

CHAPTER XXVI LAND DEVELOPMENT REGULATIONS

Article I General Provisions

26-1 GENERAL PROVISIONS.

26-1.1 Short Title.

This chapter shall be known and may be cited as the "Land Development Regulations of the Borough of South Toms River, New Jersey," pursuant to the provisions of N.J.S.A. 40:55D-1 et seq., which has been adopted for the following purposes:

- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;
 - b. To secure safety from fire, flood, panic and other natural and manmade disasters;
 - c. To provide adequate light, air and open space;
 - d. To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole;
 - e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;
 - f. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;
 - g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;
 - h. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight;
 - i. To promote a desirable visual environment through creative development techniques and good civic design and arrangements;
 - j. To promote the conservation of open space and valuable natural resources and to prevent urban sprawl and degradation of the environment through improper use of land;
 - k. To encourage planned unit developments which incorporate the best features and design and relate the type, design and layout of residential, commercial, industrial and recreational development to the particular site;
 - l. To encourage senior citizen community housing construction;
 - m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land; and
 - n. To promote the conservation of energy through the use of planning practices designed to reduce energy consumption and to provide for maximum utilization of renewable energy sources.
- (1975 Code § 13-1.1)

26-1.2 Definitions.

Unless otherwise set forth, the terms and definitions contained in the Municipal Land Use Law shall be applicable to the provisions of this chapter. In addition, the following terms are hereby defined as follows:

Application for Development shall mean the application form and all accompanying documents required by ordinance for approval of a subdivision plan, site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit pursuant to this chapter.

Approving Authority shall mean the Land Use Board of the Borough unless a different agency is designated by this chapter when acting pursuant to the authority of this chapter.

Conditional Use shall mean a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in Zoning, Article VI of this chapter and upon the issuance of an authorization therefore by the Land Use Board.

Development Regulation shall mean the zoning article, subdivision article, site plan article, official map article of this chapter or other municipal regulation of the use and development of land, or amendment thereto adopted and filed pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

Planned Development shall mean planned unit development, planned unit residential development, residential cluster, planned commercial development or planned industrial development.

(1975 Code § 13-1.2)

26-1.3 Administrative Procedure.

The Borough Council and the Land Use Board shall adopt, and may amend reasonable rules and regulations, not inconsistent with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., or this chapter for the administration of their functions, powers and duties, and shall furnish a copy thereof to any person upon request and may charge a reasonable fee, as established by subsection 26-1.17q. for such copy. Copies of all such rules and regulations and amendments thereto shall be maintained in the office of the Borough Clerk. (1975 Code § 13-1.3)

26-1.4 Meetings; Quorums.

The Land Use Board shall by its rules fix the time and place for holding its regular meetings for business authorized to be conducted by the Board. Regular meetings of the Land Use Board shall be scheduled not less than once a month and shall be held as scheduled unless cancelled for lack of applications for development to process. The Land Use Board may provide for special meetings, at the call of the Chairman, or on request of any two (2) of its members, which shall be held on notice to its members and the public in accordance with the provisions of the Open Public Meeting Act, N.J.S.A. 10:4-6 et seq., and Board regulations. No action shall be taken at any meeting without a quorum being present. All actions shall be taken by a majority vote of a quorum except as otherwise required by subsection 26-1.13e.

26-1.5 Public Meetings and Minutes.

- a. All regular meetings and all special meetings shall be open to the public. Notice of all such meetings shall be given in accordance with the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., and Board regulations.
- b. Minutes of every regular or special meeting shall be kept and shall include the names of all persons appearing and addressing the Land Use Board and of the persons appearing by attorney, the action taken by the Board, the findings, if any, made by it and reasons therefor. The minutes shall thereafter be made available for public inspection during normal business hours at the office of the Borough Clerk. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceedings concerning the subject matter of such minutes. Such interested party may be charged a fee as established by subsection 26-1.17 of this chapter for reproduction of the minutes for his use.
(1975 Code § 13-1.5)

26-1.6 Hearings.

- a. The Land Use Board shall hold a hearing on each application for development, or adoption, revision or amendment of the master plan.
- b. The Land Use Board shall make the rules governing such hearings. Any maps and documents for which approval is sought at a hearing shall be on file and available for public inspection at least ten (10) days before the date of the hearing during normal business hours in the office of the Borough Clerk. The applicant may produce other documents, records or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.
- c. The officer presiding at the hearing or such person as he may designate shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, and the provisions of the County and Municipal Investigations Law, N.J.S.A. 2A:67A-1 et seq. shall apply.
- d. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer, and the right of cross-examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.
- e. Technical rules of evidence shall not be applicable to the hearing, but the chairman of the Land Use Board may exclude irrelevant, immaterial or unduly repetitious evidence.
- f. The Land Use Board shall provide for the verbatim recording of the proceedings by either stenographic, mechanical or electronic means. The Land Use Board shall furnish a transcript, or duplicate recording in lieu thereof, on request to any interested party at his expense.
- g. Each decision on any application for development shall be in writing and shall include findings of fact and conclusions based thereon.
- h. A copy of the decision shall be mailed by the secretary of the Land Use Board within ten (10) days of the date of decision to the applicant, or if represented then to his attorney, without separate charge, and to all who request a copy of the decision for a fee as specified by subsection 26-1.17r. of this chapter. A copy of the decision shall also be filed by the Land Use Board in the office of the Borough Clerk. The Borough Clerk shall make a copy of such filed decision available to any interested party for a fee as specified in subsection 26-1.17 of this chapter and available for public inspection at his or her office during Borough business hours.
- i. A brief notice of the decision shall be published in a newspaper of general circulation in the Borough. Such publication shall be arranged by the Borough Clerk provided that the applicant may in any case provide for publication of the decision. The applicant shall pay a fee as designated by subsection 26-1.17 for publication of this notice, unless applicant submits proof acceptable to the Borough Clerk within ten (10) days of the decision that he has provided for the required publication. The period of time in which an appeal of the decision may be made shall run from the first publication of the decision, whether arranged by the Borough or the applicant.
(1975 Code § 13-1.6)

26-1.7 Contents of Notice of Hearing on Application for Development or Adoption of Master Plan.

Notices pursuant to subsection 26-1.8 shall state the date, time and place of the hearing, the nature of the matters to be considered, and, in the case of notices pursuant to subsection 26-1.8, an identification of the property proposed for development by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the Borough Tax Assessor's office, and the location and times at which any maps and documents for which approval is sought are available pursuant to subsection 26-1.6b. of this chapter. (1975 Code § 13-1.7)

26-1.8 Notice Required of Hearing on Applications.

Notice pursuant to paragraphs a., b., d., e., f., and g. of this subsection shall be given by the applicant and shall be given at least ten (10) days prior to the date of the hearing.

- a. Public notice of a hearing on an application for development shall be given except for: (1) conventional site plan review pursuant to subsection 26-3.1a. except as otherwise required by subsection 26-2.7h.; (2) minor subdivisions pursuant to subsection 26-3.14; or (3) final approval pursuant to subsection 26-3.10, provided that public notice shall be given in the event that relief is requested pursuant to subsection 26-2.7 as part of an application for development otherwise excepted herein from public notice. Public notice shall be given by publication in a newspaper of general circulation in the Borough.
- b. Notice of a hearing requiring public notice pursuant to paragraph a. of this subsection shall be given to the owners of all real property as shown on the current tax duplicate, located within two hundred (200) feet in all directions of the property which is the subject of such hearing. Notice shall be given by: (1) serving a copy thereof on the property owner as shown on the current tax duplicate, or his agency in charge of the property; or (2) mailing a copy thereof by certified mail to the property owner at his address as shown on the current tax duplicate. Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation.
- c. Upon the written request of an applicant, the Borough Assessor shall, within seven (7) days, make and certify a list from said current tax duplicates of names and addresses of owners to whom the applicant is required to give notice pursuant to paragraph b. of this subsection. The applicant shall be entitled to rely upon the information contained in such list, and failure to give notice to any owner not on the list shall not invalidate any hearing or proceeding. A fee of ten (\$10.00) dollars shall be charged for such list.
- d. Notice of all hearings on applications for development involving property located within two hundred (200) feet of an adjoining municipality shall be given by personal service or certified mail to the Clerk of such municipality.
- e. Notice shall be given by personal service or certified mail to the County Planning Board of a hearing on an application for development of property adjacent to an existing County road or proposed road shown on the official County map or on the County master plan, adjoining other County land or situated within two hundred (200) feet of the municipal boundary.
- f. Notice shall be given by personal service or certified mail to the Commissioner of Transportation of a hearing on an application for development of property adjacent to a State highway.
- g. Notice shall be given by personal service or certified mail to the Director of the Division of State and Regional Planning, New Jersey Department of

Community Affairs, of a hearing on an application for development of property which exceeds one hundred fifty (150) acres or five hundred (500) dwelling units. Such notice shall include a copy of any maps or documents required to be on file with the Borough Clerk pursuant to subsection 26-1.6b. of this chapter.

h. The applicant shall file an affidavit of proof of service with the Land Use Board holding the hearing on the application for development in the event that the applicant is required to give notice pursuant to this section.
(1975 Code § 13-1.8)

26-1.9 Notice Concerning Master Plan.

The Land Use Board shall give:

- a. Public notice of a hearing on adoption, revision, or amendment of the master plan; such notice shall be given by publication in a newspaper of general circulation in the Borough at least ten (10) days prior to the date of the hearing;
- b. Notice by a personal service or certified mail to the Municipal Clerk of an adjoining municipality of all hearings on adoptions, revision or amendment of a master plan involving property situated within two hundred (200) feet of such adjoining municipality at least ten (10) days prior to the date of any hearing;
- c. Notice by personal service or certified mail to the County Planning Board of: (a) all hearings on adoption, revision or amendment of the Borough master plan at least ten (10) days prior to the date of the hearing; such notice shall include a copy of any proposed master plan, or any revision or amendment thereto; and (b) the adoption, revision or amendment of the master plan not more than thirty (30) days after the date of such adoption, revision or amendment; such notice shall include a copy of the master plan or revision or amendment thereto.
(1975 Code § 13-1.9)

26-1.10 Effect of Mailing Notice.

Any notice made by certified mail pursuant to sections 26-1.6 through 26-1.9 of this chapter shall be deemed complete upon mailing. (1975 Code § 13-1.10)

26-1.11 Notice of Hearing on Ordinance or Capital Improvement Program; Notice of Action on Capital Improvement or Official Map.

- a. Notice by personal service or certified mail shall be made to the Clerk of an adjoining municipality of all hearings on the adoption, revision or amendment of a development regulation involving property situated within two hundred (200) feet of such adjoining municipality at least ten (10) days prior to the date of any such hearing.
- b. Notice by personal service or certified mail shall be made to the County Planning Board of: (1) all hearings on the adoption, revision or amendment of any development regulation at least ten (10) days prior to the date of the hearings; and (2) the adoption, revision or amendment of the municipal capital improvement program or official map not more than thirty (30) days after the date of such adoption, revision or amendment. Any notice provided hereunder shall include a copy of the proposed development regulation, the official map or the capital program, or any proposed revision or amendment thereto, as the case may be.

Notice of hearings to be held pursuant to this section shall state the date, time and place of the hearing and the nature of the matters to be considered. Any notice by certified mail pursuant to this section shall be deemed complete upon mailing.
(1975 Code § 13-1.11)

26-1.12 Filing of Development Regulations.

The Borough Clerk shall file, with the County Planning Board as soon after passage as possible, all development regulations, including this chapter and any amendments or revisions thereto, and file and maintain for public inspection copies of said regulations in the office of the Clerk. (1975 Code § 13-1.12)

26-1.13 Reserved.

Former subsection 26-1.13, Appeals to the Governing Body; Time; Notice; Modification; Stay of Proceeding, previously codified herein was deleted in its entirety by Ordinance No. 1-14.

26-1.14 Enforcement.

The Borough Council shall enforce this chapter. In case any building or structure is erected, constructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this chapter, the Borough Council and its agents or any interested party, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.
(1975 Code § 13-1.14)

26-1.15 Conditional Approvals.

- a. In the event that a developer submits an application for development proposing a development that is barred or prevented, directly or indirectly, by a legal action instituted by any State agency, political subdivision, or any other party to protect the public health and welfare or by a directive or order issued by any State agency, political subdivision or court of competent jurisdiction to protect the public health and welfare, the approving authority shall process such application for development in accordance with this chapter, and if such application for development complies with the requirements of this chapter, the approving authority shall approve such application conditioned on removal of such legal barrier to development.
- b. In the event that development proposed by an application for development requires an approval by a governmental agency other than the approving authority, the approving authority shall, in appropriate instances, condition its approval upon the subsequent approval of such government agency; provided that the approving authority shall make a decision on any application for development within the time period provided in this chapter or within an extension of such period as has been agreed to by the applicant unless the approving authority is prevented or relieved from so acting by the operation of law.
(1975 Code § 13-1.15)

26-1.16 Reserved.

26-1.17 Development Review Fees.

Editor's Note: See also subsection 26-3.13, Guarantees Required, paragraph j., Inspection Fees for On-Site and Off-Site Bonded Improvements (Escrow Deposits).

Upon filing an application for development, the developer shall pay an escrow fee to the Borough of South Toms River, by certified check, cash or bank money order, based upon the schedule set forth below. All applications shall be accompanied by a twenty-five (\$25.00) dollar nonrefundable administrative fee for purposes of defraying the costs of the administrative officer (Land Use Secretary or other similar office.) Proposals regarding more than one application type shall pay a cost equaling the sum of the costs for the component elements of that plat. Proposals requiring a combination of approvals, such as subdivision, site plan and/or variance, shall pay a cost equal to the sum of the cost for each element. All such escrow fees shall be used to pay for all professional fees incurred by the Borough's Land Use Board in reviewing such applications. In addition, all such escrow fees are minimum requirements for review of applications. The developer shall be responsible to deposit into the escrow account any and all sums which are necessary to reimburse the Board for all professional fees incurred in reviewing such applications after the initial escrow deposit has been exhausted.

- a. *Informal Concept Plan Review.* Two hundred (\$200.00) dollars.
- b. *Subdivision.*
 - 1. Minor subdivision. Preliminary and final; five hundred (\$500.00) dollars, plus fifty (\$50.00) dollars per lot. Re-review fees shall be required for additional submissions as per 26-1.17d.
 - 2. Major subdivision.
 - (a) Preliminary plat; one thousand five hundred (\$1,500.00) dollars, plus fifty (\$50.00) dollars per lot. Re-review fees shall be required for additional submissions as per 26-1.17d.
 - (b) Final; fifty (50%) percent of the fees paid for preliminary and major subdivision. Re-review fees shall be required for additional submissions as per 26-1.17d.
- c. *Site Plan.*
 - 1. Minor site plan; preliminary and final; eight hundred fifty (\$850.00) dollars. Re-review fees shall be required for additional submissions as per 26-1.17d.
 - 2. Major site plan.
 - (a) Preliminary; one thousand five hundred (\$1,500.00) dollars plus five hundred (\$500.00) dollars per acre or any portion above one (1) acre. Re-review fees shall be required for additional submissions as per 26-1.17d.
 - (b) Final; fifty (50%) percent of the fees paid for preliminary and major site plan. Re-review fees shall be required for additional submissions as per 26-1.17d.
- d. The fees paid under paragraphs b., c., and e. are estimated to cover the cost incurred by the Board for review of the initial application. Additional fees totaling fifty (50%) percent of the original fee shall be posted by the applicant for each plan review submitted after the original submission.
- e. *Extension of Preliminary or Final Approval.* Five hundred (\$500.00) dollars.
- f. *Variance.*
 - 1. Hear and decide appeals: two hundred fifty (\$250.00) dollars.
 - 2. Interpretation of Zoning Regulation or Map: two hundred fifty (\$250.00) dollars.
 - 3. Hardship bulk variance: two hundred fifty (\$250.00) dollars.
 - 4. Use variances: five hundred (\$500.00) dollars.
- g. *Conditional Uses.* One thousand (\$1,000.00) dollars.
- h. *Certificate of Subdivision.* Twenty-five (\$25.00) dollars.
- i. *Zoning Permit or Change of Use Permit.* Twenty-five (\$25.00) dollars.
- j. *Administrative Fee for Accessory Structures.* Notwithstanding any other provision of this section, the administrative fee for an application for approval of any accessory structure shall be twenty-five (\$25.00) dollars.
- k. The cost for the preparation of a resolution for preliminary or final approval shall be a minimum of two hundred (\$200.00) dollars.
- l. Protection or release of performance guaranty or maintenance guaranty: One hundred (\$100.00) dollars. The resolution fee shall be collected by the Borough Clerk at the time of release.
- m. Whenever the fees paid under paragraphs b., c., e., f4 and g. shall exceed five thousand (\$5,000.00) dollars, the fees shall be deposited in a banking institution or savings and loan association in this State insured by an agency of the Federal Government or in any other fund or depository approved for such deposits by the State of New Jersey in an account bearing interest of the minimum rate currently paid by the institution or depository on time or savings deposits. The Secretary of the Land Use Board shall notify the applicant, in writing, of the name and address of the institution or depository in which the deposit is made and the amount of the deposit. If the amount of interest earned on the deposit exceeds one hundred (\$100.00) dollars that entire amount shall belong to the applicant and shall be refunded to him by the Borough on an annual basis or at the time the deposit is repaid or applied for the purpose it was deposited; provided, however, that the Borough may retain both administrative and custodial expenses, a sum equivalent to no more than thirty-three and one-third (33 1/3%) percent of the entire amount which shall be in lieu of all other administrative and custodial expenses. In the event that the interest paid on a deposit for a year does not exceed one hundred (\$100.00) dollars, same is to be retained by the Borough.
- n. *Exemption from Payment of Fees.* In accordance with N.J.S.A. 40:55D-8, any philanthropic, fraternal or religious nonprofit organization holding a tax exempt status under the Federal Internal Revenue Code of 1954 is hereby exempt from the payment of any fees charged under this chapter by virtue of the provisions of N.J.S.A. 40:55D-1, et seq.
- o. The Borough of South Toms River hereby waives the collection of fees associated with obtaining zoning permits for the issuance of permits for the construction, reconstruction, alteration, or improvement designed for the purposes of (a) roofing or siding, (b) windows or doors, (c) electrical or plumbing work within the interior of an existing structure, (d) remodeling or interior renovations to existing homes which do not alter the exterior footprint of the existing building. The aforementioned provisions apply only to existing public or private structures or any facilities contained therein. This section will not relieve the applicant of permit fees which are charged by governmental agencies other than the Borough of South Toms River. This provision is intended to relieve property owners of the fee associated with a Zoning Permit when separate building permits must be obtained to commence construction. Applicants are not relieved of the obligation of obtaining a Zoning Permit, however, under the circumstances described herein the fee for obtaining the Zoning Permit has been waived.
- p. Public record copying charges:

First page to tenth page	0.75*
Eleventh page to twentieth page	0.50*
All pages over twenty	0.25*

*To the extent the cost the Borough actually incurs for duplication exceeds the foregoing rate, the person requesting the documents shall be charged the actual cost the Borough incurs for such copies. For example, if the documents are sent to an off-site facility for copying, the actual charges incurred to the Borough will be levied.

When the nature, format, manner of collation or volume of records to be inspected, examined or copied are such that the record cannot be reproduced by ordinary document copying equipment and ordinary business size or involves extraordinary expenditure of time and effort or if the medium requested is not one the Borough normally maintains, in addition to the actual cost of duplicating the record, a special service charge shall be levied equal to the cost the Borough incurs for providing the copies.

Prior to a request being processed that requires special handling, the Borough Clerk shall advise the requestor of such costs and the records shall not be

reproduced unless the requestor agrees to pay the costs.

Research and Retrieval Fees for Public Documents \$10.00 per hour
Plus postage, if applicable, and copying fees

q. The cost for the purchase of a printed copy of Chapter XXVI, Land Development Regulations of the Revised General Ordinances of the Borough of South Toms River shall be the actual cost to the Borough to purchase these printed copies, plus an additional fifteen (15%) percent administrative fee.

r. Copies of minutes of meetings of the Land Use Board shall be available at a cost as established in paragraph p. above.

s. The fee for a copy of decision of the Land Use Board as refereed in subsection 26-1.6h. shall be ten (\$10.00) dollars for the first page and each additional page shall be one (\$1.00) dollar.

t. The fee for publication of the notice of the decision as required in subsection 26-1.6i. shall be as advised by the Borough Clerk.
(Ord. No. 5-97 § 1; Ord. No. 8-97; Ord. No. 7-01 § 1; Ord. No. 8-04 § 1; Ord. No. 6-07 § 1; New)

Article II Land Use Board

26-2 LAND USE BOARD ESTABLISHED.

26-2.1 Board Established; Appointment of Members.

a. There is hereby established pursuant to the provisions of N.J.S.A. 40:55D-25 in the Borough of South Toms River, a Planning Board which shall be known as the Land Use Board of nine (9) members consisting of the following four (4) classes:

Class I The Mayor who shall not participate in the consideration of applications for development which involve relief pursuant to N.J.S.A. 40:55D-70(d).

Class II One (1) of the Officials of the Borough other than a member of the Borough Council to be appointed by the Mayor; provided that if there is an Environmental Commission, the member of the Environmental Commission, who is also a member of the Land Use Board as required by N.J.S.A. 40:56A-1, shall be deemed to be the Class II Land Use Board member.

Class III One (1) of the Council members to be appointed by the Governing Body. However, the Class III member shall not participate in the consideration of applications for development which involve relief under N.J.S.A. 40:55D-70(d).

Class IV Six (6) other citizens of the Borough to be appointed by the Mayor. The members of Class IV shall hold no other Municipal office except that one (1) member may be a member of the Board of Education. A member of the Environmental Commission who is also a member of the Land Use Board as required by N.J.S.A. 40:56A-1, shall be a Class IV Land Use Board member.

b. *Alternate Member of the Land Use Board.* There are hereby established two (2) alternate members to the Land Use Board. The alternate members shall be appointed by the Mayor and shall meet the qualifications of Class IV members of the Board. The alternate members shall be designated at the time of the Mayor's appointment as "Alternate #1" and "Alternate #2." The terms of the alternate members shall be for two (2) years, except that the terms to the alternate members shall be such that the term of not more than one (1) alternate member shall expire in any one (1) year; provided, however, that in no instance shall the terms of the alternate members first appointed exceed two (2) years. A vacancy occurring otherwise than by expiration of the terms, shall be filled by the Mayor for the unexpired term only. No alternate member shall be permitted to act on any matter in which he has either directly or indirectly any personal or financial interest. An alternate member may, after public hearing if he requests one, be removed by the Governing Body for cause. Alternate members may participate in discussions of the proceedings but not in the deliberation and voting process, unless there exists a need to have the alternate member(s) participate because of an absence by a regular Land Use Board member(s). (1975 Code § 13-2.1; Ord. No. 1-95 §§ 1, 3)

26-2.2 Terms.

The term of the member composing Class I shall correspond with his official tenure. The terms of the members composing Class II and Class III shall be for one (1) year or terminate at the completion of their respective terms of office, whichever occurs first.

All Class IV members shall be appointed for terms of four (4) years except as otherwise herein provided. All terms shall run from January 1 of the year in which the appointment was made. (1975 Code § 13-2.2)

26-2.3 Vacancies.

If a vacancy of any class shall occur otherwise than by expiration of term, it shall be filled by appointment as above provided for the unexpired term. (1975 Code § 13-2.3)

26-2.4 Organization of Board.

The Land Use Board shall elect a Chairman and Vice-chairman from the members of Class IV and select a Secretary who may be either a member of the Land Use Board or a Borough employee designated by it. (1975 Code § 13-2.4)

26-2.5 Land Use Board Attorney.

There is hereby created the office of Land Use Board Attorney. The Land Use Board may annually appoint, fix the compensation of or agree upon the rate of compensation of the Land Use Board Attorney who shall be an attorney other than the Borough Attorney. (1975 code § 13-2.5)

26-2.6 Experts and Staff.

The Land Use Board may also employ or contract for the services of experts and other staff and services as it may deem necessary. The Board shall not, however, exceed, exclusive of gifts or grants, the amount appropriated by the Borough Council for its use. (1975 Code § 13-2.6)

26-2.7 Powers and Duties Generally.

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

a. To make, adopt and amend a master plan for the physical development of the Borough including any areas outside its boundaries, which in the Board's judgment bear essential relation to the planning of the Borough in accordance with the provisions of N.J.S.A. 40:55D-28.

b. To administer the provisions of the Land Subdivision and Site Plan Review regulations of the Borough in accordance with the provisions of this chapter and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

c. To approve conditional use applications in accordance with the provisions of this chapter pursuant to N.J.S.A. 40:55D-67.

d. To participate in the preparation and review of programs or plans required by State or Federal law or regulations.

e. To assemble data on a continuing basis as part of a continuous planning process.

f. To annually prepare a program of Borough capital improvement projects projected over a term of six (6) years, and amendments thereto, and recommend same to the Borough Council.

g. To consider and make report to the Borough Council within thirty-five (35) days after referral as to any proposed development regulation submitted to it pursuant to the provisions of N.J.S.A. 40:55D-26a, and also pass upon other matters specifically referred to the Land Use Board by the Borough Council, pursuant to the provisions of N.J.S.A. 40:55D-26b.

h. When reviewing applications for approval of subdivision plats, site plans or conditional uses, to grant to the same extent and subject to the same restrictions as permitted by the former Zoning Board of Adjustment.

1. Variances pursuant to N.J.S.A. 40:55D-70, from lot area, lot dimensional set back and yard requirements; provided that such relief from lot area requirements shall not be granted for more than one lot.

