: A temporary or portable roof-like covering that project from the wall of a building for the purpose of shielding openings from the elements. Under no circumstances can an awning or canopy be opaque or let light through. Awnings and canopies may extend a maximum of six (6) feet from the exterior wall with the building.

Banner or Pennant Sign: Any sign intended to be hung either with or without frames, possessing characters, letters, illustrations, or ornamentation applied to paper, plastic, or fabric of any kind. National flags, flags of political subdivisions, and symbolic flags of any institution or business shall not be considered pennant signs or banners for the purpose of this chapter.

Changeable Copy: A sign, or portion of a sign, that is designed so that characters, letters, or illustrations can be changed or rearranged, manually, without altering the face or the surface of the sign.

Holiday Decoration Sign: Temporary signs, in the nature of decorations, clearly incidental to and customarily and commonly associated with any national, local, or religious holiday or observance.

Identification Sign: A sign giving the nature, logo, trademark or other identifying symbol; address; or any combination of the name, symbol and address of a buildings business development, or establishment on the premises where it is located.

Sign Area: The area of a sign which is computed by multiplying the greatest width of the sign face by the greatest height of the sign face. The sign area shall include the sign face and any framing, trim or molding, but shall not include the supporting structure. (See Signable Facade Area)

Sign Face: The area or display surface used for the message.

Sign Fascia: The vertical surface of a lintel over a storefront that is suitable for sign attachment

Sign Icon: A sign that illustrates by its shape and graphics, the nature of the business conducted within.

Sign, Animated or Moving: Any sign or part of a sign, which changes physical position by any movement, or rotation or which gives the visual impression of such movement or rotation.

Sign, Awning: A sign that is mounted to or painted on, or attached to an awning that is otherwise permitted by this chapter.

Sign, Billboard: A sign which contains a commercial message and which directs attention to a business, commodity, service or entertainment conducted, sold or offered at a location other than the premises on which the sign is located.

Sign, Bus Shelter: A sign which contains a commercial message and which directs attention to a business, commodity, service or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located.

Sign, Canopy: A sign that is mounted to or painted on, or attached to a canopy that is otherwise permitted by this chapter.

Sign, Changeable: A sign that is designed so that characters, letters, or illustrations can be changed or rearranged without altering the face of or the surface of the sign and is not electronic in nature.

Sign, Community Information: A sign which contains messages of civic groups, churches or places of worship, and local special events which direct attention to a church or place of worship, facility, event, club, or organization.

Sign, Construction: A temporary sign erected on the premises on which construction is taking place, during the period of such construction, indicating the names of architects, engineers, landscape architects, contractors, or similar artisans, and the owners, financial supporters, sponsors, and similar individuals, or firms having a role or interest with respect to the structure or project.

Sign, Contractor: Any on-site sign advertising the name or business of a mechanic, contractor, or artisan performing work on the premises- where the sign is placed.

Sign, Developer: Any on-site or off-premise sign identifying or directing traffic to a particular site or development for an approved period of time longer than thirty (30) days.

Sign, Directional and Informational: Signs limited to directional messages, principally for pedestrian or vehicular traffic, such as "one-way", "entrance", and "exit". Window signs such as those that indicate hours of operation, credit card acceptance, and business affiliations are considered as informational signs. No sign with a commercial message legible from a position on the street shall be considered directional or informational.

Sign, Directory: Signs listing the tenants or occupants of a building or group of buildings. The respective professions or business activities may also be included as part of the sign.

Sign, Façade: See Sign, Wall

Sign, Freestanding: Any immovable sign not affixed to a building.

Sign, Home Occupation or Sign, Home Professional Office: A sign containing only the name and occupation or professional of a permitted home occupation or permitted home professional office.

Sign, Illuminated: A sign lighted by or exposed to artificial lighting either by lights on or in the sign or directed towards the sign.

Sign, Inflatable: Any display or object capable of being expanded by air or other gas and used on a permanent or temporary basis to advertise a product or event.

Sign, Marquee: A sign that is mounted, or painted on, or attached to a marquee that is otherwise permitted by this chapter.

Sign, Memorial or Nameplate: Memorial signs or tablets, names of building and date of erection when cut into any masonry surface, integral to the construction of a building, or when constructed of bronze or other incombustible material mounted on the face of a building, bench or other structure.

Sign, Neighborhood Identification: Signs which identify any type of housing development, by name. No advertising for real estate agents, developers, contractors, builders, architects or other is permitted on Neighborhood Identification Signs.

Sign, Nonconforming: Any sign that does not conform to the regulations of this chapter.

Sign Political: A temporary sign announcing or supporting political candidates or issues in connection with any national, state or local election.

Sign, Portable: A sign that is not permanent, affixed to a building, structure or the ground.

Sign, Projecting: A sign which is fixed to a building or other structure that which extends beyond the surface to which it is affixed. Projecting signs shall be at least eight (8) feet from the ground and should project no more than four (4) feet from the structure.

Sign, Real Estate: A sign pertaining to the sale or lease of the premises, or a portion of the premises, on which the sign is located.

Sign, Street Banner: Any banner sign which is stretched across and hung over a public right-of-way.

Sign, Suspended: A sign hanging down from a marquee, awning, canopy, porch, or roof overhang that would exist without the sign.

Sign, Temporary: A sign constructed of paper, cloth, canvas, plastic, plywood, or other lightweight material intended to be displayed for a short period of time, not to exceed thirty (30) days exclusive of construction signs, contractor signs, and developer signs.

Sign, Vehicle: A sign affixed or painted on a vehicle or trailer and parked at a specific location for a period of four (4) or more days so that its primary purpose is as a commercial message.

Sign, Wall: A sign fastened to or painted on the wall of a building or structure in such a manner that the wall becomes the supporting structure for, or forms the background surface of the sign and which does not project more than six (6) inches from such building, or structure.

Sign, Window: A sign that is applied to or attached to the exterior or interior of a window or located in such manner within a building that it can be seen from the exterior of the structure through a window.

Sign: Any object, device, display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figure, design, symbols, fixtures, colors, illumination or projected images.

Signable Facade Area: The rectangular, continuous area on the wall of a building, which extends from the top line of windows and doors on the first floor, and the bottom line of the second floor windows, roof, or cornice above, in an area that is uninterrupted by windows, architectural details, or openings.

§ 310-33 entitled "Signs" is hereby deleted in its entirety and replaced with the newly established standards for signs as set forth below.

A. The purpose of this chapter is to promote and protect the public health, safety, and welfare by creating a more attractive residential and commercial climate within all areas of the municipality. This code is intended to create a more attractive business climate by further enhancing the streetscape improvement project undertaken by the community. This code seeks to enhance and protect the physical appearance of all areas by reducing the obstructions and hazards to pedestrian and auto traffic caused by indiscriminate placement and use of signs.

B. Applicability

- (1) All signs within the Borough of New Providence shall be subject to the provisions of this section.
- (2) No sign shall be placed on, or attached to a building, or erected independently, for any purpose other than to advertise a permitted business or use conducted on the same premises unless specifically permitted herein.

C. Approvals Required

- (1) Each application for development shall include a sign plan showing a description of the message, trademark, symbol, or insignia, and the specific design, location, size, dimensions, colors, materials, height above ground, construction, and illumination of proposed signs in accordance with the following regulations.
- (2) Any sign hereafter erected in New Providence, which is exposed to public view, shall conform to the provisions of this Ordinance and any other ordinance or regulation of New Providence, the County, State or Federal government relating to the erection and maintenance of signs. In the event of conflicting regulations, the most restrictive regulation shall prevail.
- (3) No existing sign shall be enlarged, rebuilt, structurally altered, or relocated except in accordance with the provisions of this ordinance. Furthermore, the failure to issue a permit for any sign shall not relieve the owner or lessee of the premises from the duty of safely maintaining any such structures.
- (4) All development applications shall submit all signs to be approved by the Planning Board or Zoning Board of Adjustment.
- (5) In applications where only sign modification is sought and no other site modifications are proposed, any sign exceeding the maximum area, height, or otherwise not in conformance with the requirements of this section shall require application and approval for minor site plan with waiver(s).
- (6) No sign, other than exempt signs, shall be erected without first obtaining a sign permit from the Zoning Office. Permit applications shall be accompanied by a plan, drawn to scale, showing details of the sign, type of illumination, type of materials, colors, its size, and location on the building and/or lot. Permits for window signs and changeable copy signs shall be valid as long as there is no change in the sign area, location, and type of such signs that have been authorized by permit.
- (7) If applicable, a building permit from the Construction Official may be required.
- (8) Fees shall be established pursuant to the requirements of Chapter 147 of the Code of the Borough of New Providence.

D. General Provisions

- (1) No sign other than street, traffic or similar official signs shall be erected within or project over the right-of-way of any public street, sidewalk, or public promenade, except as hereafter provided.
- (2) Street signs shall be in conformance with the New Jersey Department of Transportation Standards and the Manual on Uniform Traffic Control Devices for

Streets and Highways, latest edition. The location of street signs shall be determined by the Borough Engineer and shall be free from visual obstruction.

- (3) No signs shall be erected, altered or replaced which are not in accordance with the standards established in this section.
- (4) No sign shall be placed on any property without the consent of the property owner.
- (5) No sign shall be attached to utility poles, public structures, trees, stumps, fence-posts, other signs or sign posts, but shall be free-standing or attached to buildings in accordance with this section, except as otherwise provided herein for "warning signs."
- (6) No sign shall be erected so as to project over any property line.
- (7) No signs shall be clustered and no Commercial Shopping Center or Office Complex Identification Signs shall contain individual signs for individual tenants except as part of an approved Site Plan or waiver of Site Plan approval by the appropriate municipal agency.

E. Exemptions.

The following signs shall be permitted in any zone without prior approvals, however all signs are subject to the requirements of § 310-33D.

- (1) One (1) real estate sign advertising the sale, lease, or rent of the premises upon which the sign is located, which sign shall not exceed eighteen (18) inches high by twenty-four (24) inches wide or three (3) square feet. These signs must be set back three (3) linear feet from all property lines. The sign must be mounted so that the top of the sign is no more than thirty-six (36) inches above the ground.
- (2) One (1) temporary construction sign of architects, engineers, real estate agencies, or corporations on the lot(s) to which it relates. Said signs shall not exceed six (6) square feet. In addition, said signs must be removed within seven (7) days of the issuance of the final construction department certificate of occupancy of the project to which the sign relates. It must be mounted so that the top of the sign is no more than forty-eight (48) inches above the ground. The sign shall not be located in any sight triangle.
- (3) One (1) temporary contractor sign per contractor shall be permitted only during the period contractor is actively performing work on the lands or premises where the sign is placed. The sign shall not exceed six (6) square feet in area, the top of the sign and shall not be more than three (3) feet above the ground. The sign shall not be located in any sight triangle and shall be located behind the street line by a minimum of three (3) feet.

- (4) Decorations for a recognized officially designated holiday or observance provided that they do not create a traffic or fire hazard, and provided that said signs are removed within fifteen (15) days after the holiday.
- (5) Official municipal, county, state or federal governmental signs.
- (6) Political and personal opinion signs shall be permitted throughout the Municipality. Political and personal opinion signs shall be removed within three (3) days after the event they advertise. Political signs and personal opinion signs shall not exceed six (6) square feet and shall not be attached to trees or utility poles.
- (7) Temporary garage sale or yard sale. Such signs may not exceed three (3) square feet; may not be erected more than seven (7) days prior to such sale; and must be removed immediately upon conclusion of the event. No premise shall be permitted to erect such signs more than two times in any calendar year.
- (8) Flags of the United States of America, the States, County, or municipality, foreign nations having diplomatic relations with the United States, and any other flag adopted and sanctioned by an elected legislative body or competent jurisdiction, provided that such flag shall not exceed twenty five (25) square feet and shall not be flown from a pole that exceeds 35 feet in height.
- (9) The following signs will be permitted in any public, quasi-public, commercial, or industrial districts without prior approvals:
 - a) Change in the copy of a changeable copy, once a permit for the sign has been issued.
 - b) Grand opening signs which shall be no larger than twenty (20) square feet in area, provided that the sign is not placed for more than 30 days. These signs may be banner signs mounted on the facade or building and must be at least eight (8) feet high above sidewalk elevation and no higher than the second habitable floor of the building, or other types of similar temporary signs.
 - c) A portable swinger, "A" frame, or sandwich sign that can be no larger than five (5) square feet when utilized to advertise daily specials, special events, restaurant menu specials and the like, providing the sign is located in front of the establishment and is only displayed when the establishment is open for business. Under no circumstances can these signs impede pedestrian flow or be displayed when the enterprise is not open.
 - d) Restaurant menu when displayed in a glass case affixed to the exterior building wall for that purpose, or when displayed on a signboard located in close proximity to the restaurant entrance located on private property. The

area of the signboard or display case shall not exceed the menu size by more than thirty (30) percent.

- e) Temporary window signs shall not exceed twenty-five percent (25) percent of the total storefront window area, and shall be promptly removed upon termination of the sale or event, and shall not be displayed for longer than thirty (30) days. Paper signs should be hung one foot behind the glass attached to a rigid backer board and highlighted with a spotlight.
- f) Directional and Informational window signs including hours of operation, credit card acceptance, and business affiliations are considered informational signs, and are not included in the 25 percent maximum permitted window sign area. No sign with a commercial message legible from a position on the street shall be considered directional or informational.
- g) Temporary banner signs over the public right-of-way shall be approved and permitted by the official action of the Borough Council and be permitted by permit for fourteen (14) days. If temporary banner signs are proposed along a County roadway, permission must be granted by Union County.

F. General Sign Design Guidelines.

- (1) The sign's design should complement the design of its host building or site and the overall character of the business district. Signs should be designed and painted by professional sign makers or experienced artists. Each sign should be designed in accordance with the following standards.
- (2) *Appearance*- Signs should be compatible with their surroundings. Signs for businesses in a common building or contiguous structure, shopping, office, or industrial center should be compatible with each other. Signs attached to the same building should be the same shape, background color and dimension, regardless of individual business ownership or tenancy in the building.
- (3) *Materials*- High-quality materials will ensure that a sign will look attractive, reduce maintenance costs, and last longer. Sign materials and finished textures should complement the building materials. Permanent signs should be made of wood, high-density foam simulating wood, medium-density overlay and finished plywood, brass, copper, or bronze. Plastic and lexan materials should be used for internally illuminated signs.
- (4) *Placement*- Signs should be integrated with the building without obscuring important architectural details or storefront windows. Signs should be mounted so as to minimize damage to historic materials, and finished with architectural details to complement the sign, such as ornamental iron or brass supports and routed wood posts and edges to provide detail and relief.

- (5) *Lettering*- Lettering and character typefaces should match the scale of the building and size of the sign as well as consideration of the adjacent roadway speed limits and whether pedestrians are in the area.
- (6) *Color*- The colors should be compatible with the style and color scheme of the building and its neighbors. Color schemes should be kept simple, limited to two or three colors, and based on a host building's painted exterior detailing, such as window trim and cornices. Earth tones, primary colors, and pastels are appropriate and can be designed with subtle combinations, and variations. Fluorescent, luminescent and iridescent colors and tones should only be used for traffic safety signs. Signs with a strong color contrast are more legible.
- (7) *Lighting*- Decorative light fixtures, such as gooseneck, hooded, historic reproduction, and alcove fixtures, are encouraged that are complimentary to the design of building, sign, or site. Signs should be evenly lit with no isolated bright or dark spots. No substantial light or glare may be directed or reflected onto adjacent streets or properties. Internally illuminated signs should use LED lights to the extent feasible and lettering should be channel set.

G. Specific Design Standards

- (1) All height limitations shall be measured from the average grade at the curb line to the top or bottom of the sign, as is specified, or its supporting structure.
- (2) Where any sign, flag, or banner is located over a walkway, sidewalk, pedestrian way, or other public area, the bottom of the sign, flag, or banner shall be at least eight (8) feet above grade level of the pedestrian area.
- (3) Signs shall be located outside of sight triangles.
- (4) Illuminated signs shall be arranged to reflect the light and glare away from adjoining lots and streets to prevent glare or blinding effects upon motor vehicle traffic and so as not to cause a nuisance to residents of the area. All exterior lighted signs shall be shielded or have translucent fixtures to prevent glare.
- (5) An application for an illuminated sign must include a lighting fixture catalogue cut or manufacturer's product description sheet with isolux or lumens specifications and mounting information. It shall indicate the lighting intensity (lumens) that would be generated by any lighting devices shining onto the sign and the rest of the property and neighboring properties and the lumens that would be projecting from any illuminated signs as part of the sign plan. (This information is part of the manufacturer's data sheet.) Externally illuminated signs consisting of three or fewer one-hundred-watt incandescent light bulbs, or compact fluorescent lights of comparable illuminating capacity, shall be exempt from submitting a lumens plan.

- (6) Attached wall signs shall be affixed parallel to wall to which they are attached, and the face of the sign shall project no more than ten (10) inches from the surface of the wall.
- (7) All signs shall be maintained in a safe, presentable and good structural condition at all times, including the replacement of defective parts or landscaping, painting, repainting, cleaning, and other acts required for the maintenance of said sign. The owner of any property on which a sign is located and those responsible for the maintenance of the sign shall be equally responsible for the condition of the area in the vicinity of the sign and shall be required to keep this area clean, sanitary, and free from noxious or offensive substances, rubbish, and flammable waste materials. If the sign is not made to comply with adequate safety standards, the Zoning Officer shall require its removal within thirty (30) days.
- (8) All signs should have a consistent sign design throughout a particular project. The design theme would include style of lettering, construction, material, type of pole or standard (wood or metal) size and lighting. Color of letters and background should be carefully considered in relation to the color of the material of the buildings or where the signs are proposed to be located.
- (9) The sign area of two-sided signs shall be computed using one (1) side of the sign, if the signs are identical.
- (10) The area of wall signs shall be computed by first measuring the initial letter, number, logo, trademark or symbol or letters of the name independently as a rectangle enclosing the letter, number, logo, trademark, or symbol and adding thereto the area of a rectangle enclosing all the remaining letters, numbers, logos, trademarks, or symbols forming the sign. Other wall signs of a solid face construction, which are placed and securely fastened to the building wall and are complete in and of themselves shall have the area computed on the basis of a rectangle formed by a complete sign.

H. Prohibited Signs

- (1) All signs not expressly permitted under § 310-33 or exempt from regulation in accordance with § 310-33E are prohibited.
- (2) No sign of any type shall be permitted to obstruct driving vision, pedestrian or vehicular traffic, traffic signals, traffic directional and identification signs, walkways, entrances, exits, fire escape, doorways, other places of business, 48" wide sidewalks, or other signs or windows of the building on which they are located, or in any way affect the safety of the public. The Borough of New Providence is authorized to remove any such sign at the expense of the permittee or owner of the property upon which it is located or person or entity responsible for erecting the sign.

(3) Billboard or Off-Premise Signs- The Borough of New Providence hereby prohibits all billboard and/or off-premise signs.

(4) Additional prohibited signs include but are not limited to:

- a) Changeable copy signs, except as otherwise permitted herein,
- b) Neon or gas tubing like signs,
- c) Beacons,
- d) Tethered balloons,
- e) Signs using red, yellow, and green lights which mimic the operation of any traffic control signal,
- f) Roof signs or signs mounted on the roof,
- g) Signs painted directly onto buildings,
- h) Inflatable signs,
- i) Animated, or moving signs,
- j) Mobile signs,
- k) Mechanical or electrical signs employing devices to revolve, flash or display movement or the illusion of movement. Or scrolling text and images
- l) Internally illuminated awning and canopy signs,
- m) Internally illuminated projecting and suspended signs (box signs),
- n) Vehicle(s) or trailer(s) permanently located to serve as a sign in circumvention of this chapter,
- o) Signs which present lewd language or graphic sexual depictions,
- p) Bench signs, and
- q) Bus shelter signs.

I. Developer Signs.

(1) One on-site temporary developer sign for projects that have received final site plan or subdivision approval from the board of jurisdiction shall be permitted. The sign shall identify the project and shall be shown on the final site plan or

subdivision map. The sign area shall not exceed thirty (32) square feet and the sign height shall not exceed four (4) feet about the adjacent ground level. The sign shall be located outside of site triangles shall be located behind the street line by a minimum of three (3) feet. Once construction is completed, prior to the release of sureties, or when the project is dormant for over three (3) months, the on-site temporary sign shall be removed.

J. Public and Quasi-public Uses.

- (1) Community event signs sponsored by a civic organization, club, municipality or house of worship shall be permitted.
- (2) Community event signs shall be no larger than four (4) feet by six (6) feet.
- (3) Community event signs are setback at least fifteen (15) feet from any street or property line, and that such signs are only erected for a period of fourteen (14) days and are removed immediately following the event.
- (4) These signs are exempt from permit filing, but must register the sign, including sign location, event date, sign specifications and person or persons responsible for aforementioned sign with a contact phone number with the Zoning Officer or other designated official.
- (5) A house of worship may have two (2) signs not to exceed a total of thirty two (32) square feet displayed on the property. One sign may be an identification sign and one sign may be a changeable copy sign.

K. All Residential Districts and Uses located in New Providence

- (1) A permitted Home Professional Office or approved Home Occupation may have one sign not to exceed four (4) square feet in area or be higher than five (5) feet above surrounding grade level. The sign shall not extend beyond a vertical plane three (3) linear feet from all property lines displayed on the property, where a building housing a permitted Home Occupation is located within six (6) feet of the front lot line or the street line one (1) projecting sign may be used in lieu of a small freestanding sign noted above. The projecting sign shall not exceed four (4) square feet in area. The projecting sign shall be permitted to be located between an imaginary line drawn perpendicular to the top of any first or ground floor windows and/or doors and the top of the floor of the second floor.
- (2) No other displays or changes in facade that alter the residential character of the building shall be permitted in any residential district.
- (3) Neighborhood Identification Signs not to exceed six (6) square feet in area and that is not more than 18 inches above ground level and not to exceed five (5) feet high.

L. Commercial and Industrial Districts.

(1) Freestanding signs

- a) One (1) freestanding sign shall be permitted at a rate of one (1) square foot of sign (per side), for every three (3) linear feet of street frontage. Freestanding signs shall not exceed a total maximum area of fifty (50) square feet per side.
- b) Freestanding signs shall be located a minimum of ten (10) feet away from all property lines and outside of any sight triangles.
- c) Freestanding signs shall be mounted so that the bottom of the sign is at least eighteen (18) inches above ground level.
- d) Freestanding signs shall be monument-style and no higher than ten (10) feet above ground level.
- e) Freestanding signs may be internally illuminated. Freestanding signs may also be illuminated by an exterior light source, facing down, not upwards towards the sky.
- f) Individual freestanding signs for multiple tenants or tenant structures shall not be permitted.

(2) Building signs

- a) Facade, wall, suspended, projecting, and window signs shall have a maximum total area of four (4%) percent of the total of the area of the building facade fronting on a principal entrance, but in no case shall any individual sign be greater than fifty (50) square feet. One building sign per public entrance (maximum of 2) shall be permitted.
- b) Wall signs shall be located between the top line of windows or doors on the first floor, and the bottom line of the second floor windows, roof, or cornice above, in an area that is uninterrupted by windows, architectural details, or openings. (See Signable Façade Area)
- c) Wall signs shall not project beyond the roof or sides of the building. Wall signs may not project more than six (6) inches beyond the front surface of the building.
- d) In addition to the permitted signs projecting or suspended signs with a display area not greater than four (4) square feet that maintain a height of eight (8) feet over the sidewalk or surrounding grade and do not project more than four (4) feet from the exterior wall, shall be permitted under a canopy for each storefront or business service having an individual public entrance from the

exterior of the building. This sign area shall not count against the maximum signage permitted per this ordinance.

- e) Suspended signs may not extend farther away from the exterior wall of the building than the structure from which it is supported. In no case shall the suspended sign be greater than four (4) feet from the exterior wall of the building.
- f) One etched or painted permanent window sign shall be permitted in one storefront window of any retail or commercial business, providing it does not exceed twenty-five (25) percent of the window area.
- g) One awning or canopy sign shall be permitted on the awning or canopy providing the maximum letter height does not exceed eighteen (18) inches. Under no circumstances shall the awning or canopy be internally illuminated. Awnings and canopies are permitted to encroach upon the sidewalk a minimum of three (3) and maximum of six (6) feet, and be located eight (8) feet above surrounding adjacent grade level. The signage should be provided on the valance and should be limited to the store, business name or street number. No other text should be on the awning.
- h) Changeable copy signs are permitted for gasoline service stations to provide fuel pricing information.

(3) Directory signs shall be permitted in relation to each building, provided the directory is no more than six (6) square feet in area and four (4) feet in height. The sign shall not be located in the front yard setback.

(4) Directional signs. Directional signage shall be permitted on sites where necessary to safely and effectively convey persons to their intended destination. Directional signs shall be consistent with each other and the site's other signage, and shall be limited to six (6) square feet in area and four (4) feet in height. The signs shall not be used for advertising purposes and may be internally illuminated.

M. Maintenance.

- (1) The property owner shall be responsible for maintaining all signs erected on a tax lot. This maintenance shall include repainting, repairing and cleaning, as necessary. No sign shall be permitted to exhibit:
 - a) Excessive chipped or peeling paint or lettering;
 - b) Damaged or broken lettering or signboard;
 - c) Illegible material due to fading, obliteration, or other condition; or

- d) Dirty, torn, broken, or otherwise damaged awning, canopy, projecting sign, or other sign support structure.
- (2) If the Zoning Officer determines that any sign is in a state of disrepair so as to no longer be reasonably capable of presenting its message, or abandoned or a danger to the public health or public safety, he shall give written notice of the condition of the sign to the owner of the sign and to the owner of record of the tax lot.
- (3) The property owner shall thereafter have 30 days to repair or remove said sign.
- (4) If said sign is not satisfactorily repaired or removed within the thirty-day period, the Zoning Officer may thereafter take such actions as are permitted pursuant to this Chapter.

N. Abandonment. Abandoned signs and their supporting structures shall be removed within 30 days. The Borough may thereafter take such actions as are permitted pursuant to this Chapter.

