

## Chapter 240. LAND SUBDIVISION AND SITE PLAN REVIEW

**[HISTORY: Adopted by the Town Council of the Town of Newton 4-9-2012 by Ord. No. 2012-12. Editor's Note: This ordinance also repealed former Ch. 240, Site Plan Review, adopted 6-8-1970 as Ch. 19A of the Revised General Ordinances, as amended. Amendments noted where applicable.]**

### GENERAL REFERENCES

Fees and costs — See Ch. **100**.

Flood damage prevention — See Ch. **120**.

Historic preservation — See Ch. **139**.

Land use procedures — See Ch. **166**.

Stormwater control — See Ch. **258**.

Zoning: form-based code — See Ch. **320**.

### § 240-1. Title and purpose; approving agency.

- A. Title and purpose. This chapter shall be known and may be cited as the "Land Subdivision and Site Plan Ordinance of the Town of Newton." The purpose of the chapter shall be to provide rules, regulations and standards to guide land subdivision and site plan review in the Town of Newton in order to promote health, safety, convenience and general welfare of the municipality. It shall be administered to ensure the orderly growth and development, the conservation, protection and proper use of land and adequate provisions for circulation, utilities and services.
- B. Approving agency. The provisions of this chapter shall be administered by the Town Planning Board in accordance with all applicable provisions of N.J.S.A. 40:55D-1 et seq.

### § 240-2. Definitions.

As used in this chapter, the following words shall have the meanings hereinafter set forth:

## **ACID-PRODUCING SOILS**

Soils that contain geologic deposits of iron sulfide minerals (pyrite and marcasite) which, when exposed to oxygen from the air or from surface waters, oxidize to produce sulfuric acid. Acid-producing soils, upon excavation, generally have a pH of 4.0 or lower. After exposure to oxygen, these soils generally have a pH of 3.0 or lower. Information regarding the location of acid-producing soils in New Jersey can be obtained from local Soil Conservation District offices.

## **ADMINISTRATIVE AUTHORITY**

The Planning Board or Construction Office with all of the powers delegated, assigned, or assumed by them according to statute or ordinance.

## **APPLICANT**

The individual, corporation or entity 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 pursuant to § 25 or 27 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-34 40:55D-36).

## **AQUIFER**

A formation, group of formations, or part of a formation that contains sufficient saturated permeable rock, sand, or gravel which is capable of storing and transmitting usable quantities of water to wells and springs.

## **BEST MANAGEMENT PRACTICES (BMP)**

Performance or design standards established to minimize the risk of contaminating groundwater or surface waters while managing the use, manufacture, handling or storage of hazardous substances or hazardous wastes.

## **CATEGORY ONE WATERS or C1 WATERS**

Shall have the meaning ascribed to this term by the Surface Water Quality Standards, N.J.A.C. 7:9B, for purposes of implementing the antidegradation policies set forth in those standards, for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, and other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources.

## **CATEGORY TWO WATERS or C2 WATERS**

Those waters not designated as outstanding natural resource waters or Category One waters in the Surface Water Quality Standards, N.J.A.C. 7:9B, for purposes of implementing the antidegradation policies set forth in those standards.

## **COMPLETE APPLICATION**

An application form completed as specified by this or any other applicable ordinance and the rules and regulations of the Planning Board. A complete application includes all accompanying documents required by ordinance for approval of the application for development. Where applicable this includes, but is not limited to, a site plan or subdivision plat, provided that the Planning Board or other reviewing municipal agency may require such additional information not specified in the ordinance. The Planning Board may also require revisions in the accompanying documents which 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 municipal agency. An application shall be complete upon the meeting of all requirements specified in the ordinance and in the rules and regulations of the municipal agency, and shall be deemed complete as of the day it is so certified by the administrative officer for purposes of the commencement of the time periods for action by the Planning Board or other municipal agency.

## **CONTAMINATION**

The degradation of natural water quality so that the water is not suitable for human consumption.

## **CRITICAL ENVIRONMENTAL AREAS**

Areas containing environmental constraints such as wetlands, wetland buffers, riparian buffers, state waters, steep slopes or other environmental features which are regulated by the NJDEP or this chapter.

## **DEVELOPER**

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

## **DEVELOPMENT**

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

## **DISCHARGE**

Any intentional or unintentional action or omission, unless pursuant to and in compliance with the conditions of a valid and effective federal or state permit, resulting in the releasing, spilling, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or lands of the state or into waters outside the jurisdiction of the state when damage may result to the lands, waters or natural resources within the jurisdiction of the state.

## **DISTURBANCE**

The placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of

vegetation.

### **DRAINAGE RIGHT-OF-WAY**

The lands required for the installation of stormwater sewers or drainage ditches, or required along a natural stream of water for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage.

### **FINAL APPROVAL**

The official action of the Planning Board taken on an approved preliminary plat after all conditions, engineering plans, and other requirements have been completed and the required improvements installed or bonds properly posted for their completion. A plat that receives such final approval shall have been prepared by a professional engineer licensed in the State of New Jersey, and a land surveyor in compliance with all of the provisions of N.J.S.A. 46:23-9.9 et seq. *Editor's Note: N.J.S.A. 46:23-9.9 through 46:23-9.16 and 46:23-9.18 were repealed by L. 2011, c. 217, § 2, effective 5-1-2012.* and shall be the map which must be filed with the County Clerk in accordance with N.J.S.A. 40:55D-54 in order to make the approval binding.

### **FINAL PLAT**

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

### **FLOODWAY**

Shall have the meaning ascribed to this term by the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and regulations promulgated thereunder published at N.J.A.C. 7:13 et seq., and any supplementary or successor legislation and regulations from time to time enacted or promulgated.

### **GENERAL TERMS AND CONDITIONS**

The general terms and conditions shall be those outlined under preliminary plat, § **240-4** and the design standards as outlined under § **240-7**.

### **GLARE**

The sensation produced by luminance within the visual field that is sufficiently greater than the luminance to which the eyes are adapted to cause annoyance, discomfort or loss in visual performance and visibility.

### **GROUNDWATER**

Water contained in interconnected pores of a saturated zone in the ground that is available for wells and springs. A saturated zone is a volume of ground in which the voids in the rock or soil are filled with water.

### **HAZARDOUS SUBSTANCE**

Any substance designated under 40 CFR 116 pursuant to Section 311 of the Federal Water Pollution Control Act Amendments of

1972 (Clean Water Act) (Public Law 92-500; 33 U.S.C. § 1251 et seq.), the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or "hazardous pollutant" as defined by the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.). Substances listed include petroleum, petroleum products, pesticides, solvents and other substances.

## **HAZARDOUS WASTE**

Any solid waste that is defined or identified as a hazardous waste pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E et seq., N.J.A.C. 7:26-8, *Editor's Note: N.J.A.C. 7:26-8 was repealed by R. 1996, d. 500, effective 10-21-1996.* or 40 CFR Part 261.

## **I.E.S.N.A.**

Illuminating Engineering Society of North America. An organization that recommends standards for the lighting industry.

## **IMPERVIOUS SURFACE**

An area that has been covered by a layer of material that is highly resistant to infiltration by water.

## **INTERMITTENT STREAM**

A surface water body with definite bed and banks in which there is not a permanent flow of water as shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a special water resource protection area (SWRPA) pursuant to the stormwater management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys.

## **LAKE, POND or RESERVOIR**

Any surface water body shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a special water resource protection area (SWRPA) pursuant to the stormwater management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys; that is an impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water. This excludes sedimentation control and stormwater retention/detention basins and ponds designed for treatment of wastewater.

## **LIGHT TRESPASS**

Any form of artificial luminance emanating from a light fixture or illuminated sign that penetrates other property and creates a nuisance, as specified in § **240-7C**.

## **LOT**

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

## **MAJOR DEVELOPMENT**

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

## **MAJOR SUBDIVISION**

All subdivisions not classified as minor subdivisions.

## **MAJOR SUBDIVISION PLAT**

The final map of a major subdivision which is presented to the Planning Board for approval and which, if approved, shall be filed with the County Clerk.

## **MASTER PLAN**

A composite of the mapped and written proposals recommending the physical development of the Town which shall have been duly adopted by the Planning Board.

## **MAXIMUM CONTAMINANT LEVEL (MCL)**

Maximum permissible level of a contaminant in water measured at the point of entry to the distribution system or at the free-flowing outlet of the ultimate user of a public water system or other water system to which state primary drinking water regulations apply. Any contaminant added to the water under circumstances controlled by the user, except a contaminant resulting from corrosion of piping and plumbing caused by water quality, is excluded from this definition (New Jersey Safe Drinking Water Act N.J.A.C. 7:10).

## **MINOR SUBDIVISION**

The division of a tract of land meeting one or more of the following conditions:

- A. The division of a parcel of land for the purpose of enlarging an adjoining parcel wherein the remaining parcel is not in conflict with the Zoning Ordinance, *Editor's Note: See Ch. 320, Zoning: Form-Based Code*. nor is its future use or development adversely affected.
- B. The division of a tract of land into a maximum of two lots plus the remainder (three lots total) of the tract being subdivided wherein all such lots or parcels meet all of the following requirements:
  - (1) Such lots shall not be in conflict with the Zoning Ordinance, Master Plan or Official Map.
  - (2) All lots shall front on an existing street as defined in this chapter which is of the width shown on the Master Plan and which is improved sufficiently to meet all requirements of N.J.S.A. 40:55D-35 so that a building permit could be issued to construct a building on each lot.
  - (3) No new streets or roads shall be involved.
  - (4) Curbs, sidewalks and other improvements required in § **240-7** are either in existence or the lots are located in a developed area where such improvements would normally be installed by the Town either as a general improvement or by assessment against benefiting property owners.

- (5) The resulting lots shall be suitable for their intended purpose without the necessity of making unusual changes in grades of the lots.
- (6) The creation of the lots shall not produce a drainage problem or result in the necessity for drainage improvements or any other type of off-tract improvement.
- (7) The creation of the lots will not adversely affect the uniform and comprehensive development of any remaining parcel or adjoining land in terms of:
  - (a) Suitable future road access and desirable future road and lot patterns.
  - (b) Future water and sanitary sewer utility installation and storm drainage improvements.
- (8) The creation of the lots shall be in conformance with the zoning plan and zone scheme for the area and the immediately surrounding neighborhood.
- (9) Notwithstanding the foregoing, no more than two lots and a remainder shall be created by minor subdivision, if complete development of the remaining lot or parcel as permitted by the Zoning Chapter *Editor's Note: See Ch. 320, Zoning: Form-Based Code*. would require a new road or roads. Subsequent subdivision of a remaining lot or parcel shall be accepted only as a major subdivision.

#### **MINOR SUBDIVISION PLAT**

The final map of a minor subdivision which is presented to the Planning Board for approval and which, if approved, shall be filed with the County Clerk unless the subdivision is perfected by deeds filed with the County Clerk.

#### **NJDEP**

New Jersey Department of Environmental Protection.

#### **OBJECTIONABLE DIRECT GLARE SOURCE**

Glare resulting from excessive levels of illumination or insufficiently shielded light sources emanating from light fixtures in the field of view where the lens, lamp or reflector produces visible glare above a height of five feet at a property line or a public roadway.

#### **OFFICIAL MAP**

A map adopted in accordance with the provisions of N.J.S.A. 40:55D-32 et seq. Such map shall be deemed to be conclusive with respect to the location and width of streets, public parks and playgrounds, and drainage right-of-way shown thereon.

#### **OFF SITE**

Located outside the lot lines of the lot in question but within the property of which the lot is a part, which is the subject of the development application, or contiguous portion of a street or right-of-way.

#### **OFF TRACT**

Not located on the property which is the subject of a development application, nor on the contiguous portion of a street or right-of-way.

**ON SITE**

Located on the lot in question.

**ON TRACT**

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

**OUTDOOR LIGHT FIXTURE**

An electrically powered illuminating device containing a total light source of more than 1,800 initial lumens per fixture or any spot or flood luminaire with a reflector contained in the lamp component, such as a parabolic aluminized reflector (PAR) lamp, of more than 900 initial lumens, which is permanently installed outdoors, including, but not limited to, devices used to illuminate any site, architectural structure, or sign.

**OWNER**

Any individual, firm, association, syndicate, copartnership or corporation having sufficient proprietary interest in the land sought to be subdivided, to commence and maintain proceedings to subdivide such land under this chapter and for the purpose of this chapter, shall include developer, applicant, agent, engineer or other person authorized to represent the owner as defined herein.

**PERENNIAL STREAM**

A surface water body that flows continuously through the year in most years and shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a special water resource protection area (SWRPA) pursuant to the stormwater management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys.

**PERFORMANCE GUARANTEE**

Any security which may be accepted in lieu of a requirement that certain improvements be made before the Planning Board or other approving body approves a plat, including performance bonds, escrow agreements, and other similar collateral or surety agreements.

**PERSON**

Any individual, public or private corporation, company, partnership, firm, association, owner or operator, political subdivision of this state, and any state, federal or interstate agency or an agent or employee thereof.

**PLAT**

A map or maps of a subdivision or site plan.

**POLLUTED WATER**

Drinking water exceeding a federal and/or state maximum contaminant level (MCL).

### **POPULATION GROUP**

A group or number of people living within a specified area or sharing similar characteristics (such as occupation or age).

### **POTENTIAL POLLUTANT SOURCE (PPS)**

An activity or land use which may contribute to contamination of a source of drinking water. For the purposes of this chapter, potential pollutant sources are defined in § **240-10F**.

### **PRELIMINARY APPROVAL**

The conferral of certain rights pursuant to §§ 34, 36 and 37 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-46, 40:55D-48 and 40:55D-49), prior to final approval after specific elements of a development plan have been agreed upon by the Planning Board and the applicant.

### **PRELIMINARY PLAT**

The preliminary map indicating the proposed layout of the subdivision submitted to the Secretary of the Planning Board for Planning Board consideration and tentative approval, and meeting the requirements of § **240-4** of this chapter.

### **PUBLIC COMMUNITY WELL**

A public water supply well which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

### **PUBLIC DRAINAGEWAY**

The land reserved or dedicated for installation of stormwater sewers or drainage ditches, or required along a natural stream or watercourse for preserving the channel and providing for the flow of water to safeguard the public against flood damage, sedimentation and erosion.

### **PUBLIC NONTRANSIENT NONCOMMUNITY WELL**

A public water supply well that is not a public community well and that regularly serves at least 25 of the same persons for more than six months in any given calendar year.

### **REDEVELOPMENT**

The construction of structures or improvements on areas which previously contained structures or other improvements.

### **RESUBDIVISION**

The further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law, or the alteration of any streets or establishment of any new streets within any subdivision previously made and

approved or recorded according to law. Resubdivision shall not include conveyances to combine existing lots by deed or other instrument.

### **RIPARIAN ZONE**

The land and vegetation within and directly adjacent to all surface water bodies including, but not limited to, lakes, ponds, reservoirs, perennial and intermittent streams, up to and including their point of origin, such as seeps and springs, as shown on the New Jersey Department of Environmental Protection's GIS hydrography coverages or, in the case of a special water resource protection area (SWRPA) pursuant to the stormwater management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys.

### **RIPARIAN ZONE MANAGEMENT PLAN**

A plan approved by the Town Engineer. The plan shall be prepared by a landscape architect, professional engineer or other qualified professional, and shall evaluate the effects of any proposed activity/uses on any riparian zone. The plan shall identify existing conditions, all proposed activities, and all proposed management techniques, including any measures necessary to offset disturbances to any affected riparian zone.

### **SHIELDED LIGHT FIXTURE**

A light fixture with cutoff optics that allows no direct light emissions above a vertical cutoff angle of 90° above nadir (straight down at perfect vertical), through the light fixture's lowest light-emitting part. Any structural part of the light fixture providing this cutoff angle must be permanently affixed.

### **SOLE-SOURCE AQUIFER**

Any drinking water aquifer upon which more than 50% of a population group of 25 or more year-round residents depends and for which there is no practicable or affordable alternate water supply.

### **SPECIAL WATER RESOURCE PROTECTION AREA or SWRPA**

A three-hundred-foot area provided on each side of a surface water body designated as a C1 water or tributary to a C1 water that is a perennial stream, intermittent stream, lake, pond, or reservoir, as defined herein and shown on the USGS quadrangle map or in the County Soil Surveys within the associated HUC 14 drainage, pursuant to the stormwater management rules at N.J.A.C. 7:8-5.5(h).

### **STEEP SLOPE**

Any slope equal to or greater than 20% as measured over any minimum run of 10 feet. Steep slopes are determined based on contour intervals of two feet or less.

### **STREET**

Any avenue, street, boulevard, road, lane, parkway, viaduct, alley or other way which is an existing state, county or municipal

roadway, or a street or way shown upon a plat heretofore approved pursuant to law or approved by official action, or a street or way on a plat duly filed and recorded in the office of the County Clerk prior to the appointment of a Planning Board and the grant to such Board of the power to review plats. "Street" shall include the land between the street lines whether improved or unimproved, and may comprise pavement, shoulders, gutters, sidewalks, parking areas, and other areas within the street lines. For the purpose of this chapter, streets shall be classified as follows:

- A. Arterial streets: those streets used primarily for fast or heavy traffic.
- B. Major streets: those streets used primarily for heavy local and through traffic.
- C. Collector streets: those streets which carry traffic from minor streets to major streets, including principal entrance streets of a residential development and streets for circulation within such a development.
- D. Minor streets: those streets used primarily for access to the abutting properties.
- E. Marginal access streets: those streets parallel or adjacent to controlled access highways or major thoroughfares, and which provide access to abutting properties and protection from through traffic.
- F. Alleys: minor ways used primarily for vehicular service access to the back or side of properties otherwise abutting on a street.

### **STREET LINE**

The edge of the improved street including pavement, shoulders, gutters, sidewalks, parking areas, curbs and planting strips or pavers.

### **SUBDIVIDER**

An applicant for development who seeks to subdivide the property in question.

### **SUBDIVISION**

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

- A. Divisions of land, if found by the Planning Board or Technical Review Committee thereof appointed by the Chairman to be used for agricultural purposes where all resulting parcels are five acres or larger in size.
- B. Divisions of property by testamentary or intestate provisions.
- C. Divisions of property upon court order, including but not limited to judgments of foreclosure.
- D. Consolidation of existing lots by deed or other recorded instrument.
- E. The conveyance of one or more adjoining lots, tracts or parcels of land, owned by the same person or persons all of which are found and certified by the administrative officer to conform with the requirements of the municipal development regulations and are shown and designated as separate lots, tracts or parcels on the Tax Map or atlas of the Town. The term "subdivision" shall also include the term "resubdivision."

### **SURFACE WATER BODY(IES)**

Any perennial stream, intermittent stream, lake, pond, or reservoir. In addition, any regulated water under the Flood Hazard Area Control Act rules at N.J.A.C. 7:13-2.2, or state open waters identified in a letter of interpretation issued under the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A-3 by the New Jersey Department of Environmental Protection Division of Land Use Regulation, shall also be considered surface water bodies.

### **TECHNICAL REVIEW COMMITTEE**

A committee of the Planning Board established by Chapter **166** to review any applications for development or requests for review presented to the Board which may benefit from preliminary review by the Board's professionals.

### **TEMPORARY USE**

A use that is established for a fixed period of time with the intent to discontinue such use upon the expiration of such time and does not involve any permanent improvements on a property.

### **THREATENED OR ENDANGERED SPECIES**

A species identified pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq. or the Endangered Plant Species List, N.J.A.C. 7:5C-5.1, and any subsequent amendments thereto.

### **TIER 1 WELLHEAD PROTECTION AREA**

That area of land within a wellhead protection area from which groundwater may enter the well within two years.

### **TIER 2 WELLHEAD PROTECTION AREA**

That area of land within a wellhead protection area from which groundwater may enter the well within five years.

### **TIER 3 WELLHEAD PROTECTION AREA**

That area of land within a wellhead protection area from which groundwater may enter the well within 12 years.

### **TIME OF TRAVEL (TOT)**

The average time that a volume of water will take to travel in the saturated zone from a given point to a pumping well.

### **TROUT MAINTENANCE WATER**

A section of water designated as trout maintenance in the New Jersey Department of Environmental Protection's Surface Water Quality Standards at N.J.A.C. 7:9B.

### **TROUT PRODUCTION WATER**

A section of water identified as trout production in the New Jersey Department of Environmental Protection's Surface Water Quality Standards at N.J.A.C. 7:9B.

## WELLHEAD

The well borehole and appurtenant equipment.

## WELLHEAD PROTECTION AREA (WHPA)

An area described in plan view around a well, from which groundwater flows to the well and groundwater pollution, if it occurs, may pose a significant threat to the quality of water withdrawn from the well.

## § 240-3. Subdivision and site plan procedures.

### A. Completeness review.

- (1) Content of application. Each application for approval of a minor site plan or subdivision, preliminary site plan, preliminary major subdivision, final site plan or subdivision, conditional use or variance relief shall include all information and data listed in the appropriate corresponding checklist as set forth in this chapter. *Editor's Note: The Planning Board Application Checklist is included at the end of this chapter.*
- (2) Completeness procedure.
  - (a) The municipal agency or authorized committee or designee (hereinafter called the "municipal agency") shall review all applications and accompanying documents required by this chapter to determine that the application is complete. An application for development shall be complete for purposes of starting the applicable time period for action by the Planning Board when so certified by the municipal agency. In the event that the municipal agency does not deem the application complete within 45 days, the application shall be deemed complete for the purposes of starting the applicable time period for action by the Planning Board following the expiration of the forty-five-day time period. The applicant may request one or more waivers from the submission requirements upon presentation of reasons for granting the waiver. The municipal agency shall grant or deny the requests for waivers within 45 days. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that he or she is entitled to approval of the application.
  - (b) The municipal agency may subsequently require correction of any information found to be in error and submission of additional information not specified in the checklist 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 municipal agency.