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

i. To perform such other advisory duties as are assigned to it by ordinance or resolution of the Borough Council for the aid and assistance of the Borough Council or other agencies or officers.

j. The Land Use Board shall have those powers and follow those procedures as previously set forth in this section entitled Zoning Board of Adjustment, throughout those sections, and any current reference to "Zoning Board of Adjustment" should now read "Land Use Board."

(1975 Code § 13-2.7; Ord. No. 1-95 § 4)

26-2.8 Advisory Committee.

The Mayor may appoint one or more persons as a Citizens Advisory Committee to assist or collaborate with the Land Use Board in its duties, but such person or persons shall have no power to vote or take other action required of the Board. Such person or persons shall serve at the pleasure of the Mayor. (1975 Code § 13-2.8)

26-2.9—26-2.12 Reserved.

26-2.13 Additional Powers of the Land Use Board Acting as the Zoning Board of Adjustment.

a. The powers of the Land Use Board shall be in accordance with N.J.S.A. 40:55D-70 et seq. and with the provisions of this chapter.

b. It is further the intent of this chapter to confer upon the Land Use Board as full and complete powers as may lawfully be conferred upon such Board, including, not by way of limitation, the authority, in connection with any case, action or proceeding before the Board, to interpret and construe the provisions of this section, or any term, clause, sentence or word hereof, and the zoning map, in accordance with the general rules of construction, applicable to the legislative enactments.

c. The Board may, in appropriate cases and subject to appropriate conditions and safeguards, grant variances from the terms of this chapter in accordance with the general or specific rules contained herein, and with the general rules hereby laid down that equity shall be done in cases where the strict construction of the provisions of this chapter would work undue hardship. The powers and duties of the board having been delegated to and imposed upon it by statute, the board shall in all cases follow the provisions applicable to it in N.J.S.A. 40:55D-1 et seq. and it shall furnish to any person requesting the same a copy of its rules and information as to how appeals or applications may properly be filed with the Board for its decision thereon.

(1975 Code § 13-2.13)

26-2.14 Expiration of Variance.

Any variance from the terms of this chapter hereafter granted by the Land Use Board permitting the erection or alteration of any structure or structures, or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by the variance, or unless such permitted use has actually been commenced within eighteen (18) months from the date of publication of the notice of the judgment or determination of the Land Use Board; except however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the Land Use Board to the Borough Council, or to a court of competent jurisdiction, until the termination in any manner of such appeal or proceeding. (1975 Code § 13-2.14)

26-2.15 Powers Granted by Law.

The Land Use Board shall have such powers as are granted by law to:

a. Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in the enforcement of the zoning ordinance.

b. Hear and decide requests for interpretation of the map or zoning ordinance, or for decisions upon other special questions upon which the Board is authorized by the zoning ordinance to pass.

c. Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property, or by reason of exceptional topographic conditions, or by reason of other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation in the zoning ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the owner of such property, to grant upon an application or an appeal relating to such property, a variance from such strict application, so as to relieve such difficulties or hardship, provided, however that no variance shall be granted under this paragraph to allow a structure or use in a district restricted against such structure or use; and further provided that the proposed development does not require approval by the Land Use Board of a subdivision, site plan or conditional use in conjunction with which the planning board shall review a request for a variance pursuant to N.J.S.A. 40:55D-60.

d. Grant a variance to allow a structure or use in a district restricted against such structure or use in particular cases and for special reasons, but only by the affirmative vote of at least two-thirds of the full authorized membership of the Board.

No variance or other relief may be granted under the provisions of this subsection unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. Any application under this subsection may be referred to any appropriate person or agency, including the Land Use Board, for its report provided that such reference shall not extend the period of time within which the Land Use Board shall act.

(1975 Code § 13-2.15; N.J.S.A. 40:55D-70)

26-2.16 Additional Statutory Powers.

The Land Use Board shall in addition to the powers specified in subsection 26-2.13 have power given by law to:

- a. Direct issuance of a permit pursuant to N.J.S.A. 40:55D-34 for a building or structure in the bed of a mapped street or public drainageway, flood control basin or public area reserved on the official map.
- b. Direct issuance of a permit pursuant to N.J.S.A. 40:55D-36 for a building or structure not related to a street.

The Land Use Board acting as the Zoning Board of Adjustment shall have the power to grant to the same extent and subject to the same restrictions as the Land Use Board subdivision or site plan approval pursuant to Article 6 of C. 291, P.L. 1975, N.J.S.A. 40:55D-1 et seq., or conditional use approval pursuant to N.J.S.A. 40:55D-67 whenever the Board is reviewing an application for approval of a use variance.
(1975 Code § 13-2.16)

26-2.17 Conflicts of Interest.

No member of the Land Use Board shall act on any matter in which he has either directly or indirectly any personal or financial interest. Whenever any such member shall disqualify himself from acting on a particular matter, he shall not continue to sit with the Board on the hearing of such matter nor participate in any discussion or decision relating thereto. (1975 Code § 13-2.17)

Article III Subdivision and Site Plan Review and Approval*

26-3 SUBDIVISION AND SITE PLAN REVIEW AND APPROVAL.

26-3.1 Grant of Power; County Planning Board Approval.

a. Pursuant to the provisions N.J.S.A. 40:55D-37, approval of subdivision plats by resolution of the Land Use Board shall be required as a condition for the filing of such plats with the County Recording Officer. Approval of site plans by resolution of the Land Use Board shall be required as a condition for the issuance of a building permit and certificate of occupancy for any new building, addition to or alteration of an existing building, any change in use, or any use variance for any nonresidential development except that subdivision or individual lot applications for detached one (1) or two (2) dwelling unit buildings shall be exempt from such site plan review and approval; provided that the resolution of the Land Use Board shall substitute whenever the former Board of Adjustment has jurisdiction over a subdivision or site plan pursuant to subsection 26-2.14 of this chapter.

b. Each application for subdivision approval, where required pursuant to Section 5 of P.L. 1968, c. 285, and each application for site plan approval, where required pursuant to Section 8 of P.L. 1968, c. 285 shall be submitted by the applicant to the County Planning Board for review and approval, as required by the aforesaid sections, and the approving authority shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required time period.
(1975 Code § 13-3.1)

26-3.2 Submittal Procedure.

a. The applicant shall submit fourteen (14) copies of his complete application for subdivision, site plan, or conditional use approval to the Secretary of the Land Use Board at least fourteen (14) days before the monthly meeting date of the Board. The time for the Board's review shall not begin to run until the submission of a complete application with the required fee. Unless the applicant is informed in writing by the Secretary of the Land Use Board within forty-five (45) days of the actual submission of the application that it is incomplete, said application shall be deemed complete as of the date it was submitted.

b. A complete application for preliminary approval shall consist of the following:

1. A properly completed site plan, subdivision and/or conditional use information form.
2. The required fee, as per subsection 26-1.17 of this chapter.
3. A site plan or subdivision plot plan on which the following is set out:
 - (a) Scale, not to exceed one inch equals one hundred feet (1" = 100').
 - (b) Locator map showing all road intersections within five hundred (500) feet or the nearest intersection, whichever is most distant.
 - (c) All structures, wooded areas and topography with two (2) foot intervals, except where the slope exceeds fifteen (15%) percent, in which case contour intervals may be five (5) feet for those areas.
 - (d) All lot lines and owners of lots within two hundred (200) feet of the site.
 - (e) Streets, easements, watercourses and rights-of-way, both existing and proposed.
 - (f) Utility and drainage plans.
 - (g) Any extension of off-tract improvements necessitated by the proposed development.
 - (h) A soil erosion and sedimentation control plan, pursuant to the requirements of N.J.S.A. 4:24-39 et seq.
 - (i) In the case of a site plan, preliminary plans for elevations and locations of structures, parking, lighting, loading, signs and landscaping.

c. Reserved.

d. Reserved.

e. The secretary of the Land Use Board shall distribute the site plan, subdivision and/or conditional use application for review and report, and where required approval, as follows:

1. The Municipal Planner.
2. The Municipal Engineer.
3. The Municipal Utilities Authority.
4. The Municipal Health Officer.
5. The Municipal Fire Officer.
6. The Land Use Board Members.
7. The Zoning Enforcement Officer.
8. Referral to other appropriate boards and agencies.

26-3.3 Reservation of Public Areas.

a. Before approving a subdivision or site plan, the approving authority shall require that streets, public drainageways, flood control basins and public areas, designated for reservation on the master plan or official map, must be shown on the plat in locations and sizes suitable to their intended uses. The approving authority may reserve the location and extent of such streets, ways, basins or areas shown on the plat for a period of up to one year after the approval of the final plat or within such further time as may be agreed to by the developer. Unless during such period or extension thereof the Borough shall have entered into a contract to purchase or institute condemnation proceedings according to law for the fee or a lesser interest in the land comprising such streets, ways, basins or areas, the developer shall not be bound by such reservations shown on the plat and may proceed to use such land for private use in accordance with applicable development regulations. The provisions of this subsection shall not apply to streets and roads, flood control basins or public drainageways necessitated by the subdivision or land development and required for final approval.

b. The developer shall be entitled to just compensation for actual loss found to be caused by such temporary reservation and deprivation of use. In such instance, unless a lesser amount has previously been mutually agreed upon, just compensation shall be deemed to be the fair market value of an option to purchase the land reserved for the period of reservation; provided that determination of such fair market value shall include, but not be limited to, consideration of the real property taxes apportioned to the land reserved and prorated for the period of reservation. The developer shall be compensated for the reasonable increased cost of legal, engineering, or other professional services incurred in connection with obtaining subdivision approval or site plan approval, as the case may be, caused by the reservation.

c. Upon the submission to the approving authority of an application for development showing development proposed for an area reserved on the official map or master plan, the secretary of the approving authority shall notify the Borough Council in writing of such application, and that the approving authority intends to grant approval for said development in the reserved area unless the Borough Council notifies the approving authority prior to the date for final approval that it intends to reserve the area in question and provide compensation to the developer for such reservation. The notice of intent to reserve shall be in the form of a resolution by the Borough Council. The Borough Council shall thereupon proceed either to reach an agreement with the developer as to the amount of compensation to be paid for such reservation, or negotiate a purchase price for the reserved area. Upon the Borough Council arriving at the amount to be paid the developer by way of compensation for reservation or purchase, the amount shall be deposited in escrow for the benefit of the developer.

(1975 Code § 13-3.3)

26-3.4 Off-Tract Improvements.

a. The approving authority shall require, as a condition of preliminary subdivision or site plan approval, that the developer pay his pro-rata share of the cost of providing only reasonable and necessary street improvements and water, sewerage and drainage facilities, and easements therefor, which are located outside the property limits of the development but necessitated or required by construction or improvements within such development. Such contribution for a developer's pro-rata share shall only be required where the off-tract improvements are to be constructed pursuant to the provisions of the circulation and comprehensive utility services plans included in the municipal master plan. The developer shall either install the improvements or contribute his pro-rata share of the costs, at the option of the developer. If the developer installs the improvements, he shall be compensated by the Borough for all but his pro-rata share of the cost of the improvement. (1975 Code § 13-3.4)

26-3.5 Findings for Planned Developments.*

Prior to approval of planned developments, the approving authority shall find the following facts and conclusions:

a. That departure by the proposed development from zoning regulations otherwise applicable to the subject property conform to the zoning ordinance standards pursuant to Section 26-35.

b. That the proposals for maintenance and conservation of the common open space are reliable, and the amount, location and purpose of the common open space are adequate.

c. That provisions through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreational and visual enjoyment are adequate.

d. That the proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established.

e. In the case of a proposed development which contemplates construction over a period of years, that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate.

(1975 Code § 13-3.5)

26-3.6 Standards for the Establishment of Open Space Organization.

a. The Borough Council may, at any time, accept the dedication of land for public use and maintenance, or any interest therein, required to be set aside, designated and reserved for the use and enjoyment of owners and occupants of land adjoining or neighboring such land as a condition of approval of planned unit development, planned unit residential development or residential cluster, but such dedication shall not be required by the approving authority.

b. The developer shall provide for an organization for the ownership and maintenance of any open space for the benefit of owners or residents of a development, if the open space is not dedicated to the Borough. Such organization shall not be dissolved and shall not dispose of any open space, by sale or otherwise, except to an organization conceived and established to own and maintain the open space for the benefit of such development, and thereafter such organization shall not be dissolved or dispose of any of its open space without first offering to dedicate the same to the Borough.

c. In the event that such organization shall fail to maintain the open space in reasonable order and condition, the Borough Council may serve written notice upon such organization or upon the owners of the development setting forth the manner in which the organization has failed to maintain the open space in reasonable condition, and the notice shall include a demand that such deficiencies of maintenance be cured within thirty-five (35) days thereof, and shall state the date and place of a hearing thereon which shall be held within fifteen (15) days of the notice. At such hearing, the Borough Council may modify the terms of the original notice as to deficiencies and may give a reasonable extension of time not to exceed sixty-five (65) days within which they may be cured. If the deficiencies set forth in the original notice or in the modification thereof shall not be cured within thirty-five (35) days or any permitted extension thereof, the Borough, in order to preserve the open space and maintain the same for a period of one (1) year, may enter upon and maintain such land. This entry and maintenance shall not vest in public any rights to use the open space except when the same is voluntarily dedicated to the public by the owners. Before the expiration of the year, the Borough Council shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the open space, call a public hearing upon fifteen (15) days written notice to such organization and to the owners of the development, to be held by the Borough Council, at which hearing such organization and the owners of the development shall show cause why such maintenance by the Borough shall not, at the election of the Borough, continue for a succeeding year. If the Borough Council shall determine that such organization is ready and able to maintain open space in reasonable condition, the Borough shall cease to maintain the open space at the end of the year. If the Borough Council shall determine such organization is not ready and able to maintain the open space in a reasonable condition, the Borough may, in its discretion, continue to maintain the open space during the next succeeding year, subject to a similar hearing and determination, in each year thereafter. The decision of the Borough Council in any case shall constitute a final administrative decision subject to judicial review.

d. The cost of such maintenance by the Borough shall be assessed pro rata against the properties within the development that have a right of enjoyment of the open space in accordance with assessed value at the time of imposition of the lien, and shall become a lien and tax on these properties and be added to and be a part of the tax to be levied and assessed thereon, and be enforced and collected with interest by the same officers and in the same manner as other taxes.

26-3.7 Time for Decision.

a. 1. Upon the submission to the Secretary of the Land Use Board of a complete application for a site plan for ten (10) acres of land or less, the Land Use Board shall grant or deny preliminary approval within forty-five (45) days of the date of such submission or within such further time as may be consented to by the developer, except that if the application for site plan approval also involves an application for relief pursuant to subsection 26-2.7h. of this chapter, the Land Use Board shall grant or deny preliminary approval within ninety-five (95) days of the date of the submission of a complete application to the Secretary of the Land Use Board, or within such further time as may be consented to by the applicant.

2. Upon the submission of a complete application for a site plan of more than ten (10) acres, or for a conditional use approval, the Land Use Board shall grant or deny preliminary approval of the site plan and/or approval of the conditional use within ninety-five (95) days of the date of such submission or within such further time as may be consented to by the applicant.

b. 1. Upon the submission to the Secretary of the Land Use Board of a complete application for a subdivision of ten (10) or fewer lots, other than a minor subdivision as defined by N.J.S.A. 40:55D-1 et seq., the Land Use Board shall grant or deny preliminary approval within forty-five (45) days of the date of such submission or within such further time as may be consented to by the developer, except that if the application for subdivision approval also involves an application for relief pursuant to subsection 26-2.7 of this chapter, the Land Use Board shall grant or deny preliminary approval within ninety-five (95) days of the date of submission of a complete application to the Secretary of the Land Use Board, or within such further time as may be consented to by the applicant.

2. Upon the submission of a complete application for a subdivision of more than ten (10) lots, the Land Use Board shall grant or deny preliminary approval within ninety-five (95) days of the date of such submission or within such further time as may be consented to by the developer.

c. Failure of the Land Use Board to reach a decision within the specified time periods or extensions thereof shall result in the approval of the subdivision and/or site plan and/or conditional use as submitted.

d. The Land Use Board may waive site plan approval requirements if the construction or alteration or change of occupancy or use does not affect existing circulation, drainage, relationships or buildings to each other, landscaping, buffering, lighting and other considerations of site plan review.

e. If the Land Use Board requires any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing, an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development. The Land Use Board shall, if the proposed development complies with this chapter, grant preliminary subdivision or site plan approval.

f. Nothing herein shall be construed to limit the right of a developer to submit a sketch plat to the Land Use Board for informal review, and neither the Land Use Board nor the developer shall be bound by any discussions or statements made during such review; provided that the right of the developer at any time to submit a complete application for subdivision or site plan approval shall not be limited by his submission of a sketch plat and the time for the Land Use Board's decision shall not begin to run until the submission of a complete application.

(1975 Code § 13-3.7)

26-3.8 Public Hearings.

A public hearing shall be held on all applications for site plan approval. (1975 Code § 13-3.8)

26-3.9 Rights Under Preliminary Approval.

Preliminary approval of a major subdivision or site plan, except as provided in paragraph d. of this subsection, shall confer upon the applicant the following rights for a three (3) year period from the date of the preliminary approval:

a. That the general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and off-tract improvements; and, in the case of a site plan, existing natural resources to be preserved on the site; vehicular and pedestrian circulation, parking and loading; screening, landscaping and location of structures; exterior lighting both for safety reasons and street lighting; except that nothing herein shall be construed to prevent the Borough from modifying by ordinance such general terms and conditions of preliminary approval as relate to public health and safety;

b. That the applicant may submit for final approval on or before the expiration date of preliminary approval the whole or a section or sections of the preliminary subdivision plat or site plan; and

c. That the applicant may apply for and the reviewing board may grant extensions on such preliminary approval for additional periods of at least one (1) year but not to exceed a total extension of two (2) years, provided that if the design standards have been revised by ordinance, such revised standards may govern.

d. In the case of a subdivision or site plan for an area of fifty (50) acres or more, the reviewing board may grant the rights referred to in paragraphs a., b. and c. above for such period of time, longer than three (3) years, as shall be determined by the reviewing board to be reasonable taking into consideration:

1. the number of dwelling units and nonresidential floor area permissible under preliminary approval; (2) economic conditions; and (3) the comprehensiveness of the development. The applicant may apply for thereafter and the reviewing board may thereafter grant an extension to preliminary approval for such additional period of times as shall be determined by the reviewing board to be reasonable taking into consideration: (1) the number of dwelling units and nonresidential floor area permissible under preliminary approval; and (2) the potential number of dwelling units and nonresidential floor area of the section or sections awaiting final approval; (3) economic conditions; and (4) the comprehensiveness of the development; provided that if the design standards have been revised, such revised standards may govern.

(1975 Code § 13-3.9)

26-3.10 Final Approval of Site Plans and Major Subdivisions.

a. The reviewing board shall grant final approval if the detailed drawings, specifications and estimates of the application for final approval conform to the standards established by this chapter for final approval, the conditions of preliminary approval, and, in the case of a major subdivision, the standards prescribed by the Map Filing Law, N.J.S.A. 46:23-9.9 et seq. provided that in the case of a planned development, the reviewing body may permit minimal deviations from the conditions of preliminary approval necessitated by change of condition beyond the control of the developer since the date of preliminary approval without the developer being required to submit another application for development for preliminary approval.

b. Final approval shall be granted or denied within forty-five (45) days after submission of a complete application to the secretary of the approving authority, or within such further time as may be consented to by the applicant. Failure of the approving authority to act within the period prescribed shall constitute final approval of the application for final approval as submitted and a certificate of the secretary of the approving authority as to failure of the approving authority to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other required evidence of approval.

c. A complete application for final approval shall consist of the following where applicable:

1. A properly completed final subdivision or site plan approval form.

2. The required fee as per subsection 26-1.17 of this chapter.

3. A final plat or a site plan in final form, including all the information shown on the preliminary plan, conditions of preliminary approval, plus the following:
- (a) In the case of a subdivision, the following requirements shall apply:
- (1) Final Plat. The final plat shall be drawn in ink on tracing cloth at a scale not less than one inch equals one hundred feet (1"=100') and in compliance with all the provisions of N.J.S.A. 46:23-9.11, and amendments thereto. The final plat shall show or be accompanied by the following:
- Date, name and location of the subdivision, name of owner, graphic scale and reference meridian.
 - Tract boundary lines, right of way lines of streets, street names, easements and other rights of way, land to be reserved or dedicated to public use, all lot lines and other site lines; with accurate dimensions, bearings or deflection angles, radii, acres, and central angles of all curves.
 - The purpose of any easement or land reserved or dedicated to public use shall be designated, and the proposed use of sites other than residential shall be noted.
 - Each block shall be numbered, and the lots within each block shall be numbered consecutively beginning with the number one.
 - Minimum building setback line on all lots and other sites.
 - Location and description of all monuments.
 - Names of owners of adjoining unsubdivided land.
 - Certification by the engineer or surveyor as to accuracy of details of plat.
 - Certification that the applicant is agent or owner of the land, or that the owner has given consent under an option agreement.
 - When approval of a plat is required by any officer or body of such a municipality, County or State approval shall be certified on the plat.
 - Certificate from the Tax Collector that all taxes are paid to date. In addition, the Land Use Board may require the following:
Cross-sections and profiles of streets, approved by the Borough Engineer, may be required to accompany the final plat.
Contours of five (5) foot intervals for slopes averaging ten (10%) percent or greater and at two (2) foot intervals for land of lesser slope.
Plans and profiles of storm and sanitary sewers and water mains.
- (b) In the case of a site plan, the requirements set forth in subsection 26-3.2 shall be complied with.
4. A subdivision plat conforming with the Map Filing Act, N.J.S.A. 46:23-9.9 et seq.
(1975 Code § 13-3.10)

26-3.11 Exception to Application of Subdivision or Site Plan Regulations; Simultaneous Review and Approval.

- a. The approving authority when acting upon applications for preliminary or minor subdivision approval shall have the power to grant such exceptions from the requirements for subdivision approval as may be reasonable and within the general purpose and intent of the provisions for subdivision review and approval of this chapter, if the literal enforcement of one (1) or more provisions of this chapter is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in questions.
- b. The approving authority when acting upon application for preliminary site plan approval shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of this chapter, if the literal enforcement of one or more provisions of this chapter is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.
- c. The approving authority shall have the power to review and approve or deny conditional uses or site plans simultaneously with review for subdivision approval without the developer being required to make further application to the approving authority, or the approving authority being required to hold further hearings. The longest time period for action by the approving authority, whether it be for subdivision, conditional use or site plan approval, shall apply. Whenever approval of a conditional use is requested by the developer pursuant to this subsection, notice of the hearing on the plat shall include reference to the request for such conditional use.
(1975 Code § 13-3.11)

26-3.12 Effect of Final Approval.

- a. The zoning requirements applicable to the preliminary approval first granted and all other rights conferred upon the developer pursuant to subsection 26-3.9 of this chapter, whether conditionally or otherwise, shall not be changed for a period of two (2) years after the date of final approval; provided that in the case of major subdivision, the rights conferred by this section shall expire if the plat has not been duly recorded ninety-five (95) days. The approving authority may extend such period of protection for extensions of one (1) year but not to exceed three (3) extensions. Notwithstanding any other provision of this chapter, the granting of final approval terminates the time period of preliminary approval pursuant to subsection 26-3.9 of this chapter for the section granted final approval.
- b. In the case of a subdivision or site plan for a planned unit development or planned unit residential development or residential cluster of fifty (50) acres or more or conventional subdivision or site plan for one hundred fifty (150) acres or more, the approving authority may grant the rights referred to in paragraph a. of this subsection, for such period of time, longer than two (2) years, as shall be determined by the approving authority to be reasonable taking into consideration: (1) the number of dwelling units and nonresidential floor area permissible under final approval; (2) economic conditions; and (3) the comprehensiveness of the development. The developer may apply for thereafter, and the reviewing board may thereafter grant, an extension of final approval for such additional period of time as shall be determined by the approving authority to be reasonable taking into consideration: (1) the number of dwelling units and nonresidential floor area permissible under final approval; (2) the number of dwelling units and nonresidential floor area remaining to be developed; (3) economic conditions; and (4) the comprehensiveness of the development.
(1975 Code § 13-3.12)

26-3.13 Guarantees Required; Inspection Fees; Escrow.

- a. Before recording of final subdivision plats, or as a condition of final site plan approval, the approving authority may require and shall accept in accordance with the standards adopted by this chapter for the purpose of assuring the installation and maintenance of on-tract improvements:
1. The furnishing of a performance guarantee in favor of the Borough in an amount not to exceed one hundred twenty (120%) percent of the cost of installation for improvements it may deem necessary or appropriate including: streets, grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, surveyor's monuments, as shown on the final map and required by the Map Filing Law, N.J.S.A. 46:23-9.9 et seq., water mains, culverts, storm sewers, sanitary sewers, or other means of sewage disposal, drainage structures, erosion control and sedimentation control devices, public improvements of open space and, in the case of site plans only, other on-site improvements and landscaping; provided that no more than ten (10%) percent of the total performance guarantee shall be required to be in cash, and the balance shall be in form of a surety company bond from a bonding company approved by the Borough Council, or an irrevocable letter of credit from a banking institution authorized to do business in New Jersey.

The Borough Engineer shall review the improvements required by the approving authority which are to be bonded and itemize their cost. Said itemization shall be the basis for determining the amount of performance guarantee and maintenance guarantee required by the approving authority. The Borough Engineer shall forward his estimate of the cost of improvements to the applicant within thirty (30) days of the date of receipt of a request sent by certified mail for said estimate.

2. The furnishing of a maintenance guarantee to be posted with the Borough for a period not to exceed two (2) years after final acceptance of the improvement, in an amount not to exceed fifteen(15%) percent of the cost of the improvement.

