



## ORDINANCE NO. 2023-03

**AN ORDINANCE BY THE MAYOR AND COUNCIL AMENDING THE BOROUGH OF LEBANON CODE OF LAND USE ORDINANCES TO REPEAL LEBANON BOROUGH LAND USE ORDINANCES REVISED IN 2004. CHAPTER 165 LAND USE REGULATIONS ORDINANCE; TO ADOPT CHAPTER 165 LAND USE ORDINANCE; AND TO ADOPT ADMINISTRATIVE WAIVER OF SITE PLAN REVIEW APPLICATION AND WAIVER CHECKLIST TO ADOPT CHECK LISTS, TO ADOPT ZONING MAP AND SCHEDULE OF ZONING REQUIREMENTS.**

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# Chapter 165 Land Use Regulations

**[HISTORY: Adopted by the Mayor and Council of the Borough of Lebanon October 18, 2023 by Ord. No. 2023-03. Amendments noted where applicable.]**

#### GENERAL REFERENCES

Uniform construction codes — See Ch. 97.

Noise — See Ch. 178.

Sewers and sewage disposal — See Ch. 234.

Floodplain Management Regulation – See Ch. 254

Stream Corridor Protection – See Ch. 256.

Wellhead Protection – See Ch. 291.

Sanitary Water Management — See Ch.320.

# Part 1

## General Provisions

### Article I

#### Title; Purpose; Scope

#### § 165-1 Title.

This chapter shall be known as the "Land Use Regulations of the Borough of Lebanon."

#### § 165-2 Purpose.

The purpose of this chapter shall, in general and where applicable to local conditions in the Borough of Lebanon, be the purpose of the Municipal Land Use Law, Chapter 291 of the Laws of 1975, as set forth in Section 2 (N.J.S.A. 40:55D-2) of said law.

#### § 165-3 Scope.

- A. It is not intended by this chapter to repeal, abrogate, annul or in any way impair or interfere with existing provisions of other laws or ordinances, except those specifically or impliedly repealed by this chapter, or any private restrictions placed upon property by covenant, deed or other private agreement, unless repugnant hereto.
- B. Where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or lot coverage or requires greater lot area or longer yards or other open spaces than are imposed or required by such rules, regulations or permits or by such private restrictions, the provisions of this chapter shall control.

## Part 2

### Definitions

#### Article II

#### Definition of Terms

#### § 165-4 Definitions.

For the purpose of this section, the following terms, phrases, words, and their derivations shall have the meanings stated herein, as it relates to the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. unless their use in the text of this section clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Whenever a term is not defined in this chapter, it is intended to have the meaning set forth in P.L. 1976, c. 291 (N.J.S.A. 40:55D-1 et seq.), if defined by that statute. In the event of a conflict between the definition in this chapter and that contained in said statute, the definition in said statute will apply. Words used in the present tense include the future; the singular number includes the plural, and the plural the singular. The word "lot" includes the word "plot."

The word "building" includes the word "structure." The term "such as," where used herein, shall be considered as introducing a typical or illustrative, rather than an entirely exclusive or inclusive, designation of permitted or prohibited uses, activities, establishments or structures. The words "zone" and "district" are synonymous.

#### **ABANDONED OR DISCONTINUED SIGN OR SIGN STRUCTURE**

A sign or sign structure whose owner has failed to operate or maintain said sign or sign structure for a period of six months or longer. The following conditions shall be considered as the failure to operate or

maintain a sign or sign structure:

- (1) A sign displaying advertising for a product or service which is no longer available or displaying advertising for a business which is no longer in business; or
- (2) A sign which is blank.

### **ACCESSORY BUILDING**

A subordinate building or structure on the same lot with a principal building, or a portion of the principal building, occupied or devoted exclusively to an accessory use. Where an accessory building or structure is attached to a principal building, such accessory building or structure shall be considered part of the principal building.

### **ACCESSORY USE**

A use naturally and normally incident and subordinate to the principal use of the premises or lot.

### **ACTIVITY**

Any development for which an application for development is necessary.

### **ADMINISTRATIVE OFFICER OF THE LAND USE BOARD**

The Administrative Officer of the Land Use Board, means the Clerk of the municipality, unless a different municipal official is designated by Ordinance or Statute.

### **ADULT BOOKSTORE**

Any business having as a predominant part of its stock-in-trade books, magazines, photographs, pictures, films, devices, newspapers, recordings, periodicals or any other item or paraphernalia devoted to the presentation or exploitation of parts of the anatomy, human or animal, in an obscene manner or for obscene purposes.

### **ADULT MOTION-PICTURE STUDIO**

The business of showing or presenting to one or more persons material depicting sexual acts or parts of the anatomy of humans or animals in an obscene manner or for obscene purposes.

### **ADVERTISING**

Sign copy intended to aid, directly or indirectly, in the sale, use or promotion of a product, commodity, service, activity, entertainment, or real or personal property.

### **AGRICULTURAL LAND**

Land used for growing crops, raising or breeding dairy, poultry or other livestock, truck gardening, wood lots, nursery or greenhouse or other agricultural or horticultural purposes. Agricultural land shall also include open or wooded areas, ponds, brooks, meadows, swamps and land used for hunting, trapping, wild game preserves and noncommercial recreational purposes.

### **AGRICULTURAL PRODUCE SIGN**

A sign whose function is exclusively for advertising for the normal, incidental and customary sale of products, produce or livestock raised on the premises.

### **ALTERATION OF BUILDING**

A change in the supporting members of a building, an addition to or diminution of a building, a conversion of a building or a part thereof, the removal of a building from one location to another or a change in use.

### **AMBULATORY CARE FACILITY**

A human health care facility or a distinct part of a human health care facility in which preventative, diagnostic, and treatment services are provided to persons who come to the facility to receive services and depart from the facility on the same day, provided the facility is not a hospital and/or does not provide inpatient care.

**ANIMATED SIGN**

A sign which includes action, motion, or color changes, or the optical illusion of action, motion, or color changes, including signs set in motion by movement of the atmosphere, or made up of a series of sections that turn.

**APARTMENT**

A dwelling unit, located in a building containing two or more similar units and adjoining said similar units above, below or to the side, and which may share with said similar units common facilities, such as entryways, hallways and utility systems.

**APARTMENT BUILDING**

A building or group of buildings containing three or more apartments.

**APPLICANT**

A developer submitting an application for development.

**APPLICATION FOR DEVELOPMENT**

The application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, residential cluster, conditional use or zoning variance, or direction of the issuance of a permit by the Land Use Board.

**APPROVING AUTHORITY**

The Land Use Board of the municipality, unless a different agency is designated by ordinance when acting pursuant to the authority of this chapter.

**ARTWORK**

A two- or three-dimensional representation of a creative idea that is expressed in a form and manner as to provide aesthetic enjoyment for the viewer rather than to specifically convey the name of the business or a commercial message about the products or services offered on the property upon which the artwork is displayed.

**AWNING SIGN**

See "canopy sign."

**BANDIT SIGN**

See "snipe sign."

**BANK**

The inclined sides of the channel.

**BANNER**

Any sign or string of one or more signs, usually made of cloth or other lightweight material, which is used to attract attention, whether or not imprinted with words or characters, including but not limited to balloons and pennants. Flags shall not be considered banners.

**BASEMENT**

A portion of the building partly underground, but having less than 1/2 of its clear height below the

average grade of the adjoining ground. (See "cellar.")

**BEACON**

A stationary or revolving light which flashes or projects illumination, single color or multicolored, in any manner which has the effect of attracting or diverting attention, except, however, this term does not include any kind of lighting device which is required or necessary under the safety regulations of the Federal Aviation Administration or other similar agency. This definition does apply to any similar type of lighting device contained entirely within a structure and which does not project light to the exterior of the structure.

**BED**

The floor of the channel.

**BILLBOARD**

A sign structure and/or sign utilized for advertising an establishment, an activity, a product, service or entertainment which is sold, produced, manufactured, available or furnished at a place other than on the property on which said sign structure and/or sign is located.

**BLOCK**

An area of land surrounded by streets.

**BOARDER or ROOMER**

A person not a member of a family, as defined in this chapter, who pays for the privilege of lodging.

**BOROUGH**

The Borough of Lebanon.

**BUFFER AREA OR ZONE**

An unoccupied portion of land maintained as a landscaped area.

**BUILDING**

A structure having a roof supported by columns, walls or similar structural parts, used or intended to be used for the housing, enclosure or shelter of persons, animals or property of any kind.

**BUILDING COVERAGE**

That portion of a lot covered by the main or first floor of a building or buildings.

**BUILDING FRONTAGE**

For the purposes of the sign regulations set forth in § **165-109** of this Code only, means the length of the single face of a building or that portion of a building occupied by a single office, business or enterprise, commonly referred to as "storefront," which is abutting a street, parking area, or other means of customer access such as an arcade, a mall or a walkway. The building frontage for a side facade shall be the length of the single face of a side of a building or that portion of a side of a building occupied by a single office, business or enterprise.

**BUILDING LINE**

A line parallel to a street right-of-way at a point where the building is closest to said right-of-way.

**CAFETERIA**

A restaurant in which hot and cold food for consumption on site is displayed on counters and patrons serve themselves, including buffets.

## **CALIPER**

American Association of Nurserymen standard for trunk measurement of nursery stock. Caliper of the trunk shall be taken six inches above the ground for and up to and including four-inch caliper size, and 12 inches above the ground for larger sizes.

## **CANNABIS CULTIVATOR**

Any person or entity holding a Class 1 Cannabis Cultivator license issued by the State of New Jersey that grows, cultivates, or produces cannabis in the State of New Jersey, and sells, and may transport, this cannabis to other cannabis cultivators, or usable cannabis to cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers.

## **CANNABIS DELIVERY**

The transportation of cannabis items and related supplies to a consumer. "Cannabis delivery" also includes the use by a licensed cannabis retailer of any third-party technology platform to receive, process, and fulfill orders by consumers, which third party shall not be required to be a licensed cannabis establishment, distributor, or delivery service, provided that any physical acts in connection with fulfilling the order and delivery shall be accomplished by a certified cannabis handler performing work for or on behalf of the licensed cannabis retailer, which includes a certified cannabis handler employed or otherwise working on behalf of a cannabis delivery service making off-premises deliveries of consumer purchases fulfilled by that cannabis retailer.

## **CANNABIS DELIVERY SERVICE**

Any person or entity holding a Class 6 Cannabis Delivery license issued by the State of New Jersey that provides courier services for consumer purchases of cannabis items and related supplies fulfilled by a cannabis retailer in order to make deliveries of the cannabis items and related supplies to that consumer, and which services include the ability of a consumer to purchase the cannabis items directly through the cannabis delivery service, which after presenting the purchase order to the cannabis retailer for fulfillment is delivered to that consumer.

## **CANNABIS DISTRIBUTOR**

Any person or entity holding a Class 4 Cannabis Distributor license issued by the State of New Jersey that transports cannabis in bulk intrastate from one licensed cannabis cultivator to another licensed cannabis cultivator, or transports 40 cannabis items in bulk intrastate from any one class of licensed cannabis establishment to another class of licensed cannabis establishment, and may engage in the temporary storage of cannabis or cannabis items as necessary to carry out transportation activities.

## **CANNABIS ESTABLISHMENT**

A cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer.

## **CANNABIS MANUFACTURER**

Any person or entity holding a Class 2 Cannabis Manufacturer license issued by the State of New Jersey, that processes cannabis items in this state by purchasing or otherwise obtaining usable cannabis, manufacturing, preparing, and packaging cannabis items, and selling, and optionally transporting, these items to other cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers.

## **CANNABIS RETAILER**

Any person or entity holding a Class 5 Cannabis license issued by the State of New Jersey that purchases or otherwise obtains usable cannabis from cannabis cultivators and cannabis items from cannabis manufacturers or cannabis wholesalers, and sells these to consumers from a retail store, and may use a cannabis delivery service or a certified cannabis handler for the off-premises delivery of cannabis items and related supplies to consumers. A cannabis retailer shall also accept consumer purchases to be fulfilled from its retail store that are presented by a cannabis delivery service which will be delivered by the cannabis delivery service to that consumer.

**CANNABIS WHOLESALER**

Any person or entity holding a Class 3 Cannabis Wholesaler license issued by the State of New Jersey that purchases or otherwise obtains, stores, sells or otherwise transfers, and may transport, cannabis items for the purpose of resale or other transfer to either another cannabis wholesaler or to a cannabis retailer, but not to consumers.

**CANOPY SIGN**

Any sign that is a part of or attached to an awning or canopy, i.e., a fabric, plastic, or structural protective cover constructed over a door, entrance, window, or outdoor service area that is constructed as an integral part of a building.

**CAPITAL IMPROVEMENT**

A governmental acquisition of real property or a major construction project.

**CELLAR**

A portion of the building partly underground, having 1/2 or more than 1/2 of its clear height below the average grade of the adjoining ground. (See "basement.")

**CEMETERY**

Property used for the interring of the dead.

**CHANGE IN USE**

The use of a building or land which is in any manner different from the previous use by way of function, operation, extent, products sold or manufactured and the like, including a change from one permitted use to another kind of permitted use in the same zone, as well as any change in activity which changes, alters or enlarges the previous use or which will change, alter, enlarge or affect drainage, traffic, parking, sidewalks, paving, landscaping, fencing, sanitary disposal or other similar considerations under the site plan review requirements.

**CHILD-CARE CENTERS**

Any facility which is maintained for the care, development, and supervision of six or more children who attend the facility for less than 12 hours a day and which offers such programs as child-care centers, day-care centers, drop-in centers, day nursery schools, play schools, cooperative child centers, centers for children with special needs, infant-toddler programs, employment-related child centers, and/or kindergartens that are not an integral part of a private educational institution or system offering elementary education in grades kindergarten through sixth. A child-care center shall not offer programs operated by a public or private day school of elementary and/or high school grade, special activity programs for children, youth camps, and/or religious classes or centers. Child-care centers shall have a license from the Department of Human Services pursuant to P.L. 1983, c. 492 (N.J.S.A. 30:5B-1 et seq.).

**CIRCULATION**

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

**CLEARING**

Any intentional or negligent act to cut down, remove all or a substantial part of, or damage a tree or other vegetation that will cause the tree or other vegetation to decline and/or die. Such acts shall include but not be limited to damage inflicted upon the root system of the vegetation by the application of toxic substances, by the operation of equipment and vehicles, by storage of materials, by the change of natural grade due to excavation or filling, or by the alteration of natural physical conditions.

**CLUB**

A facility where a group of persons who share a common association gather for the purpose of conducting activities related to such an association. A club may be a not-for-profit or for-profit entity. A private club is used exclusively by members and their guests. A public club may have members, but may also be used by persons who do not maintain membership or are not associated with members.

**CLUSTERED BUILDING**

One of a group of buildings positioned in the landscape to create outdoor courtyards (with open or closed corners) that minimize land coverage and create welcoming spaces in proportion to the human scale.

**COLUMBARIUM**

A permanent building or structure used for the storage of cinerary urns (urns containing cremated human remains), which are usually placed in niches.

**COMMERCIAL MESSAGE**

Any sign wording, logo, or other representation or image that directly or indirectly names, advertises, or calls attention to a product, service, sale or sales event or other commercial activity.

**COMMON FACILITIES**

Includes but is not limited to facilities for the common use of two or more dwelling units, such as roads, sidewalks, swimming pools, playgrounds, recreation areas, trees, greens, fairways, sidewalks, dog parks and parking areas.

**COMMON OPEN SPACE**

An open space area within or related to a site designated as a development, designed and intended for the use or enjoyment of residents and owners within of the development. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the use or enjoyment of residents and owners in the development.

**CONDITIONAL USE**

A use permitted in a particular zone district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in this chapter and upon the issuance of an authorization therefor by the Land Use Board.

**CONFERENCE CENTER**

A facility or facilities intended for business, executive or professional conferences, conventions and seminars.

**CONSTRUCTION SIGN**

A temporary on-premise sign identifying the ongoing construction activity during the time that a building permit is active and prior to completion of the work for which the permit was issued, containing sign copy that is limited to the ongoing construction activity and identifying the contractor and/or any subcontractor engaged to perform construction activity on the site.

**CONVENTIONAL DEVELOPMENT**

Development other than planned development.

**COPY**

The linguistic or graphic content of a sign.

**CORNER LOT**

A lot at the junction of, and having frontage on, two or more intersecting streets.

## **CRITICAL ROOT ZONE**

A region measured outward from a tree trunk representing the essential area of the roots that must be maintained or protected for the tree's survival. At a minimum, the area shall be shown as a circular area around the tree trunk extending 1.5 feet of radial distance for every inch of tree DBH, with a minimum of eight feet. For trees over 24 inches DBH, a probe shall be used in the field to determine the extent of the root zone.

## **CUTOFF LIGHT FIXTURE**

A light fixture with cutoff optics that allows no direct light emissions above a vertical cutoff angle of 80° above nadir (straight down at perfect vertical), through the light fixture's lowest light-emitting part when the mounting height is 16 feet or less. Any structural part of the light fixture providing this cutoff angle must be permanently affixed.

## **DBH (diameter at breast height)**

Tree trunk diameter measured at a height of 4.5 feet above the ground. If a tree splits into multiple trunks below 4.5 feet, the trunk is measured at its most narrow point beneath the split.

## **DEAD-END STREET or CUL-DE-SAC**

Any street or combination of streets having only one outlet or connection to a street having more than one outlet or means of access.

## **DENSITY**

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

## **DEPTH OF MEASUREMENT, MAXIMUM**

A distance, as specified in this chapter, measured from and parallel to a street right-of-way, within which the required minimum lot size must be measured.

## **DEVELOPER**

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

## **DEVELOPMENT**

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

## **DEVELOPMENT REGULATION**

A zoning, subdivision, site plan, Official Map or other regulation of the use and development of land, or amendment thereto, adopted and filed pursuant to P.L. 1975, c. 291, (N.J.S.A. 40:55D-1 et seq.)

## **DIRECT GLARE SOURCE**

Any direct glare source visible above a height of five feet at the subject property line.

## **DIRECTIONAL SIGN**

A noncommercial on-site sign providing direction or information to pedestrian or vehicular traffic that is related or reasonably necessary to the movement of pedestrian or vehicular traffic on the premises, and not displaying a commercial message (e.g., "entrance," "exit," "caution," "no parking," "one way only," "no trespassing," and the like).

## **DISH ANTENNA (SATELLITE EARTH STATION)**

A dish-shaped antenna designed to receive television broadcasts relayed by microwave signals from earth-orbiting communications satellites.

**DISTRIBUTION CENTER/FACILITY**

Building or facility where goods or products are received and/or stored for delivery to another location for purchase or consumption.

**DIVISION**

The Division of State and Regional Land Use in the Department of Community Affairs.

**DOUBLE-FACED SIGN**

A single sign with copy on both sides of the sign and mounted as a single structure.

**DRAINAGE RIGHT-OF-WAY**

The lands required for the installation of stormwater sewers or drainage ditches or required along a natural stream or watercourse for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage, in accordance with Chapter 1 of Title 58 of the New Jersey Statutes Annotated, and including lands intended as flood control basins.

**DRIPLINE**

A perpendicular line that extends downward from the outermost tips of the tree branches to the ground.

**DWELLING or DWELLING UNIT**

A building or part thereof used as the residence of and providing complete living facilities for a family, as defined in this chapter.

**DWELLING, MULTIFAMILY**

A building containing three or more dwelling units.

**DWELLING, ONE-FAMILY**

A building physically detached from other buildings and containing one dwelling unit.

**DWELLING, TWO-FAMILY**

A building containing two dwelling units.

**ELECTION SIGN**

A temporary sign erected or displayed for the purpose of identifying candidates for office, or positions or expressing support for or opposition to a candidate or stating a position regarding an issue upon which the voters of the Borough shall vote.

**ELECTRIC VEHICLE (EV) CHARGING STATION (SUPPLY EQUIPMENT)**

Equipment that connects and provides a source of electricity to recharge electric vehicles, neighborhood electric vehicles and plug-in hybrid vehicles.

**ENVIRONMENTAL IMPACT STATEMENT (EIS)**

A written report, including appropriate maps and exhibits, describing a proposed development and assessing the environmental and ecological impacts of the development in order to alert the Borough and the developer to potential risks and dangers.

**ERECT**

To construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish; but it does not include any of the foregoing activities when performed as an

incident to the change of advertising message or customary maintenance or repair of a sign.

**FACADE**

The side of a building that faces a public or private street.

**FAMILY**

A person or number of persons occupying a dwelling unit as a single housekeeping unit, who are living together as a living unit, being a traditional family unit or the functional equivalency thereof.

**FAMILY DAY-CARE HOME**

Any private residence approved by the Division of Youth and Family Services or an organization with which the Division contracts for family day care in which child-care services are regularly provided to no less than three and no more than five children for no less than 15 hours per week. A child being cared for under the following circumstances is not included in the total number of children receiving child-care services:

- (1) The child being cared for is legally related to the provider; or
- (2) The child is being cared for as part of a cooperative agreement between parents for the care of their children by one or more of the parents, where no payment for the care is being provided.

**FARM**

A parcel of land comprised of five or more acres, exclusive of a minimum of one acre used for a dwelling, having a gross income exceeding \$500 per year acquired from the production thereon. Said five or more acres shall be devoted to either the production for sale or consumption by the owner of plants and animals generally accepted as useful to man, including but not limited to forages and crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, horses, ponies, mules, dairy cattle or goats and including the breeding and grazing of any or all such animals; bees and apiary products; furbearing animals; and trees and forest products, including the processing and sale of these products on the property where produced. Land shall be deemed a "farm" when devoted to the production for sale of fruits of all kinds, including grapes; nuts and berries; vegetables; and nursery, floral, ornamental and greenhouse products, including the processing and sale of these products on the property where produced.

**FENCE**

An artificially constructed barrier of wood, masonry, wire, metal or any other combination of materials to enclose, screen, or separate areas. A berm, or earthen berm, shall not be considered a fence under this definition.

**FINAL APPROVAL**

The official action of the Land Use Board taken on a preliminarily approved major subdivision or site plan after all conditions, engineering plans and other requirements have been completed or fulfilled and the required improvements have been installed or guaranties properly posted for their completion, or approval conditioned upon the posting of such guaranties.

**FINAL PLAT**

The map or maps of a subdivision application for which final approval is sought pursuant to this chapter.

**FLAG**

Any fabric or bunting containing distinct colors, patterns or symbols, used as an ornamental flag or as a symbol of government, political subdivision, corporation or business or other entity. (See also "ornamental flag.")

**FLAGPOLE**

A pole on which to raise a flag.

**FLASHING SIGN**

A sign which permits light to be turned on or off intermittently more frequently than once per minute or any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use, including an LED (light emitting diode) or digital sign, and changes more frequently than once per minute.

**FLOOR AREA**

The area of a floor computed by measuring the dimensions of the outside walls in a building or dwelling unit, excluding attic, basement, and cellar floors, porches, patios, terraces, breezeways, carports, verandas, garages, atria, galleries, indoor mechanical installations, interior parking and loading spaces, and guard houses, provided that such excluded areas are not utilized for work or storage space in nonresidential buildings.

**FLOOR AREA RATIO**

The sum of the area of all floors of buildings or structures compared to the total area of the site.

**FOOTCANDLE (fc)**

A unit of illuminance on a surface one-foot square in area onto which there is a uniform flux of one lumen.

**FOOTLAMBERT (fL)**

A unit of luminance of a surface reflecting or emitting light at the rate of one lumen per square foot. The average luminance of any reflecting surface in footlamberts is the product of the illuminance in footcandles striking the surface times the reflectance of the surface.

**FOREST**

A naturally growing or managed (for timber production) area of a minimum of 1/8 acre in size that has at least 100 trees per acre with at least 50% of those trees having a two-inch or greater diameter at 4.5 feet above ground.

**FREE EXPRESSION SIGN**

A sign, not in excess of four square feet in size (area) per side and whose top is not more than three feet off the ground, communicating information or views on matters of public policy, or public concern or containing any other noncommercial message, that is otherwise lawful.

**FREESTANDING SIGN**

A sign supported by structures or supports that are placed on or anchored in the ground or at ground level and which are independent of any building or other structure.