### B. Informal concept review.

- (1) Prior to any submittal of an application for development, the applicant may request an informal review of a concept plan before the Planning Board in order to:
  - (a) Familiarize the applicant with the substantive and procedural requirements of the Subdivision and Site Plan Ordinance.
  - (b) Permit input from the Planning Board on the general design of the project.
  - (c) Provide for an exchange of information regarding the concept plan and applicable elements of the Master Plan, Zoning Ordinance *Editor's Note: See Ch. 320, Zoning: Form-Based Code.* and other development requirements.
  - (d) Advise the applicant of any public sources of information that may assist the application.
  - (e) Consider opportunities to increase the benefits of the development and mitigate any impacts related to the development.
  - (f) Identify policies and regulations that create opportunities or pose significant constraints for the proposed development.
- (2) Neither the developer nor the Planning Board shall be bound by the review of any concept plan.
- (3) Documents and fees to be submitted. Applicants seeking an informal concept review before the Planning Board shall submit 18 copies of the plan and one copy of the completed application and required review fees to the Board Secretary.
- (4) Nature of the concept plan. The concept plan is a general plan that need not be fully engineered. The plan or plat should be sufficiently detailed to allow the Planning Board to make suggestions on general site design and layout for circulation, stormwater management, location of open space and buffers, building arrangements and to determine how the proposal meets the Town's Master Plan goals and objectives.

C. When site plan or subdivision approval are required.

- (1) Any property that is to be developed, redeveloped, altered or changed in any way shall require a minor or major site plan approval or waiver of same by the appropriate reviewing agency. Exempt from this process are detached one-or two-unit dwellings on an individual lot and any construction work considered to be ordinary repairs by the Zoning Officer. Also exempt are changes in occupancy, changes in use or temporary uses approved by the Zoning Officer.
- (2) Subdivision approval shall be required prior to the recording of any plat or deed affecting the subdivision of any land in

the Town of Newton.

D. Dedication of right-of-way. No subdivision or site plan involving any street(s) requiring additional right-of-way width as specified in the Master Plan, Official Map or the street requirements of this chapter shall be approved unless such additional right-of-way, along one or both sides of said street(s), as applicable, be deeded to the Town or other appropriate governmental agency.

E. Traffic impact statement.

(1) The Board may require a traffic impact statement as part of preliminary approval of a major subdivision or site plan if, in the opinion of the Board Engineer, the development could have an adverse impact on the surrounding road network, site, ingress/egress or on-site circulation.

(2) General provisions.

(a) The traffic impact statement shall be prepared by a New Jersey licensed professional engineer having appropriate experience and education in traffic engineering.

(b) All relevant sources of information used in the preparation of said statement shall be identified.

(3) Submission format. All traffic impact statements shall provide a description of the impact and effect of the proposed land development upon all roads which are adjacent to or immediately affected by traffic and shall specifically address the following items:

(a) Existing conditions in the vicinity of the proposed project including:

[1] Roadway network.

[2] Representative traffic counts, not during holiday or summer periods (or with appropriate statistical adjustments for counts during the summer months.)

[3] Traffic accident statistics.

[4] Availability of public transportation.

[5] Level of service of adjacent roadways.

(b) Traffic generated by the proposed development, including:

[1] Trip generation.

[2] Trip distribution.

[3] Modal split.

[4] Level of service.

(c) Traffic impacts caused by the proposed development as per change in existing conditions.

(d) Explanation of traffic reduction/traffic management plans necessary pursuant to any current federal, state or county requirements.

(e) Recommendations for alleviating or diminishing any possible congestion or disruption to the established traffic pattern.

(f) Any other information requested by the Board that is reasonably required to make an informed statement of potential traffic impacts.

#### F. Environmental impact statement.

(1) The Board shall require an environmental impact statement as part of preliminary approval of a major subdivision or site plan. The Board may waive portions of the environmental impact statement requirements upon a finding that a complete report need not be prepared in order to evaluate adequately the environmental impact of a particular project. The Board shall review the application with specific reference to the following areas of concern:

(a) More than 25% of the property has a grade of 15% or greater.

(b) More than 25% of the property is within a floodplain.

(c) The property is located in an area where potable water supplies may be adversely affected.

(d) Industrial activities involving the use, processing or manufacture of hazardous, toxic or corrosive substances as defined and named in regulations promulgated by the USEPA.

(e) The visual impact of the project would be significant.

(f) The proposal would result in negative impacts to critical environmental areas.

- (2) Submission format. All environmental impact statements shall consist of written and graphic materials which clearly present the following information:
- (a) Project description. A description of the proposed project shall be presented to indicate the extent to which the site must be altered, the kinds of facilities to be constructed, and the uses intended. The resident population, working population and visitor population shall be estimated.
  - (b) The compatibility or incompatibility of the proposed project shall be described in relation to the following:
    - [1] Master Plan and latest Master Plan Reexamination.
    - [2] Sussex County Strategic Growth Plan and other planning documents.
    - [3] New Jersey State Development and Redevelopment Plan.
- (3) Site description and inventory. The suitability of the site for the intended use shall be discussed. This shall include a description of environmental conditions on the site which shall include, but not be limited to, the following items:
- (a) Topography and soil types. A description and map of the topographic conditions and soil types of the site shall be provided.
  - (b) Contamination. Information regarding the presence or absence of environmental contamination, including the presence of known or suspected contaminants on site; prior uses of the property; and the status of any past or present administrative or judicial proceeding involving contamination or remediation of contamination on the site. In appropriate cases, the Board may require similar information with regard to surrounding sites.
  - (c) Critical environmental areas. A description and map of the wetland areas, wetland buffers and floodplains on the site shall be provided.
  - (d) Surface water. A description and map of existing waterways and water bodies that are partially or totally on the site shall be identified along with any riparian issues that may be relevant to the development.
  - (e) Unique scenic features. Describe and map those portions of the site that can be considered to have unique scenic qualities and any scenic view from the site.
  - (f) Endangered species. A description and map of any threatened or endangered species habitat located within the site.
  - (g) Miscellaneous. When warranted, an analysis shall be conducted of existing air quality and/or noise levels as

prescribed by the New Jersey Department of Environmental Protection.

- (4) Impact. The negative and positive impacts of the project during and after construction shall be discussed. The specific concerns that shall be considered include the following:
  - (a) Soil erosion and sedimentation resulting from surface runoff.
  - (b) Flooding and floodplain disruption.
  - (c) Surface water quality.
  - (d) Sewage disposal.
  - (e) Solid waste disposal.
  - (f) Scenic features on- and off site.
  - (g) Air quality.
  - (h) Noise levels.
  - (i) Lighting levels, including trespass lighting.
  - (j) Effect on community services, including projected population increase, increase in municipal and school services and consequences to municipal taxes.
  - (k) Endangered species.
  - (l) Critical environmental areas.
- (5) Mitigation measures. The applicant shall provide the measures that will be utilized during the planning, construction and operation phases of the project to minimize or eliminate negative impacts on- and off site. Mitigation measures with regard to the following specific items should be prioritized:
  - (a) Stormwater management plans and plans for soil erosion and sedimentation controls.
  - (b) Water supply and water conservation proposals.
  - (c) Noise reduction techniques.

- (d) Screening and landscaping intended to enhance the compatibility of the development with adjacent areas.
  - (e) Miscellaneous on-site and off-site public improvements.
  - (f) Sewage disposal.
  - (g) Endangered species.
  - (h) Critical environmental areas.
- (6) Alternatives. A discussion of site design and project location alternatives that were considered shall be provided. The discussion shall indicate why an alternative was rejected if it would have resulted in less of a negative impact than the proposed development.
- (7) Licenses, permits, and other approvals required by law. The applicant shall list all known licenses, permits and other approvals required by law in order to construct and operate the project as proposed. The list shall include, at a minimum, approvals required by the Town, county, state and federal governments. Where approvals have already been granted, copies of said approvals should be attached to the report. Where approvals are pending, a note should be added stating when the application was submitted and when an approval is expected.
- (8) Documentation. All publications, file reports, manuscripts or other written sources of information, which were consulted in preparation of the environmental impact assessment, shall be listed and footnoted. A list of all agencies and individuals from whom pertinent information was obtained orally or by letter shall be listed separately. Dates and locations of all meetings shall be specified.
- (9) Review. Applicants shall provide suitable mitigation for all adverse environmental impacts and other conditions identified in the EIS and/or in the course of the public hearings before the Board.
- (10) Development phasing. Whenever an applicant intends to construct a development in phases, phasing information shall be included in the plans for preliminary approval, and all phases shall be:
- (a) Fully functional, self-contained and self-sustaining with adequate access, circulation, parking, utilities, open spaces and landscaping. Each phase shall have the capacity to function perpetually independent of subsequently proposed phases.
  - (b) Provided with temporary or permanent transitional features, buffers or protective areas necessary to prevent damage or detriment to adjoining properties or to any completed section or stage. In addition, such temporary or permanent transitional features, buffers or protective areas shall not impede development of future sections or

stages in the planned development. Plans, estimated dates of completion for each phase and specifications of each phase are to be filed with the Board, with sufficient detail and scale to fully demonstrate the arrangement and site locations of all structures, primary and accessory land uses, parking, landscaping, public and private utilities and services, facilities and land ownership conditions.

G. Submission of minor subdivision plat.

- (1) Any owner of land within the Town, prior to subdividing or resubdividing land where such subdivision is desired to qualify as a minor subdivision, may submit an application for minor subdivision approval to the Secretary of the Planning Board in accordance with the land use procedures herein and according to the submission requirements of the minor subdivision checklist. *Editor's Note: The Planning Board Application Checklist is included at the end of this chapter.*
- (2) If approved as a complete application for a minor subdivision by unanimous action of the duly authorized committee of the Planning Board, the duly authorized committee of the Planning Board shall report its action at the next meeting of the Planning Board for a formal vote on the resolution of approval of the duly authorized committee's review. Upon a majority vote by the Planning Board, the Planning Board may request to review the application for minor subdivision prior to approving any resolution of approval. The final minor subdivision plat, or deeds perfecting the subdivision, shall be submitted by the subdivider to the Sussex County Planning Board for its consideration, simultaneously with its submission to the Town Planning Board. Following approval by the County Planning Board, 10 copies of a final minor subdivision plat (or the original of subdivision's deed or deeds) shall then be forwarded by the applicant to the Chairman and the Secretary of the Planning Board for their signatures, and three signed copies shall be returned to the applicant within one week following the next regular meeting of the Planning Board. The latter shall also be signed by the Town Engineer who shall evidence compliance with all approved design and improvement standards. No further Planning Board approval shall be required. If variances are required, or if the duly authorized committee of the Planning Board deems the full Planning Board should review the application, the application will be forwarded to the Planning Board for review at a regular meeting.
- (3) The Secretary of the Planning Board shall forward one copy to each of the following:
  - (a) Town Clerk.
  - (b) Town Engineer.
  - (c) Town Planner.
  - (d) Building Inspector or Zoning Officer.

- (e) Tax Assessor.
  - (f) Secretary of the Planning Board.
  - (g) County Planning Board.
  - (h) Secretary of the Board of Health.
  - (i) Planning Board.
- (4) Either a deed or plat shall be filed with the County Clerk in accordance with the provisions of the Land Use Procedures Chapter. *Editor's Note: See Ch. 166, Land Use Procedures.*
- (5) If a plat is not approved as a minor subdivision, a notation to that effect shall be made on the plat which will be returned to the subdivider for compliance with the procedures of this chapter.

#### H. Submission of minor site plan.

- (1) Submission requirements for a minor site plan are provided for in the Minor Site Plan and Subdivision Checklist included in this chapter. *Editor's Note: See the Planning Board Application Checklist included at the end of this chapter.* Some or all of those requirements may be waived by the reviewing agency.
- (2) Minor site plan classification criteria. An application may be designated as a minor site plan if the following conditions are met:
- (a) The use is permitted in the zone.
  - (b) No new bulk variances are required and no existing nonconformities are expanded or worsened.
  - (c) The proposed site improvements do not exceed, cumulatively over a five-year period, a total of 5,000 square feet.
  - (d) The proposed building footprint is not increased, cumulatively over a five-year period, by more than 2,000 square feet.
  - (e) No hazardous or toxic materials are involved in business operation.
- (3) Minor site plan review criteria. In reaching a decision about a minor site plan application, the reviewing board, or a duly authorized committee of that board, shall consider the issues outlined below. Notice of the meeting is not required for

minor site plan review.

- (a) The extent of any new parking demand, how it will be met and whether or not traffic conditions will be changed. In the case of sites in the T-4, T-5 and T-6 Zones, shared parking, off-site parking and other parking alternatives may be accepted.
- (b) The extent of any additional surface runoff and any impact on adjoining properties. If there is an anticipated increase in runoff, the approval shall be subject to the review and approval of the Board Engineer.
- (c) The extent of any aesthetic impacts, either to the subject property or adjoining properties. Changes to the building facade, landscaping or other site features shall be considered in determining whether or not any negative impacts will result.
- (d) The extent of any increase in the number of employees and any impacts associated with that increase.
- (e) The extent of any exterior lighting changes and the impacts associated with those changes.
- (f) The design of any proposed signage and whether or not it meets the Town's design guidelines and sign regulations.

I. Submission of preliminary plat of major subdivision for preliminary approval.

- (1) Any owner of land who desires major subdivision approval shall submit his application and maps and other required information in accordance with the requirements of the Major Site Plan and Subdivision Checklist, *Editor's Note: See the Planning Board Application Checklist included at the end of this chapter.* together with the required fees. The application and plat shall be forwarded to the Technical Review Committee and Town Engineer for review. If the Technical Review Committee finds the application for development is incomplete, the developer shall be notified thereof within 45 days of submission of such application, or it shall be deemed to be properly submitted. If the applicant is not the record owner of the title to the property being subdivided, he shall file a written consent signed by the owner consenting to the making of the application. The applicant shall forward one copy thereof to the Town Clerk. The developer shall file copies with the County Planning Board for approval or waiver of review.
- (2) The applicant shall notify all persons entitled to notice of the hearing on the application in accordance with the provisions of the Land Use Procedures Chapter *Editor's Note: See Ch. 166, Land Use Procedures.* and N.J.S.A. 40:55D-12. If the Planning Board requires any substantial amendment in the layout of improvements proposed by the developer that have already been the subject of a hearing, an amended application shall be submitted and proceeded upon as in the case of the original application for development, including the giving of notice in accordance with the provisions of N.J.S.A. 40:55D-12.

- (3) Copies of the preliminary plat shall be forwarded by the Secretary of the Planning Board prior to the hearing to the following persons:
  - (a) Town Engineer.
  - (b) Secretary of Board of Health.
  - (c) Town Planner.
  - (d) Planning Board.
- (4) After the public hearing, the Planning Board shall take formal action either approving or disapproving the preliminary plat within the time required by N.J.S.A. 40:55D-48. For a subdivision of 10 or fewer lots, the Planning Board shall grant or deny preliminary approval within 45 days of the date of the submission, and in the case of a subdivision of more than 10 lots, it shall grant or deny preliminary approval within 95 days of the date of such submission or within such further time as may be consented to by the developer. Otherwise, the Planning Board shall be deemed to have granted preliminary approval to the subdivision. If the plat is disapproved, the reasons for disapproval shall be given to the subdivider.
- (5) Approval of any application shall be conditioned on certification by the Sussex County Soil Conservation District of a plan for soil erosion and sediment control, pursuant to the provisions of N.J.S.A. 4:24-39 et seq.
- (6) If the Planning Board acts favorably on a preliminary plat, the Chairman of the Planning Board shall affix his signature to the plat with a notation that it has received tentative approval and return it to the subdivider for compliance with final approval requirements.
- (7) A copy of the action taken by the Planning Board shall be forwarded to the Town Clerk.
- (8) Preliminary approval shall, except as hereinafter set forth, confer upon the applicant the following rights for a three-year period from the date of such 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; except that nothing herein shall be construed to prevent the Town from modifying by ordinance such general terms and conditions of preliminary approval as may relate to public health and safety.
  - (b) The applicant may submit for final approval on or before the expiration date of preliminary approval the whole or a

section or sections of the preliminary subdivision plat.

- (c) The applicant may apply for and the Planning Board may grant extensions on such preliminary approval for additional periods of at least one year, but not to exceed a total extension of two years; provided that if the design standards have been revised by ordinance, such revised standards may govern.
- (d) In the case of a subdivision for an area of 50 acres or more, the Planning Board may grant the rights referred to in Subsection **I(8)(a), (b) and (c)** hereinabove for such period of time longer than three years, as shall be determined by the Planning Board to be reasonable, taking into consideration the number of dwelling units and nonresidential floor area permissible under preliminary approval, economic conditions and the comprehensiveness of the development. The applicant may apply for thereafter, and the Planning Board may thereafter grant, an extension of preliminary approval for such additional period of time as shall be determined by the Planning Board to be reasonable taking into consideration:

[1] The number of dwelling units under preliminary approval.

[2] The potential number of dwelling units and nonresidential floor area of the section or sections awaiting final approval.

[3] Economic conditions.

[4] The comprehensiveness of the development, provided that if the design standards have been revised, such revised standards shall govern.

#### J. Improvement or guarantees prior to final approval.

- (1) No final plat shall be finally approved by the Planning Board until the satisfactory completion of all improvements required under § **240-7** have been certified to the Board by the Town Engineer, or unless the subdivision owner or owners shall likewise have satisfactorily completed:
  - (a) All required utility installations and their appurtenances including water mains, gas, sanitary sewers, and drainage; all in accordance with the Town's specifications and as may be required by the Planning Board and Council.
  - (b) Grading and constructed surfacing of the "base course" of all streets and the installation of all curbs and gutters where required by § **240-5D** and **E** of this chapter, in accordance with Town specifications and as required by the Planning Board, and filed with the Town Council a performance guarantee in the form required by the Planning Board and Council sufficient in amount to cover 120% of the cost of all other improvements required by the

Planning Board and Council, together with either cash or a cashier's or certified check sufficient in an amount to cover an amount equal to 10% of the cost of the improvements pursuant to N.J.S.A. 40:55D-53, all as estimated by the Town Engineer, and assuring the proper installation of the improvements by or before an agreed date; which 10% shall be held in escrow by the treasurer and deposited or invested in the manner prescribed by law for municipal funds, the principal amount to be refunded to the subdivision owner or owners upon satisfactory completion of all improvements and for release of the applicable performance guarantee or sooner, in the sole discretion of the Planning Board and the Town Council.

- (c) For improvements to the site that require ongoing maintenance, such as landscaping, the Town Council may require a maintenance guarantee to be posted 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 improvement, which cost shall be determined by the Town Engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.4. In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the Town for such utilities or improvements.

K. Submission of final plat of major subdivision.

- (1) The final plat shall be submitted to the Board Secretary for forwarding to the Newton Town Council for final approval in accordance with the provisions of the Land Use Procedures Chapter. *Editor's Note: See Ch. 166, Land Use Procedures.*
- (2) Eighteen black-and-white prints, 13 half scales and five full scales, together with four copies of the application form for final approval, shall be submitted to the Secretary of the Planning Board at least 10 days prior to the date of the regular Planning Board meeting. Unless the preliminary plat is approved without changes, the final plat shall have incorporated all changes or modifications required by the Planning Board.
- (3) The final plat shall be accompanied by a statement by the Town Engineer that all required utility installations and their appurtenances including water mains, gas, sanitary sewers, and drainage have been satisfactorily installed and constructed, and that he is in receipt of a map showing all said utilities in exact location and elevation, and that:
  - (a) The developer has completed grading and constructed surfacing of the base course of all streets in accordance with Town specifications, and that performance guarantees as required by § **240-5H** of this chapter have been posted and deposited with the Town in a sufficient amount to insure the completion of all required improvements.
  - (b) The amount of the guarantee and cash deposit shall be based upon the Town Engineer's estimate of cost.
- (4) Unless the subdivider has filed a statement from the Sussex County Planning Board certifying compliance with all

submission requirements of the Board as to the subdivision in question, one copy of the application and two copies of every plan shall be forwarded to the Sussex County Planning Board for its review and/or approval prior to final approval by the Newton Planning Board. If the Sussex County Planning Board has approval authority, its action shall be noted on the plat.

- (5) Final approval shall be granted or denied within the time specified in the Land Use Procedures Chapter. *Editor's Note: See Ch. 166, Land Use Procedures.* Failure of the Planning Board to act within the period prescribed shall constitute final approval and a certificate of the Secretary of the Board as to the failure of the Planning Board to act shall be issued on request of the applicant. Such certificate shall be sufficient in lieu of the written endorsement or other evidence of approval herein required and shall be so accepted by the County Clerk for purposes of filing final subdivision plats.
- (6) Upon final approval, copies of the final plat shall be filed by the Planning Board with the following:
  - (a) Municipal Clerk: one copy.
  - (b) Municipal Engineer: one copy.
  - (c) Building Inspector: one copy.
  - (d) Tax Assessor: one copy.
  - (e) County Planning Board: two copies.
  - (f) Official issuing certificate for approved lots: one copy.
- (7) Within 95 days of final approval, the final plat shall be filed by the subdivider with the County Clerk in accordance with the provisions of N.J.S.A. 40:55D-54. For good and sufficient reasons, the Planning Board may extend the time for filing for an additional period not to exceed 190 days from the date of the signing of the plat.
- (8) No plat shall be offered for filing to the County Clerk unless it has been duly approved by the Planning Board and signed by the Chairman and Secretary thereof.
- (9) Original Mylars of the final approved plat shall be submitted to the Board Secretary in sufficient number as required by the County Planning Board for signature by the Planning Board Chair, Board Secretary and Board Engineer.

## § 240-4. Plat and plan details.

A. Administrative application requirements. All applications before the Planning Board shall be accompanied by the following information:

- (1) Application form (original plus 17 copies).
- (2) Fees and escrow deposits.
- (3) Certification of taxes, liens and assessments paid.
- (4) Eighteen copies of proposed plan.
- (5) Affidavit of ownership/authorization form.
- (6) Site inspection authorization.
- (7) Compliance with legal notice requirements including proof of publication and proof of service (except minor subdivisions and minor site plan not requiring variances).
- (8) Corporation or partnership form.
- (9) Listing of all variances, design standards, checklists waivers and justification.
- (10) Copies of all prior resolutions pertaining to the subject property.
- (11) Two recent photographs of the property (except minor subdivisions).
- (12) Copy of Sussex County Planning Board application.
- (13) Copy of soil erosion/sediment control application (except minor subdivisions).
- (14) Copy of NJDOT/NJDEP applications.

B. Minor subdivision plat. The minor subdivision plat shall be based on Tax Map information or some other similarly accurate base and shall show or be accompanied by the following information:

- (1) Plan clearly and legibly drawn or reproduced at a scale not smaller than one inch equals 50 feet.
- (2) Sheet size, 24 inches by 36 inches.