In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance of maintenance guarantee, as the case may be, shall be required for such utilities or improvements.

b. The amount of any performance guarantee may be reduced by the Borough Council by resolution when portions of the improvements have been certified by the Borough Engineer to have been completed. The time allowed for installation of the improvements for which the performance guarantee has been provided may be established by the Borough Council by resolution.

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

d. When all of the required improvements have been completed, the obligor shall notify the Borough Council in writing, by certified mail addressed in care of the Borough Clerk of the completion of said improvements and shall send a copy thereof to the Borough Engineer. Thereupon the Borough Engineer shall inspect all of the improvements and shall file a detailed report, in writing, with the Borough Council, indicating either approval, partial approval, or rejection of the improvements with a statement of reasons for any rejection. If partial approval is indicated, the cost of the improvements rejected shall be set forth.

e. The Borough Council shall either approve, partially approve or reject the improvements, on the basis of the report of the Borough Engineer and shall notify the obligor in writing, by certified mail, of the contents of said report and the action of said approving authority with relation thereto, not later than sixty-five (65) days after receipt of the notice from the obligor of the completion of the improvements. Where partial approval is granted, the obligor shall be released from all liability pursuant to its performance guarantee, except for the improvement not yet approved. Failure of the Borough Council to send or provide such notification to the obligor within sixty-five (65) days shall be deemed to constitute approval of the improvements and the obligor and surety, if any, shall be released from all liability pursuant to such performance guarantee.

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

g. The obligor shall reimburse the Borough for all reasonable inspection fees paid the Borough Engineer for the foregoing inspection of improvements.

h. *Improvements to be Considered.* Prior to the granting of final approval, the developer shall have installed or, if permitted in lieu thereof, shall have furnished performance guaranties for the ultimate installation of the following improvements. All improvements shall be designed, constructed and placed in accordance with any applicable standards and specifications of the Borough or County, State or Federal regulatory agencies. The developer may construct improvements prior to final approval and the filing of the final plat, provided that final construction drawings have been received and approved by the Borough Engineer and upon notification to the Board forty-five (45) days prior to the start of construction and payment of inspection fees as specified in this chapter seven (7) days prior to the start of construction. Improvements are:

1. Streets, grading and streetlights.
2. Street name signs at all street intersections within or abutting the subdivision.
3. Curbs.
4. Sidewalks.
5. Shade trees.
6. Monuments. All monuments shall be of the size and shape required by N.J.S.A. 46:23-9.11q and placed in accordance with the statute.
7. Storm drains.
8. Bulkheads.
9. Landscaping, topsoil and seeding on all rights-of-way.
10. Soil erosion and sedimentation control measures.

i. *Inspection Requirements.*

1. General requirements. All improvements, except as otherwise provided, shall be subject to inspection and approval by the Borough Engineer. No underground installation shall be covered until inspected and approved by the Borough Engineer or those agencies having jurisdiction over the particular installation. If such installation is covered prior to inspection, it shall be uncovered or other inspection means used, such as television or other pipeline camera, as may be deemed necessary by the Borough Engineer, and charges for such work will be paid for by the developer. The appropriate engineer shall be notified by the developer at least forty-eight (48) hours prior to the start of construction.

2. Inspection not acceptance. Inspection of any work by the Borough Engineer or his authorized representative shall not be considered to be final approval or rejection of the work but shall only be considered to be a determination of whether or not the specific work involved was being done to Borough specifications or other required standards at the time of inspection. Any damage to such work or other unforeseen circumstances, such as the effect of the weather, other construction, changing conditions, settlement, etc., between the time of installation and the time that the developer wishes to be released from his performance guaranty shall be the full responsibility of the developer, and the work shall not be considered accepted until release of the performance guaranty.

3. Payment to contractors. No developer shall enter into any contract requiring the Borough Council, the Borough Engineer or any of their agents, employees or other representatives to make any declarations, written or otherwise, as a condition of payment of the developer to a contractor as to the acceptance or rejection of the work. Neither the Borough Council, the Borough Engineer nor any of their agents, employees or representatives shall make any such declaration.

j. *Inspection Fees for On-Site and Off-Site Bonded Improvements; Escrow.*

1. Inspection fee escrow deposits.

(a) At least one (1) week prior to the beginning of construction or installation of any required improvements, the developer shall notify the Borough Engineer, in writing, of the developer's intention to commence such work. The Borough Engineer or his or her designee, to ensure satisfactory completion, shall inspect all improvements and utility installations during the time of their installation, and no underground installation shall be covered until inspected by the Borough Engineer or his or her designee.

(b) The cost of all inspections shall be the responsibility of the developer, and he or she shall deposit the necessary inspection fee with the designated

municipal officer upon making application for final approval under this chapter or prior to the start of any construction, whichever shall first occur. The inspection fee shall consist of a sum equal to the following:

(1) The amount of escrow deposit for inspection fees shall be five (5%) percent of the total cost of the improvements with a minimum fee of five hundred (\$500.00) dollars.

(2) For those developments for which the reasonably anticipated fees are less than ten thousand (\$10,000.00) dollars, these fees may, at the option of the developer, be paid in two (2) installments. The initial amount deposited by the developer shall be fifty (50%) percent of the reasonably anticipated fees.

(3) When the balance on deposit drops to ten (10%) percent of the reasonably anticipated fees because the amount deposited by the developer has been reduced by the amount paid to the Borough Engineer for inspection, the developer shall deposit the remaining fifty (50%) percent of the anticipated inspection fees.

2. This fee shall be held in reserve by the Borough and shall be used to pay the costs of inspecting the construction. It shall be the obligation of the developer to pay for the actual costs of inspecting the construction. Any excess moneys shall be remitted to the developer upon approval of all improvements as provided herein. Any additional inspection costs shall be paid by the developer prior to the approval of the improvements by the Governing Body, as provided for herein.

3. The required guaranties and inspection costs shall be posted with the Borough Clerk prior to the signing of the final plat, the issuance of any building permits or the commencement of any construction.

4. In the event the final approval of a development has been granted in stages or sections, and hence the construction of the required improvements is to be undertaken in stages or sections, bonding and inspection of improvements shall also be in stages or sections.

5. The minimum inspection cost shall be five hundred (\$500.00) dollars.

6. The inspection fee may be utilized to pay any engineering, legal or other professional fees incurred by the Borough in regard to the developer's obligation to properly install site improvements.

(1975 Code § 13-3.13; Ord. No. 5-91 §§ 2-4; Ord. No. 5-07 § 2)

26-3.14 Minor Subdivision.

a. The Land Use Board shall waive notice and public hearing for an application for development if the Subdivision Committee of the Land Use Board appointed by the Chairman finds that the application for development conforms to the definition of "minor subdivisions" as defined in N.J.S.A. 40:55D-1 et seq. Minor subdivision approval shall be deemed to be final approval of the subdivision by the Board; provided that the Board or the subcommittee may condition such approval on terms ensuring the provision of improvements pursuant to Article VII of this chapter.

b. Minor subdivision approval shall be granted or denied within forty-five (45) days of the date of submission of a complete application to the Secretary of the Land Use Board, or within such further time as may be consented to by the applicant. Failure of the Land Use Board to act within the period prescribed shall constitute minor subdivision approval and a certificate of the Secretary of the Land Use Board as to the failure of the Land Use Board to act shall be issued on request of the applicant; and it shall be sufficient in lieu of the written endorsement or other evidence of approval, herein required, and shall be so accepted by the County Recording Officer for purposes of filing subdivision plats.

c. Approval of a minor subdivision shall expire one hundred ninety (190) days from the date of municipal approval unless within such period a plat in conformity with such approval and the provisions of the Map Filing Law, N.J.S.A. 46:23-9.9 et seq., or a deed clearly describing the approved minor subdivision is filed by the developer with the County Recording Officer, the Municipal Engineer and the Municipal Tax Assessor. Any such plat or deed accepted for such filing shall have been signed by the Chairman and Secretary of the Land Use Board. In reviewing the application for development for a proposed minor subdivision, the Land Use Board may accept a plat not in conformity with the Map Filing Act; provided that if the developer chooses to file the minor subdivision as provided herein by plat rather than deed such plat shall conform with the provisions of said act.

d. The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor subdivision approval was granted, shall not be changed for a period of two (2) years after the date of minor subdivision approval, provided that the approved minor subdivision shall have been duly recorded as provided herein.

(1975 Code § 13-3.14)

26-3.15 Filing of Subdivision Plats.

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

b. Final approval of a major subdivision shall be evidenced by affixing to the plat the signature of the Chairman and Secretary of the approving authority, or a copy of the certificate of the Secretary of the approving authority indicating that the approving authority failed to reach a decision on the subdivision application within the prescribed time. The signatures of the Chairman and Secretary of the approving authority shall not be affixed until the developer has posted the guarantees required pursuant to subsection 26-3.13 of this chapter.

(1975 Code § 13-3.15)

26-3.16 Selling Before Approval of Subdivision; Penalty.

a. If, before final approval has been granted, any person transfers or sells or agrees to transfer or sell, except pursuant to an agreement expressly conditioned on final subdivision approval, as owner or agent, any land which forms a part of a subdivision for which municipal approval is required by ordinance pursuant to this chapter, such person shall be subject to a penalty not to exceed one thousand (\$1,000.00) dollars and each lot disposition so made shall be deemed a separate violation in Municipal Court. In addition to the foregoing, the Borough may institute and maintain a civil action:

1. For injunctive relief; and

2. To set aside and invalidate any conveyance made pursuant to such a contract of sale if a certificate of compliance has not been issued.

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

(1975 Code § 13-3.16; N.J.S.A. 40:55D-55; New)

26-3.17 Certificates Showing Approval.

a. The prospective purchaser, prospective mortgagee, or any other person interested in any land which forms part of a subdivision, or which formed part of such

a subdivision three (3) years preceding August 1, 1976, may apply in writing to the Borough Clerk for the issuance of a certificate certifying whether or not such subdivision has been approved by the Land Use Board. Such application shall contain a diagram showing the location and dimension of the land to be covered by the certificate and the name of the owner thereof.

b. The Borough Clerk shall make and issue such certificate within fifteen (15) days after the receipt of such written application and the fees therefor. The officer shall keep a duplicate copy of each certificate, consecutively numbered, including a statement of the fee charged, in a binder as a permanent record of his or her office.

c. Each such certificate shall be designated a "certificate as to approval of subdivision of land" and shall certify:

1. That there exists in the Borough of South Toms River a duly established Land Use Board and that there is an ordinance controlling subdivision of land adopted under the authority of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

2. Whether the subdivision, as it relates to the land shown in the application, has been approved by the Land Use Board, and if so, the date of such approval and any extensions and terms thereof, showing that subdivision of which the lands are a part is a validly existing subdivision.

d. The Borough Clerk shall be entitled to demand and receive for such certificate issued by him a reasonable fee not in excess of those provided in N.J.S.A. 54:5-14 and 15. The fees so collected by the Borough Clerk shall be paid by him or her to the Borough.
(1975 Code § 13-3.17)

Article IV Site Plan and Subdivision Standards*

26-4 IMPROVEMENTS.

Prior to the granting of final approval, the subdivider shall have installed or shall have furnished performance guarantees or cash escrow in the amount equal to the Borough Engineer's estimated cost of improvements not yet completed. (Ord. No. 139 § A7; Ord. No. 13-84 § A4)

26-4.1 Streets; Minimum Requirements.

Pavement with modified bituminous penetration macadam consisting of a macadam base course three and one-half (3 1/2) inches in thickness, a bituminous penetration macadam intermediate course three (3) inches in thickness, and a bituminous concrete surface course one and one-half (1 1/2) inches thickness; total thickness of pavement, eight (8) inches. Pavement to conform to requirements of New Jersey State Highway Department, Standard Specifications 1941, as revised or amended. (1975 Code § 13-4.1)

26-4.2 Street Signs.

To conform to existing Borough street signs. (1975 Code § 13-4.2)

26-4.3 Monolithic Concrete Curb and Two-Foot Gutter.

As per specifications of Borough Engineer. (1975 Code § 13-4.3)

26-4.4 Concrete Sidewalk.

As per specifications of Borough Engineer. (1975 Code § 13-4.4)

26-4.5 Shade Trees.

To be required along all proposed streets at twenty-five (25) foot intervals, between sidewalk and curb line. Trees shall be nursery grown stock not less than three and one-half (3 1/2) inches in circumference, planted with support to three stakes by rubber covered wires and shall be a type approved by the Land Use Board. All trees not surviving shall be replaced by the developer within three (3) years of acceptance. The Board may require the developer, at his sole expense, to retain a qualified forester to report to the Board as to what can be done to save existing trees, prior to preliminary approval. (1975 Code § 13-4.5)

26-4.6 Top Soil Protection.

No top soil shall be removed from the site or used as spoil. Top soil moved during the course of construction shall be redistributed so as to provide at least six (6) inches of cover to all areas of the subdivisions and shall be stabilized by seeding or planting. These provisions shall also apply to any slopes or grades created by the subdivider. (1975 Code § 13-4.6)

26-4.7 Monuments.

To be the size and shape required by N.J.S.A. 46:23-9.11(g), and shall be placed in accordance with statute. (1975 Code § 13-4.7)

26-4.8 Culverts, Storm Sewers and Sanitary Sewers.

All such installations shall be properly connected with an existing system and shall be adequate to handle all present and probably future development, to the satisfaction of the Borough Engineer. (1975 Code § 13-4.8)

26-4.9 Disposal of Dead Trees.

All stumps, litter, rubbish, brush, weeds, dead or dying trees, roots and debris shall be removed to the satisfaction of the Construction Official and in full compliance with the Borough ordinance regulating the removal of same. (1975 Code § 13-4.9)

26-4.10 Inspection Required of all Improvements.

Plans for and the installation of all of the above listed improvements shall be subject to inspection and approval of the Borough Engineer who shall be notified by the developer at least forty-eight (48) hours prior to the start of construction. No underground installations shall be covered until inspected and approved. (1975 Code § 13-4.10)

26-4.11 Design Standards.

The subdivider shall observe the following requirements and principles of land subdivision in the design of each subdivision or portion thereof. (1975 Code § 13-4.11)

26-4.12 General Standards.

The subdivision plat shall conform to design standards that will encourage good development patterns within the Borough. After a master plan is adopted, all subdivisions shall conform to the proposals and conditions shown thereon. The streets, drainage rights-of-way, school sites, public parks and playgrounds shown on the

officially adopted master plan or official map shall be considered in approval of subdivision plats. Where not shown on the master plan or official map, streets and drainage rights-of-way shall be shown on the final plat in accordance with N.J.S.A. 40:55D-1 et seq. and amendments and supplements thereto, and shall be such as to lend themselves to the harmonious development of the Borough and enhance the public welfare in accordance with the following design standards. (1975 Code § 13-4.12)

26-4.13 Streets.

- a. 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.
- b. Any subdivision abutting arterial streets may be required to 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 Land Use Board may determine appropriate.
- c. The right-of-way width shall be measured from lot line to lot line and shall not be less than fifty (50) feet for any street, except that the right-of-way width for internal roads and alleys in multi-family, commercial and industrial development 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.
- d. No subdivision showing reserve strips controlling access to street shall be approved.
- e. 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 (1) or both sides of the road.
- f. Grades of arterial and collector streets shall not exceed four (4%) percent. Grades on other streets shall in general not exceed ten (10%) percent. No street shall have a minimum grade of less than one half of one (.5%) percent.
- g. Street intersections shall be as nearly at right angles as is possible and in no case shall be less than seventy-five (75°) degrees. The block corners at intersections shall be rounded at radius of not less than twenty (20) feet.
- h. Street jogs with centerline offsets of less than one hundred twenty-five (125) feet shall be prohibited.
- i. All changes in grade shall be connected by vertical curves of sufficient radius to provide a smooth transition and proper sight distance.
- j. Cul-de-sacs or dead end streets are generally deemed undesirable and should be avoided. If, however, the Land Use Board determines that a cul-de-sac is necessary, then and in that event it shall not be longer than three hundred (300) feet and shall provide a turn around at the end with a radius of not less than fifty (50) feet and tangent to the right side of the street. If a dead end street is of a temporary nature, a similar turn around shall be provided and provisions made for future extension of the street and reversion of the excess right-of-way to the adjoining properties.
- k. 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. All proposed street names shall be submitted to the Land Use Board for approval.
- l. A tangent at least one hundred (100) feet shall be introduced between reversed curves on arterial and collector streets, where the centerline is less than a five hundred (500) foot radius.
(1975 Code § 13-4.13)

26-4.14 Blocks.

- a. Block length and width or acreage within bounding roads shall be such as to accommodate the size of lot required in the area by the zoning chapter and to provide for convenient access, circulation control and safety of street traffic.
- b. For commercial, group housing or industrial use, block size shall be sufficient to meet all area and yard requirements for such use.
(1975 Code § 13-4.14)

26-4.15 Lots.

- a. Lot dimensions and area shall not be less than the requirements of Article VI, Zoning.
- b. Insofar as is practical, side lot lines shall be at right angles to straight streets, and radial to curved streets.
- c. Each lot must front upon an approved street at least fifty (50) feet in width.
- d. Where extra width has been dedicated for widening of existing streets, lots shall begin at such extra width line, and all setbacks shall be measured from such line.
- e. Where there is a question as to the suitability of a lot or lots for their intended uses due to factors such as topographical irregularities, erosion conditions, flood conditions or similar circumstances, the Board may after adequate investigation, withhold approval of the said subdivision.
(1975 Code § 13-4.15)

26-4.16 Public Use and Service Areas.

- a. Easements along rear property lines or elsewhere for utility installation may be required. Such easements shall be at least fifteen (15) feet wide and located in consultation with the companies or Borough Departments concerned.
- b. Where a subdivision is traversed by a watercourse, drainage way, channel or street, there shall be provided a drainage right-of-way conforming substantially with the lines of such watercourse, and such further width or construction, or both as will be adequate for the purpose. All easements or drainage rights-of-way shall be formally deeded to the Borough of South Toms River.
- c. Natural features such as streets, brooks, hilltops and views shall be preserved whenever possible in designing any subdivision containing such features.
(1975 Code § 13-4.16)

26-4.17 Completion of Improvements.

Prior to the issuance of a certificate of occupancy, all improvements as shown on the approved site plan shall have been completed. When by reason of adverse weather conditions completion of certain improvements would cause an undue delay, the Land Use Board shall require the posting of a performance guarantee sufficient in amount to cover the cost of all such uncompleted improvements as estimated by the Borough Engineer, assuring the installation of such uncompleted improvements within one year of the posting of the performance guarantee. The amount of the performance guarantee shall be fixed by the Land Use Board and shall not be in excess of one hundred twenty (120%) percent of the cost of uncompleted improvements as estimated by the Borough Engineer. The performance guarantee shall be in the form of a certified check drawn on a bank which is a member of the Federal Reserve System payable to the Borough of South Toms River or in such form as may be approved by the Borough Attorney as to form and execution. Failure to comply with any of the conditions of the site plan approval subsequent to the receipt of a building permit or certificate of occupancy as the case may be, shall be construed to be a violation of this section and shall be grounds for the revocation of any building permit or certificate of occupancy, as the case may be. If the Construction Official finds that any conditions of site plan approval have not been met, he shall give the applicant ten (10) days written notice to comply with the conditions. Failure to comply within this ten (10) day period shall result in the revocation of the building permit

26-4.18 Stormwater Management Facilities, Maintenance and Repair.*

Whenever the Borough is requested to accept dedication of properties to be maintained for detention or retention basin purposes, which will result in the Borough having to expend funds in the future for the maintenance of such properties, the Borough shall, unless otherwise determined by the Borough Council, require that the property owner dedicating such property post with the Borough funds that will defray the estimated costs of maintenance for a ten (10) year period. (Ord. No. 4-07 § 1)

26-4.19 Public Restaurant and Eating Establishments.

a. No certificate of occupancy for any premise as described herein shall be issued unless and until final site plan approval has been granted by the Borough of South Toms River Land Use Board which has the appropriate jurisdiction to review the same.

b. Any building within the Borough which is utilized as a restaurant, tavern, lunchroom, or any eating establishment with seating capacity of more than twenty-five (25) people shall be constructed to the following specifications:

1. Indoor ceiling-mounted sprinkler system with heat sensitive activation;
2. Emergency exit fire doors;
3. One (1) fire hydrant located on the lot in question;
4. Parking areas with two (2) handicapped spaces and handicapped access;
5. Paved parking surface constructed of six (6) inch gravel base, four (4) inches of bituminous stabilized base coarse, two (2) inches of FABC-1 surface coarse;
6. One (1) parking space (10 feet by 20 feet) for each one and one-half (1 1/2) seats located within the restaurant.
7. All bathrooms to be provided with handicapped facilities;
8. Four (4) foot concrete sidewalks adjacent to all public streets;
9. Fifty (50) foot of buffered area from the developed area to the property line when the property line is adjacent to a residential area or body of water;
10. Buffer is to be comprised of a continuous dense planting of White Pine, Japanese Pine, or American Holly with a double staggered row twelve (12) feet on center, with a minimum tree height of five (5) feet. Additionally a six (6) foot high board-on-board fence or chain link fence with privacy slats is to be placed on the development side of the double tree line.

(Ord. no. 3-91 § 1)

26-4.20 Detention Basins.*

Any property within the Borough of South Toms River which contains a groundwater detention or retention basin in excess of five hundred (500) square feet shall be surrounded by a six (6) foot high chain link fence with privacy slats or other solid fencing of the same height which will prohibit access to the detention basin. All gates or access ways through the fence shall be locked. (Ord. No. 1-91 § 2)

26-4.21 Facilities for the Collection or Storage of Source Separated Recyclable Materials in New Multi-Family Housing Developments.

a. *Definitions.* As used in this section:

Multi-Family Housing Development shall mean a building containing three (3) or more dwelling units occupied, or intended to be occupied, by persons living independently of each other, or a group of such buildings;

Recycling Area shall mean space allocated for collection and storage of source-separated recyclable materials.

b. *Recycling Area Required for Multi-Family Housing Developments.* There shall be included in any new multi-family 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 areas 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. The dimensions of the recycling area and the bins or containers shall be determined in consultation with the Municipal Recycling Coordinator, and shall be consistent with the District Recycling Plan adopted pursuant to N.J.S.A. 13:1E-99.13 and any applicable requirements of the Municipal Master Plan, adopted pursuant to Section 26 of P.L. 1987, c. 102.

c. *Location.* The recycling area shall be conveniently located for the residential disposition of source-separated recyclable materials, preferably near, but clearly separated from, a refuse dumpster.

d. *Lighting; Accessibility.* 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.

e. *Design of Recycling Bins or Containers.* The recycling area or the bins or containers placed therein shall be designed so as to provide protection against adverse environmental conditions which might render the collected materials unmarketable. 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.

f. *Signs.* 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.

g. *Landscaping and Fencing.* Landscaping and/or fencing shall be provided around any outdoor recycling area and shall be developed in an aesthetically pleasing manner.

(Ord. No. 10-93 §§ 1-7)

Article V Requirements for Development in the Pinelands Area

Prior ordinance history: 2008 Code §§ 26-5–26-5.12

26-5 PINELANDS AREA REQUIREMENTS.

26-5.1 Compliance Required.

All development within the Pinelands Area of the Borough shall comply with the land use and development standards of the Pinelands Comprehensive Management Plan as set forth at N.J.A.C. 7:50, subchapters 5 and 6. In the event of a conflict between the standards of the Pinelands Comprehensive Management Plan and other regulations of this chapter, the standards of the Pinelands Comprehensive Management Plan shall apply. (Ord. No. 3-13 § 1)

26-5.2 Public Development.

All development proposed by the Borough or any agency thereof shall comply with the requirements for public development set forth in the Pinelands Comprehensive Management Plan, N.J.A.C. 7:50-41 et seq. (Ord. No. 3-13 § 1)

26-5.3 Procedures.

a. No person shall carry out any development within the Pinelands Area of the Borough without obtaining a Certificate of Filing from the Pinelands Commission pursuant to N.J.A.C. 7:50-4.34.

b. All development approvals in the Pinelands Area of the Borough shall be forwarded to the Pinelands Commission for review pursuant to N.J.A.C. 7:50, subchapter 4.
(Ord. No. 3-13 § 1)

26-5.4 Amendments.

All amendments to this chapter shall be submitted to the Pinelands Commission in accordance with N.J.A.C. 7:50-3.45 to determine if said amendments raise a substantial issue with respect to the standards of the Pinelands Comprehensive Management Plan. Any such amendment shall become effective only as provided in N.J.A.C. 7:50-3.45. (Ord. No. 3-13 § 1)

26-5.5 Definitions.

a. The following terms are used as defined in the Pinelands Comprehensive Management Plan, adopted by the Pinelands Commission Protection Act (N.J.S.A. 13:18A-1 et seq) as amended:

Approval Agency shall mean any board, body or other authority within the Borough with authority to approve or disapprove subdivision, site plans, construction permits or other applications for development approval.

Certificate of Filing shall mean a certificate issued by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.34 that a complete application for development has been filed.

Development shall mean the change or enlargement of any use or disturbance of any land, the performance of any building or mining operation, the division of land into two (2) or more parcels, and the creation or termination of rights of access or riparian rights including, but not limited to:

- a. A change in type of use of a structure or land;
- b. A reconstruction, alteration of the size or material change in the external appearance of a structure or land;
- c. A material increase in the intensity of use of land, such as an increase in the number of businesses, manufacturing establishments, offices or dwelling units in a structure or on land;
- d. Commencement of resource extraction or drilling or excavation on a parcel of land;
- e. Demolition of a structure or removal of trees;
- f. Commencement of forestry activities;
- g. Deposit of refuse, solid or liquid waste or fill on a parcel of land;
- h. In connection with the use of land, the making of any material change in noise levels, thermal conditions, or emissions of waste material; and
- i. Alteration, either physically or chemically, of a shore, bank, or floodplain, seacoast, river, stream, lake, pond, wetlands or artificial body of water.