**FRONTAGE**

The length of the property line of a parcel of land, which runs parallel with and along a road right-of-way or street, exclusive of alleyways.

**FUTURE DEVELOPMENT SIGN**

A sign that functions to advertise the future or proposed development of the premises upon which the sign is erected.

**GARAGE OR YARD SALE SIGN**

Any on-site temporary sign pertaining to the sale of personal property in, at or upon any residentially zoned property located in the Borough. Garage or yard sales shall include but not be limited to all such

sales, and shall include the advertising of the holding of any such sale, or the offering to make any sale, whether made under any name such as garage sale, lawn sale, yard sale, front yard sale, back yard sale, home sale, attic sale, rummage sale, patio sale, flea market sale, or any similar designation.

### **GARAGE, PRIVATE**

A detached accessory building or portion of the main building used for the storage of motor vehicles.

### **GARAGE, PUBLIC**

Any building, premises or land in which or upon which a business, service or industry involving the maintenance, washing or servicing a party and storage in connection therewith of registered motor vehicles is conducted or rendered, but not including motor vehicle service stations, as defined herein.

### **GARDEN APARTMENTS**

A building consisting of three or more units, each having a direct access to the outside with or without use or access to a common hall or passageway, and so laid out that dwelling units are not susceptible to sale on individual lots, and for which utilities may be shared.

### **GENERAL TERMS AND CONDITIONS**

The conditions under which preliminary approval is granted, including plat and plan details in Article VIII, on-tract improvements in Article IX, off-tract improvements in Article X and design standards in Article XI.

### **GARBAGE**

The animal, vegetable and other organic wastes resulting from handling, preparation, cooking, consumption of food or other products not dangerous or injurious. (See Refuse, Rubbish).

### **GLARE**

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

### **GOLDEN RECTANGLE**

A rectangle with the classic ratio of 1:2 that is based upon human proportions and has been used as a regulating shape to create well proportioned architecture. In its wide or tall form, it is used at both small and large scales to identify desirable proportions for window panes, windows and building facades.

### **GOVERNING BODY**

The chief legislative body of the municipality.

### **GREENHOUSE, COMMERCIAL**

A building in which plants, flowers and similar materials are grown for sale.

### **GROSS RESIDENTIAL DENSITY**

The number of dwelling units per acre of total lot area.

### **HABITABLE ROOM**

A room or enclosed floor space arranged for living, sleeping and eating purposes.

### **HEDGEROW**

A landscape feature typically found along property boundaries in rural areas. Hedgerows are characterized by a mix of native vegetation and successional plant material arranged in a linear fashion.

## **HEIGHT OF BUILDING**

The vertical distance measured from the average ground elevation of the finished grade around the building to the level of the highest point of the roof surface. Average elevation shall be the average of the highest and lowest elevations along the finished grade around the building.

## **HISTORICAL TREE**

A tree which has been found by a professional forester, horticulturalist or other professional plantsman to be of notable historic interest to the Borough because of its age, type, size or historic association and has been so designated and the designation has been officially made and promulgated as part of the official records of the Borough, county or state.

## **HOLIDAY AND SEASONAL DECORATIONS**

Decorations that pertain to legal or other recognized holidays or to a season of the year.

## **HOSPITAL**

A facility that is licensed by the State of New Jersey pursuant to N.J.S.A. 26:2H-1 et seq. that provides human health care services, such as medical care or surgery, and including inpatient care. Hospitals may include related facilities, such as laboratories, outpatient facilities, dietary facilities, training facilities, and offices.

## **HOTEL**

A building containing hotel units, each having its only access from an interior corridor, which building has a public lobby and full-time management serving the guests, and which may contain ancillary services and facilities, such as restaurants, shops and boutiques, recreation facilities, meeting rooms and conference and convention facilities which shall be accessible from the interior of the building.

## **HOTEL UNIT**

A room or suite of rooms in a hotel designed and intended to be used as overnight sleeping accommodations for transient guests.

## **IESNA**

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

## **ILLEGAL SIGN**

Any sign which was unlawfully erected or which has been determined to be in violation of any provision of § **165-109** of the Lebanon Borough Code.

## **ILLUMINATED SIGN**

Any sign or portion thereof which is illuminated by artificial light, either from an interior or exterior source, including outline, reflective or phosphorescent light, whether or not the source of light is directly affixed as part of the sign.

## **IMPERVIOUS SURFACE**

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

## **INCIDENTAL SIGN**

A sign not exceeding one square foot in size attached to a freestanding sign or affixed to a wall that either:

- (1) Identifies credit cards accepted by the owner, tenant, or occupant of the parcel where the incidental sign is located; or

- (2) Provides an official notice of services required by law or trade affiliation.

### **INTERESTED PARTY**

In a criminal or quasi-criminal proceeding, any citizen of the State of New Jersey; and in case of a civil proceeding in any court or in an administrative proceeding before a municipal agency, any person, whether residing within or without the Borough, whose right to use, acquire or enjoy property is or may be affected by any action taken under this chapter or whose rights to use, acquire or enjoy property under this chapter or under any other law of the State of New Jersey or of the United States have been denied, violated or infringed upon by an action or a failure to act under this chapter.

### **INTERMITTENT SIGN**

A sign which permits light to be turned on or off intermittently more frequently than once every 12 hours or which is operated in a way whereby light is turned on or off intermittently more frequently than once every 12 hours, including any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use, including an LED (light emitting diode) or digital sign, and which varies in intensity or color more frequently than once every 12 hours.

### **INVASIVE PLANT MATERIAL**

A plant that has the ability to thrive and spread outside its natural range, often displacing native vegetation and disrupting habitats over time.

### **LAND DISTURBANCE**

Any activity involving the clearing, grading, transporting, filling or excavation of land which causes land to be exposed to the danger of erosion, except for normal farming practices executed for the purposes of farming.

### **LANDSCAPE ISLAND**

An area surrounded by asphalt or other hard surface in an area intended for vehicular movement that consists of plants and/or other landscape design elements.

### **LIGHT TRESPASS**

Any form of artificial illuminance emanating from a light fixture or illuminated sign that penetrates other property and creates a nuisance, as specified in § 165-74C.

### **LOADING SPACE**

An off-street accommodation for the parking of a commercial vehicle during the process of transferring articles, materials, goods or merchandise between the vehicle and a building.

### **LOT**

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

### **LOT AREA**

The total square footage included within lot lines.

### **LOT AVERAGING**

A residential development option that allows a range of minimum lot areas, provided that the maximum density for the parcel is not exceeded.

### **LOT COVERAGE**

The square footage by which all buildings, decks, pools, parking areas, drives and driveways, paved or unpaved, walks and patios, and any other impervious surface(s) as measured in a horizontal plane, cover a

lot. Maximum allowed lot coverage in this chapter shall be determined by referring to the lot coverage as a portion of the total lot area.

**LOT DEPTH**

The distance between the front and rear property lines of a lot measured perpendicular to the lot width.

**LOT LINE**

A line of record bounding a lot which divides one lot from another or from a public or private street.

**LOT LINE, FRONT**

The lot line separating a lot from a street, or from a right-of-way, or from an access easement.

**LOT LINE, REAR**

The lot line lying opposite or generally opposite and parallel to the front lot line and connecting the side lot lines, or, if there is no rear line, such as in the case of a triangular or otherwise irregularly shaped lot, a line 10 feet in length, entirely within the lot, parallel to and at a maximum distance from the front lot line.

**LOT LINE, SIDE**

Any lot line other than a front or rear lot line.

**LOT WIDTH**

The distance between the side lines of a lot measured parallel to the street, right-of-way, or access easement.

**LOW INCOME**

Total gross household income equal to 50% or less of the median household income for households of the same size and using the median income data for household size prepared by the United States Department of Housing and Urban Development (HUD) or equally reliable source for the region which includes Lebanon Borough.

**MAINTENANCE GUARANTY**

Any security, which may be accepted by the Borough for the maintenance of any improvements required by this chapter.

**MAJOR SUBDIVISION**

Any subdivision of land not classified as a minor subdivision.

**MARGINAL ACCESS STREETS**

Streets which are parallel to and adjacent to arterial streets and highways and which provide access to abutting properties and protection from through traffic.

**MASSAGE PARLOR**

A business which provides the services of massage and body manipulations, including exercise, heat and light treatments of the body and all forms and methods of physical therapy, unless operated by a medical practitioner or professional physical therapist licensed by the State of New Jersey. Excluded from this definition, however, are barber or beauty shops, wherein a massage may be given to the scalp, face, neck or shoulders.

**MASTER PLAN**

A composite of one or more written or graphic proposals for the development of the municipality as set forth in and adopted pursuant to P.L. 1975, c. 291 (N.J.S.A. 40:55D-1 et seq.).

**MAUSOLEUM**

A permanent structure or building used for the entombment of human remains in crypts, vaults or niches. This includes a columbarium.

**MEDICAL OFFICE**

One or more rooms or groups of rooms, each used primarily for conducting the business of a licensed health care professional(s) who is engaged in private practice that is not an ambulatory care facility or hospital.

**MINOR SITE PLAN**

A conventional site plan not involving any new building, any addition to an existing building or any physical on-site improvements.

**MINOR SUBDIVISION**

The division of a tract of land into not more than two separate lots or parcels, including any remaining area, wherein both lots or parcels front on an existing street as defined in this chapter, which street is improved sufficiently to meet all requirements of Article 5 of P.L. 1975, c. 291, so that a building permit can be issued to construct a building on each lot, such division not involving a planned development, any new street or the extension of any off-tract improvement, the cost of which is to be prorated pursuant to N.J.S.A. 40:55D-42.

**MODERATE INCOME**

Total gross household income between 50% and 80% of the median household income for households of the same size using the median income data for household size prepared by the United States Department of Housing and Urban Development (HUD) or equally reliable source for the region which includes Lebanon Borough.

**MOTEL**

A building or a group of buildings containing motel units, each unit having direct access to the outside of the building, which may, but need not, have access to an interior hallway or lobby, said building or buildings having full-time management and which may contain restaurants and recreation facilities primarily intended to serve transient guests of the motel.

**MOTEL UNIT**

A room or suite of rooms in a motel, designed and intended to be used as overnight sleeping accommodations for transient guests.

**MOTOR VEHICLE FILLING STATION**

A building or premises used for the sale of petroleum products, with or without convenience goods.

**MOTOR VEHICLE SERVICE STATION**

A building or premises in which or upon which is conducted a business involving the retail sale and direct delivery to motor vehicles of gasoline and lubricating oil, regardless of any other business on the premises, which business may or may not include facilities for lubricating, washing or otherwise servicing motor vehicles, but not including facilities for body repair work or painting. A motor vehicle service station may or may not include sale of convenience goods.

**MULCH, PLANT BEDS**

A covering of shredded hardwood, bark and/or other acceptable protective ground covering generated from renewable resources, spread over the soil to prevent excessive evaporation, erosion and/or weed germination. Aggregate type soil coverings need to be approved by the Municipal Landscape Architect.

**MULCH, SEED STABILIZATION**

Plant residue or other suitable materials applied to the soil surface to conserve moisture, prevent erosion and aid in seed germination. Examples of such material include, but are not limited to, straw, hydro-mulch and mulch seed accelerators.

### **MUNICIPAL AGENCY**

The Land Use Board, or the Borough Council of the Borough of Lebanon and such other statutory Boards of the Borough.

### **MUSEUM**

Premises used for the exhibition of objects of cultural, historical or scientific interest, and which may include the collection or preservation of such objects, for the recreation or cultural education of the public.

### **NAMEPLATE SIGN or OCCUPANT IDENTIFICATION SIGN**

A sign indicating the name and/or profession or address of a person or persons residing on the premises or legally occupying the premises.

### **NATIVE PLANT MATERIAL**

A plant occurring naturally in an area and not introduced by man; indigenous.

### **NONCOMMERCIAL MESSAGE**

Any message that is not a commercial message.

### **NONCONFORMING BUILDING**

A structure, the size, dimension or location of which was lawful prior to adoption of this chapter, but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption.

### **NONCONFORMING LOT**

A lot of record existing at the date of the passage of this chapter, which does not conform to the regulations of this chapter for the zone in which it is located.

### **NONCONFORMING SIGN**

A sign that was lawfully erected but no longer conforms to the regulations provided in § 165-109 of the Lebanon Borough Land Use Regulations.

### **NONCONFORMING USE**

A use or activity lawfully existing as of the effective date of this chapter, but which fails to conform to the requirements of the zoning district in which it is located.

### **NURSING HOME**

A facility that is licensed by the State of New Jersey pursuant to N.J.S.A. 26:2H-1 et seq. for those in need of intensive and on-going medical and nursing assistance. A nursing home provides twenty-four-hour-per-day skilled nursing, personal care, pharmacy, dining, activities, housekeeping, recreation, social work and transportation services to its residents.

### **OBSCENE**

That which to the average person, applying contemporary community standards, when considered as a whole, is patently offensive in the description or representation of sexual matters or has, as its dominant theme or purpose, an appeal to the prurient interest.

### **OFFICE**

One or more rooms or groups of rooms, each used primarily for conducting the affairs of a business, profession, service, industry or government, but not including manufacturing, assembly or productions of goods on the premises, banks or the sale of goods or products from the premises, except for accessory sales and banking services intended primarily as a convenience to office personnel and office visitors.

**OFFICIAL MAP**

A map adopted by ordinance of the governing body pursuant to Article 5 of P.L. 1975, c. 291, showing the location and width of streets and drainage rights-of-way and the location and extent of public parks and playgrounds, whether existing or proposed.

**OFF-PREMISES SIGN or OFF-SITE SIGN**

Any sign relating in its subject matter to commodities, accommodations, services or activities on a premises other than the premises on which the sign is located.

**OFF-TRACT IMPROVEMENT**

An improvement which is not located on the property which is the subject of an application for development nor on a contiguous portion of a street or right-of-way, and includes any of the following:

- (1) All improvements of the types required for on-tract installation where the need for the providing of such improvements off-tract is, in whole or in part, made necessary by the proposed application of the applicant and where the making of such improvements will confer a benefit upon the applicant's lands which are the subject of the application.
- (2) Any improvement or facility, the installation of which is required in the public interest, and the public need for which would not arise but for the improvement of the lands which are the subject of the applicant's application, and the installation of which would confer a benefit upon the applicant's lands which are the subject of application. In addition to improvements of this type referred to above, improvements required to maintain a safe flow of vehicular and pedestrian traffic are specifically declared to be necessary in the public interest.
- (3) Installation of new improvements and extensions and modifications of existing improvements.

**ONE-HUNDRED-YEAR FLOOD LINE**

The line which is formed by following the outside boundaries of the area inundated by a one-hundred-year flood. A one-hundred-year flood is estimated to have one-percent chance or one chance in 100 of being equaled or exceeded in any one year. The one-hundred-year flood line shall be determined by reference to N.J.A.C 7:13-2.3 and 7:13-2.4.

**ON-PREMISES SIGN or ON-SITE SIGN**

Any sign relating in its subject matter to the commodities, accommodations, service or activities on the premises on which the sign is located.

**ON-SITE**

Located on the lot in question.

**OPEN SPACE**

Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space. "Open space" shall include the term "common open space" as herein defined. For the purpose of determining the limits of open space area, it shall include any area exclusive of buildings, paved surfaces, public rights-of-way and areas serving individual dwelling units or intended for the use of occupants of individual dwelling units, but inclusive of clubhouses, tennis courts, swimming pools and similar recreation facilities, along with accessory

parking facilities.

**ORNAMENTAL FLAG**

Any fabric or similar material containing patterns, drawings or symbols used for decorative purposes and designed to be flown as a flag.

**ORNAMENTAL TREE**

A tree grown for its ornamental qualities.

**OUTDOOR ENCLOSED LIGHT FIXTURE**

An electrically powered illuminating device which is either temporarily or permanently installed outdoors, including but not limited to devices used to illuminate any site, architectural structure or sign. The face of lamp must be recessed within the enclosure, and any glass/plastic protective or diffusing device cannot extend beyond that enclosure.

**OWNER**

Any individual, firm, association, syndicate, copartner ship or corporation having sufficient proprietary interest in the land sought to be subdivided or developed to commence and maintain proceedings to subdivide or develop the same under this chapter.

**PARAPET**

A false front or wall extension above the roofline of a building.

**PARKING AREA**

An open area, other than a street or other public way, used for the parking of motor vehicles and available for public use, whether for a fee or as a service or privilege for clients, customers, suppliers or residents.

**PARKING SPACE**

An accommodation for the off-street parking of a motor vehicle, having an area, exclusive of access drives and aisles, as specified in this chapter and having adequate provision for ingress and egress.

**PENNANT**

Any series of small flag-like or streamer-like pieces of cloth, plastic, paper or similar material attached in a row to any staff, cord, building, or at only one or two edges, the remainder hanging loosely.

**PERFORMANCE GUARANTY**

A security which may be accepted in lieu of a requirement that certain improvements be made before the Land Use Board approves a subdivision plat or site plan.

**PERMANENT SIGN**

Any sign which, when installed, is intended for permanent use. For the purposes of this section any sign with an intended use in excess of 12 months from the date of installation shall be deemed a permanent sign.

**PHYSIOGRAPHIC PROVINCE**

A landform region delineated according to similar terrain that has been shaped by a common geologic history.

**PLANNED DEVELOPMENT**

Planned unit development, planned unit residential development, residential cluster, planned commercial development, or planned industrial development.

**PLANNED NONRESIDENTIAL DEVELOPMENT**

An area with a minimum contiguous acreage of 50 acres or more to be developed according to a plan as a single entity, containing one or more structures with appurtenant common areas to accommodate nonresidential uses as may be permitted by the zoning regulations.

**PLANNED UNIT DEVELOPMENT (PUD)**

An area with a minimum contiguous acreage of 50 acres or more to be developed as a single entity according to a plan, containing one or more residential clusters or planned unit residential developments and one or more public, quasi-public, commercial or industrial areas in such ranges of ratios of nonresidential uses to residential uses as may be specified in the zoning regulations.

**PLANNED UNIT RESIDENTIAL DEVELOPMENT**

An area with a minimum contiguous acreage of 25 acres or more in the AH-1, AH-2, or AH-3 Districts to be developed as a single entity according to a plan containing one or more residential clusters, which may include appropriate commercial, public, or quasi-public uses all primarily for the benefit of the residential development.

**PLAT**

The map or maps of a subdivision.

**PORTABLE SIGN**

Any sign, banner, or poster that is not permanently attached to the ground or structure. For purposes of this chapter, an inflatable sign shall be considered a portable sign.

**PRELIMINARY APPROVAL**

The conferral of certain rights pursuant to § **165-46D** prior to final approval after specific elements of a development plan have been agreed upon by the Land Use Board and the applicant.

**PRELIMINARY FLOOR PLANS AND ELEVATIONS**

Architectural drawings prepared during early and introductory stages of the design of a project, illustrating in a schematic form its scope, scale and relationship to its site and immediate environs.

**PRELIMINARY PLAT OR SITE PLAN**

The preliminary map indicating the proposed layout of a subdivision or site plan, which is submitted to the Administrative Officer of the Land Use for consideration and preliminary approval.

**PRINCIPAL USE**

The primary or predominant use of the premises.

**PROJECTING SIGN**

Any sign affixed perpendicularly to a building or wall in such a manner that its leading edge extends more than 12 inches beyond the surface of such building or wall.

**PUBLIC VIEW**

Visible from a public thoroughfare, public lands or buildings or navigable waterways.

**QUORUM**

The majority of the full authorized membership of a municipal agency.

**REAL ESTATE SIGN**

A sign advertising the sale, rental or lease of the premises or part of the premises on which the sign is displayed temporarily.

**REFORESTATION**

The re-establishment of a biological community dominated by trees and other woody plants containing at least 100 trees per acre with at least 50% of those trees having a two-inch or greater diameter at 4.5 feet above the ground, within seven years.

**REFUSE**

Synonymous with municipal solid waste and shall mean and include all accumulation of waste matters discarded as of no further value to the owner, such as garbage, wrappings and small discarded containers, but shall exclude all manure, sewerage, dead animals, petroleum products, cleanings from public and private catch basins, washrack's or sumps, white goods, bulky waste, recyclables, yard waste, and special or hazardous wastes.

**RESIDENTIAL CAMPS AND CONFERENCE CENTER**

Facilities consisting of tents, cabins, and other shelters used as temporary living quarters, and ancillary structures, primarily designed for recreation, education or vacation purposes for children or adults or both.

**RESIDENTIAL CLUSTER**

An area to be developed as a single entity according to a plan, containing residential housing units which have a common or public open space area as an appurtenance.

**RESTAURANT**

A business in which food and drink is prepared inside or outside of the building to patrons for consumption either inside or outside the building. Restaurant does not mean or include food trucks, food trailers and/or preparation of food outdoors.

**RESUBDIVISION**

The further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law, or the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, but does not include conveyances so as to combine existing lots by deed or other instrument which is exempt from subdivision.

**REVOLVING SIGN or ROTATING SIGN**

Any sign that revolves or rotates.

**RIDING ACADEMY OR STABLE**

Any establishment where horses are kept for riding, driving or stabling for compensation or incidental to the operation of any club, association, ranch or similar establishment.

**ROOF SIGN**

Any sign erected and constructed wholly on or over the roof of a building, which is supported by the roof structure, or any sign that extends in whole or in part above the roofline of a building. For purposes of this definition, "roofline" shall mean the highest continuous horizontal line of a roof. On a sloping roof, the roofline is the principal eave or the highest line common to one or more principal eaves of a roof. On a flat roof, the roofline is the highest continuous line of a roof or parapet, whichever is higher.

**RUBBISH**

Shall include all combustible and non-combustible waste material not dangerous or injurious, except garbage. (See Garbage, Refuse).

**SAFETY SIGN**

See "warning sign."

**SANDWICH BOARD SIGN**

A temporary portable double-faced, freestanding sign.

**SEARCH AREA**

That geographic area (which may or may not extend beyond municipal boundary lines) within which additional wireless telecommunications facilities are required to provide reliable and adequate coverage consistent with the licensing requirements of the Federal Communications Commission (FCC).

**SECONDARY BUILDING FACADE**

A building facade which is not the primary entrance facade and is not the building facade which faces the street.

**SEEDLING**

An unbranched woody plant, less than 24 inches in height and having a diameter of less than one-half-inch caliper measured at two inches above the root collar.

**SELF-SERVICE STORAGE FACILITY**

A structure containing separate, individual, or private storage spaces of varying sizes leased or rented on individual leases for varying periods of time.

**SENIOR CITIZEN HOUSING**

A building or buildings containing one or more dwelling units restricted by deed or other instrument to occupancy of each dwelling unit by a person or persons in any one of the following categories: up to two individuals, both of whom are 55 years of age or older; or a man and a wife, either one of whom is 55 years of age or older.

**SETBACKS**

The required yard or distance between buildings and property lines.

**SEWAGE TREATMENT PLANT**

A facility designed to process and treat sewage from existing or proposed development.

**SEXUALLY ORIENTED ENTERTAINMENT BUSINESS**

An adult bookstore, motion-picture studio or massage parlor or any other business or establishment dealing predominantly with obscene acts or materials.

**SHOP, RENTAL**

A building or part thereof in which or from which a service is rendered directly to the public.

**SIDEWALK SALE**

Occasional, temporary display of retail merchandise or services offered for sale on the exterior of, but on the same property as, a permanent building which houses such sales or services. Sidewalk sales may include a temporary structure, such as a canopy or tent.

**SIGHT TRIANGLE**

A triangular-shaped portion of land established at street intersections or street and driveway intersections in which nothing is erected or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection. In the absence of any other applicable standard:

- (1) For street intersections, this triangle is created by establishing points 30 feet from the point of intersection of each of two intersecting right-of-way lines and connecting these two points with a straight line to form a triangle; and
- (2) For driveway intersections, this triangle is created by establishing points 10 feet from the point of intersection of a right-of-way line and the line established by driveway edge and connecting those two points with a straight line to form a triangle.