O. Permits Fees.

- (1) All signs, excluding those specifically exempted within this section, shall require a sign permit from the Zoning Officer and, if applicable, a building permit from the Construction Code Official. The applicant shall furnish the Zoning Officer with a fee as required and the necessary information from which to determine whether the subject sign meets the requirements of this section
- (2) Individual signs placed within a multiple sign structure subsequent to its installation shall require a separate permit.
- (3) Where the erection of a sign has not been completed within six (6) months after the date of issuance of the permit, the permit shall become null and void and subject to reapplication. The Zoning Officer shall have the discretion to grant a reasonable continuation of time where unavoidable conditions prevented the initiation or completion of work within the prescribed time period.
- (4) Fees shall be established pursuant to the requirements of § 147-4 of the Code of the Borough of New Providence
- (5) Notwithstanding the provisions of this section, the Borough Council in its absolute and sole discretion, or by contract or agreement, may provide advertising for any business, organization or use when such advertising is deemed to be in furtherance of the public good, health, safety and/ or general welfare.

P. Enforcement

- (1) If the Zoning Officer shall find that any sign regulated herein is unsafe, insecure, in need of repair, equipped with flashing or blinking lights, or otherwise in violation of this section, the Zoning Officer shall give written notice to the owner thereof or to his/her attorney. If the owner fails to remove, alter or repair the sign within 30 days after such notice, the Zoning Officer may initiate further action as provided in this section in order to abate or remedy the violation.
- (2) Upon failing to comply with the violation notice from the Zoning Officer within the time specified, the Zoning Officer is authorized to cause the removal of the sign, and any expense incidental thereto shall be paid by the permittee or owner of the property upon which the sign is located.

Q. Violations and remedies.

- (1) **Penalties.** Any violation of any provision of this section shall be punishable upon conviction by a fine of not less than \$50.00 dollars and not to exceed \$1,000.00 dollars.
- (2) The following individuals shall be subject to potential punishment:
 - a) The owner, tenant or occupant of a building, premises, or part thereof where such a violation has been committed or does exist; and
 - b) Any agent, contractor, corporation or other person who commits, takes part or assists in the violation.
- (3) Each day a violation continues shall constitute a separate and distinct offense, punishable as such in accordance with the following:
 - a) A minimum penalty of \$50.00 dollars per day shall be imposed; and
 - b) Any person or entity who is convicted of violating any provision of this section within one (1) year of the date of a previous violation of the same provision of this section, and who was fined for the previous violation, shall be sentenced by the Municipal Court an additional fine as a repeat offender. The additional fine imposed by the Court upon such person or entity for a repeat offense shall not be less than the minimum fine fixed for a violation of the section, but shall be calculated separately and in addition to the fine imposed for the violation of this section.
 - c) The imposition of penalties herein shall not preclude the Borough of New Providence or any other person from instituting an action to prevent the unlawful construction, reconstruction, installation, alteration, repair, conversion or use of a sign, or to restrain, correct or abate a violation.

(4) Injunctive and other relief. In addition to the foregoing, the Borough of New Providence may institute and maintain a civil action for injunctive or other relief as provided in the Municipal Land Use Law and other applicable laws.

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This ordinance shall take effect upon passage and publication as provided by law.

Introduced: October 10, 2011

Public Hearing: November 28, 2011

Adopted: November 28, 2011

BOROUGH OF NEW PROVIDENCE,
COUNTY OF UNION,
STATE OF NEW JERSEY

J. Brooke Hern, Mayor

Attest:

Wendi B. Barry, Clerk

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2011-21**

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION,
STATE OF NEW JERSEY, AMENDING CHAPTER 305 OF THE CODE OF THE
BOROUGH OF NEW PROVIDENCE ENTITLED "SUBDIVISION OF LAND AND SITE
PLAN REVIEW" TO ADD ENHANCED DESIGN STANDARDS FOR THE CENTRAL
BUSINESS DISTRICT**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey as follows:

1. Chapter 305 of the Code of the Borough of New Providence is amended to add Section 305-12A, Design Standards for the Central Business District as follows:

§305-12A. Design Standards for the Central Business District.

In addition to the general design standards set forth in §305-11, applications for development in the Central Business District shall conform to the New Providence Downtown Design Standards that are incorporated herein as Chapter 305 Appendix 1.

2. Chapter 305 Appendix 1 is attached hereto and made part hereof.
3. All other terms and provisions of Chapter 305 shall remain unchanged.
4. This ordinance shall take effect as provided by law.

Introduced: October 10, 2011
Public Hearing: November 28, 2011
Adopted: November 28, 2011

**BOROUGH OF NEW PROVIDENCE,
COUNTY OF UNION,
STATE OF NEW JERSEY**

J. Brooke Hern, Mayor

Attest:

Wendi B. Barry, Clerk

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2011-21**

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION,
STATE OF NEW JERSEY, AMENDING CHAPTER 305 OF THE CODE OF THE
BOROUGH OF NEW PROVIDENCE ENTITLED "SUBDIVISION OF LAND AND SITE
PLAN REVIEW" TO ADD ENHANCED DESIGN STANDARDS FOR THE CENTRAL
BUSINESS DISTRICT**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey as follows:

1. Chapter 305 of the Code of the Borough of New Providence is amended to add Section 305-12A, Design Standards for the Central Business District as follows:

§305-12A. Design Standards for the Central Business District.

In addition to the general design standards set forth in §305-11, applications for development in the Central Business District shall conform to the New Providence Downtown Design Standards that are incorporated herein as Chapter 305 Appendix 1.

2. Chapter 305 Appendix 1 is attached hereto and made part hereof.
3. All other terms and provisions of Chapter 305 shall remain unchanged.
4. This ordinance shall take effect as provided by law.

Introduced: October 10, 2011

Public Hearing: November 28, 2011

Adopted: November 28, 2011

BOROUGH OF NEW PROVIDENCE

ORDINANCE 2011-25

AN ORDINANCE AMENDING CHAPTER 275, ARTICLE 2, SECTION 275-14 ON AFFORDABLE HOUSING OF THE BOROUGH OF NEW PROVIDENCE TO REGULATE THE ALLOWABLE TIMEFRAME FOR AFFORDABILITY HOUSING CONTROLS.

BE IT ORDAINED by the governing body of the Borough of New Providence, Union County, New Jersey, that the Zoning Ordinance of the of the Borough of New Providence is hereby amended to include provisions for affordable housing,

WHEREAS, WHEREAS, at Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code, the State has promulgated affordability controls in regulations designed to implement the Act, by assuring that low- and moderate-income units that are created under the Act are occupied by low- and moderate-income households for an appropriate period of time (the "Rules"); and

WHEREAS, under authorization of the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq., hereinafter the "Act") the Municipality is implementing a program to provide affordable housing units to low- and moderate-income households desiring to live within the Municipality; and

NOW, WHEREFORE, IT IS HEREBY ORDAINED by the Governing Body of the Borough of New Providence as follows:

§ 275-14, entitled "Covenants and restrictions on sales and rentals," is hereby amended to read as the following (additions underlined):

275-14 Covenants and restrictions on sales and rentals.

H. Removal of restrictions. After 30 years from the date of its initial occupancy, an affordable housing unit may be sold or rented without restrictions; provided, however, that at the time of the removal of the deed restriction, the owner of a rental unit shall convey to the Housing Fund of the borough the difference between the appraised value of the unit (as determined by an independent appraisal by an appraiser agreed upon by the Borough Council and the unit owner) and the affordable rent level then applicable to the housing unit. With sales units, the difference between the actual sales price of the unit and the affordable sales price shall be conveyed to the Housing Fund at the time of the first transfer of ownership following the removal of the deed restriction.

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This ordinance shall take effect upon passage and publication as provided by law.

Dated: November 28, 2011

Public Hearing: December 12, 2011

Adopted: December 12, 2011

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION,
STATE OF NEW JERSEY

J. Brooke Hern, Mayor

Attest:

Wendi B. Barry, Clerk

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2012-07**

AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE AMENDING AND SUPPLEMENTING § 310-6 OF THE "LAND USE" PROVISIONS OF THE BOROUGH CODE TO ADD NEW DEFINITIONS FOR EXISTING AND PROPOSED NEW LAND USES

WHEREAS, the Borough Council, in conjunction with the Borough's Planning Board and the Borough Planner, undertook a review of the land use provisions of the Borough Code governing the Borough's Central Business District (C) in order to, among other things, provide consistency in the standards applicable to the zone, to replace outdated standards contained therein, and to promote appropriate development within this zone; and

WHEREAS, as a result of this review, the Planning Board and the Borough Planner have recommended that certain amendments be made to the definitions within § 310-6 of the Borough Code to add new definitions for existing and proposed new land uses; and

WHEREAS, the Borough Council has determined that it is appropriate and necessary to amend § 310-6 of the Borough Code to add new definitions for existing and proposed new land uses;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of New Providence, County of Union and State of New Jersey that § 310-6 of the Borough Code of the Borough of New Providence is hereby amended and supplemented as follows:

(1) § 310-6 is hereby amended to add the following new defined terms:

SPAS/ DAY SPAS: Retail personal service establishments that offer a combination of non-medical personal services that may include hair, nail and skin treatment or others services typically found in a beauty shop, and may offer patrons multiple services such as personal hygiene, grooming, relaxation therapy, and hydro therapy, and licensed massage therapy as defined by New Jersey General Statutes. Massage therapy shall be an accessory use (See definition of massage-accessory) and shall cover less than 20 percent of the gross floor of the principal use.

MASSAGE – ACCESSORY: A use where massages occur, either permanently or temporarily, and the area where the massage occurs, which shall cover less than 20 percent of the gross floor of the principal use. The following professions and services shall not be classified as a massage establishment:

1. Any duly licensed medical physician, doctor, surgeon, osteopath, chiropractor, acupuncturist, registered nurse, or to other person licensed by the state while engaging in practices as part his or her license.

2. Any barber, beautician, manicurist, cosmetologist, or esthetician who is licensed under the laws of the State of New Jersey while engaging in practices as part his or her license. This exemption shall include hospitals, nursing homes, sanitariums, and any other health facilities duly licensed by the State of New Jersey or to accredited high schools, junior colleges, colleges, or universities whose coaches and trainers are acting within the scope of their employment.
3. Shall not apply to physical therapist or trainer of amateur, semiprofessional, or professional athletes or athletic teams while engaging in his or her training responsibilities for and with athletes.
4. Any massage technician offering massage services to a fully clothed client in public common areas where the primary use is not a massage establishment (i.e., chair massage services in a supermarket, massage services in the courtyard of an outdoor or indoor shopping center).

(2) All other defined terms set forth within §310-6 shall remain in full force and effect.

BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provisions so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective; and

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict; and

BE IT FURTHER ORDAINED, that this Ordinance shall take effect on upon passage and publication in accordance with applicable law.

INTRODUCTION: April 23, 2012
PUBLIC HEARING: May 14, 2012
ADOPTED: May 14, 2012

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2012-11**

AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION STATE OF NEW JERSEY AMENDING THE DEFINITION OF "PERSONAL SERVICES ESTABLISHMENT" AT SECTION 310-6 OF THE BOROUGH CODE

WHEREAS, the Borough Council, in conjunction with the Borough's Planning Board and the Borough Planner, undertook a review of the land use provisions of the Borough Code governing the Borough's commercial districts in order to, among other things, provide consistency in the standards applicable to the zone, to replace outdated standards contained therein, and to promote appropriate development within this zone; and

WHEREAS, as a result of this review, the Planning Board and the Borough Planner have recommended, *inter alia*, that certain amendments be made to the definition of "Personal Services Establishment" within § 310-6 of the Borough Code; and

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of New Providence, County of Union and State of New Jersey that § 310-6 of the Borough Code of the Borough of New Providence is hereby amended and supplemented as follows:

(1) § 310-6 is hereby amended to revise the definition of Personal Services Establishment as follows:

PERSONAL SERVICE ESTABLISHMENT – Any business which primarily offers services to the general public at retail, such as shoe repair, watch repair, barber and beauty services, including spas/day spas and including massage as an accessory use as defined herein, but excluding massage as a principal use and professional services.

(2) All other defined terms set forth within §310-6 shall remain in full force and effect.

BE IT FURTHER ORDAINED that this ordinance shall take effect in accordance with law.

INTRODUCED: August 13, 2012
PUBLIC HEARING: September 10, 2012
ADOPTED: September 10, 2012

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2013-11**

**"AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION, STATE
OF NEW JERSEY, AMENDING AND SUPPLEMENTING 310D SCHEDULE IV ENTITLED
"MINIMUM REQUIRED OFF STREET PARKING" OF THE ZONING ORDINANCE OF THE
BOROUGH OF NEW PROVIDENCE"**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey, as follows:

SECTION I. Section 310d of the Code of the Borough of New Providence entitled "Schedule VI, Minimum Required Off-Street Parking" is amended in full, as follows:

Schedule of Parking Requirements	
Type of Use	Required Off-Street Parking
Residential Uses	
Single Family Building	2 for each dwelling unit, one of which shall be in the garage
Two Family dwelling	1 1/2 for each 1-bedroom unit; 2 for all other dwelling units; 1 space per unit shall be in a garage, except in affordable housing districts
Townhouse	Same as 2-Family
Garden Apartment	Same as 2-Family
Rooming or Boarding House	1 for each guest room, plus 1 for owner
Non Residential Uses	
Ambulatory Health Care Facility	10 per building plus 1 per 200 square feet
Assembly hall, auditorium, community center building, theatre and public meeting room	1 for each 100 square feet of gross floor area; or 1 for each 3 seats, whichever is greater.
Auto repair and gasoline stations	4 for each bay: plus 1 for every 1 1/2 employees, plus 10%

Banks	1 per 300 square feet
Buildings with mixed uses	Calculated separately and added to the parking requirement of the other uses
Commercial Office	1 Per 300 square feet
Corporate Office	1 per 250 square feet of gross floor area; or 1 for every 1/1/2 employees, plus 10% whichever is greater; plus 6 for visitors
Child day-care services	1 per employee plus 1 per 10 children or fraction thereof for freestanding uses
Club or Lodge	20 plus 1 additional space for each 200 square feet of gross floor area
Data Center	1 per space per employee plus 4 visitors
Educational services, such as service training schools, data processing schools, business and secretarial schools and job training and vocational rehabilitation services but excluding primary and secondary schools and colleges	1 per employee and 0.9 per student
Electronic computer and data processing services	1 per employee or 1 per 350 square feet, whichever is greater
Fast food restaurant	1 for each 2 seats devoted to service, or 1 for each 125 square feet of gross floor area, whichever is greater; plus 1 for every 1 1/2 employees, plus 10%
Headquarters mixed used complex, including offices, laboratories, and research facilities	Calculated separately and added to the parking requirement of the other uses
Health Care Testing Service Facility	10 per building plus 1 per 150 square feet
Hotel/Conference Center	1.25 per sleeping room and 1 per employee; 0.5 spaces per seat (conference rooms); 10 spaces per 1,000 SF of gross leasable area (restaurant)
Inbound and outbound call centers	1 per space per employee plus 4 visitors
Light industry/ Manufacturing	1 for each 800 square feet of gross floor area; or 1 for every 1 1/2 employees on maximum shift, plus 10%, whichever is greater; plus 6 visitors

Nursing Homes	1 for each 2 beds
Personal Services	1 per employee or 1 per 350 square feet, whichever is greater
Professional offices	1 per 300 square feet
Recreation, Sports Facility, Multi-Pool Commercial Training Facilities.	<p>5 per 1,000/Square feet (Fitness centers)</p> <p>Multi-Pool Commercial Training Facilities. 1 per 50 sf of water surface of all pools. 25% of required parking may be reserved subject to approval of Planning Board.</p> <p>1 per employee and 3 per court (tennis or badminton courts, shuffleboard courts, and handball or squash)</p> <p>4 per 1,000/ SF (Recreation Center)</p> <p>14 per 1,000/SF (Multi-Purpose Recreation Center)</p>
Religious uses	1 for each 3 seats or 72 inches of seating spaces when benches rather than seats are used.
Restaurants and taverns (excluding fast food service restaurants)	1 for each 2 seats, plus 1 for every 2 employees
Retail sales and service businesses	1 per 250 square feet
School, Elementary	2 for each classroom and 2 for every 8 seats in auditorium and or assembly halls; or 1 space for each teacher and employee, plus 10%, whichever is greater
School, Secondary	10 for each classroom
Scientific engineering and/or research laboratories devoted to research, design, and/or experimentation and processing and fabrication incidental thereto	1 per employee or 1 per 350 square feet, whichever is greater, plus 6 for visitors
Telecom Hotel	1 per 300 square feet
Unlisted Uses	Determined by the approving authority, as applicable, pursuant to site plan review criteria ad considering the nature and intensity of the proposed use and its impact on the surrounding areas.
Veterinary Center	1 per 400 square feet
Wellness and Lifestyle center	Calculated separately and added to the parking requirement of the other uses
Wholesale business	1 per employee or 1 per 350 square feet, whichever is greater

SECTION II. Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION III. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as to the extent of such inconsistency.

SECTION IV. This ordinance shall take effect immediately upon adoption and publication according to law.

Introduced: September 23, 2013
Public Hearing: October 14, 2103
Adopted: October 14, 2013

I, Wendi B. Barry, Borough Clerk of the Borough of New Providence, County of Union and State of New Jersey, certify this to be a true copy of an ordinance adopted by the Mayor and Borough Council at a regular meeting held on October 14, 2013.

Wendi B. Barry 10/29/13
Wendi B. Barry Date
Borough Clerk

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2015-02**

**"AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 310 OF THE CODE OF
THE BOROUGH OF NEW PROVIDENCE ENTITLED 'ZONING'"**

BE IT ORDAINED by the Mayor and Council of the Borough of New Providence, in the County of Union and State of New Jersey, that Chapter 310 of the Code of the Borough of New Providence entitled "Zoning" is hereby amended as set forth below; and

WHEREAS, the Board desires to revise and replace the utilization of Floor Area Ratio for existing detached housing by implementing and amending certain height, setback and other bulk requirements with the intent of reducing the massing and scale of dwellings as viewed from the street and otherwise preventing the construction of dwellings that are out of character with the neighborhood; and

WHEREAS, based on a review of several recent years' applications before the Borough's Zoning Board of Adjustment and the Borough's desire to expedite and reduce the cost of seeking variance approval for additions and minor construction, where appropriate, the Board finds it beneficial to the public to adopt the following:

1. Part III. Article II, Chapter 310-6, entitled "Definitions" shall be amended to add definitions and replace existing definitions with revised definitions, as follows:

Definitions:

ENCROACHMENT: Any structure that protrudes into a required setback.

STOOP: A small staircase ending in a platform that leads to the entrance of a building.

PORCH: A covered platform that leads to the entrance of a building.

PORICO: A structure consisting of a roof supported by columns or piers that leads to the entrance of a building.

STORY, ABOVE-GRADE: "Any living area having a finished floor area above grade, except a basement, shall be considered a "story" when the distance from the grade to the finished surface of the floor above the basement is more than four (4) feet for more than 60% of the total perimeter of the building or more than ten (10) feet at any point."

2. Part III. Article II, Chapter 310-10, entitled "Schedules" shall be amended to revise certain requirements set forth in "Schedule II: Lot and Yard Requirements", "Schedule III: Height, Coverage and Living Area Requirements" and "Schedule IV: Minimum Required Off-street

Parking" as indicated on the attached amended schedules.

3. Part III. Article II, Chapter 310-10, entitled "Schedules" shall be amended to include the requirements set forth in "Schedule IIA: Lot and Yard Requirements – Existing Lots."
4. Part III. Article II, Chapter 310-13, entitled "Lot and yard requirements" shall be amended to include reference to Schedule IIA such that it reads as follows:

The regulations set forth in Schedule II: Lot and Yard Requirements and Schedule IIA: Lot and Yard Requirements – Existing Lots, shall apply to all structures and lots within the several districts respectively, unless otherwise specified in this chapter. Where minimum lot widths at the setback line are required, the specified width shall be maintained from the setback line for an additional 40 feet toward the rear lot line.

5. Part III, Article II, Chapter 310-23, entitled "Projections into required yards" at paragraph A, subsection 6, is amended as follows:

A. Subject to the conditions hereinafter set forth, the following additions may be permitted to extend into required yards in residential districts:

(6) A roof with unenclosed sides over an entrance platform of a dwelling or portico may project up to five feet into the required front yard, provided that the roof over an entrance platform shall not extend beyond the platform and steps, nor shall the total area of the extension into the front yard exceed 25 square feet. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be such that the minimum front yard setback may be the average of the front yard setbacks of the dwellings located on the lots within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, but in no event shall the minimum front yard setback be less than 10 feet.

6. Part III, Article II, Chapter 310-23, entitled "Projections into required yards" paragraph B, subsection 1, shall be amended as follows:

B. Said additions must meet the following conditions:

1. The existing building conforms to the requirements of Schedules II, **IIA** and **III** for the yard in question or, if the yard requirement is not met, meets all conditions below:
7. **Repealer.** All ordinances or parts of ordinances inconsistent with this ordinance area hereby repealed as to the extent of such inconsistency.
8. **Severability.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

9. **Effective Date.** This Ordinance shall take effect immediately upon adoption and publication as provided by law.

Introduced: March 20, 2015
Public Hearing: April 13th and 27th, 2015
Adopted: April 27, 2015

Record of Council Vote

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO	X			
GENNARO	X			
KAPNER	X			
MADDEN	X			
MUÑOZ	X			
ROBINSON	X			
MORGAN				TO BREAK COUNCIL TIE VOTE

I, Wendi B. Barry, Borough Clerk of the Borough of New Providence, County of Union and State of New Jersey, certify this to be a true copy of an ordinance adopted by the Mayor and Borough Council at a regular meeting held on April 27, 2015.

Wendi B. Barry 4/28/2015

Wendi B. Barry, Borough Clerk Date

ZONING

310 Attachment 2

Borough of New Providence

SCHEDULE II LOT AND YARD REQUIREMENTS

Dimension	Requirement
*R1 District: Single-Family District	
Minimum lot area	18,000 square feet
Minimum yards	See Schedule IIA
Minimum lot width	
Interior	
At setback line	120 feet
At right-of-way line	75 feet
Corner	
At setback line	130 feet
At right-of-way line	85 feet
*R2 District: Single-Family District	
Minimum lot area	15,000 square feet
Minimum yards	See Schedule IIA
Minimum lot width	
Interior	
At setback line	110 feet
At right-of-way line	60 feet
Corner	
At setback line	110 feet
At right-of-way line	70 feet
*R2A District: Single-Family District [Added 6-27-2005 by Ord. No. 2005-8]	
Minimum Lot Area	18,000 square feet
Minimum yards	See Schedule IIA
Minimum lot width	
Interior	
At setback line	80 feet
At right-of-way line	60 feet
Corner	
At setback line	110 feet
At right-of-way line	70 feet
Minimum lot depth	200 feet

*¹ The standards set forth in the schedule for single-family uses shall apply for all subdivisions. For existing lots in all zones permitting single-family dwellings as a principal permitted use, see Schedule IIA.

²* The standards set forth in the schedule for single-family uses shall apply for all subdivisions. For existing lots in all zones permitting single-family dwellings as a principal permitted use, see Schedule IIA.

R3 District: Two-Family District

Minimum lot area

One-family	8,000 square feet
Two-family	10,000 square feet

Minimum yards**

Front	30 feet
Rear	40 feet
Side	
One	8 feet
Both	20 feet

Minimum lot width

Interior	
At setback line	75 feet
At right-of-way line	50 feet
Corner	
At setback line	85 feet
At right-of-way line	60 feet

R3A District: Single-Family and Two-Family District [Added 8-8-2005 by Ord. No. 2005-13]

Minimum lot area

Single-family	10,000 square feet
Two-family	15,000 square feet

Minimum yards**

Front	30 feet
Rear	40 feet
Side	
One	12 feet
Both	30 feet

Minimum lot width

Single-family	
At the Setback Line	80 feet
At the right-of-way Line	80 feet

Two-family	
At the Setback Line	100 feet
At the right-of-way Line	100 feet

Minimum lot depth

Single-family	125 feet
Two-family	150 feet

R4 District: Multifamily District

Minimum lot area

Garden apartments and townhouses	2 acres
One-family	8,000 square feet

Two-family	10,000 square feet
Planned unit residential developments	5 acres
Minimum yards**	
Front	30 feet
Rear	40 feet
Side	
One	15 feet
Both	35 feet
Minimum lot width	
Interior	
At setback line	—
At right-of-way line	100 feet
Corner	
At setback line	—
At right-of-way line	100 feet

OR District: Office and Residential District

Minimum lot area	
Hotel	2 acres
Planned unit residential developments	5 acres
Office	20,000 square feet
Residential	
One-family	8,000 square feet
Two-family	10,000 square feet
Garden apartments and townhouses	2 acres
Minimum yards**	
Front	
Office or hotel	20 feet
Other Residential	30 feet
Rear	40 feet
Side	
One	15 feet
Both	35 feet
Minimum lot width	
Interior	
At setback line	100 feet
At right-of-way line	—
Corner	
At setback line	100 feet
At right-of-way line	—

CCD District: Central Commercial District

Minimum lot area	None
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** For single-family dwellings, see Schedule IIA for all minimum yard requirements.