Development approval shall mean any approval granted by an approval agency, including appeals to the Governing Body, except certificates of occupancy and variances, pursuant to N.J.S.A. 40:55D-70, which do not otherwise include issuance of a construction permit, subdivision or site plan approval:

Pinelands Area, Borough of South Toms River shall mean that areas of the Borough of South Toms River designated as part of the Pinelands Area by Section 10(a) of the New Jersey Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.). It consists of that portion of the Borough located west of the Garden State Parkway and south of the Pennsylvania and Atlantic Railroad line.

Pinelands Development Credit shall mean a use right allocated to certain lands within the Pinelands Area by the Pineland Commission pursuant to N.J.A.C. 7:50-5.53 that can be used to secure a density bonus on other lands in the Pinelands Areas or in association with a variance issued for development in the Pinelands Regional Growth Area.

Public Development shall mean any development, including subdivision, undertaken by the Borough or another governmental agency.
(Ord. No. 3-13 § 1)

26-6—26-9 RESERVED.

Article VI Zoning

26-10 INTERPRETATIONS AND DEFINITIONS.

26-10.1 Interpretations.

This article shall be liberally construed in the light most favorable to the zoning scheme and welfare of the community as a whole. (Ord. No. 144 § 300; Ord. No. 13-84 § A6)

26-10.2 Words and Phrases.

Unless otherwise indicated or inappropriate, words and phrases shall be given whatever number, gender or tense actually used. The word "lot" includes the word "plot." The word "building" includes the word "structure." The term "such as" shall be considered as indicating a typical illustrative situation or example rather than as being entirely exclusive or inclusive. (Ord. No. 144 § 301; Ord. No. 13-84 § A5)

26-10.3 Definitions.

As used in this article:

Accessory Building or Use shall mean a subordinate building or use which is located on the same lot on which the principal building or use is situated and which is reasonably necessary and incidental to the conduct of the primary use or building.

Alterations shall mean as applied to a building or a structure, a change or rearrangement in the structural parts or in the existing facilities, or an enlargement, whether by extension of a side or by increasing in height or by moves from one location or position to another.

Amusement Area shall mean any area within or about a building or open area, open to the public, used for amusement devices, games, or recreational diversions of all types and construction.

Apartment House shall mean every building or portion thereof, which contains three (3) or more dwelling units.

Automobile Graveyard or Junkyard shall mean any place where one or more motor vehicles not in running condition, or parts thereof, are kept or stored in the open with no intent to restore them to operating condition.

Basement shall mean a portion of the building partly underground, but having less than half of its clear height below the average grade of the adjoining ground.

Billboard shall mean any structure or part thereof used to convey a message or attract the attention of the public to an activity, product or location which is not conducted, sold or located on the same parcel of land as the structure. This definition shall not include bulletin boards used for government or church notices, or signs advertising the sale or lease of the premises on which they are located.

Block shall mean the lands bounded by two (2) or more streets, which divide it from other lands.

Block Frontage shall mean the length of a street between two (2) intersecting or interrupting streets.

Boarding or Rooming House shall mean any building or that part of any building where rooming units are rented with or without meals to more than three (3) lodgers in which no provisions are made or permitted for cooking of any description in any bedroom or suite of rooms by the occupant thereof and in which no collective cooking or community kitchen is provided or permitted.

Building shall mean any structure whether or not enclosed wholly or in part having a roof supported by columns, piers or walls, including tents, lunch wagons, trailers, dining cars, camp cars or other structures on wheels, or having other supports and any unroofed structure, terrace, platform or porch, whether or not enclosed wholly or in part.

Buildable Area shall mean the area of a lot remaining after the minimum applicable yard requirements have been complied with.

Building Coverage shall mean the total area expressed in square feet of the outside dimensions of the principal building together with all accessory buildings.

Building Height shall mean the vertical dimensions of a building measured from curb grade to the highest point of the roof in the case of a flat roof; the decline of a mansard roof, or the average height between the plate and ridge of a gable, hip or gambrel roof.

Building Line shall mean the line beyond which no part of a building may be built or project.

Carport shall mean an open structure attached to the main building enclosed on no more than two (2) sides intended for the sheltering of motor vehicles.

Cellar shall mean a portion of the building partly underground having more than half of its clear height below the average grade of the adjoining ground.

Certificate of Occupancy shall mean a certificate issued by the building inspector upon the completion of the construction of a new building or alterations to an existing building, certifying that the construction complies with all ordinances relating thereto.

Common Ownership shall mean two (2) or more contiguous lots or parcels in the same ownership.

Community Building shall mean a building for civic, social, educational, cultural and recreational uses, not operated primarily for monetary gain.

Corner Lot shall mean a lot at the junction of, or having frontage on, two (2) or more streets.

Court shall mean an open space other than a required yard on the same lot with a building and bounded on two (2) or more sides by such building. A court not extending to a required yard is an inner court. A court extending to a required yard is an outer court.

Curb Grade shall mean the elevation of the street grade as established by law; referring to a building height, it means the greatest vertical measurement of the building as computed from the curb grade at the lot center line of the lot front.

Dinners, Lunch Cars, Pullman Diners and Similarly Named Structures shall mean any prefabricated structure brought in complete form to, or assembled on the site, designed for the serving of meals.

Driveway shall mean the use of land for ingress and egress by vehicles of any description.

Dwelling shall mean a building designed for and used exclusively for residential purposes.

- a. Single-family dwelling – a detached building designed for and used exclusively as one dwelling unit.
- b. Two-family dwelling – a detached building containing not more than two dwelling units which are entirely separated by a horizontal floor or vertical wall, unpierced, except for access to the outside or to a common cellar or basement.
- c. Multiple-family dwelling – a building designed for or containing three or more dwelling units.

Dwelling Unit shall mean a unit of a minimum of one room and bath providing complete living facilities for one family including facilities or provision for facilities required in the storage, preparation and serving of food.

Efficiency Apartment shall mean a dwelling unit consisting of one room and bath or one and one-half rooms and bath in which there is no separate bedroom.

Family shall mean:

- a. One (1) or more persons related by blood or marriage occupying a dwelling unit and living as a single nonprofit housekeeping unit.
- b. A collective number of individuals living together in one dwelling unit under one head, whose relationship is of a permanent and distinct domestic character and cooking as a single nonprofit housekeeping unit.

Fence shall mean a structure of any material, built, erected or interposed in, on or upon any lot line or any lot including a gate, hedge, ditch, wall, trestle, frame of wood, or iron or other material.

Floor Area shall mean the total enclosed floor area of a structure. For residential uses such areas shall not include garages, breezeways, unheated porches, basements or cellars. For business or commercial uses, such areas shall include all floor space having headroom of at least seven (7) feet.

Garage shall mean a building, or a part thereof, in which a motor vehicle is stored, kept or repaired. Types of garages include:

- a. **Garage, Private** shall mean a garage as an accessory use to a residence utilized for the storage of not more than three (3) motor vehicles, and in which no business, service or industry is conducted or rendered.
- b. **Garage, Public** shall mean:
 1. A garage used as a business, service or industry connected with motor vehicles either housed or repaired, except automobile sales rooms conducted exclusively for the exhibition of not more than ten (10) vehicles.
 2. A garage used for the storage, care or repair of motor vehicles for profit, including any sale of motor vehicles, fuels, or accessories, or where any such vehicles are kept for hire.
- c. **Automobile Service Station** shall mean a use where gasoline stored in underground tanks, kerosene or motor oil and lubricants or grease for operation of automobiles, are retailed directly to the public on premises and wherein minor automobile accessories and services are provided.

When the dispensing, sale or offering for sale of a motor fuel or oil is incidental to the conduct of a public garage, the premises shall be classified as a public garage.

Garden Apartments shall mean a group of architecturally harmonious residential buildings, not more than two (2) stories in height, constructed on one parcel of land and operated as a single unit.

Home Business shall mean any lawful business that is professional in nature and permitted by the zoning ordinance, and is clearly customary, incidental, and accessory to the use of the premises as a single-family residential dwelling unit; and which does not alter the exterior of the property or affect the residential character of the neighborhood.

Home Occupation shall mean an accessory use for gain or support conducted only by members of a family residing on the premises within the principal building.

Institutional Uses shall mean churches, schools, providing primary and secondary education, and libraries.

Junk Yard shall mean a use involving the buying, selling, storing or processing objects which are dilapidated or unfit for their intended purpose but which have value principally because of the materials or parts of which they are composed.

Kennel shall mean a structure wherein dogs, cats, or any other type of domesticated or wild animals are boarded, or bred for hire or sale.

Land Use Board shall mean the Land Use Board of the Borough of South Toms River.

Lot shall mean a land area occupied or designed to be occupied by a building and its accessory building.

Lot Area shall mean an area of land expressed in square feet which is determined by the limits of the lines bounding that area.

Lot Coverage see **Building Coverage**.

Lot Depth shall mean the distance between the mid-points of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the site lot lines in the rear.

Lot Front shall mean:

- a. The street frontage having the least frontage and on which the majority of buildings in the block face. All yard and height requirements and limitations shall be computed on this provision.
- b. Double frontage shall mean and shall exist when a lot fronts or faces two streets, whether intersecting or otherwise.

Lot Width shall mean the shortest horizontal distance between the side lot lines measured at the most forward allowable building line or setback line.

Manufacturing shall mean a use involving the treatment of processing of raw products and the production or assembly of articles, parts, or finished products from raw or prepared materials by giving them new forms or qualities.

Mercantile Establishment shall mean any structure in or upon which goods, wares or merchandise are offered for sale or services are rendered.

Nonconforming Building shall mean a building which in its design or location upon a lot does not conform to the regulations of this chapter for the zone in which it is located.

Nonconforming Lot shall mean a lot of record existing on February 14, 1972, which does not have the minimum width, depth, frontage, or have the rear, front or side yards or contain the minimum area for the zone in which it is located.

Nonconforming Use shall mean a use of a building or of land that does not conform to the regulations of this chapter for the zone in which it is located.

Parking Area, Private shall mean an open area or structure, other than street or other public way, used for parking a vehicle where permitted.

Public Area, Public shall mean an open area, other than street or other public way, used for the parking of automobiles and available to the public whether for a fee, free, or as an accommodation for clients or customers.

Parking Lot shall mean a use or accessory use where motor vehicles are stored, parked, kept or located in the open, with or without charge.

Parking Space shall mean an off-street space available for the parking of a motor vehicle which, in this chapter, is required to be an area ten (10) feet wide and twenty (20) feet long, exclusive of passageways and driveways appurtenant thereto and giving access thereto.

Person shall mean any individual, corporation, partnership, association, or other group of persons, including any agency of a municipal, County, State or Federal government.

Porch, Open shall mean a roofed piazza, porch or portecochere which projects beyond the main wall of a building and which does not encroach upon any open space required by this chapter.

Principal Building shall mean a building in which is conducted the main or principal use of the lot on which the building is situated.

Private Swimming Pool shall mean any artificially constructed basin or other structure for the holding of water for use by the possessor, his family or guests, for swimming, diving and other aquatic sports and recreation. The term swimming pool does not include any temporarily erected plastic, canvass or rubber pool.

Restaurant shall mean a use where food is sold for consumption on the premises.

Restaurant, Drive-In shall mean a restaurant at which food or refreshments are customarily served to or consumed by patrons while seated in their automobiles, regardless of whether or not, in addition thereto, seats or other accommodations are also provided for patrons.

Setback Line shall mean a line within any lot, marking the limits of a required yard space, parallel to the street line between which and the street line, no building or portion thereof may be erected except as provided in this chapter.

Single Ownership shall mean ownership of a separate parcel or tract of real property which is not contiguous to land in the same ownership.

Sign shall mean any device, structure, or object for visual communication that is used for the purpose of bringing the subject thereof to the attention of others.

Sign Area of shall mean the area included within the frame or edge of the sign. Where the sign has no such frame or edge, the area shall be defined by an enclosed four-sided (straight sides) geometric shape which most closely outlines said sign.

Site Plan shall mean a plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, rights-of-way, boundaries, all essential dimensions and bearings, and any other information which may be necessary to reach an informed decision.

Story shall mean that part of a building between the surface of any floor and the next floor above it, or in its absence, the finished ceiling or roof above it. A split-level story shall be considered a second story if its floor level is six (6) feet or more above the level of the line of the finished floor next below it, except a cellar. A half story is defined and the uppermost story of a building in which a sloping roof replaces the upper part of the wall.

Street shall mean a public or private thoroughfare serving as a means of vehicular and pedestrian travel, furnishing access to abutting properties and providing space for public utilities.

Trailer, Camper, Mobile Home and Similar Structures are defined in Section 26-17 of this chapter.

Use shall mean the specific purpose for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained.

Yard shall mean:

- a. **Yard, Front** - the required open space extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot. The depth of the front yard shall be measured at right angles to the front lot line,
- b. **Yard, Rear** - The required open space extending across the full width of the lot and lying between the rear line of the lot and the nearest line of any building on the lot. The depth of the rear yard shall be measured at right angles to the rear lot line.
- c. **Yard, Side** - The required open space between the side line of the lot and the nearest line to the building and extending from the front yard line to the rear yard line or in the absence of either such yards, to the street or rear lot lines as the case may be. The width of a side yard shall be measured at right angles to the side line of the lot.
(1975 Code § 13-6; New)

26-11 GENERAL PROVISIONS.

26-11.1 Permissive Article.

This article is intended to be permissive as to uses and purposes permitted within the hereinafter designated zones and any use or purpose not expressly designated for a particular zone or zones within the section setting out the same is prohibited. (1975 Code § 13-7.1)

26-11.2 General Use Limitations.

Except as hereinafter provided, the following general regulations shall apply:

- a. No structure shall be erected, moved, structurally altered, rebuilt, added to, or enlarged, nor shall any land be designated or used for any purpose other than as permitted in each zone by this chapter. No open space or yard surrounding any building shall be encroached upon or reduced in any manner except in conformity to the yard, lot area, building location, percentage of lot coverage and such other regulations hereinafter designated for the zone in which the building or open space is located.
- b. No open space provided around any building for the purpose of complying with the provisions of this chapter shall be considered as providing open space for any other building.
- c. In residential zones set forth in the within chapter, there shall be only one main residential building on each lot of record.
- d. In business and commercial zones, there shall be only one (1) principal building erected on each lot of record except as otherwise provided herein.
- e. A driveway or walk providing ingress and egress, by foot or vehicle, except to a one-family dwelling in residential zones, or to off-street parkings or loading areas shall not be considered as an accessory use in any zone.
- f. On any corner lot, nothing shall be erected, placed, planted or allowed to grow in such a manner as to obstruct vision between a height of two and one-half (2.5) feet and ten (10) feet above the curb grades of the intersecting streets, in the triangular area formed by the two (2) intersecting street lines bounding the lot and by a line connecting points on each street line, located thirty (30) feet from the intersection of the street lines.
- g. No vehicles, equipment or storage shall be kept, placed or located in any required setback space for a front, side or rear yard unless otherwise specifically provided in the within chapter. Also no motor vehicle shall be parked, stored, displayed or otherwise located in or on any vacant or undeveloped lot unless otherwise specifically provide by the within chapter.
 1. All violators of this section shall upon conviction be subject to the penalty stated in Chapter I, Section 1-5. Each and every day in which a violation of this section exists shall constitute a separate violation subject to penalty.
- h. No building or part thereof shall encroach upon any required yard area in any zone, with the exception that steps and entranceways not more than eight (8) feet wide may project three (3) feet into a required front yard and three (3) feet into a required side yard.
- i. Every principal building shall face a public street and shall be built upon a lot with frontage on a public Street which has been improved in accordance with standards of the Borough, unless relief has been granted by the board of adjustment under the provision of N.J.S.A. 40:55-1.40, or unless otherwise provided herein.
- j. An accessory building attached to a principal building shall comply in all respects with the yard requirements of this chapter for the principal building. Detached accessory buildings shall be located to the rear of the front building line of the principal building, and if located in a side yard area shall conform to side yard requirements for accessory buildings.
- k. No church or house of worship shall be placed upon any lot that is less than a minimum of one (1) acre in size. All churches or houses of worship shall provide at a minimum, onsite parking spaces equal to at least fifty (50%) percent of its congregation.
(1975 Code § 13-7.2; Ord. No. 2-05; Ord. No. 7-06 §§ 1-3; New)

26-11.3 Flood Plain District.

Nothing herein provided shall be so construed as to prohibit the owners of lands within any area threatened by flood or tidal waters from lawfully filling, draining, constructing levees and bulkheads, or otherwise improving their land so as to eliminate or reduce the danger of flood or the erosion of soil, provided that any improvements are in compliance with any Federal, State, County or local laws and regulations and the required permits are obtained. (1975 Code § 13-7.3; New)

26-11.4 Certificates of Occupancy.

a. No land shall be occupied or used and no buildings hereafter placed, erected or altered shall be occupied or used in whole or in part for any purpose whatsoever until a certificate of occupancy shall have been issued by the Construction Official stating that the use of the building therein specified, or either of them as the case may be, complies with all the provisions of this chapter or any other ordinance of this Borough applicable to its issuance. Such certificates of occupancy shall be granted or denied within ten (10) days after the written application therefor has been received by the Construction Official. Applications shall be filed in duplicate by the owner or his agent and shall state the intended use of the structure and of the land. The application shall be accompanied by detailed plans and specifications, a plot plan, the established building lines within the site and such other information as may be necessary or desirable to provide for the enforcement of this chapter. Plans shall be drawn to scale and shall show actual dimensions in figures. All building plans, specifications and plot plans shall be signed by an architect or professional engineer licensed by the State of New Jersey. The owner may sign the building plans as to single- family dwellings or as to building accessories to the dwellings in the event the owner has prepared the building plans, provided the owner files an affidavit to that effect in accordance with law. Notwithstanding any other provisions of this chapter, only a land surveyor licensed by the State of New Jersey may prepare and certify the required plot plan.

b. A record of all certificates of occupancy shall be kept on file in the office of the Construction Official and copies shall be furnished upon request to any person having a proprietary or leasehold interest in the building or land affected. A fee of twenty (\$20.00) dollars shall be charged for each original certificate and one (\$1.00) dollar for each copy thereof.

c. After any building or structure having previously been issued a certificate of occupancy suffers a change in tenancy through either sale or lease, the owner of the building or structure shall notify the Building Subcode Official of such impending change in occupancy. After receipt of the notice, the Building Subcode Official shall inspect the building or structure to determine whether same complies with all of the provisions of this chapter or any other ordinances of this Borough. If the building or structure meets the requirements hereof, the Building Subcode Official shall forthwith issue a certificate of occupancy; but if the building or structure does not meet the requirements hereof, the Building Subcode Official shall notify the applicant of the details in which the building or structure does not meet the requirements hereof, and when such details have been perfected, the applicant shall notify the Building Subcode Official that the items have been corrected. No building or structure pursuant to this section shall be occupied or used until the certificate of occupancy has been issued.

d. *Fees.* A fee of ten (\$10.00) dollars shall be charged for the first inspection by the Building Subcode Official after notification; any additional inspections, if required, shall be charged a fee of five (\$5.00) dollars. The fee shall become the property of the Borough. No additional fee shall be charged for a certificate of occupancy issued pursuant to this section. The Tax Search Officer shall provide notice of a certificate of occupancy requirement on all issued tax searches. (1975 Code § 13-7.4)

26-11.5 Accessory Building and Uses.

An accessory building or use in any zone shall be subject to the following requirements:

a. No accessory building shall exceed sixteen (16) feet in height except for flagpoles which shall not exceed a height of twenty-five (25) feet.

b. No accessory building or use shall be located in any required front or side yard space, except as otherwise provided for in this chapter.

c. In residential zones there shall not be more than two (2) accessory buildings per lot or plot.

d. An accessory building shall not be erected, nor an accessory use be permitted, prior to the construction of the main building, or the establishment of the principal use, upon the lot.

e. Where an accessory building is structurally attached to a main building, it shall be subject to, and must conform to all regulations of this chapter applicable to the main building.

f. In the business and commercial zones, no accessory building or use shall be used for a business use conducted for profit apart from the main use. In all other zones, an accessory building shall not contain or be used for the conduct of a business. Otherwise, the use shall be limited to a garage, an attached utility room or tool shed for the containment of tools, implements, screens, storm sash, or other articles generally considered accessory parts of the main building or its use, unless otherwise specifically provided for hereinafter in the respective enumerated zones.

g. No accessory building shall be used in whole or in part as living, sleeping or housekeeping quarters.

h. A display of products or services rendered, sign-board or advertising sign of any nature shall in no case be permitted on an accessory building or a part thereof. Any such signs, advertising, etc., which are permitted, shall conform with all requirements and regulations of any ordinances of the Borough regulating the use of signs.

(1975 Code § 13-7.5; Ord. No. 10-02 § 1; New)

26-11.6 Outdoor Storage.

Merchandise, articles or materials may be kept, stored or displayed outside the confines of the building only in the B-1 and H-D Zones, and then only if all the following requirements are complied with:

a. Outdoor storage or display is permitted only during the normal business hours.

b. Trash and garbage may be temporarily stored outdoors pending its collection. All such storage shall be screened by special planting or a fence of such a height that the materials cannot be visible from any abutting street or property. Under no circumstances shall the storage or display of any article or material be permitted in the front yard in any zone except trash and garbage during the waste collection periods on the assigned day for the respective zones.

The commercial storage of gasoline, fuel oil, kerosene, cylinder oil and other petroleum products in tanks or other containers above ground is not included in permitted outdoor storage and is prohibited in all zones.

(1975 Code § 13-7.6)

26-11.7 Home Business Regulations.

a. The use is limited solely to office use;

b. The use is not operated by a number of employees such as to unreasonably cause a disturbance impacting the ability of neighbors to peacefully enjoy their property;

c. No nonresident employees, customers, or business invitees or guests shall visit the dwelling unit for business purposes in numbers such as to unreasonably cause a disturbance impacting the ability of neighbors to peacefully enjoy their property;

d. The use shall be located in only one room of the dwelling unit, which shall not be served by an entrance separate from the household;

e. Interior storage of materials shall only consist of office supplies;

f. There shall be no change to the exterior of building or structures because of the use and no outside appearance of a business use, including, but not limited to, parking, storage, signs, or lights;

g. The use operates no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical interference, including interference with telephone, radio or television reception, detectable by neighboring residents;

h. The use does not require any increased or enhanced electrical or water supply;

i. The quantity and type of solid waste disposal is the same as other residential uses in the zone district;

j. The capacity and quality of effluent is typical of normal residential use and creates no potential or actual detriment to the sanitary sewer system or its components;

k. Delivery trucks shall be permitted or provide delivery services to a home office only on weekdays between the hours of 9:00 a.m. and 5:00 p.m.;

l. Taxicab and limousine services may be permitted as a home office use, provided that only one taxicab or one limousine may be parked at the residence in a separate, off-street improved parking space.

(Ord. No. 2-14 § 2)

26-12 NONCONFORMING BUILDINGS AND USE OF PRE-EXISTING UNDERSIZED LOTS.

26-12.1 Continuance of Nonconforming Use.

If on February 14, 1972, any lot use or building is being lawfully used for a purpose which does not conform to the requirements of the particular zone where the lot or building is situated, the use may be continued, subject to other provisions contained in this section, and any change of title of possession shall not affect the continuance of such existing use. The existing use may be continued as aforesaid, provided that:

a. No nonconforming lot shall be further reduced in size.

b. No nonconforming building shall be enlarged, extended or increased.

c. No nonconforming use may be expanded.

d. No structural alterations or substantial major changes shall be made in any building containing a nonconforming use.

e. No structural alterations shall be made in a building containing a nonconforming use in order to change the use of such a building or structure to another or an additional nonconforming use.

(1975 Code § 13-8.1)

26-12.2 Reversion and Change of Use.

a. No nonconforming use of a lot or building, if once changed into a conforming use, may be changed back into a nonconforming use.

b. A nonconforming use shall not be changed to, substituted by, or replaced by another nonconforming use.

(1975 Code § 13-8.2)

26-12.3 Discontinuance and Abandonment.

In the event there is a cessation of operation of any nonconforming use for a period of twelve (12) consecutive months, there shall be a presumption that the use has been abandoned. In such event, any owner desiring to reinstate such use after the twelve (12) month period has elapsed, shall apply to the Land Use Board pursuant to N.J.S.A. 40:55D-70 in order to determine whether an abandonment was intended.

A nonconforming use shall be adjudged abandoned when there occurs a cessation of any such use or activity by an apparent act or failure to act on the part of a tenant or owner in such a manner as to lead to the conclusion that an abandonment was intended.

The provisions of this subsection shall refer to the actual use indicated by the form and construction of the building. (1975 Code § 13-8.3)

26-12.4 Unsafe Buildings.

Nothing in the within section shall be construed so as to prevent the strengthening or restoration to a safe and lawful condition of any part of a building declared to be unsafe or unlawful by the Construction Official, Fire Department or other duly authorized official. Such repairs and maintenance work as required to keep it in sound condition may be made to a nonconforming building or structure, provided that no structural enlargements shall be made. All alterations shall be in accordance with the requirements of the State Uniform Construction Code and the area, bulk and other requirements of the within zoning chapter, or any amendment or supplement thereto, specifically referring to the zone location of the nonconforming premises. (1975 Code § 13-8.4)

26-12.5 Change of Location.

No nonconforming use of any portion of a lot or building may be moved to any other part of the lot or building upon or within which the same was conducted on February 14, 1972. (1975 Code § 13-8.5)

26-12.6 Restoration.