## **SIGN**

Any device, fixture, placard or structure which uses color, form, graphics, illumination, architectural style or design with text, or writing to advertise, attract attention, announce the purpose of or identify the purpose of any person or entity, or to communicate information of any kind to the public. The term sign includes sign structure. The following shall not be considered signs subject to the regulations of this chapter: artwork, holiday or seasonal decorations, municipal banners, cemetery markers, machinery or equipment signs, memorial signs or tablets.

## **SIGN AREA**

The total area, as measured in square feet, of a sign surface, including all parts thereof devoted to the background, computed by bounding the exterior of the sign structure or surface with a series of straight or curved lines tangent thereto. The area of a sign painted directly on a wall or awning and signs with letters attached directly to walls or awnings shall be calculated by constructing an imaginary series of straight lines or lines formed, bounded or characterized by curves around the outside of all elements of the sign.

## **SIGN FACE**

The part of the sign that is or can be used to identify, display, advertise, communicate information, or for the visual representation, which attracts or intends to attract the attention of the public for any purpose.

## **SIGN HEIGHT**

The vertical distance measured from ground level nearest the base of the sign to the highest point on the sign.

## **SIGN MAINTENANCE**

Replacing, repairing or repainting of a portion of a sign or sign structure, or periodically changing changeable copy or renewing copy, which has been made unusable by ordinary wear.

## **SIGN STRUCTURE**

Any structure which is designed specifically for the purpose of supporting a sign, which has supports or which is capable of supporting a sign. The definition shall include any decorative covers, braces, wires, supports, or other components attached to or placed around the sign structure.

## **SINGLE OWNERSHIP**

Ownership by one person or by two or more persons jointly, as joint tenants, tenants by the entirety or tenants in common, of a separate parcel of real property not adjacent to land in the same ownership.

## **SITE PLAN**

A development plan of one or more lots on which is shown:

- (1) The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, floodplains, marshes and waterways.
- (2) The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress

and egress, drainage facilities, utility services, landscaping, structures and signs, lighting and screening devices.

- (3) Any other information that may be reasonably required in order to make an informed determination pursuant to this chapter.

### **SKY GLOW**

Luminance in the atmosphere caused by dust, water vapor, and other particles that reflect and scatter any stray lighting that is reflected or emitted into the atmosphere.

### **SNIPE SIGN (BANDIT SIGN)**

Any sign tacked, nailed, posted, pasted, glued or otherwise attached to trees, rocks, or other natural features, or poles, stakes, or fences with the message appearing thereon not applicable to the present use of the premises upon which the sign is located. This shall not include warning signs such as no trespassing signs or no hunting signs.

### **SOLAR ENERGY SYSTEM**

An energy system which converts solar energy to usable thermal, mechanical, chemical or electrical energy through the use of a solar panel or solar panel array and associated equipment.

### **SOLAR PANEL**

A photovoltaic panel, or hot air or water panel collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

### **SOLAR PANEL ARRAY**

A collection of multiple solar panels mounted or arranged together, providing energy to the same primary user, as part of a solar energy system.

### **SPECIAL EVENT SIGN**

A sign, regardless of its content, providing notice of or direction to an event, gathering, assembly or meeting, for a limited period of time, that is open to the public at large.

### **STATUTORY SIGN**

A sign required by any statute or regulation of the State of New Jersey or the United States.

### **STORAGE SHED**

A building that is accessory to a single-family residential dwelling with dimensions that are not greater than 200 square feet in area and not exceeding 10 feet in height at the eaves and that is used solely for storage.

### **STORY**

That portion of a building included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between any floor and the ceiling next above it.

### **STORY, HALF**

A portion of a building situated above a story where the walls meet a sloping roof, having a maximum average height of five feet.

### **STREAM CORRIDOR**

The bed and banks of a stream that confine and conduct continuously or intermittently flowing water (also referred to as the "stream channel"). Flow paths with a total contributory drainage area less than 50 acres must have definable bed and banks to be included in a stream corridor. "Stream corridor" also includes all of the land within the one-hundred-year flood line on either side of that portion of the

designated stream or tributary and all of the land within a one-hundred-foot wide buffer around the one-hundred-year flood line on either side of that portion of the designated stream or tributary. If there is no one-hundred-year flood line delineated, the one-hundred-foot buffer shall be measured outward from top of the bank of the stream channel. In cases where slopes greater than 15% abut the outer boundary of the stream corridor, the area of such slopes shall also be included within the stream corridor.

## **STREET**

Any street, avenue, boulevard, road, lane, parkway, viaduct, alley or other way which is an existing state, county or municipal roadway, or a street or way shown upon a plat heretofore approved pursuant to law or approved by official action, or a street or way on a plat duly filed and recorded in the office of the county recording officer prior to the appointment of a Land Use Board and the grant to such Board of the power to review plats, and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, sidewalks, parking areas and other areas within the street lines.

## **STREET ADDRESS SIGN**

Any sign denoting the street address of the premises on which it is attached or located.

## **STREET LINE**

The right-of-way of a street as indicated by public usage, dedication or deed of record.

## **STRUCTURE**

A combination of materials forming a construction for occupancy, use, or ornamentation whether installed on, above, or below the surface of a parcel of land.

## **SUBDIVIDER**

Any individual, firm, association, syndicate, copartner ship, corporation, trust or any other legal entity commencing proceedings under this chapter to effect a subdivision of land hereunder for himself or for another.

## **SUBDIVISION**

- (1) The division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development.
- (2) The following shall not be considered subdivisions within the meaning of this chapter, if no new streets are created:
  - (a) Divisions of land found by the Land Use Board, or Subdivision Committee thereof appointed by the Chairman, to be for agricultural purposes where all resulting parcels are five acres or larger in size.
  - (b) Divisions of property by testamentary or intestate provisions.
  - (c) Division of property upon court order, including but not limited to judgments or foreclosure.
  - (d) Consolidation of existing lots by deed or other recorded instrument.
  - (e) The conveyance of one or more adjoining lots, tracts or parcels of land, owned by the same person or persons, and all of which are found and certified by the administrative officer to conform to the requirements of the municipal development regulations and are shown and designated as separate lots, tracts or parcels on the Tax Map or Atlas of the municipality.
- (3) The term "subdivision" shall also include the term "resubdivision".

## **SUBDIVISION AND SITE PLAN COMMITTEE**

A committee of at least three Land Use Board members appointed by the Chairman of the Board for the purpose of classifying subdivisions in accordance with the provisions of this chapter and reviewing subdivisions and site plans and performing such other duties relating to land subdivision and site plans as may be conferred on this Committee by the Board.

## **SWIMMING POOL**

A structure, or tank constructed to hold water for the use by the owner, their family or guests for swimming and aquatic recreation, whether permanently installed, portable, collapsible or otherwise, having a depth of eighteen (18) inches or greater and a capacity not more than one hundred (100) cubic feet.

## **TEMPORARY SIGN**

A sign intended for a use not permanent in nature. For the purposes of this chapter, a sign with an intended use of one year or less shall be deemed a temporary sign.

## **TOWNHOUSE**

A single family dwelling attached by a common wall between it and the adjacent unit or units extending from the basement to the roof, together with individual front and rear entrances and yards designed as an integral part of each unit.

## **TRAFFIC CONTROL DEVICE SIGN**

Any sign located within the right-of-way that functions as a traffic control device and that is described and identified in the Manual on Uniform Traffic Control Devices (MUTCD) and approved by the Federal Highway Administrator as the national standard. A traffic control device sign includes those signs that are classified and defined by their function as regulatory signs (that give notice of traffic laws or regulations), warning signs (that give notice of a situation that might not readily be apparent), and guide signs (that show route designations, directions, distances, services, points of interest, and other geographical, recreational, or cultural information).

## **TRANSCRIPT**

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

## **TRANSPLANT**

The digging up and relocation of existing plant material to a new planting location.

## **TREE**

A large, woody plant having one or several self-supporting stems or trunks and numerous branches that reach a height of at least 20 feet at maturity.

## **UNDERSTORY TREE**

Plant material often massed and seldom isolated that grows in the shade of an emergent or forest canopy. For the purposes of this chapter, the plant material is generally used for buffers and reforestation plantings and generally not adjacent to pedestrian or vehicular use areas and not necessarily used for ornamental purposes.

## **VARIANCE**

Permission to depart from the literal requirements of a zoning regulation.

## **VEHICLE SIGN**

Any sign or signs where the total sign area covers more than 10 square feet of the vehicle.

## **WALL SIGN**

A sign, which is painted on, fastened to, or erected against the wall of a building with its face in a parallel plane with the plane of the building facade or wall, that does not extend above the height of the vertical wall or eaves, which is used for advertising.

## **WAREHOUSE**

A building or facility in which goods, supplies, equipment, materials and merchandise are stored, where no physical change in such articles takes place and where such articles are not otherwise used on the premises, which use is typically characterized by frequent heavy trucking activity.

## **WARNING SIGN or SAFETY SIGN**

A sign that functions to provide a warning of a dangerous condition or situation that might not be readily apparent or that poses a threat of serious injury (e.g., gas line, high voltage, condemned building, etc.) or that functions to provide a warning of a violation of law (e.g., no trespassing, no hunting allowed, etc.).

## **WHIP**

An unbranched woody plant greater than 24 inches in height and having a diameter of less than one-inch caliper measured at two inches above the root collar.

## **WINDOW SIGN**

Any sign mounted in any fashion on the interior or exterior of the surface of a window.

## **WIND SIGN**

A sign which uses objects or material fastened in such a manner as to move upon being subjected to pressure by wind, and shall include banners, pennants, ribbons, spinners, streamers or captive balloons; however, the term wind sign shall not include flags.

## **WIRELESS TELECOMMUNICATIONS ANTENNAS**

Antennas that transmit or receive radio frequency signals, digital signals, analog signals or electromagnetic waves directly from and/or to wireless telephones, paging devices and/or other personal wireless telecommunication devices.

## **WIRELESS TELECOMMUNICATIONS EQUIPMENT COMPOUND**

A fenced-in area which houses any combination of wireless telecommunications structures, buildings, antennas, equipment and/or towers.

## **WIRELESS TELECOMMUNICATIONS STRUCTURES, ANTENNAS, EQUIPMENT AND/OR TOWERS**

Buildings and/or structures and equipment for the delivery of wireless telecommunications except for satellite dish antennas, which shall be regulated under § **165-113** of this chapter. For purposes of this definition, wireless telecommunications structures, antennas, equipment and/or towers may be collectively referred to herein as "wireless telecommunications facilities." This definition shall not include any tower, or the installation of any antenna, that is under 70 feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.

## **WIRELESS TELECOMMUNICATIONS TOWER**

A vertical structure used to support wireless telecommunications antennas.

## **YARDS**

- (1) **FRONT YARD** An open unoccupied space, unless occupied by a use as hereinafter specifically permitted, extending across the full width of the lot and lying between the street right-of-way and the

nearest point of the principal building.

- (2) **SIDE YARD** An open space unoccupied except by a use as hereinafter specifically permitted, extending from the front yard to the rear yard of a lot and lying between the side lot line and the nearest point of the principal structure on the lot.
- (3) **REAR YARD** An open space, unoccupied except by a use as hereinafter specifically permitted, extending across the full width of the lot and lying between the rear lot line and the nearest point of the principal building (See definition of "rear lot line").

## Part 3 Administration and General Procedures

### Article III Administrative Procedures

#### § 165-6 **Adoption of rules and regulations.**

The Land Use Board shall adopt and may amend reasonable rules and regulations, not inconsistent with this chapter, for the administration of its functions, powers and duties and shall furnish a copy thereof to any person upon request and may charge a reasonable fee for such copy. Copies of all such rules and regulations and amendments thereto shall be maintained in the office of the Borough Clerk.

#### § 165-7 **Meetings.**

- A. Land Use Board shall by its rules fix the time and place for holding its regular meetings for business authorized to be conducted by such agency. Regular meetings of the Land Use Board shall be scheduled not less than once a month and shall be held as scheduled unless canceled for lack of applications for development to process. The Land Use Board may hold special meetings, at the call of the Chairman or on the request of any two of its members, which shall be held on notice to its members and the public in accordance with municipal regulations. No action shall be taken at any meeting without a quorum's being present. All actions shall be taken by a majority vote of the members present at the meeting, except as otherwise required of this Sections 23, 25, 49 and 50 of P.L. 1975, c. 291. Failure of a motion to receive the number of votes required to approve an application pursuant to the exceptional vote requirements of Section 25 of P.L. 1975, c. 291, of this chapter shall be deemed an action denying the application. Nothing herein shall be construed to contravene any act providing for procedures for the governing body.
- B. All regular meetings and all special meetings shall be open to the public. Notice of all such meetings shall be given in accordance with municipal regulations. An executive session for the purpose of discussing and studying any matters to come before the agency shall not be deemed a regular or special meeting within the meaning of this chapter.
- C. Minutes of every regular or special meeting shall be kept and shall include the names of persons appearing and addressing the Land Use Board and of the persons appearing by attorney, the action taken by the Land Use Board, the findings, if any, made by it and reasons therefor. The minutes shall thereafter be made available for public inspection during normal business hours at the office of the administrative officer. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceedings concerning the subject matter of such minutes. Such interested party may be charged a reasonable fee for reproduction of the minutes for this use.

#### § 165-8 **Hearings; filing of ordinances.**

- A. The Land Use Board shall hold a hearing on each application for development, except for concept plan review. The Land Use Board shall also hold a hearing on the adoption, revision or amendment of a Master Plan. The governing body shall hold a hearing on the adoption or amendment of a development

regulation, an Official Map or a capital improvements program.

- (1) 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 10 days before the date of the hearing, during normal business hours, in the office of the administrative officer. The applicant may produce other documents, records or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.
- (2) The officer presiding at the hearing, or such person as he may designate, shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties; and the provisions of the County and Municipal Investigations Law, P.L. 1958, c. 38 (N.J.S.A. 2A:67A-1 et seq.), shall apply.
- (3) 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.
- (4) Technical rules of evidence shall not be applicable to the hearing, but the agency may exclude irrelevant, immaterial or unduly repetitious evidence.
- (5) 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. Said transcript shall be certified in writing by the transcriber to be accurate.
- (6) Findings and conclusions.
  - (a) The Land Use Board shall include findings of fact and conclusions based thereon in each decision on any application for development and shall reduce the decision to writing. The Land Use Board shall provide the findings and conclusions through:
    - [1] A resolution adopted at a meeting held within the time period provided in the act for action by the Land Use Board on the application for development; or
    - [2] A memorializing resolution adopted at a meeting held not later than 45 days after the date of the meeting at which the Land Use Board voted to grant or deny approval. Only the members of the Land Use Board who voted for the action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution.
  - (b) An action pursuant to § **165-7A** of this chapter (resulting from the failure of a motion to approve an application) shall be memorialized by resolution as provided above, with those members voting against the motion for approval being the members eligible to vote on the memorializing resolution. The vote on any such resolution shall be deemed to be a memorialization of the action of the Land Use Board and not be an action of the Land Use Board; however, the date of the adoption of the resolution shall constitute the date of the decision for purposes of the mailings, filings and publications required by Subsection **A(7)** and **(8)** of this section. If the Land Use Board fails to adopt a resolution or memorializing resolution as hereinabove specified, any interested party may apply to the Superior Court in a summary manner for an order compelling the Land Use Board to reduce its findings and conclusions to writing within a stated time, and the cost of the application, including attorney's fees, shall be assessed against the municipality.
- (7) A copy of the decision shall be mailed by the Land Use Board within 10 days of the date of decision to

the applicant, or if represented, then to his attorney, without separate charge, and to all who request a copy of the decision for a reasonable fee. 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 reasonable fee and available for public inspection at his office during reasonable hours.

- (8) A brief notice of the decision shall be published in the official newspaper of the municipality, if there is one, or in a newspaper of general circulation in the municipality. Such publication shall be arranged by the Borough Clerk, provided that nothing in this chapter shall be construed as preventing the applicant from arranging such publication if he so desires. The municipality may make a reasonable charge for its 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 municipality or the applicant.
- B. Notice of hearing on application for development or adoption of Master Plan. Notices pursuant to Subsection **B(1)** and **(2)** below 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 **B(1)** below, 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 Municipal 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 **A(1)** herein above.
- (1) Notice of applications. Notice pursuant to Subsection **B(1)(a)**, **(b)**, **(d)**, **(e)**, **(f)** and **(g)** of this section shall be given by the applicant. Said notice shall be given at least 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 minor subdivisions, minor site plans and final approval, by publication in the official newspaper of the municipality, if there is one, or in a newspaper of general circulation in the municipality.
    - (b) Notice of a hearing requiring public notice pursuant to Subsection **B(1)** of this section shall be given to the owners of all real property, as shown on the current tax duplicate, located in the state and within 200 feet in all directions of the property which is the subject of such hearing, provided that this requirement shall be deemed satisfied by notice to the condominium association, in the case of any unit owner whose unit has a unit above or below it, or horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it. Notice shall be given by serving a copy thereof on the property owner, as shown on said current tax duplicate, or their agency in charge of the property or by mailing a copy thereof by certified mail to the property owner at his address, as shown on said current tax duplicate. Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, a vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within 300 feet of the property which is the subject of the hearing, may be made in the same manner as to a corporation without further notice to unit owners, co-owners or homeowners on account of such common elements or areas.
    - (c) Upon the written request of an applicant, the Borough Clerk shall, within seven days, make and certify a list from said current tax duplicates of names and addresses of owners to whom the applicant is required to give notice pursuant to Subsection **B(1)(b)** of this section. The applicant shall be entitled to rely upon the information contained in such list, and failure to give notice to any owner not on the list shall not invalidate any hearing or proceeding. A sum not to exceed \$0.25 per name, or \$10, whichever is greater, may be charged for such list.
    - (d) Notice of hearings on applications for development involving property located within 200 feet of an adjoining municipality shall be given by personal service or certified mail to the Clerk of such

municipality.

- (e) Notice shall be given by personal service or certified mail to the County Land Use Board of any hearing on an application for development.
  - (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 Land Use in the Department of Community Affairs of a hearing on an application for development of property which exceeds 150 acres or 500 dwelling units. Such notice shall include a copy of any maps or documents required to be on file with the Municipal Clerk pursuant to Subsection **A(1)** herein above.
  - (h) The applicant shall file an affidavit of proof of services 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.
  - (i) Notice pursuant to Subsection **B(1)** (d), (e), (f) and (g) of this section shall not be deemed to be required unless public notice pursuant to Subsection **B(1)(a)** and **(b)** of this section are required.
- (2) Notice concerning Master Plan. The Land Use Board shall give:
- (a) Public notice of a hearing on the adoption, revision or amendment of the Master Plan. Such notice shall be given by publication in the official newspaper of the municipality, if there is one, or in a newspaper of general circulation in the municipality, at least 10 days prior to the date of hearing.
  - (b) Notice by personal service or certified mail to the Clerk of an adjoining municipality of all hearings on the adoption, revision or amendment of a Master Plan involving property situated within 200 feet of such adjoining municipality, at least 10 days prior to the date of any such hearing.
  - (c) Notice by personal service or certified mail to the County Land Use Board of all hearings on the adoption, revision or amendment of the Municipal Master Plan, at least 10 days prior to the date of the hearing, such notice to include a copy of any such proposed Master Plan or any revision or amendment thereto, and notice of the adoption, revision or amendment of the Master Plan not more than 30 days after the date of such adoption, revision or amendment, such notice to include a copy of the Master Plan or revision or amendment thereto.
- (3) Effect of mailing notice. Any notice by certified mail pursuant to Subsection **B(2)(b)** and **(c)** above shall be deemed complete upon mailing.
- C. Notice of hearing on ordinance or capital improvement program; notice of action on capital improvement or Official Map.
- (1) Notice by personal service or certified mail shall be made to the Clerk of an adjoining municipality of all hearings on the adoption, revision or amendment of a development regulation involving property situated within 200 feet of such adjoining municipality, at least 10 days prior to the date of any such hearing.
  - (2) Notice by personal service or certified mail shall be made to the County Land Use Board of all hearings on the adoption, revision or amendment of any development regulation at least 10 days prior to the date of the hearing, and the adoption, revision or amendment of the municipal capital improvement program or Municipal Official Map not more than 30 days after the date of such adoption, revision or amendment. Any notice provided hereunder shall include a copy of the proposed development

regulation, the Municipal Official Map or the municipal capital improvement program or any proposed revision or amendment thereto, as the case may be.

- (3) Notice of hearings to be held pursuant to this Subsection C 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 subsection shall be deemed complete upon mailing.

D. Filing of ordinances.

- (1) This chapter or any revision or amendment thereto shall not take effect until a copy thereof has been filed with the County Land Use Board.
- (2) An Official Map shall not take effect until filed with the county recording officer.
- (3) Copies of this chapter and any revisions or amendments thereto shall be filed and maintained in the office of the Borough Clerk.

§ 165-9 **(RESERVED).**

§ 165-10 **Scope of authority.**

Any power expressly authorized by this chapter to be exercised by the Land Use Board shall not be exercised by any other body, except as otherwise provided in this chapter.

§ 165-11 **Interruption of running of period of approval.**

In the event that, during the period of approval heretofore or hereafter granted to an application for development, the developer is barred or prevented, directly or indirectly, from proceeding with the development otherwise permitted under such approval by a legal action instituted by any state agency, political subdivision or other party to protect the public health and welfare or by a directive or order issued by any state agency, political subdivision or court of competent jurisdiction to protect the public health or welfare, and the developer is otherwise ready, willing and able to proceed with said development, the running of the period of approval under this chapter or under any act repealed by this chapter, as the case may be, shall be suspended for the period of time said legal action is pending or such directive or order is in effect.

§ 165-12 **Conditional approval.**

- 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 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 Land Use Board shall process such application for development regulations, and if such application for development complies with municipal development regulations, the Land Use Board shall approve such application, conditioned on removal of such legal barrier to development.
- B. In the event that a development proposed by an application for development requires an approval by a governmental agency other than the Land Use Board, the Land Use Board shall, in appropriate instances, condition its approval upon the subsequent approval of such governmental agency, provided that the municipality shall make a decision on any application for development within the time period provided in this chapter or within such extension of such period as has been agreed to by the applicant unless the Land Use Board is prevented or relieved from so acting by the operation of law.

§ 165-13 **Application fees and escrow deposits.**

There is hereby established, in connection with various applications for development and other matters which are the subjects of this chapter the following schedule of fees and deposits which are the personal responsibility of both the property owner and the applicant if not one and the same:

- A. Copy of a decision of the governing body to an interested party in connection with an appeal pursuant to § **165-9**: \$10.
- B. Publication in a newspaper of a decision of the governing body on an appeal pursuant to § **165-9**: cost of publication.
- C. Development applications:
  - (1) Outline of nonrefundable application and initial escrow fees.
    - (a) Minor subdivision, simple lot line change:
      - [1] Application fee: \$200.
      - [2] Full escrow deposit: \$2,000.
    - (b) Minor site plan:
      - [1] Application fee: \$200.
      - [2] Initial Escrow deposit: \$2,000, plus \$100 per lot.
    - (c) Preliminary major subdivision:
      - [1] Application fee: \$500, plus \$100 per lot.
      - [2] Escrow fee: \$1,000 per lot.
      - [3] Major Stormwater Management Design Review escrow fee \$2,000.
    - (d) Final major subdivision:
      - [1] Application fee: \$500.
      - [2] Escrow fee: \$2000, plus \$50 per lot.
    - (e) Preliminary nonresidential site plan approval:
      - [1] Application fee: \$250, plus \$5 per 1,000 square feet of lot area, or part thereof, plus \$5 per 100 square feet of proposed building floor area, or part thereof.
      - [2] Escrow fee. If the gross floor area of the building is 100,000 square feet or less: \$1,000 plus \$10 per 1,000 square feet of lot area, plus \$10 per 100 square feet of gross floor area of the building. If the gross floor area of the building exceeds 100,000 square feet: \$500 plus \$3.50 per 1,000 square feet of lot area, plus \$3.50 per 100 square feet of gross floor area of the building.
      - [3] Major Stormwater Management Design Review escrow fee \$2,000.
      - [4] Environmental Impact Statement Review Escrow fee: \$1,000.
    - (f) Final nonresidential site plan approval:
      - [1] Application fee: \$250, plus \$1 per 1,000 square feet of lot area, or part thereof, plus \$1 per 100 square feet of proposed building floor area, or part thereof.
      - [2] Escrow fee. If the gross floor area of the building is 100,000 square feet or less: \$1,000 plus \$3 per

1,000 square feet of lot area, plus \$3 per 100 square feet of gross floor area of the building. If the gross floor area of the building exceeds 100,000 square feet: \$500 plus \$1 per 1,000 square feet of lot area, plus \$1 per 100 square feet of gross floor area of the building.