- (3) Name, address, license number of plan preparer, signature, original raised seal.
- (4) Title block.
- (5) Record owner(s) name and address.
- (6) Applicant's name, address, phone number, fax number and e-mail.
- (7) Name of project, if any.
- (8) Date of map preparation and each subsequent revision.
- (9) Zoning district of parcel and surrounding lands.
- (10) Zoning chart listing existing/proposed requirements for area, setbacks, lot coverage, height, density, floor area, ratio, parking.
- (11) Existing structures within 200 feet and distance to property line.
- (12) Each block and lot numbered in conformity with the municipal Tax Map as determined by the municipal Tax Assessor with street address from the 911 Coordinators.
- (13) Copy of Sussex County Planning Board application.
- (14) Scale of map, both written and graphic.
- (15) North arrow giving reference meridian.
- (16) Properties within 200 feet, lot and block number and owner, outline of two-hundred-foot perimeter.
- (17) Tax Map sheet number.
- (18) Key map showing location of tract to be considered in relation to surrounding area, within 200 feet. Scale not less than one inch equals 400 feet and north arrow.
- (19) Area of entire tract.
- (20) Metes and bounds of proposed lot(s).

- (21) Area and frontage of proposed lot(s).
- (22) Area/frontage of remaining tract.
- (23) Property lines to the nearest hundredth.
- (24) Bearings to the nearest second.
- (25) Lot acreage to the nearest hundredth.
- (26) Building envelopes.
- (27) Location of existing railroads, bridges, culverts, drainage pipe, water and sewer, utility poles and underground utilities.
- (28) Natural features including existing vegetation, wet areas, watercourse, floodplain limit, rock outcroppings.
- (29) Existing/proposed driveway locations with sight distance profiles.
- (30) Road locations, names, with right-of-way.
- (31) Sight triangle, drainage, utility, driveway and other easements.
- (32) Provisions for certification and approvals.
- (33) If wetlands are present, a delineation is needed and an absence/presence letter to determine buffer width.
- (34) Written confirmation from Tax Assessor that proposed lot numbers are acceptable.
- (35) Copy of current deed and all easements/restrictions.
- (36) A CAD file of subdivision for Tax Map updates.

C. Major subdivision preliminary plat. The preliminary plat shall be clearly and legibly drawn by a land surveyor or engineer licensed in the State of New Jersey. The plat shall be designed in compliance with the provisions of § **240-8** of this chapter, and shall show or be accompanied by the following information:

- (1) Plan clearly and legibly drawn or reproduced at a scale not smaller than one inch equals 50 feet.
- (2) Sheet size, 24 inches by 36 inches.

- (3) Name, address, license number of plan preparer, signature, original raised seal.
- (4) Title block.
- (5) Record owner(s)' name and address.
- (6) Applicant's name, address, phone number, fax number and e-mail.
- (7) Name of project, if any.
- (8) Date of map preparation and each subsequent revision.
- (9) Zoning district of parcel and surrounding lands.
- (10) Zoning chart listing existing/proposed requirements for area, setbacks, lot coverage, height, density, floor area, ratio, parking.
- (11) Existing structures within 200 feet and distance to property line.
- (12) Each block and lot numbered in conformity with the municipal Tax Map as determined by the municipal Tax Assessor.
- (13) Copy of Sussex County Planning Board application.
- (14) Scale of map, both written and graphic.
- (15) North arrow giving reference meridian.
- (16) Properties within 200 feet, lot and block number and owner, outline of two-hundred-foot perimeter.
- (17) Tax Map sheet number.
- (18) Key map showing location of tract to be considered in relation to surrounding area, within 200 feet. Scale not less than one inch equals 400 feet and north arrow.
- (19) Area of entire tract.
- (20) Metes and bounds of proposed lot(s).
- (21) Area and frontage of proposed lot(s).

- (22) Area/frontage of remaining tract.
- (23) Property lines to the nearest hundredth.
- (24) Bearings to the nearest second.
- (25) Lot acreage to the nearest hundredth.
- (26) Building envelopes.
- (27) Location of existing railroads, bridges, culverts, drainage pipe, water and sewer, utility poles and underground utilities.
- (28) Natural features including existing vegetation, wet areas, watercourse, floodplain limit, rock outcroppings.
- (29) Existing/proposed driveway locations with sight distance profiles.
- (30) Open space, buffer zone, recreation areas, municipal and public areas and lands to be conveyed to the Town if applicable.
- (31) Plan and profiles of road locations, type, size, width of right-of-way, paving materials, edge of pavement, curbs, sidewalks, catch basins, drainage structures, all utilities, rights-of-way easements, existing buildings or other structures. Profile shall be at a scale of one inch equals five feet vertical; one inch equals 50 feet horizontal.
- (32) Road cross sections every 50 feet along center line at a scale of one inch equals five feet horizontal and vertical.
- (33) Existing and proposed contours at five-foot intervals for slopes 15% or greater; two-foot intervals for lesser slopes.
- (34) Earthwork summary.
- (35) Cut and fill limits.
- (36) Location of proposed drainage structures, curbs, swales, berms, guide rails, edge of pavement, sidewalks.
- (37) Construction details for drainage structures, curb, guide rail, pavement design, sidewalks.
- (38) Existing/proposed driveway locations with sight distance profiles.
- (39) Road locations, names, with right-of-way.

- (40) Sight triangle, drainage, utility, driveway and other easements.
- (41) Provisions for certification and approvals.
- (42) NJDEP letter of interpretation regarding the presence/absence of wetlands on property and within 150 feet. If wetlands are present, line verified by NJDEP and transition area established. NJDEP reference number on plan.
- (43) Written confirmation from Tax Assessor that proposed lot numbers are acceptable.
- (44) Facility impact report, including:
  - (a) Sewer and water report.
  - (b) Sewer and water map.
  - (c) Traffic impact statement.
  - (d) Circulation/traffic map.
- (45) Environmental impact statement.
- (46) Multifamily residential housing units shall include provisions for the collection, disposition and recycling of materials designated in the Newton Recycling Ordinance *Editor's Note: See Ch. 250, Art. IV.* and provisions for solid waste, dumpster enclosure.
- (47) Copies of protective covenants, deed restrictions or homeowner association documents.
- (48) Building floor plan, elevation views and first-floor elevation with overall building height.
- (49) Compliance with ADA requirements.
- (50) Copy of current deed and all easements/restrictions.

D. Major subdivision final plat. The final plat shall be drawn in ink on tracing cloth or in a CAD file reproducible on Mylars in compliance with all the provisions of N.J.S.A. 46:23-9 et seq. *Editor's Note: N.J.S.A. 46:23-9 was repealed by L. 1953, c. 358, p. 1941, § 7, effective 1-1-1954. N.J.S.A. 46:23-9.7 et seq. were repealed by L. 2011, c. 217, § 2, effective 5-1-2012.* The final plat shall show or be accompanied by the following:

- (1) Plan clearly and legibly drawn or reproduced at a scale not smaller than one inch equals 50 feet.
- (2) Sheet size, 24 inches by 36 inches.
- (3) Name, address, license number of plan preparer, signature, original raised seal.
- (4) Title block.
- (5) Record owner(s) name and address.
- (6) Applicant's name, address, phone number, fax number and e-mail.
- (7) Name of project.
- (8) Date of map preparation and each subsequent revision.
- (9) Certification of accuracy by preparer.
- (10) Zoning district of parcel and surrounding lands.
- (11) Zoning chart listing existing/proposed requirements for area, setbacks, lot coverage, height, density, floor area, ratio, parking.
- (12) Proposed developer's agreement.
- (13) Existing structures within 200 feet and distance to property line.
- (14) Obtain each block and lot numbered in conformity with the municipal Tax Map as determined by the municipal Tax Assessor. Copy of Sussex County Planning Board application.
- (15) Scale of map, both written and graphic.
- (16) North arrow giving reference meridian.
- (17) Properties within 200 feet, lot and block number and owner, outline of two-hundred-foot perimeter.
- (18) Tax Map sheet number.
- (19) Key map showing location of tract to be considered in relation to surrounding area, within 200 feet. Scale not less

than one inch equals 400 feet and north arrow.

- (20) Area of entire tract.
- (21) Metes and bounds of proposed lot(s).
- (22) Area and frontage of proposed lot(s).
- (23) Area/frontage of remaining tract.
- (24) Property lines to the nearest hundredth.
- (25) Bearings to the nearest second.
- (26) Lot acreage to the nearest hundredth.
- (27) Building envelopes.
- (28) Location of existing railroads, bridges, culverts, drainage pipe, water and sewer, utility poles and underground utilities.
- (29) Natural features including existing vegetation, wet areas, watercourse, floodplain limit, rock outcroppings.
- (30) Open space, buffer zone, recreation areas, municipal and public areas and lands to be conveyed to the Town if applicable.
- (31) Plan and profiles of road locations, type, size, width of right-of-way, paving materials, edge of pavement, curbs, sidewalks, catch basins, drainage structures, all utilities, rights-of-way easements, existing buildings or other structures. Profile shall be at a scale of one inch equals five feet vertical; one inch equals 50 feet horizontal.
- (32) Location of proposed drainage structures, curbs, swales, berms, guide rails, edge of pavement, sidewalks.
- (33) Construction details for drainage structures, curb, guide rail, pavement design, sidewalks.
- (34) Existing/proposed driveway locations with sight distance profiles.
- (35) Road locations, names, with right-of-way.
- (36) Sight triangle, drainage, utility, driveway and other easements.

(37) Provisions for certification and approvals.

(38) Letter itemizing all elements covered under performance guarantee.

(39) Letter of approval and certification from Town Engineer.

(40) Letter certifying conformance to preliminary plat by applicant's engineer.

(41) "I certify that (NAME OF STREET OR STREETS) are approved roads by the Planning Board of the Town of Newton. Approval of this map shall not be construed as acceptance of said roadways indicated herein, nor shall such approval obligate the Town of Newton to maintain or exercise jurisdiction on said road or street until such time said road may be accepted by the Town of Newton."

Signature of \_\_\_\_\_

Town Clerk

(42) Copies of stream encroachment permit applications, if applicable.

(43) NJDEP letter of interpretation regarding the presence/absence of wetlands on property and within 150 feet. If wetlands are present, line verified by NJDEP and transition area established. NJDEP reference number on plan.

(44) Written confirmation from Tax Assessor that proposed lot numbers are acceptable.

(45) Copies of protective covenants, deed restrictions and homeowner's association documents.

(46) A CAD file of subdivision for Tax Map updates.

(47) Final as-built plan.

E. Minor site plan. The minor site plan shall be clearly and legibly drawn by a land surveyor or engineer licensed in the State of New Jersey or other licensed professional qualified to prepare site plans. The plan shall show or be accompanied by the following information:

(1) Plan clearly and legibly drawn or reproduced at a scale not smaller than one inch equals 50 feet.

(2) Sheet size, 24 inches by 36 inches.

- (3) Name, address, license number of plan preparer, signature, original raised seal.
- (4) Title block.
- (5) Record owner(s) name and address.
- (6) Applicant's name, address, phone number, fax number and e-mail.
- (7) Name of project, if any.
- (8) Date of map preparation and each subsequent revision.
- (9) Zoning district of parcel and surrounding lands.
- (10) Zoning chart listing existing/proposed requirements for area, setbacks, lot coverage, height, density, floor area, ratio, parking.
- (11) Scale of map, both written and graphic.
- (12) North arrow giving reference meridian.
- (13) Tax Map sheet number.
- (14) Key map showing location of tract to be considered in relation to surrounding area, within 200 feet. Scale not less than one inch equals 400 feet and north arrow.
- (15) Area of entire tract.
- (16) Lot acreage to the nearest hundredth.
- (17) Building envelopes.
- (18) Location of existing railroads, bridges, culverts, drainage pipe, water and sewer, utility poles, and underground utilities.
- (19) Existing/proposed driveway locations.
- (20) Road locations, names, with right-of-way.
- (21) Sight triangle, drainage, utility, driveway and other easements.

- (22) Provisions for certification and approvals.
- (23) Soil erosion plans and details.
- (24) Lighting plan, including fixture and footing details, wattage, height, isolux patterns.
- (25) If wetlands are present, a delineation is needed and an absence/presence letter to determine buffer width.
- (26) Compliance with ADA requirements.
- (27) Copy of current deed and verification of all utilities, easements and restrictions.
- (28) Property survey signed and sealed by a New Jersey licensed surveyor.

F. Preliminary major site plan. The preliminary major site plan shall be clearly and legibly drawn by an engineer licensed in the State of New Jersey or other licensed professional qualified to prepare site plans. The plan shall show or be accompanied by the following information:

- (1) Plan clearly and legibly drawn or reproduced at a scale not smaller than one inch equals 50 feet.
- (2) Sheet size, 24 inches by 36 inches.
- (3) Name, address, license number of plan preparer, signature, original raised seal.
- (4) Title block.
- (5) Record owner(s) name and address.
- (6) Applicant's name, address, phone number, fax number and e-mail.
- (7) Name of project.
- (8) Date of map preparation and each subsequent revision.
- (9) Certification of accuracy by preparer.
- (10) Zoning district of parcel and surrounding lands.
- (11) Zoning chart listing existing/proposed requirements for area, setbacks, lot coverage, height, density, floor area, ratio,

parking.

- (12) Proposed developer's agreement.
- (13) Existing structures within 200 feet and distance to property line.
- (14) Obtain each block and lot numbered in conformity with the municipal Tax Map as determined by the municipal Tax Assessor and obtain street address from the 911 Coordinators. Copy of Sussex County Planning Board application.
- (15) Scale of map, both written and graphic.
- (16) North arrow giving reference meridian.
- (17) Properties within 200 feet, lot and block number and owner, outline of two-hundred-foot perimeter.
- (18) Tax Map sheet number.
- (19) Key map showing location of tract to be considered in relation to surrounding area, within 200 feet. Scale not less than one inch equals 400 feet and north arrow.
- (20) Area of entire tract.
- (21) Property lines to the nearest hundredth.
- (22) Bearings to the nearest second.
- (23) Lot acreage to the nearest hundredth.
- (24) Building envelopes.
- (25) Location of existing railroads, bridges, culverts, drainage pipe, water and sewer, utility poles and underground utilities.
- (26) Natural features including existing vegetation, wet areas, watercourse, floodplain limit, rock outcroppings.
- (27) Plan and profiles of road locations, type, size, width of right-of-way, paving materials, edge of pavement, curbs, sidewalks, catch basins, drainage structures, all utilities, rights-of-way easements, existing buildings or other structures. Profile shall be at a scale of one inch equals five feet vertical; one inch equals 50 feet horizontal.
- (28) Existing and proposed contours at five-foot intervals for slopes 15% or greater; two-foot intervals for lesser slopes.

- (29) Earthwork summary.
- (30) Cut and fill limits.
- (31) Location of proposed drainage structures, curbs, swales, berms, guide rails, edge of pavement, sidewalks.
- (32) Construction details for drainage structures, curb, guide rail, pavement design, sidewalks.
- (33) Existing/proposed driveway locations with sight distance profiles.
- (34) Road locations, names, with right-of-way.
- (35) Sight triangle, drainage, utility, driveway and other easements.
- (36) Provisions for certification and approvals.
- (37) Soil erosion plan and details.
- (38) Fire protection details including number of proposed units, available water supply, water main size, flow, hydrant location.
- (39) Environmental impact statement.
- (40) Landscape plan with types, quantity, size and location of plantings; scientific and common names.
- (41) Lighting plan, including fixture and footing details, wattage, height, isolux patterns.
- (42) Drainage plan including runoff calculations for fifty-year storm frequency and a map showing drainage area.
- (43) Storm drainage facilities improvements designed for one-hundred-year flood capacity or as recommended by Town Engineer.
- (44) Copies of stream encroachment permit applications, if applicable.
- (45) NJDEP letter of interpretation regarding the presence/absence of wetlands on property and within 150 feet. If wetlands are present, line verified by NJDEP and transition area established. NJDEP reference number on plan.
- (46) Facility impact report, including:

(a) Sewer and water report.

(b) Sewer and water map.

(c) Traffic impact statement.

(d) Circulation/traffic map.

(47) Building floor plan, elevation views and first-floor elevation with overall building height.

(48) Provisions for solid waste, dumpster enclosure and recycling.

(49) Compliance with ADA requirements.

G. Final major site plan. The final major site plan shall be clearly and legibly drawn by an engineer licensed in the State of New Jersey or other licensed professional qualified to prepare site plans. The plan shall show or be accompanied by the following information:

(1) Plan clearly and legibly drawn or reproduced at a scale not smaller than one inch equals 50 feet.

(2) Sheet size, 24 inches by 36 inches.

(3) Name, address, license number of plan preparer, signature, original raised seal.

(4) Title block.

(5) Record owner(s) name and address.

(6) Applicant's name, address, phone number, fax number and e-mail.

(7) Name of project.

(8) Date of map preparation and each subsequent revision.

(9) Certification of accuracy by preparer.

(10) Zoning district of parcel and surrounding lands.

(11) Zoning chart listing existing/proposed requirements for area, setbacks, lot coverage, height, density, floor area, ratio,

parking.

- (12) Proposed developer's agreement.
- (13) Existing structures within 200 feet and distance to property line.
- (14) Obtain each block and lot numbered in conformity with the municipal Tax Map as determined by the municipal Tax Assessor. Copy of Sussex County Planning Board application.
- (15) Scale of map, both written and graphic.
- (16) North arrow giving reference meridian.
- (17) Properties within 200 feet, lot and block number and owner, outline of two-hundred-foot perimeter.
- (18) Tax Map sheet number.
- (19) Key map showing location of tract to be considered in relation to surrounding area, within 200 feet. Scale not less than one inch equals 400 feet and north arrow.
- (20) Area of entire tract.
- (21) Property lines to the nearest hundredth.
- (22) Bearings to the nearest second.
- (23) Lot acreage to the nearest hundredth.
- (24) Building envelopes.
- (25) Location of existing railroads, bridges, culverts, drainage pipe, water and sewer, utility poles and underground utilities.
- (26) Natural features including existing vegetation, wet areas, watercourse, floodplain limit, rock outcroppings.
- (27) Plan and profiles of road locations, type, size, width of right-of-way, paving materials, edge of pavement, curbs, sidewalks, catch basins, drainage structures, all utilities, rights-of-way easements, existing buildings or other structures. Profile shall be at a scale of one inch equals five feet vertical; one inch equals 50 feet horizontal.
- (28) Existing and proposed contours at five-foot intervals for slopes 15% or greater; two-foot intervals for lesser slopes.

- (29) Earthwork summary.
- (30) Cut and fill limits.
- (31) Location of proposed drainage structures, curbs, swales, berms, guide rails, edge of pavement, sidewalks.
- (32) Construction details for drainage structures, curb, guide rail, pavement design, sidewalks.
- (33) Existing/proposed driveway locations with sight distance profiles.
- (34) Road locations, names, with right-of-way.
- (35) Sight triangle, drainage, utility, driveway and other easements.
- (36) Provisions for certification and approvals.
- (37) Soil erosion plan and details.
- (38) Fire protection details including number of proposed units, available water supply, water main size, flow, hydrant locations.
- (39) Landscape plan with types, quantity, size and location of plantings; scientific and common names.
- (40) Lighting plan, including fixture and footing details, wattage, height, isolux patterns.
- (41) Copies of stream encroachment permit applications, if applicable.
- (42) NJDEP letter of interpretation regarding the presence/absence of wetlands on property and within 150 feet. If wetlands are present, line verified by NJDEP and transition area established. NJDEP reference number on plan.
- (43) Facility impact report, including:
  - (a) Sewer and water report.
  - (b) Sewer and water map.
  - (c) Circulation/traffic report.
  - (d) Circulation/traffic map.

(44) Building floor plan, elevation views and first-floor elevation with overall building height.

(45) Provisions for solid waste, dumpster enclosure and recycling.

(46) Compliance with ADA requirements.

H. Variance application. An application for a variance from the requirements of the Zoning Ordinance *Editor's Note: See Ch. 320, Zoning: Form-Based Code*, pursuant to N.J.S.A. 40:55D-70 et seq. shall include the following:

(1) Plan clearly and legibly drawn or reproduced at a scale not smaller than one inch equals 50 feet.

(2) Sheet size, 24 inches by 36 inches.

(3) Name, address, license number of plan preparer, signature, original raised seal.

(4) Title block.

(5) Record owner(s) name and address.

(6) Applicant's name, address, phone number, fax number and e-mail.

(7) Name of project.

(8) Date of map preparation and each subsequent revision.

(9) Certification of accuracy by preparer.

(10) Zoning district of parcel and surrounding lands.

(11) Zoning chart listing existing/proposed requirements for area, setbacks, lot coverage, height, density, floor area, ratio, parking.

(12) Existing structures within 200 feet and distance to property line.

(13) Obtain each block and lot numbered in conformity with the municipal Tax Map as determined by the municipal Tax Assessor and obtain street address from the 911 Coordinators. Copy of Sussex County Planning Board application.

(14) Scale of map, both written and graphic.

- (15) North arrow giving reference meridian.
- (16) Properties within 200 feet, lot and block number and owner, outline of two-hundred-foot perimeter.
- (17) Tax Map sheet number.
- (18) Key map showing location of tract to be considered in relation to surrounding area, within 200 feet. Scale not less than one inch equals 400 feet and north arrow.
- (19) Area of entire tract.
- (20) Property lines to the nearest hundredth.
- (21) Bearings to the nearest second.
- (22) Lot acreage to the nearest hundredth.
- (23) Building envelopes.
- (24) Location of existing railroads, bridges, culverts, drainage pipe, water and sewer, utility poles and underground utilities.
- (25) Road locations, names, with right-of-way.
- (26) Sight triangle, drainage, utility, driveway and other easements.
- (27) Provisions for certification and approvals.
- (28) NJDEP letter of interpretation regarding the presence/absence of wetlands on property and within 150 feet. If wetlands are present, line verified by NJDEP and transition area established. NJDEP reference number on plan.
- (29) Building floor plan, elevation views and first-floor elevation with overall building height.
- (30) Graphic written description of area surrounding the site so the prevailing zoning and actual uses in the area are clear.
- (31) A description of any alternatives that were considered.
- (32) A statement or legal brief of why the variance should be granted.
- (33) Copies of all relevant documents from the Zoning Officer.

(34) Copy of current deed and verification of all utilities, easements and restrictions.