Minimum yards		
Front	5 feet from right-of-way line except where there is the setback shall be the same as the setback of the shall be	
an existing established setback, then structures on either side. If one setback continued.		
Rear	None, except as required by §§ 310-19C and	310-21
Side	None, except as required by §§ 310-19C and	310-21
Minimum lot width		
Interior		
At setback line	None	
At right-of-way line	None	
Corner		
At setback line	None	
At right-of-way line	None	

C1 District: Specialty Commercial District**Minimum lot area**

Planned commercial developments	5 acres
Planned unit residential developments	5 acres

Minimum yards

Front	15 feet from right-of-way line except where there is an existing established setback, then the setback shall be the same as the setback of the structures on either side. If one setback is deeper than the other, the deeper setback shall be continued.
Rear	None, except as required by §§ 310-19C and 310-21
Side	None, except as required by §§ 310-19C and 310-21

Minimum lot width

Interior	
At setback line	None
At right-of-way line	None
Corner	
At setback line	None
At right-of-way line	None

C2 District: Neighborhood Commercial District**Minimum lot area**

None

Minimum yards

Front	Same as C1 Zone
Rear	None, except as required by §§ 310-19C and 310-21
Side	None, except as required by §§ 310-19C and 310-21

Minimum lot width

Interior	
At setback line	None
At right-of-way line	None
Corner	
At setback line	None
At right-of-way line	None

TBI-1 District: Technology and Business Innovation Zone I (former RL District)**Minimum lot area**

150,000 square feet

Planned Commercial Developments	5 acres
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Minimum yards

Front	100 feet
Rear	None, except as required by §§ 310-19C and 310-21
Side	50 feet for each side yard, except as required

by §§ 310-19C and 310-21

Minimum lot width

Interior	
At setback line	300 feet
At right-of-way line	300 feet
Corner	
At setback line	300 feet
At right-of-way line	300 feet

TBI-2 District: Technology and Business Innovation Zone II (former LI District)

Minimum lot area 100,000 square feet

Planned commercial developments 5 acres

Minimum yards

Front	100 feet
Rear	Same as TBI-1 District
Side	Same as TBI-1 District

Minimum lot width

Interior	
At setback line	300 feet
At right-of-way line	300 feet
Corner	
At setback line	300 feet
At right-of-way line	300 feet

A1 District: Affordable Housing District [Amended 8-10-1992 by Ord. No. 92-12]

Minimum lot area As designated on Zoning Map, except that single-family detached housing on conventional lots in residential clusters shall have a minimum lot area of 10,000 square feet

Minimum yards

Front	30 feet
Rear	20 feet*
Side	
One	15 feet*
Both	35 feet*

*NOTE: Except as required by §§ 310-19C and 310-21

A2 District: Affordable Housing District

Same as A1 District

A3: Affordable Housing District

Same as A1 District

RS: Residential Senior Citizen Community Affordable Housing District [Added 9-28-1992 by Ord. No. 92-14]

Minimum lot area	Determined by borough
Minimum square feet of common space (may be a combination of interior and exterior space)	900 square feet
Minimum lot frontage	100 feet
Maximum building height, principal structure	3 stories, not to exceed 35 feet
Maximum lot coverage	50%
Maximum improved lot coverage	80%

(Setbacks, curblines, sidewalks, buffers, distances between buildings, landscaping, lighting, utilities, streets and access shall all be as approved for the specific dwelling on the specific site, as determined by the borough to achieve the maximum use of the lot for this specific purpose in combination with the best interests of the senior citizen tenants, their neighbors and the borough.)

Maximum residential density	16 units per acre
Minimum required off-street parking	3/4 space per unit

With the exception of those improvements necessary to comply with the pertinent federal laws, all other requirements of a senior citizen dwelling not specifically amended by this ordinanceⁱ shall be in conformance with minimum requirements for multifamily dwellings in the borough, unless otherwise designated by the borough, in its sole discretion.

ⁱEditor's Note: "This ordinance" refers to Ord. No. 92-14, adopted 9-28-1992, which provided for the establishment of the RS District.

ZONING

310 Attachment 2A

Borough of New Providence

SCHEDULE IIA LOT AND YARD REQUIREMENTS – EXISTING LOTS

Dimension	Requirement
R1 District: Single-Family District	
Minimum lot area	18,000 square feet
Minimum yards	
Front	40 feet or the prevailing front yard setback line ^{*4} of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet
Rear	40 feet or 35% of lot depth; whichever is greater
Side	
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height
Both	30% of the lot width
Minimum lot width	
Interior	
At setback line	120 feet
At right-of-way line	75 feet
Corner	
At setback line	130 feet
At right-of-way line	85 feet
R2 District: Single-Family District	
Minimum lot area	15,000 square feet
Minimum yards	
Front	40 feet or the prevailing front yard setback line ^{*5} of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet
Rear	40 feet or 35% of lot depth; whichever is greater
Side	One For lots wider than 75 feet, the

^{*4} Setback line shall be measured to the front principal building wall. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be permitted to the same extent as exist with respect to dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot.

setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height

Both	30% of the lot width
<u>Minimum lot width</u>	
Interior	
At setback line	110 feet
At right-of-way line	60 feet
Corner	
At setback line	110 feet
At right-of-way line	70 feet
R2A District: Single-Family District [Added 6-27-2005 by Ord. No. 2005-8]	
<u>Minimum Lot Area</u>	18,000 square feet
<u>Minimum yards</u>	
Front	40 feet or the prevailing front yard setback line* ⁶ of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet
Rear	40 feet or 35% of lot depth; whichever is greater
Side	
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height
Both	30% of the lot width
<u>Minimum lot width</u>	
Interior	
At setback line	80 feet
At right-of-way line	60 feet
Corner	
At setback line	110 feet
At right-of-way line	70 feet
<u>Minimum lot depth</u>	200 feet

R3 District: Two-Family District

<u>Minimum lot area</u>	
Single-family	8,000 square feet

* Setback line shall be measured to the front principal building wall. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be permitted to the same extent as exist with respect to dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot.

Two-family	10,000 square feet
Minimum yards	
Single-family	
Front	40 feet or the prevailing front yard setback line* of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet
Rear	40 feet or 35% of lot depth; whichever is greater
Side	
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height
Both	30% of the lot width
Two-Family	
Front	30 feet
Rear	40 feet
Side	
One	8 feet
Both	20 feet
Minimum lot width	
Interior	
At setback line	75 feet
At right-of-way line	50 feet
Corner	
At setback line	85 feet
At right-of-way line	60 feet

R3A District: Single-Family and Two-Family District [Added 8-8-2005 by Ord. No. 2005-13]

Minimum lot area	
Single-family	10,000 square feet
Two-family	15,000 square feet
Minimum yards	
Single-family	
Front	40 feet or the prevailing front yard setback line* of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet
Rear	40 feet or 35% of lot depth; whichever is greater
Side	
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback

* Setback line shall be measured to the front principal building wall. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be permitted to the same extent as exist with respect to dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot.

		shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height
Both		
Two-Family		30% of the lot width
Front	30 feet	
Rear	40 feet	
Side		
One	12 feet	
Both	30 feet	
Minimum lot width		
Single-family		
At the Setback Line	80 feet	
At the right-of-way Line	80 feet	
Two-family		
At the Setback Line	100 feet	
At the right-of-way Line	100 feet	
Minimum lot depth		
Single-family	125 feet	
Two-family	150 feet	
R4 District: Multifamily District		
Minimum lot area		
Garden apartments and townhouses	2 acres	
OneSingle-family	8,000 square feet	
Two-family	10,000 square feet	
Planned unit residential developments	5 acres	
Minimum yards		
Single-family		
Front	40 feet or the prevailing front yard setback line* of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet	
Rear	40 feet or 35% of lot depth; whichever is greater	
Side		
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height	
Both	30% of the lot width	
Two-Family/All Other Uses		
Front	30 feet	

* Setback line shall be measured to the front principal building wall. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be permitted to the same extent as exist with respect to dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot.

Rear	40 feet
Side	
One	15 feet
Both	35 feet
Minimum lot width	
Interior	
At setback line	
At right-of-way line	100 feet
Corner	
At setback line	
At right-of-way line	100 feet
OR District: Office and Residential District	
Minimum lot area	
Hotel	2 acres
Planned unit residential developments	5 acres
Office	20,000 square feet
Residential	
One-family	8,000 square feet
Two-family	10,000 square feet
Garden apartments and townhouses	2 acres
Minimum yards	
Front	
Single-Family	40 feet or the prevailing front yard setback line* of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet
Other Residential	30 feet
Office or hotel	20 feet
Rear	
Single-Family	40 feet or 35% of lot depth; whichever is greater
All other uses	40 feet
Side	
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height
Single-Family	
All other uses	15 feet
Both	
Single-Family	30% of the lot width

* Setback line shall be measured to the front principal building wall. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be permitted to the same extent as exist with respect to dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot.

All other uses	35 feet
Minimum lot width	
Interior	
At setback line	100 feet
At right-of-way line	—
Corner	
At setback line	100 feet
At right-of-way line	—
CCD District: Central Commercial District	
Minimum lot area	None
Minimum yards	
Front	5 feet from right-of-way line except where there is an existing established setback, then the setback shall be the same as the setback of the structures on either side. If one setback is deeper than the other, the deeper setback shall be continued.
Rear	None, except as required by §§ 310-19C and 310-21
Side	None, except as required by §§ 310-19C and 310-21
Minimum lot width	
Interior	
At setback line	None
At right-of-way line	None
Corner	
At setback line	None
At right-of-way line	None
C1 District: Specialty Commercial District	
Minimum lot area	
Planned commercial developments	5 acres
Planned unit residential developments	5 acres
Minimum yards	
Front	15 feet from right-of-way line except where there is an existing established setback, then the setback shall be the same as the setback of the structures on either side. If one setback is deeper than the other, the deeper setback shall be continued.
Rear	None, except as required by §§ 310-19C and 310-21
Side	None, except as required by §§ 310-19C and 310-21
Minimum lot width	
Interior	
At setback line	None
At right-of-way line	None
Corner	
At setback line	None
At right-of-way line	None

C2 District: Neighborhood Commercial District

Minimum lot area	None
Minimum yards	
Front	Same as C1 Zone
Rear	None, except as required by §§ 310-19C and 310-21
Side	None, except as required by §§ 310-19C and
Minimum lot width	
Interior	
At setback line	None
At right-of-way line	None
Corner	
At setback line	None
At right-of-way line	None

TBI-1 District: Technology and Business Innovation Zone I (former RL District)

Minimum lot area	150,000 square feet
Planned Commercial Developments	5 acres
Minimum yards	
Front	100 feet
Rear	None, except as required by §§ 310-19C and 310-21
Side	50 feet for each side yard, except as required by §§ 310-19C and 310-21
Minimum lot width	
Interior	
At setback line	300 feet
At right-of-way line	300 feet
Corner	
At setback line	300 feet
At right-of-way line	300 feet

TBI-2: Technology and Business Innovation Zone II (former LI District)

Minimum lot area	100,000 square feet
Planned commercial developments	5 acres
Minimum yards	
Front	100 feet
Rear	Same as TBI-1 District
Side	Same as TBI-1 District
Minimum lot width	
Interior	
At setback line	300 feet
At right-of-way line	300 feet
Corner	
At setback line	300 feet
At right-of-way line	300 feet

A1 District: Affordable Housing District [Amended 8-10-1992 by

Ord. No. 92-12]

Minimum lot area

As designated on Zoning Map, except that single-family detached housing on conventional lots in residential clusters shall have a minimum lot area of 10,000 square feet

Minimum yards

Front

30 feet

Rear

20 feet*

Side

One 4

15 feet*

Both

35 feet*

*NOTE: Except as required by §§ 310-19C and 310-21

A2 District: Affordable Housing District

Same as A1 District

A3: Affordable Housing District

Same as A1 District

RS: Residential Senior Citizen Community Affordable Housing District [Added 9-28-1992 by Ord. No. 92-14]

Minimum lot area

Determined by borough

Minimum square feet of common space
(may be a combination of interior and exterior space)

900 square feet

Minimum lot frontage

100 feet

Maximum building height, principal structure

3 stories, not to exceed 35 feet

Maximum lot coverage

50%

Maximum improved lot coverage

80%

(Setbacks, curblines, sidewalks, buffers, distances between buildings, landscaping, lighting, utilities, streets and access shall all be as approved for the specific dwelling on the specific site, as determined by the borough to achieve the maximum use of the lot for this specific purpose in combination with the best interests of the senior citizen tenants, their neighbors and the borough.)

Maximum residential density

16 units per acre

Minimum required off-street parking

3/4 space per unit

With the exception of those improvements necessary to comply with the pertinent federal laws, all other requirements of a senior citizen dwelling not specifically amended by this ordinanceⁱ shall be in conformance with minimum requirements for multifamily dwellings in the borough, unless otherwise designated by the borough, in its sole discretion.

ⁱEditor's Note: "This ordinance" refers to Ord. No. 92-14, adopted 9-28-1992, which provided for the establishment of the RS District.

ZONING

310 Attachment 3

Borough of New Providence

SCHEDULE III COVERAGE AND LIVING AREA REQUIREMENTS

Type of Restriction	Restriction
R1 District: Single-Family District	
Maximum building height	
Principal structure	2 1/2 stories not to exceed 30 feet ¹¹
Accessory structure	1 story not to exceed 14 feet
Maximum lot coverage	
Principal building	25% 20% of the first 7,500 square feet of lot area and 10% of each additional square foot of lot area in excess of 7,500 square feet
Accessory building	5%
Maximum improved lot coverage	40%
FAR (does not include basement or attic space space) [Added 5-24-2004 by Ord. No. 2004-5; amended 5-23-2005 by Ord. No. 2005-9]	See end of this Schedule III
R2 District: Single-Family District	
Maximum building height	
Principal structure	2 1/2 stories not to exceed 30 feet*
Accessory structure	1 story not to exceed 14 feet
Maximum lot coverage	
Principal building	25% 20% of the first 7,500 square feet of lot area and 10% of each additional square foot of lot area in excess of 7,500 square feet
Accessory building	5%
Maximum improved lot coverage	40%
FAR (does not include basement or attic space space) [Added 5-24-2004 by Ord. No. 2004-5; amended 5-23-2005 by Ord. No. 2005-9]	See end of this Schedule III

¹¹ In no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height.

R2A District: Single-Family District

Maximum building height	
Principal structure	2 1/2 stories not to exceed 30 feet*
Accessory structure	1 story not to exceed 14 feet
Maximum lot coverage	
Principal building	25% 20% of the first 7,500 square feet of lot area and 10% of each additional square foot of lot area in excess of 7,500 square feet
Accessory building	5%
Maximum improved lot coverage	40%
FAR (does not include basement or attic space space) [Added 5-24-2004 by Ord. No. 2004-5; amended 5-23-2005 by Ord. No. 2005-9]	See end of this Schedule III

R3 District: Two-Family District

Maximum building height	
Principal structure	2 1/2 stories not to exceed 30 feet
Accessory structure	Not to exceed 14 feet
Maximum lot coverage	
Principal structure building	25%
Accessory structure building	5%
Maximum improved lot coverage	50%
FAR (does not include basement or attic space space) [Added 5-24-2004 by Ord. No. 2004-5; amended 5-23-2005 by Ord. No. 2005-9]	See end of this Schedule III**

R4 District: Multifamily District

Maximum building height	
Principal structure	2 1/2 stories not to exceed 30 feet
Accessory structure	Not to exceed 16 feet
Maximum lot coverage	30%
Maximum improved lot coverage	70%
Maximum residential density of dwelling units	14 per acre
FAR (does not include basement or attic space space) [Added 5-24-2004 by Ord. No. 2004-5; amended 5-23-2005 by Ord. No. 2005-9]	See end of this Schedule III**

* In no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height.

** The maximum floor area ratio requirement shall not apply to single-family dwellings.

OR District: Office and Residential District

Maximum building height	
Residential	
Principal structure	2 1/2 stories not to exceed 30 feet
Accessory structure	Not to exceed 16 feet
Nonresidential	30 feet (Hotel: 3 stories not to exceed 35 feet)
Maximum floor area ratio	
Hotel	0.50
Office	0.35
Residential	
One-family	Not Applicable
Two-family	0.35
Garden apartment and townhouse	0.35
Maximum improved lot coverage	
Office or hotel	90%
Residential	
One-family	40%
and Two-family	50%
Garden apartment and townhouse	70%
FAR (does not include basement or attic space space) [Added 5-24-2004 by Ord. No. 2004-5; amended 5-23-2005 by Ord. No. 2005-9]	See end of this Schedule III

CCD District: Central Commercial District

Maximum building height	
Principal structure	2 stories not to exceed 30 feet
Accessory structure	Not to exceed 14 feet
Maximum floor area ratio	0.50
Maximum improved lot coverage	100%
Minimum living area	Not applicable

C1 District: Specialty Commercial District

Maximum building height	
Principal structure	
Residential	2 1/2 stories not to exceed 30 feet
Nonresidential	2 stories not to exceed 30feet
Accessory structure	Not to exceed 14 feet
Maximum floor area ratio	0.30
Maximum improved lot coverage	80%

C2 District: Neighborhood Commercial District

Maximum building height	
Principal structure	2 stories not to exceed 30 feet
Accessory structure	Not to exceed 14 feet

NEW PROVIDENCE CODE

Maximum floor area ratio	0.30
Maximum improved lot coverage	80%

TBI-1 District: Technology and Business Innovation Zone I (former RL District)

Maximum building height	
Principal structure	3 stories not to exceed 45
feet	
Accessory structure	45 feet
Maximum floor area ratio	0.35
Maximum improved lot coverage	80 %

TBI-2 District: Technology and Business Innovation Zone II (former LI District)

Maximum building height	
Principal structure	40 feet
Accessory structure	35 feet
Maximum floor area ratio	0.40 (TBI-1 uses: 0.35)
Maximum improved lot coverage	80%

A1 District: Affordable Housing District

Maximum building height	
Principal structure	2 1/2 stories not to exceed
30 feet	
Accessory structure	Not to exceed 16 feet,
except that recreational	buildings and facilities
shall be governed by the	height limitations for
principal structures	
Maximum lot coverage	30%
Principal structure building	
Accessory structure building	
Maximum improved lot coverage	50%
Minimum living area	
1-bedroom	550 square feet
2-bedroom	660 square feet
3-bedroom	850 square feet
Maximum gross density of dwelling units	6 per acre

A2 District: Affordable Housing District

Same as A1 District, except that maximum gross density of dwelling units shall be 10 per acre. [Amended 11-13-1989 by Ord. No. 89-16]

A3 District: Affordable Housing District

Same as A1 District, except that maximum gross density of dwelling units shall be 14 per acre; the maximum lot coverage shall be 35%; and the maximum improved lot coverage shall be 70%.

The maximum permitted floor area for residential use by lot size shall be as follows:

LOT SIZE	FAR
4,999 sq ft and under	0.275
5,000-5,999 sq ft	0.275
6,000-6,999 sq ft	0.271
7,000-7,999 sq ft	0.267
8,000-8,999 sq ft	0.263
9,000-9,999 sq ft	0.260
10,000-10,999 sq ft	0.256
11,000-11,999 sq ft	0.252
12,000-12,999 sq ft	0.248
13,000-13,999 sq ft	0.244
14,000-14,999 sq ft	0.240
15,000-15,999 sq ft	0.237
16,000-16,999 sq ft	0.233
17,000-17,999 sq ft	0.229
18,000-18,999 sq ft	0.225
19,000-19,999 sq ft	0.220
20,000-20,999 sq ft	0.215
21,000-21,999 sq ft	0.210
22,000-22,999 sq ft	0.205
23,000-23,999 sq ft	0.201

LOT SIZE	FAR
24,000-24,999 sq ft	0.197
25,000-25,999 sq ft	0.193
26,000-26,999 sq ft	0.189
27,000-27,999 sq ft	0.184
28,000-28,999 sq ft	0.180
29,000-29,999 sq ft	0.176
30,000-39,000 sq ft	0.171
31,000-31,999 sq ft	0.166
32,000-32,999 sq ft	0.162
33,000-33,999 sq ft	0.158
34,000-34,999 sq ft	0.154
35,000-35,999 sq ft	0.150
36,000-36,999 sq ft	0.146
37,000-37,999 sq ft	0.142
38,000-38,999 sq ft	0.139
39,000-39,999 sq ft	0.136
40,000-40,999 sq ft	0.133
41,000-41,999 sq ft	0.130
42,000-42,999 sq ft	0.127
43,000 sq ft and over	0.125

ZONING

310 Attachment 4

Borough of New Providence

SCHEDELE IV
Schedule of Parking Requirements

Type of Use	Required Off-Street Parking
Residential Uses	
Single Family Building	2 for each dwelling unit, one of which shall be in the garage*
Two Family dwelling	1 1/2 for each 1-bedroom unit; 2 for all other dwelling units; 1 space per unit shall be in a garage, except in affordable housing districts
Townhouse	Same as 2-Family
Garden Apartment	Same as 2-Family
Rooming or Boarding House	1 for each guest room, plus 1 for owner
Non Residential Uses	
Ambulatory Health Care Facility	10 per building plus 1 per 200 square feet
Assembly hall, auditorium, community center building, theatre and public meeting room	1 for each 100 square feet of gross floor area; or 1 for each 3 seats, whichever is greater.
Auto repair and gasoline stations	4 for each bay: plus 1 for every 1 1/2 employees, plus 10%

* The requirement for a minimum of one garage space per dwelling unit shall not apply to existing single-family dwellings enlarged by 200 square feet or less of principal building coverage.

Banks	1 per 300 square feet
Buildings with mixed uses	Calculated separately and added to the parking requirement of the other uses
Commercial Office	1 Per 300 square feet
Corporate Office	1 per 250 square feet of gross floor area; or 1 for every 1/1/2 employees, plus 10% whichever is greater; plus 6 for visitors
Child day-care services	1 per employee plus 1 per 10 children or fraction thereof for freestanding uses
Club or Lodge	20 plus 1 additional space for each 200 square feet of gross floor area
Data Center	1 per space per employee plus 4 visitors
Educational services, such as service training schools, data processing schools, business and secretarial schools and job training and vocational rehabilitation services but excluding primary and secondary schools and colleges	1 per employee and 0.9 per student
Electronic computer and data processing services	1 per employee or 1 per 350 square feet, whichever is greater
Fast food restaurant	1 for each 2 seats devoted to service, or 1 for each 125 square feet of gross floor area, whichever is greater; plus 1 for every 1 1/2 employees, plus 10%
Headquarters mixed used complex, including offices, laboratories, and research facilities	Calculated separately and added to the parking requirement of the other uses
Health Care Testing Service Facility	10 per building plus 1 per 150 square feet
Hotel/Conference Center	1.25 per sleeping room and 1 per employee; 0.5 spaces per seat (conference rooms); 10 spaces per 1,000 SF of gross leasable area (restaurant)
Inbound and outbound call centers	1 per space per employee plus 4 visitors
Light industry/ Manufacturing	1 for each 800 square feet of gross floor area; or 1 for every 1 1/2 employees on maximum shift, plus 10%, whichever is greater; plus 6 visitors

Nursing Homes	1 for each 2 beds
Personal Services	1 per employee or 1 per 350 square feet, whichever is greater
Professional offices	1 per 300 square feet
Recreation, Sports Facility, Multi-Pool Commercial Training Facilities.	5 per 1,000/Square feet (Fitness centers) Multi-Pool Commercial Training Facilities. 1 per 50 sf of water surface of all pools. 25% of required parking may be reserved subject to approval of Planning Board. 1 per employee and 3 per court (tennis or badminton courts, shuffleboard courts, and handball or squash) 4 per 1,000/ SF (Recreation Center) 14 per 1,000/SF (Multi-Purpose Recreation Center)
Religious uses	1 for each 3 seats or 72 inches of seating spaces when benches rather than seats are used.
Restaurants and taverns (excluding fast food service restaurants)	1 for each 2 seats, plus 1 for every 2 employees
Retail sales and service businesses	1 per 250 square feet
School, Elementary	2 for each classroom and 2 for every 8 seats in auditorium and or assembly halls; or 1 space for each teacher and employee, plus 10%, whichever is greater
School, Secondary	10 for each classroom
Scientific engineering and/or research laboratories devoted to research, design, and/or experimentation and processing and fabrication incidental thereto	1 per employee or 1 per 350 square feet, whichever is greater, plus 6 for visitors
Telecom Hotel	1 per 300 square feet
Unlisted Uses	Determined by the approving authority, as applicable, pursuant to site plan review criteria ad considering the nature and intensity of the proposed use and its impact on the surrounding areas.
Veterinary Center	1 per 400 square feet

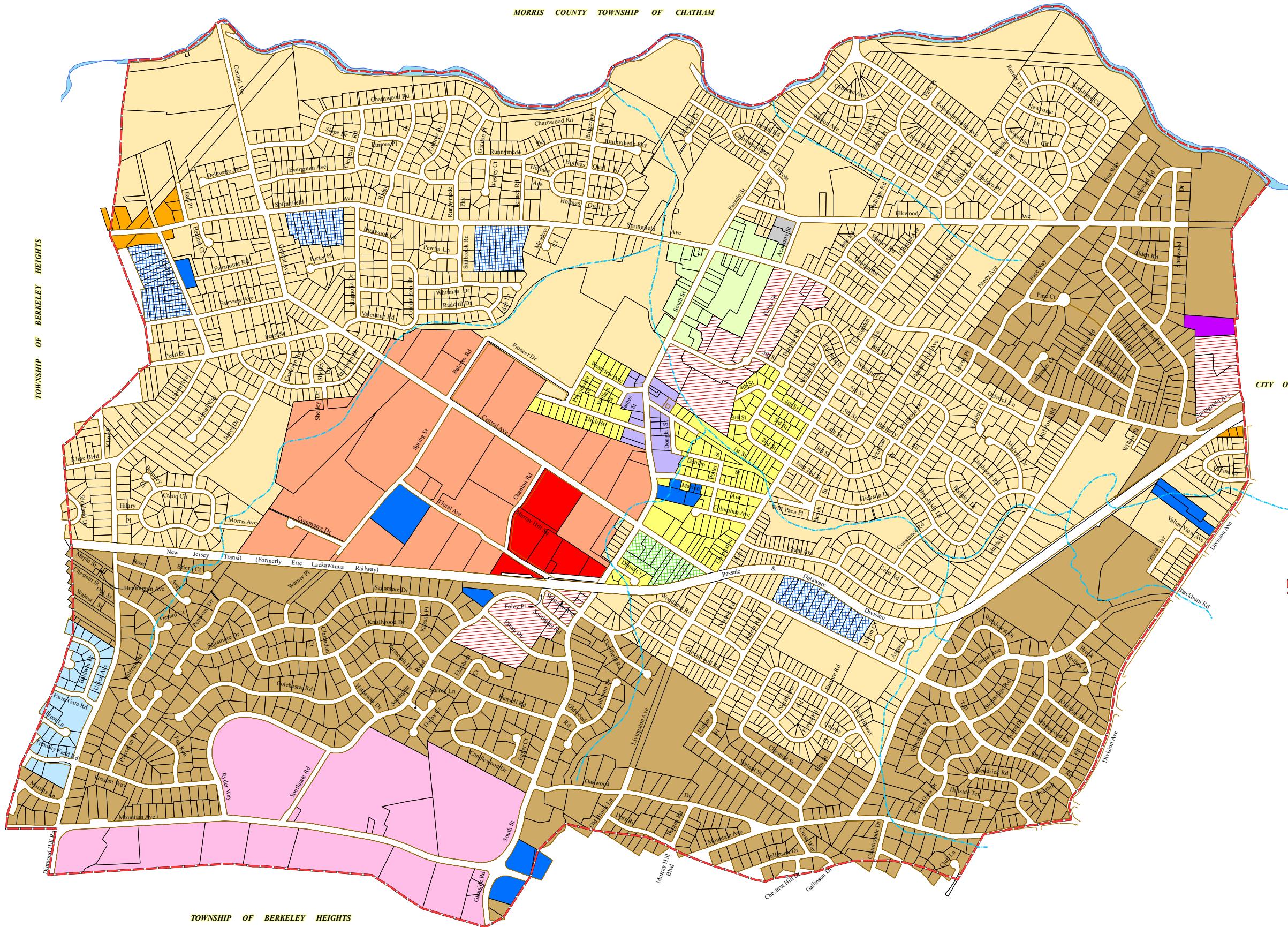
Wellness and Lifestyle center	Calculated separately and added to the parking requirement of the other uses
Wholesale business	1 per employee or 1 per 350 square feet, whichever is greater

MORRIS COUNTY TOWNSHIP OF CHATHAM

TOWNSHIP OF BERKELEY HEIGHTS



CITY OF SUMMIT



LEGEND

- Streams
- Water Bodies
- Municipal Boundary

Zoning

- Parcels
- A-1 - District Affordable Housing 6 Units / Acre
- A-2 - District Affordable Housing 10 Units / Acre
- A-3 - District Affordable Housing 14 Units / Acre
- C - Central Commercial District
- C-1 - Specialty Commercial District
- C-2 - Neighborhood Commercial District
- LI - Light Industrial District
- OR - Office & Residential District
- R-1 - Single Family Residential
- R-2 - Single Family Residential
- R-3 - Two Family Residential
- R-4 - Multi Family
- R-S - Residential Senior Citizen
- R2A - Single Family District
- R3A - Single Family and Two Family District
- RL - Research Laboratory District

TOWNSHIP OF BERKELEY HEIGHTS

NOTE:
THIS MAP WAS DEVELOPED USING NJDEP DIGITAL
DATA AND UNION COUNTY GIS DATA. THIS SECONDARY
PRODUCT HAS NOT BEEN VERIFIED BY THE NJDEP AND IS
NOT COUNTY OR STATE AUTHORIZED. REVISIONS HAVE
BEEN MADE TO THE NJDEP GIS DATA TO MEET GRAPHICAL
REPRESENTATION OF THE BOROUGH BOUNDARY AS
SHOWN ON THE BOROUGH TAX MAPS.