(g) Preliminary multifamily subdivision or site plan approval:

[1] Application fee: \$500, plus \$50 per dwelling unit; but not to exceed \$10,000

[2] Escrow fee: \$2,000, plus \$100 per dwelling unit.

[3] Major Stormwater Management Design Review escrow fee \$2,000.

[4] Environmental Impact Statement Review Escrow fee: \$1,000.

(h) Final multifamily subdivision or site plan approval:

[1] Application fee: \$250, plus \$25 per dwelling unit, but not to exceed \$5,000.

[2] Escrow fee: \$2,000 plus \$50 per dwelling unit.

[3] Major Stormwater Management Design Review escrow fee \$2,000.

[4] Environmental Impact Statement Review Escrow fee: \$1,000.

(i) Preliminary planned development, including mixed residential cluster, multifamily, mobile home park and PUD developments:

[1] Application fee: the sum of preliminary fees for single family, multifamily and commercial portions based on each component of the application.

[2] Escrow fee: the sum of preliminary fees for single family, multifamily and commercial portions based on each component of the application.

(j) General development plan under optional staged preliminary planned development procedures:

[1] Application fee: 1/3 of the preliminary planned development application fee.

[2] Escrow fee: 1/3 of the preliminary planned development application fee.

(k) Final planned development, including mixed residential cluster, multifamily, mobile home park and PUD developments:

[1] Application fee: the sum of final fees for single family, multifamily and commercial portions based on each component of the application.

[2] Escrow fee: the sum of final fees for single family, multifamily and commercial portions based on each component of the application.

(l) Conceptual review of a concept plan for a potential application before the Land Use Board, other than a conceptual general development plan: a single but not more than one-hour appearance before the Land Use Board with Board professionals in attendance.

[1] Application fee: \$200.

[2] Escrow fee: \$1,000.

[3] In the event that the developer submits within 90 days a minor subdivision or site plan, or preliminary major subdivision or site plan for the same proposed development and layout, the amount of any conceptual review escrow fees that have not been expended shall be credited toward the applicable escrow fee.

(m) Conceptual general development plan:

[1] Application fee: 1/3 of the preliminary planned development application fee.

[2] Escrow fee: 1/3 of the preliminary planned development application fee.

(n) Amended site plan.

[1] Application fee: Same as preliminary and final site plan above.

[2] Escrow fee: Same as preliminary and final site plan above.

(o) Site plan waiver.

[1] Application fee: \$200.

[2] Escrow fee: \$1,500, but only payable should Board review be required pursuant to § **165-36.2**.

D. Variance and appeals. In addition to Subsection C fees the following application and escrow fees apply:

(1) Appeals from a decision of the building or zoning official pursuant to § **165-26A(1)**:

(a) Application fee: \$200.

(b) Escrow fee: \$2,000.

(2) Interpretation of the Zoning Map or zoning regulations or requests for decisions on other special questions pursuant to § **165-26A(2)**:

(a) Application fee: \$200.

(b) Escrow fee: \$2,000.

(3) Variances pursuant to § **165-26A(3)** from lot area, lot dimensional, setback and yard requirements:

(a) Application fee: \$200.

(b) Escrow fee: \$1,000 for first requested variance; \$250 per each additional requested variance.

(4) Variance from use regulations pursuant to § **165-26A(4)**:

(a) Application fee: \$200.

(b) Escrow fee: \$2,000 for the first requested variance, \$250 per each additional requested variance.

(5) Direction pursuant to § **165-26A(5)** for issuance of a permit for a building or structure in the bed of a mapped street or public drainage way, flood-control basin, or public area reserved on an Official Map:

(a) Application fee: \$200.

(b) Escrow fee: \$1,000.

- (6) Direction pursuant to § **165-26A** for the issuance of a permit for a building or structure not related to a street:
  - (a) Application fee: \$200.
  - (b) Escrow fee: \$1,000.
- E. Site plan application fees and escrows for telecommunications installations shall be as follows:
  - (1) If no new tower is proposed, an application fee of \$200 and an escrow fee of \$2,000.
  - (2) If a new tower is proposed, an application fee of \$500 and an escrow fee of \$5,000.
- F. Zoning permit:
  - (1) Accessory buildings/structures:
    - (a) Residential building \$25.
    - (c) Nonresidential building: \$50.
  - (2) Pools \$25.
  - (3) Additions:
    - (a) Residential: \$50.
    - (b) Nonresidential: \$75.
  - (4) New buildings:
    - (a) Residential: \$125.
    - (b) Nonresidential: \$135.
  - (5) Nonresidential interior alterations: \$35.
  - (6) Farm buildings: \$30.
  - (7) Signs:
    - (a) Temporary: \$25.
    - (b) Permanent: \$25.
  - (8) Decks and patios: \$30.
  - (9) Fences and retaining walls \$30.
  - (10) Tenancy review: \$50.
  - (11) Driveways: fee \$25; escrow: \$250.
  - (12) All other zoning permits: \$25.
- G. Soil Disturbance and Grading Plan Not Associated with Improvements Defined in a Land Use Board

Application For Site Plan or Subdivision.

- (1) Application fee: \$25.
  - (2) Escrow review fee: \$500.
  - (3) Escrow inspection fee: \$500.
- H. Stormwater Management Plan Review Not Associated with Improvements or Development Defined in a Land Use Board Application for Site Plan or Subdivision.
1. Minor Development:
    - a. Application fee: \$50
    - b. Escrow Review: \$500.
    - c. Escrow Inspection: \$500.
  2. Major Development:
    - a. Application fee: \$50.
    - b. Escrow Review: \$2,000.
    - c. Escrow Inspection: \$1,000.

§ 165-14 **Escrow Accounts and Technical Review Fees.**

- A. Escrow fees: general provisions.
- (1) In addition to the nonrefundable application fees, the applicant shall be required to establish one or more escrow accounts with the Borough to cover the cost of professional services in connection with the review of said application, including but not limited to shorthand reporting and transcripts, review, inspection, testimony and reports of the Borough Engineer, Borough Planner, Borough Attorney, Board Attorney and any other professionals whose services are deemed necessary with respect to processing the application by the Land Use Board in order to assure compliance with the provisions of this chapter. Said escrow fees shall be required for all applications for approval of preliminary and final site plans, preliminary and final subdivision, planned developments and variances of any type.
  - (2) At the time of submitting an application to the administrative officer for site plan or subdivision review, before the Land Use Board, the applicant shall be required to make a deposit to the escrow account as hereinafter provided and execute an escrow agreement. The escrow agreement shall be in a form approved by the Land Use Board Attorney. All fees and escrow deposits must be paid prior to certification by the administrative officer that the application is complete. In the event that the amounts required to be posted by this chapter are not sufficient to cover the Borough's professional charges associated with this application, the Land Use Board shall request additional escrow funds.
  - (3) Following the approval of a major subdivision or site plan and prior to the commencement of construction, the applicant shall be required to make a further deposit to the escrow account to provide sufficient escrow to pay for anticipated inspection fees and any anticipated additional professional review services.
  - (4) Whenever an amount of money in excess of \$5,000 shall be deposited by an applicant with the Borough

for professional services employed by the municipality to review applications for development, for municipal inspection fees or to satisfy guarantee requirements, the money, until repaid or applied to the purposes for which it is deposited, including the applicant's portion of the interest earned thereon, except as otherwise provided herein, shall continue to be the property of the applicant and shall be held in trust by the municipality. Money deposited shall be held in escrow. The municipality receiving the money shall deposit it 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, in an account bearing interest at the minimum rate currently paid by the institution or depository on time or savings deposits. The municipality 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. The municipality shall not be required to refund an amount of interest paid on a deposit which does not exceed \$100 for the year. If the amount of interest exceeds \$100, that entire amount shall belong to the applicant and shall be refunded to him by the municipality annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be; except that the municipality may retain for administrative expenses a sum equivalent to no more than 33 1/3% of that entire amount, which shall be in lieu of all other administrative and custodial expenses.

- (5) Payment to professionals chargeable against escrow deposits.
  - (a) The Chief Financial Officer of the municipality shall make all of the payments to professionals for services rendered to the municipality for review of applications for development, review and preparation of documents, inspections of improvements or other purposes. Such fees or charges shall be based upon a schedule established by resolution. The application review and inspection charges shall be limited only to professional charges for review of applications, review and preparation of documents and inspections of developments under construction and review by outside consultants when an application is of a nature beyond the scope of the expertise of professionals normally utilized by the municipality. The only costs that shall be added to any such charges shall be actual out of pocket expenses of any such professionals or consultants including normal and typical expenses incurred in processing applications and inspecting improvements. The municipality or approving authority shall not bill the applicant, or charge any escrow account or deposit authorized herein, for any municipal clerical or administrative functions, overhead expenses, meeting room charges, or any other municipal costs and expenses except as provided for in this section, nor shall a municipal professional add any such charges to his bill. If the salary, staff support and overhead for a municipal professional are provided by the municipality, the charge shall not exceed 200% of the sum of the products resulting from multiplying the hourly base salary, which shall be established annually by ordinance, of each of the professionals by the number of hours spent by the respective professional upon review of the application for development or inspection of the developer's improvements, as the case may be. For other professionals the charge shall be at the same rate as all other work of the same nature by the professional for the municipality when fees are not reimbursed or otherwise imposed on applicants or developers.
  - (b) If the municipality requires of the developer a deposit toward anticipated municipal expenses for the professional services, the deposit shall be placed in an escrow account. The amount of the deposit required shall be reasonable in regard to the scale and complexity of the development. The amount of the initial deposit required shall be established by ordinance. For review of applications of development proposing a subdivision, the amount of the deposit shall be calculated based on the number of proposed lots. For review of applications for development proposing a site plan, the amount of the deposit shall be based on one or more of the following: the area of the site to be developed, the square footage of buildings to be constructed, or an additional factor for circulation intensive sites, such as those containing drive-through facilities. Deposits for inspection fees shall be established in accordance with § 165-49A(8).
- (6) Each payment charged to the deposit for review of applications, review and preparation of documents and inspection of improvements shall be pursuant to a voucher from the professional, which voucher

shall identify the personnel performing the service, and for each date the services performed, the hours spent to 1/4 hour increments, the hourly rate and the expenses incurred. All professionals shall submit vouchers to the Chief Financial Officer of the municipality on a monthly basis in accordance with schedules and procedures established by the Chief Financial Officer of the municipality. If the services are provided by a municipal employee, the municipal employee shall prepare and submit to the Chief Financial Officer of the municipality a statement containing the same information as required on a voucher, on a monthly basis. The professional shall send an informational copy of all vouchers or statements submitted to the Chief Financial Officer of the municipality simultaneously to the applicant. The Chief Financial Officer of the municipality shall prepare and send to the applicant a statement which shall include an accounting of funds listing all deposits, interest earnings, disbursements and the cumulative balance of the escrow account. This information shall be provided on a quarterly basis, if monthly charges are \$1,000 or less, or on a monthly basis if monthly charges exceed \$1,000. If an escrow account or deposit contains insufficient funds to enable the municipality or the approving authority to perform required application reviews or improvement inspections, the Chief Financial Officer of the municipality shall provide the applicant with a notice of insufficient escrow or deposit balance. In order for work to continue on the development or the application, the applicant shall within a reasonable time period post a deposit to the account in an amount to be agreed upon by the municipality or approving authority and the applicant. In the interim, any required health and safety inspections shall be made and charged back against the replenishment of funds.

- (7) The following close-out procedure shall apply to all deposits and escrow accounts and shall commence after the Board has granted final approval and signed the subdivision plat or site plan, in the case of application review escrows and deposits, or after the improvements have been approved, in the case of improvement inspection escrows and deposits. The applicant shall send written notice by certified mail to the Chief Financial Officer of the municipality and the governing body and to the relevant municipal professional, that the application or the improvements as the case may be, are completed. After receipt of such notice, the professional shall render a final bill to the Chief Financial Officer of the municipality within 30 days, and shall send a copy simultaneously to the applicant. The Chief Financial Officer of the municipality shall render a written final accounting to the applicant on the uses to which the deposit was put within 45 days of receipt of the final bill. Any balances remaining in the deposit or escrow account, including interest shall be refunded to the developer along with the final accounting.
- (8) All professional charges for review of an application for development, review and preparation of documents or inspection of improvements shall be reasonable and necessary, given the status and progress of the application or construction. Review fees shall be charged only in connection with an application for development presently pending before the approving authority or upon review of compliance with conditions of approval, or review of requests for modification or amendment made by the applicant. A professional shall not review items which are subject to approval by any state governmental agency and not under municipal jurisdiction except to the extent consultation with a state agency is necessary due to the effect of state approvals in the subdivision or site plan. Inspection fees shall be charged only for actual work shown on a subdivision or site plan or required by an approving resolution. Professionals inspecting improvements under construction shall charge only for inspections that are reasonably necessary to check the progress and quality of the work and such inspections shall be reasonably based on the approved development plans and documents.
- (9) If the municipality or approving authority retains a different professional or consultant in the place of the professional originally responsible for development, application review or inspection of improvements, the municipality or the approving authority shall be responsible for all time and expenses of the new professional to become familiar with the application or the project, and the municipality shall not bill the applicant or charge the deposit or the escrow account for any such services.
- (10) For purposes of this section, the annual professional services agreement entered into with the professional shall constitute the schedule required pursuant to § **165-14A(5)(a)**.

(11) Dispute resolution procedure.

- (a) An applicant shall notify in writing the governing body with copies to the Chief Financial Officer, and the professional whenever the applicant disputes the charges made by a professional for services rendered to the municipality in reviewing applications for development, review and preparation of documents, inspection of improvements or other charges. The governing body or its designee shall within a reasonable time period attempt to remediate any disputed charges. If the matter is not resolved to the satisfaction of the applicant, the applicant may appeal to the County Construction Board of Appeals any charge to an escrow account or a deposit by any municipal professional or consultant, or the cost of installation of improvements estimated by the Municipal Engineer. An applicant or their authorized agent shall submit the appeal in writing to the County Construction Board of Appeals. The applicant or their authorized agent shall simultaneously send a copy of the appeal to the municipality and any professional whose charge is the subject of the appeal. An applicant shall file an appeal within 45 days from receipt of the informational copy of the professional's voucher, except that if the professional has not supplied the applicant with an informational copy of the voucher, then the applicant shall file their appeal within 60 days from receipt of the municipal statement of activity against the deposit or escrow account. An applicant may file an appeal for an ongoing services of charges by a professional during a period not exceeding six months to demonstrate that they represent a pattern of excessive or inaccurate charges. An applicant making use of this provision need not appeal each charge individually.
  - (b) The County Construction Board of Appeals shall hear the appeal, render a decision thereon, and file its decision with a statement of the reasons therefor with the municipality not later than 10 business days following the submission of the appeal, unless such period of time has been extended with the consent of the applicant. The decision may approve, disapprove, or modify the professional charges appealed from. A copy of the decision shall be forwarded by certified or registered mail to the party making the appeal, the municipality and the professional involved in the appeal. Failure by the Board to hear an appeal and render and file a decision thereon within the time limits prescribed in this subsection shall be deemed a denial of the appeal for purposes of a complaint, application or appeal to a court of competent jurisdiction.
  - (c) During the pendency of any appeal, the municipality shall continue to process, hear and decide the application for development, and to inspect the development in the normal course, and shall not withhold, delay, or deny reviews, inspections, signing of subdivision plats or site plans, the reduction or the release of performance or maintenance guarantees, the issuance of construction permits or certificates of occupancy or any other approval or permit because an appeal has been filed or is pending under this section. The Chief Financial Officer of the municipality may pay charges out of the appropriate escrow account or deposit for which an appeal has been filed. If a charge is disallowed after payment, the Chief Financial Officer of the municipality shall reimburse the deposit or escrow account in the amount of any such disallowed charge or refund the amount to the applicant. If a charge is disallowed after payment to a professional or consultant who is not an employee of the municipality, the professional or consultant shall reimburse the municipality in the amount of any such disallowed charge.
- B. No application for development shall be deemed complete unless and until an Escrow Fee Agreement has been signed by the applicant and submitted to the Administrative Officer together with the nonrefundable application fees required in § 165-13 and the escrow fees required therein.

Part 4  
**Land Use Board**

Article IV

## General Provisions

### § 165-15 Establishment; composition; terms; voting eligibility.

#### A. Membership.

- (1) Regular members. Pursuant to P.L. 1975, c. 291 (N.J.S.A. 40:55D-1 et seq.), there is hereby established a Land Use Board of seven members. The Land Use Board heretofore established shall continue. The Land Use Board shall consist of four classes of members as follows:
  - (a) Class I: the Mayor or the Mayor's designee in the absence of the Mayor.
  - (b) Class II: one of the officials of the Borough, other than a member of the governing body, to be appointed by the Mayor.
  - (c) Class III: a member of the governing body to be appointed by it.
  - (d) Class IV: four citizens of the municipality to be appointed by the Mayor. The members of Class IV shall hold no other municipal office.
  - (e) No member shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest. A member may, after public hearing if he requests one, be removed by the governing body for cause.
- (2) Alternate members.
  - (a) The Mayor may appoint not more than two alternate members of the Land Use Board. Such alternate members shall meet the qualifications of Class IV members. Alternate members shall be designated at the time of appointment by the Mayor as "Alternate No. 1" and "Alternate No. 2." The terms of the alternate members shall be for two years, except that the term of not more than one alternate member shall expire in any one year; provided, however, that in no instance shall the terms of the alternate members first appointed exceed two years. A vacancy occurring otherwise than by expiration of term shall be filled by the Mayor for the unexpired term only.
  - (b) Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member of any class. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.
  - (c) 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.
- B. The terms of the member composing Class I shall correspond to their official tenure. The terms of the members composing Class II and Class III shall be for one year or terminate at the completion of their respective terms of office, whichever occurs first. Class II member who is also a member of the Environmental Commission. The terms of all Class IV members first appointed under this chapter shall be so determined that, to the greatest practical extent, the expiration of such terms shall be distributed evenly over the first four years after their appointments, provided that the initial Class IV term of each such member shall not exceed four years. Thereafter, the Class IV term of each such member shall be four years. If a vacancy in any class shall occur otherwise than by expiration of the Land Use Board term, it shall be filled by appointment as above provided for the unexpired term. No member of the Land Use Board shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest. Any member other than a Class I member, after a public hearing if he requests one, may be removed by the governing body for cause.

- C. A member of the Land Use Board who was absent for one or more of the meetings at which a hearing was held shall be eligible to vote on the matter upon which the hearing was conducted, notwithstanding their absence from one or more of the meetings; provided, however, that such Board member has available to him the transcript or recording of all of the hearing from which he was absent and certifies in writing to the Board that he has read such transcript or listened to such recording.

**§ 165-16 Organization.**

The Land Use Board is authorized to adopt bylaws and other rules and regulations governing its procedural operation, which bylaws, rules and regulations shall be consistent with the provisions of this chapter and P.L. 1975, c. 291. The Land Use Board shall elect a Chairman and Vice Chairman from the members of Class IV, select a Secretary, who may or may not be a member of the Land Use Board or a municipal employee, and create and fill such other offices as established by ordinance. It may employ or contract for and fix the compensation of legal counsel, other than the Municipal Attorney, and experts and other staff and services as it may deem necessary, not exceeding, exclusive of gifts or grants, the amount appropriated by the governing body for its use.

**§ 165-17 Powers and duties.**

The Land Use Board is a Planning Board under the Municipal Land Use Law which also has the powers of a Board of Adjustment in accordance with N.J.S.A. 40:55D-25c. The Land Use Board shall be governed by and shall have such powers as are conferred upon it by the Municipal Land Use Law. More specifically, the Land Use Board shall have authority to:

- A. Prepare, adopt and, from time to time, amend or revise a Master Plan.
- B. Exercise control over the review of subdivisions and site plans in accordance with Part 6.
- C. Exercise control over the granting of applications for conditional uses.
- D. The Land Use Board may grant the following relief:
  - (1) Whenever a proposed development requires approval of a variance pursuant to N.J.S.A. 40:55D-70d, the Land Use Board shall have the power to grant to the same extent and subject to the same restrictions as a Board of Adjustment, but in such a case the Class 1 and Class 3 members shall not participate in the application.
  - (2) Variances pursuant to N.J.S.A. 40:55D-70c.
  - (3) Direction to issue a permit for buildings or structures in the bed of any street or public draining way, flood control basin, or public area reserved on an official map pursuant to N.J.S.A. 40:55D-34.
  - (4) Direction to issue a permit for a building or structure not related to a street pursuant to N.J.S.A. 40:55D-36.
  - (5) Appeals of Administrative Officer decisions pursuant to N.J.S.A.40:55D-70a.
  - (6) Interpretations pursuant to N.J.S.A. 40:55D-70b.
- E. Whenever relief is requested pursuant to this section, notice of the hearing on the application for development shall include reference to the request for relief and shall state the date, time and place of the hearing, the nature of the matters to be considered, and identification of the property by street address and lot and block as shown on the current tax duplicate in the municipal tax assessor's office, and the location and times at which any maps and documents are sought are available for review.
- F. The developer may elect to submit a separate application requesting approval of the variance or

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

- G. Exercise such other duties as may be assigned to it by ordinance or resolution of the governing body and perform such other functions as may be authorized by P.L. 1975, c. 291, and other state statutes and administrative regulations.

**§ 165-18 Referral to governing body.**

- A. Prior to the adoption of a development regulation, revision or amendment thereto, the Land Use Board shall make and transmit to the governing body, within 35 days after referral, a report, including recommendations concerning the proposed development regulation, revision or amendment. The governing body, when considering the adoption of a development regulation, revision or amendment thereto, shall review the report of the Land Use Board and may disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following such recommendations. Failure of the Land Use Board to transmit its report within the thirty-five-day period provided herein shall relieve the governing body from the requirements of this subsection in regard to the proposed development regulation, revision or amendment thereto referred to the Land Use Board.
- B. The governing body may, by ordinance, provide for the reference of any matter or class of matters to the Land Use Board before final action thereon by a municipal body or municipal officer having final authority thereon. Such reference shall not extend the time for action by the referring body, whether or not the Land Use Board has submitted its report. Whenever the Land Use Board shall have made a recommendation regarding a matter authorized by this chapter to another municipal body, such recommendation may be rejected only by a majority of the full authorized membership of such other body.

**§ 165-19 Time period for approval.**

Whenever an application for approval of a subdivision plat, site plan or conditional use includes a request for relief pursuant to § **165-17D** of this chapter, the Land Use Board shall grant or deny approval of the application within 120 days after submission by a developer of a complete application to the administrative officer or within such further time as may be consented by the applicant. In the event that the developer elects to submit separate consecutive applications, the aforesaid provision shall apply to the application for approval of the variance or direction for issuance of a permit. The period for granting or denying and subsequent approval shall be as otherwise provided in this chapter. Failure of the Land Use Board to act within the period prescribed shall constitute approval of the application, and a certificate of the administrative officer as to the failure of the 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.

**§ 165-20 Simultaneous review.**

The Land Use Board shall have the power to review and approve or deny conditional uses or site plans simultaneously with review for subdivision approval without the developer's being required to make further application to the Land Use Board or the Land Use Board's being required to hold further hearings. The longest time period for action by the Land Use Board, whether it be for subdivision, conditional use or site plan approval, shall apply. Whenever approval of a conditional use is requested by the developer pursuant to this section, notice of the hearing on the plat shall include reference to the request for such conditional use.

**§ 165-21 Citizens' Advisory Committee.**

After the appointment of a Land Use Board, 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.

**§ 165-22 Referral to Environmental Commission.**

Whenever an Environmental Commission has prepared and submitted to the Land Use Board an index of the natural resources of the municipality, the Land Use Board shall make available to the Environmental Commission an informational copy of every application for development submitted to the Land Use Board. Failure of the Land Use Board to make such informational copy available to the Environmental Commission shall not invalidate any hearing or proceeding.