I. Appeal or interpretation of the Zoning Ordinance. *Editor's Note: See Ch. 320, Zoning: Form-Based Code.* An application for an appeal or interpretation of the Zoning Ordinance pursuant to N.J.S.A. 40:55D-70 et seq. shall include the following:

(1) Plan clearly and legibly drawn or reproduced at a scale not smaller than one inch equals 50 feet.

(2) Sheet size, 24 inches by 36 inches.

(3) Name, address, license number of plan preparer, signature, original raised seal.

(4) Title block.

(5) Record owner(s) name and address.

(6) Applicant's name, address, phone number, fax number and e-mail.

(7) Name of project.

(8) Date of map preparation and each subsequent revision.

(9) Certification of accuracy by preparer.

(10) Zoning district of parcel and surrounding lands.

(11) Zoning chart listing existing/proposed requirements for area, setbacks, lot coverage, height, density, floor area, ratio, parking.

(12) Existing structures within 200 feet and distance to property line.

(13) Obtain each block and lot numbered in conformity with the municipal Tax Map as determined by the municipal Tax Assessor and obtain street address from the 911 Coordinators. Copy of Sussex County Planning Board application.

(14) Scale of map, both written and graphic.

(15) North arrow giving reference meridian.

(16) Properties within 200 feet, lot and block number and owner, outline of two-hundred-foot perimeter.

- (17) Tax Map sheet number.
- (18) Key map showing location of tract to be considered in relation to surrounding area, within 200 feet. Scale not less than one inch equals 400 feet and north arrow.
- (19) Area of entire tract.
- (20) Property lines to the nearest hundredth.
- (21) Bearings to the nearest second.
- (22) Lot acreage to the nearest hundredth.
- (23) Building envelopes.
- (24) Location of existing railroads, bridges, culverts, drainage pipe, water and sewer, utility poles and underground utilities.
- (25) Road locations, names, with right-of-way.
- (26) NJDEP letter of interpretation regarding the presence/absence of wetlands on property and within 150 feet. If wetlands are present, line verified by NJDEP and transition area established. NJDEP reference number on plan.
- (27) Building floor plan, elevation views and first-floor elevation with overall building height.
- (28) Graphic written description of area surrounding the site so the prevailing zoning and actual uses in the area are clear.
- (29) A description of any alternatives that were considered.
- (30) A statement or legal brief of why the variance should be granted.
- (31) Copies of all relevant documents from the Zoning Officer.
- (32) Copy of current deed and verification of all utilities, easements and restrictions.

## **§ 240-5. Improvements.**

A. Improvement requirements. Prior to granting of final approval, developer shall have installed or shall have furnished performance guarantees for the ultimate installation of the following improvements.

- B. Streets. All streets shall be surfaced in accordance with applicable standards and specifications of the Town. The construction shall be subject to inspection and approval by the Town Engineer.
- C. Street name signs. Street name signs shall be placed at all street intersections within or abutting the subdivision. Signs shall be of a type approved by the Town and shall be placed in accordance with the standards of the Town of Newton.
- D. Curbs. Curbs shall be constructed and provided for in accordance with the standards and specifications of the Town. The construction shall be subject to inspection and approval by the Town Engineer.
- E. Gutters. Gutters shall be constructed in accordance with the standards and specifications of the Town when the grade exceeds seven percent.
- F. Topsoil protection. To the extent practicable no topsoil shall be removed from the site or used as spoil.
- G. Culverts, storm sewers, water mains and sanitary sewers. All such installations shall be properly connected with an approved system and shall be adequate to handle all present and probable future developments.
- H. Performance guarantee. No final plat shall be approved by the Planning Board until the completion of all such required improvements has been certified to the Planning Board by the Town Engineer, unless the subdivision owner has filed with the Town a performance guarantee in an amount not to exceed 120% of the cost of all such improvements, or uncompleted portions thereof, as approved by the Planning Board, and insuring the installation of such uncompleted portions thereof, as estimated by the Town Engineer, and insuring the installation of such uncompleted improvements on or before an agreed date. The performance guarantee may be in the form of a performance bond, which shall be issued by a bonding or surety company approved by the Town Council; a certified check returnable to the subdivider after full compliance, or any other type of security approved by the Town Attorney. The performance guarantee shall be approved by the Town Attorney as to form, sufficiency and execution. The performance guarantee shall run for a period to be fixed by the Town Council upon the recommendation of the Planning Board, but in no case for a term of more than three years. However, with the consent of the owner and the surety, if there be one, the Town Council may by resolution extend the term of the performance guarantee for an additional period not to exceed three years, in accordance with and subject to the requirements of N.J.S.A. 40:55D-53, as amended. The amount of the performance guarantee may be reduced by the Town Council as provided for by statute and the Land Use Procedures Chapter. *Editor's Note: See Ch. 166, Land Use Procedures.* If the required improvements have not been installed in accordance with the performance guarantee, the obligor and surety shall be liable thereon to the Town for the reasonable cost of the improvements not installed and, upon receipt of the proceeds thereof, the Town shall install such improvements.
- I. Required off-tract improvements. Pursuant to the provisions of N.J.S.A. 40:55D-42, construction of or contributions for off-tract water, sewer, drainage and street improvements may be required in accordance with the following criteria:

- (1) Improvements to be constructed at the sole expense of the applicant. In cases where an off-tract improvement or improvements is necessitated or required by the proposed development application, and where no other property owners receive a special benefit thereby, the Planning Board may require the applicant, as a condition of subdivision approval, at the applicant's sole expense to provide for and construct such improvements as if they were on-tract improvements in the manner provided hereafter and as otherwise provided by law.
- (2) Contributions by developer toward required off-tract improvements:
  - (a) In cases where the need for any off-tract improvement is necessitated by the proposed development application, and where the Planning Board determines that properties outside the development will also be benefited by the improvements, such determination shall be made by the Planning Board in writing. Such resolution or determination of the Planning Board shall specify the off-tract improvements which were necessary and the terms and conditions which shall be imposed upon the applicant to insure their successful and reasonable implementation. In its deliberation as to whether off-tract improvements are required, the Planning Board shall be guided by the rules and regulations specified in the Zoning Chapter, *Editor's Note: See Ch. 320, Zoning: Form-Based Code*, this chapter and the Town Master Plan. The Planning Board may also be guided by counsel from the Planning Board Attorney, Planning Board Engineer, any consultant and other qualified experts, and municipal officials relative to the subject matter.
  - (b) In the event that the Planning Board determines that one or more improvements constitute an off-tract improvement, the Planning Board shall notify the Town Council, specifying the Board's recommendation relative to the estimated cost of such improvements, the applicant's prorated share of the cost, and possible methods or means to implement the improvements, including, but not limited to, performance and maintenance guarantees, cash contributions, development agreements and other forms of surety.
  - (c) The Planning Board shall not grant final approval on the subdivision until all aspects of such conditions have been mutually agreed to by both the applicant and the Town Council, and a written resolution to that effect by the Town Council has been transmitted to the Planning Board.
- (3) Methods of implementation:
  - (a) Performance and maintenance guarantees. Where a performance or maintenance guarantee or other surety is required in connection with an off-tract improvement, the applicant shall be required to follow the same procedures and requirements as specified in this chapter for other improvements.
  - (b) Development agreement. Where a development agreement is required governing off-tract improvements or other conditions as may be required by this chapter, such agreement shall be approved by the Town Council after review

as to form, sufficiency and execution by the Town Council. The agreement shall specify the amount of cash contributions, if any, the method of payment, the relative timing of such payment, and the obligation or obligations to be undertaken by the Town.

(c) Cash contributions, when not required. Cash contributions for off-tract improvements shall not be required under the following conditions:

[1] Where another county or state agency has jurisdiction over the subject improvement and requires a cash contribution, guarantee or other surety of the applicant in lieu of such conditions imposed by the Town; or

[2] Where a benefit assessment or other similar tax levy is imposed upon the applicant for the off-site improvement provided; or

[3] Where the applicant, where legally permissible, can undertake the improvements in lieu of the Town of Newton undertaking the improvement, subject to standards and other conditions as may be imposed by the Town.

(d) Cash contributions, method of payment. Where a cash contribution is required by this chapter, the contribution shall be deposited with the Town Treasurer with a copy of the applicant's transmittal letter forwarded to the Town Council, the Town Engineer and Planning Board. Any and all monies received by the Treasurer shall be deposited in an escrow account for the purpose of undertaking the improvements specified. Where such improvements are not undertaken or initiated for a period of 10 years, the funds may be retained by the Town and may be used for general municipal purposes. In such event, neither the applicant nor any of his heirs, executors, administrators, or grantees shall be liable to the Town for any assessment for the purpose of installing any of the improvements for which the cash contribution was made.

(4) Pro-rata formula for determining applicant's share of off-tract improvements. Where an off-tract improvement is required, the following criteria shall be utilized in determining the proportionate share of such improvement to the applicant:

(a) Street widening, alignment, corrections, channelization of intersections, construction of barriers, new or improved traffic signalization, signs, curbs, sidewalks, trees, utility improvements not covered elsewhere, and the construction of new streets and other similar street or traffic improvements. The applicant's proportionate share shall be in the ratio of the estimated peak hour traffic generated by the proposed property or properties, to the sum of the present deficiency in peak hour traffic capacity of the present facility, and the estimated peak hour traffic generated by the proposed development. The ratio thus calculated shall be increased by 10% for contingencies.

(b) Water distribution facilities, including the installation of new water mains, the extension of existing water mains, the

relocation of such facilities, and the installation of appurtenances associated therewith. The applicant's proportionate cost shall be in the ratio of the estimated daily use of water from the property or properties in gallons to the sum of the deficiency in gallons per day for the existing system or subsystem, and the estimated daily use of water for the proposed development. The ratio thus calculated shall be increased by 10% for contingencies.

- (c) Sanitary sewer distribution facilities including the installation, relocation or replacement of collector and interceptor sewers and the installation, relocation or replacement of other appurtenances associated therewith. The applicant's proportionate cost shall be in the ratio of the estimated daily flow in gallons to the sum of the present deficient capacity for the existing system or subsystem and the estimated daily flow from the proposed project or development. In the case where the peak flow for the proposed development may occur during the peak flow period for the existing system, the ratio shall be the estimated peak flow rate from the proposed development in gallons per minute, to the sum of the present peak flow deficiency in the existing system or subsystem and the estimated peak flow rate from the proposed development. The greater of the two ratios thus calculated shall be increased by the ratio used to determine the cost to the applicant.
- (d) Stormwater and drainage improvements, including installation, relocation or replacement of transmission lines, culverts, catch basins and the installation, relocation or replacement of other appurtenances associated therewith. The applicant's proportionate cost shall be in the ratio of the estimated peak surface runoff as proposed to be delivered into the existing system measured in cubic feet per second, to the sum of the existing peak flow in cubic feet per second deficiency for the existing system and the estimated peak flow as proposed to be delivered. The ratio thus calculated shall be increased by 10% for contingencies. The applicant's engineer shall compute the drainage basin area and the area occupied by the development. Where no drainage system exists which will receive the flow of surface water from the applicant's development, the applicant shall furnish all drainage rights-of-way deemed to be necessary by the Planning Board.
- (e) In calculating the proportionate or prorated amount of the cost of any required off-tract facilities which shall be borne by the applicant, the Planning Board shall also determine the prorated amount of cost to be borne by other owners of lands which will be benefited by the proposed improvements.

J. Tax Map maintenance. The fees as outlined in Chapter **100**, Fees and Costs, of the Newton Revised General Ordinances shall be paid by the applicant for the cost of updates and modifications to the Town of Newton's tax maps as a result of applications approved by the Newton Planning Board. The fee shall be paid at the time that the deed and/or plot plan is signed on behalf of the Board.

## § 240-6. Street and stormwater design standards.

- A. Design standards requirements. The developer shall observe the following requirements and principles of land development for site plan and subdivision design.
- B. General. The subdivision plat shall conform to design standards that will encourage good development patterns within the municipality. The streets, drainage rights-of-way, school sites, public parks and playgrounds shown on an officially adopted Master Plan or Official Map shall be considered in approval of subdivision plats. Where no Master Plan or Official Map exists, streets and drainage rights-of-way shall be shown on the final plat and shall be such as to lend themselves to the harmonious development of the municipality and enhance the public welfare in accordance with the following design standards set out in this chapter.
- C. Streets.
- (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) Subdivisions abutting arterial streets shall provide a marginal service road or reverse frontage with a buffer strip for planting, or some other means of separation of through and local traffic as the Planning Board may determine appropriate.
  - (3) The right-of-way width of every street shall be measured from lot line to lot line and shall not be less than 50 feet in width, or such greater width as shown on the official or the adopted Master Plan, except that the Planning Board, in its discretion, may permit marginal access streets and alleys having a width of not less than 40 feet. The right-of-way width for internal roads in commercial and industrial developments 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.
  - (4) No subdivision showing reverse strips controlling access to streets shall be approved except where the control and disposal of land comprising such strips has been placed with the governing body under conditions approved by the Planning Board.
  - (5) Subdivisions that adjoin or include existing streets that do not conform to widths as shown on the Master Plan or Official Map or the street width requirements of this chapter shall dedicate additional width along either one or both sides of said road. If the subdivision is along one side only, 1/2 of the required extra width shall be dedicated.
  - (6) Grades of arterial and collector streets shall not exceed 4%. Grades on other streets shall not exceed 10%. No street shall have a minimum grade of less than 1/2 of 1%.

- (7) Street intersections shall be as nearly at right angles as is possible and in no case be less than 60°. The block corners at intersections shall be rounded at the curblines with the curve having a radius of not less than 25 feet.
- (8) Street jogs with center-line offsets of less than 125 feet shall be prohibited.
- (9) A tangent at least 100 feet long shall be introduced between reverse curves on arterial and collector streets.
- (10) When connecting street lines deflect from each other at any one point by more than 10° and not more than 45°, they shall be connected by a curve with a radius of not less than 100 feet for minor streets and 300 feet for arterial and collector streets.
- (11) All changes in grade shall be connected by vertical curves of sufficient radius to provide a smooth transition and proper sight distance.
- (12) Dead-end streets shall not be longer than 600 feet and shall provide a turnaround at the end with a radius of not less than 42 feet and tangent whenever possible to the right side of the street.
- (13) No street shall have a name which will duplicate or so nearly duplicate as to be confused with the names of existing streets. The continuation of an existing street shall have the same name.
- (14) Where a tract is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged so as to allow the opening of future streets and logical further subdivisions.
- (15) Private streets shall not be approved nor shall public improvements be approved for any private street.

#### D. Blocks.

- (1) Block length and width of acreage within bounding roads shall be such as to accommodate the size of lots required in the area by the Zoning Ordinance, *Editor's Note: See Ch. 320, Zoning: Form-Based Code*, and to provide for convenient access, circulation control and safety of street traffic. Block lengths shall not under any circumstances exceed 1,200 feet.
- (2) In blocks over 1,000 feet long, pedestrian crosswalks may be required in locations deemed necessary by the Planning Board. Such walkway shall be 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.

## E. Lots.

- (1) Lot dimensions and area shall not be less than the requirements of the Zoning Ordinance. *Editor's Note: See Ch. 320, Zoning: Form-Based Code.*
- (2) Insofar as is practical, lots shall be rectangular in shape with side lot lines at right angles to straight streets and radial to curved streets.
- (3) Each lot must front upon an approved street at least 50 feet in width, except lots fronting on marginal access streets described in § **240-6C(3)** of this chapter.
- (4) Where extra width has been dedicated for widening of existing streets, lots shall begin at such extra width line, and all setbacks shall be measured from such line.
- (5) Where there is a question as to the suitability of a lot or lots for their intended use due to factors such as shape, sight distances, topography, rock formations, wetlands, flood conditions or similar circumstances, the Planning Board may, after adequate investigation, withhold approval of such lots.
- (6) Corner lots for residential use shall have extra width to permit appropriate building setbacks from and orientation to both streets.

## F. 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 15 feet wide and located in consultation with the companies or municipal departments concerned.
- (2) Where a subdivision is traversed by a watercourse, drainageway, channel, or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the line of such watercourse, and such further width or construction, or both, as will be adequate for the purpose.
- (3) Natural features of every lot shall be sufficient to provide amply for the front, rear and side yard requirements of the Zoning Ordinance *Editor's Note: See Ch. 320, Zoning: Form-Based Code.* of the Town for the district or zone within which the land is located and the use for which the land is intended to be used.

G. Stormwater control. Projects which meet the definition of "major development" as defined in § **240-2**, Definitions, shall comply with all standards set forth in Chapter **258**, Stormwater Control.

H. Lot dimensions. The dimensions of every lot shall be sufficient to provide for the front, rear and side yard requirements set forth in the Zoning Ordinance *Editor's Note: See Ch. 320, Zoning: Form-Based Code.* of the Town for the district or zone within which the land is located, and the areas shall provide adequate space as is dictated by good planning for which the land is intended to be used.

## § 240-7. Subdivision and site plan general design standards.

A. General design standards. In reviewing any application for development, the Board shall consider the following standards, however, where applicable, residential site improvement standards may apply:

(1) Circulation.

- (a) The Board shall consider pedestrian and vehicular traffic movement within and adjacent to a lot or tract with particular emphasis on the provision and layout of parking areas, off-street loading and unloading, movement of people, goods and vehicles from access roads, within the lot or tract, between buildings and between buildings and vehicles. In site plans, the Board shall determine which roads shall be public and which shall remain private.
- (b) The Board shall ensure that all parking areas are landscaped and spaces are usable and are safely and conveniently arranged. Access to a lot or tract from adjacent roads shall be designed so as to interfere as little as possible with traffic flow and to permit vehicles a safe ingress and egress to the lot or tract.
- (c) The circulation plan of each development shall reflect the Master Plan's circulation plan element. Major access improvements in critical environmental areas shall be discouraged. The location and provision of bikeways, sidewalks and other pedestrian linkages shall be encouraged and clearly indicated as outlined in § **240-7H**.
- (d) Applicants shall be encouraged to develop and implement transportation options where appropriate, i.e., mass transit programs, the use of vans, carpooling, construction of bike paths and bike storage areas and construction of convenient bus pickup and dropoff points. In order to minimize peak-hour traffic impacts, applicants shall encourage staggered starting and quitting times and changes in work hours where appropriate and include the details within the application to the Board.
- (e) All development adjacent to or otherwise involving New Jersey State Highway Route 206 shall conform with the State Highway Access Management Code adopted by the Commissioner of Transportation under Section 3 of the State Highway Access Management Act, N.J.S.A. 27:7-91. Any development adjacent to or involving a county road within the Town shall conform with the Access Management Code adopted by the County of Sussex, N.J.S.A. 27:16-1. Land development adjacent to or involving an existing or proposed municipal street shall conform with any

municipal access management code adopted pursuant to N.J.S.A. 40:67-1.

- (f) Pedestrian walkways and bikeways shall be designed where appropriate as outlined in the Town's Circulation Plan Element and according to Subsection 20-22.5, Minimum Design Standards for Complete Streets.
- (2) Design and building layout.
- (a) The design and layout of buildings and parking areas shall meet the requirements of Chapter **320**. Particular attention shall be given to energy conservation, safety and fire protection and impact on surrounding development. Architectural design shall meet the requirements of Chapter **320**, or, if in the Historic District, also Chapter **139**.
  - (b) Fire escapes shall be constructed only against the side or rear wall of a building and shall be located and/or screened so as not to detract from the appearance of such buildings.
  - (c) All new buildings shall strengthen the particular design features of their locale, by, for example, framing scenic views, defining and inviting the use of open spaces or continuing particular and desirable design features or statements. Design standards from Chapter **320** and, if in the Historic District, Chapter **139** shall apply.
  - (d) The rhythm of structural mass to voids, such as windows and entries, of a front facade shall relate to rhythms established in adjacent buildings if the rhythms of such adjacent buildings are aesthetically pleasing.
  - (e) If several storefronts are to be located in one building or are to be developed on lots where zero lot lines are permitted or required, such storefronts shall be unified in overall design treatment, particularly as to the design of windows and door openings, and the use of materials and colors. All storefronts shall include display windows with a sill height of not more than two feet from grade. Commercial buildings containing separate stores or open spaces shall be designed with architectural relief and interesting facade treatment to suggest the creation of separate spaces instead of repeated spaces of the same visual appearance.
  - (f) All building additions shall be designed to reflect the existing building in terms of scale, materials, fenestration and color. A change in scale may require a transitional design element between the addition and the existing building. Facade renovations should include as few different materials as possible.
  - (g) Where large structures are required, massing and blank walls shall be avoided as much as possible and, where necessary, relieved by variation and architectural relief and details. Excessively expansive blank walls are prohibited. Offsets are needed every 80 feet. Building offsets shall be provided along each building wall to relieve the visual effect of a singly long wall. Rooflines shall also be varied. An individual building shall use a combination of story

heights to provide further visual relief. Building designs should incorporate details such as masonry chimneys, cupolas, dormers and similar features of architectural appeal.

- (h) Roof shape and material shall be architecturally compatible with the rest of the building and shall reflect surrounding patterns.
- (i) Materials shall be selected for suitability to the type of buildings and the design in which they are to be used. Buildings shall have the same materials, or those that are architecturally harmonious, used for all building walls and other exterior building components wholly or partly visible from public ways.
- (j) Colors shall be selected to be harmonious. Only compatible accent colors shall be used. Building colors should reflect earth tones or historical colors. Accent or complementary colors, harmonizing with the main color, may be used for trim, awnings and other accents.
- (k) Environmental considerations. Environmental elements relating to prevention of soil erosion, protection of significant vistas or views, preservation of trees and protection of watercourses, resources, topography, soil and animal life shall be reviewed, and the design of the plan shall minimize any adverse impact on these elements. The requirements of §§ **240-12**, Riparian zones, 240-11, Steep slopes, and 240-10, Wellhead protection, shall apply.

### (3) Landscaping.

- (a) Landscaping shall be provided as part of any overall site plan design and integrated into building arrangements, topography, parking and buffering requirements. Landscaping includes trees, bushes, shrubs, ground cover, perennials, annuals, plants, sculpture, art, fountains, planters and/or the use of building and paving materials in a fashion that is aesthetically pleasing in a design that is acceptable to the Planning Board.
- (b) The existing sense and appearance of any natural scenic qualities on a tract shall be retained by the careful placement of buildings and improvements.