Any nonconforming building or use which has been destroyed by fire, explosion, flood, windstorm, or other act of God shall be considered partially destroyed if the cost of restoration equals fifty (50%) percent or less of the estimated equalized or true valuation of the building as determined by the Tax Assessor. Such a building or use may be rebuilt, restored or repaired without necessity of a variance. If the damage is greater than above outlined, the building or use shall be considered completely destroyed and shall not be rebuilt, restored or repaired unless in conformity with the building and use requirements of this chapter.

In the event of a dispute as to the extent of destruction, a ruling shall be made by the board of adjustment pursuant to N.J.S.A. 40:55D-70a.

Repairs and restoration of such nonconforming building or structure shall take place within one year from date of such destruction and damage. Restoration must be completed within six (6) months of the date of commencement of repairs or restoration. Otherwise such resumption and continuance of the nonconforming usage shall not be permitted. (1975 Code § 13-8.6)

26-12.7 Zone Changes.

Whenever the boundaries of a zone shall be changed so as to transfer an area from one zone to another zone of a different classification, the foregoing provisions shall also apply to any nonconforming uses existing therein or created thereby. (1975 Code § 13-8.7)

26-13 SIGNS, FENCES AND HEDGES.

26-13.1 Signs, and Other Advertising Structures, Prohibited All Zones.

Any class of sign or other advertising structure which is not specifically provided for and permitted by this chapter is prohibited. This prohibition includes but is not

limited to:

- a. Any temporary, portable or movable sign.
- b. The use of signs on parked vehicles for bringing to the attention of the general public any off premises or billboard type advertising or to add to the otherwise permitted advertising of the premises within the Borough.
- c. Billboards.
- d. Off premises or point of sale signs unless primarily directional and designating a parking lot or area operated in a zone permitting such use by a business being conducted within the Borough.
- e. Signs painted on or fastened to the roof of any building or structure.

(1975 Code § 13-9.1)

26-13.2 Signs, Marquees, Awnings, Canopies, Fences and Hedges in Single-Family Residential Zones.

- a. The following signs shall be permitted in the R-7, R-10 and R-15 Zones subject to the regulations set forth herein:

1. Official municipal, County, State or Federal signs, including traffic and directional markers, and signs in connection with the identification, operation or protection of any public utility or municipal, County, State or Federal activity.
2. A single nonilluminated nameplate sign not exceeding two (2) square feet in area.
3. Sign for a school or church or other permitted use of a similar nature, on the same lot therewith, for the purpose of displaying the name of the institution and its activities or services, provided that the area of such sign shall not exceed twenty (20) square feet and that no one side shall exceed five (5) feet in length; and, provided further, that not more than one such sign shall be erected on any one street frontage on any one property. Such sign may be illuminated by white light only and the total illumination for any side shall not exceed the equivalent of that given by a one hundred fifty (150) watt incandescent bulb or a forty (40) watt fluorescent.
4. Trespassing signs and signs indicating private ownership or roadways or other property, on the same premises therewith, provided that the area of such sign shall not exceed two (2) square feet and shall be spaced at intervals of not less than one hundred (100) feet of street frontage.
5. A single nonilluminated wood, metal or similar sign not exceeding four (4) square feet in area, and on one (1) side exceeding three (3) feet in length, which advertises the sale, rental or lease of the premises upon which the sign is located. A variety or multiplicity of signs by the owner or various agents advertising the sale, rental or lease of the premises or a portion thereof is prohibited.
6. A single sign denoting the architect, engineer and/or contractor, when placed upon the work under construction and not exceeding sixteen (16) square feet in area, and not to exceed five (5) feet in any dimension. Such sign shall be removed within thirty (30) days after the issuance of a certificate of occupancy.
7. Temporary, emergency or nonadvertising signs, special event signs, commemorative signs, (directory) type signs listing various businesses as approved and limited to location, design and period of time, by the mayor and Council.
8. On any corner lot, no sign, fence or hedge shall be placed in such a manner as to obstruct vision between a height of two and one-half (2.5) feet and ten (10) feet above the curb grade of the two (2) intersecting streets, in the triangular area formed by the two intersecting street lines bounding the lot and by a line connecting points on each street line, located thirty (30) feet from the intersection of the curb lines.

- b. Awnings are permitted in any residential zone on any dwelling.

- c. Marquees and canopies are not permitted in any residential zone.

- d. Fences and hedges are permitted in any residential zone, provided, however, that in each instance, the fence or hedge conforms to and is governed by the following regulations:

1. No fence shall:
 - (a) Exceed four (4) feet in height on the front and side yards of the property to the rear building line, or
 - (b) Exceed six (6) feet in height from the rear building line of the property to the rear yard line of the property; or
 - (c) Be constructed or maintained on the front yard or the street side of the property beyond the property line of the premises, or encroach on any public right-of-way; or
 - (d) Be electrically charged; or
 - (e) Be constructed of barbed wire, pointed instruments, spikes or similar material, or have this type of material placed on or added to an existing fence.
2. All fences shall:
 - (a) Have all plant life growing on a fence conform to all limitations governing fences; and
 - (b) Be properly supported and braced; and
 - (c) Be symmetrical in appearance and conform to the definite pattern, size and uniformity of design, and
 - (d) Be properly maintained and kept in good repair, appearance and clean condition.
3. No hedge shall:
 - (a) Be maintained contrary to the provisions of subsection 26-13.2d,1(c)
 - (b) Be left unmaintained or untrimmed.
 - (c) Any swimming pool permitted by this or any other ordinance of the Borough, which has a depth exceeding twelve (12) inches, whether constructed within or on top of the ground shall be completely enclosed by a fence not less than four (4) feet and not more than six (6) feet in height.

(1975 Code § 13-9.2)

26-13.3 Signs, Marquees, Awnings, Canopies, Fences and Hedges in C-N, SED, MU and MR Zones.

- a. The following signs shall be permitted in the C-N, SED, MU and MR Zones subject to the regulations set forth herein:

1. Any sign permitted in the residential zone.
2. Memorial signs or tablets, names of buildings and date of erection when cut into any masonry surface or when constructed of bronze or other incombustible materials.

3. Wall signs provided no sign extends further than fifteen (15) inches from the face of the building upon which it is attached and provided that the bottom of the sign shall be at least ten (10) feet above the ground level below the sign.
 4. The maximum vertical dimensions of any single sign shall not exceed five (5) feet and the maximum horizontal dimensions shall not exceed forty (40%) percent of the width of the wall to which the sign is attached.
 5. The number of signs for any business or industry, except as otherwise provided herein, shall be based on the following:
 - (a) Two (2) signs on a public street for up to seventy-five (75) feet of street frontage, with one additional sign to be allowed for each additional seventy-five (75) feet of street frontage or fraction thereof.
 - (b) Show or display windows may be covered up to twenty-five (25%) percent of window area, without any time limitations, by signs fastened to the inside surface of the window.
 6. In addition to flat signs attached to the building wall as permitted, each use within the above zones is entitled to one freestanding sign accessory to the business conducted on the property provided all of the following requirements are complied with:
 - (a) Requirements.
 - (1) For single shop properties, the sign area shall not exceed forty (40) square foot per side.
 - (2) For three (3) or two (2) shop properties, the sign area shall not exceed seventy-five (75) square feet per side.
 - (3) For four (4) shops or more, such properties are limited to a maximum one hundred (100) square foot per sign side.
 - (4) All signs may be double faced.
 - (5) All freestanding signs must be maintained and repaired on a regular basis.
 - (6) Blinking lights or displays on any sign are prohibited.
 - (7) The maximum sign square footage for each shop or store in a multiple shop sign configuration shall be fifteen (15) square foot per store or shop.
 - (8) The remaining portion of any signs may include the name of the Plaza or Shopping Center, and may include a time/temperature display.
 - (b) No vertical or horizontal dimensions of such sign shall exceed eight (8) feet. Such sign may be illuminated provided it is by white light only, and the total illumination for a side shall not exceed the equivalent of that given by a two hundred (200) watt incandescent bulb.
 - (c) Floodlights used for the illumination may not exceed the wattage prescribed.
 - (d) The sign shall not be closer to the right-of-way line of any street than twenty (20) feet.
 - (e) The highest portion of any freestanding sign or its supporting structure shall not exceed eighteen (18) feet in height. The bottom of such signs shall be a minimum of ten (10) foot clear of the ground or grade. In cases of ground based signs, such signs are to be a maximum height of three (3) feet and must be located in such a manner which will promote safe sight distance from any vantage. Such signs may not exceed five (5) feet in length.
 - (f) Exposed neon signage and lighting shall be encased in or behind a glass or plastic cover when applied externally.
 7. No sign shall extend or project above the highest elevation of the wall to which it is attached.
- b. Marquees and canopies are not permitted in these zones.
 - c. No hedge shall:
 1. Exceed the height limitations previously set out for fences in subsection 26-13.2d,1(a) and (b).
 2. Be maintained contrary to the provisions of subsection 26-13.2d,1(c).
 - d. Non-solid fences may be erected to a height not exceeding fifteen (15) feet, on all sides of the property, for the protection of business premises, provided:
 1. No fence shall extend beyond the front line of the building on any side facing a public street.
 2. No fence shall be constructed or maintained on the front yard or the street side of the property beyond the property line of the premises, encroach on any public right-of-way, be electrically charged, be constructed of barbed wire, pointed instruments, spikes or similar material, or have this type of material placed on or added to any existing fence, or allow any plant life growing on a fence to not conform to all limitations governing fences. The fence must be properly supported and braced, be symmetrical in appearance and conform to the definite pattern size and of uniformity of design.

(1975 Code § 13-9.3; Ord. No. 13-94 § A7; Ord. No. 9-02 § 1; Ord. No. 15-02 § 1; Ord. No. 8-13 § 12.0)

26-14 OFF-STREET PARKING AND LOADING.

26-14.1 Off-Street Parking in SED, MR, R-7, R-10 and R-15 Zones.

- a. In the R-7, R-10 and R-15 Zones, provisions shall be made for one useable off-street parking space of each dwelling unit, provided, however, garages as required herein may be counted as the required space.
 - b. In the SED and MR Zones, provisions shall be made for one and three-quarters (1.75) off-street parking spaces for each unit within a townhouse condominium development.
- (1975 Code § 13-10.1; Ord. No. 8-13 § 13.0)

26-14.2 Off-Street Parking for Nonresidential Uses.

- a. In the C-N, SED, MU, and MR Zones, provision shall be made for off-street parking space for each two hundred (200) square feet of total floor area with the following exceptions:
 1. Warehouses need only provide one off-street parking space for each five hundred (500) square feet (or major part thereof) of floor area in such building.
 2. An office and professional service use building must provide one space for each one hundred fifty (150) square feet of floor area.
 3. The number of required parking spaces in the MR Zone for townhouse condominium development shall be governed by subsection 26-14.1b.
- (Ord. No. 144 § 802; Ord. No. 13-84 § A7; Ord. No. 8-13 § 13.0)

26-14.3 Off-Street Loading and Unloading Space.

In all zones, for every building or part thereof hereafter erected, which is to be occupied by manufacturing, storage, goods display, retail store, wholesale store or warehouse, market, hospital, laundry, dry cleaning or other use similarly requiring the receipt or distribution in vehicles of materials or merchandise, there shall be provided and maintained on the same premises with such building at least one off-street loading space independent of required off-street parking area with access to a street. Each loading space shall be at least ten (10) feet in width, fifty (50) feet in length and have a fourteen (14) foot clearance above grade. Such space may occupy all or part of the required side or rear yard only. (1975 Code § 13-10.3)

26-14.4 General Requirements for Off-Street Parking Areas.

No building permit or certificate of occupancy as required herein shall be issued by the Construction Official for any construction or alteration of a building, the use of land or change in use in a nonresidential zone until a site plan shall have been submitted to the Land Use Board as hereinafter provided and the Land Use Board shall have ascertained that all of the following requirements will be complied with:

- a. All off-street parking areas shall be surfaced with an asphalt, bituminous, or cement binder pavement which shall be graded and drained to dispose of all surface water as approved by the Borough Engineer.
- b. The off-street parking area shall be effectively screened on any side which adjoins or faces premises situated in any residence zone by a fence or wall not less than four (4) or more than six (6) feet in height, maintained in good condition, provided, however, that a screening of hedge or other natural landscaping may be substituted for the required fence or wall if approved by the Land Use Board.
- c. All off-street parking areas shall be used solely for the parking of motor vehicles and no commercial repair work or service of any kind shall be conducted on such parking lot. No sign, other than entrance, exit, ownership, and condition of use signs shall be maintained.
- d. Off-street parking facilities as accessory to any use permitted in a residence zone shall be provided on the same lot with the permitted principal building.
- e. Off-street parking facilities as required by this section shall be provided on the same lot with the permitted principal building. In the C-N, SED, MU and MR Zones, off-street areas for nonresidential uses are permitted in the residential zones which are contiguous to the abovementioned zones, provided that the parking area is on the same side of the street and in the same block as the principal use.
- f. Any owner or group of owners of a business building may jointly sponsor off-street parking facilities, provided the area of the parking facilities equals the total parking area requirements of each owner participating therein, and further provided that such jointly sponsored facilities comply with all other requirements of this section. In addition, all entrances and exits shall be recorded as permanent easements or rights-of-way.
- g. Those portions of the property which are not used for off-street parking shall be attractively planted with trees, shrubs, plants in size and number, and grass lawns, as may be required by the Land Use Board. Special plantings or fences as may be required by the Land Use Board shall be provided along the zone boundary lines so that parking areas shall not be visible from the adjoining or adjacent residential properties. Those portions of the property which are landscaped as required by this paragraph shall be adequately maintained by the owner, keeping all plantings alive and healthy, or replaced.
- h. In addition to the other requirements of this section, the following regulations shall be complied with in the SED and MU Zones;

1. Each entrance to and exit from a parking lot shall be at least fifty (50) feet distance from any adjacent property located in any residence zone and the location and design of entrances, exits, surfacing, landscaping, marking and lighting shall be subject to the approval of the Land Use Board to insure adequate relation to traffic safety and protection of the adjacent residence area.

2. The required parking areas are permitted in abutting residential zones provided the parking area does not extend more than one hundred fifty (150) feet into the residential zone and further provided the parking area must extend continuously from the parking areas in the SED and MU Zones.

- i. All parking areas shall be designed with service aisles to meet the following standards:

Parallel to 30 degree angle parking - 12 foot aisle width.

31 degree to 45 degree angle parking - 14 foot aisle width.

46 degree to 60 degree angle parking - 18 foot aisle width.

61 degree to 90 degree angle parking and access drives - 24 foot aisle width.

Only one-way traffic circulation shall be permitted in 12, 14 and 18 foot aisle width.

- j. Lines showing the proper width and depth of parking spaces as required by this section shall be painted on the parking surface and shall be maintained at all times.

- k. All new used or expansion of existing uses in nonresidential zones shall be required to provide curbs, sidewalks and shade trees within the street right-of-way. All such facilities shall be installed in accordance with Borough specifications.

- l. The amount of off-street parking area to be paved may be reduced by the Land Use Board if it can be clearly demonstrated by the applicant that such additional parking area is not necessary. However, the entire amount of unpaved parking area must at all times be made available for parking in the event that future conditions should so require.

- m. No certificate of occupancy shall be issued unless, at time of completion, the off-street parking area fully complies with all of the Land Use Board's requirements, as certified in writing by the Land Use Board.

- n. A parking space shall be an area ten (10) feet wide and twenty (20) feet long. It shall not be located in any passageway or driveway giving access to the premises upon which the parking is located nor shall it be so located as to require special effort, attention or skill in order to be utilized. That is, a parking space shall be so located on the site as to be easily utilized by the average driver.

(1975 Code § 13-10.4; Ord. No. 8-13 § 13.0)

26-15 PROHIBITING OUTSIDE STORAGE OF UNREGISTERED MOTOR VEHICLES.

26-15.1 Purpose.

The purpose of the within section is to prohibit the storage of unregistered motor vehicles out-of-doors within the Borough of South Toms River. (Ord. No. 1-97 § 1)

26-15.2 Abandonment Prohibited.

- a. It shall be unlawful for any person to abandon a motor vehicle on or along any public street or roadway or any public lands or place within the Borough.

- b. No person shall park or leave unattended a vehicle on private property without the consent of the owner or other person in control or possession of the property for a period in excess of that for which the consent was given, except in the case of emergency, or disablement of the vehicle, in which case, the owner or

operator thereof shall arrange for the expeditious removal of the vehicle.
(Ord. No. 1-97 § 13-10.5)

26-15.3 Presumption of Abandonment.

A vehicle which has remained on or along any highway or other public property or on private property without the consent of the owner or other person in charge of the private property for a period of more than forty-eight (48) hours or for any period without current license plates, registration or insurance shall be presumed to be an abandoned motor vehicle. (Ord. No. 1-97 § 13-10.6)

26-15.4 Open Air Storage of Inoperable or Unregistered Motor Vehicles.

It shall be unlawful for any owner, possessor or occupant of land in a residential zone within the Borough of South Toms River, with the exception of legal commercial nonconforming uses located therein, to store, place, or permit to be stored or placed upon such land, other than in an enclosed building or in a duly licensed junk yard operated pursuant to all applicable regulations of the Borough of South Toms River, any automobiles so in need of repair as to render them incapable of being readily operated under their own power or automobiles not currently licensed, registered, or insured, or any parts of any such automobiles or vehicles. However, an owner of a vehicle may restore a single inoperable vehicle on his own property for the period of one (1) year without current registration and insurance for the vehicle. In the case of a motor vehicle which is more than twenty-five (25) years old the vehicle owner may restore the vehicle on his own property for a period of two (2) years without valid registration and insurance. Antique vehicles which require a restoration period of more than one (1) year must be registered with the Borough Code Enforcement Officer. Owners of vehicles which are in the process of restoration must demonstrate substantial progress during the period of time which any vehicle remains unregistered and uninsured.

Under no circumstances may any residential property owner permit more than one (1) vehicle to remain on the property without valid registration and insurance at any one time. Restoration or repair of motor vehicles, be they registered or unregistered, is not permissible in the front yards of any residential property. To the extent possible the restoration and repair of motor vehicles must remain out of sight of the public.
(Ord. No. 1-97 § 13-10.7)

26-15.5 Notice of Violation; Service of Notice.

a. Upon complaint of any resident or property owner of the Borough of South Toms River or upon his own motion, the Zoning Officer, the Code Enforcement Officer, Police Officer or any other authorized Borough official may make an investigation of the condition complained of and, if it appears that as violation of one or more of the provisions of this chapter exists on the land, the Zoning Officer, Code Enforcement Officer, Police Officer, or other authorized Borough official shall notify the owner, possessor, or occupant of the property in writing of such violation, which shall require the abatement of the violation within ten (10) days from the date of service of such notice.

b. Such notice shall be served personally upon the owner, possessor or occupant of the property by handing a copy of it to the person or by leaving it at his usual place of abode with some member of his household over the age of fourteen (14) years; but if any such owner or possessor resides outside of the Borough of South Toms River, the notice shall be served upon him by registered or certified mail, addressed to him as his usual residence if the same is ascertainable; otherwise, such owner shall be served by notice published in the official newspaper of the Borough of South Toms River. (Ord. No. 1-97 § 13-10.8)

26-15.6 Failure to Abate Violation.

If an owner, possessor or occupant of lands fails or refuses to abate the violation within ten (10) days from the date of receipt of the notice or the publication date of the notice as provided for in subsection 26-15.5, the Borough of South Toms River, through its Zoning Officer, Code Enforcement Officer, Police Department or authorized Borough official may serve the owner, possessor or occupant the summons for a violation of this chapter. (Ord. No. 1-97 § 13-10.9)

26-15.7 Abatement of Violation.

If the owner, possessor, or occupant of the lands is adjudged by the Municipal Court of the Borough of South Toms River to have violated this chapter, the Borough, through its servants, agents or employees, at the direction of the Court, may enter upon the lands and premises for the purpose of removing such motor vehicle or parts thereof. The Borough shall take possession of any such motor vehicle and proceed to dispose of it in accordance with the provisions of N.J.S.A. 39:10A-1 et seq. (Ord. No. 1-97 § 13-10.10)

26-15.8 Violation and Penalties.

a. Any person violating or failing to comply with any of the provisions of this section shall, upon conviction thereof, be punishable by a fine of not more than one thousand (\$1,000.00) dollars by imprisonment for a term not to exceed ninety (90) days, or by community service of not more than ninety (90) days, or any combination of imprisonment, fine, or community service as determined in the discretion of the Municipal Court Judge. The continuation of such violation for each successive day shall constitute a separate offense, and the person or persons allowing or permitting the continuation of the violation may be punished as provided above for each separate offense.

b. The violation of any provision of this section shall be subject to abatement summarily by a restraining order or injunction issued by a Court of competent jurisdiction.
(Ord. No. 1-97 § 13-10.11)

26-16 PUBLIC GARAGES AND MOTOR VEHICLE SERVICE STATIONS.

26-16.1 Where Permitted.

A public garage or motor vehicle service station, while necessary, may be inimical to the public safety and welfare if located without due consideration of conditions and surroundings. No permit for such use shall be issued for any zone other than the C-N Zone and only then after a permit authorizing such use is first obtained as hereinafter provided, as a conditional use approved by the Land Use Board. (Ord. No. 8-13 § 9.0)

26-16.2 Application for Permit.

Any person desiring to use any premises, or to erect, construct or alter any new or existing building or buildings arranged, intended or designed to be used, as a public garage or service station shall apply to the Land Use Board, on its forms and shall file the additional information or data.

a. A plot plan drawn to scale showing the location of the premises and of the building thereon, or to be erected or constructed thereon; the street entrances and exits or driveways; and the precise location of the tanks-pumps, lifts and other appurtenances.

b. The width of the street or streets upon which the premises abut.

c. The location, type or kind of building and present use, if known, of all buildings within five hundred (500) feet of the boundary lines of the premises.

d. Where the applicant is a person other than the owner of the premises, the written consent of such owner or owners authorizing the filing of the application.
(1975 Code § 13-11.2)

26-16.3 Hearing by Land Use Board.

Upon the filing of such application, the Land Use Board shall fix a date and place for a public hearing to be held on the application. If, after considering the evidence submitted at such hearing, the location and physical characteristics of the premises or building intended to be used as a public garage or service station and other hazards, existing conditions and surroundings, the Land Use Board shall find that such proposed use will not be detrimental to the health, safety and general welfare of the community and is reasonably necessary for the convenience of the community, it shall grant the application and direct the Construction Official to issue a permit subject to any conditions imposed. (1975 Code § 13-11.3)

26-16.4 Requirements.

Anything in this section to the contrary notwithstanding, the Land Use Board shall not order, direct or authorize the issuance of a permit to use any building or premises as or for a public garage or service station unless the plot plan shows that:

- a. The lot or parcel of land so to be used has a street frontage of at least one hundred fifty (150) feet and an average depth of at least one hundred twenty-five (125) feet except in the case of a corner lot where the street frontage and depth shall each be at least one hundred twenty-five (125) feet on each street.
- b. The building is set back at least twenty-five (25) feet from every adjoining property line and at least forty (40) feet from a street line.
- c. The entrance and exit driveway or driveways are at least twenty (20) feet wide but not more than thirty-five (35) feet wide, at least ten (10) feet from the adjoining property line and at least twenty (20) feet from the corner of intersecting public streets.
- d. Every gasoline or oil tank, pump, lift, filling, greasing or other device, appliance or apparatus is located at least ten (10) feet from the side and rear lines of the premises.
- e. No floor drains shall be connected to the sanitary sewer system.
- f. The nearest boundary line of the lot or parcel of land so to be used is at least one thousand five hundred (1,500) feet from any boundary line of property which is used as, or upon which is erected:
 1. A public or private school.
 2. A church or other place of worship.
 3. A public library or any other public building.
 4. A theatre or other building used or intended to be used for motion picture, theatrical or operatic productions, or for public entertainment.
 5. A public playground or civic center.
 6. A firehouse or fire station.

(1975 Code § 13-11.4)

26-16.5 Purpose.

The purpose of the foregoing provisions is to set forth a complete procedure for obtaining a conditional use approval from the Land Use Board for the use of lands and buildings as public garages or service stations, and is not intended to affect or repeal the provisions of the State Uniform Construction Code. (1975 § 13-11.5)

26-17 TRAILER, CAMPER OR MOBILE HOME AND SIMILAR RECREATIONAL STRUCTURES.

26-17.1 Definitions.

As used in this section:

- a. **Mobile Home** shall mean a vehicle, with or without motor power, over twenty-five (25) feet in length or over six (6) feet in width, designed to be used as living and sleeping quarters, or as an office, or a place of business.
- b. **Travel Trailer** shall mean a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses.
- c. **Pickup Camper** shall mean a structure designed primarily to be mounted on a pickup or truck chassis and with sufficient equipment to render it suitable for use as a temporary dwelling for travel, recreational and vacation use.
- d. **Motorized Home** shall mean a portable dwelling designed and constructed as an integral part of a self-propelled vehicle.
- e. **Folding Tent Trailer** shall mean a folding structure, mounted on wheels and designed for travel and vacation use.

(1975 Code § 13-12.1)

26-17.2 Storage of Campers and Mobile Homes.

Any owner of a mobile home, travel trailer, pickup camper, motorized home, folding tent trailer or similar recreational equipment as defined and permitted herein, may park or store it on a single-family residential property or any other property in the Borough subject to the following restrictions:

- a. It shall not have any connections to electricity, water, gas or sanitary sewer facilities, and at no time shall this equipment or vehicle be used for living, sleeping or housekeeping purposes while within the confines of the Borough.
- b. It must be kept in good repair, carry a current year's vehicle registration license, (where licensing is required) and at all times, except when loading or unloading for immediate departure or arrival, shall be kept locked and secured.