**§ 165-23 Review of capital projects.**

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

**§ 165-23.1 Referral from Historic Preservation Commission.**

The Land Use Board shall exercise the powers set forth in § 4-69K, entitled "Demolition of historic structure."

**§ 165-24 Expiration of exceptions and variances**

Any exception or variance from this chapter granted by the Land Use Board to an application shall expire if no construction, alteration, or conversion has been commenced within one (1) year from the date of granting such variation or exception, unless otherwise provided in the resolution of the Board granting the exception or variation.

**Part 5  
(Reserved)**

**Part 6  
Subdivision and Site Plan Review**

**Article VI  
Application Procedure**

**§ 165-36 Approval required.**

Prior to the subdivision or resubdivision of land and prior to the issuance of a construction permit or certificate of occupancy for any development, an application for subdivision, site plan or planned development review, as the case may be, shall be submitted to and approved by the Land Use Board or administrative officer, as appropriate, and in accordance with the requirements of this article.

### § 165-36.1 **Exemption from site plan review and approval.**

The following shall be exempt from site plan review and approval (but not the requirement to obtain zoning and construction permits):

- A. Individual lot applications for detached one- or two-family dwelling unit buildings.
- B. Replacement of previously approved outdoor mechanical equipment, including air-conditioning equipment, generators, or similar equipment or appliances, provided that the replacement equipment is the same or similar to the existing equipment and is installed in the same location.
- C. Replacement of previously approved fencing, provided that for a fence conforming with the provisions of § **165-117.1**, the replacement fencing shall be the same or similar to the existing fencing and in the same location.
- D. Replacement of previously approved signage, provided that for signage conforming with the provisions of § **165-109**, the replacement signage shall be the same or similar to the existing signage and in the same location and at the same height.
- E. Replacement of a previously approved roof-mounted solar energy system, provided that the replacement system is the same or similar to the existing system and in the same location and at the same height.

### § 165-36.2 **Waiver of site plan review.**

- A. The administrative officer and/or Land Use Board, as appropriate, may waive the requirement of site plan review and or approval, in part or in its entirety, if the proposed development does not require any new variances or alter any existing variances, and if it:
  - (1) Secured previous site plan approval under the terms of this chapter and the proposed development will have an insignificant impact on the previously approved site plan; or
  - (2) Involves normal repair, maintenance or replacement; or
  - (3) Will not affect existing circulation, parking, drainage, stormwater management, Highlands compliance, building arrangements, landscaping, buffering, lighting or other considerations of site plan review.
- B. An applicant requesting such a waiver shall provide to the administrative officer one paper copy and one digital copy of the Administrative Waiver of Site Plan Review Application and Waiver Checklist, together with all accompanying plans and documents and appropriate application fee.
- C. Within 30 days of receipt of a complete application, the administrative officer, in consultation with Board Engineer, Board Planner, Board Attorney, and/or other staff and officials, as appropriate, shall determine whether the application meets the criteria set forth in § **165-36.2A** above. Applications meeting those criteria may be approved administratively. If the administrative officer is unable to determine whether the application meets the said criteria, the application shall be referred to the full Land Use Board for action. In such cases, no additional application fee shall be required.

### § 165-37 **Filing with County Land Use Board.**

When approval of the County Land Use Board is required, the applicant shall also file the application with that agency in accordance with its rules and regulations.

### § 165-38 **Time period for filing.**

Said application shall be filed with the Administrative Office of the Land Use Board at least twenty-one (21) days prior to a regular meeting of the Land Use Board.

**§ 165-39 Contents of application.**

An application under this Part 6 shall contain any and all data and material indicated on the checklist referred to in § 165-41.

**§ 165-40 Filing fees and escrow deposits.**

The application shall be accompanied by a filing fee and initial escrow deposit pursuant to § 165-13 to cover the technical, investigative and administrative expenses involved in processing the application.

**§ 165-41 Completeness of application; checklists.**

- A. An application for development shall be complete for purposes of commencing the applicable time period for action by the Land Use Board when so certified by the Clerk of the Board. In the event that the Clerk of the Board does not certify the application to be complete within 45 days of the date of its submission, the application shall be deemed complete upon the expiration of the forty-five-day period for purposes of commencing the applicable time period unless the application lacks information indicated on the checklist referred to below and provided to the applicant, and the Clerk of the Board has notified the applicant, in writing, of the deficiencies in the application within 45 days of submission of the application. The applicant may request that one or more of the submission requirements be waived, in which event the Land Use Board shall grant or deny the request within 45 days. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that he is entitled to approval of the application. The Land Use Board may subsequently require correction of any information found to be in error and submission of additional information not specified in this chapter or any revisions in the accompanying documents as are reasonably necessary to make an informed decision as to whether the requirements necessary for approval of the application for development have been met. The application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents so required by the Land Use Board.
- B. For the purposes of administering this section, the following checklist for determining completeness of applications are hereby adopted and made part of this chapter:
- (1) Lebanon Borough Administrative Waiver of Site Plan Review Application and Waiver Checklist (1).
  - (2) Borough of Lebanon Application Checklist (Attachment 2).

**§ 165-41.1 Applications for development in Highlands.**

A. Applicability.

- (1) This section shall apply to any application for development involving lands located within (or partially within) the Borough Highlands Area (which includes the entirety of the Borough) that seeks approval of a site plan, subdivision, or change in use, where approval of such application would:
  - (a) For residential development, create three or more dwelling units;
  - (b) For nonresidential development:
    - [1] Result in the ultimate disturbance of one acre or more of land;
    - [2] Produce a cumulative impervious surface area of 1/4 acre, or more; or
    - [3] Introduce or expand on any of the following land uses/facilities:
      - [a] Landfills;

- [b] Permanent storage or disposal of hazardous wastes, industrial or municipal sludge or radioactive materials, including solid waste landfills;
  - [c] Collection and transfer facilities for hazardous wastes, solid wastes that contain hazardous materials, and radioactive materials;
  - [d] Industrial treatment facility lagoons; or
  - [e] Any major or minor potential contaminant source (as identified in Appendix A and Appendix B of this section, respectively) on lands located within 200 feet of the wellhead of any public community well or public noncommunity well, as these are defined at § **165-41.1B** below.
- (2) All thresholds in § **165-41.1A(1)(a)** and **(b)**, above, shall be interpreted to apply cumulatively over time, beginning as of the effective date of this section. If or when any one of the thresholds is reached, the section shall apply to any and all development in excess of that threshold. Where an application proposes a mixed use, the thresholds in § **165-41.1A(1)(b)**, for nonresidential development, shall apply to the whole of the project, while that in § **165-41.1A(1)(a)** shall apply to the residential component. For purposes of this section, the phrases "application for development," "Highlands Area," "residential development," "ultimate disturbance," and "cumulative impervious surface area" shall be defined as provided at § **165-41.1B** below.
- B. Definitions. For the purpose of this section, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this section clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

**AGRICULTURAL IMPERVIOUS COVER**

Agricultural or horticultural buildings, structures or facilities with or without flooring, residential buildings and paved areas, but not meaning temporary coverings.

**AGRICULTURAL OR HORTICULTURAL DEVELOPMENT**

Construction for the purposes of supporting common farmsite activities, including, but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

**AGRICULTURAL OR HORTICULTURAL USE**

The use of land for common farmsite activities, including, but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

**APPLICANT**

A developer submitting an application for development.

**APPLICATION FOR DEVELOPMENT**

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

**DISTURBANCE**

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

**DISTURBANCE, ULTIMATE**

The total existing or proposed area of disturbance of a lot, parcel, or other legally designated (or otherwise legally recognized) tract or subdivision of land, for the purpose of, and in connection with, any human activity, property improvement, or development, including the surface area of all buildings and structures, all impervious surfaces, and all associated land disturbances such as excavated, filled, and graded areas, and all lawn and landscape areas. Ultimate disturbance shall not include areas of prior land disturbance which at the time of evaluation:

- (1) Contain no known man-made structures (whether above or below the surface of the ground) other than such features as old stone rows or farm field fencing; and
- (2) Consist of exposed rock outcroppings, or areas which, through exposure to natural processes (such as weathering, erosion, siltation, deposition, fire, flood, growth of trees or other vegetation) are no longer impervious or visually obvious, or ecologically restored areas which will henceforth be preserved as natural areas under conservation restrictions.

**FARM MANAGEMENT UNIT**

A parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

**HIGHLANDS ACT**

The Highlands Water Protection and Land Use Act, P.L. 2004, c.120, as amended, codified in part at N.J.S.A. 13:20-1 et seq.

**HIGHLANDS APPLICABILITY DETERMINATION (HAD)**

The determination made by the NJDEP of whether a project proposed for the Preservation Area is a major Highlands development, whether any such major Highlands development is exempt from the Highlands Act, and whether the project is consistent with the applicable areawide water quality management plan.

**HIGHLANDS AREA**

That portion of the municipality for which the land use Land Use and regulation are in conformance with, or are intended or proposed to be in conformance with, the Highlands Regional Master Plan.

**HIGHLANDS COUNCIL**

The New Jersey Highlands Water Protection and Land Use Council.

**HIGHLANDS REGION**

All that area within the boundaries of the municipalities listed in Subsection a. of Section 7 of the Highlands Act.

**IMPERVIOUS SURFACE**

Any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, including, but not limited to, porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

**IMPERVIOUS SURFACES, CUMULATIVE**

The total area of all existing or proposed impervious surfaces situated or proposed to be situated within

the boundary lines of a lot, parcel, or other legally recognized subdivision of land, expressed either as a measure of land area such as acreage, or square feet, or as a percentage of the total lot or parcel area.

**MAJOR POTENTIAL CONTAMINANT SOURCES (PCS)**

Land uses and activities determined by the Highlands Council to pose a major risk of groundwater contamination (see Appendix A).

**MINOR POTENTIAL CONTAMINANT SOURCES (PCS)**

Land uses and activities determined by the Highlands Council to pose a minor risk of groundwater contamination (see Appendix B).

**MUNICIPAL LAND USE LAW (MLUL)**

The New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

**NJDEP**

New Jersey Department of Environmental Protection

**NJDEP PRESERVATION AREA RULES**

The regulations established by the NJDEP to implement requirements of the Highlands Act, titled "Highlands Water Protection and Land Use Act Rules," and codified at N.J.A.C. 7:38-1 et seq.

**PLAN CONFORMANCE**

The process by which a municipality revises the master plan, development regulations and other regulations related to the development and use of land to conform them with the goals, requirements, and provisions of the Regional Master Plan in accordance with the Highlands Plan Conformance Guidelines.

**LAND USE AREA**

Lands within the Highlands Region not within the Preservation Area (N.J.S.A. 13:20-7).

**PRESERVATION AREA**

That portion of the Highlands Region so designated by Subsection b. of Section 7 of the Highlands Act.

**PUBLIC COMMUNITY WELL**

A well that provides water to a public water system serving at least 15 service connections used by year-round residents or regularly serving at least 25 year-round residents.

**PUBLIC NONCOMMUNITY WELL**

A well that is not a public community well and that provides water to a public water system regularly serving at least 25 individuals for at least 60 days in any given calendar year.

**REGIONAL MASTER PLAN (RMP)**

The Highlands Regional Master Plan or any revision thereof adopted by the Highlands Council pursuant to N.J.S.A. 13:20-8.

**SOLAR PANEL**

An elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array. (As defined by the Highlands Act, N.J.S.A. 13:20-1 et seq., as amended.)

**STRUCTURE**

A combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

- C. Consistency determinations required. No application for development included in Subsection **A** above shall be deemed complete or considered for review by an approving authority of Lebanon Borough until and unless the applicant has obtained and provided a copy of:
- (1) A consistency determination from the Highlands Council indicating that the application is consistent with the Highlands Regional Master Plan; or
  - (2) A consistency determination from the Highlands Council indicating that the application is not consistent with the Highlands Regional Master Plan, accompanied by a certification, as described in Subsection **D** below, by the applicant's professional(s) that the application has been revised since review by the Highlands Council to achieve consistency with the Highlands Regional Master Plan.
- D. Findings of consistency. Where a Highlands Council consistency determination indicates that an application for development is inconsistent with the Highlands Regional Master Plan, no such application shall be deemed complete or considered for review by an approving authority of Lebanon Borough, until or unless the applicant has obtained from the professional(s) responsible for preparation of the applicant's plans, a certification indicating that to the best of the knowledge and abilities of such professional(s), the application has been revised to achieve consistency with the Highlands Regional Master Plan and specifically describing the revisions made to achieve such consistency.
- E. Waiver. The Borough may issue a waiver from the provisions of this section where it can be established by the applicant and can be verified by the Borough Administrator or Zoning Officer of the Borough that:
- (1) The activity, improvement or development proposed by the subject application for development has not yet been formally determined to be exempt from the Highlands Act (see § **165-41.1H**, below), but eligibility for an exemption has been sufficiently established by the applicant; or
  - (2) The activity, improvement or development proposed in the application for development will neither encroach upon a Highlands resource or Highlands Resource Area, nor be of detrimental impact to any Highlands resource or Highlands Resource Area as these are identified and delineated in the Highlands Regional Master Plan. The applicant's professional(s) responsible for preparation of the applicant's plan shall establish compliance of the above through a formal certification specifically addressing the Highlands resources and Resource Areas and related policies and objectives as identified in Chapter **4** of the Highlands Regional Master Plan.
- F. Highlands Council call-up. All Borough waivers or findings of application completeness issued pursuant to this section shall be issued in writing, inclusive of a statement indicating the rationale for the determination. All such determinations shall be subject to Highlands Council call-up review, and shall include conditions requiring same consistent with this subsection. The Borough shall, within five calendar days of issuance of all such determinations, provide a copy of the decision to the applicant and to the Highlands Council. The Highlands Council call-up review period shall expire 15 calendar days following its receipt of same. Upon determining to exercise this authority for call-up review, the Highlands Council shall transmit notice to the applicant and the municipality. Absent any such notification from the Highlands Council within that timeframe, the application shall be considered complete, with the date of the waiver or finding of application completeness to be as of the date of first issuance by the municipality.
- G. Exclusions. The following specific improvements and related applications shall be excluded from the provisions of this section:

- (1) The reconstruction, within the same footprint, of any building or other structure lawfully existing as of the effective date of this section, in the event of its destruction or partial destruction by fire, storm, natural disaster, or any other unintended circumstance.
  - (2) Any improvement or alteration to a building or other structure lawfully existing as of the effective date of this section, where such improvement or alteration is necessary for compliance with the provisions of the Americans with Disabilities Act, or to otherwise provide accessibility to the disabled.
  - (3) Any agricultural or horticultural use or development that would not result in either:
    - (a) An increase, since the date of enactment of the Highlands Act (August 10, 2004), either individually or cumulatively, of new agricultural impervious cover of greater than 3% to the total land area of a farm management unit. Solar panels shall not be included in any calculation of agricultural impervious cover (all terms as defined in § 165-41.1B, above); or
    - (b) Construction of three or more residential dwelling units (including accessory dwelling units) served by individual on-site septic system(s).
- H. Exemptions. Any activity, improvement or development project listed and demonstrated to constitute a Highlands Act exemption shall be exempt from the provisions of this section. Formal demonstration of a Highlands Act exemption for an application for development involving lands located (or partially located) in the Highlands Area shall consist of one of the following:
- (1) State agency determination. State agency determinations shall include either a Highlands applicability determination (HAD) issued by the NJDEP for a Preservation Area proposal, or a Highlands exemption determination issued by the Highlands Council for a Land Use area proposal, in either case, indicating that the proposal qualifies as a Highlands Act exemption.
  - (2) Municipal determination. Pursuant to § 165-41.2, Highlands Area exemptions, below, for any application under this section involving Highlands Act exemption Numbers 4, 6, 7 or 8, the applicant may request and shall be deemed to have satisfied the evidentiary requirement by obtaining a municipal exemption determination issued by the municipal exemption designee as established by § 165-41.2H, provided such determination indicates that the proposal qualifies as a Highlands Act exemption. The applicant may rely upon the findings of a municipal exemption determination to the same extent and with the same protections as would apply in the case of a Highlands exemption determination issued by the Highlands Council, or of a HAD issued by the NJDEP.

§ 165-41.2 **Highlands Area exemptions.**

- A. Purpose. The purpose of this section is to set forth the procedural and substantive requirements by which the Borough will issue Highlands Act exemption determinations. Such determinations pertain only to Highlands Act Exemptions 1, 2, 4, 5, 6, 7, and 8. Highlands Act exemption determinations indicate whether proposed activities, improvements or development projects affecting lands located within the Borough Highlands Area are exempt from the Highlands Water Protection and Land Use Act ("Highlands Act," N.J.S.A. 13:20-1 et seq.), and are therefore exempt from the Highlands Water Protection and Land Use Council's ("Highlands Council") Regional Master Plan, the New Jersey Department of Environmental Protection's Highlands Water Protection and Land Use Act Rules and from any amendments to the Borough's Master Plan, development regulations, or other regulations adopted pursuant to the approval of the Borough's petition for plan conformance by the Highlands Council.
- B. Scope/applicability. The provisions of this section pertain to activities, improvements and development projects involving lands located within the Borough of Lebanon. The provisions of this section shall not

be construed to alleviate any person or entity from the provisions and requirements of any other applicable ordinances, rules, or regulations of the municipality, or from any other applicable law, regulation, or requirement of any county, state, or federal authority having jurisdiction. Nor shall the provisions of this section deprive any person or entity from seeking a Highlands exemption determination from the NJDEP or the Highlands Council.

- C. Statutory authority. This section is adopted under the authority of the Highlands Act and the MLUL. In the Highlands Act, the Legislature identified numerous categories of activities that are exempt from the Act, the RMP, the Preservation Area rules, and any amendments to a master plan, development regulations, or other regulations adopted by a local government to conform them with the RMP. See N.J.S.A. 13:20-28. The Legislature granted the Highlands Council the authority to administer the plan conformance process and to approve, reject, or approve with conditions municipal plan conformance petitions. See N.J.S.A. 13:20-14 and 13:20-15. The Legislature, through the MLUL, granted authority to New Jersey municipalities to govern land use and development within their borders and, through the Highlands Act, established requirements for Highlands municipalities to conform their land use and development regulations with the RMP. In a July 19, 2012, memorandum of understanding between the Highlands Council and the NJDEP, the Council and the NJDEP recognized the circumstances in which it would be appropriate for conforming, Highlands Council-certified municipalities to make determinations regarding specified Highlands Act exemptions.
- D. Word usage. Terms used in the body of this section which are defined by the Highlands Act are intended to have the same definitions as provided in the Highlands Act. Unless expressly stated to the contrary or alternately defined herein, terms which are defined by the MLUL are intended to have the same meaning as set forth in the MLUL. For purposes of this section, the terms "shall" and "must" are indicative of a mandatory action or requirement while the word "may" is permissive.
- E. Definitions. For purposes of this section the following definitions shall apply:

**AGRICULTURAL IMPERVIOUS COVER**

Agricultural or horticultural buildings, structures or facilities with or without flooring, residential buildings and paved areas, but not meaning temporary coverings. (N.J.S.A. 13:20-3.)

**AGRICULTURAL OR HORTICULTURAL DEVELOPMENT**

Construction for the purposes of supporting common farmsite activities, including, but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing. (N.J.S.A. 13:20-3.)

**AGRICULTURAL OR HORTICULTURAL USE**

The use of land for common farmsite activities, including, but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing. (N.J.S.A. 13:20-3.)

**APPLICANT**

A developer submitting an application for development.

**APPLICATION FOR DEVELOPMENT**

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

issuance of a permit pursuant to Section 25 or Section 27 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-34 or 40:55D-36).

### **BUILDING PERMIT**

Used interchangeably with the term "construction permit"; see definition below.

### **CONSTRUCTION PERMIT**

A permit issued pursuant to the New Jersey Uniform Construction Code, Chapter **23** of Title 5 of the New Jersey Administrative Code (N.J.A.C. 5:23-1 et seq.), providing authorization to begin work subject to the conditions and requirements established under the provisions therein.

### **DEVELOPMENT**

The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the MLUL (N.J.S.A. 13:20-3; N.J.S.A. 40:55D-4.)

### **DISTURBANCE**

The placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation. (N.J.S.A. 13:20-3.)

### **DISTURBANCE, ULTIMATE**

The total existing or proposed area of disturbance of a lot, parcel, or other legally designated (or otherwise legally recognized) tract or subdivision of land, for the purpose of, and in connection with, any human activity, property improvement, or development, including the surface area of all buildings and structures, all impervious surfaces, and all associated land disturbances such as excavated, filled, and graded areas, and all lawn and landscape areas. Ultimate disturbance shall not include areas of prior land disturbance which at the time of evaluation:

- (1) Contain no known man-made structures (whether above or below the surface of the ground) other than such features as old stone rows or farm field fencing; and
- (2) Consist of exposed rock outcroppings, or areas which, through exposure to natural processes (such as weathering, erosion, siltation, deposition, fire, flood, growth of trees or other vegetation) are no longer impervious or visually obvious, or ecologically restored areas which will henceforth be preserved as natural areas under conservation restrictions.

### **ENVIRONMENTAL LAND USE OR WATER PERMIT**

A permit, approval, or other authorization issued by the Department of Environmental Protection pursuant to the Freshwater Wetlands Protection Act, P.L. 1987, c.156 (N.J.S.A. 13:9B-1 et seq.), the Water Supply Management Act, P.L. 1981, c.262 (N.J.S.A. 58:1A-1 et seq.), the Water Pollution Control Act, P.L. 1977, c.74 (N.J.S.A. 58:10A-1 et seq.), The Realty Improvement Sewerage and Facilities Act (1954), P.L. 1954, c. 199 (N.J.S.A. 58:11-23 et seq.), the Water Quality Land Use Act, P.L. 1977, c.75 (N.J.S.A. 58:11A-1 et seq.), the Safe Drinking Water Act, P.L. 1977, c.224 (N.J.S.A. 58:12A-1 et seq.), or the Flood Hazard Area Control Act, P.L. 1962, c.19 (N.J.S.A. 58:16A-50 et seq.). (N.J.S.A. 13:20-3.)

### **FARM MANAGEMENT UNIT**

A parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise. (N.J.S.A. 13:20-3.)

**FARMSITE**

A farm management unit as defined above.

**FOREST MANAGEMENT PLAN**

A written guidance document describing the forest resources present on a property, the landowner's management goals and objectives, and the recommended practices or activities to be carried out over time on the land. This tool is used to evaluate a forest land's current state and provide a management process which, over time, meets the landowner's objectives, while maintaining health and vigor of the resource. Forest management plans are typically written for a ten-year period. (RMP, Glossary.)

**HIGHLANDS APPLICABILITY DETERMINATION**

A determination made by the NJDEP (pursuant to N.J.A.C. 7:38-2.4) indicating whether a project proposed for the Preservation Area is a major Highlands development, whether any such major Highlands development is exempt from the Highlands Act, and whether the project is consistent with the applicable areawide water quality management plan.

**HIGHLANDS AREA**

That portion of the municipality for which the land use Land Use and regulation are in conformance with, or are intended or proposed to be in conformance with, the Highlands RMP.

**HIGHLANDS PRESERVATION AREA APPROVAL (HPAA)**

An approval issued by the NJDEP pursuant to 7:38-6 pertinent to a regulated activity in the Highlands Preservation Area, and including an HPAA that contains a waiver pursuant to N.J.S.A. 13:20-33b.

**IMMEDIATE FAMILY MEMBER**

A spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, or half sister, whether the individual is related by blood, marriage, or adoption. (N.J.S.A. 13:20-3.)

**IMPERVIOUS SURFACE**

Any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, including, but not limited to, porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements. (N.J.S.A. 13:20-3.)

**IMPERVIOUS SURFACES, CUMULATIVE**

The total area of all existing or proposed impervious surfaces situated or proposed to be situated within the boundary lines of a lot, parcel, or other legally recognized subdivision of land, expressed either as a measure of land area such as acreage, or square feet, or as a percentage of the total lot or parcel area.