### (4) Buffering.

- (a) 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.
- (b) Extensive buffering shall be required where intensive land uses abut less intensive uses. Existing natural vegetation, if

appropriate for the above-stated purposes, shall be retained.

(5) Open space.

- (a) Open space shall be provided as part of a site plan and shall serve as a buffer and/or help integrate buildings and uses. Undeveloped open space should have as a prime objective the preservation of a tract's natural amenities and vistas. Ponds, rock outcroppings, wooded areas, steep slopes, ravines and streambeds are prime lands recommended for undeveloped open space.
- (b) Open spaces shall be located to provide for maximum usability and to create a harmonious relationship between buildings.

(6) Signs.

- (a) Signs shall be designed so as to be aesthetically pleasing, coordinated with other signs on the site and in the area through a master signage plan and located so as to achieve their purpose without constituting hazards to vehicles and pedestrians.
- (b) Design theme. There should be a coordinated graphics design theme throughout any site plan. The design theme shall include style and size of lettering, construction materials, colors, location, type of pole or standard, size and lighting. Color of letters and background should be carefully considered in relation to the color of the material or buildings or where the signs are proposed to be located. Size and style shall meet the requirements of Chapter **320**.
- (c) Location. Signs should be located so as not to create a hazard. The location of signs should be selected in terms of traffic visibility.

(7) Utilities.

- (a) The storm drainage system, sanitary waste disposal system, water supply system, solid and sanitary waste collection and disposal plan and electrical and other distribution systems shall be reviewed and approved.
- (b) Utilities shall be located underground for all new developments. In such event that certain aspects of utilities cannot be installed underground, facilities such as pumping stations or transformers shall be enclosed in buildings or effectively screened with landscaping and/or buffering as approved by the Board.
- (c) Particular emphasis shall be given to the establishment of drainage rights-of-way, analysis of the adequacy of existing systems and the need for improvements, both on site and off site, to adequately control the rate, volume and

velocity of storm drainage, provide for treatment of effluent and to maintain an adequate supply of potable water at sufficient pressure.

(d) Any proposed development which shall be adjacent or proximate to, or otherwise involve, potable water supply reservoirs or wells shall include adequate and suitable protections for such potable water supply from pollution or other degradation of water quality resulting from the development, or other uses of surrounding land areas. All such provisions shall be in accordance with § **240-10**, Wellhead protection.

(8) Street furniture and street trees. The site plan shall provide for street furniture made of the same or similar materials to ensure design continuity and be appropriate to the particular use. These may include, but not limited to, public art, benches, bike racks, trash receptacles, bus shelters, tree planters and directories. Street trees shall be planted where deemed necessary by the Planning Board along the frontage of any proposed development.

(9) Topsoil protection. To the extent practicable, no topsoil shall be removed from the site or used as spoil. Topsoil stripped and stockpiled during the course of construction shall be redistributed so as to provide at least four inches of even cover to all areas of the development and shall be stabilized by seeding or planting.

B. Specific design standards. In reviewing any application for development, the Board shall consider the following standards. Where applicable, the Residential Site Improvement Standards (RSIS), as amended from time to time, shall apply.

(1) Blocks. Block length and width or acreage within surrounding roads shall be such as to accommodate the size of lots required in the area by this chapter and to provide for convenient access, circulation control and safety of street traffic.

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

(3) Where extra width has been dedicated for the widening of existing streets, lot areas shall begin at such extra line and setbacks shall be measured from such line.

(4) Where there is a question as to the suitability of a lot or lots for their intended use due to factors such as but not limited to wetlands, rock formations, areas of subsidence or flood conditions, the Board may withhold approval of such lots.

(5) General buffers.

(a) Visual screens provided through landscaping shall be designed in such a manner as to provide a barrier on a year-round basis around the view of the area to be screened.

- (b) Existing vegetation within the buffer shall be preserved, where possible, and supplemented with plantings and other buffer devices to provide screening of residences.
- (c) Buffer dimensions shall be measured from property lines.
- (d) Within any buffer area, utilities, driveways and streets may be permitted to cross at right angles to the buffer.
- (e) No buildings, signs (other than directional signs), structures, storage of materials or parking shall be permitted within the buffer area.
- (f) All plantings shall be installed according to accepted horticultural standards.
- (g) When required. Buffering shall be required when topographical, natural vegetative or other barriers do not provide reasonable screening and when the Board determines that there is a need to shield the site from adjacent properties to minimize adverse impacts such as incompatible land uses, noise, glaring light and traffic. In small lot developments, when building design and siting do not provide privacy, the Board may require landscaping, fences or walls to ensure privacy and screen dwelling units. Required buffering shall be maintained for the life of the project.
- (h) Dimensional requirements. Where more intensive land uses abut less intensive uses, a buffer strip of a width of not less than 20 feet shall be designed and maintained. The length of such strip shall be designed to fulfill the function identified in Subsection **B(5)(i)** of this section. Parking areas, garbage collection and utility areas and loading and unloading areas shall be buffered around their perimeter by a buffer strip having a minimum width of 20 feet. Where residential subdivisions abut higher-order streets such as collectors or arterials, lots should front on lower-order streets, and a landscaped buffer area shall be provided along the roadway. The buffer strip shall be a minimum of 25 feet wide but not to exceed 10% of any single lot area. For reasons of public health, safety or welfare, these requirements may be reasonably increased by the Board. Trees and shrubs shall be required in such instances.
- (i) Design. Arrangement of plantings in buffers shall provide maximum protection to adjacent properties and avoid damage to existing plant material. The plantings shall be arranged in double staggered rows. If planting berms are used, the minimum top width shall be four feet and the maximum side slope shall be 2:1. No berm shall be so high in height or mass as to be disproportionate to the characteristics of its setting.
- (j) Planting specifications. Plant materials shall be a minimum of six feet in height and planted in such a fashion that a screen at least eight feet in height shall be produced within three growing seasons. All plantings shall be deer resistant, such as Blue Spruce, and installed according to accepted horticultural standards.

(k) Maintenance. Plantings shall be watered regularly with a sprinkler system or other means preferably using recycled water in a manner appropriate for the specific plant species through the first growing season, and dead or dying plants shall be replaced by the developer during the next planting season. No buildings, structures, storage of materials or parking shall be permitted within the buffer area. Buffer areas shall be maintained and kept free of all debris, rubbish, weeds and tall grass.

(l) Basic standards. The following buffer requirements shall apply unless it is shown or apparent to the Board that an alternative arrangement is more suitable:

[1] Along the side and rear lot lines of all commercial, industrial and other nonresidential uses: 20 feet.

[2] Along the front lot line of light industrial, manufacturing or other higher-intensity nonresidential uses: 20 feet.

[3] Along the side and rear lot lines of nonresidential uses that abut residential zones and uses: 25 feet.

[4] Along the front lot lines of multifamily residential uses: 25 feet; except in the T-5 and T-6 Zones.

[5] Buffers need not be added cumulatively to setback requirements; a buffer area shall instead be an overlay of a required setback.

(6) Landscaping, tree protection and replacement.

(a) All lots, regardless of the type of use, shall have a minimum of 15% (except in the T-6 Zone) of the lot landscaped. All areas not occupied by buildings, parking areas, patios, walkways and/or any other impervious surface shall be suitably landscaped. No landscaping shall interfere with required sight triangles.

(b) Deciduous trees shall have at least a two-and-one-half-inch dbh and 12 feet in height at planting, and evergreen trees shall be at least six feet tall. All trees shall be balled and burlapped and be of specimen quality as established by the American Association of Nurserymen.

(c) Any landscaping which, within two years of planting, dies, for any reason, shall be replaced by the developer(s) at his expense by means of a developer's agreement or a bond agreement as determined by the Town Council.

(d) Tree protection and replacement must be undertaken as part of the site plan. All existing trees over three inches in dbh shall be surveyed and shown on the site plan with the species, dbh, and removal status. Trees shown to be removed shall be replaced with trees that will equal 50% of the total dbh at the time of planting to replace the trees proposed for removal. For example, if a ten-inch dbh tree is proposed to be removed the developer should propose to replace it with a five-inch dbh tree. Where a developer cannot or does not wish to replace all trees on

the site, that developer may pay a fee per tree into the Town of Newton Tree Bank at a fee as established in Chapter **100**, Fees and Costs.

(e) The following landscape principles shall be considered:

[1] Landscaping shall be located to provide for climate control.

[2] Landscaping shall be used to accent and complement buildings.

[3] Landscaping shall be provided in public areas, parking areas, recreation sites and adjacent to buildings.

[4] Vines and climbing plants shall be considered for large expanses of wall.

[5] Massing trees shall be considered at critical points.

[6] Smaller trees shall be used on narrow streets.

[7] Ground cover shall be used to prevent erosion.

[8] A variety and mixture of landscaping shall be provided. Consideration shall be given to susceptibility to disease, colors, season, textures, shapes, blossom and foliage in selecting species.

[9] Local soil conditions and water availability shall be considered in the choice of landscaping.

[10] Existing trees located within 10 feet of any street right-of-way shall be maintained unless shown to be removed as part of an approved plan. The existing grade within that space shall not be disturbed without such approval.

[11] Entrances to nonresidential lots shall be given special landscaping treatment.

[12] The impact of any proposed landscaping plan at various time intervals shall be considered. Shrubs may grow and eventually block sight distances. Foundation plants may block outbuildings.

[13] Existing large trees (more than six-inch dbh) not proposed for removal shall be saved by not varying the grade around the trees by more than six inches to 12 inches within the drip circle, by construction of tree wells and by erecting protective fences. Clumps or masses of trees shall be protected. All buildings shall be sited to preserve the maximum number of trees on the site. Existing large trees over 12 inches dbh should be given special consideration for preservation.

[14] Landscaping in parking areas shall be provided in accordance with this chapter.

[15] Impervious materials are discouraged in any landscape area. Weed-retardant mulch, porous nonwoven synthetic landscape fabric or other materials shall be used.

[16] Decorative stones are discouraged as a ground cover. Vegetative ground cover is encouraged.

[17] On site reuse of rainwater and grey water for irrigation is encouraged.

(7) Fences or walls.

- (a) Fences or walls in excess of 18 inches in height shall be considered as accessory uses to a principal permitted use and shall be permitted in accordance with the general standards set forth below.
- (b) Wherever possible, natural screening shall be used to achieve privacy. However, where a privacy fence appears to offer a better alternative than the absence of such fence or natural screening due to circumstances involving the characteristics of the affected properties, fences conforming to this section shall be permitted.
- (c) The finished side of all fence surfaces shall face adjacent properties.
- (d) No fence shall be erected of barbed wire or similar harmful elements, nor constructed in any manner which might be dangerous to persons or animals, except that this restriction shall not apply to farms.
- (e) No fence or wall shall be erected in a prescribed sight triangle.
- (f) No fence anywhere in a front yard, including a fence running along or approximately parallel to a side lot line within a front yard, shall be more than four feet high.
- (g) No fence, running substantially along a rear lot line, or approximately parallel thereto, or otherwise in a rear yard, shall exceed six feet in height measured from average grade corresponding to each eight-foot section of fencing. If such fence has decorative scalloped panels or pickets along its upper edge, height may be measured to the lowest point of such edge, thus allowing posts and corresponding elements to exceed the height limitation of this subsection, but in no event by more than one foot. Where a rear yard or side yard of a corner lot abuts a side lot line and front yard of an adjacent lot, then in no event shall a fence in such rear or side yard on the corner lot exceed four feet in height such portion thereof which lies parallel to or otherwise substantially alongside the front yard of the adjacent lot.
- (h) All fencing other than a stone fence, stone (or masonry) wall, or iron decorative type fence shall be constructed of

wood or a material that is relatively indistinguishable from wood.

(i) Walls of masonry or natural stone (not retaining walls), such as New England drywalls and rows of fieldstone, shall not exceed a height of four feet.

(j) Without limitation hereto, the following fences and fencing materials are specifically prohibited:

[1] Barbed wire or other hazardous construction or material unless on a farm.

[2] Canvas, fabric or cloth fences.

[3] Electrically charged fences unless on a farm.

[4] Temporary fences, such as snow or silt fences, except as the latter may be necessary during development or other approved land disturbance.

[5] Plastic slats or other inserts in woven wire fences.

[6] Any fence, wall or similar structure as well as shrubbery screening which substantially cuts off light or air or which may cause a nuisance, dangerous condition or a substantial fire-fighting impediment shall be prohibited.

[7] Notwithstanding § **240-7B(7)(h)**, woven wire fencing may be substituted for wood or simulated wood fencing for safety, a dog run or other appropriate reason; provided, however, that the closed loop edge shall be at the top, and no part of such fencing shall lie within a front yard.

[8] Swimming pool fences. Every private swimming pool shall have a fence enclosure which complies with (BOCA) Building Officials and Code Administrators International.

[9] Retaining wall. Any retaining wall 48 inches or greater in height shall be designed by a licensed professional engineer and shall require a building permit.

### C. Outdoor lighting.

(1) Purpose. The governing body of the Town of Newton does herein find that regulation of outdoor lighting in the Town of Newton is necessary to prevent misdirected or excessive artificial light, caused by inappropriate or misaligned light fixtures that produce glare, light trespass (nuisance light) and/or unnecessary sky glow; and also that such regulation is necessary to discourage the waste of electricity and to improve or maintain nighttime public safety, utility and security.

- (2) All outdoor light fixtures installed and thereafter maintained, other than those serving one- and two-family dwellings, shall comply with the requirements as specified below:
- (a) Where used for security purposes or to illuminate walkways, roadways and parking lots, only shielded light fixtures shall be used.
  - (b) Where used for commercial and industrial purposes such as in merchandise display areas, work areas, platforms, signs, architectural, landscape or sports or recreational facilities, all light fixtures shall be equipped with automatic timing devices and comply with the following:
    - [1] Light fixtures used to illuminate flags, statues or any other objects mounted on a pole, pedestal or platform shall use a narrow cone beam of light that will not extend beyond the illuminated object.
    - [2] Other upward directed architectural, landscape or decorative direct light emissions shall have at least 90% of their total distribution pattern within the profile of the illuminated structure.
    - [3] Recreational and sports facility lighting shall be shielded whenever possible. Such lighting shall have directional and glare control devices, when necessary, to comply with § **240-7C(3)** and be equipped with automatic timing devices.
    - [4] Externally illuminated signs, including commercial billboard, building identification or other similar illuminated signs, shall comply with the following:
      - [a] Top-mounted light fixtures shall be shielded and are preferred.
      - [b] When top-mounted light fixtures are not feasible, illumination from other positioned light fixtures shall be restricted to the sign area. Visors or other directional control devices shall be used to keep spill light to an absolute minimum. Internally illuminated signs are prohibited.
  - (c) All other outdoor lighting shall use shielded light fixtures.
  - (d) For commercial lighting after operating hours, only minimal lighting necessary for security purposes shall remain on, all other lighting shall be turned off, on motion sensors or on timers.
  - (e) All floodlight-type fixtures, once properly installed, shall be permanently affixed in the approved position.
  - (f) Foundations supporting lighting poles not installed four feet behind the curb shall not be less than 24 inches above the ground.

(g) When 50% or more of existing outdoor light fixtures are being replaced or modified, then all lighting must be made to conform to the provisions of this lighting ordinance.

(3) Light trespass (nuisance light).

(a) All light fixtures, except streetlighting, shall be designed, installed and maintained to prevent light trespass, as specified below:

[1] At a height of five feet above the property line of subject property, illuminations from light fixtures shall not exceed 0.1 footcandle in a vertical plane on residentially zoned property.

[2] Outdoor light fixtures properly installed and thereafter maintained shall be directed so that there will not be any objectionable direct glare source visible above a height of five feet from any property or public roadway.

[3] Note: Light fixtures near adjacent property may require special shielding devices to prevent light trespass.

(4) Illuminance and luminance requirements.

(a) Illuminance and luminance requirements shall be as set forth in the current editions of the IESNA Lighting Handbook and other IESNA publications and this chapter shall adopt those standards.

(b) Streetlighting. Average IESNA illuminance recommendations should not be exceeded. IESNA average to minimum illuminance uniformity ratios are to be used as a guide for designing safe and adequate roadway lighting.

(c) Outdoor parking facilities. Outdoor parking lot illuminance shall be based on certain illuminance specifications recommended by the IESNA, as contained in Schedule A. *Editor's Note: Schedule A is included at the end of this chapter.*

(d) All other illuminance uses shall not exceed IESNA recommendations.

(e) Internally illuminated signs shall not exceed IESNA luminance recommendations.

(5) Electric utility floodlights.

(a) No electric utility floodlight intended for property illumination shall be located within the public right-of-way on any public roadway or on any property unless:

[1] The luminaire is sufficiently shielded and aimed so that no objectionable direct glare source is visible at any point

on the roadway where the viewing height is five feet or greater and when the distance from the mounting pole is 70 feet or greater.

[2] The property being illuminated does not exceed the maximum maintained illuminance levels to perform the lighting task prescribed in § **240-7C(4)**, Illuminance and luminance requirements, of this chapter.

[3] All electric utility floodlights shall be subject to the requirements in § **240-7C(3)**, Light trespass (nuisance light), of this chapter.

(6) On-site outdoor lighting energy conservation.

(a) The design and installation of outdoor lighting on the site of a subdivision or site plan shall be constructed so as to conform to the standards specified herein:

[1] All outdoor lighting not necessary for security purposes shall be reduced, activated by motion sensor devices or turned off during nonoperating hours. Illuminated signs are excluded from this requirement.

[2] All lighting shall be designed to prevent misdirected or excessive artificial light and to maximize energy efficiency.

(7) Submission of plans.

(a) Submission of plans and evidence of compliance shall include the following:

[1] Description of outdoor light fixtures including component specifications such as lamps, reflectors, optics, angle of cutoff, supports, poles and include manufacturers' catalog cuts.

[2] Locations and description of every outdoor light fixture and hours of operation.

[3] Maintained horizontal illuminance shown as footcandles (after depreciation):

[a] Maximum.

[b] Minimum.

[c] Average, during operating and nonoperating hours.

[d] Average-to-minimum-uniformity ratio.

[4] Computer-generated photometric grid showing footcandle readings every 10 feet and the average footcandles.

[5] Foundation details for light poles.

[6] When not using IESNA recommendations, submit reasons and supply supporting documentation.

(8) Prohibitions. Searchlights or flashing or animated signs are prohibited.

(9) Enforcement.

(a) Violation of any provision of this subsection shall be cause for an enforcement document to be issued to the violator by the Town's Code Enforcement Officer or the other official or enforcing agency designated by the Mayor and Council. The recipient of an enforcement document shall be entitled to a hearing in Municipal Court having jurisdiction to contest such action.

(b) Any person who violates any provision of this subsection shall be subject to a civil penalty for each penalty of not more than \$1,250; imprisonment for a term not exceeding 90 days, a period of community service not exceeding 90 days, or any combination thereof. If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate and distinct offense.

(c) No provision of this subsection shall be construed to impair any common law, statutory or regulatory cause of action or legal remedy thereof, or any personal injury or damage arising from any violation of this subsection or from other law.

D. Utilities.

(1) All wiring shall be laid underground.

(2) Screening of exterior mechanical equipment.

(a) Electrical and mechanical equipment shall be located within the interior of a building wherever possible. When an interior location is not practical, such equipment shall be placed in a location where it can be substantially screened from public view. Roof-mounted equipment should be situated towards the rear of the building on pitched roofs and shall be hidden with parapets or screens of materials on flat roofs which are in harmony with the building's architecture. The furnace exhaust should be boxed in to resemble a chimney.

(b) Process equipment such as stacks, hoppers, compactors, bins, storage vessels, blowers, compressors, piping, ducting, conveyors and the like shall be located and screened so as to minimize the visual impact on adjacent

properties.

- (c) Ground-level utilities shall be screened so as to be unobtrusive when viewed from the public rights-of-way and adjacent uses.

E. Monuments. Monuments shall be installed in compliance with the requirements of N.J.S.A. 46:23-9.11q (the Map Filing Law). *Editor's Note: N.J.S.A. 46:23-9.11 was repealed by L. 2011, c. 217, § 2, effective 5-1-2012.* Monuments may be required delineating critical area easements and conservation easements at the discretion of the Board.

F. Storage and disposal of waste.

- (1) Outdoor refuse and recycling containers shall be visually screened within a durable enclosure so as not to be visible from adjacent lots or sites, neighboring properties or streets.
- (2) No refuse and recycling storage areas shall be permitted between a street and the front of a building.
- (3) No refuse and recycling storage area shall be located so as to prevent natural runoff from such areas or impair the existing water quality of any stream, watercourse or aquifer.
- (4) All materials or wastes which might cause fumes, dust, odor or which constitute a fire hazard or which may be edible or otherwise attractive to rodents, bears or insects shall be stored outdoors only if enclosed in sealed and covered containers which are adequate to eliminate such hazards. Containers shall be specified by the manufacturer to be animal resistant.
- (5) Refuse and recycling collection areas shall be effectively designed to contain all refuse generated on site and deposited between collections.
- (6) Refuse and recycling collection enclosures shall be designed of durable materials with finishes and colors which are unified and harmonious with the overall architectural theme.
- (7) Refuse and recycling collection areas shall be located to provide clear and convenient access for refuse collection vehicles.
- (8) Medical, hazardous or other regulated waste shall meet the state and federal standards for such materials.
- (9) Recycling facilities for new multifamily housing developments.
  - (a) There shall be included in any new multifamily housing development that requires subdivision or site plan approval

an indoor or outdoor recycling area for the collection and storage of residentially generated recyclable materials. The dimensions of the recycling area shall be sufficient to accommodate recycling bins or containers which are of adequate size and number and which are consistent with anticipated usage and with current methods of collection in the area in which the project is located.

- (b) The recycling area shall be conveniently located for the disposition of source-separated recyclable materials by residents of the multifamily housing development, preferably near, but clearly separated from, a refuse dumpster.
- (c) The recycling area shall be well lit and shall be safely and easily accessible by recycling personnel and vehicles. Collection vehicles shall be able to access the recycling area without interference from parked cars or other obstacles. Reasonable measures shall be taken to protect the recycling area and the bins or containers placed therein against theft of recyclable materials, bins or containers.
- (d) Any bins or containers which are used for the collection of recyclable paper or cardboard and which are located in an outdoor recycling area shall be equipped with a lid, or otherwise covered, so as to keep the paper or cardboard dry.
- (e) Signs clearly identifying the recycling area and the materials accepted therein shall be posted adjacent to all points of access to the recycling area. Individual bins or containers shall be equipped with signs indicating the materials to be placed therein.
- (f) Landscaping and fencing shall be provided around any outdoor recycling area and shall be developed in an aesthetically pleasing manner.