(1975 Code § 13-12.2)

26-17.3 Parking in Streets.

No mobile home trailer, or motorized home, shall be parked on any street of the Borough in violation of any parking ordinance of the Borough or, in any case, for a period of more than four (4) hours. It may be parked in a public parking lot between the hours of 8:00 a.m. to 12:00 midnight of the same day. If parked in the open in any residential district, it may be parked outside of a garage provided it is parked to the rear of the setback line of the premises, but in conformity with all zone requirements for side yards and rear yards relating to accessory buildings in the zone where parked. (1975 Code § 13-12.3)

26-17.4 Parking of Boats.

The parking of boats in R-7, R-10 or R-15 Zones is prohibited except for one boat not exceeding thirty (30) feet in length and parked or stored in compliance with all provisions. (1975 Code § 13-12.4)

26-18 REGULATION OF SEXUALLY-ORIENTED BUSINESSES.

26-18.1 Statutory Authorization, Findings of Fact, Purposes and Objectives.

a. *Statutory Authorization.* It is the responsibility of the local government to adopt regulations designed to promote the public health, safety and general welfare. Such power has been delegated to the municipalities from the legislative of the State of New Jersey. The Borough Council, in order to better promote the public health, safety and general welfare of its citizens, does ordain as follows:

b. *Findings of Fact.* Pursuant to N.J.S.A. 2C:34-2(b), the legislature of the State of New Jersey has determined that it is a fourth degree crime to sell, distribute, rent or exhibit material which is obscene. Consequently, the State of New Jersey has pre-empted the Borough from prohibiting the sale of material which the Township believes to be obscene. However, in order to promote the public health, safety and general welfare of its citizens, the Borough may promulgate reasonable time, place and manner regulations with respect to the sale, distribution, rental or exhibition of various items by sexually-oriented businesses.

1. The Borough Council has determined that sexually-oriented businesses have a deleterious effect on both the existing businesses adjacent to such establishments, as well as the surrounding residential areas; causes increased crime, especially prostitution; adversely affects property value; creates an atmosphere which is inimical to the values of a significant segment of the Borough's population; encourages residents and businesses to move elsewhere; and that such sexually-oriented businesses, when located in close proximity to each other, contributes to urban blight and downgrades the quality of life in the adjacent areas.

c. *Purposes and Objectives.* It is the purpose of this section to regulate sexually-oriented businesses, to minimize and control the adverse effects recognized in the preceding section, and to promote the public health, safety and general welfare of the citizens of the Borough of South Toms River. The Borough Council finds that the secondary effects of adult entertainment establishments, as established through the reports and studies of other cities and municipalities with the appropriate resources to conduct same, is deleterious and inimical to health, safety and general welfare of the residents of the municipality. It is not the purpose of this section to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment, nor will this section have the effect of restricting or denying such access. (Ord. No. 5-92 § 13-12.5)

26-18.2 Definitions.

In this section:

Adult Arcade shall mean any place to which the public is permitted or invited, wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or image-producing devices are maintained to show images to one (1) person per machine at one (1) time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

Adult Bookstore or **Adult Video Store** shall mean a commercial establishment which, as its principle business purpose, conspicuously offers for sale or for rental for any form of consideration, any one (1) or more of the following:

- a. Books, magazines, periodicals or other printed material, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas," or
- b. Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

Adult Motel shall mean a hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration which:

- a. Provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas," and has a sign visible from a public right-of-way which advertises the availability of this adult type of photographic reproductions; or
- b. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- c. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

Adult Motion Picture Theater shall mean a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas." Adult motion picture theaters shall meet the seating criteria established for adult theaters.

Adult Theater shall mean a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity for live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities." Seating shall be provided in a design consistent with traditional movie theaters. All sitting areas shall be visible and unobstructed.

Commercial Display shall mean the exhibition to the senses of another person for valuable consideration, whether the valuable consideration is paid by the recipient of the exhibition or by another, and whether the exhibition occurs at the exhibitor's place of business or elsewhere.

Nudity or **A State of Nudity** shall mean the appearance of a human bare buttocks, anus, male genitals, female genitals or female breasts.

Obscene Materials shall mean the definition of obscene materials set forth in C. 95, L. 1978, as amended by C. 211, Section 1, L. 1982 (effective December 23, 1982 as N.J.S.A. 2C:34-2), as same shall be, from time to time, amended or supplemented, as well as in accordance with, and not more strictly than judicial interpretations thereof, pursuant to the Constitution of the United States and of the State of New Jersey finally concluded in courts of jurisdiction sufficient to render decisions on constitutional questions of general application.

Person shall mean an individual, proprietorship, partnership, corporation, association or other legal entity.

Sexually-Oriented Business shall mean an adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater or adult theater.

Specified Anatomical Areas shall mean:

- a. The less than completely and opaquely covered human genitals, pubic region, buttocks or female breasts below the point immediately above the top of the areola; or
- b. Human male genitals in a discernably turgid state, even if completely and opaquely covered.

Specified Sexual Activities shall mean and includes any of the following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts;
- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- c. Masturbation, actual or simulated; or
- d. Excretory functions as part of or in conjunction with any of the activities set forth in a. through c.

26-18.3 Location of Sexually-Oriented Businesses.

a. It shall be a violation of this section if a person operates or causes to be operated, or allows to be operated, a sexually oriented business:

1. Within one-quarter (1/4) mile of a place of worship;
2. Within one-quarter (1/4) mile of any school, whether public or private, or within one-quarter (1/4) mile of any school bus stop;
3. Within one-quarter (1/4) mile of a boundary of a growth area, village or rural development, district or zone;
4. Within one-quarter (1/4) mile of any other sexually-oriented business;
5. Within one-quarter (1/4) mile of any residential use or zone;
6. Within one quarter (1/4) mile of any public park or playground.

b. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually-oriented business is conducted, to the nearest property line of the premises of a place of worship, a school, a boundary of a residential district, a public park or playground or a lot devoted to residential use or a school bus stop.

c. A sexually-oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the establishment of sexually-oriented business, of a place of worship, school, public area, residential district, or residential lot within one-quarter (1/4) mile of the sexually-oriented business.

d. The sexually-oriented business shall conform with design standards and development requirements established through the ordinances of the Borough of South Toms River. Sexually-oriented businesses will be limited to five hundred (500) square feet in any one location. Existing businesses will not be permitted to expand beyond the five hundred (500) square foot limitation without being considered an application for a new, separate, and distinct business operation.

(Ord. No. 5-92 § 3; Ord. No. 4-99 § 2)

26-18.4 Enforcement.

a. Any person violating any provision of this section shall, upon conviction, be liable for a fine not to exceed one thousand (\$1,000.00) dollars, or a term of imprisonment not to exceed ninety (90) days, or both. In no event shall any person violating this section, upon conviction, receive a fine below the amount of one hundred (\$100.00) dollars.

b. Each day a sexually-oriented business is in operation in violation of paragraph c. of this subsection each such day shall constitute a separate offense under this section.

c. Each separate film, video cassette or other visual reproduction, or each showing of live entertainment which is displayed to another in violation of subsection 26-18.3 is a separate offense under this section.

(Ord. No. 5-92 § 3)

26-19 ESTABLISHMENT OF ZONES OR DISTRICTS.

26-19.1 List of Zones.

For the purposes of the within chapter, the Borough is hereby divided into seven zones or districts as follows:

R-7	Residence Zone
R-10	Residence Zone
R-15	Residence Zone
MR	Marine Recreational-Residential Zone
ML	Municipal Lands Zone
CR	Conservation Residential
T	Townhouse Transition
M-U	Mixed-Use
SED	Special Economic Development
C-N	Neighborhood Commercial

(1975 Code § 13-13.1; Ord. No. 14-94 § 1; New; Ord. No. 8-13 § 1.0)

26-19.2 Zoning Map.

The aforesaid zones are hereby established as shown on a map entitled "Zoning Map, Borough of South Toms River, Ocean County, New Jersey, revised by Maser Consulting, PA, May 2013" which accompanies and is hereby made a part of the chapter.

NOTE: The map referred to herein may be found at the end of this chapter.

a. The zoning map is hereby amended so as to provide for a zone entitled Municipal Lands Zone located at and within the boundaries of Mill Street, South Main Street, Route 9 and the line separating Lots 5 and 6 from Lot 7, all in Block 8 as found on the tax map of the Borough of South Toms River. The purpose of this description is to describe those premises currently owned by the Borough of South Toms River, and known and designated as Lots 7 and 8 in Block 8 as found on the tax map of the Borough of South Toms River.

b. The B-1 Zone shall be amended to include the following property:

1. Block 8, Lot 10
2. Block 8.01, Lots 1 & 4
3. Block 8.01, Lots 2, 3, 5 & 6

In so amending the zoning map the Governing Body of the Borough of South Toms River has determined that the properties in question are more suitably zoned for Business Professional use as the properties have frontage along Flint Road. Flint Road is a commercial corridor within the Borough and all other properties with frontage along Flint Road are commercially zoned.

(Ord. No. 144 § 1202; Ord. No. 260 § 2; Ord. No. 13-84 § A7; Ord. No. 14-94 § 2; Ord. No. 6-95 § 1; Ord. No. 8-13 § 2.0)

26-19.3 Interpretation of Zone Map and Boundaries.

Where the street layout actually on the ground varies from the street layout in the zone map, or there is a doubt in particular instances as to what boundary line is determining, the question of such determination shall be adjudicated by the Land Use Board pursuant to N.J.S.A. 40:55D-70a. The designation shown on the zone map

shall be applied to the map by the Land Use Board after due notice and public hearing, in such a way as to carry out the intent and purposes of the map for the particular area in question. (1975 Code § 13-13.3)

26-19.4 Uncertain Zone Boundaries.

In the event any uncertainty exists as to any zone boundaries as shown on the map, the following rules shall apply:

- a. In unsubdivided land and where a zone boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions shown on the map, shall be determined by the use of the scale appearing thereon.
- b. Where a zone boundary line divides a lot in a single or joint ownership of record on February 14, 1972, the regulations for the less restricted portion of such lot shall extend not more than thirty (30) feet into the more restricted portion; provided, however, that the lot must have frontage on a street in the less restricted zone. (1975 Code § 13-13.4)

26-20 R-7 AND R-10 RESIDENCE ZONES.

26-20.1 Primary Intended Use.

The Borough of South Toms River is an established suburban residential community. It is the desire of the community to preserve and protect the established character of neighborhoods in the Borough and to encourage a compatible relationship between new or expanded houses and traditional neighboring structures that reflects the best of the local character, particularly in terms of scale, siting, design features, and orientation on the site.

These zones are designed for and permit single-family residential use but also permit:

- a. Signs conforming to Section 26-13.
- b. Accessory uses customarily incident to individual residences provided that any accessory structure may not exceed one story in height.
- c. Private garages conforming to definition of "garage, private," carports, sheds and accessory buildings are not to exceed six hundred (600) square feet in floor area.
- d. Parking and parking facilities conforming to this chapter.
- e. Not more than one (1) permanent roomer or boarder per family.
- f. Private swimming pools provided a permit is issued by the Construction Official and signed by the Borough Engineer and further provided all of the following regulations are complied with:
 1. The area of the private swimming pool shall not exceed twenty (20%) percent of the rear yard area.
 2. The pool shall be equipped with a filtration, circulation, clarification and chlorination system adequate to maintain the water in a clean and healthful condition in accordance with the health requirements of the Borough and State.
 3. The discharge pipe or conductor leading from any private swimming pool shall not exceed two (2) inches in diameter, and shall be composed of galvanized iron, or such other standard and durable material as may be approved by the Borough Engineer. No private swimming pool shall be wholly or partially emptied in any manner that will cause water to flow upon the premises of another and no private swimming pool shall be wholly or partially emptied upon any land if a storm water drain is readily accessible to the premises on which the pool is located. No private swimming pool shall be wholly or partially emptied into any sanitary sewer system, cesspool or septic tank.
 4. No public water shall be used in connection with the operation of any private swimming pool during any time when restrictions are imposed on the use of public water.
 5. Every private swimming pool shall be completely enclosed with a permanent substantial fence at least four (4) feet from the edge of the pool, and no less than five (5) feet in height above the ground level. Any opening or gate in such fence shall be so designed, constructed and maintained so as to prevent access to the pool at any time except when the pool is in use under the supervision of the possessor of the pool or by his permission.
 6. The swimming pool shall not be closer than five (5) feet to any side or rear lot lines of the premises, provided on corner lots, no part of any pool shall be constructed within the front yard area on either street.
 7. All lighting in connection with a swimming pool shall be so arranged and shielded as to reflect the light downward away from all adjoining and nearby residences or streets.
- g. Home Occupations.
- h. Family day-care homes.

(1975 Code § 13-14.1; Ord. No. 11-02; Ord. No. 8-13 § 3.0)

26-20.2 Required Area, Yard, Height and Bulk Requirements.

- a. *Minimum Size of Lot.*
 1. Interior lot.
 - (a) Minimum lot size R-7 to be not less than seven thousand (7,000) square feet for an interior lot.
 - (b) Minimum lot size R-10 to be not less than ten thousand (10,000) square feet for an interior lot.
 - (c) Interior lots shall be a minimum of seventy (70) feet in width for both R-7 and R-10 Zones.
 2. Corner lot shall contain ten thousand (10,000) square feet and have a street frontage of at least one hundred (100) feet on each of the intersecting streets.
- b. *Minimum Setback Requirements for Principal Building.*
 1. Front yard. No building shall be erected or altered so as to increase or decrease the pronounced uniformity of the street front alignment of the existing buildings and in the depths of the existing front yards. In any case the principal building will be set back from the property line a minimum of twenty-five (25) feet on both interior and corner lots. Corner lots will set back off each of the intersecting streets.
 2. Side yards (each). Ten (10) feet on interior lots and twelve (12) feet on corner lots.
 3. Rear yard. Thirty (30) feet in depth.

c. *Minimum Required Yards for Accessory Building:*

1. Side yards (each). Five (5) feet in width.
2. Rear yard. Five (5) feet in depth.

d. *Maximum Building Area.* The total combined building area of dwelling and all permitted accessory buildings, including garage, shall not exceed twenty-five (25%) percent of the area of the lot.

e. *Maximum Building Height.* Thirty-five (35) feet or two and one-half (2 1/2) stories, whichever is less.

f. *Minimum Floor Area.* One thousand (1,000) square feet in one (1) story building (gross) and one thousand five hundred (1,500) in a two and one-half (2 1/2) story building.

g. *Minimum Unoccupied Open Space.* Fifteen (15%) percent.

(1975 Code § 13-14.2; Ord. No. 12-02; Ord. No. 13-02; Ord. No. 8-13 § 4.0)

26-20.3 Off-Street Parking.

As set forth and required in Section 26-14 of this chapter. (1975 Code § 13-14.3)

26-20.4 Front Yard Paving or Hardtopping.

No portion of the front yard area shall be paved or hardtopped in any manner except a driveway area not to exceed twenty-five (25) feet in width. (1975 Code § 13-14.4)

26-21 R-15 RESIDENCE ZONE.

26-21.1 Permitted Principal Uses and Buildings.

This zone is designed for and permits single-family residential use as permitted in the R-7 Zone except that no roomer or boarding rooms shall be permitted. (1975 Code § 13-15.1)

26-21.2 Permitted Accessory Uses and Buildings.

Any accessory building or use allowed in the R-7 Zone is permitted in the R-15 Zone. (1975 Code § 13-15.2)

26-21.3 Area, Yard, Height and Bulk Requirements.

a. *Minimum Size of Lot.*

1. Interior lot shall contain fifteen thousand (15,000) square feet and have a street frontage of at least one hundred twenty (120) feet.
2. Corner lot shall contain twenty-two thousand five hundred (22,500) square feet and have a street frontage of at least one hundred fifty (150) feet on each of the intersecting streets.

b. *Minimum Setback Requirements for Principal Building.*

1. Front yard. Minimum of thirty (30) feet on interior lots and on corner lots for each frontage on each of the intersecting streets.
2. Side yards (each). Fifteen (15) feet on interior lots and twenty (20) feet on corner lots at all points on the building proper.
3. Rear yard. Fifty (50) feet in depth.

c. *Minimum Setback Requirements for Accessory Building.* Same as R-7 Zone.

d. *Maximum Building Area.* Same as the R-7 Zone.

e. *Maximum Building Height.* Same as R-7 Zone.

f. *Minimum Floor Area.* One thousand two hundred (1,200) square feet (gross) in one (1) story and two thousand (2,000) feet (gross) in a two and one-half (2 1/2) story building.

g. *Minimum Unoccupied Open Space.* Fifteen (15%) percent.

(1975 Code § 13-15.3; Ord. No. 14-02; Ord. No. 8-13 § 5.0)

26-21.4 Modification of Area and Bulk Requirements.

In order that the public health, safety, morals and general welfare be furthered in an age of increasing land development and to encourage a flexibility of site design and area development, to encourage innovations in residential development so that growing demands of the population may be met and served by greater variety in design and layout of buildings and by the conservation and more effective and efficient use of open space, to encourage a more efficient use of public services, to conserve the value of the land and preservation of the property values within established residential areas, modification of the lot area and lot width may be allowed subject to compliance with subsection 26-21.5 through 26-21.9. (1975 Code § 13-15.4)

26-21.5 Modifications Permitted Subject to Land Use Board Approval as Required by Subsection 26-21.6.

The minimum lot area and minimum lot width as required by subsection 26-21.3 may be reduced by employing the use of open space zoning, as hereinafter defined, provided the following requirements are met:

- a. The minimum interior lot area shall be ten thousand (10,000) square feet and the minimum corner lot area shall be fifteen thousand (15,000) square feet.
- b. The minimum lot width of an interior lot shall be ninety (90) feet and the minimum lot width of a corner lot shall be one hundred twenty (120) feet.
- c. The minimum interior lot front yard shall be thirty (30) feet and on a corner lot eighty (80) feet frontage on each frontage on each of the intersecting streets.
- d. The minimum rear lot depth - forty (40) feet.
- e. All lands of the tract not included in proposed lots or street rights-of-way shall be dedicated or conveyed to the Borough to be used by the Borough Council for either recreation or drainage and conservation areas.
- f. All other zoning and subdivision standards and requirements shall apply.

26-21.6 Application Procedure.

- a. An applicant proposing to develop lands in accordance with the modifications provided for in subsection 26-21.5 shall first submit a preliminary subdivision plat to the Land Use Board in accordance with zoning standards for area, yard, height and bulk requirements of subsection 26-21.3. After approval of the plat by the Board and Borough Council, the applicant may then submit a plan in accordance with standards and conditions of subsection 26-21.5 showing exactly the same number of lots as shown and agreed to in the original plat subdivision.
 - b. The Land Use Board shall review the preliminary plat utilizing modified lot design standards and thereafter decide upon the submission. The Board shall base its decision upon the modified lot design sketch plat proposal with regard to the following:
 1. The proposal conforms to the comprehensive plan of the Borough.
 2. The proposal furthers the intent and spirit of the adopted master plan.
 3. The proposal does comply with the intent and purposes of the modified lot design provision as described in subsection 26-21.4.
 - c. The Land Use Board and Borough Council shall not be compelled to approve a proposal for modified size development if in its sole discretion the proposal does not further the orderly development of the area and that proposed open space does not relate to the comprehensive plan for development and provision of parks, public facilities and natural drainage systems in the Borough.
 - d. The proposed subdivision shall be in accordance with a comprehensive plan and fulfill or contribute toward fulfilling one or more of the purposes outlined in N.J.S.A. 40:55D-28.
 - e. Any area conveyed to the Borough under the terms of this subsection shall be adaptable to the above listed public uses without undue public expenditure necessary to improve such land resulting from excessive topography, adverse drainage or soil conditions, or inadequate accessibility.
- (1975 Code § 13-15.6)

26-21.7 Permitted Lot Design Modification.

The creation of lots of less area or frontage than that normally required for the zone district in which the lots are located may be permitted provided the subdivision design and arrangement of lots shall be in such a manner as to maintain the intended density of the zone district in which the modification is permitted. Further in order to permit the use of the additional open space area for the Borough for public purposes as outlined above, the title to open space which are created by virtue of the permitted reduction shall vest in the Borough. (1975 Code § 13-15.7)

26-21.8 Land Dedication.

The owner of a tract of land approved by the Land Use Board and Borough Council to be subdivided in accordance with modified lot design standards shall convey to the Borough all lands not included in lots and streets. The land shall be conveyed for public uses as determined by the Borough. The land shall be improved in accordance with Borough requirements prior to dedication. Dedicator or conveyance to the Borough shall be in such form as is acceptable to the Borough. (1975 Code § 13-15.8)

26-21.9 Off-Street Parking.

As set forth in this Section 26-14. (1975 Code § 13-15.9)

26-21.10 Front Yard Paving or Hardtopping.

No portion of the front yard area shall be paved or hardtopped in any manner except a driveway area not to exceed thirty (30) feet in width. (1975 Code § 13-15.10)

26-22 CR CONSERVATION RESIDENCE ZONE.

The Borough of South Toms River is an established suburban residential community. It is the desire of the community to preserve and protect the established character of neighborhoods in the Borough and to encourage a compatible relationship between new or expanded houses and traditional neighboring structures that reflects the best of the local character, particularly in terms of scale, siting, design features, and orientation on the site. (Ord. No. 8-13 § 6.0)

26-22.1 Permitted Principal Uses and Buildings.

This zone is designed for and permits single-family residential use and all uses permitted in the R-15 Zone. (Ord. No. 8-13 § 6.0)

26-22.2 Permitted Accessory Uses and Buildings.

Any accessory building or use allowed in the R-15 Zone is permitted in the CR Zone. (Ord. No. 8-13 § 6.0)

26-22.3 Area, Yard, Height and Bulk Requirements.

The following area, yard and building requirements shall apply to the Conservation Residential Zone:

- a. Minimum lot area. 3 acres.
- b. Minimum lot width. 150 feet.
- c. Minimum lot frontage. 150 feet.
- d. Minimum lot depth. 100 feet.
- e. Minimum front setback. 50 feet.
- f. Minimum rear setback:
 1. Principal buildings: 50 feet.
 2. Accessory buildings: 25 feet.
 3. Private swimming pools: 25 feet.
- g. Minimum side yard setbacks:
 1. Principal buildings: 25 feet.

2. Accessory buildings: 15 feet.
3. Private swimming pools: 15 feet.
- h. Maximum lot coverage by buildings: 3 percent.
- i. Minimum unoccupied open space: 75 percent.
- j. Maximum building height: 35 feet.

(Ord. No. 8-13 § 6.0)

26-22.4 Off-Street Parking.

As set forth in this Section 26-14. (Ord. No. 8-13 § 6.0)

26-22.5 Front Yard Paving or Hardtopping.

No portion of the front yard area shall be paved or hardtopped in any manner except a driveway area not to exceed thirty (30) feet in width. (Ord. No. 8-13 § 6.0)

26-23 T TOWNHOUSE TRANSITION ZONE.

26-23.1 Permitted Principal Uses and Buildings.

This zone is designed for and permits residential townhouses. (Ord. No. 8-13 § 7.0)

26-23.2 Area, Yard and Building Requirements.

- a. Minimum area utilized for townhouse condominium development. Two (2) acres.
- b. Maximum units per acre. Eight (8) units.
- c. Maximum building height. Thirty-five (35) feet.
- d. Minimum building setback from all property lines. Fifty (50) feet.
- e. No more than eight (8) dwelling units nor less than four (4) dwelling units shall be contained in any one (1) structure.
- f. There shall be a maximum of twenty-five (25%) percent lot coverage.
- g. Each structure shall have ingress from the front and rear to either common hallways or to each dwelling unit.
- h. The minimum distance between buildings shall be fifty (50) feet but in no event shall a townhouse condominium building be located within fifty (50) feet of single-family dwelling.
- i. A minimum of fifteen (15%) percent of the total land area shall be set aside for usable recreation space.
- j. All buildings shall provide not less than two (2) exterior exposures for each dwelling unit, properly placed by windows or other openings so as to provide through ventilation or cross-ventilation for the unit.
- k. The structures or buildings shall be authentic traditional colonial design or of a contemporary design and other details such as entrance, columns, windows, shutters, cornices, chimneys and porches shall be designed and executed in strict conformity with those general types. All buildings shall be constructed with an exterior of brick or stone or concrete.
 1. Within townhouse condominium developments, all garages and outbuildings, and enclosures of any sort, must conform in general type to the architecture of the main structure.
 - m. All townhouse type buildings shall have not more than two (2) floors devoted to dwelling living units. No portion of the basement area shall be used for dwelling purposes.
 - n. All streets, both external and internal (including street grading and paving), driveways, parking areas, sidewalks, curbs, gutters, street lighting, shade trees, water mains and water systems, culverts, storm sewers, and such other improvements as may be found necessary in the public interest shall be installed in accordance with the standards adopted for subdivisions of land, and the building permit therein shall not be issued unless and until an adequate performance guarantee for the purpose of insuring proper installation of the improvements is posted with the Borough Clerk in a form approved by the Borough Attorney and in an amount determined by the Borough Engineer to be sufficient to insure the completion of all required improvements.
 - o. No townhouse condominium development shall be approved until approval of plans for disposal of sewerage in accordance with the standards set forth by the County Sewerage Authority are met. The performance guarantee outlined in this section is also applicable to sewerage disposal.
 - p. A recreation site shall be developed with facilities suitable to serve the residents of the development. It shall be located in an area which will not be detrimental to adjacent property owners by virtue of noise, light, glare and any other objectionable feature emanating from such facility. No recreation area shall be located in front of a building. A recreation area may be provided for to the side or rear of the buildings provided it is not located within twenty-five (25) feet of any building.
 - q. No outside area or equipment shall be provided for the hanging of laundry or the outside airing of laundry in any manner. Sufficient area and equipment shall be made available within each building for the laundering and artificial drying of laundry of occupants of each building.
 - r. Where a townhouse condominium development district abuts a residential district or a commercial use, an evergreen planting screen having a minimum width of five (5) feet shall be provided. The screen shall consist primarily of evergreen trees so as to provide visual obstruction. The planting material shall be at least six (6) feet high at the time of planting. It shall be the responsibility of the owner or developer to carry out this planting and to promote such maintenance and care as is required to obtain the effect intended by the original plan.
 - s. All parking lots in townhouse condominium developments shall be adequately lighted, either with wall-mounted or post-mounted ornamental fixtures. Lights shall be adequately shielded from adjacent properties. If garages are provided, they shall have a floor area of not less than two hundred forty (240) square feet. They may be built into the townhouse structure or separately constructed as herein provided. No garage or other accessory building shall be placed nearer to a side or rear property line than fifty (50) feet when abutting a residential district; in all other cases, twenty-five (25) feet. In no case shall a garage or accessory building be permitted between a street frontage and building. Each group of attached garages shall have a joint capacity of no more than ten (10) vehicles arranged in a row and there shall be a minimum distance of twelve (12) feet between such structures. Garages and other accessory buildings shall be not more than one (1) story in height. The architectural design and materials used in the construction thereof shall conform to the design and building materials used in the construction of the townhouse condominium structures. No part of any garage or other accessory building shall be used for living purposes. Garages and parking areas shall be used as automobile parking units only, with no sales, dead storage, dismantling or servicing of any kind permitted.

t. Pools included as part of the overall development of a townhouse condominium development shall be located within an area not less than four thousand (4,000) square feet that is devoted to the use of the pool and constructed according to the standards set forth in this chapter.
(Ord. No. 8-13 § 7.0)

26-23.3 General Controls.