0 255 510 760 1,020 1,270 1,530 1,785 2,040
Feet

BOROUGH ZONING MAP

FOR

NEW PROVIDENCE BOROUGH
UNION COUNTY NEW JERSEY

MAP DATE: MARCH 2010
REVISIONS: _____

BOROUGH ENGINEER

DATE

HQGIS1\BASEDATA\UNION\NEWPROV\ZONE\MAPMXD

BOROUGH OF NEW PROVIDENCE

Ordinance 2018-07

**AN ORDINANCE UPDATING THE PERFORMANCE AND MAINTENANCE
GUARANTEE SECTIONS OF THE BOROUGH'S SUBDIVISION OF LAND AND SITE
PLAN REVIEW CHAPTER OF THE BOROUGH CODE TO COMPLY WITH
STATUTORY UPDATES TO THE MUNICIPAL LAND USE LAW**

WHEREAS the Municipal Land Use Law (N.J.S.A. 40:55D -1 et seq.) delegates to municipalities the power to zone and regulate development and that statute is amended from time to time by the state legislature; and

WHEREAS the provisions regarding performance guarantees, maintenance guarantees and establishing a safety and security obligation were recently amended by the legislature and the Borough now likewise amends its Subdivision of Land and Site Plan Review Chapter of the Borough Code to comply with the revisions to the statute.

NOW, THEREFORE, BE IT ORDAINED by the governing body of the Borough of New Providence, County of Union, State of New Jersey that the following provisions of Chapter 305 Subdivision of Land and Site Plan Review, Section 15 Guarantees, fees and other charges, of the Borough Code shall be amended and supplemented as follows:

A. Before final approval. Before the recording of final subdivision plats or as a condition of final approval, the reviewing board may require and shall accept in accordance with the standards adopted by this chapter for the purpose of assuring the installation and maintenance of all public and certain private on-tract improvements which have not yet been installed:

(1)The furnishing of a performance guarantee to be posted with the Borough Council in favor of the borough in the amount not to exceed 120% of the cost of installation for improvements required by an approval or developer's agreement, ordinance, or regulation to be dedicated to a public entity and that have not yet been installed, including as shown on the approved plans or plat; streets, pavement, gutters, curbs, sidewalks, street lighting,

street trees, surveyor's monuments as shown on the final map and required by the Map Filing Law, water mains, sanitary sewers community septic systems, drainage structures, public improvements of open space and any grading necessitated by the preceding improvements. Provided that no more than 10% of the total performance guaranties shall be in cash and the balance shall be in the form of a bond from a bonding company approved by the Borough.

- a. The Borough may also require the performance guarantee to include within an approved phase or section of development privately owned perimeter buffering landscaping as required by local ordinance or imposed as a condition of approval. At the developer's option a separate performance guarantee may be posted for the privately owned perimeter landscaping.
- b. If the developer requests a permit update under the Uniform Construction Code for the purpose of updating the name and address of the owner of the property on a construction permit the Borough shall require as a condition of such permit update that the successor developer furnish such replacement guarantees as applicable to the then current stage of the development.

(2) Temporary Certificate of Occupancy Guarantee. In the event the developer shall seek a temporary certificate of occupancy for a development unit, lot building or phase of development, as a condition of the issuance thereof the Borough shall require the posting of a temporary certificate of occupancy guarantee as provided for in N.J.S.A. 40:55D-53(1) et seq..

(3) Safety and Stabilization Guarantee. The developer shall also furnish to the Borough a safety and stabilization guarantee which shall be available to the Borough for the purpose

of returning property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition per the requirements of N.J.S.A. 40:55D-53(1) et seq.. At the developer's option the safety and stabilization guarantee may be provided as a line item in the performance guarantee or as a separate guarantee.

(4) Cost estimate. An itemized cost estimate to be submitted by the developer and the Borough Engineer shall review the improvements and costs estimates for reasonableness in accord with the provisions of N.J.S.A. 40:55D-54.. Said itemization shall be the basis for determining the amount of performance guarantee, safety and stabilization guarantee and maintenance guarantee required by the reviewing board or the ordinances of the Borough. The Borough Engineer shall forward his estimate of the cost of improvements to the applicant within 30 days of receipt of a request sent by certified mail for same estimate.

(5) Maintenance guarantee. The Developer shall furnish a maintenance guarantee to be posted with the Borough Council for a period not to exceed two years after final acceptance of the improvement, in an amount not to exceed 15% of the cost of the installation of the bonded improvements which are being released. In addition to the maintenance guarantee for the items being released from the performance bond, the Borough shall also require a maintenance guarantee in an amount not to exceed 15% of the costs of the installation of the following private site improvements; stormwater management basins, in-flow and water quality structures within the basins, and the out-flow pipes and structures of the stormwater system. In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the

improvements are covered by performance or maintenance guarantees to another governmental agency, no performance or maintenance guarantee, as the case may, be shall be required for such utilities or improvements. The maintenance guarantee(s) shall automatically expire at the end of the established term(s).

(No change to B or C)

D. Completion. When all, or substantially all, of the required bonded improvements have been completed, the obligor shall notify the Borough Council in writing, by certified mail addressed in care of the Borough Clerk, of the completion of said improvements and shall send a copy thereof to the Borough Engineer. Thereupon, the Borough Engineer shall inspect all of the bonded improvements and shall file a detailed report, in writing, with the Borough Council, with copy to the obligor, within 45 days of the date requested, indicating either approval, partial approval or rejection of the improvements with a statement of reasons for any partial approval or rejection. If partial approval is indicated, the cost of the bonded improvements rejected shall be set forth.

E. Council review. The Borough Council shall either approve, partially approve or reject the improvements on the basis of the report of the Borough Engineer and shall adopt a resolution setting forth such determination with 45 days of receipt of the Engineer's Report. The Borough Clerk shall notify the obligor in writing, by sending the obligor a true copy of the resolution by certified mail, advising of the Borough Council's determinations. When partial approval is granted, the obligor shall be released from all liability pursuant to its performance guaranty, except for the portion adequately sufficient to secure provision of the improvements not yet approved, provided that 30% of the

amount of the performance guarantee and safety and stabilization guarantee posted may be retained to ensure completion of all improvements. Failure of the Borough Council to send or provide such notification to the obligor within 65 days shall be deemed to constitute approval of the improvements, and the obligor and surety, if any, shall be released from all liability, pursuant to such guaranty.

(No changes to F, G)

H. Inspection Fees. The obligor shall reimburse the borough for all reasonable inspection fees paid to the Borough Engineer for the forgoing inspection of improvements, provided that the borough may require the developer to post a deposit for all or a portion of the reasonably anticipated fees to be paid to the Borough Engineer for such inspection. The amount of the inspection fees, except for extraordinary circumstances, shall be the greater of \$500 or 5% of the cost of bonded improvements subject to a performance guarantee as determined pursuant to this section and N.J.S.A. 40:55D-53 and 54 and further, the developer shall deposit escrow fees not exceed 5% of the costs of the private site improvements that are not subject to the performance guarantee, for the cost of those inspections. Such costs shall be determined pursuant to N.J.S.A. 40:55D-54.

(1) If the Borough determines that the amount in escrow for the payment of inspection fees, as calculated pursuant to N.J.S.A. 40:55D-53, is insufficient to cover the costs of additional required inspections, the Borough may require the developer to deposit additional funds in escrow provided the Borough delivers to the developer a written inspection escrow deposit request, signed by the Borough Engineer which; informs the developer of the need for the additional inspections, details the items undertakings that

require inspection, estimates the time required for those inspections and estimates the cost for performing those inspections.

(2) At the option of the developer the inspection fees may be paid in installments as provided for in N.J.S.A. 40:55D-53.

(No change to I and J)

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**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2019-03**

“AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION, STATE OF NEW JERSEY, AMENDING ZONING ORDINANCE “

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey as follows:

SECTION 1. Section 310-6 of Article II of Chapter 310 of the Code of the Borough of New Providence is amended to read as follows:

BUILDING, COVERAGE

The ratio of the horizontal area measured from the exterior walls of the ground floor of the principal building on a lot to the total lot area. In one and two-family residential structures, porches, decks and similar appurtenances without a roof are excluded.

BUILDING, HEIGHT OF

- A. The vertical distance measured from grade to:
 - (1) The deckline in the case of mansard roofs (which may not extend above the deckline more than 10% of the building height) with no other structures thereon except chimneys; or,
 - (2) To the mean level of the slope of the roof in the case of gabled, hip, and gambrel roofs with no other structures thereon except chimneys; or
 - (3) The top of any and all other types of roof surfaces, including flat roofs, or any structure on the roof, including but not limited to elevators, escalator penthouses, cooling towers, or structure to house mechanical or other equipment.
- B. Unless otherwise provided in this chapter, the maximum height of a building or structure will be thirty five (35) feet.
- C. Notwithstanding the above, any fill material placed within 10 feet of the perimeter of the foundation walls that increases the outside finished ground elevation shall not be considered when computing the building height.

SECTION 2. Article IV, Section 310-11 of Chapter 310 of the Code of the Borough of New Providence entitled “Applicability” is amended to delete the following:

- ~~E. No structure shall be altered, enlarged or rebuilt without first accommodating these elements of design required by zoning ordinance. Such requirements of design include but are not limited to garages and driveways.~~

SECTION 3. Article V, Section 310-20 of Chapter 310 of the Code of the Borough of New Providence entitled "Off-street parking requirement" is amended to read as follows:

D. Access.

(2) Access drives or driveways for one- and two-family dwellings shall be located entirely on the lot with the principal building and shall be not less than 10 feet wide and not more than 14 feet wide at the curbline for single driveways or 18 feet for double driveways. No more than one driveway entrance is permitted for any one- or two-family dwelling

SECTION 4. Article VI, Section 43 Of Chapter 310 Of The Code Of The Borough Of New Providence Entitled "Home Occupations" is amended to read as follows:

Home office use, meaning an office use clearly incidental and secondary to the principal residential use carried on for gain by a permanent resident in a dwelling unit which also constitutes the resident's principal place of business, shall be a permitted accessory use in residential zone districts, provided:

- a. The use is limited solely to office use;
- b. The use is operated by or employs in the residence only a resident or residents who are permanent full-time residents of the dwelling unit and not more than one (1) non-resident employee;
- c. The use shall not exceed 400 square feet and shall be located in only one room of the dwelling unit, which shall not be served by an entrance separate from the household;
- d. Storage of materials shall not include hazardous materials;
- e. There shall be no change to the exterior of buildings or structures because of the use, and no outside appearance of a business use, including, but not limited to, parking, storage, signs, or lights;
- f. The use operates no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference, including interference with telephone, radio or television reception, detectable by neighboring residents;
- g. The use does not require any increased or enhanced electrical or water supply;
- h. The quantity and type of solid waste disposal is the same as other residential uses in the zone;
- i. The capacity and quality of effluent is typical of normal residential use, and creates no potential or actual detriment to the sanitary sewer system or its components;
- j. Delivery trucks shall be limited to U.S. Postal Service, United Parcel Service, Federal Express, and other delivery services providing regular service to residential uses in the zone district; and

- k. All vehicular traffic to and from the home office use shall be limited in volume, type and frequency to what is normally associated with other residential uses in the zone district;
- l. There shall be permitted no more demand for parking than one (1) additional vehicle at a time;
- m. Clients, customers, and solicitors shall only be present on the property between the hours of 8:00 am to 8:00 pm;
- n. Specifically prohibited home occupations, unless permitted as a conditional use, shall be:
 - (1) Animal hospitals, stables, kennels or livery stables
 - (2) Barbershops and beauty parlors
 - (3) Clinics or hospitals
 - (4) Dancing or music schools and nursery schools
 - (5) Rental businesses
 - (6) Repair shops
 - (7) Retail merchandising where the public visits the home to make purchases
 - (8) Restaurants
 - (9) Auto repair shops and body shops
 - (10) Private clubs
 - (11) Mortuaries and funeral homes
 - (12) Pest control

Section 5. Schedule IIA , Section 310b Of Chapter 310 of the Code Of The Borough Of New Providence Entitled “Schedule IIA – Lot And Yard Requirements – Existing Lots” is amended to read as follows:

**SCHEDULE IIA
LOT AND YARD REQUIREMENTS – EXISTING LOTS**

Dimension	Requirement
R1 District: Single-Family District	
Minimum lot area	18,000 square feet
Minimum yards	
Front	40 feet or the prevailing front yard setback line ¹ of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet

¹* Setback line shall be measured to the front principal building wall. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be permitted to the same extent as exist with respect to dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot.

Rear		
Principal structure	40 feet or 35% of lot depth; whichever is greater	
Deck	40 feet	
Side		
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height	
Both	30% of the lot width	
Minimum lot width		
Interior		
At setback line	120 feet	
At right-of-way line	75 feet	
Corner		
At setback line	130 feet	
At right-of-way line	85 feet	
R2 District: Single-Family District		
Minimum lot area	15,000 square feet	
Minimum yards		
Front	40 feet or the prevailing front yard setback line ^{*2} of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet	
Rear		
Principal structure	40 feet or 35% of lot depth; whichever is greater	
Deck	40 feet	
Side		
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height	
Both	30% of the lot width	
Minimum lot width		
Interior		
At setback line	110 feet	
At right-of-way line	60 feet	
Corner		
At setback line	110 feet	
At right-of-way line	70 feet	

R2A District: Single-Family District

Minimum Lot Area	18,000 square feet
Minimum yards	
Front	40 feet or the prevailing front yard setback line ^{*3} of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet
Rear	40 feet or 35% of lot depth; whichever is greater
Principal structure	40 feet
Deck	
Side	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height
One	
Both	30% of the lot width
Minimum lot width	
Interior	
At setback line	80 feet
At right-of-way line	60 feet
Corner	
At setback line	110 feet
At right-of-way line	70 feet
Minimum lot depth	200 feet

R3 District: Two-Family District

Minimum lot area	
Single-family	8,000 square feet
Two-family	10,000 square feet
Minimum yards	
Single-family	
Front	40 feet or the prevailing front yard setback line ^{*4} of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet
Rear	40 feet or 35% of lot depth; whichever is greater
Principal structure	40 feet
Deck	

* Setback line shall be measured to the front principal building wall. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be permitted to the same extent as exist with respect to dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot.

* Setback line shall be measured to the front principal building wall. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be permitted to the same extent as exist with respect to dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot.

Side		
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height	
Both	30% of the lot width	
Two-Family		
Front	30 feet	
Rear	40 feet	
Side		
One	8 feet	
Both	20 feet	
Minimum lot width		
Interior		
At setback line	75 feet	
At right-of-way line	50 feet	
Corner		
At setback line	85 feet	
At right-of-way line	60 feet	

R3A District: Single-Family and Two-Family District

Minimum lot area		
Single-family	10,000 square feet	
Two-family	15,000 square feet	
Minimum yards		
Single-family		
Front	40 feet or the prevailing front yard setback line ^{*5} of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet	
Rear		
Principal Structure	40 feet or 35% of lot depth; whichever is greater	
Deck	40 feet	
Side		
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height	
Both	30% of the lot width	
Two-Family		
Front	30 feet	
Rear	40 feet	

Side	
One	12 feet
Both	30 feet
Minimum lot width	
Single-family	
At the Setback Line	80 feet
At the right-of-way Line	80 feet
Two-family	
At the Setback Line	100 feet
At the right-of-way Line	100 feet
Minimum lot depth	
Single-family	125 feet
Two-family	150 feet

R4 District: Multifamily District

Minimum lot area	
Garden apartments and townhouses	2 acres
Single-family	8,000 square feet
Two-family	10,000 square feet
Planned unit residential developments	5 acres
Minimum yards	
Single-family	
Front	40 feet or the prevailing front yard setback line ^{*6} of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet
Rear	40 feet or 35% of lot depth; whichever is greater
Principal Structure	40 feet
Deck	
Side	
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height
Both	30% of the lot width
Two-Family/All Other Uses	
Front	30 feet
Rear	40 feet
Side	
One	15 feet
Both	35 feet

* Setback line shall be measured to the front principal building wall. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be permitted to the same extent as exist with respect to dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot.

Minimum lot width		
Interior		
At setback line	—	
At right-of-way line	100 feet	
Corner		
At setback line	—	
At right-of-way line	100 feet	

OR District: Office and Residential District

Minimum lot area		
Hotel	2 acres	
Planned unit residential developments	5 acres	
Office	20,000 square feet	
Residential		
One-family	8,000 square feet	
Two-family	10,000 square feet	
Garden apartments and townhouses	2 acres	
Minimum yards		
Front		
Single-Family	40 feet or the prevailing front yard setback line ^{*7} of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet	
Other Residential	30 feet	
Office or hotel	20 feet	
Rear		
Single-Family		
Principal Structure	40 feet or 35% of lot depth; whichever is greater	
Deck	40 feet	
All other uses	40 feet	
Side		
One		
Single-Family	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height	
All other uses	15 feet	
Both		
Single-Family	30% of the lot width	
other uses	35 feet	

* Setback line shall be measured to the front principal building wall. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be permitted to the same extent as exist with respect to dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot.

Minimum lot width	
Interior	
At setback line	100 feet
At right-of-way line	—
Corner	
At setback line	100 feet
At right-of-way line	—
CCD District: Central Commercial District	
Minimum lot area	None
Minimum yards	
Front	5 feet from right-of-way line except where there is an existing established setback, then the setback shall be the same as the setback of the structures on either side. If one setback is deeper than the other, the deeper setback shall be continued.
Rear	None, except as required by §§ 310-19C and 310-21
Side	None, except as required by §§ 310-19C and 310-21

Minimum lot width	
Interior	
At setback line	None
At right-of-way line	None
Corner	
At setback line	None
At right-of-way line	None

C1 District: Specialty Commercial District

Minimum lot area	
Planned commercial developments	5 acres
Planned unit residential developments	5 acres
Minimum yards	
Front	15 feet from right-of-way line except where there is an existing established setback, then the setback shall be the same as the setback of the structures on either side. If one setback is deeper than the other, the deeper setback shall be continued.
Rear	None, except as required by §§ 310-19C and 310-21
Side	None, except as required by §§ 310-19C and 310-21
Minimum lot width	
Interior	
At setback line	None
At right-of-way line	None

Corner		
At setback line	None	
At right-of-way line	None	
C2 District: Neighborhood Commercial District		
Minimum lot area	None	
Minimum yards		
Front	Same as C1 Zone	
Rear	None, except as required by §§ 310-19C and 310-21	
Side	None, except as required by §§ 310-19C and	
Minimum lot width		
Interior		
At setback line	None	
At right-of-way line	None	
Corner		
At setback line	None	
At right-of-way line	None	
TBI-1 District: Technology and Business Innovation Zone I (former RL District)		
Minimum lot area	150,000 square feet	
Planned Commercial Developments	5 acres	
Minimum yards		
Front	100 feet	
Rear	None, except as required by §§ 310-19C and 310-21	
Side	50 feet for each side yard, except as required by §§ 310-19C and 310-21	
Minimum lot width		
Interior		
At setback line	300 feet	
At right-of-way line	300 feet	
Corner		
At setback line	300 feet	
At right-of-way line	300 feet	
TBI-2: Technology and Business Innovation Zone II (former LI District)		
Minimum lot area	100,000 square feet	
Planned commercial developments	5 acres	
Minimum yards		
Front	100 feet	
Rear	Same as TBI-1District	
Side	Same as TBI-1District	
Minimum lot width		
Interior		
At setback line	300 feet	
At right-of-way line	300 feet	

Corner	
At setback line	300 feet
At right-of-way line	300 feet

A1 District: Affordable Housing District

Minimum lot area	As designated on Zoning Map, except that single-family detached housing on conventional lots in residential clusters shall have a minimum lot area of 10,000 square feet
Minimum yards	
Front	30 feet
Rear	20 feet*
Side	
One	15 feet*
Both	35 feet*

*NOTE: Except as required by §§ 310-19C and 310-21

A2 District: Affordable Housing District

Same as A1 District

A3: Affordable Housing District

Same as A1 District

RS: Residential Senior Citizen Community Affordable Housing District

Minimum lot area	Determined by borough
Minimum square feet of common space (may be a combination of interior and exterior space)	900 square feet
Minimum lot frontage	100 feet
Maximum building height, principal structure	3 stories, not to exceed 35 feet
Maximum lot coverage	50%
Maximum improved lot coverage	80%
(Setbacks, curblines, sidewalks, buffers, distances between buildings, landscaping, lighting, utilities, streets and access shall all be as approved for the specific dwelling on the specific site, as determined by the borough to achieve the maximum use of the lot for this specific purpose in combination with the best interests of the senior citizen tenants, their neighbors and the borough.)	
Maximum residential density	16 units per acre
Minimum required off-street parking	3/4 space per unit
With the exception of those improvements necessary to comply with the pertinent federal laws, all other requirements of a senior citizen dwelling not specifically amended by Ordinance 92-14 shall be in conformance with minimum requirements for multifamily dwellings in the borough, unless otherwise designated by the borough, in its sole discretion.	

SECTION 6. Schedule III, Section 310c of Chapter 310 of the code of the Borough of New Providence entitled "Schedule III – Coverage and Living Area Requirements" is amended to read as follows:

SCHEDULE III
COVERAGE AND LIVING AREA REQUIREMENTS

Type of Restriction	Restriction
R1 District: Single-Family District	
Maximum building height	
Principal structure	2 1/2 stories not to exceed 35 feet ⁸
Accessory structure	1 story not to exceed 14 feet
Maximum lot coverage	
Principal one story building (ranch)	25%
Principal building more than one story	20% of the first 7,500 square feet of lot area and 10% of each additional square foot of lot area in excess of 7,500 square feet
Accessory building	5%
Maximum improved lot coverage	40%
R2 District: Single-Family District	
Maximum building height	
Principal structure	2 1/2 stories not to exceed 35 feet ⁹
Accessory structure	1 story not to exceed 14 feet
Maximum lot coverage	
Principal one story building (ranch)	25%
Principal building	20% of the first 7,500 square feet of lot area and 10% of each additional square foot of lot area in excess of 7,500 square feet
Accessory building	5%
Maximum improved lot coverage	40%
R3 District: Two-Family District	
Maximum building height	
Principal structure	2 1/2 stories not to exceed 30 feet
Accessory structure	Not to exceed 14 feet
Maximum lot coverage	
Principal building	25%
Accessory building	5%
Maximum improved lot coverage	50%

⁸ In no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height.

⁹ In no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height

FAR (does not include basement or attic space See end of this Schedule III¹⁰
space)

R4 District: Multifamily District

Maximum building height	
Principal structure	2 1/2 stories not to exceed 30 feet
Accessory structure	Not to exceed 16 feet
Maximum lot coverage	30%
Maximum improved lot coverage	70%
Maximum residential density of dwelling units	14 per acre
FAR (does not include basement or attic space space)	See end of this Schedule III ¹¹

OR District: Office and Residential District

Maximum building height	
Residential	
Principal structure	2 1/2 stories not to exceed 30 feet
Accessory structure	Not to exceed 16 feet
Nonresidential	30 feet (Hotel: 3 stories not to exceed 35 feet)
Maximum floor area ratio	
Hotel	0.50
Office	0.35
Residential	
One-family	Not Applicable
Two-family	0.35
Garden apartment and townhouse	0.35
Maximum improved lot coverage	
Office or hotel	90%
Residential	
One-family	40%
Two-family	50%
Garden apartment and townhouse	70%

CCD District: Central Commercial District

Maximum building height	
Principal structure	2 stories not to exceed 30 feet
Accessory structure	Not to exceed 14 feet
Maximum floor area ratio	0.50
Maximum improved lot coverage	100%
Minimum living area	Not applicable

¹⁰The maximum floor area ratio requirement shall not apply to single-family dwellings.

¹¹The maximum floor area ratio requirement shall not apply to single-family dwellings.