#### G. Streets.

- (1) All streets shall be constructed in accordance with the Town's road standards. Where applicable, the Residential Site Improvement Standards, as amended from time to time, shall apply.
- (2) The arrangement of streets shall be such as to provide for the appropriate extension of existing streets. New road systems shall be in accordance with the Master Plan.
- (3) Minor streets shall be so designed as to discourage through traffic.
- (4) Developments abutting through traffic streets may be required to provide a marginal service road or some other means of separation of through and local traffic as the Board may determine. Major arterial streets shall not be entered by new streets other than major collector streets.

- (5) Developments which adjoin or include existing streets and the streets do not conform to widths, as shown on the Master Plan, or the street width requirements of this chapter, shall dedicate, by deed, additional width along either one or both sides of said street. If the development is along one side only, 1/2 of the required extra width shall be dedicated. Grades of through traffic streets and collector streets shall not exceed 10%. Grades on other streets shall not exceed 12%. Streets shall have a minimum grade of 1%.
- (6) Street intersections shall be as nearly at right angles as is possible and in no case shall be less than 60°. The block corners at intersections shall be rounded at the property line with a curve radius of not less than 25 feet.
- (7) Street jogs with center-line offsets of less than 125 feet shall be prohibited.
- (8) A tangent at least 100 feet long shall be introduced between reverse curves on through traffic and collector streets.
- (9) When connecting street lines deflect from each other at any one point by more than 10° and not more than 45°, they shall be connected by a curve with a center-line radius of not less than 100 feet for minor streets and 300 feet for through traffic and collector streets.
- (10) All changes in grade shall be connected by vertical curves of sufficient radius to provide a smooth transition and proper sight distance.
- (11) Dead-end streets (culs-de-sac) shall provide a turnaround at the end with a pavement radius of not less than 42 feet and tangent, whenever possible, to the right side of the street. If a dead-end street is of a temporary nature, a similar turnaround shall be provided and provisions shall be made for future extension of the street, reversion of the excess right-of-way to the adjoining properties and removing cul-de-sac pavement. Planting islands of sufficient size to accommodate trees and shrubs are encouraged.
- (12) Street appurtenances.
  - (a) No street shall have a name which will duplicate or so nearly duplicate as to be confused with the names of existing streets. The continuation of an existing street shall have the same name.
  - (b) Guide rails shall be designed to prevent cars from leaving the road. They shall be installed where danger exists to the traveling public due to steep topography, narrow roadways, location of drainage ditches or other similar conditions.
  - (c) Streetlights shall be installed at street intersections, along vertical and horizontal curves and at the end of dead-end streets. Lights shall be spaced approximately 40 feet apart. Light output shall be appropriate for the specific

location in accordance with standards recommended in the current edition of the Illuminating Engineering Society, IES Lighting Handbook.

#### H. Sidewalks.

- (1) Sidewalks shall be concrete and shall have a minimum width of four feet. Sidewalk areas shall be landscaped and shall be properly illuminated with adequate lighting as per this section.
- (2) Sidewalks shall be provided on all residential developments as required by the New Jersey Residential Site Improvement Standards at N.J.A.C. 5:21-4.5 et seq. Applications for de minimis exceptions from the sidewalk requirements for residential developments shall be undertaken as provided for at N.J.A.C. 5:21-3.1 et seq. Sidewalks for residential developments shall be constructed pursuant to N.J.A.C. 5:21-4.18 et seq. and pursuant to § **240-7H(6)** of this section below where same do not conflict with the requirements of the New Jersey Residential Site Improvement Standards.
- (3) For all other developments, sidewalks may be required where the Planning Board determines them necessary to provide pedestrian connections between residential areas and neighborhood schools, churches, commercial areas, other such facilities and probable future development. Where sidewalks are required to be installed by the Planning Board for other than residential developments pursuant to this subsection, construction shall be undertaken by the developer pursuant to § **240-7H(6)** of this section below.
- (4) Sidewalks shall be constructed true to the lines, grades and dimensions shown on the plans and Town details.
- (5) The site shall be cleared, stripped of topsoil and vegetation and rough graded. Material in the subgrade shall be excavated and replaced by broken stone, gravel or other suitable material. The contractor shall fine grade the subgrade of the sidewalk area smooth and even and roll with a tandem roller weighing not less than three tons as directed by the Town Engineer. The sidewalk shall be brought to the prescribed line, grade and dimensions.
- (6) The concrete shall be Class B and shall meet New Jersey State Department of Transportation Standard Specifications for Road and Bridge Construction and amendments thereto with the following proportions to be used which must be approved by the Town Engineer:
  - (a) Cement sand coarse aggregate Class B 1.75 3.5 4000 p.s.i.
  - (b) Class B minimum 4,000 p.s.i. air entrained transit mix concrete must be used.
  - (c) The sand shall be properly graded, clean moderately sharp, and free from clay, loam, mica, organic or other foreign

matter.

- (d) The concrete shall be placed on damp base. If base is dry, it shall be lightly wetted down to avoid rapid moisture removal from the concrete.
  - (e) After the concrete is placed it shall be compacted by tamping or screeding to a true grade and surface, working up enough fines to allow a flat finish without addition of added mortar. The surface shall be floated, edged, and jointed. Just prior to final set, a hair broom shall be used to sweep concrete to a uniform broomed surface.
  - (f) Premolded bituminous expansion joint material shall be installed every 20 feet and half depth contraction joints installed every four feet.
  - (g) The sidewalk shall have a minimum thickness of four inches. Driveway concrete walk and approach shall be six inches thick with six-inch-by-six-inch welded wire mesh with two-inch cover from the bottom of the slab.
  - (h) Driveway approaches (if concrete) are to be laid with one-and-one-half-inch lip at curblines. Monolithic curb approaches are prohibited.
- (7) Wood or metal forms shall be used for the construction of concrete sidewalks and braced at proper intervals as directed by the Town Engineer on each side of the sidewalk in order to maintain a true and straight edge on said walk. Damaged or corked forms shall not be used.
  - (8) After the forms have been removed the earth shall be graded on each side of the sidewalk in a finished and workmanlike manner and rolled as directed by the Town Engineer from the curb to the property line.
  - (9) Where no curb grade, or curb or sidewalk lines have previously been established on an accepted Town street, road, etc., application must be made to the Town Engineer for the necessary information.
  - (10) The unpaved area between the curblines and the adjacent edge of the sidewalk pavement shall be graded so that it has a uniform slope from the pavement edge toward the curblines of not less than 1/4 inch, nor more than 1/2 inch per foot, except by permission of the Town Engineer. There shall be six inches of screened topsoil and seed between the curb and sidewalk and sidewalk and the property line.
  - (11) All concrete shall be protected from dehydration by use of mats or suitable material. These mats shall be kept wet during the curing period or by use of approved curing compounds.
  - (12) As the weather and freezing conditions from November 15 to March 15 are unpredictable, any construction of roads, sidewalks and driveway approaches during the above-mentioned time shall be permitted only by approval of the Town

Engineer. He shall permit such construction only if weather and/or soil conditions permit. Normally, permanent construction during this period of the year is not permitted, and all construction is subject to reinspection and replacement if required.

I. Traffic signs and control devices. These improvements, such as "Stop," "Yield" and "One-Way" signs, etc., shall be designed and installed in accordance with applicable federal, state, county and municipal regulations. Recommendation as to their installation may be made by the Police Department or other competent agency and may have to be approved by ordinance.

J. Street trees.

(1) Street trees shall be required on all major site plan and major subdivision applications.

(2) Street trees shall have a dbh of at least 3 1/2 inches and be at least 12 feet in height when planted. When trees are planted at predetermined intervals along streets and park edges, spacing shall depend on expected tree size and species. Generally trees expected to reach a height of 40 or more feet shall be planted at intervals of 50 feet. Trees of an expected height of 30 feet to 40 feet shall be planted at intervals of 30 feet. Small trees less than 30 feet in height shall be planted at intervals of 25 feet. If a street canopy effect is desired by the Board, trees may be planted closer together following the recommendations of the licensed landscape architect. All trees shall be planted so as not to interfere with utilities, roadways, sidewalks, site easements or streetlights. Tree location, landscaping design and spacing plan shall all be approved by the Board as part of the landscape plan.

(3) When trees are planted, more than one species of street tree should be used. Planting a variety of tree species will guard against large areas of tree loss throughout the Town if a particular species is ever stricken with disease.

K. Street furniture. The site plan shall provide for those elements of street furniture made of the same or similar materials to ensure design continuity and be appropriate to the particular use. They may include benches, bike racks, trash receptacles, bus shelters and landscaping planters. All trash receptacles shall be adequately secured, enclosed and screened on all sides by landscaping or other types of attractive materials.

L. Sight triangle.

(1) Sight triangles shall be required at each quadrant of an intersection of streets in order to provide clear sight vision at intersections. The area within such sight triangles shall either be dedicated as part of the street right-of-way or maintained as part of the obligation of the ownership of the lot adjoining such street or streets, and which shall be set aside on a respective plat or plan as a sight triangle easement. On state and county roads, NJDOT or county standards will apply. RSIS applies to residential subdivisions on Town roads. Sight triangle easements are subject to approval by

the Town Engineer.

- (2) Within a sight triangle easement, no grading, planting or structure shall be erected and maintained more than 30 inches above center-line grade of either intersecting street or driveway or lower than eight feet above their center lines, including utility poles, but excluding street name signs and official traffic regulation signs. Where any street or driveway intersection involves earthen berms or vegetation, including trees, the developer shall trim such vegetation and trees as well as establish proper excavation and grading to provide the sight triangle.
- (3) The sight triangle shall be that area bounded by the intersecting street lines and a straight line which connects sight points located on the two intersecting street lines the following distances away from the intersecting street lines:
  - (a) Arterial streets at 130 feet.
  - (b) Collector streets at 60 feet.
  - (c) Primary and secondary local streets at 35 feet.
- (4) Where the intersecting streets are both arterial, both collectors or one arterial and one collector, two overlapping sight triangles shall be required, formed by connecting the sight points noted above with a sight point 35 feet with respect to the intersecting street. Classification of existing and proposed streets shall be by those shown on the Master Plan, this chapter or as designated by the Board at the time of the application for approval of a new street not included herein.
- (5) A sight triangle easement dedication shall be expressed on the plat or plan as follows:
  - (a) Sight triangle easement subject to grading, plant and construction restrictions as provided pursuant to the Newton Land Subdivision and Site Plan. Portions of a lot set aside for a sight triangle shall be calculated in determining the lot area and shall be included in establishing the minimum setbacks.
  - (b) The property owner shall maintain the sight triangle. If the property owner does not maintain the sight triangle, the Town has the right but not the obligation to clear the sight triangle and assess the property owner for cost of clearing.

#### M. Walls and fences.

- (1) Walls and fences may be utilized as elements of a landscaping plan in order to prevent trespassing, create privacy, provide screening or retain earth. Walls shall be designed to become an attractive special feature and may be constructed out of materials such as brick, stone, (rough cut, flagstone or ledge), fieldstones laid in a drywall or other

appealing material or pattern.

- (2) Fences shall be wooden or simulated wood material and be of picket, basket-weave, lattice, split-rail, panel, woven or similar design or construction. Wooden fences may be left to weather naturally, stained and/or painted; provided, however, that painted fencing shall be repainted as necessary. Woven wire is discouraged except in necessary and appropriate circumstances. If a woven wire fence must be used, it shall be of black color and its visibility obscured to a significant extent by plantings or vines, if practicable. Plastic slats or other inserts in chain link fences are prohibited.
- (3) In all cases, walls and fences must complement the character of the site and the architectural design of the buildings. All fences and walls shall be suited to the nature of the project.
- (4) See § **240-7B(7)** for other fence and wall standards including maximum height.

## § 240-8. Off-street parking/loading.

### A. General design standards.

- (1) Where applicable, the Residential Site Improvement Standards, as amended from time to time, shall apply. Parking and loading designs are subject to review and approval by the Town Engineer.
- (2) Off-street parking and loading areas shall be coordinated with the public street system serving the area in order to avoid conflicts with through traffic, obstruction to pedestrian walkways and vehicular thoroughfares. Shared parking among mixed uses shall be encouraged.
- (3) A minimum of 15% of any surface parking facility containing more than 10 spaces shall be landscaped and shall include one shade tree for every 10 parking spaces. Shade trees shall be a minimum 3 1/2 inches in caliper and an installed height of 12 feet.
- (4) All parking and loading areas abutting mixed-use/residential areas shall be buffered about their periphery with landscaping and/or fencing.
- (5) All parking and loading areas for nonresidential uses shall be graded and paved and shall be adequately drained.
- (6) Dimension of parking spaces. Every such space provided shall measure at least nine feet in width and 18 feet in length, exclusive of access drives and aisles. Hairpin striping shall be required. End-to-end parking spaces shall measure not less than eight feet in width by 23 feet in length. Twenty percent of required parking spaces may be compact spaces measuring 8.5 feet in width by 15 feet in depth.

(7) Width of aisles. The width of all aisles providing direct access to individual parking spaces shall be in accordance with the requirements set forth below. Only one-way traffic shall be permitted in aisles serving parking spaces placed at an angle other than 90°. Parking aisle widths must meet NFPA fire code standards and are subject to review and approval by the Town Fire Code Official.

<b>Parking Angle (degrees)</b>	<b>Aisle Width (feet)</b>
0 (end-to-end parking)	12
30	12
45	13
60	18
90 (perpendicular parking)	24

(8) There shall be adequate provisions for safe and convenient ingress and egress to all parking areas.

(9) Every parking area shall have direct access to a street or alley and shall conform with the following:

(a) Driveways shall have a minimum width of 12 feet for one-way traffic and 30 feet at throat of driveway for two-way traffic.

(10) Maximum grade of nonresidential parking areas:

<b>Areas</b>	<b>Maximum Grade (percent)</b>
Parking spaces and service aisles	4%
Main approach walkways to buildings	4%
Collector or other service walkways	6%
Swales	5%
Driveway entrances and exits up to 25 feet from right-of-way line	2%

- (11) All off-street parking areas shall be used solely for the parking of passenger automobiles, and no commercial repair work, service or storage of new or used motor vehicles, materials or merchandise of any kind shall be conducted on such parking area.

B. Sidewalks in parking areas. Sidewalks shall be required between parking areas and principal structures, along aisles and driveways and wherever pedestrian traffic occurs. They shall have a minimum of four feet of passable width and shall be raised a maximum of six inches above the parking area except when crossing streets or driveways. Guide rails shall be provided in appropriate locations. Parked vehicles shall not overhang or extend over sidewalk areas unless an additional sidewalk width of two feet is provided to accommodate such overhang.

C. Landscaping.

- (1) Amount required. In parking lots containing more than 10 spaces, at least 15% of the interior parking area shall be landscaped with plantings. Parking lot street frontage screening and perimeter screening shall be a minimum of 10 feet wide. Planting required within the parking lot shall be exclusive of other planting requirements. Planting islands and landscaping areas within a parking area shall, to the greatest practicable extent, be randomly located so as to lend visual interest and avoid a sense of parking area expanse. The Board may require additional parking space or snow disposal areas or easements to ensure that this section is adequately reconciled with effective parking requirements following significant snow events.
- (2) Isolated locations. Landscaping shall be located in protected or isolated areas such as along walkways, in center islands at the end of bays or between parking stalls. All landscaping in parking areas and on street frontage shall be placed so that it will not obstruct sight distance.
- (3) Plant type. A mixture of hardy flowering and/or decorative evergreen and deciduous trees shall be planted; the area between trees shall be planted with shrubs or ground cover or covered with mulch.
- (4) All open parking areas containing six or more parking spaces shall be effectively screened by densely planted compact evergreen hedge not less than six feet high with respect to all sites where such parking adjoins any property situated in a residential district and where otherwise needed to ensure privacy for residential properties. Parking areas shall be arranged and designed so as to prevent damage to or intrusion into existing vegetated areas. Planting areas shall be incorporated between rows of stalls and trees; flowers and shrubbery shall be grown therein and properly maintained.
- (5) Off-street parking shall be generally screened from public view and from adjacent properties in all nonresidential zones.

A combination of earth berms and evergreen and deciduous plantings is acceptable under appropriate circumstances. The use of planting islands within the parking lot to relieve visual monotony of a paving surface and to channel traffic flow shall be required.

- (6) A minimum of one shade tree shall be provided per 10 parking stalls or one shade tree per 3,000 square feet of parking lot area, whichever is greater, and shall be distributed evenly throughout the parking area. Such trees shall have a minimum of 3 1/2 inches to four inches in dbh and an installed height of 12 feet to 14 feet. Wherever possible, at the intersection of four ninety-degree parking stalls or in other unused areas not affecting parking stall utility, maneuverability or adequate door-swing, a shade tree shall be installed and protected by curbing, planter structure or other suitable means to avoid possible damage by vehicles. Such protective device structures shall not interfere with vehicles entering or exiting a parking stall or aisle.

D. Paving materials. Paving for off-street pedestrian ways may be of man-made or natural material, such as stone or stone combination thereof. Surface paving must produce a firm and level surface to facilitate passage, snow removal and stabilize the surface. Surface paving must be naturally decorative and provide visual interest and be of suitable material, texture and color. Asphalt paving of pedestrian ways is prohibited. Cobblestones, stone block and pavers made of slate, concrete or natural stone are preferred. Concrete walkways are acceptable. An appealing combination of materials is also acceptable. Clay brick should be avoided for its propensity to become slippery under freezing conditions. Curbing shall be constructed of concrete or granite block.

E. Location of parking.

- (1) Required off-street parking shall be located only in those locations as set forth below and shall meet all setback requirements set forth in this subsection.
- (2) In all residential zones or for any residence, not more than one of the required off-street spaces for each dwelling unit may be on the driveway in the front yard.
- (3) Off-street parking facilities as accessory to any use permitted in a residential zone shall be provided on the same lot with the permitted principal building.
- (4) Access to or egress from any property situated in a nonresidential zone through the use of a driveway located on property in a residential zone is prohibited.
- (5) Bicycle racks. Bicycle racks shall be encouraged for all multifamily and nonresidential developments at the ratio of one bicycle space for each dwelling unit or one bicycle space for each 20 off-street parking spaces or fraction thereof over 20 spaces.

F. Off-street loading.

- (1) Application. In any building or building group or part thereof hereafter erected and having a gross floor area of 5,000 square feet or more of nonresidential space, there shall be provided and maintained on the same zone lot with such building a designated off-street loading zone.
- (2) Location of loading areas. All loading areas shall be on the same lot as the use which is to be served. Such areas shall be located only in a side or rear yard. Such areas shall not encroach upon any required open space, accessway, off-street parking area or public right-of-way. Where located adjacent to any residential district, they shall be set back a minimum of five feet from such property line.
- (3) Access. All required off-street loading areas shall provide sufficient turning areas and access.
- (4) Calculation of required loading areas. The number of off-street loading berths required for any use shall be determined by application of the standards set forth below:

<b>Floor Area in Square Feet</b>	<b>Number of Spaces</b>
5,000 to 9,999	1
10,000 to 19,999	2
20,000 to 49,999	3
50,000 to 100,000	4
Each additional 100,000 or part thereof	1

- (5) Each loading space shall be at least 12 feet in width, 30 feet in length and have a fourteen-foot clearance above grade, provided, however, that the Planning Board may require additional length of up to 55 feet depending on the length of vehicles using said space.

## § 240-9. Signs.

A. General sign provisions.

- (1) Permits for signs. Except for signs as permitted in Subsection **A(10)** below or for which a special permit is required

pursuant to Chapter **320**, no sign shall be constructed or displayed unless a permit shall have first been obtained from the Building Inspector. If there is any question as to the suitability of any sign or as to its meeting the requirements of this chapter, either the Building Inspector or the Zoning Officer may refer the application for said sign to the Planning Board, which shall submit a report of its findings to the Building Inspector or the Zoning Officer, as the case may be, immediately after its first regular meeting following receipt of the sign application.

- (2) Temporary safety, traffic, directional and warning signs shall be permitted as provided in Chapter **320**.
- (3) Moving, flashing, blinking or rotating signs or lights, as well as streamers, pennants and similar displays, are prohibited in all zones. Without limitation of the generality of the foregoing, this prohibition includes balloons, other inflatable objects, searchlights, and flexible signs in which movement is produced through operation of a fan or similar device.
- (4) Signs required by law and necessary to the public welfare shall be permitted as provided in Chapter **320**.
- (5) No sign shall be placed as to interfere with or be mistaken for a traffic light or similar safety device or interfere with traffic visibility.
- (6) All illuminated signs shall be either indirectly lighted or of the diffused lighting type. No sign shall be lighted by means of flashing or intermittent illumination.
- (7) No sign as permitted shall extend or project above the highest elevation of the wall to which it is attached, nor shall any sign be erected on or attached to the roof of a building.
- (8) Any sign that uses the word "stop" or "danger" or otherwise presents or implies the need or requirement of stopping or caution or the existence of danger or which is likely to be confused with any sign displayed by public authority is prohibited.
- (9) No banner or portable signs shall be permitted except as provided in Chapter **320**.
- (10) The following exemptions shall apply only to the requirement for a sign permit and shall not be construed as relieving the owner of the sign from the responsibility for its erection and maintenance in good and safe conditions:
  - (a) Memorial tablets or signs, names of buildings and date of erection when cut into any masonry surface or when constructed of bronze or other noncombustible materials.
  - (b) Traffic or other municipal signs, legal notices, railroad crossing signs, danger signs and such temporary emergency signs as may be erected by governmental or public utility employees in carrying out their official work.