**MAJOR HIGHLANDS DEVELOPMENT**

- (1) Except as otherwise provided pursuant to Subsection a. of Section 30 of the Highlands Act ("exemptions"):
  - (a) Any nonresidential development in the Preservation Area;
  - (b) Any residential development in the Preservation Area that requires an environmental land use or water permit from the NJDEP, or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by 1/4 acre or more;
  - (c) Any activity undertaken or engaged in the Preservation Area that is not a development but results in the ultimate disturbance of 1/4 acre or more of forested area or that results in a cumulative increase in impervious surface by 1/4 acre or more on a lot; or

- (d) Any capital or other project of a state entity or local government unit in the Preservation Area that requires an environmental land use or water permit from the NJDEP, or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by 1/4 acre or more.
- (2) Major Highlands development shall not include any agricultural or horticultural development or agricultural or horticultural use. Solar panels shall not be included in any calculation of impervious surface. (As defined by the Highlands Act, N.J.S.A. 13:20-1 et seq., as amended.)

#### **MASTER PLAN**

For purposes of this section, all references to the "Borough Master Plan," "master plan," or "Master Plan" refer to the municipal Master Plan, as defined in the MLUL, as adopted by the Borough Land Use Board.

#### **MASTER PLAN, HIGHLANDS REGIONAL (RMP)**

For purposes of this section, all references to the Highlands Regional Master Plan (RMP), shall be by use of the words "Highlands Regional Master Plan," "Highlands RMP," "Regional Master Plan," or "RMP."

#### **MUNICIPAL LAND USE LAW (MLUL)**

The New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

#### **NJDEP**

New Jersey Department of Environmental Protection.

#### **NJDEP PRESERVATION AREA RULES**

The regulations established by the NJDEP to implement requirements of the Highlands Act, titled "Highlands Water Protection and Land Use Act Rules," and codified at N.J.A.C. 7:38-1 et seq.

#### **LAND USE AREA**

Lands within the Highlands Region that are not located in that portion designated by the Highlands Act as the "Preservation Area" (see metes and bounds description at N.J.S.A. 13:20-7b). For purposes of this section, this terminology shall also be used to refer to Land Use Area lands located solely within the Borough.

#### **PRESERVATION AREA**

Lands within the Highlands Region that are located in that portion designated by the Highlands Act as the "Preservation Area" (see metes and bounds description at N.J.S.A. 13:20-7b). For purposes of this section, this terminology shall also be used to refer to Preservation Area lands located solely within the Borough.

#### **SOLAR PANEL**

An elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array. (N.J.S.A. 13:20-3.)

#### **STRUCTURE**

A combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

#### **F. Highlands Act exemptions.**

- (1) Section 30 of the Highlands Act identifies as exempt, specific activities, improvements and development

projects affecting lands within the Highlands Region. Such activities, improvements and projects may be proposed as a component of any type of land use application submitted to the municipality for approval, including but not limited to zoning permit applications, building permit applications, and applications for development (as defined at § **165-41.2E**). Any such qualifying activity, improvement or development project is exempt, with regard specifically to that activity, improvement or development project, from the requirements of the Highlands Act, the Highlands RMP, the NJDEP Preservation Area Rules, and any amendments to the Borough's master plan, development regulations, or other regulations adopted pursuant to the approval of the Borough's petition for plan conformance by the Highlands Council. Such an exemption specifically applies to any Highlands Area land use ordinance adopted by the Borough pursuant to the Highlands Council's approval of the Borough's petition for plan conformance.

- (2) Evidence that a proposed activity, improvement, or development project qualifies as a Highlands Act exemption may be sought in the form of either a state agency exemption determination or a municipal exemption determination as provided at § **165-41.2F(2)(a)** and **(b)** below, respectively.
  - (a) State agency exemption determination. State agency exemption determinations shall consist of either a Highlands applicability determination issued by the NJDEP for a Preservation Area proposal, or a Highlands exemption determination issued by the Highlands Council for a Land Use Area proposal. State agency determinations may be requested with regard to any Highlands Act exemption; however, for applications involving any exemption not identified at § **165-41.2G** below, a state agency exemption determination is required. Any applicant seeking a formal exemption determination for a capital or other project of any state entity or local government unit, or for any other publicly owned or controlled land or facility, also must request a state agency exemption determination.
  - (b) Municipal exemption determination. For an application involving any of the specific exemptions listed in § **165-41.2G** below, the applicant may request a municipal exemption determination. The applicant may rely upon the findings of a municipal exemption determination to the same extent as would apply to an exemption determination issued by the Highlands Council or the NJDEP.
- G. Highlands Act exemptions eligible for municipal determination. Effective as of the date on which the Borough receives written authorization from the Highlands Council to proceed, an applicant may seek a municipal exemption determination for the Highlands Act exemptions listed hereunder.
  - (1) Exemption 1. The construction of a single-family dwelling, for an individual's own use or the use of an immediate family member, on a lot owned by the individual on the date of enactment of the Highlands Act (August 10, 2004) or on a lot for which the individual entered into a binding contract of sale to purchase on or before May 17, 2004.
  - (2) Exemption 2. The construction of a single-family dwelling on a lot in existence on the date of enactment of the Highlands Act (August 10, 2004), provided that the construction does not result in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by 1/4 acre or more.
    - (a) A municipal exemption determination indicating that an applicant qualifies under Highlands Act Exemption 2 shall require approval and filing of a deed notice along with a site plan delineating the total exempt area and the extent of the disturbance recognized in the municipal exemption determination (see § **165-41.2I(6)** below). Municipal exemption determinations in such instances shall not take effect until the applicant has provided proof of filing of the approved deed notice.
  - (3) Exemption 4. The reconstruction of any building or structure for any reason within 125% of the footprint of the lawfully existing impervious surfaces on the site, provided that the reconstruction does not increase the lawfully existing impervious surface by 1/4 acre or more. This exemption shall not apply to the reconstruction of any agricultural or horticultural building or structure for a nonagricultural

or nonhorticultural use.

- (a) For purposes of this section, this exemption shall not be construed to permit multiple 125% footprint expansions, but rather, to permit one or more reconstruction activities cumulatively resulting in a maximum 125% increase in the footprint of the impervious surfaces lawfully existing on the site, provided they do not cumulatively exceed the one-quarter-acre limitation. Any determination of whether the expansion of impervious cover meets the statutory criteria for the exemption must account for the preexisting impervious cover, and for the Preservation Area, such expansion must be contiguous to the location of the existing impervious cover. See *In re August 16, 2007 Determination of NJDEP ex rel. Christ Church*, 414 N.J. Super. 592 (App. Div. 2010), certif. denied, 205 N.J. 16 (2010).
- (b) For Preservation Area determinations, the applicable date of lawful existence shall be August 10, 2004, the date of enactment of the Highlands Act. For Land Use Area determinations, the date of lawful existence shall coincide with the effective date of the municipally adopted Highlands Area Checklist Ordinance (§ **165-41.1**) or Highlands Area Land Use Ordinance, whichever is earlier.
- (4) Exemption 5. Any improvement to a single-family dwelling in existence on the date of enactment of the Highlands Act (August 10, 2004), including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool or septic system.
- (5) Exemption 6. Any improvement, for nonresidential purposes, to a place of worship owned by a nonprofit entity, society or association, or association organized primarily for religious purposes, or a public or private school, or a hospital, in existence on the date of enactment of the Highlands Act (August 10, 2004), including but not limited to new structures, an addition to an existing building or structure, a site improvement, or a sanitary facility.
- (6) Exemption 7. An activity conducted in accordance with an approved woodland management plan pursuant to Section 3 of the Farmland Assessment Act, P.L. 1964, c.48 (N.J.S.A. 54:4-23.3) or a forest stewardship plan approved pursuant to Section 3 of P.L. 2009, c. 256 (the State Park and Forestry Resources Act, N.J.S.A. 13:1L-31), or the normal harvesting of forest products in accordance with a forest management plan or forest stewardship plan approved by the State Forester.
- (7) Exemption 8. The construction or extension of trails with nonimpervious surfaces on publicly owned lands or on privately owned lands where a conservation or recreational use easement has been established.
- H. Exemption designee(s). Municipal exemption determinations regarding Highlands Act exemptions shall be issued by the Borough Administrator or Zoning Officer. The exemption designee(s) shall be authorized to issue municipal exemption determinations on behalf of the Borough, and shall only begin to do so after satisfactory completion of a Highlands Council training class for which the individual(s) has/have received formal certification from the Highlands Council.
  - (1) Updates to training certification. In the event of programmatic changes, updated information, or modifications to procedures, updated training certification may be required of exemption designees in order to maintain qualifications for providing municipal exemption determinations. The Highlands Council will provide training modules on an as-needed basis, to provide base training to new employees, and/or to further the expertise of already-certified individuals. Exemption designees and the municipalities they serve will be advised of any need for upgraded training, which will be provided and funded by the Highlands Council.
  - (2) Interim determinations. For the duration of any period during which the Borough is without a qualified exemption designee(s) due to changes in personnel or other extenuating circumstances, applicants seeking Highlands Act exemption determinations shall be referred to the NJDEP or the Highlands Council, for a state agency determination pursuant to § **165-41.2F(1)** above.

I. Application procedures.

- (1) Municipal exemption applications. Requests for municipal exemption determination shall be submitted on forms provided by the Land Use Department and shall be accompanied by sufficient information and documentary evidence to demonstrate whether the proposed activity, improvement or development project qualifies for the applicable exemption. Required submission materials applicable to each exemption appear at § 165-41.2.M below.
- (2) Completeness determination. The exemption designee shall review the application and all accompanying materials to determine whether sufficient information has been submitted to make a determination on the application. In the event of a finding that the application is incomplete, the exemption designee shall, within 15 calendar days of receipt, issue such findings in writing to the applicant, indicating what information is required to properly consider the application.
- (3) Time for determination. The exemption designee shall issue municipal exemption determinations within 30 calendar days of receipt of a complete application. The exemption designee may consult with the Executive Director (or applicable designee) of the Highlands Council as needed in making any exemption determination, however. In such circumstance, the exemption designee shall seek such assistance within the thirty-day period and shall issue the determination within at least 10 calendar days of receiving the requested guidance. In no case shall failure to meet this date constitute approval of the exemption.
- (4) Determinations. All municipal exemption determinations shall be provided in writing, shall certify to the applicability or inapplicability of the exemption, and shall include a statement of the rationale for the decision. Any municipal exemption determination certifying to the applicability of Highlands Act Exemption Number 2 shall be contingent upon submission of proof of filing of the required deed notice, as set forth at § **165-41.2I(6)**, below.
- (5) Notice of determination required. The exemption designee shall provide copies of all municipal exemption determinations, including a copy of the full application, to the Highlands Council and, for decisions regarding lands in the Highlands Preservation Area, to the NJDEP, in either case, within 10 business days of issuance.
- (6) Deed notice for exemption Number 2. Any municipal exemption determination that certifies to the applicability of Highlands Act exemption Number 2 (§ **165-41.2G(2)** above), shall be issued conditionally, pending fulfillment of the requirement that a deed notice be recorded in the office of the Hunterdon County Clerk indicating the extent of the exemption that has been consumed. The deed notice shall incorporate each of the components listed below, and the applicant shall provide a copy of the filed deed notice to the Highlands Council within five business days of filing.
  - (a) Clear identification of the name(s) and address(es) of the owner(s) in fee of the property;
  - (b) Designated tax block and lot number(s), street address(es), municipality and county of location of the property;
  - (c) Reference to the municipal exemption determination (by date, numbering if applicable) issued and under which the deed notice is being filed;
  - (d) Description of the approved area of ultimate disturbance and the impervious surface area, with verification that these remain below the statutory limits;
  - (e) For properties of one acre or more in area, metes and bounds delineation indicating the portion of the property for which the ultimate disturbance has been authorized;

- (f) Agreement to abide by the ultimate disturbance and impervious surface limits imposed, any furtherance thereof rendering the municipal exemption determination null and void; and
  - (g) Notice that the owner(s) and subsequent owner(s) and lessees shall cause all leases, grants, and other written transfers of interest in the property to contain provisions expressly requiring all holders thereof to take the property subject to the limitations therein set forth.
- J. Appeal of municipal exemption determination. A municipal exemption determination may be appealed by any affected person/entity by filing a notice of appeal within 20 calendar days of issuance or receipt of said determination, whichever is later, specifying the grounds therefor. Appeals must be filed with the NJDEP in the case of any Preservation Area exemption, and with the Highlands Council, in the case of any Land Use Area exemption. All appeals shall be copied to the exemption designee, who shall immediately transmit to the NJDEP or the Highlands Council, as applicable, copies of the notice of appeal, the municipal exemption determination application, and all supplemental materials constituting the record that the exemption designee relied upon in issuing the municipal exemption determination. Where the municipal exemption determination deems an activity, improvement or development project exempt, the filing of an appeal to the NJDEP or the Highlands Council shall stay all proceedings in furtherance of its approval by the municipality.
- K. Effect of certified exemption. Issuance of a municipal exemption determination that certifies to the applicability of a Highlands Act exemption shall recognize the applicant's exemption from the provisions of the RMP, NJDEP Preservation Area rules, and any municipal ordinances and requirements adopted under the authority of the Highlands Act to achieve Highlands Plan conformance. The exemption is restricted solely to the extent of the specified activity, improvement, or development project as described in the language of the Highlands Act exemption, or to any lesser activity, improvement, or development project as proposed and certified through a municipal exemption determination application. Any activity, improvement, or development project, or any part thereof, that is not specifically listed as an exemption or exceeds the limits of an exemption, remains subject to all of the above regulatory programs to the full extent of the respective applicability of each. Issuance of a Highlands exemption determination shall not relieve the applicant from securing all other required federal, state, or local approvals.
- L. Application fees. The application fee for a municipal exemption determination shall be \$100, except for Exemption Number 5, when it is a part of a zoning permit application, for which the general zoning permit fee shall apply.
- M. Submission requirements. All applications shall be accompanied by the municipal exemption determination application form, the applicable fees, and the information listed below, as applicable to the particular exemption or exemption(s) being sought by the applicant. All references to professional preparers indicated herein shall be construed to include any and all qualified individuals licensed, certified, or otherwise eligible and authorized to complete such work, in accordance with the applicable laws and legal requirements of the State of New Jersey, including but not limited to the MLUL and Title 13 of the New Jersey Administrative Code, Law and Public Safety. Where the exemption designee finds that any submission item is not necessary to address the evidentiary requirements that must be satisfied for issuance of an exemption determination, either because alternate items have been provided by the applicant, or the relevant information is readily available through records, maps, or any other documents on file in the offices of the municipality, the exemption designee may waive the applicant's obligation to submit such information.
- (1) Exemption 1.
    - (a) A copy of a deed, closing or settlement statement, title policy, tax record, mortgage statement or any other official document showing that the lot was legally owned by the applicant on or before August 10, 2004, and indicating the lot and block as designated by the municipal tax mapping, the municipality and

county in which the lot is located, and the street address;

- (b) If the applicant did not own the lot, a copy of the binding contract of sale executed by the seller and the applicant on or before May 17, 2004, for the lot on which the house is to be constructed; and
  - (c) A certification by the applicant stating that the single-family dwelling proposed for construction on the lot specified and described therein by tax lot and block, municipality and county of location, and street address, is intended for the applicant's own use or the use of an immediate family member as identified therein by name and relationship to the applicant.
- (2) Exemption 2.
- (a) A copy of the recorded deed or plat showing that the lot was created on or before August 10, 2004, or proof of subdivision approval on or before August 10, 2004;
  - (b) A property survey certified by a licensed New Jersey professional land surveyor indicating the property boundary lines and overall lot size, and showing what structures currently exist on the lot, if any;
  - (c) A parcel plan certified by a licensed New Jersey professional engineer showing all existing and proposed development, including all structures, grading, clearing, impervious surface and disturbance, and including the calculations supporting the claim that impervious surfaces and areas of disturbance are within the limits necessary for Exemption 2; and
  - (d) A metes and bounds description of the area of the lot to be disturbed, limited to less than one acre and a draft conservation restriction or deed notice (pursuant to § **165-41.2I(5)**, above) to cover the balance of the lot.
- (3) Exemption 4.
- (a) A parcel plan certified by a licensed New Jersey professional engineer depicting:
    - [1] All existing property improvements, including all structures, grading, clearing, impervious surfaces and limits of disturbance, lawfully existing on the site as of August 10, 2004, for Preservation Area projects and as of the effective date of the municipal Highlands Area Checklist Ordinance (§ **165-41.1**) or Highlands Area Land Use Ordinance, whichever is earlier; and
    - [2] All proposed development, including all structures, impervious surfaces, clearing limits, and limits of disturbance, including grading; and
  - (b) A copy of any official documentation of the original date of construction of the building or otherwise establishing the lawfulness of existing impervious surfaces.
- (4) Exemption 5.
- (a) A copy of any official documentation proving the single-family dwelling was in existence on August 10, 2004;
  - (b) A description of the proposed improvement; and
  - (c) A certification from the applicant that the property and all improvements will continue to be used for single-family dwelling purposes.
- (5) Exemption 6.
- (a) A copy of any official documentation indicating that the place of worship, public or private school or

hospital was in existence on August 10, 2004;

- (b) For improvements to a place of worship, documentation showing that the entity, society or association, or association organized primarily for religious purposes has nonprofit status;
- (c) A site plan certified by a licensed New Jersey professional engineer depicting:
  - [1] All existing property improvements, including all structures, grading, clearing, impervious surfaces and limits of disturbance, existing on the site on August 10, 2004; and
  - [2] All proposed development, including all structures, impervious surfaces, clearing limits, and limits of disturbance, including grading.
- (6) Exemption 7.
  - (a) For a private landowner with an approved woodland management plan or forest stewardship plan:
    - [1] A copy of the applicant's tax bill showing that the site has farmland assessment tax status under the New Jersey Farmland Assessment Act, N.J.S.A. 54:4-23.1 et seq., if applicable;
    - [2] A brief description of the total area of woodlands that is the subject of the approved woodland management plan or forest stewardship plan;
    - [3] A brief description of the length of time that the area to be managed has been in use for woodland management or forest stewardship plan; and
    - [4] A copy of the approved woodland management plan or forest stewardship plan.
  - (b) For the normal harvesting of forest products in accordance with a forest management plan or forest stewardship plan approved by the State Forester:
    - [1] A brief description of the total area where the normal harvesting of forest products occurs;
    - [2] A brief description of the length of time that the area to be managed has been in use for normal harvesting of forest products; and
    - [3] A copy of a forest management plan or forest stewardship plan approved by the state Forester.
- (7) Exemption 8.
  - (a) A site plan certified by a licensed New Jersey professional engineer showing the proposed trail construction with details, including the location and width of existing and proposed trails and those off-site trails to which they connect, if any;
  - (b) A written description of the nonimpervious materials to be used; and
  - (c) For privately owned property, a copy of a deed for the property and the conservation or recreational use easement on the property.

**§ 165-42 Informal review of concept plan.**

At the request of an applicant, the Land Use Board in its capacity as a Land Use Board, shall grant an informal review of a concept plan for a development for which the applicant intends to prepare and submit an application for development. The applicant shall not be bound by any concept plan for which review is requested, and the Land Use Board shall not be bound by any such review. The concept plan shall be in sufficient detail to allow the Land Use Board to make an informed decision on the merits of the proposed

development. The submission of a concept plan is recommended prior to the filing of a formal application for preliminary subdivision approval or preliminary site plan approval. (The Land Use Board in its capacity as a Board of Adjustment shall not review concept plans).

## Article VII Review Procedure

### § 165-43 General procedures.

- A. Upon receipt of an application, the Administrative Officer of the Land Use Board shall forward the same to the Subdivision and Site Plan Committee and, in addition, shall send a copy to each of the following for report and recommendation:
  - (1) Borough Engineer.
  - (2) Tax Assessor.
  - (3) County Department of Health when review by that agency is required.
  - (4) Environmental Commission.
  - (5) Borough Board of Health.
  - (6) Such other federal, state, county and municipal officials and agencies as directed by the Subdivision and Site Plan Committee.
- B. The Subdivision and Site Plan Committee shall review the application, along with reports required from any officials or agencies, and shall submit its findings and recommendations to the Land Use Board.
- C. Time for action by the Land Use Board.
  - (1) The Land Use Board shall grant or deny the application within the times of submission of a complete application prescribed below or within such further time as may be consented to by the applicant:

### Period of Time for Action by Land Use Board

<b>Type of Application</b>	<b>(days)</b>
Minor subdivision plat	45
Minor site plan	45
Preliminary subdivision plat:	
10 lots or less	45
More than 10 lots	95
Master development plan of a planned development	95

**Period of Time for  
Action by Land Use Board**

<b>Type of Application</b>	<b>(days)</b>
Preliminary planned development plan	95
Preliminary site plan:	
10 acres or less	45
More than 10 acres	95
Final subdivision plat	45
Final planned development plan	45
Final site plan	45

- (2) Failure of the Land Use Board to act within the period prescribed shall constitute approval, and a certificate of the Borough Clerk 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. The applicant shall be notified of the Land Use Board's action within one week of its action.
- D. Whenever review or approval of an application by the County Land Use Board is required, the Land Use Board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Land Use Board or upon approval by the County Land Use Board by its failure to report thereon within the required time period.
- E. Before the Administrative Officer of the Land Use returns any approved application to an applicant, the applicant shall have sufficient copies made to furnish one copy to each of the following:
- (1) Borough Clerk.
  - (2) Borough Engineer.
  - (3) Construction Official and Zoning Officer.
  - (4) Tax Assessor.
  - (5) County Land Use Board.
  - (6) Borough Board of Health.

**§ 165-44 Submission of minor subdivision application.**

- A. A minor subdivision application shall be filed in accordance with Article **VI** above and shall contain all data and information required in § **165-54**, as well as all information indicated on Application Checklist

(Attachment 2) for determining completeness of application.

- B. If the application is classified and approved as a minor subdivision by the Subdivision and Site Plan Committee, the Committee shall, in turn, refer the application to the full Land Use Board for confirmation of its action. If approval as a minor subdivision is confirmed, the plat shall be signed by the Chairman and Secretary of the Land Use Board. One copy of the signed plat shall be returned to the applicant within one week following the Land Use Board meeting at which classification is confirmed. No further Subdivision and Site Plan Committee or Land Use Board approval shall be required. In approving a plat as a minor subdivision or confirming such action, the Subdivision Committee or the Land Use Board, as the case may be, may impose such terms and conditions as are reasonable and within the intent of this chapter, including provision for improvements pursuant to Articles **IX** and **X**.
- C. Classification as a minor subdivision shall expire 190 days from the date of approval unless within such period a plat in conformity with such approval and the provisions of the Map Filing Law, P.L. 1960, c. 141 (N.J.S.A. 46:23-9.9 et seq.), or a deed clearly describing the minor subdivision is filed by the developer with the county recording officer, the Borough Engineer and the Borough Tax Assessor. Any such plat or deed accepted for such filing shall have been signed by the Chairman and Secretary of the Land Use Board. In reviewing the application for minor subdivision, the Land Use Board shall be permitted to accept a plat not in conformity with the Map Filing Act, P.L. 1960, c. 141 (N.J.S.A. 46:23-9.9 et seq.), provided that if the developer chooses to file the minor subdivision as provided herein by plat rather than by deed, such plat shall conform to the provisions of said act.
- D. The Zoning requirements and general terms and conditions, whether conditional or otherwise, upon which the minor subdivision is granted shall not be changed for a period of two years after the date of minor subdivision approval, provided that said minor subdivision shall have been duly recorded as provided in this section.
- E. If the application for a minor subdivision is classified as a major subdivision, the subdivider will be so notified. No further Land Use Board action on the application shall be required, and the subdivider shall follow the procedures contained herein for processing approval of a preliminary and final plat of a major subdivision.
- F. In granting minor subdivision approval, the Land Use Board may condition such approval on terms insuring the provision of on-tract improvements pursuant to Article **IX**.

**§ 165-45 Minor site plan.**

The procedures for minor subdivisions as provided in § **165-54** shall, as applicable, apply to minor site plans. An application for minor site plan approval shall contain all information indicated on Application Checklist (Attachment 2) for determining completeness of application.