C1 District: Specialty Commercial District

Maximum building height	
Principal structure	
Residential	2 1/2 stories not to exceed 30 feet
Nonresidential	2 stories not to exceed 30feet
Accessory structure	Not to exceed 14 feet
Maximum floor area ratio	0.30
Maximum improved lot coverage	80%

C2 District: Neighborhood Commercial District

Maximum building height	
Principal structure	2 stories not to exceed 30 feet
Accessory structure	Not to exceed 14 feet
Maximum floor area ratio	0.30
Maximum improved lot coverage	80%

TBI-1 District: Technology and Business Innovation Zone I (former RL District)

Maximum building height	
Principal structure	3 stories not to exceed 45 feet
Accessory structure	45 feet
Maximum floor area ratio	0.35
Maximum improved lot coverage	80 %

TBI-2 District: Technology and Business Innovation Zone II (former LI District)

Maximum building height	
Principal structure	40 feet
Accessory structure	35 feet
Maximum floor area ratio	0.40 (TBI-1 uses: 0.35)
Maximum improved lot coverage	80%

A1 District: Affordable Housing District

Maximum building height	
Principal structure	2 1/2 stories not to exceed 30 feet
Accessory structure	Not to exceed 16 feet, except that recreational buildings and facilities shall be governed by the height limitations for principal structures
Maximum lot coverage	30%
Principal building	
Accessory building	
Maximum improved lot coverage	50%
Minimum living area	
1-bedroom	550 square feet
2-bedroom	660 square feet
3-bedroom	850 square feet
Maximum gross density of dwelling units	6 per acre

A2 District: Affordable Housing District

Same as A1 District, except that maximum gross density of dwelling units shall be 10 per acre.

A3 District: Affordable Housing District

Same as A1 District, except that maximum gross density of dwelling units shall be 14 per acre; the maximum lot coverage shall be 35%; and the maximum improved lot coverage shall be 70%.

SECTION 7. Schedule IV, Section 310d of Chapter 310 of the code of the Borough of New Providence entitled “Schedule IV – Schedule of Parking Requirements” is amended to read as follows:

SCHEDULE IV
Schedule of Parking Requirements

Type of Use	Required Off-Street Parking
Residential Uses	
Single Family Building	2 for each dwelling unit, one of which shall be in the garage*
Two Family dwelling	1 1/2 for each 1-bedroom unit; 2 for all other dwelling units; 1 space per unit shall be in a garage, except in affordable housing districts
Townhouse	Same as 2-Family
Garden Apartment	Same as 2-Family
Rooming or Boarding House	1 for each guest room, plus 1 for owner
Non Residential Uses	
Ambulatory Health Care Facility	10 per building plus 1 per 200 square feet
Assembly hall, auditorium, community center building, theatre and public meeting room	1 for each 100 square feet of gross floor area; or 1 for each 3 seats, whichever is greater.
Auto repair and gasoline stations	4 for each bay: plus 1 for every 1 1/2 employees, plus 10%
Banks	1 per 300 square feet
Buildings with mixed uses	Calculated separately and added to the parking requirement of the other uses

Commercial Office	1 Per 300 square feet
Corporate Office	1 per 250 square feet of gross floor area; or 1 for every 1/1/2 employees, plus 10% whichever is greater; plus 6 for visitors
Child day-care services	1 per employee plus 1 per 10 children or fraction thereof for freestanding uses
Club or Lodge	20 plus 1 additional space for each 200 square feet of gross floor area
Data Center	1 per space per employee plus 4 visitors
Educational services, such as service training schools, data processing schools, business and secretarial schools and job training and vocational rehabilitation services but excluding primary and secondary schools and colleges	1 per employee and 0.9 per student
Electronic computer and data processing services	1 per employee or 1 per 350 square feet, whichever is greater
Fast food restaurant	1 for each 2 seats devoted to service, or 1 for each 125 square feet of gross floor area, whichever is greater; plus 1 for every 1 1/2 employees, plus 10%
Headquarters mixed used complex, including offices, laboratories, and research facilities	Calculated separately and added to the parking requirement of the other uses
Health Care Testing Service Facility	10 per building plus 1 per 150 square feet
Hotel/Conference Center	1.25 per sleeping room and 1 per employee; 0.5 spaces per seat (conference rooms); 10 spaces per 1,000 SF of gross leasable area (restaurant)
Inbound and outbound call centers	1 per space per employee plus 4 visitors
Light industry/ Manufacturing	1 for each 800 square feet of gross floor area; or 1 for every 1 1/2 employees on maximum shift, plus 10%, whichever is greater; plus 6 visitors
Nursing Homes	1 for each 2 beds
Personal Services	1 per employee or 1 per 350 square feet, whichever is greater
Professional offices	1 per 300 square feet
Recreation, Sports Facility, Multi-Pool Commercial Training Facilities.	5 per 1,000/Square feet (Fitness centers) Multi-Pool Commercial Training Facilities. 1 per 50 sf

	of water surface of all pools. 25% of required parking may be reserved subject to approval of Planning Board.
	1 per employee and 3 per court (tennis or badminton courts, shuffleboard courts, and handball or squash)
	4 per 1,000/ SF (Recreation Center)
	14 per 1,000/SF (Multi-Purpose Recreation Center)
Religious uses	1 for each 3 seats or 72 inches of seating spaces when benches rather than seats are used.
Restaurants and taverns (excluding fast food service restaurants)	1 for each 2 seats, plus 1 for every 2 employees
Retail sales and service businesses	1 per 250 square feet
School, Elementary	2 for each classroom and 2 for every 8 seats in auditorium and or assembly halls; or 1 space for each teacher and employee, plus 10%, whichever is greater
School, Secondary	10 for each classroom
Scientific engineering and/or research laboratories devoted to research, design, and/or experimentation and processing and fabrication incidental thereto	1 per employee or 1 per 350 square feet, whichever is greater, plus 6 for visitors
Telecom Hotel	1 per 300 square feet
Unlisted Uses	Determined by the approving authority, as applicable, pursuant to site plan review criteria ad considering the nature and intensity of the proposed use and its impact on the surrounding areas.
Veterinary Center	1 per 400 square feet
Wellness and Lifestyle center	Calculated separately and added to the parking requirement of the other uses
Wholesale business	1 per employee or 1 per 350 square feet, whichever is greater

This ordinance shall take effect upon final adoption and publication according to law.

INTRODUCTION: March 25, 2019
PUBLIC HEARING: May 6, 2019
ADOPTION: May 6, 2019

Record of Council Vote

	AYE	NAY	ABSENT	NOT VOTING
CUMISKEY	X			
DESARNO	X			
GENNARO	X			
GEOFFROY	X			
MUÑOZ	X			
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

Allen Morgan, Mayor

Attest:

Wendi B. Barry, Borough Clerk

BOROUGH OF NEW PROVIDENCE

Ordinance No. 2019-06

AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE AMENDING AND SUPPLEMENTING CERTAIN SECTIONS OF CHAPTER 310, ENTITLED “ZONING,” OF THE BOROUGH’S REVISED GENERAL CODE TO ESTABLISH A NEW AFFORDABLE HOUSING ZONE AND NEW AFFORDABLE HOUSING OVERLAY ZONES OVER CERTAIN LOTS WITHIN THE BOROUGH

WHEREAS, the Borough Council of the Borough of New Providence desires to create a realistic opportunity for the creation of affordable housing within the Borough; and

WHEREAS, the Borough Council has determined that it is appropriate to place an overlay zone that requires an affordable housing set-aside over certain portions of the Technology and Business Innovation Zone I (“TBI-1”) and the Technology and Business Innovation Zone II (“TBI-2”), and in doing so, create future opportunities for affordable housing; and

WHEREAS, the Borough Council has also determined that a portion of the TBI-2 Zone, known as Block 210 Lots 20 and 32, is appropriate for inclusionary development through the creation of a new zone known as the A4 Affordable Housing Zone; and

WHEREAS, the Borough has a constitutional obligation to create a realistic opportunity for the construction of its fair share of the region’s need for affordable housing; and

WHEREAS, the Borough wishes to foster development that provides an affordable housing set-aside.

BE IT ORDAINED by the governing body of the Borough of New Providence, Union County, New Jersey, that the Zoning and Land Use Ordinance of the Borough of New Providence is hereby amended to establish the Affordable Housing (AHO) Overlay, Affordable Housing Age-Restricted (AH-ARO) Overlay, and the Planned Adult Community (PACO) Overlay as well as the A4 Affordable Housing Zone. This Ordinance is intended to encourage the construction of affordable housing opportunities within the Borough.

NOW, WHEREFORE, IT IS HEREBY ORDAINED by the Mayor and Borough Council of the Borough of New Providence as follows:

§ 310-6, entitled “Definitions,” is hereby amended to revise definitions “District, Residential” and “Nonresidential District” to include the newly established Affordable Housing (“AH”), Affordable Housing Age-Restricted (“AH-AR”), and the Planned Adult Community (“PAC”) Overlays as well as the A4 Affordable Housing Zone to read as follow:

“AGE-RESTRICTED UNIT: A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population where the head of household is a minimum of 62 years, or 55 and meets the provisions of the 42

U.S.C. §§3601 et seq., except that due to death, a remaining spouse of less than 55 years of age shall be permitted to continue to reside.

DISTRICT, RESIDENTIAL: The A1, A2, A3, A4, R1, R2, R2A, R3, R3A, R4, and RS Districts and residential uses in the OR District and the AHO*, AH-ARO*, and PACO* Overlay Zones. (*Note: only if/when these zones are developed with residential uses will they qualify as residential districts.)

NONRESIDENTIAL DISTRICT: Any district other than the A1, A2, A3, A4, R1, R2, R2A, R3, R3A, R4, and the AHO*, AH-ARO*, and PACO* Overlay Zones. (*Note: only if/when these zones are developed with residential uses will they qualify as residential districts.)”

§ 310-7, entitled “Districts Established,” and § 310-8, entitled “Zoning Map,” is hereby amended to rezone the following parcel from the Technology and Business Innovation Zone II (“TBI-2”) to the A4 Affordable Housing Zone:

Block 210 Lots 20 and 32

§ 310-7, entitled “Districts Established,” and § 310-8, entitled “Zoning Map,” is hereby amended to place the following parcels in the Affordable Housing Age-Restricted-1 Overlay (“AH-ARO”) Zone:

Block 221 Lot 5

§ 310-7, entitled “Districts Established,” and § 310-8, entitled “Zoning Map,” is hereby amended to place the following parcels in the Planning Adult Community Overlay (“PACO”) Zone:

Block 370 Lot 1

§ 310-7, entitled “Districts Established,” and § 310-8, entitled “Zoning Map,” is hereby amended to place the following parcels in the Affordable Housing Overlay (“AHO”) Zone:

Block 210: Lots 21, 23, 33

Block 221: Lots 2.01 and 6

Block 340: Lots 4, 6 and 8

§310-18A, entitled “Maximum Number of Buildings,” is hereby amended to read:

“A. There shall be no more than one principal dwelling structure and two accessory structures, including a private garage, on each lot in any residential district, except as provided for in A1, A2, A3, A4, OR Districts and the AHO, AH-ARO, and PACO Overlay Zones under §310-22, Multifamily residential development or within the specific zone standards found herein.”

§ 310-35, entitled “Affordable housing,” is hereby shall be deleted.

§ 310-50, entitled “Affordable Housing Districts, Standards,” is hereby amended to read:

“Special standards applicable to development of the A1, A2, A3, A4 Districts and the AHO, AH-ARO, and PACO Overlay Zones are only set forth in the Chapter 305, Subdivision of Land and Site Plan Review, § 305-12I, to expedite the production of lower-income housing. These standards are deemed to be the minimum necessary for public health, safety and welfare and remove standards which may be desirable to achieve but which may also be cost-generating to a developer of lower-income housing and thereby inhibit its production. Any provision of this chapter or any other ordinance which is in conflict with the affordable housing standards of the Subdivision and Site Plan Ordinance *Editor's Note: See Ch. 305, Subdivision of Land and Site Plan Review.* and which imposes restrictions or limitations not required for health and safety shall be inapplicable to the A1, A2, A3, A4 Districts and the AHO, AH-ARO, and PACO Overlay Zones.”

§ 310-50.1, entitled “A4 Affordable Housing Zone Standards” is hereby created to read as follows:

A4 Affordable Housing Zone

- A. The purpose of the A4 Affordable Housing Zone, which applies to Block 210 Lots 20 and 32, is to provide areas within the Borough designated for multi-family housing, single-family townhouses, and affordable housing opportunities. The intent of this zone is to be developed as a single entity.
- B. Principal permitted uses:
 - a. Multi-family dwellings
 - b. Townhouses, subject to the Borough’s definition of “Town House” found in Ordinance Section 310-6 with the exception of height, which shall be governed by the standards within this section.
 - c. Existing wireless communication tower
 - d. Public parks, recreation building/facilities, and playgrounds
- C. Permitted accessory uses:
 - a. Private parks and playgrounds
 - b. Private recreation buildings and facilities
 - c. Garages and off-street parking facilities
 - d. Uses customary and incidental to the principal use
 - e. Building/roof-mounted wireless communication facility subject to the submission requirements found in Ordinance Section 310-47.1E
- D. The following bulk standards shall apply:
 - a. Minimum Lot Area: 20 Acres

- b. Minimum Building Setbacks:
 - i. From Commerce Street: 40 feet
 - ii. From Spring Street: 40 feet
 - iii. From Block 210, Lot 21: 30 feet
 - iv. From the R-2 Zone: 40 feet
 - v. From internal streets: 12 feet
- c. Minimum Distance Between Buildings: No portion of a building shall be closer to another building than 50% of its height. In the event the adjacent buildings are different heights, the higher height shall govern.
- d. Minimum Parking Setback for Multi-Family Residential Buildings: Surface parking areas shall be set back a minimum of 15 feet from the principal building.
- e. Townhouse Driveways: Driveways shall be a minimum of 20 feet between the sidewalk and garage.
- f. Maximum Building Height, measured in accordance with §310-6 of the Borough's Zoning and Land Use Ordinance:
 - i. Townhouses: 3 stories / 38 feet; If the residential structure contains a ground-level enclosed parking area, then the calculation of the height and number of stories shall exclude the ground-level parking area. The height of the structure shall be measured from the finished floor of the first floor above the ground level parking area.
 - ii. Multi-Family buildings: 3 stories / 38 feet. If the residential structure contains a ground-level enclosed parking area, then the calculation of the height and number of stories shall exclude the ground-level parking area. The height of the structure shall be measured from the finished floor of the first floor above the ground level parking area.
 - iii. Clubhouse: 30 feet
 - iv. All other accessory structures: 15 feet
- g. Maximum Building Coverage: 25%
- h. Maximum Impervious Coverage: 50%

E. Minimum Off-Street Parking:

- a. Townhomes: 2 spaces per dwelling unit, 1 of which shall be in a garage.
- b. Multi-Family: RSIS

- c. A garage and driveway space shall count as two spaces; as well as a dedicated tandem space in a covered garage.
- d. To the extent feasible, all off-street parking shall be located interior to the property and have limited visibility from the public rights-of-way.

F. Maximum Number of Units:

- a. 192 total dwelling units.
- b. Development of the site shall provide for a 20% set-aside for family rental affordable units.

G. Affordable Housing

- a. Very low, low and moderate-income housing shall be constructed and rented in accordance with the Council on Affordable Housing rules at N.J.A.C. 5:93-1 et seq. and the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5:80-26.1 et seq. including standards for the split between very low, low and moderate income housing, provided a minimum of 13% of the affordable units are very low income units at 30% of the median income and 37% of the affordable units are low income units with the (up to) 50% balance of units allowed at moderate income; bedroom distribution; range of affordability; pricing and rent of units; affirmative marketing; 30-year minimum affordability controls and construction phasing with the market rate units developed on the tract.

H. Buffers

- a. A 20-foot buffer shall be maintained along the property boundary abutting the R-2 residential zone. No buildings, signs, structures (including stormwater management facilities), parking, or roadways shall be permitted within the buffer area.

I. Signage

- a. The provisions of §310-33, entitled "Signs" and amended by Ordinance 2011-20, shall govern any provisions regarding signage not addressed herein. Where there is conflict between §310-33 and this ordinance, this ordinance shall take precedence.
- b. One freestanding sign is permitted at each entrance to the development. Each sign shall not exceed 50 square feet per side.
- c. Freestanding signs may be internally illuminated and may also be illuminated by an exterior light source, facing down, not upwards toward the sky.
- d. Freestanding signs shall be setback a minimum of 15 feet from the lot line.
- e. Freestanding signs shall be setback a minimum of 12 feet from internal roadways.

- f. Directional signs are permitted on all internal roadways. Directional signs shall be consistent with each other and the tract's other signage.
- g. Numbers indicating the addresses of the multi-family residential buildings are permitted to be hung on the exterior walls, not to exceed 6 square feet and not to protrude more than 6 inches from the building's surface.

J. Additional Standards

- a. Two or more principal uses are permitted on a single tract.
- b. The development may include a recreational amenity, such as but not limited to a clubhouse, for use by the residents of the entire development.
- c. To the extent feasible, the existing forested areas of the tract shall be maintained.
- d. Access roads to the tract shall be permitted from Central Avenue, Spring Street and Commerce Drive.
- e. To the extent feasible, all resident parking associated with multi-family structures shall be located under the building.
- f. For surface parking areas associated with multi-family structures, a minimum of 10% of the surface area shall be landscaped and shall include one shade tree for every 20 parking spaces.
- g. Each multi-family building shall not contain more than 48 units.
- h. No building shall be in excess of 200 feet in length.
- i. No dwelling unit and/or room intended for human habitation shall be located in a basement, cellar or attic, with the exception that a townhouse structure and multi-family buildings may have a basement/cellar that contains a general-purpose room such as a family room or recreation room.
- j. Generators are required for all common areas in multi-family buildings.

K. Design Standards

Any deviation from the following standards shall trigger waiver relief.

- a. Architecture
 - i. All development shall be designed in such a manner that respects the architectural character of the New Providence residential community.
 - ii. Building massing shall be broken up through the use of one or more of the following: multiple gables, varying roof heights, dormers, oriental treatments, alternating materials, and architectural articulation.

iii. Garage doors shall be constructed of a solid material and be aesthetically pleasing.

b. Landscaping.

i. Any landscaping which, within 2 years of planting dies for any reason, shall be replaced by the developer(s) at their expense.

ii. A minimum 3-foot wide landscape strip (e.g. grass, ornamental plants, street trees) shall be provided between the curb and the sidewalk along all internal streets.

iii. Street trees shall be planted 40 feet apart on average within the landscape strip along all internal streets.

iv. Street trees shall be at least 2.5 inch caliper at planting. Evergreen trees shall be at least 6 feet tall at planting. All trees shall adhere to the American Standards for Nursery Stock.

v. All areas not occupied by buildings, roadways, parking areas, patios, walkways, and/or any other impervious surface shall be adequately landscaped.

vi. No landscaping at any location shall interfere with sight triangles.

c. Exterior Lighting.

i. Exterior lighting fixtures shall not create excessive glare or light levels or direct light onto neighboring buildings or properties.

ii. All building entrances to multi-family structures shall be illuminated by exterior lighting.

iii. Light poles shall not exceed 18 feet in height.

iv. Street lights shall be provided along all internal streets.

d. Circulation.

i. The development of the tract shall take into consideration both the vehicular and pedestrian movement of the site.

ii. Sidewalks shall be provided throughout the entire tract, providing access to all structures and parking areas.

iii. Sidewalks shall be a minimum of 4 feet in width. In no event shall sidewalk clearance be less than the minimum levels set by the Americans with Disabilities Act.

iv. All intersections shall contain handicapped accessible ramps.

v. All intersections shall contain painted crosswalks.

vi. All crosswalks shall be a minimum of 5 feet in width.

e. Utilities.

i. Utilities shall be as visually unobtrusive as possible.

ii. Meters and access panels shall be integrated with street and building design and screened from public view.

iii. Emergency generators shall be located interior to the building or shall be completely screened from public view. Existing generators may remain in the location they exist at the time that this Ordinance is adopted. Existing generators must maintain any audio barriers and screening that were previously approved by the Borough Planning Board. Application for development must include proof that such audio barriers are appropriate for a residential development. Additional landscaping may be required to screen the existing generators.

iv. Transformers and primary and back-up generators shall be located interior to the building or vaulted underground within the pavement area of an internal street.

v. Ground-level utilities shall be screened by nondeciduous landscaping that will conceal the utilities throughout the year, without impeding access by the utility company.

f. Refuse and Recycling.

i. For multi-family construction:

1. No refuse and recycling storage and collection areas shall be permitted between the front of a building and the street.

2. All outside refuse and recycling storage areas shall conform to the perimeter setbacks as established herein.

3. Outdoor refuse and recycling containers shall be screened with a durable enclosure, so as to not be visible by interior roads or adjacent properties. Landscaping and/or fencing shall be used as additional screening measures.

4. Refuse and recycling areas shall be designed to appropriately contain all refuse generated on site.

5. There shall be clear and unobstructed access to all refuse and recycling areas for collection vehicles.

a. Sustainable Building Design Guidelines

The Sustainable Building Design Guidelines provide opportunities to improve building efficiency and sustainability and to the extent feasible, should be incorporated into the building and site design.

- ii. Where possible, windows should be oriented to the south.
- iii. Utilize high-performance glazing to reduce heat gain while admitting light.
- iv. Provide shading devices, such as roof overhangs, controllable shades, etc.
- v. Use deciduous landscaping to shade the summer sun and maximize heating from winter sun.
- vi. Ensure that insulation is properly rated.
- vii. Install high-efficiency HVAC systems.
- viii. Incorporate thermal mass construction.
- ix. Install fully shielded and cutoff light fixtures that are compatible with dark skies guidelines.
- x. Utilize programmable switches, sensors or timers to adjust lighting levels for different times of day, and to reduce energy consumption.
- xi. Install lighting fixtures that utilize LED bulbs or similar efficient models.
- xii. Use roofs of lighter shades or utilize reflective surface finishing.
- xiii. Install green roofs, which consist of a lightweight engineered soil media, underlain by drainage layer and a high-quality impermeable membrane that protects the building structure. Green roofs are useful for assisting with stormwater management, but they also protect the roof, can be used as an amenity, reduce heat island effect, reduce noise, reduce cooling needs in the summer and heating needs in the winter, and provide water quality management benefits.

§ 310-50.2, entitled “AHO Affordable Housing Overlay Zone” is hereby created to read as follows:

AHO Affordable Housing Overlay Zone

- A. The purpose of the Affordable Housing Overlay Zone (AHO), which applies to Block 210: Lots 21, 23, 33; Block 221: Lots 2.01 and 6; and Block 340: Lots 4, 6 and 8, is to provide areas within the Borough designated for multi-family and affordable housing opportunities. This zone constitutes an overlay, providing property owners with the option of continuing the use of the property as permitted in the underlying zone (TBI-2), or to redevelop with residential and affordable housing components.

B. Principal permitted uses:

- a. Multi-family dwellings
- b. Townhomes, subject to the Borough's definition of "Town House" found in Ordinance Section 310-6 with the exception of height, which shall be governed by the standards within this section.

C. Permitted accessory uses:

- a. Public and private parks and playgrounds
- b. Public and private recreation buildings and facilities
- c. Garages and off-street parking facilities
- d. Uses customary and incidental to the principal use

D. The following bulk standards shall apply:

- a. Minimum Lot Area: 2 acres
- b. Minimum Building Setbacks:
 - i. Front: 30 feet
 - ii. Rear: 20 feet*
 - iii. Side
 - 1. One: 15 feet*
 - 2. Both: 35 feet*

*Except as required by §310-19C and §310-21

- c. Minimum Distance Between Buildings: No portion of a building shall be closer to another building than 50% of its height. In the event the adjacent buildings are different heights, the higher height shall govern.

d. Maximum Building Height:

- i. Principal Building: 3 stories/38 feet
- ii. Accessory Structures: 15 feet

- e. Maximum Building Coverage: 35%
- f. Maximum Impervious Coverage: 60%

E. Minimum Off-Street Parking:

- a. Townhomes: 2 spaces per dwelling unit, 1 of which shall be in a garage.
- b. Multi-Family: RSIS

- c. A garage and driveway space shall count as two spaces; as well as a dedicated tandem space in a covered garage.
- d. To the extent feasible, all off-street parking shall be located interior to the property and have limited visibility from the public rights-of-way.

F. Maximum Density:

- a. Block 210 Lot 21: 9.5 units/acre
- b. Block 210 Lot 23: 9.5 units/acre
- c. Block 210 Lot 33: 9.5 units/acre
- d. Block 340 Lot 4: 16 units/acre
- e. Block 340 Lot 6: 17 units/acre
- f. Block 340 Lot 8: 9.5 units/acre
- g. Block 221 Lot 2.01: 15 units/acre
- h. Block 221 Lot 6: 16 units/acre
- i. At least 20% of all units created shall be set-aside to be occupied by households qualified as low, very-low, or moderate-income, in accordance with current standards.

G. Affordable Housing

- a. Very low, low and moderate-income housing shall be constructed and rented in accordance with the Council on Affordable Housing rules at N.J.A.C. 5:93-1 et seq. and the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5:80-26.1 et seq. including standards for the split between very low, low and moderate income housing, provided a minimum of 13% of the affordable units are very low income units at 30% of the median income and 37% of the affordable units are low income units with the (up to) 50% balance of units allowed at moderate income; bedroom distribution; range of affordability; pricing and rent of units; affirmative marketing; 30-year minimum affordability controls and construction phasing with the market rate units developed on the tract.

H. Signage

- a. The provisions of §310-33, entitled "Signs" and amended by Ordinance 2011-20, shall govern any provisions regarding signage not addressed herein. Where there is conflict between §310-33 and this ordinance, this ordinance shall take precedence.
- b. One freestanding sign is permitted at each entrance to the development. Each sign shall not exceed 50 square feet per side.

- c. Freestanding signs may be internally illuminated and may also be illuminated by an exterior light source, facing down, not upwards toward the sky.
- d. Freestanding signs shall be setback a minimum of 15 feet from the lot line.
- e. Freestanding signs shall be setback a minimum of 12 feet from internal roadways.
- f. Directional signs are permitted on all internal roadways. Directional signs shall be consistent with each other and the tract's other signage.
- g. Numbers indicating the addresses of the multi-family residential buildings are permitted to be hung on the exterior walls, not to exceed 6 square feet and not to protrude more than 6 inches from the building's surface.

I. Additional Standards

- a. Two or more principal uses are permitted on a single tract.
- b. Surface parking lots shall include landscaped medians and/or islands when any expanse of pavement exceeds 108' in width; otherwise landscaping along the perimeter is required.
- c. For surface parking areas associated with multi-family structures, a minimum of 10% of the surface area shall be landscaped and shall include one shade tree for every 20 parking spaces.
- d. Each multi-family building shall not contain more than 48 units.
- e. No building shall be in excess of 200 feet in length.
- f. No dwelling unit and/or room intended for human habitation shall be located in a basement, cellar or attic, with the exception that a townhouse structure and multi-family buildings may have a basement/cellar that contains a general-purpose room such as a family room or recreation room.
- g. Generators are required for all common areas in multi-family buildings.