The following additional general controls shall apply to townhouse condominium developments:

- a. *Off-Street Parking.* Marked off-street parking shall be required as follows:
 1. All drives, turning areas and parking spaces shall be hard surfaced.
 2. A parking space shall be as defined in subsection 26-10.3.
- b. *Walks.* Walks shall be required as follows:
 1. Entry walks or service walks shall be masonry construction.
 2. Entry walks or service walks shall be in addition to and not part of any driveway.
 3. Primary entry walks shall be a minimum of four (4) feet in width.
 4. Secondary walks (service walks or individual unit walks) shall be a minimum of three (3) feet in width.
 5. Walks may encroach five (5) feet into any required side yard and twenty-five (25) feet into any required rear yard. Primary or secondary entry walks shall cross the front yard between the limit lines of the required side yards if extended to the front property line.
 6. Any walk forming a part of the parking or turning area or crossing a driveway may be of the same material as the parking or turning area or driveway.
 7. Paths forming a part of any garden or recreation area are not considered walks for the purpose of this chapter.
- c. *Recreational Facilities.* Recreational facilities shall be permitted subject to the conditions contained in this chapter and the following additional restrictions:
 1. Recreational facilities including marinas and swimming or wading pools shall be permitted as an accessory use for the unit.
 2. Recreational facilities are for the use of occupants of the development and their guests and friends or relations of guests. No public use or offering of use shall be permitted except as otherwise provided herein.
- d. *Patio or Sunbathing Areas.*
 1. Patio or sunbathing areas including barbecue or outdoor eating facilities may be permitted as an accessory use.
 2. These facilities shall be for the use of occupants of the development and their guests and friends or relations of guests. No public use or offering of use shall be permitted.
 3. These facilities may encroach into any required yard (except for buildings pertaining thereto) as is permitted under the subsection limiting and controlling walks.
- e. *Trash and Garbage Collection; Storage and Removal.*
 1. An adequate enclosed and covered area shall be provided for the collection and storage of trash and garbage.
 2. At least one (1) such area shall be provided for each building.
- f. *Television and/or Radio Antenna.* Only one (1) master antenna shall be permitted for television and/or radio reception for each building.
- g. *Soundproofing.* All buildings shall conform to the minimum standard of forty-five (45) decibel reduction value for all property walls and floors, except where another ordinance or law shall provide a higher minimum standard in which case it shall apply.
- h. *Screening.*
 1. All trash and garbage collection locations and parking and turning area shall be screened by natural or artificial means as to reduce to a minimum their effect on the desired harmoniously pleasing aesthetics of the site within the Borough.
 2. Perimeter screening shall be required for natural or artificial means to maintain a harmoniously pleasing aesthetic value and effectively obstruct the view from adjacent premises to a height not to exceed six (6) feet.
 3. The Construction Official and/or Zoning Officer of the Borough shall make an annual inspection and report to the Borough Council as a maintenance of required screening.
- i. *Exterior Lighting.*
 1. All parking and turning areas, drives, entries, and walkways shall be lighted for safety from dusk to dawn with lighting shielded from adjoining properties.
 2. All recreational and/or patio or similar areas may be lighted with lighting shielded from adjoining properties.
 3. All general project or building lighting shall be permitted provided lighting is soft white light shielded from adjoining and opposite properties.
- j. *Exterior Sound.* Exterior sound facilities shall be permitted for any recreational, patio or similar area until 12:00 midnight providing the facility does not violate any provision of any other ordinance concerning the peace and general welfare of the Borough.
- k. *Storage Areas.* Each building may provide general storage area for service for the building and project.
- l. *Mail Receptacles.* Each dwelling unit shall be required to have mail receptacles in accordance with the specifications of the Post Office Department.
- m. *Required Heating and Utilities.*
 1. No dwelling unit shall be constructed without a central heating system or systems sufficient to permit each dwelling unit to be maintained at a temperature of seventy-two (72°) degrees when the outside temperature is at zero (0°) degrees. The temperature for each dwelling unit shall be regulated by a control located therein.
 2. Central or individual air-conditioning units shall be provided so as to permit each dwelling unit to maintain a temperature of seventy-two (72°) degrees when the outside temperature is ninety (90°) degrees. Where central air conditioning systems are installed, the temperature for each dwelling unit shall be controlled by a control located therein.
 3. Any plans submitted for the construction of any townhouse condominium type building or buildings set forth herein shall provide for adequate water

service and shall in addition provide the storm sewer facilities. The plans shall also provide for sewerage disposal service in accordance with the standards and requirements set forth by the County sewerage authority.

(Ord. No. 8-13 § 7.0)

26-24 RESERVED.

26-25 C-N NEIGHBORHOOD COMMERCIAL ZONE.

Editor's Note: Former Section 26-25, B-1 Neighborhood Business and Professional Zone was repealed by Ordinance No. 8-13.

26-25.1 Permitted Principal Uses and Buildings.

This zone is designed to permit the following principal uses:

- a. Retail stores, shops and markets, provided that:
 1. All goods and products fabricated or processed on the premises incidental to such use shall be sold at retail on the premises.
 2. No goods, supplies or materials shall be stored out-of-doors, nor shall any fabricating be done out-of-doors.
- b. Service establishments such as barber shops, beauty shops, tailoring and dressmaking shops, shoe repair shops, dry cleaning and laundry collection shops provided that no processing requiring the use of flammable materials is done on the premises.
- c. Public garages and motor vehicle service stations pursuant to Section 26-16.
- d. Business and professional offices, banks and other fiduciary institutions.
- e. Public utility offices and exchanges.
- f. Restaurants, lunchrooms and other eating establishments excluding roadside stands, diners and lunchwagons, drive-ins and self-service restaurants.
- g. Music, art and dancing studios.
- h. Undertaking and funeral services.
- i. Restaurants, lunchrooms and other eating establishments excluding roadside stands and lunchwagons.
- j. Clubs, lodges, association buildings, meeting rooms and halls.

(Ord. No. 8-13 § 8.0)

26-25.2 Permitted Accessory Uses and Buildings.

- a. Off-street parking and loading spaces provided and required by Section 26-14.
- b. Outside storage uses normally associated with a permitted use provided that the storage area shall be screened from adjacent uses by a buffer strip consisting of a dense planting at least five (5) feet in width and otherwise complies with the provisions of this chapter. No storage shall be permitted in any required front yard.

(Ord. No. 8-13 § 8.0)

26-25.3 Area, Yard, Height and Bulk Requirements.

- a. *Minimum Size of Lot.* Forty thousand (40,000) square feet and a street frontage of at least two hundred (200) feet.
- b. *Minimum Setback Requirements for Principal Building.*
 1. Front yard. Sixty (60) feet in depth.
 2. Side yards (each). Twenty (20) feet in width.
 3. Rear yard. Forty (40) feet in depth.
- c. *Minimum Setback Requirements for Accessory Building.*
 1. Side yards (each). Five (5) feet in width.
 2. Rear yard. Ten (10) feet in depth.
- d. *Maximum Building Area.* The total combined building area of all permitted buildings shall not exceed thirty-five (35%) percent of the area of the lot.
- e. *Maximum Building Height.* Thirty-five (35) feet or two and one-half (2 1/2) stories.
- f. *Minimum Floor Area.* Three thousand (3,000) square feet for one (1) story and five thousand (5,000) square feet for two and one-half (2 1/2) stories.

(Ord. No. 8-13 § 8.0)

26-25.4 Additional Requirements in the Pinelands Area.

When a variance or other approval for a residential use in that portion of the C-N Zone located in the Pinelands Area is granted by the Borough, Pinelands Development Credits shall be used for 50% of the authorized units for parcels under 10 acres in size; for 75% of the authorized units for parcels between 10 and 20 acres in size and for 100% of the authorized units for parcels over 20 acres in size. (Ord. No. 8-13 § 8.0)

26-26 MU MIXED USE ZONE.

Editor's Note: Former Section 26-26 H-D Highway Development Zone was repealed by Ordinance No. 8-13.

26-26.1 Permitted Principal Uses.

This zone is designed for the following principal uses:

- a. Retail stores, shops and markets, provided that:

1. All goods and products fabricated or processed on the premises incidental to such use shall be sold at retail on the premises.
2. No goods, supplies or materials shall be stored out-of-doors, nor shall any fabricating be done out-of-doors.
- b. Service establishments such as barber shops, beauty shops, tailoring and dressmaking shops, shoe repair shops, dry cleaning and laundry collection shops provided that no processing requiring the use of flammable materials is done on the premises.
- c. Business and professional offices, banks and other fiduciary institutions.
- d. Public utility offices and exchanges.
- e. Restaurants, lunchrooms and other eating establishments excluding roadside stands, diners and lunchwagons, drive-ins and self-service restaurants.
- f. Music, art and dancing studios.
- g. Undertaking and funeral services.
- h. Apartments over retail and live-work dwelling units.

(Ord. No. 8-13 § 10.0)

26-26.2 Permitted Accessory Uses and Buildings.

- a. Off-street parking and loading spaces as provided and required by Section 26-14.
- b. Outside storage uses normally associated with a permitted use provided that said storage area shall be screened from adjacent uses by a buffer strip consisting of a dense planting at least five (5) feet in width and otherwise comply with the provisions of this chapter. No storage shall be permitted in any required front yard.

(Ord. No. 8-13 § 10.0)

26-26.3 Area, Yard, Height and Bulk Requirements.

- a. *Minimum Size of Lot.* Shall contain twenty thousand (20,000) square feet and have street frontage of one hundred fifty (150) feet and on corner lots have street frontage of one hundred (100) feet on each frontage on each of the intersecting streets.
- b. *Minimum Setback Requirements for Principal Building.*
 1. Front yard. Fifty (50) feet except on corner lots which will have a minimum of sixty (60) feet on each frontage on each of the intersecting streets.
 2. Side yards (each). Fifteen (15) feet in width at all points of the building proper.
 3. Rear yard. Twenty-five (25) feet in depth.
- c. *Minimum Setback Requirements for Accessory Building.*
 1. Side yards (each). Five (5) feet in width.
 2. Rear yard. Five (5) feet in depth.
- d. *Maximum Building Area.* The total combined building area of all permitted buildings shall not exceed thirty-five (35%) percent of the area of the lot.
- e. *Maximum Building Height.* Thirty-five (35) feet or two and one-half (2 1/2) stories.
- f. *Minimum Floor Area.* One thousand five hundred (1,500) feet in one (1) story buildings and two thousand five hundred (2,500) feet in two and one-half (2 1/2) stories.

(Ord. No. 8-13 § 10.0)

26-27 RESERVED.

26-28 SED SPECIAL ECONOMIC DEVELOPMENT ZONE.

Editor's Note: Former Section 26-28, BD Business Development Zone was repealed by Ordinance No. 8-13.

26-28.1 Permitted Principal Uses.

This zone is designed for the following principal uses:

- a. Planned Development, which may include:
 1. Hotels and motels
 2. Eating and drinking establishments, including full service restaurants and cocktail lounges, but excluding drive-thru and curbside service establishments
 3. Entertainment and outdoor recreation facilities
 4. Stores and shops for the conduct of any retail business, excluding drive-thru establishments
 5. Business service establishments, such as banks (with or without drive-thru), conference services, telecommunication services, office services, etc.
 6. Personal service establishments (e.g., a tailor, barbershop or beauty salon)
 7. Pharmacies (with or without drive-thru)
 8. Offices for professional services (e.g., physicians, lawyers or architects); commercial offices (e.g., realtors or travel agencies); and offices incidental to permitted uses.

(Ord. No. 8-13 § 11.0)

26-28.2 Conditional Uses.

- a. The following principal uses are permitted in a Planned Development through issuance of a Conditional Use Permit by the Land Use Board subject to the following Conditions:
 1. No portion of a Planned Development containing the uses listed herein shall be closer than 1,000 feet to County Route 530 (Dover Road).

2. Uses shall be limited to:

- (a) Self-storage
- (b) Flex warehouse
- (c) Contractor unit

b. Planned Retirement/Senior Citizen/Active Adult Development, at a maximum density of eight (8) units per acre, consisting of one or more of the following housing types:

- 1. Townhouses (Single-family unit where each unit shares a common wall with one or two units) or Quadraplexes (four unit building where each unit shares a common wall with two other units), pursuant to the requirements of Section 26-23.
- 2. Multifamily apartment building for Senior Citizen occupancy, limited to 50 units in any one building and 3.5 stories and 50 feet in height.

(Ord. No. 8-13 § 11.0)

26-28.3 Area, Yard, Height and Bulk Requirements.

- a. *Minimum Size of Tract for Planned Development.* Five (5) acres.
- b. *Minimum Building and Parking Setback Requirements.* Seventy-five (75) feet from public right-of-way or zone boundary.
- c. *Maximum Building Area.* The total combined building area of all permitted buildings shall not exceed thirty-five (35%) percent of the area of the tract of the Planned Development.
- d. *Maximum Building Height.* Thirty-five (35) feet, unless otherwise specified herein. Building height may be increased to fifty (50) feet if the building is setback a minimum of one hundred fifty (150) feet from right-of-way or zone boundary.
- e. *Minimum Floor Area Ratio.* 0.5.

(Ord. No. 8-13 § 11.0)

26-28.4 Additional Requirements in the Pinelands Area.

In that portion of the SED Zone located in the Pinelands Area, Pinelands Development Credits shall be used for twenty-five (25%) percent of all units approved as part of any residential development, including a Planned Retirement/Senior Citizen/Active Adult Development in accordance with subsection 26-28.2.b. One-quarter of a Pinelands Development Credit (i.e., one right) shall be purchased and redeemed for every four (4) approved residential units. (Ord. No. 8-13 § 11.0)

26-29 DESIGN GUIDELINES FOR C-N, MU AND SED ZONES.

The following design guidelines create standards for yards, open space, landscaping, signage, setbacks, connectivity, and screening. These standards are the basis for development design for commercial development unless more restrictive requirements exist elsewhere in this chapter.

These standards apply to all new nonresidential development, expansions, or redevelopment, except for smaller additions or modification to an existing use. This exception would permit any existing lot in the commercial zone on which a building or structure is located to have additions to the principal building and /or construction of any accessory building or structures without a need for a variance or design waiver from these standards and requirements. The intent is not to overwhelm existing businesses with new regulations and standards, but to encourage reinvestment and improvements to properties over time. Examples of exceptions to ordinance standards include properties where:

- a. There is no change in the use of the lot or principal building.
- b. The building additions do not cumulatively exceed one thousand (1,000) square feet of gross floor area.
- c. The development does not disturb more than five thousand (5,000) square feet of ground area.

(Ord. No. 8-13 § 14.0)

26-29.1 Specific Standards.

The following standards are required unless a design exception is granted by the Land Use Board:

- a. Off-street parking and loading areas are prohibited in the required front yard setback area.
- b. Detention basins are prohibited in the required front yard setback area, except that rain gardens or bioswales are permitted when incorporated into the proposed landscape plan as approved by the Land Use Board.
- c. A grass/landscape area shall be provided along the roadway frontage pursuant to a landscape plan approved by the Land Use Board inclusive of shade trees, shrubs and ground cover.
- d. Lighting standards that require lighting levels not to exceed 0.1 footcandles on residential property lines.
- e. Connectivity between sites is required sufficient to facilitate convenient movements for pedestrians and vehicles. Where feasible, cross access drives for vehicles between adjoining sites and parking areas to reduce turning movements onto Dover Road and Route 166 are required, subject to site plan approval by the Land Use Board.

(Ord. No. 8-13 § 14.0)

26-30 MR MARINE RECREATIONAL-RESIDENTIAL ZONE.

26-30.1 Primary Intended Use.

The Marine Recreational-Residential Zone is expressly intended to be for the purpose of utilizing the waterfront marine area as a commercial and residential recreational center or, in lieu of such an orientation, of a nature which may be considered as secondary or supportive of uses which are considered to be marine recreational type uses, either on the same lot, on adjacent lots, or within the general vicinity of such marine recreational type uses. (1975 Code § 13-20.1)

26-30.2 Permitted Uses.

The following uses shall be permitted in the Marine Recreational-Residential Zone:

- a. Marinas, but not boat yards.
- b. Hotels and motels.
- c. Movie theaters.
- d. Museums.
- e. Indoor and outdoor recreation centers.
- f. Office buildings for members of a recognized profession.
- g. Antique and curio shops.
- h. Offices of a business or public utility.
- i. Shops of artisans or craftsmen.
- j. Retail sale of goods.
- k. Personal service establishments.
- l. Restaurants with a minimum seating capacity for one hundred (100) people.
- m. Townhouse condominium developments.
- n. Any use considered to be of a marine and commercial-recreational nature.

(1975 Code § 13-20.2)

26-30.3 Conditional Uses.

Upon application to the Land Use Board and upon this approval, the following conditional uses may be permitted in the MR Marine Recreational-Residential Zone:

- a. Public Garages and Motor Vehicle Service Stations.

(1975 Code § 13-20.3)

26-30.4 Required Accessories.

The following accessories shall be required for any use established in the Marine Recreational-Residential Zone:

- a. Off-street parking.
- b. Off-street loading.

(1975 Code § 13-20.4)

26-30.5 Permitted Accessory Uses.

The following accessories shall be permitted in the MR Marine Recreational-Residential Zone:

- a. Fences.
- b. Private swimming pools.
- c. Other customary accessory uses and buildings which are clearly incidental to the principal use and building.

(1975 Code § 13-20.5)

26-30.6 Area, Yard and Building Requirements.

The following area, yard and building requirements shall apply to the Marine Recreational-Residential Zone:

- a. Minimum lot area. 7,500 square feet.
- b. Minimum lot width. 75 feet.
- c. Minimum lot frontage:
 - 1. Interior lot: 75 feet.
 - 2. Corner lot: 100 feet on both streets.
- d. Minimum lot depth. 100 feet.
- e. Minimum front setback. 35 feet.
- f. Minimum rear setback:
 - 1. Principal buildings: 25 feet.
 - 2. Accessory buildings: 15 feet.
 - 3. Private swimming pools: 10 feet.
- g. Minimum side yard setbacks:
 - 1. Principal buildings: 15 feet.
 - 2. Accessory buildings: 10 feet.
 - 3. Private swimming pools: 10 feet.
- h. Minimum setback from the Toms River.

Editor's Note: All applications for development on lands adjacent to waterbodies in the Borough must be accompanied by a "Letter of Interpretation (LOI)" from the New Jersey Department of Environmental Protection (NJDEP). All plans must meet the requirements stipulated in the LOI from the NJDEP before issuance of a zoning permit or development permit.

- i. Maximum lot coverage by buildings: 25 percent.
- j. Minimum unoccupied open space. 15 percent.

k. Maximum building height. 35 feet.

1. All uses other than single-family residences located on the property abutting the Toms River shall provide, in a manner acceptable to the Land Use Board, for reasonable public access to and along the waterfront and to the adjacent properties along the waterfront. All buildings constructed shall be so located and so designed as to minimize any obstruction to public view of the Toms River.
(1975 Code § 13-20.6)

26-30.7 Buffer Areas.

A transition strip or suitable fence shall be placed along property lines where such lines separate a marina or commercial recreational activity from a residential area except where deemed to be not necessary by the applicable Land Use Board and where the requirement for such granting is waived by the adjoining owners in writing to the Board. (1975 Code § 13-20.7)

26-30.8 Reserved.

Former subsection 26-30.8, Townhouse Condominiums, was repealed in entirety by Ord. No. 8-13.

26-30.9 Reserved.

Former subsection 26-30.9, General Controls, was repealed in entirety by Ord. No. 8-13.

26-31 ML MUNICIPAL LANDS ZONE.

26-31.1 Primary Intended Use.

This zone is designated for and permits public structures to be owned solely by governmental entities and to be used solely for public purposes and the conduct and activity of the governmental agency owning such building. (1975 Code § 13-18A-1)

26-31.2 Bulk Requirements.

The following bulk requirements shall apply in the zone:

- a. Maximum building height. Thirty (30) feet.
- b. Minimum building setback from property lines. Ten (10) feet.
- c. Maximum lot coverage. Thirty (30%) percent.

(1975 Code § 13-18A.2)

26-31.3 Additional Requirements in the Pinelands Area.

When a variance or other approval for a residential use in that portion of the M-L Zone located in the Pinelands Area is granted by the Borough, Pinelands Development Credits shall be used for fifty (50%) percent of the authorized units for parcels between ten (10) and twenty (20) acres in size and for one hundred (100%) percent of the authorized units for parcels over twenty (20) acres in size. (Ord. No. 3-13 § 4)

26-32—26-34 RESERVED.

26-35 PLANNED RESIDENTIAL DEVELOPMENT.

26-35.1 Statement of Objectives of Development.

It has been determined that there is a need to encourage development in a manner that will generally serve the public health, safety, morals and general welfare of the community and to provide for balanced residential development that can be innovative and responsive to the growing demands for greater variety in type, design and layout of buildings and by the conservation and more efficient use of open space for the creation of greater opportunities for better housing and recreation within the community; and in and for these purposes to provide a procedure which can relate the type, design and layout of residential development to the particular site and area in a manner consistent with the preservation and upgrading of property values within the established residential areas, and to insure that the increased flexibility of substantial regulations of land development authorized herein be subject to such administrative standards and procedures as contained herein; planned residential developments shall be permitted subject to the provisions of this section. (1975 Code § 13-22.1)

26-35.2 Designation of Municipal Authority.

The municipal authorities designated to act under this section shall be the Land Use Board and the Borough Council. The person designated to receive the original plans shall be the Secretary of the Land Use Board and a copy of the plans shall be filed with the Borough Clerk. (1975 Code § 13-22.2)

26-35.3 Standard of Development.

a. Each Planned Residential Development (hereinafter called PRD) shall have an initial size of not less than seventy-five (75) adjacent and/or contiguous acres. Public roads shall not be deemed to divide acreage for this purpose.

A PRD shall be deemed "primarily residential" when not more than five (5%) percent of the area is for nonresidential use; the proposed nonresidential uses are integrated as accessory or demonstrated as compatible to the residential uses; and the proposed area for nonresidential uses does not exceed ten (10) acres.

b. Permitted Uses.

1. Dwelling uses in detached, semi-detached, attached groups of attached or clustered or multi-storied structures, or any combination thereof.
2. Any nonresidential use, to the extent such nonresidential use is designed and intended to serve the residents of the PRD.
3. Public and private educational and recreational facilities.

4. If the applicant intends to request a modification of the minimum permitted uses prior to the initial submission of his plan of development, a separate statement outlining the reasons why such modification should be granted should be submitted to the Borough Council.

c. Timing of Development.

1. In order to establish a well balanced, orderly growth in the PRD, the timing of development among the various types of uses and subgroups thereunder shall be regulated by the Land Use Board and Borough Council in accordance with the time specified in schedules as may be more particularly hereinafter set forth.

2. If the development and plan is approved in stages, each stage of development shall be computed prior to proceeding to the next stage, or adequate performance guarantees shall be posted to insure completion of improvements of each approved stage. Performance guarantees may be released in part by resolution of the Borough Council upon certification by the Borough Engineer that the guaranteed times are in accordance with all Borough regulations and planning requirements.

d. *Residential Density and Associated Standards.*

1. A PRD shall be permitted in any district within the Borough.
2. Density and/or building intensity may be increased if the character of the development and/or amenities incorporated in the development warrant such increases; provided that in no case shall the overall density be increased in excess of the following requirements:
 - (a) The maximum of ten (10) dwelling units per gross acre shall not be exceeded in the entire PRD
 - (b) A minimum lot size for single-family detached dwelling in the PRD shall be fourteen thousand (14,000) square feet, and up to thirty (30%) percent of the required minimum lot size may be established as a common green area but not necessarily contiguous to the lot; the applicant shall be permitted to create a "clustered development" as that phrase is commonly referred to in the building industry.
 - (c) A minimum of thirty (30%) percent of the area of the entire PRD shall remain in common open space.
 - (d) Townhouses shall not exceed a maximum height of thirty-five (35) feet. Single-family detached dwellings shall have not more than two (2) stories.
 - (e) For apartment dwellings there shall be no more than thirty (30%) percent apartments with more than one (1) bedroom and of that amount no more than twenty-five (25%) percent of those apartments shall contain three (3) bedrooms. All rooms other than kitchens, bathrooms and living rooms or the equivalent, whatever its name, shall be deemed to be bedrooms.
 - (f) Not more than twenty (20%) percent of all units in the PRD shall be apartment units.
3. Common areas shall consist of no more than seventy-five (75%) percent devoted to passive uses.
(1975 Code § 13-22.3)

26-35.4 Site and Structure Regulations.