**§ 165-46 Preliminary subdivision plat and preliminary site plan.**

- A. Application for approval of a preliminary subdivision plat or a preliminary site plan shall be filed in accordance with Article **IV** and shall contain all information prescribed in § **165-56** or **165-58**, as the case may be, as well as all information indicated on Application Checklist (Attachment 2) for determining completeness of application.
- B. Following report from the Subdivision and Site Plan Committee, if the Land Use Board finds that the application is in substantial compliance with the provisions of this chapter, it shall schedule a hearing on the application, following the procedures in § **165-8**.
- C. If the Land Use Board requires any substantial amendment in the layout of improvements proposed by the developer that have been the subject of the hearing, an amended application shall be submitted and proceeded upon as in the case of the original application. The Land Use Board shall, if the proposed application complies with this chapter, grant preliminary approval.

- D. Preliminary approval shall, except as provided in Subsection **E** of this section, confer upon the applicant the following rights for a three-year period from the date of the preliminary approval:
- (1) That the general terms and conditions on which preliminary approval is granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and off-tract improvements; and, in the case of a site plan, any requirements peculiar to site plan approval pursuant to § **165-62**, 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.
  - (2) That the applicant shall submit for final approval, on or before the expiration date of preliminary approval, the whole, or a section or sections, of the preliminary subdivision plat or site plan, as the case may be, after which time any such approval shall be null and void.
  - (3) That the applicant may apply for and the Land Use Board may grant extensions of such preliminary approval for additional periods of at least one year, but not to exceed a total extension of two years, provided that if the design standards have been revised by ordinance, such revised standards may govern.
  - (4) Any lot that received preliminary subdivision or site plan approval more than three years before the date of adoption of the subject ordinance may apply for final approval within one year of the date of the adoption of the subject ordinance, after which time any such approval shall be null and void. Such application shall be subject to all other requirements of this chapter and the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) during the one-year time period.
- E. In the case of a subdivision of or site plan for an area of 50 acres or more, the Land Use Board may grant the rights referred to in Subsection **D(1)**, **(2)** and **(3)** above for such period of time, longer than three years, as shall be determined by the Land Use Board to be reasonable, taking into consideration the number of dwelling units and nonresidential floor area permissible under preliminary approval, economic conditions and the comprehensiveness of the development. The applicant may apply for thereafter and the Land Use Board may thereafter grant an extension of preliminary approval for such additional period of time as shall be determined by the Land Use Board to be reasonable, taking into consideration the number of dwelling units and nonresidential floor area of the section or sections awaiting final approval, economic conditions and the comprehensiveness of the development, provided that if the design standards have been revised, such revised standards may govern.
- F. Prior to granting approval to a preliminary plat, the applicant shall furnish the Land Use Board with the following certifications:
- (1) Certification from the Board of Health approving the method and type of sewage disposal and water supply.
  - (2) Where water or sewerage service is to be obtained from other than a municipally owned system, certification from the appropriate agency that it has consented to such method of service and copies of all agreements from private utilities undertaking to provide such services if the same are not to be supplied by the applicant.

§ **165-47 Preliminary planned development plan.**

The procedure for review of a preliminary planned development plan shall be the same procedure as for a preliminary subdivision or a preliminary site plan, or both, as the case may be, as prescribed in § **165-46**, according to the nature of the planned development, and approval shall confer upon the applicant the rights referred to in § **165-46D**. An application for approval of a preliminary planned development shall include all

data and information prescribed in § **165-56** or **165-58**, as the case may be, as well as all information indicated on Application Checklist (Attachment 2) for determining completeness of major site plan and subdivision application.

§ 165-48 (**RESERVED**).

§ 165-49 **Improvements; guarantees; inspections; start of construction.**

A. Guarantees required.

- (1) Before filing of final subdivision plats or recording of minor subdivision deeds or as a condition of final site plan approval or as a condition to the issuance of a zoning permit pursuant to N.J.S.A. 40:55D-65, the Borough or approving board shall, for the purposes of assuring the installation and maintenance of certain on- and off-tract improvements require the developer to furnish a performance guarantee(s) and provide for a maintenance guarantee in accordance with the terms of this section.
  - (a) Performance guarantees as used in this section shall mean a performance guarantee required by § **165-49B** below, a temporary certificate of occupancy guarantee required by § **165-49C** below, and a safety and stabilization guarantee as required by § **165-49D** below. A maintenance guarantee as used in this section shall mean a maintenance guarantee required by § **165-49E** below.
  - (b) All performance and maintenance guarantee estimates shall be prepared by the Borough Engineer as required by § **165-49B(1)** and § **165-49E(2)** below. Any adjustment in the amount of a performance or maintenance guarantee shall be approved by resolution of the governing body.
  - (c) The developer shall present two copies of the performance or maintenance guarantee(s) required by § **165-49B** and **165-49E** below to the Borough Clerk for the review and approval of the Borough Attorney as to form and execution.
- (2) At least 10% of the amount of the approved performance guarantee(s) shall be deposited by the developer in cash with the Borough. The remaining 90% may be in cash, irrevocable letter of credit or surety bond. In the event of default, the 10% cash may be first applied to the completion of the requirements and any bidding and legal costs associated therewith, and the remaining 90% cash, letter of credit or surety bond may thereafter be resorted to, if necessary, for the completion of the requirements and any additional bidding and legal costs associated therewith.
  - (a) In the case of surety bonds, the developer shall be the principal and the bond shall be provided by a surety company operating pursuant to a valid certificate of authority issued pursuant to N.J.S.A. 17:17-1 et seq. Proof of such valid certificate of authority shall be furnished to the Borough when the surety bond is submitted.
  - (b) Irrevocable letters of credit shall comply with the "Uniform Customs and Practices for Documentary Credits" (1984 Revision), International Chamber of Commerce, Publication No. 400, and shall be issued or confirmed by a New Jersey banking institution. The Borough shall accept a performance guarantee or maintenance guarantee which is an irrevocable letter of credit if it:
    - [1] Constitutes an unconditional payment obligation of the issuer running solely to the municipality for an express initial period of time in the amount determined;
    - [2] Is issued by a banking or savings institution authorized to do and doing business in this state;
    - [3] Is for a period of time of at least one year; and
    - [4] Permits the municipality to draw upon the letter of credit if the obligor fails to furnish another letter of

credit which complies with the provisions of this section 30 days or more in advance of the expiration date of the letter of credit or such longer period in advance thereof as stated in the letter of credit.

B. Performance guarantees.

- (1) Public improvements. Developer shall furnish a performance guarantee in favor of the Borough in an amount not to exceed 120% of the cost of installation of only those improvements required by an approval or developer's agreement, ordinance or regulation to be dedicated to a public entity, and that have not yet been installed, which cost shall be determined by the Borough Engineer, according to the method of calculation set forth in N.J.S.A. 40:55D-53.4, for the following improvements as shown on the approved plans or plat: streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor's monuments as shown on the final map and required by the Map Filing Law, P.L. 1960, c. 141 (N.J.S.A. 46:23-9.9 et seq.), repealed by Section 2 of P.L. 2011, c.217, or N.J.S.A. 46:26B-1 through N.J.S.A. 46:26B-8, water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements. The Borough Engineer shall prepare an itemized cost estimate of the improvements to be covered by the performance guarantee, which itemized cost estimate shall be appended to each performance guarantee posted by the developer.
- (2) Perimeter buffering. The performance guarantee may also be required to include, at the discretion of the Borough or approving board, a guarantee for the installation of privately owned perimeter buffer landscaping within an improved phase or section of a development as a condition of approval. At the developer's option, a separate performance guarantee may be posted for the privately owned perimeter buffer landscaping.

C. Temporary certificate of occupancy guarantee.

- (1) In the event that a developer shall seek a temporary certificate of occupancy for a development, unit, lot, building or phase of a development, then as a condition of the issuance thereof, the developer shall furnish a separate guarantee, referred to as a temporary certificate of occupancy guarantee in favor of the Borough in an amount equal to 120% of the cost of the terms of the temporary certificate of occupancy and which must be installed or completed as a condition precedent to the issuance of the permanent certificate of occupancy for the development, unit, lot, building or phase of development and which are not covered by an existing performance guarantee.
- (2) Upon posting of a temporary certificate of occupancy guarantee, all sums remaining under a performance guarantee, required pursuant to § **165-49B** above, which relate to the development, unit, lot building or phase of development for which the temporary certificate of occupancy is sought, shall be released.
- (3) The scope and amount of the temporary certificate of occupancy guarantee shall be determined by the Borough Engineer, the zoning officer, or other municipal official designated by ordinance.
- (4) The Borough shall not, at any time, hold more than one guarantee or bond of any type with respect to the same line item.
- (5) The temporary certificate of occupancy guarantee shall be released by the Borough Engineer, the Zoning Officer, or other municipal official designated by ordinance upon the issuance of a permanent certificate of occupancy with regard to the development, unit, lot, building or phase as to which the temporary certificate of occupancy relates.

D. Safety and stabilization guarantee.

- (1) A developer shall furnish to the Borough a safety and stabilization guarantee in favor of the Borough. At

the developer's option, a safety and stabilization guarantee may be furnished either as a separate guarantee or as a line item of the performance guarantee. A safety and stabilization guarantee shall be available to the Borough solely for the purpose of returning property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition. The Borough shall be permitted to access the guarantee when:

- (a) Site disturbance has commenced and, thereafter, all work on the development has ceased for a period of at least 60 consecutive days following such commencement for reasons other than force majeure; and
  - (b) Work has not resumed within 30 days following the provision of written notice by the Borough to the developer of the Borough's intent to claim payment under the guarantee. The Borough shall not provide notice of its intent to claim payment under a safety and stabilization guarantee until a period of at least 60 days has elapsed during which all work on the development has ceased for reasons other than force majeure. The Borough shall provide written notice to a developer by certificated mail or other form of delivery providing evidence of receipt.
- (2) Pursuant to N.J.S.A. 40:55D-53a(1)(d), the amounts to be posted in connection with a safety and stabilization guarantee shall be as follows:
- (a) For a development with bonded improvements in an amount not exceeding \$100,000, shall be \$5,000.
  - (b) For a development with bonded improvements exceeding \$100,000, shall be calculated as a percentage of the bonded improvement costs of the development or phase of development as follows:
    - [1] Five thousand dollars for the first \$100,000 of bonded improvement costs, plus 2.5% of bonded improvement costs in excess of \$100,000 up to \$1,000,000; plus
    - [2] One percent of bonded improvement costs in excess of \$1,000,000.
- (3) The Borough shall release a separate safety and stabilization guarantee to a developer upon the developer's furnishing of a performance guarantee which includes a line item for safety and stabilization in the amount required under this subsection.
- (4) The Borough shall release a safety and stabilization guarantee upon the Borough Engineer's determination that the development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.

E. Maintenance guarantees.

- (1) Prior to the release of a performance guarantee required pursuant to § **165-49B** above, the developer shall post with the Borough a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the improvements which are being released.
- (2) If required, the developer shall post with the Borough, upon the inspection and issuance of final approval of the following private site improvements by the Borough Engineer, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the following private site improvements: stormwater management basins, inflow and water quality structures within the basins, and the outflow pipes and structures of the stormwater management system, if any, which cost shall be determined according to the method of calculation set forth in Section 15 of P.L. 1991, c. 256 (N.J.S.A. 40:55D-53.4).
- (3) The term of the maintenance guarantee shall be for a period not to exceed two years and shall automatically expire at the end of the established term.

F. Improvements owned by other entities. In the event that other governmental agencies or public utilities

automatically will own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the Borough for such utilities or improvements.

- G. Extensions of time for installation of bonded improvements.
- (1) All required bonded improvements shall be completed to the satisfaction of the Borough Engineer within 12 months of the receipt of the initial construction permit.
  - (2) The time allowed for installation of the bonded improvements for which the performance guarantee has been provided may be extended by the governing body by resolution. As a condition or as part of any such extension, the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed 120% of the cost of the installation, which cost shall be determined by the Borough Engineer according to the method of calculations set forth in Section 15 of P.L. 1991, c.256 (N.J.S.A. 40:55D-53.4) as of the time of the passage of the resolution.
- H. Recourse by Borough. If the required bonded improvements are not completed or corrected in accordance with the performance guarantee, the developer 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. Such completion or correction of improvements shall be subject to the public bidding requirements of the Local Public Contracts Law, P.L. 1971, c. 198 (N.J.S.A. 40A:11-1 et seq.).
- I. Substantial completion of improvements; reduction/release of guarantee(s).
- (1) Upon substantial completion of all required street improvements (except for the top course) and appurtenant utility improvements, and the connection of same to the public system, the developer may request of the governing body, in writing, by certified mail addressed in care of the Borough Clerk, that the Borough Engineer prepare, in accordance with the itemized cost estimate prepared by the Borough Engineer and appended to the performance guarantee pursuant to § **165-49B** above, a list of all uncompleted or unsatisfactory completed bonded improvements. If such a request is made, the developer shall send a copy of the request to the Borough Engineer. The request shall indicate which bonded improvements have been completed and which bonded improvements remain uncompleted in the judgment of the developer. Thereupon the Borough Engineer shall inspect all bonded improvements covered by developer's request and shall file a detailed list and report, in writing, with the governing body, and shall simultaneously send a copy thereof to the developer not later than 45 days after receipt of the developer's request.
  - (2) The list prepared by the Borough Engineer shall state, in detail, as to each bonded improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness of each incomplete improvement or the nature and extent of, and remedy for, the unsatisfactory state of each completed bonded improvement determined to be unsatisfactory. The report prepared by the Borough Engineer shall identify each bonded improvement determined to be complete and satisfactory together with a recommendation as to the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory bonded improvement, in accordance with the itemized cost estimate prepared by the Borough Engineer and appended to the performance guarantee pursuant to § **165-49B** above.
  - (3) The governing body, by resolution, shall either approve the bonded improvements determined to be complete and satisfactory by the Borough Engineer, or reject any or all of these bonded improvements upon the establishment in the resolution of cause for rejection, and shall approve and authorize the amount of reduction to be made in the performance guarantee relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the Borough Engineer and appended to the performance guarantee pursuant to § **165-49B** above. This resolution shall be adopted not later than 45

days after receipt of the list and report prepared by the Borough Engineer. Upon adoption of the resolution by the governing body, the developer shall be released from all liability pursuant to its performance guarantee with respect to those approved bonded improvements, except for that portion adequately sufficient to secure completion or correction of the improvements not yet approved; provided that 30% of the amount of the total performance guarantee and safety and stabilization guarantee posted may be retained to ensure completion and acceptability of all improvements. The safety and stabilization guarantee shall be reduced by the same percentage as the performance guarantee is being reduced at the time of each performance guarantee reduction.

- (a) For the purpose of releasing the developer from liability pursuant to its performance guarantee, the amount of the performance guarantee attributable to each approved bonded improvement shall be reduced by the total amount for each such improvement, in accordance with the itemized cost estimate prepared by the Borough Engineer and appended to the performance guarantee pursuant to § **165-49B** above, including any contingency factor applied to the cost of installation. If the sum of the approved bonded improvements would exceed 70% of the total amount of the performance guarantee, then the Borough may retain 30% of the amount of the total performance guarantee and safety and stabilization guarantee to ensure completion and acceptability of bonded improvements, as provided above, except that any amount of the performance guarantee attributable to bonded improvements for which a temporary certificate of occupancy guarantee has been posted shall be released from the performance guarantee even if such release would reduce the amount held by the Borough below 30%.
- (4) If the Borough Engineer fails to send or provide the list and report as requested by the developer pursuant to § **165-49I(1)** above within 45 days from receipt of the request, the developer may apply to the court in a summary manner for an order compelling the Borough Engineer to provide the list and report within a stated time and the cost of apply to the court, including reasonable attorney's fees may be awarded to the prevailing party.
- (5) If the governing body fails to approve or reject the bonded improvements determined by the Borough Engineer to be complete and satisfactory or reduce the performance guarantee for the complete and satisfactory improvements within 45 days from the receipt of the Borough Engineer's list and report, the developer may apply to the court in a summary manner for an order compelling, within a stated time, approval of the complete and satisfactory improvements and approval of a reduction in the performance guarantee for the approvable complete and satisfactory improvements in accordance with the itemized cost estimate prepared by the Borough Engineer and appended to the performance guarantee pursuant to § **165-49B** above; and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.
- (6) In the event that the developer has made a cash deposit with the Borough or approving authority as part of the performance guarantee, then any partial reduction granted in the performance guarantee pursuant to this subsection shall be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee, provided that if the developer has furnished a safety and stabilization guarantee, the Borough may retain cash equal to the amount of the remaining safety and stabilization guarantee.
- (7) If any portion of the required bonded improvements is rejected, the approving authority may require the developer to complete or correct such improvements and, upon completion or correction, the same procedure of notification, as set forth in this section, shall be followed.
- (8) Irrevocable letters of credit and bonds, if any, shall be released first; cash shall be released last.
- (9) Nothing herein shall be construed to limit the right of the developer to contest by legal proceedings any determination of the governing body or the Borough Engineer.

J. Inspections.

- (1) The developer shall reimburse the municipality for all reasonable inspection fees paid to the Borough Engineer for the foregoing inspection of improvements; provided that the municipality may require of the developer a deposit for the inspection fees in an amount not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of improvements. For those developments for which the reasonably anticipated fees are less than \$10,000, fees may, at the option of the developer, be paid in two installments. The initial amount deposited by a developer shall be 50% of the reasonably anticipated fees. When the balance on deposit drops to 10% 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 50% of the anticipated inspection fees.
- (2) For those developments for which the reasonably anticipated fees are \$10,000 or greater, fees may, at the option of the developer, be paid in four installments. The initial amount deposited by a developer shall be 25% of the reasonably anticipated fees. When the balance on deposit drops to 10% 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 make additional deposits of 25% of the reasonably anticipated fees. The Borough Engineer shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit.
  - (a) Failure of the developer to deposit the additional funds in escrow may subject the developer to a stop-work order and/or suspension of construction permits.
- (3) Any improvement installed contrary to the approved plan(s) or plat(s) shall constitute just cause to void the approval(s).
- (4) Any improvement installed without compliance with § **165-49J(3)** above shall constitute just cause for:
  - (a) Removal of the uninspected improvement;
  - (b) The payment by the developer of any costs for material testing;
  - (c) The restoration by the developer of any improvements disturbed during any material testing; and/or
  - (d) The issuance of a stop-work order by the Borough Engineer pending the resolution of any dispute.
- (5) Inspection by the Borough of the installation of improvements and utilities shall not operate to subject the Borough of Lebanon to liability for claims, suits or liability of any kind that may at any time arise because of defects or negligence during construction or at any time thereafter; it being recognized that the responsibility to maintain safe conditions at all times during construction and to provide proper utilities and improvements is upon the owner and or their contractor, if any.
- (6) In the event that final approval is by stages or sections of development pursuant to N.J.S.A. 40:55D-38, the provisions of this section shall be applied by stage or section.
- (7) To the extent that any of the improvements have been dedicated to the Borough on the subdivision plat or site plan, the governing body shall be deemed, upon the release of any performance guarantee required pursuant to § **165-49B** above, to accept dedication for public use of streets or roads and any other improvements made thereon according to site plans and subdivision plats approved by the approving authority, provided that such improvements have been inspected and have received final approval by the Borough Engineer.
  - (a) Prior to such acceptance, the developer shall also provide an affidavit stating that there are no liens or other legal encumbrances on any of the improvements or utilities proposed to be dedicated to the Borough.

- (b) Notwithstanding anything to the contrary herein, nothing shall prohibit the Borough from formally accepting such improvements via ordinance in accordance with N.J.S.A. 40A:12-5 et seq.
- (8) The approval of any application for development by the Borough shall in no way be construed as acceptance of any street or drainage system, or any other improvement, nor shall such approval obligate the Borough in any way to exercise jurisdiction over such street or drainage system or other improvement.
- (9) No improvement shall be accepted by the Borough unless and until all of the following conditions have been met:
  - (a) The Borough Engineer shall have certified, in writing, that the improvements are completed and that they comply with the requirements of this chapter; and
  - (b) The owner shall have filed with the governing body a maintenance guarantee in accordance with § **165-49E** above. The requirements for a maintenance guarantee may be waived by the governing body only if the Borough Engineer has certified that the improvements have been in continuous use for not less than two years from the date the Borough Engineer certified completion of such improvements and that during this period the owner has maintained the improvements in a satisfactory manner.
- K. Successor developers/owners. If the property or any part of same is sold or otherwise conveyed to a successor developer prior to the completion and acceptance of all improvements, an assignment of developer's agreement, and new performance, maintenance or other guarantees shall be required from the new owner or successor developer. Upon the transfer of ownership of property that is the subject of a construction permit, and prior to the beginning or continuing work authorized by the construction permit, the new owner or successor developer shall file with the Construction Code Office an application for a permit update to notify the Construction Code Office of the name and address of the new owner or successor developer and of all other changes to information previously submitted to the Borough. The Construction Code Office shall not approve the application for a permit update until it receives notification from the governing body or its designee that the new owner or successor developer has furnished adequate replacement performance, maintenance or other guarantees and the assignment of developer's agreement.
- L. Start of construction. No construction shall commence until:
  - (1) The developer has entered into a developer's agreement with the Borough in a form acceptable to the Borough Attorney;
  - (2) The developer has paid all fees required by this chapter;
  - (3) All easements, dedications, conveyances, deed restrictions, licenses, agreements and manuals have been submitted to, reviewed and approved by the appropriate Borough officials.
  - (4) The developer has received all other governmental permitted approvals required by the Board's resolution of memorialization granting subdivision or site plan approval;
  - (5) The developer has satisfied all conditions of approval required by the Board's resolution of memorialization granting subdivision and/or site plan approval and all changes required by the Board to the developer's subdivision and/or site plans have been filed with and approved by the Borough Engineer;
  - (6) The developer's construction plans have been filed with and approved by the Borough Engineer;
  - (7) The developer has held a predevelopment conference with the Borough Engineer and the Hunterdon

County Soil Conservation District for purposes inter alia of agreeing upon the anticipated construction schedule, procedure of construction, and any particular requirements of the Borough Engineer; and

- (8) The developer has furnished the Borough the performance guarantees required by § **165-49B** above.

§ 165-50 **Final subdivision and final site plan.**

- A. Filing. Application for approval of a final subdivision or a final site plan shall be filed in accordance with Article **VI** and shall contain all the information prescribed in § **165-57** or **165-59**, as the case may be, as well as all information indicated on Application Checklist (Attachment 2) for determining completeness of application, as the case may be. Said application shall be filed within the period prescribed in § **165-38** and may be for the whole or a section or sections of the preliminary division or site plan, as the case may be.
- B. Following the report from the Subdivision and Site Plan Committee, if the Land Use Board finds that the application is in substantial compliance with the provisions of this chapter, it shall schedule a hearing on the application, following the procedures in § **165-8**.
- C. If the Land Use Board requires any substantial amendment in the layout of improvements proposed by the developer that have been the subject of the hearing, an amended application shall be submitted and proceeded upon as in the case of the original application. The Land Use Board shall, if the proposed application complies with this chapter, together with any conditions imposed by the Board, grant final approval.
- D. Prior to granting approval to a final subdivision, the following conditions shall be met:
- (1) In a development served by public water, hydrants are to be located and fire flows are to be such that they meet the minimum standards of the Insurance Services Office of New Jersey, and certification to that effect from that agency shall be submitted.
  - (2) Domestic water supplies for each house shall have a residual pressure in the water main in front of the dwelling of not less than 30 pounds per square inch. Certification to that effect from either the serving utility or the Insurance Services Office of New Jersey shall be submitted.
- E. Effect of final approval.
- (1) The zoning requirements applicable to the preliminary approval first granted and all other rights conferred upon the developer pursuant to § **165-46D(1)**, whether conditionally or otherwise, shall not be changed for a period of two years after the date of final approval, provided that, in the case of major subdivision, the rights conferred by this section shall expire if the plat has not been duly recorded within the time period provided in Subsection **E** hereof. If the developer has followed the standards prescribed for final approval and, in the case of a subdivision, has duly recorded the plat as required in Subsection **F**, the Land Use Board may extend such period of protection for extensions of one year, but not to exceed three extensions. Notwithstanding any other provisions of this chapter, the granting of final approval terminates the time period of preliminary approval pursuant to § **165-46D** for the section granted final approval.
  - (2) In the case of a subdivision or site plan for a planned unit development or residential cluster of 50 acres or more or conventional subdivision or site plan for 150 acres or more, the Land Use Board may grant the rights referred to in Subsection **D(1)** of this section for such period of time longer than two years as shall be determined by the Land Use Board to be reasonable, taking into consideration the number of dwelling units and nonresidential floor area permissible under final approval, economic conditions and the comprehensiveness of the development. The developer may apply for thereafter, and the Land Use Board may thereafter grant, an extension of final approval for such additional period of time as shall be determined by the Land Use Board to be reasonable, taking into consideration the number of dwelling

units and nonresidential floor area permissible under final approval, the number of dwelling units and nonresidential floor area remaining to be developed, economic conditions and the comprehensiveness of the development.