J. Design Standards

Any deviation from the following standards shall trigger waiver relief.

- a. Architecture
 - i. All development shall be designed in such a manner that respects the architectural character of the New Providence community and nearby residential neighborhoods.
 - ii. Building massing shall be broken up through the use of multiple gables, varying roof heights, dormers, alternating materials, and architectural articulation.

iii. Garage doors shall be constructed of a solid material and be aesthetically pleasing.

b. Landscaping.

i. Any landscaping which, within 2 years of planting dies for any reason, shall be replaced by the developer(s) at their expense.

ii. A minimum 3-foot wide landscape strip (e.g. grass, ornamental plants, street trees) shall be provided between the curb and the sidewalk along all internal streets.

iii. Street trees shall be planted 40 feet apart on average within the landscape strip along all internal streets.

iv. Street trees shall be at least 2.5 inch caliper at planting. Evergreen trees shall be at least 6 feet tall at planting. All trees shall adhere to the American Standards for Nursery Stock.

v. All areas not occupied by buildings, roadways, parking areas, patios, walkways, and/or any other impervious surface shall be adequately landscaped.

vi. No landscaping at any location shall interfere with sight triangles.

c. Exterior Lighting.

i. Exterior lighting fixtures shall not create excessive glare or light levels or direct light onto neighboring buildings or properties.

ii. All building entrances to multi-family structures shall be illuminated by exterior lighting.

iii. Light poles shall not exceed 18 feet in height.

iv. Street lights shall be provided along all internal streets.

d. Circulation.

i. The development of the tract shall take into consideration both the vehicular and pedestrian movement of the site.

ii. Sidewalks shall be provided throughout the entire tract, providing access to all structures and parking areas.

iii. Sidewalks shall be a minimum of 4 feet in width. In no event shall sidewalk clearance be less than the minimum levels set by the Americans with Disabilities Act.

iv. All intersections shall contain handicapped accessible ramps.

v. All intersections shall contain painted crosswalks.

vi. All crosswalks shall be a minimum of 5 feet in width.

e. Utilities.

i. Utilities shall be as visually unobtrusive as possible.

ii. Meters and access panels shall be integrated with street and building design and screened from public view.

iii. Transformers and primary and back-up generators shall be located interior to the building or vaulted underground within the pavement area of an internal street.

iv. Emergency generators shall be located interior to the building or shall be completely screened from public view.

v. Ground-level utilities shall be screened by nondeciduous landscaping that will conceal the utilities throughout the year, without impeding access by the utility company.

f. Refuse and Recycling.

i. For multi-family construction:

1. No refuse and recycling storage and collection areas shall be permitted between the front of a building and the street.

2. All outside refuse and recycling storage areas shall conform to the perimeter setbacks as established herein.

3. Outdoor refuse and recycling containers shall be screened with a durable enclosure, so as to not be visible by interior roads or adjacent properties. Landscaping and/or fencing shall be used as additional screening measures.

4. Refuse and recycling areas shall be designed to appropriately contain all refuse generated on site.

5. There shall be clear and unobstructed access to all refuse and recycling areas for collection vehicles.

g. Sustainable Building Design

The Sustainable Building Design guidelines provide opportunities to improve building efficiency and sustainability.

i. Where possible, windows should be oriented to the south.

- ii. Utilize high-performance glazing to reduce heat gain while admitting light.
- iii. Provide shading devices, such as roof overhangs, controllable shades, etc.
- iv. Use deciduous landscaping to shade the summer sun and maximize heating from winter sun.
- v. Ensure that insulation is properly rated.
- vi. Install high-efficiency HVAC systems.
- vii. Incorporate thermal mass construction.
- viii. Install fully shielded and cutoff light fixtures that are compatible with dark skies guidelines.
- ix. Utilize programmable switches, sensors or timers to adjust lighting levels for different times of day, and to reduce energy consumption.
- x. Install lighting fixtures that utilize LED bulbs or similar efficient models.
- xi. Use roofs of lighter shades or utilize reflective surface finishing.
- xii. Install green roofs, which consist of a lightweight engineered soil media, underlain by drainage layer and a high-quality impermeable membrane that protects the building structure. Green roofs are useful for assisting with stormwater management, but they also protect the roof, can be used as an amenity, reduce heat island effect, reduce noise, reduce cooling needs in the summer and heating needs in the winter, and provide water quality management benefits.

§ 310-50.3, entitled “AH-ARO Affordable Housing Age-Restricted Overlay Zone” is hereby created to read as follows:

AH-ARO Affordable Housing Age-Restricted Overlay Zone

- B. The purpose of the Affordable Housing Age-Restricted Overlay Zone (AH-ARO), which applies to Block 221 Lot 5, is to provide areas within the Borough designated for age-restricted, multi-family housing, including age-restricted affordable housing. This zone constitutes an overlay, providing property owners with the option of continuing the use of the property as permitted in the underlying zone (TBI-2), or to redevelop with residential and affordable housing components.
- C. Principal permitted uses:
 - a. Age-restricted multi-family dwellings

- b. Age-restricted townhomes, subject to the Borough's definition of "Town House" found in Ordinance Section 310-6 with the exception of height, which shall be governed by the standards within this section.

D. Permitted accessory uses:

- a. Public and private parks and playgrounds
- b. Public and private recreation buildings and facilities
- c. Garages and off-street parking facilities
- d. Uses customary and incidental to the principal use

E. The following bulk standards shall apply:

- a. Minimum Lot Area: 6.5 acres
- b. Minimum Building Setbacks:
 - i. Front: 30 feet
 - ii. Rear: 20 feet*
 - iii. Side
 - 1. One: 15 feet*
 - 2. Both: 35 feet*

*Except as required by §310-19C and §310-21

- c. Minimum Distance Between Buildings: No portion of a building shall be closer to another building than 50% of its height. In the event the adjacent buildings are different heights, the higher height shall govern.
- d. Maximum Building Height:
 - i. Principal Buildings: 3 stories/38 feet
 - ii. Accessory Structures: 15 feet
- e. Maximum Building Coverage: 35%
- f. Maximum Impervious Coverage: 60%

F. Minimum Off-Street Parking:

- a. Townhomes: 2 spaces per dwelling unit, 1 of which shall be in a garage.
- b. Multi-Family: 0.75 spaces per unit.
- c. A garage and driveway space shall count as two spaces; as well as a dedicated tandem space in a covered garage.

- d. To the extent feasible, all off-street parking shall be located interior to the property and have limited visibility from the public rights-of-way.

G. Maximum Density:

- a. 14 units/acre
- b. At least 20% of all units created shall be set-aside to be occupied by households qualified as low, very-low, or moderate-income, in accordance with current standards.

H. Affordable Housing

- a. Very low, low and moderate-income housing shall be constructed and rented in accordance with the Council on Affordable Housing rules at N.J.A.C. 5:93-1 et seq. and the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5:80-26.1 et seq. including standards for the split between very low, low and moderate income housing, provided a minimum of 13% of the affordable units are very low income units at 30% of the median income and 37% of the affordable units are low income units with the (up to) 50% balance of units allowed at moderate income; bedroom distribution; range of affordability; pricing and rent of units; affirmative marketing; 30-year minimum affordability controls and construction phasing with the market rate units developed on the tract.

I. Signage

- a. The provisions of §310-33, entitled “Signs” and amended by Ordinance 2011-20, shall govern any provisions regarding signage not addressed herein. Where there is conflict between §310-33 and this ordinance, this ordinance shall take precedence.
- b. One freestanding sign is permitted at each entrance to the development. Each sign shall not exceed 50 square feet per side.
- c. Freestanding signs may be internally illuminated and may also be illuminated by an exterior light source, facing down, not upwards toward the sky.
- d. Freestanding signs shall be setback a minimum of 15 feet from the lot line.
- e. Freestanding signs shall be setback a minimum of 12 feet from internal roadways.
- f. Directional signs are permitted on all internal roadways. Directional signs shall be consistent with each other and the tract’s other signage.
- g. Numbers indicating the addresses of the multi-family residential buildings are permitted to be hung on the exterior walls, not to exceed 6 square feet and not to protrude more than 6 inches from the building’s surface.

J. Additional Standards

- a. Two or more principal uses are permitted on a single tract.
- b. Surface parking lots shall include landscaped medians and/or islands when any expanse of pavement exceeds 108' in width; otherwise landscaping along the perimeter is required.
- c. For surface parking areas associated with multi-family structures, a minimum of 10% of the surface area shall be landscaped and shall include one shade tree for every 20 parking spaces.
- d. Each multi-family building shall not contain more than 48 units.
- e. No building shall be in excess of 200 feet in length.
- f. No dwelling unit and/or room intended for human habitation shall be located in a basement, cellar or attic, with the exception that a townhouse structure and multi-family buildings may have a basement/cellar that contains a general-purpose room such as a family room or recreation room.
- g. Generators are required for all common areas in multi-family buildings.

K. Design Standards

Any deviation from the following standards shall trigger waiver relief.

- a. Architecture
 - i. All development shall be designed in such a manner that respects the architectural character of the New Providence community and nearby residential neighborhoods.
 - ii. Building massing shall be broken up through the use of multiple gables, varying roof heights, dormers, alternating materials, and architectural articulation.
 - iii. Garage doors shall be constructed of a solid material and be aesthetically pleasing.
- b. Landscaping.
 - i. Any landscaping which, within 2 years of planting dies for any reason, shall be replaced by the developer(s) at their expense.
 - ii. A minimum 3-foot wide landscape strip (e.g. grass, ornamental plants, street trees) shall be provided between the curb and the sidewalk along all internal streets.
 - iii. Street trees shall be planted 40 feet apart on average within the landscape strip along all internal streets.

- iv. Street trees shall be at least 2.5 inch caliper at planting. Evergreen trees shall be at least 6 feet tall at planting. All trees shall adhere to the American Standards for Nursery Stock.
- v. All areas not occupied by buildings, roadways, parking areas, patios, walkways, and/or any other impervious surface shall be adequately landscaped.
- vi. No landscaping at any location shall interfere with sight triangles.

c. Exterior Lighting.

- i. Exterior lighting fixtures shall not create excessive glare or light levels or direct light onto neighboring buildings or properties.
- ii. All building entrances to multi-family structures shall be illuminated by exterior lighting.
- iii. Light poles shall not exceed 18 feet in height.
- iv. Street lights shall be provided along all internal streets.

d. Circulation.

- i. The development of the tract shall take into consideration both the vehicular and pedestrian movement of the site.
- ii. Sidewalks shall be provided throughout the entire tract, providing access to all structures and parking areas.
- iii. Sidewalks shall be a minimum of 4 feet in width. In no event shall sidewalk clearance be less than the minimum levels set by the Americans with Disabilities Act.
- iv. All intersections shall contain handicapped accessible ramps.
- v. All intersections shall contain painted crosswalks.
- vi. All crosswalks shall be a minimum of 5 feet in width.

e. Utilities.

- i. Utilities shall be as visually unobtrusive as possible.
- ii. Meters and access panels shall be integrated with street and building design and screened from public view.
- iii. Transformers and primary and back-up generators shall be located interior to the building or vaulted underground within the pavement area of an internal street.

iv. Emergency generators shall be located interior to the building or shall be completely screened from public view.

v. Ground-level utilities shall be screened by nondeciduous landscaping that will conceal the utilities throughout the year, without impeding access by the utility company.

f. Refuse and Recycling.

i. For multi-family construction:

1. No refuse and recycling storage and collection areas shall be permitted between the front of a building and the street.
2. All outside refuse and recycling storage areas shall conform to the perimeter setbacks as established herein.
3. Outdoor refuse and recycling containers shall be screened with a durable enclosure, so as to not be visible by interior roads or adjacent properties. Landscaping and/or fencing shall be used as additional screening measures.
4. Refuse and recycling areas shall be designed to appropriately contain all refuse generated on site.
5. There shall be clear and unobstructed access to all refuse and recycling areas for collection vehicles.

g. Sustainable Building Design Guidelines

The Sustainable Building Design Guidelines provide opportunities to improve building efficiency and sustainability.

- i. Where possible, windows should be oriented to the south.
- ii. Utilize high-performance glazing to reduce heat gain while admitting light.
- iii. Provide shading devices, such as roof overhangs, controllable shades, etc.
- iv. Use deciduous landscaping to shade the summer sun and maximize heating from winter sun.
- v. Ensure that insulation is properly rated.
- vi. Install high-efficiency HVAC systems.
- vii. Incorporate thermal mass construction.
- viii. Install fully shielded and cutoff light fixtures that are compatible with dark skies guidelines.

- ix. Utilize programable switches, sensors or timers to adjust lighting levels for different times of day, and to reduce energy consumption.
- x. Install lighting fixtures that utilize LED bulbs or similar efficient models.
- xi. Use roofs of lighter shades or utilize reflective surface finishing.
- xii. Install green roofs, which consist of a lightweight engineered soil media, underlain by drainage layer and a high-quality impermeable membrane that protects the building structure. Green roofs are useful for assisting with stormwater management, but they also protect the roof, can be used as an amenity, reduce heat island effect, reduce noise, reduce cooling needs in the summer and heating needs in the winter, and provide water quality management benefits.

§ 310-50.4, entitled “Planned Adult Community” is hereby created to read as follows:

PACO Planned Adult Community Overlay Zone

A. The purpose of the Planned Adult Community Overlay (PACO), which applies to Block 370 Lot 1, is to provide areas within the Borough designated for age-restricted, multi-family housing, including age-restricted affordable housing opportunities. The PACO allows the existing, underlying zoning (TBI-1) to remain with the option of developing a site within the parameters of this overlay ordinance. The intent of this zone is to be developed as a single entity. Any development of this site shall respect the character of the existing single-family residential neighborhood that surrounds the site to the north and west. Additionally, buffers and screening along the perimeter of the site shall be provided pursuant to the standards herein. The Borough’s steep slope ordinance shall not apply to the PACO.

The development of the PAC shall be substantially consistent with the concept plan, dated August 13, 2018, attached to the executed settlement agreement between the Borough and Linde North America Inc.

B. Principal permitted uses:

- a. Age-restricted multi-family dwellings
- b. Age-restricted townhouses, subject to the Borough’s definition of “Town House” found in Ordinance Section 310-6 with the exception of height, which shall be governed by the standards within this section.

C. Permitted accessory uses:

- a. Public and private parks and playgrounds
- b. Public and private recreation buildings and facilities
- c. Garages and off-street parking facilities

- d. Structured parking beneath the multi-family housing.
- e. Uses customary and incidental to the principal use

D. The following bulk standards shall apply:

- a. Minimum Lot Area: 21 Acres
- b. Minimum Building Setbacks:
 - i. From Mountain Avenue: 100 feet for 3 residential stories with and without underground parking; 150 feet for 4 residential stories with and without underground parking.
 - ii. From Southgate Road: 40 feet
 - iii. From Ryder Way: 80 feet
 - iv. From internal streets: 12 feet
- c. Minimum Distance Between Buildings: No portion of a building shall be closer to another building than 50% of its height. In the event the adjacent buildings are different heights, the higher height shall govern.
- d. Minimum Parking Setback for Multi-Family Residential Buildings: Surface parking areas shall be set back a minimum of 12 feet from the principal building.
- e. Townhouse Driveways: Driveways shall be a minimum of 18 feet between the sidewalk and garage.
- f. Maximum Building Height, measured in accordance with §310-6 of the Borough's Zoning and Land Use Ordinance:
 - i. Townhouses: 2.5 stories / 35 feet
 - ii. Multi-Family buildings: 3 stories / 40 feet; 4 stories / 50 feet. The height may increase another story and 15 feet for multi-family buildings with structured parking.
 - iii. Clubhouse: 25 feet
 - iv. All other accessory structures: 15 feet
- g. Maximum Building Coverage: 25%
- h. Maximum Impervious Coverage: 50%

E. Minimum Off-Street Parking: same as RSIS

F. Maximum Number of Units:

- a. 297 dwelling units.

- b. Of the total number of units, 59 shall be affordable, age-restricted rental units. In no event shall this zone produce less than 59 affordable units.

G. Affordable Housing

- a. Very low, low and moderate-income housing shall be constructed and rented in accordance with the Council on Affordable Housing rules at N.J.A.C. 5:93-1 et seq. and the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5:80-26.1 et seq. including standards for the split between very low, low and moderate income housing, provided a minimum of 13% of the affordable units are very low income units at 30% of the median income and 37% of the affordable units are low income units with the (up to) 50% balance of units allowed at moderate income; bedroom distribution; range of affordability; pricing and rent of units; affirmative marketing; 30-year minimum affordability controls and construction phasing with the market rate units developed on the tract.

H. Buffers

- a. There shall be a buffer area that surrounds the entire perimeter of the site. The buffer area shall be 100 feet off Mountain Avenue, 40 feet off Southgate Road, and 80 feet off Ryder Way.
- b. Buffering shall be located to minimize headlights of vehicles, noise, light from structures, the movement of people and vehicles and to shield activities from adjacent properties when necessary. Buffering may include but not be limited to fencing, walls, evergreens, shrubs, landscaping, berms, rocks, boulders, open space, ponds, steep slopes, deciduous trees or combinations thereof to achieve the stated objectives.
- c. Extensive buffering shall be required where intensive land uses abut less intensive uses (i.e. single-family to townhouses/multifamily). Existing natural vegetation, if appropriate for the above stated purposes, shall be retained.
- d. No buildings, signs, structures (including stormwater facilities), storage of materials, roadways or parking shall be permitted within the buffer areas, with the exception of access roads into the development and freestanding signs, in accordance this section.

I. Signage

- a. The provisions of §310-33, entitled "Signs" and amended by Ordinance 2011-20, shall govern any provisions regarding signage not addressed herein. Where there is conflict between §310-33 and this ordinance, this ordinance shall take precedence.
- b. One freestanding sign is permitted at each main entrance to the development. Each sign shall not exceed 50 square feet per side.

- c. Freestanding signs may be internally illuminated and may also be illuminated by an exterior light source, facing down, not upwards toward the sky.
- d. Freestanding signs shall be setback a minimum of 15 feet from the lot line.
- e. Freestanding signs shall be setback a minimum of 12 feet from internal roadways.
- f. Directional signs are permitted on all internal roadways. Directional signs shall be consistent with each other and the tract's other signage.
- g. Numbers indicating the addresses of the multi-family residential buildings are permitted to be hung on the exterior walls, not to exceed 8 square feet and not to protrude more than 6 inches from the building's surface.

J. Additional Standards

- a. Two or more principal uses are permitted on a single tract.
- b. The multi-family units shall include a recreational amenity, such as a clubhouse or senior center.
- c. To the extent feasible, the existing forested areas of the tract shall be maintained.
- d. Access roads to the tract shall be permitted from Southgate Road and/or Ryder Way. No access road shall be permitted to extend from Mountain Avenue.
- e. Surface parking lots shall include landscaped medians and/or islands.
- f. For surface parking areas associated with multi-family structures, a minimum of 10% of the surface area shall be landscaped and shall include one shade tree for every 20 parking spaces.
- g. Multi-family buildings shall not contain more than 135 units.
- h. No building shall be in excess of 400 feet in length. However, any building in excess of 200 feet shall have significant articulation and offsets so as to not create a monolithic and overbearing aesthetic.
- i. No dwelling unit and/or room intended for human habitation shall be located in a basement, cellar or attic, with the exception that a townhouse structure may have a basement/cellar that contains a family room or recreation room.
- j. Generator power is required for the multi-family clubhouse and elevators

K. Design Standards

Any deviation from the following standards shall trigger waiver relief.

- a. Landscaping.

- i. Any landscaping which, within 2 years of planting dies for any reason, shall be replaced by the developer(s) at their expense by way of written agreement.
- ii. A minimum 3-foot wide landscape strip (e.g. grass and street trees) shall be provided between the curb and the sidewalk (where required by RSIS) along all internal streets.
- iii. Street trees shall be planted 40 feet apart within the landscape strip along all internal streets.
- iv. Street trees shall be at least 2.5 inch caliper at planting. Evergreen trees shall be at least 6 feet tall at planting. All trees shall adhere to the American Standards for Nursery Stock.
- v. All areas not occupied by buildings, roadways, parking areas, patios, walkways, and/or any other impervious surface shall be adequately landscaped.
- vi. No landscaping at any location shall interfere with site triangles.

b. Exterior Lighting.

- i. Exterior lighting fixtures shall not create excessive glare or light levels or direct light onto neighboring buildings or properties.
- ii. All building entrances to multi-family structures shall be illuminated by exterior lighting.
- iii. For parking lots, light poles shall not exceed 18 feet in height.
- iv. Street lights shall be provided along all internal streets at a height not to exceed 18 feet.

c. Circulation.

- i. The development of the tract shall take into consideration both the vehicular and pedestrian movement of the site.
- ii. Sidewalks shall be provided throughout the entire tract (where required by RSIS), providing access to all structures and parking areas.
- iii. Sidewalks shall be a minimum of 4 feet in width. In no event shall sidewalk clearance be less than the minimum levels set by the Americans with Disabilities Act.
- iv. All intersections shall contain handicapped accessible ramps.
- v. All intersections shall contain crosswalks.
- vi. All crosswalks shall be a minimum of 5 feet in width.

d. Utilities.

- i. Utilities shall be as visually unobtrusive as possible.
- ii. Meters and access panels shall be integrated with street and building design.
- iii. Transformers and primary and back-up generators shall be located interior to the building or vaulted underground within the pavement area of an internal street.
- iv. The existing substation shall be appropriately screened by landscaping.

e. Refuse and Recycling.

i. For multi-family construction:

1. No refuse and recycling storage and collection areas shall be permitted between the front of a building and the street.
2. All outside refuse and recycling storage areas shall conform to the perimeter setbacks as established herein.
3. Outdoor refuse and recycling containers shall be screened with a durable enclosure, so as to not be visible by interior roads or adjacent properties. Landscaping and/or fencing may be used as additional screening measures.
4. Refuse and recycling areas shall be designed to appropriately contain all refuse generated on site.
5. There shall be clear and unobstructed access to all refuse and recycling areas for collection vehicles.

f. Sustainable Building Design

1. Development shall comply with Energy Star Guidelines.

§ 310-51, entitled “Common open space and common elements,” is hereby amended to add the following sub paragraph:

“D. The development of an inclusionary development in the A4 Zone shall include a donation to the Borough of New Providence the portion of the site that is currently used as a soccer field along with a portion of the adjacent existing driveway.”

Part III Article IV §310-10, entitled “Schedules” is hereby amended to include the newly established Affordable Housing Zone (“AH”) and Affordable Housing Age-Restricted Zone (AH-AR) as set forth below:

SCHEDULE I
PERMITTED USES

A4 Affordable Housing Zone

Permitted Principal Uses	Multi-family dwellings; townhouses subject to the Borough's definition with the exception of height and number of stories, which shall be governed by the standards within this section; existing wireless communication towers; public parks, recreation building / facilities, and playgrounds.
Permitted Accessory Uses	Private parks and playgrounds
	Private recreation buildings and facilities
	Garages and off-street parking facilities
	Uses customary and incidental to the principal use
	Emergency generators

AHO Affordable Housing Overlay Zone

Permitted Principal Uses	Multi-family dwellings, townhouses subject to the Borough's definition with the exception of height and number of stories, which shall be governed by the standards within this section.
Permitted Accessory Uses	Public and private parks and playgrounds
	Public and private recreation buildings and facilities
	Garages and off-street parking facilities
	Any other uses customary/incidental to the principal use
	Emergency generators

AH-ARO Affordable Housing Age-Restricted Overlay Zone

Permitted Principal Uses	Age-restricted multi-family dwellings; age-restricted townhouses subject to the Borough's definition with the exception of height and number of stories, which shall be governed by the standards within this section; public parks,
Permitted Accessory Uses	Public and private parks and playgrounds
	Public and private recreation buildings and facilities
	Garages and off-street parking facilities
	Any other uses customary/incidental to the principal use
	Emergency generators

PACO Planned Adult Community Overlay Zone

Permitted Principal Uses	Age-restricted multi-family dwellings, age-restricted townhouses subject to the Borough's definition with the exception of height and number of stories, which shall be governed by the standards within this section.
Permitted Accessory Uses	Public and private parks and playgrounds
	Public and private recreation buildings and facilities
	Garages and off-street parking facilities
	Any other uses customary/incidental to the principal use
	Emergency generators

SCHEDULE II LOT AND YARD REQUIREMENTS

A4 Affordable Housing Zone

Minimum Lot Area	20 acres
Minimum Yards	
From Commerce Street	40 feet
From Spring Street	40 feet

From Block 210 Lot 21	30 feet
From the R-2 Zone	40 feet
From Internal Streets	12 feet

AHO Affordable Housing Overlay Zone

Minimum Lot Area	2 acres
Minimum Yards	
Front	30 feet
Rear	20 feet*
Side	
One	15 feet*
Both	35 feet*

* Except as required by §310-19C and §310-21

AHR Affordable Housing Age-Restricted Overlay Zone

Minimum Lot Area	2 acres
Minimum Yards	
Front	30 feet
Rear	20 feet*
Side	
One	15 feet*
Both	35 feet*

* Except as required by §310-19C and §310-21

PACO Planned Adult Community Overlay Zone

Minimum Lot Area	21 Acres
Minimum Yards	
From Mountain Ave	100 feet for 3 residential stories with and without underground parking; 150 for 4 residential stories with and without underground parking.
From Southgate Road	40 feet
From Ryder Way	80 feet
From internal streets	12 feet

SCHEDULE II

COVERAGE AND LIVING AREA REQUIREMENTS

A4 Affordable Housing District

Maximum Building Height

Principal Structure

Townhouses 3 stories/38 feet; Where there is ground-level enclosed parking, the height and the number of stories shall be measured from the first finished floor of the floor above the at-grade parking.

Multi-family buildings

enclosed parking, the height and the number of stories shall be measured from the first finished floor of the floor above the at-grade parking.

Accessory Structures

Clubhouse 30 feet

All other accessory structures 15 feet

Lot Coverage 25%

Maximum Improved Lot Coverage 50%

Maximum Number of Units 192 total units; A 20% set-aside for family rental affordable units is required.