- a. Plot and lot sizes, dimensions, structure heights, and locations thereon, may be arranged in conformity to the overall density standards herein, including but not limited to the minimum lot sizes herein provided, and to the conditions of comprehensive plans therefor, the general features and design of which shall be approved by the Land Use Board and Borough Council. Minimum frontage requirements and percentages of lot coverage are not specified herein although the Land Use Board may be guided by standards set elsewhere herein for comparable conditions and by generally accepted standards of sound planning and zoning.
- b. Except as follows, other provisions of the zoning ordinance of the Borough governing side and rear yard sizes in residential areas shall not apply.
- c. A minimum setback distance or front yard of twenty-five (25) feet shall be provided from the curb line of all existing State and County roads, any main roads or thoroughfares designated upon the master plan of the Borough or any roadways contained in the PRD.
- d. No structure shall be erected within a distance of twenty-five (25) feet of any single-family detached dwelling.
- e. Every single-family detached dwelling shall have access to a public street, court, walkway or other area dedicated to public use or subject to an easement for access. The boundaries or extent of the lot or plot upon which any single-family detached dwelling is located shall be clearly defined on the map of the PRD.
- f. All open spaces shall be protected by fully recorded covenants running with the land conveyances or dedications.
- g. The right-of-way and pavement widths for internal ways, roads and alleys serving multi-family dwellings, including townhouse clusters, shall be determined from sound planning and engineering standards in conformity to the estimated needs of the full development proposed and the traffic to be generated thereby and shall be adequate and sufficient in size, location and design to accommodate the maximum traffic, parking and loading needs and the access of fire fighting equipment and police vehicles and shall be certified thereto by a competent expert licensed under the laws of the State of New Jersey. In such instance, other provisions of this section shall not apply but may serve as general guides to the Land Use Board in approving the development plans. In any event, internal roads shall not be less than twenty (20) feet in width and the width for internal ways and walks shall not be less than three (3) feet. Service ways for public service vehicles shall not be less than ten (10) feet in width.
- h. Dedicated streets or highways shall be subject to all other Borough ordinances and the laws of the State of New Jersey.*
(1975 Code § 13-22.4)

26-35.5 Utilities and Services.

The developer shall furnish water and sewage facilities based upon a written agreement with the South Toms River Sewerage Authority, after a joint conference with the Borough Council. The developer shall provide all necessary storm drainage, highway access, paved service streets, parking facilities, and off-street lighting, making reasonable provisions for service to the connections with adjoining properties. (1975 Code § 13-22.5)

26-35.6 Special Requirements.

- a. Every structure or group of structures and uses, including those of an institutional, charitable or public nature, and every designed plot area or cluster units having services, facilities or utilities in common private usage and in common ownership or control by its occupants or which functions as an independent corporate property owner, or agent of management, shall be located upon and within a lot or plot of land which shall be fully dimensioned and designated as representing the area of responsibility and as may be established by ownership in full or partial fee or for lease under deed covenant, lease contract, or such other conditions of usage or occupancy legally established and recorded therefor; and description or plan of each lot or plot shall be filed separately or as part of a descriptive map of a PRD with the Borough Tax Assessor. The developer shall provide for and establish an organization for the ownership and maintenance of any common open space and such organization shall not be dissolved nor shall it dispose of any common open space by sale or otherwise (except to a homeowners' association or other organization conceived and established to own and maintain the common open spaces), without first offering to dedicate the same to the municipality or any other governmental agency.
- b. Extension of a PRD. Any PRD originally established under the requirements of this section may be extended into adjoining zones by later additions of contiguous lands in parcels or units of not less than fifty (50) acres each under the conditions established for development of the original PRD, provided that it shall be subject to the same procedure for approval and in conformity with the standards herein set forth.
(1975 Code § 13-22.6)

26-35.7 Procedure for Approval.

- a. Application for a PRD shall be made in duplicate on the form provided or approved by the Borough, one (1) copy being filed with the Secretary of the Land

Use Board and one (1) copy with the Borough Clerk shall be considered an application for tentative approval. The fee for such application shall be one thousand (\$1,000.00) dollars plus the following:

One-family townhouse unit	\$15.00 per unit
One-family residence	\$15.00 per unit
Nonresidential unit	\$15.00 per unit
Apartment unit	\$15.00 per unit

Such application shall set forth the name and address of the applicant and location of the land proposed to be developed; the nature of the applicant's interest in the land; the density of the land use to be allocated to various parts of the site; the location and size of any common open space; the form or organization proposed to own and maintain common open space; the use, approximate height, bulk and location of buildings or other structures; the proposed provision for disposition of storm and sanitary water; the substance of any covenants, grants, easements or other restrictions proposed to be imposed upon the land or buildings, including easements for public utilities; the proposed provisions for parking, locations and widths of proposed streets and modifications from the existing ordinances governing streets or ways or land use being requested; the projected schedule for development and the approximate time when final approvals would be requested, a statement of why the public interest would be served by the proposed development, such statement to be supported by a detailed economic, social and physical study and any other data required by this section. Application hereunder shall be considered as a request to establish a PRD upon the land so described, and a copy shall be filed with the Department of Community Affairs of the State of New Jersey. (1975 Code § 13-22.7; New)

26-35.8 Procedure Before Land Use Board and Borough Council.

- a. Within forty-five (45) days after receipt by the Land Use Board of an application for a PRD, the Land Use Board shall hold a public hearing, public notice of which shall be given in the manner prescribed by subsection 26-1.8, and such publication shall set forth the application in full. The Chairman, or in his absence, the Acting Chairman of the Land Use Board may administer oath and, upon application by any interested party or upon its own motion, compel the attendance of witnesses. All testimony by witnesses at any hearing shall be given under oath and every party of record at a hearing shall have the right to cross-examine witnesses. A transcript of the hearing shall be caused to be made by the Land Use Board, at the cost of the applicant, copies of which shall be made available, at cost, to any party to the proceedings and to the Land Use Board and Borough Council, without cost, as accepted in evidence shall be identified and duly preserved, or if not accepted in evidence, shall be properly identified and the reason for the exclusion clearly noted in the record. A report on the proposed PRD shall be prepared and filed with the Land Use Board by the professional planner for the Board, if any, not less than five (5) days before the public hearing, and the report shall be available for public inspection during regular business hours.
- b. At the public hearing, the applicant shall present evidence as to the following:
 - 1. General character and substance;
 - 2. Objectives and purpose to be served;
 - 3. Adequacy and completeness of standards;
 - 4. Satisfactory application of standards in specific details of design in organization of elements and plans.;
 - 5. Scale, scope;
 - 6. Economic feasibility;
 - 7. Time factors and sequential development potentials;
 - 8. Conformity to comprehensive plans for the Borough's development. To this end, factual evidence and expert opinion shall be submitted by the developer in the form of such maps, charts, reports, models and other tangible materials and in the form of sworn testimony by experts, including but not limited to architects, engineers, realtors, professional planners and economists, as will clearly describe the full nature and extent of the proposal; and
 - 9. Such other matters as may be directed by the Land Use Board bearing on the appropriate determination to be made on the application in accordance with law.
- c. Following the public hearing, and within sixty (60) days from the initial hearing, the Land Use Board shall either:
 - 1. Recommend tentative approval of the application as submitted; or
 - 2. Recommend tentative approval, subject to express conditions not included in the plan as submitted or modified; or
 - 3. Deny tentative approval to the plan.
- d. The recommendation for, or denial of, tentative approval shall be by written resolution including, but not limited to, findings of fact and conclusions setting forth in what respects the plan would or would not be in the public interest, as well as the following:
 - 1. In what respects the plan is or is not consistent with the statement of the objectives of PRD, the master plan and the provisions of N.J.S.A. 40:55D-1 et seq.;
 - 2. The extent to which the plan departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk and use, and the reasons why such departures are, or are not, deemed to be in the public interest;
 - 3. The purpose, location and amounts of the common open space in the PRD, the reliability of the proposals for maintenance and conservation of the common open space, and the adequacy or inadequacy of the amount and purpose of the common open space as related to the proposed density and type of developments;
 - 4. The manner in which the design does or does not make adequate provision for public services, provide adequate control of vehicular traffic and further the amenities of light and air, recreation and visual enjoyment; and
 - 5. The relationship, beneficial or adverse, of the proposed PRD to the neighborhood in which it is proposed to be established.
- e. Within sixty (60) days after referral from the Land Use Board, the Borough Council shall review the record before the Land Use Board, hear argument on the record from the applicant and interested parties and either grant or deny tentative approval. Failure to receive a completed record within ten (10) days from the decision of the Land Use Board shall toll the time period until such time as applicant delivers a complete record to the Borough Clerk. Failure to grant tentative approval within the time period shall be deemed approval, but the period may be extended by agreement in writing. (1975 Code § 13-22.8)

26-35.9 Final Approval.

- a. If tentative approval is granted, with or without conditions, there shall be set forth in the resolution of approval the reasons therefor and the time within which an application for final approval of the plan shall be filed or, in the case of a plan which provides for development over a period of years, the periods of time within which applications for final approval of each part thereof shall be filed.
- b. In the event that tentative approval is granted, the same shall be noted on the zoning map maintained in the office of the Borough Clerk.

c. In the event that a plan is given tentative approval, and thereafter, but prior to final approval, the applicant shall elect to abandon part or all of the plan and shall also notify the Borough Council in writing, or in the event the applicant shall fail to file application for final approval within the required period of time or times, as the case may be, the tentative approval shall be deemed to be revoked and all that portion of the area included in the plan for which final approval has not been given shall be subject to those local ordinances applicable there, as they may be amended, and the same shall be noted on the zoning map in the office of the Borough Clerk. (1975 Code § 13-22.9)

26-35.10 Application for Final Approval.

- a. Application for final approval shall be made to the Secretary of the Land Use Board with a copy of the application being filed with the Borough Clerk.
- b. An application for final approval may be for all the land included in a plan or, to the extent set forth in the tentative approval, for a section thereof. The application shall be made to the Borough Clerk and within the time specified by the resolution granting tentative approval.
- c. The application shall include such drawings, specifications, covenants, easements, conditions and form of performance bond as were set forth by written resolution of the municipal authorities or accepted at the time or required by or as a result of tentative approval. A public hearing on an application for final approval of the plan, or part thereof, shall not be required provided the plan, or the part thereof submitted for final approval, is in substantial compliance with the plan therefor given tentative approval.
- d. A plan submitted for final approval shall be deemed to be in substantial compliance with the plan previously given tentative approval provided any modification by the applicant of the plan as tentatively approved does not:
 - 1. Vary the proposed growth residential density or intensity of use by more than five (5%) percent; or a percentage deemed appropriate by the Land Use Board;
 - 2. Involve a reduction of the area set aside for common open space or the substantial relocation of such area;
 - 3. Increase by more than ten (10%) percent the floor area proposed for nonresidential use;
 - 4. Increase by more than ten (10%) percent the floor areas covered by buildings or involve a substantial change in the height of buildings. A public hearing shall not be held to consider modifications in the locations and design of streets or facilities for water and for disposal of storm water and sanitary sewerage.
- e. A public hearing shall not be held on an application for final approval of a plan when the plan as submitted for final approval is in substantial compliance with the plan as tentatively approved. The burden shall nevertheless be upon the applicant to show the Land Use Board good cause for any variation between the plan as tentatively approved and the plan as submitted for final approval.

(1975 Code § 13-22.10)

26-35.11 Validity of Final Approval.

- a. A plan, or part thereof, which has been given final approval by the Borough Council shall be so certified without delay by the Borough Clerk and shall be filed of record forthwith by applicant in the Office of the County Clerk before any development shall take place in accordance therewith. Upon the filing of record of the plan, all other ordinances and subdivision regulations otherwise applicable to the land included in the plan shall cease to apply thereto. Pending completion within five (5) years of the PRD or of that part thereof, as the case may be, that has been finally approved, no modification of the provisions of said plan, or part thereof as finally approved, shall be made nor shall it be impaired by act of the Borough except with the consent of the landowner.

(1975 Code § 13-22.11)

26-35.12 Definitions.

As used in this section:

- a. **Common Open Space** shall mean a parcel of land or an area of water, or a combination of land and water within the site designated for a PRD, and designated and intended for the use or enjoyment of residents or owners of the PRD. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of residents and owners of the PRD.
- b. **Landowner** shall mean the legal or beneficial owner or owners of all of the land proposed to be included in a PRD. The holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land, shall be deemed to be a landowner for the purposes of this act.
- c. **Plan** shall mean the provisions for development of a PRD including a plot of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, private streets, ways and parking facilities, common open space and public facilities.
- d. The phrase **Provision of the Plan**, when used in this section, shall mean the written and graphic materials referred to in this definition.
- e. **Planned Residential Community** or, in the alternative **Planned Residential Development** shall mean an area of land, controlled by a landowner to be developed as a single entity for a number of dwelling and commercial units.
- f. **Dwelling Unit** shall mean one (1) or more rooms arranged for the use of one or more individuals living together as a single housekeeping unit with cooking, living, sanitary and sleeping facilities.

(1975 Code § 13-22.12)

26-35.13 Incorporation by Reference.

All requirements of the "Municipal Planned Unit Development Act (1967)" (N.J.S.A. 40:55-54 et seq.) are incorporated by reference and made applicable to all applications filed pursuant hereto, and all applicants are charged with knowledge of the Act. Any inconsistency between this section and said Act shall be resolved in favor of this section unless the result thereof would be invalid. (1975 Code § 13-22.13)

26-36—26-39 RESERVED.

Article VII Reserved

26-40—26-44 RESERVED.

Former Article VII, Pinelands Area Development Approval and Site Plan Requirements previously codified herein and containing portions of 2008 Code §§ 26-40—26-44, was deleted in its entirety by Ordinance No. 3-13.

Article VIII Site Plan Review

26-45.1 When Required.

Prior to the issuance of a building permit, or certificate of occupancy, as the case may be, for any new building, addition to or alteration of an existing building except for single and two (2) family residences, or any change in use, or a use variance obtained for any nonresidential use, a site plan shall be submitted to the Land Use Board for its review and approval. Any site plan approval issued by the Land Use Board shall be valid for the same period of time as the time during which the building permit or certificate of occupancy which may be thereafter issued shall be valid. No changes shall be made in any site plan approved by the Land Use Board without approval of the change by the Board.

Any site plan relating to a proposed use which would also require action of the Land Use Board or Borough Council shall first be submitted to the Land Use Board for its review and approval, as set forth in this section. If the Land Use Board finds that the site plan meets all requirements except for any necessary variance or variances, it may approve the site plan subject to the approval of the Borough Council. The Land Use Board may, with its approval, express its nonbinding opinion as to whether the variance or variances would be compatible with the zone plan and zoning chapter, or be detrimental to the health, welfare or safety of the Borough. No site plan approval shall be construed to obviate or waive any requirement contained in this chapter.

The Land Use Board shall act on any site plan submitted to it for its review within ninety (90) days after filing with the secretary of the Land Use Board. Failure of the Land Use Board to act thereon within the time, or within such further extended time as may be consented to by the applicant, shall be deemed a denial of the site plan submitted.

In acting upon any site plan submitted to it, the Land Use Board shall ascertain that all of the terms, conditions, standards, and requirements of this section are met. The Board shall consider how the site plan will affect congestion in the streets, safety from fire, panic and other dangers, health, morals or the general welfare, adequate light and air, the overcrowding of land or buildings, undue concentration of population, conservation of the value of property, and whether the proposed use will be conducive to the orderly development of the site in question as well as the general area in which it is located. (1975 Code § 13-24.1)

26-45.2 Site Plan.

The site plan shall be drawn at a scale of at least one inch equals thirty feet (1" = 30') provided, however, where this scale would result in an unduly large map, Land Use Board may permit a larger scale. The site plan shall include the following information:

- a. Name and title of applicant, owner and person preparing the map;
- b. Place for signature of Chairman and Secretary of Land Use Board.
- c. Place for signature of Borough Engineer;
- d. Date, scale and north sign;
- e. Tax map lot and block number;
- f. Zone in which property in question falls, and zone dividing lines through, abutting or near the property;
- g. The entire property in question even though only a portion of the property is involved in the site plan, provided, however, where it is physically impossible to show the entire property on one sheet, a key map is permitted;
- h. All abutting streets and property lines and location and setbacks of buildings on abutting lots, including fences, parking areas and access drives;
- i. Front, side and rear setback dimensions;
- j. All lot line dimensions;
- k. Rights-of-way, easements and all other interests in lands, any of which are required by this section to be deeded to the Borough;
- l. The principal buildings and all accessory buildings, with dimensions, including the height, number of stories and first floor elevation;
- m. Type of paving, curbs, sidewalks, parking space layouts and loading areas, with dimensions;
- n. Location and construction details of catch basins and all storm drainage facilities;
- o. Location, size and type of all proposed landscaping including shade trees both on the lot and along the public right-of-way. In addition, design details of fences, walls, guard rails and similar facilities shall be furnished. Plans for landscaping and landscape structures must accompany the application but may be on a separate plan to be approved by the Land Use Board;
- p. Location and type of all proposed lighting;
- q. Location, size and general description of all proposed signs including both business signs and those related to off-street parking or loading areas; and
- r. Any other requirements of this section.

(1975 Code § 13-24.2)

26-45.3 Application and Fees.

Ten (10) copies of each application and all supporting documents for site plan review shall be filed with the Secretary and Land Use Board at least thirty (30) calendar days prior to a scheduled public meeting of the Land Use Board. At the time of filing application for site plan approval, the applicant shall pay to the Borough fifteen (\$15.00) dollars for the first seven thousand five hundred (7,500) square feet of lot area of the subject property in addition to ten (\$10.00) dollars for each seven thousand five hundred (7,500) square feet of lot area or fraction thereof over the initial seven thousand five hundred (7,500) square foot fee. The applicant shall also pay twenty (\$20.00) dollars for the first one thousand (1,000) square feet of floor area of any new buildings to be erected upon the premises in question in addition to fifteen (\$15.00) dollars for each one thousand (1,000) square feet of floor area or fraction thereof over the initial one thousand (1,000) square foot fee. After the site plan has been approved, but before a building permit is issued, the applicant shall pay to the Borough an engineering inspection fee of four (4%) percent of the estimated cost of installing all required site improvements estimated by the applicant and approved by the Borough Engineer. (1975 Code § 13-24.3)

26-45.4 Completion of Improvements.

Prior to the issuance of a certificate of occupancy, all improvements as shown on the approved site plan shall have been completed. When by reason of adverse weather conditions completion of certain improvements would cause an undue delay, the Land Use Board shall require the posting of a performance guarantee sufficient in amount to cover the cost of all such uncompleted improvements as estimated by the Borough Engineer, assuring the installation of such uncompleted improvements within one (1) year of the posting of the performance guarantee. The amount of the performance guarantee shall be fixed by the Land Use Board and shall not be in excess of one hundred twenty (120%) percent of the cost of uncompleted improvements as estimated by the Borough Engineer. The performance guarantee shall be in the form of a certified check drawn on a bank which is a member of the Federal Reserve System payable to the Borough of South Toms River or in such form as may be approved by the Borough Attorney as to form and execution. Failure to comply with any of the conditions of the site plan approval subsequent to the receipt of a building permit or certificate of occupancy as the case may be, shall be construed to be a violation of this section and shall be grounds for the revocation of any building

permit, or certificate of occupancy, as the case may be. If the Construction Official finds that any conditions of site plan approval have not been met, he shall give the applicant ten (10) days written notice to comply with the conditions. Failure to comply within this ten (10) day period shall result in the revocation of the building permit or certificate of occupancy, as the case may be. Such violation may also be prosecuted under subsection 26-46.4. (1975 Code § 13-24.4)

Article IX Enforcement and Administration

26-46 ENFORCEMENT AND ADMINISTRATION.

26-46.1 Zoning Officer; Authority and Duties.

This chapter shall be enforced by a Zoning Officer who shall also have the duty and authority, when so authorized by the Mayor and Council, to enforce the provisions of any part of the Revised General Ordinances of the Borough of South Toms River.

The Zoning Officer or such other person or agency as may be designated by the Mayor and Council shall serve notice upon the owner and prosecute a complaint to determine the violation before the Municipal Court of any violation of this chapter or of any provision of the Revised General Ordinances of the Borough of South Toms River. (1975 Code § 13-23.1)

26-46.2 Approvals by the Land Use Board.

- a. All approvals are valid only as to the specific application, appeal, conditions and plans as they exist at the time of such approval by the Land Use Board; which plans, conditions, drawings, etc., shall have been filed with the Land Use Board prior to granting of or approval of the application. All such plans or survey plans submitted with an application shall have been prepared in accordance with the provisions of law; all survey plans shall be certified as to their correctness as required by law.
- b. Where an appeal is sustained or a recommendation is made by the Land Use Board to the Borough Council, and same is sustained, the necessary permits shall be secured within three (3) months of the date of approval and final action, and any such building, structure, alteration, subdivision or use (as the case may be) shall be completed and occupied within twelve (12) months from the date of such approval.
- c. Should the appellant or applicant fail to procure the necessary permits or record such subdivision or establish such use within the three (3) month period or complete such building, alteration, etc., within the twelve (12) month period, then the favorable decision or action of the Land Use Board or Borough Council shall be automatically rescinded, unless within the time limitations specified, an extension shall be approved and granted by the Land Use Board and the Borough Council. (1975 Code § 13-23.2)

26-46.3 Certificates and Permits.

- a. *Conditional Use Approvals.* These permits shall be granted after approval of Boards having jurisdiction in the matter in accordance with the procedure set forth in the preceding sections.
- b. *Certificate of Occupancy.* These permits shall be issued by the Construction Official as prescribed herein and within the State Uniform Construction Code.
- c. On the serving of notice by the Construction Official to the owners of any violation of any of the provisions or requirements with respect to any building or use thereof or of land, as specified in this chapter, the certificate of occupancy for such use shall be deemed to be in violation of this chapter and subject to the penalties hereinafter prescribed. A new certificate of occupancy shall be required for any further use of such building or land. (1975 Code § 13-23.3)

26-46.4 Penalties.

The owner or agent of a building, structure, or land where a violation of any provision of this chapter shall have been committed or shall exist, or the lessee or tenant of any building, structure or land, or any part thereof, in which such violation shall have been committed or shall exist, or the agent, architect, contractor or any other person who shall commit, take part or assist in such violation or who shall maintain any building, structure or land in which such violation shall exist, or any person, firm or group who aids, abets, counsels, commands, induces, or procures another to violate the provisions of the within chapter, shall for each and every violation thereof be deemed guilty of a violation, and upon conviction thereof for each and every violation, be subject to the penalty as stated in Chapter I, Section 1-5. (1975 Code § 13-23.4)

26-46.5 Court Proceedings by Construction Official.

In addition to the powers given to the Construction Official or as otherwise contained in this chapter, the Construction Official, any Police Officer or any taxpayer or resident of the Borough may make a complaint in the Municipal Court of the Borough for any violation of this chapter or any section, paragraph or provision thereof, and, upon conviction in such case, the penalties hereinbefore provided shall be imposed. If the jurisdiction of Municipal Court is extended or substituted to include another Court of the State of New Jersey, the latter Court shall also have jurisdiction to accept such complaints. (1975 Code § 13-23.5)

26-46.6 Proceedings by the Borough of South Toms River.










In addition to the remedy or remedies hereinbefore provided, any person violating any article, section, paragraph or provision thereof may be proceeded against by the Borough of South Toms River through any of its officials, boards, bureaus, or agencies, or by the owner of any property within the Borough by appropriate action, or by proceeding in equity or otherwise, to prevent and enjoin any threatened violation or any continuing violation of the chapter or any section, paragraph or provision thereof. (1975 Code § 13-23.6)

ZONING MAP

See separate [file](#)

²**Editor's Note:** See Section 26-25, Pinelands Area Site Plan Requirements.
³**Editor's Note:** See also Section 26-35, Planned Residential Development.
⁴**Editor's Note:** The Borough shall conform to the standards established in the "Residential Site Improvement Standards."
⁵**Editor's Note:** See also Chapter XXIV, Stormwater Management.
⁶**Editor's Note:** See also Chapter XXIV, Stormwater Management.
⁷**Editor's Note:** The requirements for streets shall conform to the New Jersey Residential Site Improvement Standards, "NJRSIS."

Legend

-  Pinelands Management Area Boundary
-  Municipal Boundaries
-  Zoning Boundaries
-  Parcels
-  Interstate Highway
-  US Highway
-  NJ State Route
-  County Route
-  Water Body

Zone Dist

- R-7, Medium-High Density Residential
- R-10, Medium Density Residential
- R-15, Low Density Residential
- CR, Conservation Residential
- T, Townhouse Transition
- SED, Special Economic Development
- M-U, Mixed-Use
- C-N, Neighborhood Commercial
- MR, Marine Recreational
- ML, Municipal Lands

ML

ATTISON AV

HUMMELL DR