- (c) Names on mail boxes.
- (d) Signs used on property warning the public against hunting or trespassing thereon.
- (11) No advertising sign shall be erected or located on, within or over any public right-of-way, excepting district identification signs for a business district or parking directional signs over access roads to parking.
- (12) No sign or advertising structure shall be erected which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the premises.
- (13) There shall be permitted one wall or ground identification sign, not exceeding 24 square feet, located on the premises of houses of worship, Sunday school buildings, public libraries, hospitals, museums, art galleries, parish houses, buildings used exclusively by federal, state, county and local government for public purposes, public, private and parochial schools, public recreational and community center buildings and grounds. No such sign shall be located closer than 15 feet to a property line or street right-of-way line.
- (14) Wall or ground traffic directional and traffic safety signs containing such wording as "one-way," "do not enter," "stop," "enter" and "exit" may be located on a property in any zone, provided the locations and sizes of such signs are approved by the Board.
- (15) Customary warning or "No Trespassing" signs not more than one square foot in area may be displayed in any zone as well as not more than four signs advertising the sale and price of seasonal farm produce, provided the total area of such signs does not exceed 24 square feet.
- (16) Temporary signs advertising a prospective sale or rental shall be permitted as provided in Chapter **320**.
- (17) Nonilluminated temporary signs on construction sites shall be permitted as provided in Chapter **320**.
- (18) One nonilluminated temporary sign on new construction sites, not exceeding 25 square feet in area and provided it shall be maintained and removed within seven days after receipt of a certificate of occupancy, is permitted in any zone.
- (19) Temporary signs for events such as elections, tricky trays, yard sales, etc., shall be permitted as provided in Chapter **320**.

## § 240-10. Wellhead protection.

A. Statement of findings. The Town of Newton finds that:

- (1) The groundwater underlying this municipality is a major source of existing and future water supplies, including drinking water. The groundwater underlying this municipality lies within the Northwest New Jersey Aquifer system, which is designated as a "sole source" aquifer under Section 1424(e) of the Federal Safe Drinking Water Act of 1974.
- (2) The groundwater aquifers are integrally connected with, are recharged by, and flow into the surface waters, lakes and streams, which also constitute a major source of water for drinking, commercial and industrial needs.
- (3) Spills and discharges of toxic or hazardous materials may contaminate or pollute groundwater supplies and related water sources.
- (4) Contaminated water from any source is a detriment to the health, welfare and comfort of the residents of this municipality, and other users of these water resources.

B. Purpose. The purpose of this section is to protect the public health, safety and welfare through the protection of the groundwater resources underlying the municipality to ensure a supply of safe and healthful drinking water for the present and future generations of local residents, employees and the general public in this municipality, as well as users of these water supplies outside this municipality. Areas of land surrounding each public community well and nontransient noncommunity well, known as wellhead protection areas, from which contaminants may move through the ground to be withdrawn in water taken from the well, have been delineated. Through regulation of land use, physical facilities, placement of toxic and hazardous materials, and other related activities within these areas, the potential for groundwater contamination can be reduced and any such contamination can be more readily found and remediated before reaching a public well. The purpose of the regulations contained in this section is to protect public community wells and public nontransient noncommunity wells from contamination.

C. Statutory authority. The Town of Newton is empowered to regulate these activities under the provisions of the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., which authorizes each municipality to plan and regulate land use to secure a safe and adequate drinking water supply for its residents. Under provisions of the Underground Storage of Hazardous Substances Act, N.J.S.A. 13:1D et seq., a municipality may adopt, with state approval, a municipal ordinance that is more stringent than N.J.A.C. 7:14B but is obligated to ensure the provisions of the ordinance are not carried out in a manner that is inconsistent with N.J.A.C. 7:14B. The Board of Health of this municipality has autonomous power granted by the state Legislature to develop this section to protect public health, safety and welfare, as set forth in the New Jersey Local Boards of Health Law, N.J.S.A. 26:3-1 et seq., and the New Jersey County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq.

D. Establishment of wellhead protection areas and maps.

- (1) Well head protection area maps:

- (a) The delineations of wellhead protection area maps for public community wells and public nontransient noncommunity wells, which were published by the New Jersey Geological Survey of the New Jersey Department of Environmental Protection, are incorporated herein and made a part of this section. The Department of Environmental Protection will periodically update the wellhead protection area maps and these maps, published by the New Jersey Geological Survey, will be available at the website: [www.state.nj.us/dep/njgs/geodata/](http://www.state.nj.us/dep/njgs/geodata/). The most recent wellhead protection area maps available through the New Jersey Geological Survey should replace the maps used for reference in this section. A map of the wellhead protection areas located within the Town of Newton is included as part of this section, is appended as Schedule D. *Editor's Note: Schedule D is included at the end of this chapter.* Maps of the municipality on which these delineations have been overlain shall be on file and maintained by the office of the Clerk of the Town of Newton, and the Construction Office of the Town of Newton.
- (b) Wellhead protection areas, as shown on the maps described in Subsection **D(1)(a)**, or as periodically updated and delineated by the Department of Environmental Protection and published by the New Jersey Geological Survey shall be considered to be superimposed over any other established zoning district. Land in a wellhead protection area may be used for any purpose permitted in the underlying district, subject to the additional restrictions presented herein.

(2) Assignment of restrictions within wellhead protection areas:

- (a) Properties located wholly or partially within a wellhead protection area shall be governed by the restrictions applicable to the more restrictive wellhead protection area tier, if partially within one or more tiers.

E. Regulation of wellhead protection areas for public wells.

- (1) The administrative authority for administering the provisions of this section shall be the Planning Board and the Board of Health of the Town of Newton acting jointly and in consultation.
- (2) Any applicant for a permit requesting a change in land use or activity which is subject to review under the provisions of the Municipal Land Use Law *Editor's Note: See N.J.S.A. 40:55D-1 et seq.* and other pertinent regulations of the Town of Newton and which is located within a delineated wellhead protection area as defined in § **240-10D**, and involves a potential pollutant source as defined in § **240-10F**, shall comply with the requirements of this section.
- (3) Any applicant for a permit requesting a change in land use or activity, which is subject to the requirements of this section, shall file an operations and contingency plan, as required by § **240-10H**, with the administrative authority. No permit that allows a change in land use or activity, which is subject to the requirements of this chapter, shall be granted unless an Operations and Contingency Plan for the proposed change has been approved by the administrative authority. Any plan approved by the administrative authority shall be kept on file in the office of the Town Clerk of the

Town of Newton, and shall be available to the public for inspection.

- (4) Any change in land use or activity that introduces a major or minor potential pollutant source (PPS), as defined in § **240-10F**, shall be prohibited within a Tier 1 wellhead protection area.
- (5) Any change in land use or activity that introduces a major PPS, as defined in § **240-10F**, shall be prohibited within a Tier 2 wellhead protection area.
- (6) Any change in land use or activity that involves any major or minor PPS, as defined in § **240-10F**, within any wellhead protection area, that is not prohibited pursuant to § **240-10E(4)** or **(5)**, shall comply with the best management practice standards, as defined in § **240-10G**.
- (7) This section is supplementary to other laws and ordinances in this municipality. Where this chapter or any portion thereof imposes a greater restriction than is imposed by other regulations, the provisions of this chapter shall supersede. These rules and regulations shall in no way affect the limitations or requirements applicable in the underlying municipal land use and zoning districts.
- (8) The use limitations noted herein shall be considered as limitations stipulated in the permitted list of uses in each zone. The activities regulated herein shall be considered limitations accessory to permitted uses in each zone.

F. Potential pollutant sources listed. The following are major and minor potential pollutant sources subject to the requirements of this chapter. These listings are consistent with the New Jersey Safe Drinking Water Act regulations [N.J.A.C. 7:10-11.4(a)4].

- (1) Major potential pollutant sources include the types of facilities and land uses listed in Schedule B. *Editor's Note: Schedule B is included at the end of this chapter.*
- (2) Minor potential pollutant sources include the types of facilities and land uses listed in Schedule C. *Editor's Note: Schedule C is included at the end of this chapter.*
- (3) The administrative authority of the Town of Newton may determine whether any other proposed change in land use or activity is of sufficient risk to the water supply to be considered a major or minor potential pollutant source.

G. Best management practice performance standards.

- (1) Any applicant proposing any change in land use or activity that involves any major or minor PPS, as defined in § **240-10F**, which would be located either wholly or partially within any wellhead protection area shall demonstrate that they have applied for all required state permits or control documents. No final approvals under the authority of the

Municipal Land Use Law *Editor's Note: See N.J.S.A. 40:55D-1 et seq.* shall be issued until all required state permits or control documents are issued final. Underground storage tanks regulated at N.J.A.C. 7:14B shall also be operated in a manner consistent with N.J.A.C. 7:14B.

- (2) Any new or modified activity that involves a major or minor PPS located wholly or partially within any wellhead protection area shall comply with and operate in a manner consistent with the following best management practices:
  - (a) All portions or areas of a facility in which hazardous substances or hazardous wastes are stored, processed, manufactured or transferred outdoors shall be designed so that the discharges of hazardous substances will be prevented from overflowing, draining, or leaching into the groundwater or surface waters.
  - (b) Outdoor storage, dispensing, loading, manufacturing or processing areas of hazardous substances or hazardous wastes must be protected from precipitation, stormwater flows or flooding.
  - (c) Wherever hazardous substances are stored, processed, manufactured or transferred outdoors, the design features shall include secondary containment and/or diversionary structures which may include but not be limited to:
    - [1] Containers, dikes, berms or retaining walls sufficiently impermeable to contain spilled hazardous substances for the duration of a spill event.
    - [2] Curbing.
    - [3] Gutter, culverts and other drainage systems.
    - [4] Weirs, booms and other barriers.
    - [5] Lined diversion ponds, lined lagoons and lined retention basins, holding tanks, sumps, slop tanks and other collecting systems.
    - [6] Drip pans.
  - (d) Secondary containment and/or diversionary systems, structures or equipment must meet the following standards:
    - [1] The system must block all routes by which spilled hazardous substances could be expected to flow, migrate, or escape into the groundwater or surface waters.
    - [2] The system must have sufficient capacity to contain or divert the largest probable single discharge that could occur within the containment area, plus an additional capacity to compensate for any anticipated normal

accumulation of rainwater.

[3] In order to prevent the discharge of hazardous substances into groundwater, all components of the system shall be made of or lined with impermeable materials sufficient to contain the substance for the duration of a spill event. Such material or liner must be maintained in an impermeable condition.

[4] No manufacturing area, processing area, transfer area, dike storage area or other storage area, or secondary containment/diversion system appurtenant thereto shall drain into a watercourse or into a ditch, sewer, pipe or storm drain that leads directly or indirectly into a surface or subsurface disposal area, unless provision has been made to intercept and treat any spilled hazardous substances in an NJDEP-approved industrial wastewater treatment or pretreatment facility, or other NJDEP-approved facility.

[5] Catchment basins, lagoons and other containment areas that may contain hazardous substances should not be located in a manner that would subject them to flooding by natural waterways.

(e) Stormwater shall be managed so as to prevent contamination of groundwater and so as to be in accordance with applicable laws and regulations of the State of New Jersey and of the Town of Newton.

#### H. Operations and contingency plan.

(1) An applicant proposing a change in land use or activity that involves a PPS, as defined in § **240-10F**, that would be located either wholly or partially within any wellhead protection area shall submit an operations and contingency plan to the administrative authority. This operations and contingency plan shall inform the administrative authority about the following aspects of the proposal:

(a) Types of PPS proposed for the site;

(b) Types and quantities of hazardous substances or hazardous wastes that may be used or stored on site;

(c) Means to be employed to contain or restrict the spillage or migration of hazardous substances or hazardous wastes from the site into groundwater;

(d) Means to be used to remediate accidental spillage of such materials;

(e) Means to notify administrative authority about any accidental spillage of such materials;

(f) Demonstration that the proposed use and/or activity would employ, to the maximum extent possible, best management practices as set forth in Subsection **G** to protect groundwater quality in the wellhead protection area

and minimize the risk of potential groundwater contamination.

(2) The administrative authority shall review and approve any operations and contingency plan prior to final approval of the application for a land use change or activity.

(3) Any operations and contingency plan submitted shall be available for public review and comment.

I. Enforcement. A prompt investigation shall be made by the appropriate personnel of the Construction or Engineering Office of the Town of Newton of any person or entity believed to be in violation hereof. If, upon inspection, a condition which is in violation of this section is discovered, a civil action may be instituted in the Special Civil Part of the Superior Court, or in the Superior Court, if the primary relief sought is injunctive or if penalties may exceed the jurisdictional limit of the Special Civil Part, by the filing and serving of appropriate process. Nothing in this section shall be construed to preclude a municipality's right, pursuant to N.J.S.A. 26:3A2-25, to initiate legal proceedings hereunder in Municipal Court. The violation of any subsection of this section shall constitute a separate and distinct offense independent of the violation of any other subsection, or of any order issued pursuant to this section. Each day a violation continues shall be considered a separate offense.

J. Nonconforming regulated activities.

(1) An otherwise lawful usage or activity which exists at the time of the effective date of this section that does not conform to this section shall be considered an allowed nonconforming activity and may continue.

(2) No allowed nonconforming activity shall be expanded, enlarged or modified in any way which is deemed by the Zoning Officer to increase its threat to groundwater or otherwise contravene the purposes and intent of this section.

(3) In the event that an allowed nonconforming activity is stopped, suspended or abandoned for a period of 12 months or longer, the activity shall permanently desist and shall be subject to the requirements of this section.

(4) Notwithstanding the foregoing, if any allowed nonconforming activity is found to pose an imminent health hazard or threat to the municipality's water supply, it shall be deemed a violation of this section.

K. Severability. If any section, sentence, clause or phrase of this section is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holdings shall in no way affect the validity of the remaining portions of this section.

## § 240-11. Steep slopes.

A. Purpose. The purpose of this section is to regulate the intensity of use in areas of steeply sloping terrain in order to limit

soil loss, erosion, excessive stormwater runoff, the degradation of surface water and to maintain the natural topography and drainage patterns of land.

- B. Background. Disturbance of steep slopes results in accelerated erosion processes from stormwater runoff and the subsequent sedimentation of water bodies with the associated degradation of water quality and loss of aquatic life support. Related effects include soil loss, changes in natural topography and drainage patterns, increased flooding potential, further fragmentation of forest and habitat areas, and compromised aesthetic values. It has become widely recognized that disturbance of steep slopes should be restricted or prevented based on the impact disturbance of steep slopes can have on water quality and quantity, and the environmental integrity of landscapes.
- C. Applicability. This section shall be applicable to new development or land disturbance on a steep slope within the Town of Newton.
- D. Designation of areas. The percent of slope (rise in feet per horizontal distance) shall be established by measurement of distance perpendicular to the contour of the slope. The percent of slope shall be calculated for each two-foot contour interval. For example, any location on the site where there is a one-foot rise over a ten-foot horizontal run constitutes a ten-percent slope; a 1.5 foot rise over a ten-foot horizontal run constitutes a fifteen-percent slope; a two-foot rise over a ten-foot horizontal run constitutes a twenty-percent slope.
- E. Steep slopes limits.
- (1) For steep slopes any disturbance shall be prohibited except as provided below:
    - (a) Redevelopment within the limits of existing impervious surfaces; and
    - (b) New disturbance necessary to protect public health, safety or welfare, such as necessary linear development with no feasible alternative; to provide an environmental benefit, such as remediation of a contaminated site; to prevent extraordinary hardship on the property owner peculiar to the property; or to prevent extraordinary hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment. For example, redevelopment, within the footprint of existing impervious cover, should be allowed to support efforts to revitalize development that has fallen into disrepair.
  - (2) The applicant shall demonstrate through site plans depicting proposed development and topography that new disturbance is not located in areas with a twenty-percent-or-greater slope.
- F. Conflicts and severability.

(1) Conflicts. All other ordinances, parts of ordinances, or other local requirements that are inconsistent or in conflict with this section are hereby superseded to the extent of any inconsistency or conflict, and the provisions of this section apply.

(2) Severability.

(a) Interpretation. This section shall be so construed as not to conflict with any provision of New Jersey or federal law.

(b) Notwithstanding that any provision of this section is held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the section shall continue to be of full force and effect.

(c) The provisions of this section shall be cumulative with, and not in substitution for, all other applicable zoning, planning and land use regulations.

G. Enforcement and violations. A prompt investigation shall be made by the appropriate personnel of the Town of Newton of any person or entity believed to be in violation hereof. If, upon inspection, a condition which is in violation of this section is discovered, a civil action may be instituted in the Special Part of the Superior Court, or in the Superior Court, if the primary relief sought is injunctive or if penalties may exceed the jurisdictional limit of the Special Civil Part, by the filing and serving of appropriate process. Nothing in this section shall be construed to preclude the right of the Town of Newton, pursuant to N.J.S.A. 26:3A2-25, to initiate legal proceedings hereunder in Municipal Court. The violation of any subsection of this section shall constitute a separate and distinct offense independent of the violation of any other subsection, or of any order issued pursuant to this section. Each day a violation continues shall be considered a separate offense.

## § 240-12. Riparian zones.

A. Intent and purpose.

(1) The governing body of the Town of Newton finds that riparian lands adjacent to streams, lakes, or other surface water bodies that are adequately vegetated provide an important environmental protection and water resource management benefit. It is necessary to protect and maintain the beneficial character of riparian areas by implementing specifications for the establishment, protection, and maintenance of vegetation along the surface water bodies within the jurisdiction of the Town of Newton, consistent with the interest of landowners in making reasonable economic use of parcels of land that include such designated areas. The purpose of this chapter is to designate riparian zones, and to provide for land use regulation therein in order to protect the streams, lakes, and other surface water bodies of the Town of Newton; to protect the water quality of watercourses, reservoirs, lakes, and other significant water resources within the Town of Newton; to protect the riparian and aquatic ecosystems of the Town of Newton to provide for the

environmentally sound use of the land resources of the Town of Newton, and to complement existing state, regional, county, and municipal stream corridor protection and management regulations and initiatives.

(2) The specific purpose and intent of this section are to:

- (a) Restore and maintain the chemical, physical, and biological integrity of the water resources of the Town of Newton.
- (b) Prevent excessive nutrients, sediment, and organic matter, as well as biocides and other pollutants, from reaching surface waters by optimizing opportunities for filtration, deposition, absorption, adsorption, plant uptake, biodegradation, and denitrification, which occur when stormwater runoff is conveyed through vegetated buffers as stable, distributed flow prior to reaching receiving waters.
- (c) Provide for shading of the aquatic environment so as to moderate temperatures, retain more dissolved oxygen, and support a healthy assemblage of aquatic flora and fauna.
- (d) Provide for the availability of natural organic matter (leaves and twigs) and large woody debris (trees and limbs) that provide food and habitat for aquatic organisms (insects, amphibians, crustaceans, and small fish), which are essential to maintain the food chain.
- (e) Increase stream bank stability and maintain natural fluvial geomorphology of the stream system, thereby reducing stream bank erosion and sedimentation and protecting habitat for aquatic organisms.
- (f) Maintain base flows in streams and moisture in wetlands.
- (g) Control downstream flooding.
- (h) Conserve the natural features important to land and water resources, e.g., headwater areas, groundwater recharge zones, floodways, floodplains, springs, streams, wetlands, woodlands, and prime wildlife habitats.

B. Statutory authority. The municipality of the Town of Newton is empowered to regulate land uses under the provisions of the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., which authorizes each municipality to plan and regulate land use in order to protect public health, safety and welfare by protecting and maintaining native vegetation in riparian areas. The Town of Newton is also empowered to adopt and implement this section under provisions provided by the following legislative authorities of the State of New Jersey:

- (1) Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.
- (2) Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

- (3) Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.
- (4) Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq.
- (5) Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.

C. Establishment of riparian zones.

- (1) Riparian zones adjacent to all surface water bodies shall be protected from avoidable disturbance and shall be delineated as follows:
  - (a) The riparian zone shall be 300 feet wide along both sides of any Category One water (C1 water) and all upstream tributaries situated within the same HUC 14 watershed. This includes special water resource protection areas or SWRPAs as defined herein and shown on the USGS quadrangle map or in the County Soil Surveys within the associated HUC 14 drainage, pursuant to the Stormwater Management Rules at N.J.A.C. 7:8-5.5(h).
  - (b) The riparian zone shall be 150 feet wide along both sides of the following waters not designated as C1 waters:
    - [1] Any trout production water and all upstream waters (including tributaries).
    - [2] Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the surface water body.
    - [3] Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the surface water body for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the surface water body.
    - [4] Any segment of a surface water body flowing through an area that contains acid-producing soils.
  - (c) For all other surface water bodies, a riparian zone of 50 feet wide shall be maintained along both sides of the water.
- (2) The portion of the riparian zone that lies outside of a surface water body is measured landward from the top of bank. If a discernible bank is not present along a surface water body, the portion of the riparian zone outside the surface water body is measured landward as follows:
  - (a) Along a linear fluvial or tidal water, such as a stream or swale, the riparian zone is measured landward of the

feature's center line.

- (b) Along a nonlinear fluvial water, such as a lake or pond, the riparian zone is measured landward of the normal water surface limit.
  - (c) Along a nonlinear tidal water, such as a bay or inlet, the riparian zone is measured landward of the mean high water line.
  - (d) Along an amorphously shaped feature such as a wetland complex, through which water flows but which lacks a definable channel, the riparian zone is measured landward of the feature's center line.
  - (e) Where slopes in excess of 15% are located within the designated widths, the riparian zone shall be extended to include the entire distance of this sloped area to a maximum of 300 feet.
  - (f) For areas adjacent to surface water bodies for which the floodway has been delineated per the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-3 or the state's adopted floodway delineations, the riparian zone shall cover the entire floodway area, or the area described in § **240-12C(1)(a)** or **(b)** above, whichever area has the greatest extent. Requests for alterations to the adopted delineations can be provided to the New Jersey Department of Environmental Protection for consideration if site-specific information is available.
- (3) A riparian zone is an overlay to the existing zoning districts. The provisions of the underlying district shall remain in full force except where the provisions of the riparian zone differ from the provisions of the underlying district, in which case the provision that is more restrictive shall apply. These provisions apply to land disturbances resulting from or related to any activity or use requiring application for any of the following permits or approvals:
- (a) Building permit.
  - (b) Zoning variance.
  - (c) Special exception.
  - (d) Conditional use.
  - (e) Subdivision/land development approval.
- (4) A map of the riparian zones of the entire Town of Newton, including all land and water areas within its boundaries, which designates surface water bodies, is included as part of this section, and is appended in Schedule E. *Editor's Note: Schedule E is included at the end of this chapter.* Maps of the municipality on which these designations have been overlain

shall be on file and maintained by the offices of the Town Clerk. This map conforms to all applicable laws, rules and regulations applicable to the creation, modification and promulgation of zoning maps.