AHO Affordable Housing Overlay Zone

Maximum Building Height

Principal Structure 3 stories not to exceed 38 feet

Accessory Structure 15 feet

Lot Coverage 35%

Maximum Improved Lot Coverage 60%

Maximum Gross Density of Dwelling Units	Block 210 Lot 21: 9.5 units/acre Block 210 Lot 23: 9.5 units/acre Block 210 Lot 33: 9.5 units/acre
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Block 340 Lot 4: 16 units/acre
 Block 340 Lot 6: 17 units/acre
 Block 340 Lot 8: 9.5 units/acre
 Block 221 Lot 2.01: 15 units/acre
 Block 221 Lot 6: 16 units/acre

AH-ARO Affordable Housing Age-Restricted Overlay Zone

Maximum Building Height

Principal Structure	3 stories not to exceed 38 feet
Accessory Structure	15 feet
Lot Coverage	35%
Maximum Improved Lot Coverage	60%
Maximum Residential Density	14 units/acre

PACO Planned Adult Community Overlay Zone

Maximum Building Height

Principal Structures

Townhouses	2.5 stories / 35 feet
Multi-family buildings	3 stories / 40 feet; 4 stories / 50 feet. The height may increase another story and 15 feet for multi-family buildings with structured parking.

Accessory Structures

Clubhouse	25 feet
All other accessory structures	15 feet

Lot Coverage

Maximum Improved Lot Coverage

Maximum Number of Units

297 total units; of this total, no less than 59 shall be affordable, age-restricted rental units. In no event shall less than 59 affordable units be constructed in this zone.

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This ordinance shall take effect upon passage and publication as provided by law.

Introduced: June 24, 2019
Public Hearing: July 15, 2019
Adopted: July 15, 2019

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

Allen B. Morgan, Mayor

Attest:

Wendi B. Barry, Borough Clerk

Exhibit A
Zoning Map

Zoning

New Providence, NJ

Proposed Zoning

-  A-1: Affordable Housing District 6 units/acre
-  A-2: Affordable Housing District 10 units/acre
-  A-3: Affordable Housing District 14 units/acre
-  A4: Affordable Housing Zone
-  C-1: Specialty Commercial District
-  C-2: Neighborhood Commercial District
-  C: Central Commercial District
-  OR: Office & Residential District
-  R-1: Single Family Residential
-  R-2: Single Family Residential
-  R2A: Single Family District
-  R-3: Two Family Residential
-  R3A: Single and Two Family District
-  R-4: Multi Family
-  R-S: Residential Senior Citizen
-  TBI 1: Technology and Business Innovation Zone I
-  TBI 2: Technology and Business Innovation Zone II

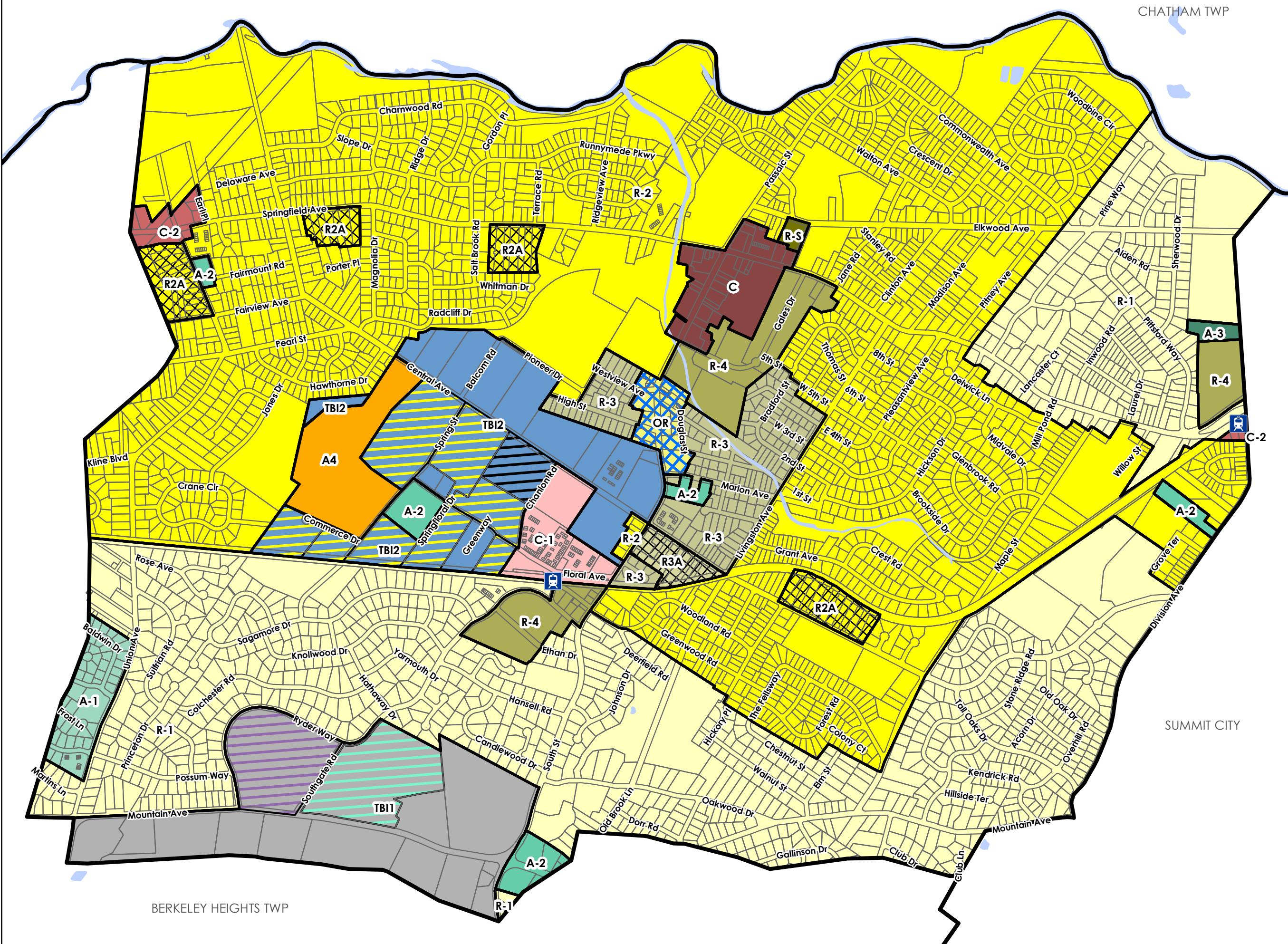
Proposed Zoning Overlays

-  AH-ARO: Affordable Housing Age-Restricted Overlay
-  AHO: Affordable Housing Overlay
-  PACO: Planned Adult Community Overlay
-  CCRCO: Continuing Care Retirement Community Overlay

HGIA
June 2018

June 2019

Source: NJGIN, NJOGIS, NJDEP, Borough of New Providence



BOROUGH OF NEW PROVIDENCE
Ordinance No. 2019-07

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE AMENDING AND
SUPPLEMENTING CERTAIN SECTIONS OF CHAPTER 310, ENTITLED “ZONING,” OF
THE BOROUGH’S REVISED GENERAL CODE TO ESTABLISH AN OVERLAY ZONE
OVER BLOCK 320 LOT 18.01 PERMITTING A CONTINUING CARE RETIREMENT
COMMUNITY FACILITY**

WHEREAS, the Borough Council of the Borough of New Providence desires to foster development that provides continuing care to the senior population of the Borough, region, and State; and

WHEREAS, the Borough Council has determined that it is appropriate to place an overlay zone that permits the development of a Continuing Care Retirement Community over a portion of the Business Innovation Zone I (“TBI-1”), known as Block 320 Lot 18.01.

BE IT ORDAINED by the governing body of the Borough of New Providence, Union County, New Jersey, that the Zoning and Land Use Ordinance of the Borough of New Providence is hereby amended to establish the Continuing Care Retirement Community Overlay (CCRCO) Zone.

NOW, WHEREFORE, IT IS HEREBY ORDAINED by the Mayor and Borough Council of the Borough of New Providence as follows:

§ 310-7, entitled “Districts Established,” and § 310-8, entitled “Zoning Map,” is hereby amended to place the following parcels in the Continuing Care Retirement Community Overlay (“CCRCO”) Zone:

Block 320 Lot 18.01

§ 310-9.1, entitled “CCRCO Continuing Care Retirement Community Overlay Standards” is hereby created to read as follows:

CCRCO Continuing Care Retirement Community Overlay

- A. The purpose of the Continuing Care Retirement Community (CCRC) District, which covers Block 320, Lot 18.01 (comprising approximately 24.6 acres), is to (1) provide an overlay zone for the development of a continuing care retirement community, consisting of independent living units and health care units, and related facilities, and (2) specify all zoning requirements applicable to the development of a CCRC. This zone is an overlay zone, so that the uses permitted in the Technology and Business Innovation Zone I under Borough Ordinance No. 2011-15 are also permitted, in accordance with the terms of that ordinance. The intent of this overlay zone is to have the CCRC developed as a single entity. Should any Borough ordinance be in conflict or inconsistent with the standards contained in this Ordinance No. 2019-07, the terms of this Ordinance No. 2019-07 shall take precedence.

B. Definitions:

CONTINUING CARE RETIREMENT COMMUNITY (“CCRC”): A development of residential living units for residents who are sixty-two (62) years of age or older, or for couples, one of whom is at least sixty-two (62) years of age, that provides “continuing care” as defined in N.J.S.A. 52:27D-332.c.,

CONTINUING CARE RETIREMENT COMMUNITY ACCESSORY USES: Any use necessary for the operation of the CCRC facility or for the benefit or convenience of the residents, employees, and their guests, such as, but not limited to, kitchen and dining facilities, places of worship, indoor and outdoor recreational buildings and uses, retail and banking facilities, beauty salons and barber shops, gift shops, classrooms, security facilities, conference rooms, common areas, guest rooms, administrative offices, health and wellness center, medical offices, postal center, pharmacy, maintenance facilities, craft and music rooms, library and television room, and non-age restricted day care center for relatives of employees.

HEALTH CARE UNIT (“HCU”): shall consist of either:

(a) An assisted living unit or memory care unit, each of which is an apartment configured for those needing assisted living or memory care, and (i) designed to house 1 or 2 related or unrelated individuals, and (ii) having an entrance door opening onto an interior corridor, which is a common area; or

(b) A skilled nursing room substantially similar to a room in a nursing home, where the CCRC provides health care under medical supervision and continuous nursing care for residents who do not require the degree of care and treatment which a hospital provides, and (i) designed to house 1 or 2 related or unrelated individuals requiring nursing or rehabilitation care, and (ii) having an entrance door opening onto an interior corridor which is a common area.

INDEPENDENT LIVING UNIT (“ILU”): A self-contained apartment with full kitchen facilities and private bath comprising an independent self-contained dwelling unit (i) designed to house individuals not needing assisted living services, memory care, rehabilitation care, or nursing care, and (ii) having an entrance door opening onto an interior corridor.

C. Principal permitted use: A Continuing Care Retirement Community

D. Permitted accessory uses:

1. Continuing Care Retirement Community Accessory Uses
2. Off-street parking and loading, including garages and structured parking above and below grade
3. Signs
4. Uses customarily incidental to the principal use

E. The following bulk standards shall apply:

1. Minimum Lot Area: 20 Acres
2. Minimum Lot Width: 300 feet
3. Minimum Yard Requirements:
 - a. From Mountain Avenue: 100 feet
 - b. From Southgate Road: 100 feet
 - c. From Ryder Way: 100 feet
 - d. From existing R-1 Zone boundary, along the northerly rear lot line of Block 320 Lot 18.01: 200 feet

There shall be no setback requirement along the boundary line of any adjacent CCRC development

4. Maximum Building Height:
 - a. Principal structure:
 - i. Maximum of 6 stories (exclusive of up to two (2) partial building levels below the six (6) stories of the structure, and a building level shall be deemed to be a partial building level, and not a story, if (x) it contains no more than 40% of the floor area of the footprint of the building of which it is a part, (y) no more than two of its elevations are exposed, i.e., visible from the exterior, and (z) none of the exposed elevations face Mountain Avenue); and
 - ii. Maximum height of 80 feet measured to the highest point of the roof, and from the finished floor elevation immediately above the highest partial building level.
 - b. Detached Accessory structure: 15 feet
5. Maximum building length: 200 feet; provided a building can be up to 340 feet in length if a parking deck is included in the calculations.

Attached structures separated by a firewall are deemed to be separate buildings.

6. Maximum Building Coverage: 40%
7. Maximum Improved Lot Coverage: 60%
8. Density: 17 units per acre, subject to the provisions set forth in Section E.9, below,

and with the number of units being calculated in the following manner:

- a. Each ILU shall be considered to be one unit.
- b. Each HCU shall be considered to be one-third (1/3) of a unit.

9. Increased Density:

The developer may elect to develop up to, but not greater than, 24 units per acre, in accordance with the method of calculation set forth above in Section E.8.a and b; however, in addition to the Non-Residential Development Fee, as set forth in N.J.S.A. 40:55D-8.3, et. seq., the developer shall pay an additional Three Thousand Dollars (\$3,000.00) for each ILU over 17 units per acre and an Additional Development Fee of One Thousand Dollars (\$1,000.00) for each HCU over 17 units per acre, as set forth more particularly below in this Section E.9 (collectively, the “Additional Fee”) into the Borough’s Affordable Housing Trust Fund. One half of the payment of the Additional Fee shall be due at the time of the application for the building permit, and the balance shall be due prior to the issuance of the certificate of occupancy. The computation of density over which the Additional Fee becomes payable, and payment of the Additional Fee, shall be in accordance with the following provisions:

- a. Threshold Density. First, one shall compute the number of units over which the Additional Payment becomes due (the “Threshold Density”). Assuming that total area of the subject property is 24.6 acres, the Threshold Density shall be 418 units (= 17 units/acre x 24.6 acres).
- b. Counting of Units. Second, the number of units is then computed as the CCRC development proceeds, with each ILU counting as one unit, and each HCU counting as 1/3 of a unit.
- c. Payments of Additional Fee. After the Threshold Density is reached, then:
 - i. For each ILU thereafter constructed, an Additional Fee of Three Thousand Dollars (\$3,000) shall be paid (i.e., \$1,500 prior to building permit and \$1,500 prior to certificate of occupancy) since, as set forth above, each ILU is the equivalent of one unit for which the Additional Fee is payable.
 - ii. For each HCU thereafter constructed, an Additional Fee of One Thousand Dollars (\$1,000) per HCU shall be paid (i.e., \$500 for each HCU prior to building permit and \$500 for each HCU prior to certificate of occupancy) since, as set forth above, each HCU is the equivalent of one-third (1/3) of a unit for which the Additional Fee is payable.
- d. Examples: The following examples assume total acreage of 24.6 acres and build-out of 540 ILU's and 108 HCU's.
 - i. Example 1 – Calculation of Permitted Density. The 540 ILU's and 108 HCU's

constitute, in accordance with Section E.8, a total of 576 units for purposes of calculating permitted density (576 units = 540 ILU's + (108 HCU's/3)). At a maximum density of 24 units/acre, the total number of permitted units, based on assumed acreage of 24.6 acres, is 590 (=24 units/acre x 24.6 acres). Therefore, the 540 ILU's and 108 HCU's are permitted, as they represent 576 units, i.e., less than the 590.

- ii. Example 2 – Calculation of Additional Fee. If 108 HCU's are first built, then since they each count as 1/3 of a unit, they will be treated as 36 units (=108/3). Therefore, the Threshold Density of 418 units will be reached upon construction of 382 ILU's (= 418 – 36). Thereafter, when an additional 158 ILU's are constructed, for the above total of 540 (= 382 + 158), the Additional Fee of \$3,000/ILU shall be paid for each of said 158 ILU's in excess of the Threshold Density, for a total Additional Fee of \$474,000 (= 158 ILU's x \$3,000/ILU), all payable at one-half prior to building permit and one-half prior to certificate of occupancy.
- iii. Example 3 – Calculation of Additional Fee. If 418 ILU's are initially constructed, then the Threshold Density of 418 units will have been reached. If thereafter, 108 HCU's are built, an Additional Fee of \$1,000/HCU shall be paid for each of said 108 HCU's, i.e., an Additional Fee of \$108,000. And if thereafter, 122 ILU's are constructed, bringing the total to 540 ILU's (= 418 + 122), then an Additional Fee of \$3,000/ILU shall be paid for each of said 122 ILU's, i.e., an Additional Fee of \$366,000 (= 122 ILU's x \$3,000/ILU), for a total Additional Fee of \$474,000 (= \$108,000 + \$366,000), all payable at one-half prior to building permit and one-half prior to certificate of occupancy.
- iv. Example 4 – Maximum Additional Fee. If 540 ILU's and 108 HCU's are constructed on 24.6 acres, then the maximum, total Additional Fee shall be Four Hundred Seventy-Four Thousand Dollars (\$474,000) computed as follows:

$$\begin{aligned}(540 \text{ ILU's} + (108 \text{ HCU's}/3) - 418) \times \$3,000 &= \\(540 + 36 - 418) \times \$3,000 &= \\158 \times \$3,000 &= \$474,000\end{aligned}$$

F. Parking:

1. Size requirements:
 - a. Minimum parking space size: 9 feet x 18 feet
 - b. Minimum two-way traffic aisle width: 24 feet
2. The minimum number of parking spaces for the entirety of a CCRC, including for all of its visitors and employees, and all of its components (such as physical rehabilitation facilities, business and medical offices, and dining spaces) shall be based only on the following ratios:
 - a. Parking for the ILU's within the CCRC development shall comply with

Table 4.4 in the Residential Site Improvement Standards, N.J.A.C. 5:21-1.1, et seq. (“RSIS”), at 1.3 parking spaces per ILU where the number of bedrooms per unit is not shown on the site plan, N.J.A.C. 5:21-4.14; and

b. Parking for the HCU’s shall be governed by the Nursing Home requirement in Borough Ordinance 2013-11 (1 parking space for each 2 beds), all subject to such relief as may be granted under RSIS, including de minimis relief under N.J.A.C. 5:21-3.1, and under the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.

3. Setback: parking shall be allowed in any yard, subject to a 70-foot setback requirement.

G. Fences: Fences shall conform to the Borough’s fence ordinance, found in Article V of Chapter 310, except that fences eight (8) feet in height shall be permitted around the memory care center, and all fences shall be located outside of the required front, side, and rear yard setback areas, except as otherwise required by law.

H. Additional Zone Standards:

1. Principal Buildings: multiple principal buildings shall be allowed on a single lot.
2. Except for stormwater management facilities, utilities, street lighting, and signage (including related signage lighting), accessory structures shall abide by all setback requirements as established herein.
3. To the extent feasible, existing forested areas within required setbacks shall be maintained.
4. All new access roads to the property shall be permitted from Southgate Road and Ryder Way and the adjacent CCRC facility.
5. Generators shall be required to provide back-up electric service to the following life safety improvements in common areas: Elevators, fire alarms, egress/access control doors, egress lighting, eyewash station lighting, and mechanical room lighting.
6. The provisions of the Borough’s steep slopes ordinance do not apply.

I. Signs: The signage provisions of Section “L” of Ordinance No. 2011-20 governing Commercial and Industrial districts shall be applicable to the CCRC district. One freestanding monument sign shall be permitted at each entrance to the CCRC, other than any entrance limited to emergency vehicles.

J. Design Standards

Except as expressly provided below in subsection “f” (Sustainable Building Design Guidelines), any deviation from the following standards shall trigger waiver relief.

- a. Landscaping.

- i. Any landscaping which, within 2 years of planting dies for any reason, shall be replaced by the developer(s) at their expense by way of written agreement.
- ii. Street trees shall be planted 40 to 50 feet apart along all internal streets/roadways.
- iii. Street trees shall be at least 2.5 inch caliper at planting and adhere to the American Standards for Nursery Stock.
- iv. All areas not occupied by buildings, roadways, parking areas, patios, walkways, and/or any other impervious surface shall be adequately landscaped.
- v. A minimum of 1 tree per 20 surface parking spaces shall be planted around the perimeter of, or adjacent to, the outdoor surface parking areas.
- vi. No landscaping at any location shall interfere with sight triangles.

b. Exterior Lighting.

- i. Exterior lighting fixtures shall not create excessive glare or light levels or direct light onto neighboring buildings or properties.
- ii. All building entrances shall be illuminated by exterior lighting.
- iii. Site lighting: Light fixtures shall not exceed 20 feet in height and shall be equipped with LED bulbs. Such fixtures shall provide for precision lighting to minimize any overflow lighting or intrusion.

c. Circulation.

- i. The development of the tract shall take into consideration both the vehicular and pedestrian movement of the site in accordance with RSIS standards.
- ii. Sidewalks shall have a minimum clearance of 4 feet in width. Sidewalk clearance must not be less than the minimum levels set by the Americans with Disabilities Act.
- iii. All intersections shall contain handicapped accessible ramps.
- iv. All intersections shall contain crosswalks.
- v. All crosswalks shall be a minimum of 5 feet in width.

d. Utilities.

- i. Utilities shall screened as reasonably as possible.
- ii. Meters and access panels shall be integrated with street and building design.
- iii. Transformers and primary and back-up generators shall be screened.

e. Refuse and Recycling.

- i. No refuse and recycling storage and collection areas shall be permitted between the front of a building and a public right-of-way.
- ii. All outside refuse and recycling storage areas shall conform to the building setbacks and buffer areas as established herein.
- iii. Outdoor refuse and recycling containers shall be screened with a durable enclosure, so as to not be visible from public rights-of-way or adjacent residential zones. Landscaping and/or fencing may be used as additional screening measures.
- iv. Refuse and recycling areas shall be designed to appropriately contain all refuse generated on site.
- v. There shall be clear and unobstructed access to all refuse and recycling areas for collection vehicles.

f. Sustainable Building Design Guidelines

The following guidelines provide opportunities to improve building efficiency and sustainability, and are provided for an applicant's strong consideration, but deviation from the following guidelines does not require waiver, exception or variance relief.

- i. Energy Star appliances shall be utilized.
- ii. Where possible, windows should be oriented to the south.
- iii. Utilize high-performance glazing to reduce heat gain while admitting light.
- iv. Provide shading devices, such as roof overhangs, controllable shades, etc.
- v. Use deciduous landscaping to shade the summer sun and maximize heating from winter sun.
- vi. Ensure that insulation is properly rated.
- vii. Install high-efficiency HVAC systems.
- viii. Incorporate thermal mass construction.
- ix. Install fully shielded and cutoff light fixtures that are compatible with dark skies guidelines.
- x. Utilize programmable switches, sensors or timers to adjust lighting levels for different times of day, and to reduce energy consumption.
- xi. Install lighting fixtures that utilize LED bulbs or similar efficient models.
- xii. Use roofs of lighter shades or utilize reflective surface finishing.

Part III Article IV §310-10, entitled “Schedules” is hereby amended to include the newly established CCRC Continuing Care Retirement Community Overlay Zone as set forth below:

SCHEDULE I
PERMITTED USES

CCRCO Continuing Care Retirement Community Overlay Zone

Permitted Principal Uses	A Continuing Care Retirement Community
Principal Accessory Uses	Continuing Care Retirement Community Accessory Uses Off-Street parking and loading, including garages and structured parking above and below grade. Uses customarily incidental to the principal use.

SCHEDULE II
LOT AND YARD REQUIREMENTS

CCRCO Continuing Care Retirement Community Overlay Zone

Minimum Lot Area	20 Acres
Minimum Lot Width	300 feet
Minimum Yard Requirements:	
From Mountain Avenue	100 feet
From Southgate Road	100 feet
From Ryder Way	100 feet
From existing R-1 Zone boundary, along the northerly rear lot line of Block 320 Lot 18.01	200 feet
	There shall be no setback requirement along the boundary line of any adjacent CCRC development

SCHEDULE II
COVERAGE AND LIVING AREA REQUIREMENTS

CCRCO Continuing Care Retirement Community Overlay Zone

Maximum Building Height Principal Building	6 stories / 80 feet measured to the highest point of the roof, and from the finished floor elevation immediately above the highest partial building level
Accessory Structure	15 feet
Lot Coverage	40%
Maximum Improved Lot Coverage	60%
Maximum Density	17 units per acre, subject to the provisions set forth in 310-9.1
Increased Density	Up to 24 units per acre, subject to the provisions set forth in 310-9.1

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This ordinance shall take effect upon passage and publication as provided by law.

Introduced: June 24, 2019
Public Hearing: July 15, 2019
Adopted: July 15, 2019

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

Allen B. Morgan, Mayor

Attest:

Wendi B. Barry, Borough Clerk

Exhibit A
Zoning Map

Zoning

New Providence, NJ

Proposed Zoning

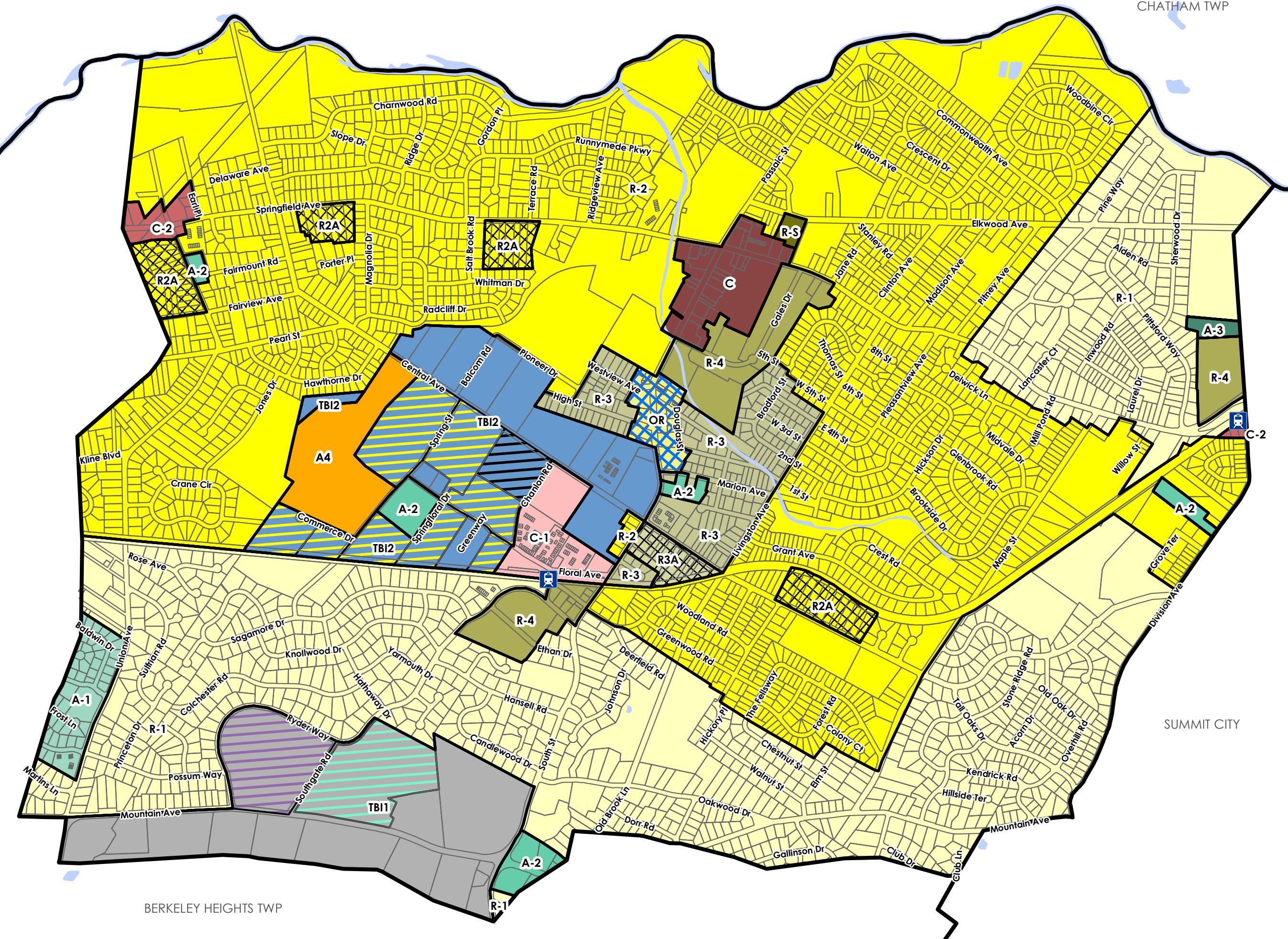
-  A-1: Affordable Housing District 6 units/acre
-  A-2: Affordable Housing District 10 units/acre
-  A-3: Affordable Housing District 14 units/acre
-  A4: Affordable Housing Zone
-  C-1: Specialty Commercial District
-  C-2: Neighborhood Commercial District
-  C: Central Commercial District
-  OR: Office & Residential District
-  R-1: Single Family Residential
-  R-2: Single Family Residential
-  R2A: Single Family District
-  R-3: Two Family Residential
-  R3A: Single and Two Family District
-  R-4: Multi Family
-  R-S: Residential Senior Citizen
-  TBI 1: Technology and Business Innovation Zone I
-  TBI 2: Technology and Business Innovation Zone II

Proposed Zoning Overlays

-  AH-ARO: Affordable Housing Age-Restricted Overlay
-  AHO: Affordable Housing Overlay
-  PACO: Planned Adult Community Overlay
-  CCRCO: Continuing Care Retirement Community Overlay

A compass rose in the top left corner with cardinal directions (N, S, E, W) and intercardinal points (NE, SE, SW, NW). To its right is a horizontal scale bar with tick marks. The first tick is labeled '0', the second is unlabeled, the third is labeled '500', and the fourth is labeled '1,000 Feet'.

Source: NJGIN, NJOGIS, NJDEP, Borough of New Providence



**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2020-01**

“AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION, STATE OF NEW JERSEY, AMENDING ZONING ORDINANCE”

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey as follows:

Section 5. Schedule IIA , Section 310b Of Chapter 310 of the Code Of The Borough Of New Providence Entitled “Schedule IIA – Lot And Yard Requirements – Existing Lots” is amended to read as follows:

**SCHEDULE IIA
LOT AND YARD REQUIREMENTS – EXISTING LOTS**

Dimension	Requirement
R1 District: Single-Family District	
Minimum lot area	18,000 square feet
Minimum yards	
Front	40 feet or the prevailing front yard setback line ¹ of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet
Rear	40 feet or 35% of lot depth; whichever is greater
Principal structure	40 feet
Deck	
Side	
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height
Both	30% of the lot width
Minimum lot width	
Interior	
At setback line	120 feet
At right-of-way line	75 feet
Corner	
At setback line	130 feet
At right-of-way line	85 feet

¹* Setback line shall be measured to the front principal building wall. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be permitted to the same extent as exist with respect to dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot.

R2 District: Single-Family District

Minimum lot area	15,000 square feet
Minimum yards	
Front	40 feet or the prevailing front yard setback line ^{*2} of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet
Rear	
Principal structure	40 feet or 35% of lot depth; whichever is greater
Deck	40 feet
Side	
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height
Both	30% of the lot width
Minimum lot width	
Interior	
At setback line	110 feet
At right-of-way line	60 feet
Corner	
At setback line	110 feet
At right-of-way line	70 feet

R2A District: Single-Family District

Minimum Lot Area	18,000 square feet
Minimum yards	
Front	40 feet or the prevailing front yard setback line ^{*3} of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet
Rear	
Principal structure	40 feet or 35% of lot depth; whichever is greater
Deck	40 feet
Side	
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height
Both	30% of the lot width

* Setback line shall be measured to the front principal building wall. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be permitted to the same extent as exist with respect to dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot.

Minimum lot width	
Interior	
At setback line	80 feet
At right-of-way line	60 feet
Corner	
At setback line	110 feet
At right-of-way line	70 feet
Minimum lot depth	200 feet
R3 District: Two-Family District	
Minimum lot area	
Single-family	8,000 square feet
Two-family	10,000 square feet
Minimum yards	
Single-family	
Front	40 feet or the prevailing front yard setback line ^{*4} of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet
Rear	40 feet or 35% of lot depth; whichever is greater
Principal structure	40 feet
Deck	
Side	
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height
Both	30% of the lot width
Two-Family	
Front	30 feet
Rear	40 feet
Side	
One	8 feet; in no event shall any new building or addition be permitted closer to any side lot line than 60% of said building's or addition's height.
Both	20 feet
Minimum lot width	
Interior	
At setback line	75 feet
At right-of-way line	50 feet

* Setback line shall be measured to the front principal building wall. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be permitted to the same extent as exist with respect to dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot.

Corner		
At setback line	85 feet	
At right-of-way line	60 feet	
R3A District: Single-Family and Two-Family District		
Minimum lot area		
Single-family	10,000 square feet	
Two-family	15,000 square feet	
Minimum yards		
Single-family		
Front	40 feet or the prevailing front yard setback line ^{*5} of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet	
Rear		
Principal Structure	40 feet or 35% of lot depth; whichever is greater	
Deck	40 feet	
Side		
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height	
Both	30% of the lot width	
Two-Family		
Front	30 feet	
Rear	40 feet	
Side		
One	12 feet; in no event shall any new building or addition be permitted closer to any side lot line than 60% of said building's or addition's height.	
Both	30 feet	
Minimum lot width		
Single-family		
At the Setback Line	80 feet	
At the right-of-way Line	80 feet	
Two-family		
At the Setback Line	100 feet	
At the right-of-way Line	100 feet	
Minimum lot depth		
Single-family	125 feet	
Two-family	150 feet	

R4 District: Multifamily District

Minimum lot area

Garden apartments and townhouses	2 acres
Single-family	8,000 square feet
Two-family	10,000 square feet
Planned unit residential developments	5 acres

Minimum yards

Single-family	
Front	40 feet or the prevailing front yard setback line ^{*6} of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet
Rear	
Principal Structure	40 feet or 35% of lot depth; whichever is greater
Deck	40 feet
Side	
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height
Both	30% of the lot width
Two-Family/All Other Uses	
Front	30 feet
Rear	40 feet
Side	
One	15 feet; in no event shall any new building or addition be permitted closer to any side lot line than 60% of said building's or addition's height.
Both	35 feet

Minimum lot width

Interior	
At setback line	—
At right-of-way line	100 feet
Corner	
At setback line	—
At right-of-way line	100 feet

OR District: Office and Residential District

Minimum lot area

Hotel	2 acres
Planned unit residential developments	5 acres
Office	20,000 square feet

* Setback line shall be measured to the front principal building wall. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be permitted to the same extent as exist with respect to dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot.

Residential		
One-family	8,000 square feet	
Two-family	10,000 square feet	
Garden apartments and townhouses	2 acres	
Minimum yards		
Front		
Single-Family	40 feet or the prevailing front yard setback line ^{*7} of existing dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot, whichever is less, but in no event less than 10 feet	
Other Residential	30 feet	
Office or hotel	20 feet	
Rear		
Single-Family	40 feet or 35% of lot depth; whichever is greater	
Principal Structure	40 feet	
Deck	40 feet	
All other uses	40 feet	
Side		
One	For lots wider than 75 feet, the setback shall be 12 feet and for lots 75 feet wide or less, the setback shall be 8 feet; further, in no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height	
Single-Family		
All other uses	15 feet; in no event shall any new building or addition be permitted closer to any side lot line than 60% of said building's or addition's height.	
Both		
Single-Family	30% of the lot width	
other uses	35 feet	
Minimum lot width		
Interior		
At setback line	100 feet	
At right-of-way line	—	
Corner		
At setback line	100 feet	
At right-of-way line	—	

* Setback line shall be measured to the front principal building wall. If front yard encroachments of porches, porticos, stoops and similar structures exist, said encroachments shall be permitted to the same extent as exist with respect to dwellings located within 200 feet of the perimeter of the subject lot and located on the same side of the street as the subject lot.

CCD District: Central Commercial District

Minimum lot area	None
Minimum yards	
Front	5 feet from right-of-way line except where there is an existing established setback, then the setback shall be the same as the setback of the structures on either side. If one setback is deeper than the other, the deeper setback shall be continued.
Rear	None, except as required by §§ 310-19C and 310-21
Side	None, except as required by §§ 310-19C and 310-21
Minimum lot width	
Interior	
At setback line	None
At right-of-way line	None
Corner	
At setback line	None
At right-of-way line	None

C1 District: Specialty Commercial District

Minimum lot area	
Planned commercial developments	5 acres
Planned unit residential developments	5 acres
Minimum yards	
Front	15 feet from right-of-way line except where there is an existing established setback, then the setback shall be the same as the setback of the structures on either side. If one setback is deeper than the other, the deeper setback shall be continued.
Rear	None, except as required by §§ 310-19C and 310-21
Side	None, except as required by §§ 310-19C and 310-21
Minimum lot width	
Interior	
At setback line	None
At right-of-way line	None
Corner	
At setback line	None
At right-of-way line	None

C2 District: Neighborhood Commercial District

Minimum lot area	None
Minimum yards	
Front	Same as C1 Zone
Rear	None, except as required by §§ 310-19C and 310-21
Side	None, except as required by §§ 310-19C and
Minimum lot width	
Interior	
At setback line	None
At right-of-way line	None
Corner	
At setback line	None
At right-of-way line	None

TBI-1 District: Technology and Business Innovation Zone I (former RL District)

Minimum lot area	150,000 square feet
Planned Commercial Developments	5 acres
Minimum yards	
Front	100 feet
Rear	None, except as required by §§ 310-19C and 310-21
Side	50 feet for each side yard, except as required by §§ 310-19C and 310-21
Minimum lot width	
Interior	
At setback line	300 feet
At right-of-way line	300 feet
Corner	
At setback line	300 feet
At right-of-way line	300 feet

TBI-2: Technology and Business Innovation Zone II (former LI District)

Minimum lot area	100,000 square feet
Planned commercial developments	5 acres
Minimum yards	
Front	100 feet
Rear	Same as TBI-1District
Side	Same as TBI-1District
Minimum lot width	
Interior	
At setback line	300 feet
At right-of-way line	300 feet
Corner	
At setback line	300 feet
At right-of-way line	300 feet

A1 District: Affordable Housing District

Minimum lot area

As designated on Zoning Map, except that single-family detached housing on conventional lots in residential clusters shall have a minimum lot area of 10,000 square feet

Minimum yards

Front	30 feet
Rear	20 feet*
Side	
One	15 feet*
Both	35 feet*

*NOTE: Except as required by §§ 310-19C and 310-21

A2 District: Affordable Housing District

Same as A1 District

A3: Affordable Housing District

Same as A1 District

RS: Residential Senior Citizen Community Affordable Housing District

Minimum lot area	Determined by borough
Minimum square feet of common space (may be a combination of interior and exterior space)	900 square feet
Minimum lot frontage	100 feet
Maximum building height, principal structure	3 stories, not to exceed 35 feet
Maximum lot coverage	50%
Maximum improved lot coverage	80%
(Setbacks, curblines, sidewalks, buffers, distances between buildings, landscaping, lighting, utilities, streets and access shall all be as approved for the specific dwelling on the specific site, as determined by the borough to achieve the maximum use of the lot for this specific purpose in combination with the best interests of the senior citizen tenants, their neighbors and the borough.)	
Maximum residential density	16 units per acre
Minimum required off-street parking	3/4 space per unit
With the exception of those improvements necessary to comply with the pertinent federal laws, all other requirements of a senior citizen dwelling not specifically amended by Ordinance 92-14 shall be in conformance with minimum requirements for multifamily dwellings in the borough, unless otherwise designated by the borough, in its sole discretion.	

This ordinance shall take effect upon final adoption and publication according to law.

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2020-06**

**"AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION,
STATE OF NEW JERSEY, AMENDING ZONING ORDINANCE"**

BE IT ORDAINED by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey that the Zoning Ordinance of the Borough of New Providence is amended to include provisions for Electric Vehicle Charging Stations. WHEREAS, electric vehicles contribute to New Providence's commitment to sustainability and are in the interest of public welfare. NOW, WHEREFORE, IT IS HEREBY ORDAINED by the Governing Body of the Borough of New Providence as follows:

Electric Vehicle Charging Stations.

A. Purpose:

The purpose of this ordinance is to provide a regulatory framework for the construction of Plug-In Electric Vehicle Charging Stations, which will preserve the public health, safety, and welfare, while also maintaining the character of New Providence. Plug-In Electric Vehicle Charging Stations will help reduce automobile air pollution, greenhouse gas emissions and storm water runoff contaminants.

B. Definitions:

1. Electric vehicle: any vehicle that is licensed and registered for operation on public and private highways, roads, and streets; operates either partially or exclusively, on electrical energy from the grid, or an off-board source, that is stored on-board via a battery for motive purpose. "Electric vehicle" includes: (1) a battery electric vehicle; and (2) a plug- in hybrid electric vehicle.
2. Electric vehicle charging station: a private parking space that is served by battery charging station equipment that has as its primary purpose the transfer of electric energy (by conductive or inductive means) to a battery or other energy storage device in an electric vehicle.

C. Location

Electric vehicle charging stations are encouraged to be installed in accordance with applicable ordinances and regulations.

D. General Regulations

1. New Construction of multifamily buildings with five or more units shall have electric vehicle charging stations equal to 10% of the approved parking spaces, in addition to any other required spaces.
2. Each electric vehicle charging station space shall be not less than 9 feet wide or 18 feet in length. Where feasible, a vehicle charging station should comply with ADA standards.
3. Identification signage for electric vehicle charging stations shall be posted immediately adjacent to and visible to the parking space and have a designated sign not greater than 17 inches by 22 inches in size. One (1) sign per electric vehicle charging space is required.

4. Charging station outlets and connector devices shall be no less than 36 inches and no higher than 48 inches from the ground or pavement surface where mounted, and shall contain a retraction device and/or a place to hang permanent cords and connectors a sufficient and safe distance above the ground or pavement surface. Equipment mounted on pedestals, lighting posts, or other devices shall be designated and located so as not to impede pedestrian travel or create trip hazards.
5. Adequate charging station equipment protection such as concrete-filled steel bollards shall be used. Non-mountable curbing may be used in lieu of bollards, if the charging station is setback a minimum of 24 inches from the face of the curb.
6. Lighting of electric vehicle charging stations shall be done in accordance with Ordinance 2008-22 "Site Lighting".

SEVERABILITY

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

REPEAL OF PRIOR ORDINANCES

All ordinances or parts of ordinances inconsistent with or in conflict with this ordinance are hereby repealed to the extent of such inconsistency.

EFFECTIVE DATE

This ordinance shall take effect after final passage and publication as provided by law.

INTRODUCTION: May 26, 2020
PUBLIC HEARING: June 22, 2020
ADOPTION: June 22, 2020

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

Allen Morgan, Mayor

Attest:

Wendi B. Barry, Borough Clerk

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2021-01**

**“AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 310 OF THE
CODE OF THE BOROUGH OF NEW PROVIDENCE ENTITLED ‘FENCES’”**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey, as follows:

SECTION 1. Section §310-32 of Article V of the Code of the Borough of New Providence entitled “Supplementary Regulations” is amended as follows:

§ 310-32 Fences

A.

Fences shall be considered as accessory uses to a principal permitted use and are permitted in all zones. The following height, setback, and orientation regulations apply in all zones:

B. Front Yard

All fences in front yards shall be at least 50% transparent. For purposes of the fence requirements for lots with two or more front yards (i.e., a corner lot), the primary front yard of a residential structure shall be defined as the space between the street and the front/main entrance of the principal building. The secondary front yard of a residential structure shall be defined as the space between the secondary street and the side of the principal building. The following standards shall apply:

- (1) Fences located in the primary front yard shall not exceed the height of 36 inches.
- (2) Fences located in the secondary front yard shall not exceed the height of four (4) feet.

C. Rear or Side Yard

Fences located in side or rear yards shall not exceed six feet in height, except when used to screen recreational vehicles, in which case the fence shall not exceed the height of the recreational vehicle.

D. Measurement of Fence Height

In determining the height of fences for the purpose of compliance, the following shall apply:

- (1) For fences that are not uniform in height along the top of the fence, the height shall be measured to the highest point of the fence, except as provided otherwise below.

- (2) Notwithstanding the maximum height limitations applicable to fences above, fence posts may exceed the maximum permitted fence height by up to one (1) foot.
- (3) Fence height shall be measured from normal grade. Normal grade shall be construed to be the newly established grade after construction, exclusive of any filling, berming, mounding, excavating or curbing which alters the grade at the base of the fence from the grade in the general vicinity of the fence.
- (4) For fences located on sloping ground, the height shall be measured from the grade directly below the point of measurement.

E. Fence Orientation

Fences shall be constructed in such a manner that the dressed side of such fence, where applicable, shall face the adjacent property or the public right-of-way, excluding railroad property. All supports for the fence shall be on the interior of the fence and property. This provision shall not preclude the construction and maintenance of a shadowbox-type fence, provided that the dressed side of the fence material shall face the adjacent property or public right-of-way and shall be of the same texture, material, and color.

SECTION 2. This ordinance shall take effect after final passage and publication as provided by law.

INTRODUCTION: January 26, 2021
PUBLIC HEARING: February 9, 2021
ADOPTION: February 9, 2021

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

Allen Morgan, Mayor

Attest:

Wendi B. Barry, Borough Clerk

BOROUGH OF NEW PROVIDENCE
ORDINANCE NO. 2021-08

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE,
COUNTY OF UNION, STATE OF NEW JERSEY
PROHIBITING THE OPERATION OF ANY CLASS OF
CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES**

WHEREAS, in 2020 New Jersey voters approved Public Question No. 1, which amended the New Jersey Constitution to allow for the legalization of a controlled form of marijuana called “cannabis” for adults at least 21 years of age; and

WHEREAS, on February 22, 2021, Governor Philip Murphy signed into law P.L. 2021, c. 16, known as the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” (the “Act”), which legalizes the recreational use of marijuana by adults 21 years of age or older, and establishes a comprehensive regulatory and licensing scheme for commercial recreational (adult use) cannabis operations, use and possession; and

WHEREAS, the Act establishes six (6) marketplace classes of licensed businesses, including:

- Class 1 Cannabis Cultivator license, for facilities involved in growing and cultivating cannabis;
- Class 2 Cannabis Manufacturer license, for facilities involved in the manufacturing, preparation, and packaging of cannabis items;
- Class 3 Cannabis Wholesaler license, for facilities involved in obtaining and selling cannabis items for later resale by other licensees;
- Class 4 Cannabis Distributer license, for businesses involved in transporting cannabis plants in bulk from one licensed cultivator to another licensed cultivator, or cannabis items in bulk from any type of licensed cannabis business to another;
- Class 5 Cannabis Retailer license for locations at which cannabis items and related supplies are sold to consumers; and
- Class 6 Cannabis Delivery license, for businesses providing courier services for consumer purchases that are fulfilled by a licensed cannabis retailer in order to make deliveries of the purchases items to a consumer, and which service would include the ability of a consumer to make a purchase directly through the cannabis delivery service which would be

presented by the delivery service for fulfillment by a retailer and then delivered to a consumer.

WHEREAS, Section 31a of the Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis establishments (defined in Section 3 of the Act as “a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer”), cannabis distributors or cannabis delivery services allowed to operate within their boundaries, as well as the location, manner and operation times of such establishments, distributors or delivery services, and establishing civil penalties for the violation of any such regulations; and

WHEREAS, Section 31b of the Act authorizes municipalities by ordinance to prohibit the operation of any one or more classes of cannabis establishments, distributors, or delivery services anywhere within the municipality; and

WHEREAS, Section 31b of the Act also stipulates, however, that any municipal regulation or prohibition must be adopted within 180 days of the effective date of the Act (*i.e.*, by August 22, 2021); and

WHEREAS, pursuant to Section 31b of the Act, the failure to do so shall mean that for a period of five (5) years thereafter, the growing, cultivating, manufacturing, selling and reselling of cannabis and cannabis items shall be permitted uses in all industrial zones, and the retail selling of cannabis items to consumers shall be a conditional use in all commercial and retail zones; and

WHEREAS, the Borough Council of the Borough of New Providence has determined that, due to present uncertainties regarding the potential future impacts that allowing one or more classes of cannabis business might have on New Jersey municipalities in general, and in the Borough of New Providence in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of Borough of New Providence’s residents and members of the public who visit, travel, or conduct business in the Borough of New Providence, to amend the Borough of New Providence’s zoning regulations to prohibit all manner of marijuana-related land use and development within the geographic boundaries of Borough of New Providence; and

WHEREAS, officials from two prominent non-profit organizations established for the purpose of advising New Jersey municipalities on legal matters (New Jersey State League of Municipalities, and New Jersey Institute of Local Government Attorneys) have strongly urged that, due to the complexity and novelty of the Act; the many areas of municipal law that are or may be implicated in decisions as to whether or to what extent cannabis or medical cannabis should be permitted for land use purposes or otherwise regulated in any particular municipality; and the relatively short duration in which the Act would allow such decisions to be made before imposing an automatic authorization of such uses in specified zoning district subject to unspecified conditions, the most prudent course of action for all municipalities, whether or not generally in favor of cannabis or medical cannabis land development and uses, would be to prohibit all

such uses within the Act's 180-day period in order to ensure sufficient time to carefully review all aspects of the Act and its impacts;

NOW THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey, as follows:

1. Pursuant to Section 31b of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16), all cannabis establishments, cannabis distributors or cannabis delivery services are hereby prohibited from operating anywhere in Borough of New Providence, except for the delivery of cannabis items and related supplies by a delivery service.

2. Section 310-12 of the Code of the Borough of New Providence shall be amended to add the following: "All classes of cannabis establishments or cannabis distributors or cannabis delivery services as said terms are defined in Section 3 of P.L. 2021, c. 16, but not the delivery of cannabis items and related supplies by a delivery service" so as to include such as prohibited uses.

3. Any article, section, paragraph, subsection, clause, or other provision of the Code of the Borough of New Providence inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

4. If any section, paragraph, subsection, clause, or provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this ordinance shall be deemed valid and effective.

5. After introduction, the Borough Clerk is hereby directed to provide a copy of the within Ordinance to the Planning Board for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Council of the Borough of New Providence within 35 days after referral, a report, including identification of any provisions in the proposed Ordinance which are inconsistent with the Master Plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

6. After introduction, the Borough Clerk is hereby directed to provide by personal service, certified mail or email with confirmation that the email was delivered, at least ten (10) days prior to the scheduled hearing, a copy of this Ordinance and a notice of hearing in accordance with N.J.S.A. 40:55D-15 to:

a. The Clerk of any adjoining municipalities located within 200 feet of the boundaries of the affected property; and

b. The Union County Planning Board.

7. After adoption, the Borough Clerk is hereby directed to file a copy of this Ordinance with the Union County Planning Board in accordance with N.J.S.A. 40:55D-16.

8. The Ordinance shall become effective immediately upon its adoption, passage and publication according to law and filing with the Union County Planning Board.

INTRODUCTION: May 11, 2021
PUBLIC HEARING: June 15, 2021
ADOPTION: June 15, 2021

Approved

Wendi B. Barry, Clerk
Borough of New Providence

Allen Morgan, Mayor
Borough of New Providence

ORDINANCE NO. 2022-01

**AMENDING SECTION 310-33 OF THE CODE OF THE
BOROUGH OF NEW PROVIDENCE ENTITLED "SIGNS"**

WHEREAS, the Planning Board of the Borough of New Providence reviewed the Borough's existing Sign Ordinance as codified in the Borough Code to insure that the provisions accurately reflect the desired vision of the Borough and determine if the existing provisions create a disadvantage to business owners of the Borough relative to their competition in surrounding municipalities; and

WHEREAS, the Planning Board reviewed sign ordinances of neighboring municipalities and after analysis and review determined that the existing provisions of the Sign Ordinance of the Borough are consistent with similar municipalities, but further determined that certain language for illuminated signs would be more beneficial;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey that Section 310-33 of the Code of the Borough entitled "Signs" be amended as follows:

Delete Section G(4) and replace with the following language:

All of the illuminated signs shall be either indirectly lighted or of the diffused lighting type, unless illuminated by an interior source. No sign shall be lighted by using unshielded incandescent bulbs, lasers, neon or gas discharge tubes, mirrors reflecting a direct light source or similar devices. Buildings or structures may not be outlined by tubing or strings of lights except for seasonal lighting which may remain on a building, but shall not be illuminated post season.

The Ordinance shall become effective immediately after publication in accordance with New Jersey law.

Introduced: February 22, 2022

Public Hearing: March 22, 2022

Adopted:

BOROUGH OF NEW PROVIDENCE,
COUNTY OF UNION,
STATE OF NEW JERSEY

Allen Morgan, Mayor

Attest:

Wendi B. Barry, Clerk