- (5) It shall be the duty of the Town Engineer, every second year after the adoption of this section, to propose modifications to the map delineating riparian zones required by any naturally occurring or permitted change in the location of a defining feature of a surface water body occurring after the initial adoption of the riparian zone map, to record all modifications to the riparian zone map required by decisions or appeals under § **240-12J**, and by changes made by the New Jersey Department of Environmental Protection in surface water classifications or floodway delineations.
- (6) The applicant or designated representative shall be responsible for the initial determination of the presence of a riparian zone on a site, and for identifying the area on any plan submitted to the Town of Newton in conjunction with an application for a construction permit, subdivision, land development, or other improvement that requires plan submissions or permits. This initial determination shall be subject to review and approval by the Town Engineer, governing body, or its appointed representative, and, where required, by the New Jersey Department of Environmental Protection.
- (7) Exemptions. To obtain exemptions from the riparian zone protection requirements above, the applicant must demonstrate compliance with one of the following:
  - (a) The proposed disturbance in a riparian zone is for a linear development with no feasible alternative route. If the riparian zone is associated with Category One waters, the linear development must also meet the requirements for special water resource protection areas under the Stormwater Management Rules at N.J.A.C. 7:8-5.5(h).
  - (b) The proposed disturbance in a riparian zone is in accordance with a stream corridor restoration or stream bank stabilization plan or project approved by the New Jersey Department of Environmental Protection.
  - (c) The proposed disturbance of a riparian zone is necessary to provide for public pedestrian access or water-dependent recreation that meets the requirements of the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, or the Coastal Zone Management Rules, N.J.A.C. 7:7E.
  - (d) The proposed disturbance of a riparian zone is required for the remediation of hazardous substances performed with New Jersey Department of Environmental Protection or federal oversight pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq. or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq.
  - (e) The proposed disturbance is for redevelopment that does not exceed the limits of existing impervious surfaces.

- (f) The proposed disturbance would prevent extraordinary hardship on the property owner peculiar to the property; or prevent extraordinary hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment.
- (g) Demonstrate through site plans depicting proposed development and topography that new disturbance is not located in areas with a twenty-percent-or-greater slope, except as allowed under Subsection **C(7)(e)** and **(f)** above.

D. Uses permitted in riparian zones.

- (1) For riparian zones in Category One waters (C1 waters), permitted uses are governed by the Stormwater Management Rules at N.J.A.C. 7:8-5.5(h) and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, unless otherwise exempt.
- (2) Any other riparian zone area shall remain in a natural condition or, if in a disturbed condition, including agricultural activities, at the time of adoption of this chapter may be restored to a natural condition. There shall be no clearing or cutting of trees and brush, except for removal of dead vegetation and pruning for reasons of public safety or for the replacement of invasive species with indigenous species. There shall be no altering of watercourses, dumping of trash, soil, dirt, fill, vegetative or other debris, regrading or construction. The following uses are permitted either by right or after review and approval by the municipality in riparian zones. No new construction, development, use, activity, encroachment, or structure shall take place in a riparian zone, except as specifically authorized in this section. The following uses shall be permitted within a riparian zone:
  - (a) Open space uses that are primarily passive in character shall be permitted by right to extend into a riparian zone, provided near stream vegetation is preserved. These uses do not require approval by the Zoning Enforcement Officer or compliance with an approved riparian zone management plan. Such uses include wildlife sanctuaries, nature preserves, forest preserves, fishing areas, game farms, fish hatcheries and fishing reserves, operated for the protection and propagation of wildlife, but excluding structures. Such uses also include passive recreation areas of public and private parklands, including unpaved hiking, bicycle and bridle trails, provided that said trails have been stabilized with pervious materials.
  - (b) Fences, for which a permit has been issued by the Construction Code Office, to the extent required by applicable law, rule or regulation.
  - (c) Crossings by farm vehicles and livestock, recreational trails, roads, railroads, stormwater lines, sanitary sewer lines, waterlines and public utility transmission lines, provided that the land disturbance is the minimum required to accomplish the permitted use, subject to approval by the Zoning Enforcement Officer, provided that any applicable state permits are acquired, and provided that any disturbance is offset by buffer improvements in compliance with

an approved riparian zone management plan and that the area of the crossing is stabilized against significant erosion due to its use as a crossing.

- (d) Stream bank stabilization or riparian reforestation, which conform to the guidelines of an approved riparian zone management plan, or wetlands mitigation projects that have been approved by the New Jersey Department of Environmental Protection, subject to approval by the Zoning Enforcement Officer and subject to compliance with an approved riparian zone management plan.

#### E. Performance standards for riparian zones.

- (1) All encroachments proposed into riparian zones in C1 waters shall comply with the requirements of the Stormwater Management Rules at N.J.A.C. 7:8-5.5(h) and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, and shall be subject to review and approval by the New Jersey Department of Environmental Protection, unless exempt.
- (2) For all other riparian zones, the following conditions shall apply:
  - (a) All new major and minor subdivisions and site plans shall be designed to provide sufficient areas outside of the riparian zone to accommodate primary structures, any normal accessory uses appurtenant thereto, as well as all planned lawn areas.
  - (b) Portions of lots within the riparian zone must be permanently restricted by deed or conservation easement held by the Town of Newton, its agent, or another public or private land conservation organization which has the ability to provide adequate protection to prevent adverse impacts within the riparian zone. A complete copy of the recorded conservation restriction that clearly identifies the deed book and pages where it has been recorded in the office of the Clerk of the applicable county or the registrar of deeds and mortgages of the applicable county must be submitted to the municipality. The applicant shall not commence with the project or activity prior to making this submittal and receiving actual approval of the plan modification and receipt of any applicable permits from the New Jersey Department of Environmental Protection. The recorded conservation restriction shall be in the form approved by the municipality and shall run with the land and be binding upon the property owner and the successors in interest in the property or in any part thereof. The conservation restriction may include language reserving the right to make de minimis changes to accommodate necessary regulatory approvals upon the written consent of the municipality, provided such changes are otherwise consistent with the purpose and intent of the conservation restriction. The recorded conservation restriction shall, at a minimum, include:

[1] A written narrative of the authorized regulated activity, date of issuance, and date of expiration (if applicable), and the conservation restriction that, in addition, includes all of the prohibitions set forth at N.J.S.A. 13:8B-2b(1) through (7).

[2] Survey plans for the property as a whole and, where applicable, for any additional properties subject to the conservation restrictions. Such survey plans shall be submitted on the surveyor's letterhead, signed and sealed by the surveyor, and shall include metes and bounds descriptions of the property, the site, and the areas subject to the conservation restriction in New Jersey State Plane Coordinates, North American Datum 1983, and shall depict the boundaries of the site and all areas subject to the conservation restriction as marked with flags or stakes on site. All such survey plans shall be submitted on paper and in digital CAD or GIS file on a media and format defined by the municipality. The flags or stakes shall be numbered and identified on the survey plan.

[3] A copy or copies of deeds for the property as a whole that indicate the deed book and pages where it has been recorded in the office of the Clerk of the applicable county or the registrar of deeds and mortgages of the applicable county.

- (c) Any lands proposed for development which include all or a portion of a riparian zone shall as a condition of any major subdivision or major site plan approval, provide for the vegetation or revegetation of any portions of the riparian zone which are not vegetated at the time of the application or which were disturbed by prior land uses, including for agricultural use. Said vegetation plan shall utilize native and noninvasive tree and plant species to the maximum extent practicable in accordance with an approved riparian zone management plan, described in § **240-12I**.
- (d) For building lots which exist as of the date of adoption of this chapter, but for which a building permit or a preliminary site plan approval has not been obtained or is no longer valid, the required minimum front, side, and rear setbacks may extend into the riparian zone, provided that a deed restriction and/or conservation easement is applied which prohibits clearing or construction in the riparian zone.
- (e) All stormwater shall be discharged outside of but may flow through a riparian zone and shall comply with the Standard for Off-Site Stability in the Standards for Soil Erosion and Sediment Control in New Jersey, established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. (see N.J.A.C. 2:90-1.3).
- (f) If stormwater discharged outside of and flowing through a riparian zone cannot comply with the Standard for Off-Site Stability cited in § **240-12E(2)(e)**, then the proposed stabilization measures must meet the requirements of the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-10.2 et seq., and have an approved flood hazard area permit.

#### F. Nonconforming structures and uses in riparian zones.

- (1) Nonconforming structures and uses of land within the riparian zone are subject to the following requirements:

- (a) Legally existing but nonconforming structures or uses may be continued.
- (b) Any proposed enlargement or expansion of the building footprint within the riparian zone of a C1 water shall comply with the standards in the Stormwater Management Rules at N.J.A.C. 7:8-5.5(h) and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.
- (c) For all other riparian zones:
  - [1] Encroachment within the riparian zone shall only be allowed where previous development or disturbance has occurred and shall be in conformance with the Stormwater Management Rules, N.J.A.C. 7:8, and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.
  - [2] Existing impervious cover shall not be increased within the riparian zone as a result of encroachments where previous development or disturbances have occurred.
  - [3] Discontinued nonconforming uses may be resumed any time within one year from such discontinuance but not thereafter when showing clear indications of abandonment. No change or resumption shall be permitted that is more detrimental to the riparian zone, as measured against the intent and purpose under § **240-12A**, than the existing or former nonconforming use. This one-year time frame shall not apply to agricultural uses that are following prescribed best management practices for crop rotation. However, resumption of agricultural uses must be strictly confined to the extent of disturbance existing at the time of adoption of this chapter.

G. Uses prohibited in riparian zones.

- (1) Any use within a riparian zone of a C1 water shall comply with the standards in the Stormwater Management Rules at N.J.A.C. 7:8-5.5(h) and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.
- (2) For other riparian zones, any use or activity not specifically authorized in § **240-12D** or **240-12F** shall be prohibited within the riparian zone. By way of example, the following activities and facilities are prohibited:
  - (a) Removal or clear-cutting of trees and other vegetation or soil disturbance such as grading, except for selective vegetation removal for the purpose of stream or riparian area stabilization or restoration projects that require vegetation removal or grading prior to implementation.
  - (b) Storage of any hazardous or noxious materials.
  - (c) Use of fertilizers, pesticides, herbicides, and/or other chemicals in excess of prescribed industry standards or the recommendations of the Soil Conservation District.

- (d) Roads or driveways, except where permitted in compliance with § **240-12D**.
- (e) Motor or wheeled vehicle traffic in any area, except as permitted by this chapter.
- (f) Parking lots.
- (g) Any type of permanent structure, except structures needed for a use permitted by § **240-12D**.
- (h) New subsurface sewage disposal system areas. The expansion and replacement of existing subsurface sewage disposal system areas for existing uses is permitted.
- (i) Residential grounds or lawns, except as otherwise permitted pursuant to this section.

H. Activities permitted in riparian zones in the case of no reasonable or prudent alternative or extreme hardship.

- (1) For riparian zones in C1 waters, requests for exemptions must be authorized by the New Jersey Department of Environmental Protection, as per the Stormwater Management Rules at N.J.A.C. 7:8-5.5(h) and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.
- (2) For other riparian zones, hardship variances may be granted by the Planning Board in cases of a preexisting lot (existing at the time of adoption of this chapter) when there is insufficient room outside the riparian zone for uses permitted by the underlying zoning and there is no other reasonable or prudent alternative to placement in the riparian zone, including obtaining variances from setback or other requirements that would allow conformance with the riparian zone requirements, and provided the following demonstrations are made:
  - (a) An applicant shall be deemed to have established the existence of an extreme economic hardship if the subject property is not capable of yielding a reasonable economic return if its present use is continued or if it is developed in accordance with provisions of this section and that this inability to yield a reasonable economic return results from unique circumstances peculiar to the subject property which:
    - [1] Do not apply to or affect other property in the immediate vicinity.
    - [2] Relate to or arise out of the characteristics of the subject property because of the particular physical surroundings, shape or topographical conditions of the property involved, rather than the personal situations of the applicant; and are not the result of any action or inaction by the applicant or the owner or his predecessors in title.
    - [3] The necessity of acquiring additional land to locate development outside the riparian zone shall not be

considered an economic hardship unless the applicant can demonstrate that there is no adjacent land that is reasonably available or could be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity.

(b) An applicant shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts, that one of the following applies:

[1] The proposed project will serve an essential public health or safety need.

[2] The proposed use is required to serve an existing public health or safety need.

[3] There is no alternative available to meet the established public health or safety need.

(c) A variance can only be granted if it is shown that the activity is in conformance with all applicable local, state, and federal regulations, including but not limited to the Stormwater Management Rules, N.J.A.C. 7:8, and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, and that the exception granted is the minimum relief necessary to relieve the hardship.

(3) If such an exception is granted, the applicant shall rehabilitate an environmentally degraded riparian zone area within or adjacent to the same site, and at least equivalent in size to the riparian zone reduction permitted, or, if not possible, rehabilitate or expand a riparian zone area at least equivalent in size within a nearby site and, if available, within the same watershed. Rehabilitation shall include reforestation, stream bank stabilization and removal of debris, in accordance with a riparian zone management plan, as described in § **240-12I** below.

#### I. Riparian zone management plan.

(1) Within any riparian zone, no construction, development, use, activity, or encroachment shall be permitted unless the effects of such development are accompanied by preparation, approval, and implementation of a riparian zone management plan.

(2) The landowner, applicant, or developer shall submit to the Municipal Clerk, or its appointed representative, a riparian zone management plan prepared by an environmental professional, professional engineer or other qualified professional which fully evaluates the effects of any proposed uses on the riparian zone. The riparian zone management plan shall identify the existing conditions including:

(a) Existing vegetation.

(b) Field-delineated surface water bodies.

- (c) Field-delineated wetlands.
  - (d) The one-hundred-year floodplain.
  - (e) Flood hazard areas, including floodway and flood fringe areas, as delineated by the New Jersey Department of Environmental Protection.
  - (f) Soil classifications as found on soil surveys.
  - (g) Existing subdrainage areas of site with HUC (hydrologic unit code) 14 designations.
  - (h) Slopes in each subdrainage area segmented into sections of slopes less than 15%; above 15% but less than 20%; and steep slopes greater than 20%.
- (3) The proposed plan shall describe all proposed uses/activities, and fully evaluate the effects of all proposed uses/activities in a riparian zone, and all proposed management techniques, including proposed vegetation and any other measures necessary to offset disturbances to the riparian zone. A discussion of activities proposed as well as management techniques proposed to offset disturbances and/or enhance the site to improve the riparian zone's ability to function effectively as a riparian zone shall also be included with the riparian zone management plan submittal to the Town of Newton.
- (4) The plan shall be reviewed and must be approved by the Town Engineer, in consultation with the Planning Board, as part of the subdivision and land development process.
- (5) The riparian zone management plan must include management provisions in narrative and/or graphic form specifying:
- (a) The manner in which the area within the riparian zone will be owned and by whom it will be managed and maintained.
  - (b) The conservation and/or land management techniques and practices that will be used to conserve and protect the riparian zone, as applicable.
  - (c) The professional and personnel resources that are expected to be necessary, in order to maintain and manage the riparian zone.
  - (d) A revegetation plan, if applicable, that includes: three layers of vegetation, including herbaceous plants that serve as ground cover, understory shrubs, and trees that, when fully mature, will form an overhead canopy. Vegetation selected must be native, noninvasive species, and consistent with the soil, slope and moisture conditions of the site.

The revegetation plan shall be prepared by a qualified environmental professional, landscape architect, or professional engineer, and shall be subject to the approval of the Town Engineer in consultation with the Planning Board. Dominant vegetation in the riparian zone management plan shall consist of plant species that are suited to the riparian zone environment. The Town Engineer may require species suitability to be verified by qualified experts from the Soil Conservation District, Natural Resources Conservation Service, New Jersey Department of Environmental Protection, U.S. Fish and Wildlife Service and/or state or federal forest agencies.

- (6) A riparian zone management plan is not required where the riparian zone is not being disturbed and conservation easements/deed restrictions are applied to ensure there will be no future clearing or disturbance of the riparian zone.
- (7) Performance of the riparian zone management plan shall be guaranteed for two years by a surety, such as a bond, cash or letter of credit, which shall be provided to the Town of Newton prior to the Town issuing any permits or approving any uses relating to the applicable use or activity.

J. Boundary interpretation; appeals procedures; inspection; conflicts; severability.

- (1) When a landowner or applicant disputes the boundaries of a riparian zone, or the defined bank-full flow or level, the landowner or applicant shall submit evidence to the Town Clerk that describes the riparian zone, presents the landowner or applicant's proposed riparian zone delineation, and presents all justification for the proposed boundary change, including, but not limited to, a verification issued under the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-6, or an approval from the New Jersey Department of Environmental Protection to encroach within the special water resource protection area (SWRPA) of a C1 water pursuant to the Stormwater Management Rules at N.J.A.C. 7:8-5.5(h)iii.
- (2) Within 45 days of a complete submission of § **240-12J(1)** above, the Town Engineer or appointed representative shall evaluate all material submitted and shall make a written determination, a copy of which shall be submitted to the Planning Board Secretary, the Municipal Clerk and the landowner or applicant. Failure to act within the forty-five-day period shall not be interpreted to be an approval of the proposed boundary change.
- (3) Any party aggrieved by any such determination or other decision or determination under § **240-12J(2)** may appeal to the Zoning Officer under the provisions of this section. The party contesting the location of the riparian zone boundary shall have the burden of proof in case of any such appeal.
- (4) Any party aggrieved by any determination or decision of the Zoning Officer under this section may appeal to the Town Council of the Town of Newton. The party contesting the determination or decision shall have the burden of proof in case of any such appeal.

(5) Inspections:

(a) Lands within or adjacent to an identified riparian zone shall be inspected by the Town Engineer when:

[1] A subdivision or land development plan is submitted.

[2] A building permit is requested.

[3] A change or resumption of a nonconforming use is proposed.

[4] A discontinued nonconforming use is resumed more than a year later, as described in § **240-12F**.

(b) The riparian zone may also be inspected periodically by representatives from the Town of Newton if excessive or potentially problematic erosion is present, other problems are discovered, or at any time when the presence of an unauthorized activity or structure is brought to the attention of municipal officials or when the downstream surface waters are indicating reduction in quality.

(6) Conflicts. All other ordinances, parts of ordinances, or other local requirements that are inconsistent or in conflict with this section are hereby superseded to the extent of any inconsistency or conflict, and the provisions of this section apply.

(7) Severability.

(a) Interpretation. This section shall be so construed as not to conflict with any provision of New Jersey or federal law.

(b) Notwithstanding that any provision of this section is held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the section shall continue to be of full force and effect.

(c) The provisions of this section shall be cumulative with, and not in substitution for, all other applicable zoning, planning and land use regulations.

K. Enforcement. A prompt investigation shall be made by the appropriate personnel of the Town of Newton of any person or entity believed to be in violation hereof. If, upon inspection, a condition which is in violation of this section is discovered, a civil action may be instituted in the Special Part of the Superior Court, or in the Superior Court, if the primary relief sought is injunctive or if penalties may exceed the jurisdictional limit of the Special Civil Part, by the filing and serving of appropriate process. Nothing in this section shall be construed to preclude the right of the Town Of Newton, pursuant to N.J.S.A. 26:3A2-25, to initiate legal proceedings hereunder in Municipal Court. The violation of any subsection of this section shall constitute a separate and distinct offense independent of the violation of any other subsection, or of any order issued

pursuant to this section. Each day a violation continues shall be considered a separate offense.

## § 240-13. through § 240-15. (Reserved)

## § 240-16. Guarantees and substantial completion.

- A. Guarantees required. As a condition of final site plan approval, the reviewing Board may require and shall accept in accordance with the standards adopted by §§ **240-3J** and **240-5A**, for the purpose of assuring the installation and maintenance of on-tract improvements, a performance guarantee. Off-tract improvements may be required pursuant to the provisions of § **240-5H**. Maintenance guarantees may also be required following completion of improvements, in accordance with § **240-3J**.
- B. Extension of performance guarantees. Whenever it is required as a condition of subdivision or site plan approval that a performance guarantee must be furnished in favor of the municipality in an amount not exceeding 120% of the estimated cost of any required improvements within a stated time, the time allowed for installation of the improvements for which the performance guarantee has been provided may be extended by the Town Council by resolution. As a condition of or as a part of any such extension, the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed 120% of the cost of the installation, as determined at of the time of passage of the resolution.
- C. Substantial completion of improvements. Upon substantial completion of all required appurtenant street improvements (except for the top course) and utility improvements and the connection of same to the public system, the obligor may notify the Town Council in writing of such completion or substantial completion, as provided for in N.J.S.A. 40:55D-53d and, after inspection and report of the Town Engineer, the Town Council may approve, partially approve, or reject the improvements. Where partial approval is granted, the bond of the obligor may be reduced, provided that 30% of the amount of the performance guarantee posted may be retained to insure completion of all improvements. Notice shall be given to the obligor as required by N.J.S.A. 40:55D-53d.
- D. Completion of improvements; liability of obligor.
  - (1) When all of the required improvements have been completed, the obligor shall notify the Town Council in writing, by certified mail addressed in care of the Town Clerk, of the completion of such improvements and shall send a copy thereof to the Town Engineer. Thereupon, the Town Engineer shall inspect all of the improvements and shall file a detailed report in writing with the Town Council, indicating either approval, partial approval or rejection. If partial approval is indicated, the cost of the improvements rejected shall be set forth.
  - (2) If the required improvements are not completed or corrected in accordance with the performance guarantee, the

obligor or surety, if any, shall be liable thereon to the Town for the reasonable cost of the improvements not completed or corrected and the Town may, either prior to or after the receipt of the proceeds thereof, complete such improvements.

(3) If any portion of the required improvements is rejected, the reviewing Board 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.

E. Notification to obligor. The Town Council shall either approve, partially approve, or reject the improvements on the basis of the report of the Town Engineer pursuant to N.J.S.A. 40:55D-53d and 40:55D-53e.

## § 240-17. Validity.

If any section, paragraph, sentence, clause or provision of this chapter shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify this chapter as a whole and such adjudication shall apply only to the section, paragraph, sentence, clause or provision so adjudged, and the remainder of this chapter shall be deemed valid and effective.

## § 240-18. Administration and enforcement.

It shall be the duty of the Zoning Officer to enforce the provisions of this chapter. The Zoning Officer shall investigate any violation or alleged violation of this chapter coming to his attention and shall have, to the extent applicable, all of the powers to exercise all of the functions and duties with respect to this chapter as set forth in § **320-31** of the Revised General Ordinances of the Town of Newton.