F. Recording of final plat.

- (1) Final approval of a major subdivision shall expire 95 days from the date of signing of the plat unless within such period the plat shall have been duly filed by the developer with the county recording officer. The Land Use Board may, for good cause shown, extend the period for recording for an additional period not to exceed 190 days from the date of signing of the plat.
- (2) No subdivision plat shall be accepted for filing by the county recording officer until it has been approved by the Land Use Board as indicated on the instrument by the signatures of the Chairman and Secretary of the Land Use Board or a certificate has been issued pursuant to P.L. 1975, c. 291. The signatures of the Chairman and Secretary of the Land Use Board shall not be affixed until the developer has posted the guaranties required pursuant to § 165-46. If the county recording officer records any plat without such approval, such recording shall be deemed null and void.

G. Filing and return of prints. After final approval, one translucent tracing and one cloth print shall be filed with the Borough Clerk. The original tracing and one cloth print shall be returned to the subdivider.

H. No construction permit shall be issued until final subdivision approval by the Land Use Board of the final plat and said plat has been properly filed with the County Clerk within the time or extended time required by Subsection F of this section. Proof of the filing shall be submitted to the Land Use Board Secretary prior to issuance of a building permit.

I. Construction permits for site plans. No construction permit in connection with a site plan shall be issued prior to final site plan approval. No certificate of occupancy in connection with a site plan shall be issued until final site plan approval is granted by the approving authority.

J. Temporary certificate of occupancy. The Construction Official may grant a temporary certificate of occupancy in accordance with the provisions of the Uniform Construction Code, specifically N.J.A.C. 5:23-2.23 and 5:23-2.24.

K. Certificates showing approval.

- (1) 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 years preceding the effective date of this chapter, may apply in writing to the Administrative Officer of the Land Use 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.
- (2) The Administrative Officer of the Land Use shall make and issue such certificate within 15 days after the receipt of such written application and the fees therefor. Said Clerk 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 the official office.
- (3) Each such certificate shall be designated a "certificate as to approval of subdivision of land" and shall certify:
  - (a) Whether there exists in said municipality a duly established Land Use Board and whether there is an ordinance controlling subdivision of land adopted under the authority of this Act.

- (b) Whether the subdivision, as it relates to the land shown in said 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.
- (c) Whether such subdivision, if the same has not been approved, is statutorily exempt from the requirement of approval as provided in this chapter.

§ 165-51 **Final planned unit development.**

The procedure for review of a final planned development plan shall be the same procedure as for a final subdivision or site plan, or both, as the case may be, as prescribed above, according to the nature of the planned development. An application for approval of a final planned development plan shall include all information indicated on Application Checklist (Attachment 2) for determining completeness of a final major subdivision and final major site plan application.

§ 165-52 **General development plans.**

A. General development plans, submission and time for decision.

- (1) Submission. Any developer of a parcel of land greater than 100 acres in size for which the developer is seeking approval of a planned development pursuant to P.L. 1975, c. 291 (N.J.S.A. 40:55D-1 et seq.) may submit a general development plan to the Land Use Board prior to the granting of preliminary approval of that development by the Land Use Board pursuant to Section 34 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-46) or Section 36 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-48).
- (2) Time for decision. The Land Use Board shall grant or deny general development plan approval within 95 days after submission of a complete application to the administrative officer, or within such further time as may be consented to by the applicant. Failure of the Land Use Board to act within the period prescribed shall constitute general development plan approval of the planned development.

B. Contents of the general development plan.

- (1) The general development plan shall set forth the permitted number of dwelling units, the amount of nonresidential floor space, the gross residential density, and the nonresidential floor area ratio for the planned development, in its entirety, according to a schedule which sets forth the timing of the various sections of the development in a chronological sequence of events as described in Subsection **B(3)(k)** below.
- (2) The planned development shall be developed in accordance with the general development plan approved by the Land Use Board, notwithstanding any provisions of P.L. 1975, c. 291 (N.J.S.A. 40:55D-1 et seq.), or an ordinance or regulations adopted pursuant thereto after the effective date of the approval.
- (3) A general development plan shall include, but is not limited to, the following:
  - (a) A general land use plan at a scale of not less than one inch equals 100 feet or such other scale permitting the entire site to be shown on one sheet. Enlargement of portions of the plan may be submitted on separate sheets of the same size. The plan shall indicate the tract area and general locations of the land uses to be included in the planned development. The total number of dwelling units and amount of nonresidential floor area to be provided and proposed land area to be devoted to residential and nonresidential uses to be included in the planned development shall be set forth, and the land area to be occupied by each proposed use shall be estimated. The gross density and intensity of use of the entire planned development shall be set forth, and a residential density and a nonresidential floor area ratio

shall be provided.

- (b) A circulation plan showing the general location and types of transportation facilities, including a general description of proposed improvements for pedestrian access, within the planned development and any proposed improvements to the existing transportation system outside the planned development. The circulation plan shall be accompanied by a traffic impact report and the applicant shall be responsible for off-site traffic improvements in accordance with N.J.S.A. 40:55D-42 and municipal ordinances that govern same.
- (c) An open space plan showing the proposed land area and general location of parks and any other land area to be set aside for conservation and recreational purposes and a general description of improvements proposed to be made thereon, including a plan for the operation and maintenance of parks and recreational lands. The open space plan shall be accompanied by a timing schedule evidencing when open space areas will be set aside and when construction of recreational amenities will commence and be completed.
- (d) A utility plan showing the need for and showing the proposed location of sewage and water lines, any drainage facilities necessitated by the physical characteristics of the site, proposed methods for handling solid waste disposal, and a plan for the operation and maintenance of proposed utilities.
- (e) A stormwater management plan setting forth the proposed method of controlling and managing stormwater on the site and off site (if applicable).
- (f) An environmental inventory and assessment in accordance with the Borough's environmental impact statement requirements (§ **165-72**), including a general description of the vegetation, soils, topography, geology, surface hydrology, climate, and cultural resources of the site, existing or man-made structures or features and the probable impact of the development on the environmental attributes on the site.
- (g) A community facility plan indicating the scope and type of supporting community facilities which may include, but not be limited to educational, or cultural facilities, historic sites, libraries, hospitals, firehouses, municipal buildings, and police stations.
- (h) A housing plan outlining the number of housing units to be provided and the extent to which any housing obligation assigned to the municipality pursuant to P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.) will be fulfilled by the development.
- (i) A local service plan indicating those public services which the applicant proposes to provide and which may include, but not be limited to, water, sewer, cable, solid waste disposal, including separation and recycling of recyclable materials. The plan shall also indicate anticipated ownership and responsibilities for these facilities.
- (j) A fiscal report describing the anticipated demand on municipal services to be generated by the planned development and any other financial impacts to be faced by the municipality or school district as a result of completion of the planned development. The fiscal report shall also include a projection of property tax revenues which will accrue to the county, municipality and school district according to the timing schedules provided under Subsection **B(3)(k)** below, and following completion of the planned development in its entirety.
- (k) A proposed development schedule in the case of a planned development where construction is contemplated over a period of years, including any terms or conditions which are intended to protect the interests of the public and of the residents who occupy any section of the planned development prior to the completion of the project in its entirety. The development schedule referred to herein need not be a schedule of specific dates but can be a series of sequential events that provides for a logical progression of the build-out and completion of the project in coordination with any on-site and off-site

improvements required by the Land Use Board of the municipality.

- (1) A municipal development agreement, which means a proposed written agreement between the municipality and the applicant relating to the planned development.

C. Terms and duration of approval.

- (1) The term and effect of the general development plan approval shall be determined by the Land Use Board using the guidelines set forth in Subsection C(2) below, except that the term of the effect of the approval shall not exceed 20 years from the date upon which the developer receives final approval of the first section of the planned development pursuant to P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.);
- (2) In making its determination regarding the duration of the effect of approval of the development plan, the Land Use Board shall consider the number of dwelling units or amount of nonresidential floor area to be constructed, prevailing economic conditions, the timing schedule to be followed in completing the development and the likelihood of its fulfillment, the developer's capacity of completing the proposed development, and the contents of the general development plan and any conditions which the Land Use Board attaches to the approval thereof. However, the Land Use Board, in establishing the timing schedule pursuant to § 165-52B(1)(k) and the municipality in negotiating the development agreement pursuant to § 165-52B(1)(l) hereof, may allow for application for preliminary approval for section(s) of the planned development subsequent to the five year limitation of N.J.S.A. 40:55D-45.7(b). The municipality shall not have cause to terminate the general development plan approval as long as the timing schedule and the development agreement allowing section by section preliminary approvals subsequent to the five-year period are being met.

D. Modification of proposed development schedule.

- (1) In the event that the developer seeks to modify the proposed development schedule, such modification shall require the approval of the Land Use Board. The Land Use Board shall, in deciding whether or not to grant approval of the modification, take into consideration prevailing economic and market conditions, anticipated and actual needs for residential units, and nonresidential space within the municipality and the region, and the availability and capacity of public facilities to accommodate the proposed development.
- (2) The developer shall gain the prior approval of the Land Use Board if, after approval of the general development plan, the developer wishes to make any variation in the location of land uses within the planned development or to increase the density of residential development or the floor area of nonresidential development in any section of the planned development; provided, however, that the Land Use Board, in approving the location of land uses, density, and floor area ratio in any section, may allow reasonable variations from the development plan within specific ranges incorporated in the approved development plan which changes are in accordance with the Zoning Ordinance and do not adversely affect the proposed infrastructure or other basic elements of the development plan.

E. Amendments, revisions, and allowable reductions.

- (1) Except as provided in Subsection E(2) below, once a general development plan has been approved by the Land Use Board, it may be amended or revised by the Land Use Board upon application of the developer.
- (2) A developer, without violating the terms of the general development plan approval granted by the Land Use Board, may, in undertaking any section of the planned development, reduce the number of residential units or amounts of nonresidential floor space in the section in question by no more than 15%; provided, however, that a developer may not reduce the number of residential units to be provided pursuant to P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.) without prior municipal approval.

F. Notice of completion; Nonfulfillment, termination of approval.

- (1) Upon the completion of each section of the development as set forth in the approved general development plan, the developer shall notify the administrative officer of the municipality, by certified mail, as evidence that the developer is fulfilling their obligations under the approved plan. For purposes of this section, "completion" of any section of the development means that the developer has acquired a certificate of occupancy for every residential unit or every nonresidential structure as set forth in the approved general development plan and pursuant to Section 15 of P.L. 1975, c. 217 (N.J.S.A. 52:27D-133). If the municipality does not receive such notification at the completion of any section of the development, the municipality shall notify the developer, by certified mail, in order to determine whether or not the terms of the approved plan are being complied with.
  - (2) If the developer does not complete any section of the development within the time required in the Land Use Board's approval of the general development plan, or if at any time the municipality has cause to believe that the developer is not fulfilling their obligations pursuant to the approved plan, the municipality shall notify the developer, by certified mail, and the developer shall have 10 days within which to give evidence that he is fulfilling their obligations pursuant to the approved plan. The municipality shall thereafter conduct a hearing to determine whether or not the developer is in violation of the approved plan. If, after such a hearing, the municipality finds good cause to terminate the approval, it shall provide written notice of same to the developer and the approved plan shall be terminated 30 days thereafter.
  - (3) In the event that a developer who has a general development plan approval does not apply for preliminary approval for the planned development which is the subject of the general development plan approval within the time provided in the developer's agreement or within five years of the date upon which the general development plan has been approved by the Land Use Board (whichever is later), the municipality shall have cause to terminate the approval, unless an extension is agreed upon by the mutual consent of the applicant and the municipality.
- G. Termination of approval upon completion. In the event that a development plan is completed before the end of the term of approval, the approval shall terminate upon the completion of the development. For purposes of this section, a development shall be considered complete on the date upon which certificate of occupancy has been issued for the final residential or nonresidential structure in the last section of the development in accordance with the timing schedule set forth in the approved general development plan and the developer has fulfilled all of their obligations pursuant to the approval.

§ 165-53 **Procedure for tenancy review.**

- A. The Zoning Officer is the appropriate administrative official to serve as the lead official in the review of proposed uses for compliance with the conditions of site plan approval and the ordinance.
- B. Prior to the issuance by the Construction Official of a building permit for interior finishing or a continuing certificate of occupancy, which is required, the applicant shall submit to the Construction Official a statement of zoning approval from the Zoning Officer indicating that the proposed use is consistent with the conditions of site plan approval and the ordinance and that additional site plan review is not required.
- C. The applicant shall submit four copies of the information required in § 165-53E to the Zoning Officer. The Zoning Officer may refer the application to the Borough's engineer, planner, and/or wastewater consultant, for consultation in making a determination as to the consistency of the proposal with the Zoning Ordinance and approval. Additional information may be required if it is deemed essential to making a determination of zoning approval. The Zoning Officer shall make a determination within 15 days of the receipt of a completed application containing the information required in § 165-53E.
- D. If the Zoning Officer determines that the proposed use is not consistent with the Zoning Ordinance and

approval, then the applicant shall be so notified in writing, with the reason(s) for disapproval noted. The applicant may then seek other administrative remedies, including application to the Land Use Board for amended site plan approval or application for an interpretation or variance.

- E. The applicant shall submit a building plan showing the location of the proposed use, along with the following information:
- (1) Name, address, and telephone number of property owner, applicant and proposed tenant.
  - (2) Block and lot number of the proposed use.
  - (3) Description of proposed use, including square footage devoted to differing uses (office, manufacturing, etc.), and an identification of the ordinance section and/or approval condition with which the proposed use complies.
  - (4) Existing use, if any, including square footage devoted to differing uses.
  - (5) Description of raw materials or original materials from which products are to be manufactured.
  - (6) Description of proposed machinery operation, products, by-products, and processes to be contained on the site.
  - (7) Estimate of daily water consumption, and the volume and nature of sewage, waste and water to be disposed of and descriptions of water supply and sewage treatment facilities.
  - (8) Statement of the anticipated number of shifts and number of employees per shift.
  - (9) Requirements for parking and loading areas, in accordance with ordinance and approval.
- F. The Zoning Officer and Land Use Board shall maintain a file for each site plan approval involving tenancy review. One copy of each application referred to in § 165-53C shall be maintained in the file, along with the record of actions taken by the Zoning Officer. Where the Resolution of Approval specified a limit on the type and mix of uses in a project, the file shall include an ongoing accounting of the current mix of uses in a project.

## Article VIII Plat and Plan Details

### § 165-54 **Minor subdivision plat.**

The minor subdivision plat shall be prepared to scale based on Tax Map information or some other similarly accurate base at a scale of not less than one inch equals 100 feet to enable the entire tract to be shown on one sheet. The plat shall be signed and sealed by a licensed New Jersey professional engineer or land surveyor and shall show or include the following information:

- A. The location of that portion which is to be subdivided in relation to the entire tract.
- B. Existing contours at sufficient intervals to determine the general slope and natural drainage of the land and existing natural features, including wooded areas, rock outcrops and swamps within the area to be subdivided and within 200 feet thereof.
- C. The name of the owner of all adjoining property and owners of property directly across the street as disclosed by the most recent municipal tax record. If there is no positive evidence of ownership of any parcel of adjoining property within 200 feet, a certificate will be presented from the custodian of tax records to that effect.

- D. The Tax Map sheet, block and lot numbers.
- E. All streets or roads and streams within 500 feet of the subdivision.
- F. The location of all structures within 100 feet of the property.
- G. The approximate location of existing streets, existing and proposed property lines and approximate lot sizes and areas.
- H. The existence and location of any utility easement which affects the title of the land being subdivided.
- I. Setback, side line and rear yard distances of existing structures.
- J. The name and address of the person preparing the plat, the scale, date of preparation and reference meridian.
- K. Certification from the Tax Collector that all taxes and assessments for local improvements on the property have been paid to date.
- L. The Land Use Board reserves the right to require a feasible sketch plan layout of remaining land not being subdivided if it is deemed necessary.
- M. Zone district boundary lines, if any, on or adjoining the property to be subdivided and a schedule indicating the required minimum lot area, lot width, lot depth and front, rear and side yards of each zone district located on the property.
- N. An environmental impact statement (EIS) when required by § 165-72.
- O. Existing wells and septic systems within 100 feet of all property lines.
- P. Such other information as may be indicated on Application Checklist (Attachment 2) for determining completeness of an application for minor subdivision approval.

**§ 165-55 Minor site plan.**

Where applicable to the proposed use, a minor site plan application shall be accompanied by such information as required in § 165-56 for a preliminary site plan in order to allow the Land Use Board to make an informed decision on the application along with such other information as may be indicated on Application Checklist (Attachment 2) for determining completeness of an application for minor site plan approval.

**§ 165-56 Preliminary plat.**

The preliminary plat shall be designed in accordance with the provisions of §§ 165-70, Subdivisions, and 165-73, Roads and Improvements, of this chapter in strict accord with modern and accepted Land Use techniques and procedures. The preliminary plat shall be drawn by such New Jersey licensed professional person or persons, depending upon the nature of the information to be provided, in accordance with the latest adopted rules and regulations of the state professional boards and shall bear the signature, seal and license number and address of said professional person. The plat shall show or be accompanied by sufficient information to establish the design, arrangement, and dimensions of streets, lots and other planned features as to form, size and location. This information shall form the basis for the general terms and conditions upon which preliminary approval may be granted and shall include:

- A. A key map showing the entire subdivision and its relation to the surrounding areas.

- B. The tract name; Tax Map sheet, block and lot numbers; date; reference meridian; graphic scale; and the following names and addresses, together with consent to file:
- (1) The name and address of the subdivider.
  - (2) The name, address and license number of the person who prepared the map.
  - (3) A certification that the applicant is the owner of the land or their authorized agent or that the owner has given consent under an option agreement, giving names and address of both.
  - (4) A certificate from the Tax Collector that all taxes and assessments for local improvements are paid to date.
- C. Acreage of the tract to be subdivided, to the nearest hundredth of an acre.
- D. Sufficient elevations or contours to determine the general slope and natural drainage of the land and the high and low points of the profiles of all proposed new streets, contours at five-foot intervals for slopes averaging 10% or greater and at two-foot intervals for land of lesser slope.
- E. The location of existing and proposed property lines, streets, existing buildings, watercourses, railroads, bridges, culverts, drainpipes and any natural features, such as wooded areas and rock formations.
- F. Location of all structures within 100 feet of the property.
- G. The total area of each lot and the area within the maximum depth of measurement of each lot in square feet.
- H. The zone district boundary lines, if any, on or adjoining the property to be subdivided and a schedule indicating the required minimum lot area, lot width, lot depth and front, rear and side yards of each zone district located on the property.
- I. The minimum street setback line and side and rear yard setback lines of each lot.
- J. A copy of any proposed protective covenants or deed restrictions applying to the land being subdivided.
- K. A grading plan showing existing and final contours of each lot.
- L. A soil erosion and sediment control plan and surface water management plan, if required, in accordance with all applicable provisions of the Lebanon Borough Soil Erosion and Sediment Control Ordinance and the Lebanon Borough Surface Water Management Ordinance.
- M. Plans, profiles and cross sections of all proposed streets.
- N. Plans and profiles of proposed utility layouts, such as but not limited to sewers, storm drains, water, gas and electricity, showing feasible connections to existing or any proposed utility system, all in accordance with §§ **165-70**, Subdivisions, and **165-73**, Roads and Improvements, of this chapter. When an individual water supply or sewage disposal system, or both, is proposed, the plan for each such system must be approved by the appropriate local, county or state health agency. When a public sewage disposal system is not available, the subdivider shall have a minimum of two percolation tests, together with soil logs for these percolation test holes, made for each proposed lot in the subdivision, the tests to be located in the approximate area where the disposal field is intended to be located. The test holes shall be no closer together than 20 feet nor farther apart than 40 feet. The subdivider shall submit with the preliminary plat the soil log and results of all tests which are conducted, whether passing or failing the statutory requirements. A deep soil log in accordance with P.L. 1954, c. 199, is required for each five lots. The Borough reserves the right to supervise or witness all or any percolation tests which are

conducted, and the subdivider shall notify the County Department of Health at least 48 hours prior to the conducting of any tests. Any subdivision or part thereof which does not meet the requirements of this subsection or other applicable regulations shall not be approved.

- O. Residential cluster details. In the case of a subdivision for a residential cluster, the following details or information shall be submitted:
  - (1) The amount and location of common open space to be provided.
  - (2) The location and description of any common facilities to be provided.
  - (3) A description of the organization to be established for the ownership and maintenance of any common open space and common facilities in accordance with Article **XII**.
- P. An environmental impact statement (EIS) when required by § **165-72**.
- Q. Such other information as may be indicated on Application Checklist (Attachment 2) for determining completeness of an application for preliminary subdivision approval.

§ 165-57 **Final plat.**

- A. The final plat shall be drawn in ink on tracing cloth or equal at a scale of not less than one inch equals 100 feet and in compliance with all provisions of Chapter 141 of the Laws of 1960 (N.J.S.A. 46:23-9.9 et seq.). The final plat shall show or be accompanied by the following:
  - (1) The date, name and location of the subdivision, name of the owner and subdivider, graphic scale, reference meridian and name of the person who prepared the map.
  - (2) Tract boundary lines, right-of-way lines of streets, street names, easements and other rights-of-way, park areas or land to be reserved or dedicated for public use, all lot lines and other site lines, watercourses, with accurate dimensions, including bearings and distances, and curve information consisting of the following minimum data:
    - (a) Central angle.
    - (b) Radii.
    - (c) Arc, and accurate dimensions to the actual street intersections as projected.
  - (3) 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.
  - (4) Each block shall be numbered, and the lots within each block shall be numbered in conformity with the Municipal Tax Map, as determined by the Borough Tax Assessor.
  - (5) Minimum building setback lines on all lots and other sites and side and rear yard setback lines.
  - (6) The location and description of all monuments, whether found, set or to be set.
  - (7) Names of owners of adjoining lands and of the land directly across the street or streets from the property involved.
  - (8) A certification by an engineer or surveyor as to the accuracy of the details on the plat.
  - (9) A certification that the applicant is the agent or owner of the land or that the owner has given consent under an option agreement.

- (10) 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.
  - (11) A certification from the Tax Collector that all taxes and assessments for local improvements on the property have been paid to date.
  - (12) As-built plans and profiles of all roads and utilities. Duplicate tracings and three black or blue-on-white prints shall be filed. One tracing and one print shall be filed with the Borough Clerk, and one tracing and one print shall be forwarded to the Borough Engineer.
  - (13) Lot grading plans. Following final approval but prior to the issuance of a building permit, the applicant shall submit to the Borough Engineer for their approval a separate detailed lot grading plan of each lot, in duplicate, prepared by a licensed professional engineer, showing the existing contour lines of the plot upon which the dwelling structure is to be constructed, final elevations proposed for the corners of the plot, corners and floor level of the structure to be erected thereon, all swales, proposed terraces, sidewalks, steps and driveways, including the slopes thereof and provisions for the proper drainage thereof. Upon receipt of said site plan, the Borough Engineer shall review the plan and determine whether or not it meets the standards set forth in this chapter. Upon making such a determination, the Engineer shall retain one copy and forward one copy of the site plan to the Construction Official.
  - (14) A letter containing a list of all items to be covered by a performance guaranty (cash or certified check), the quantities of each item, the cost of each item, utilizing prevailing unit prices common to the area, and the total amount of all items.
  - (15) A letter containing a list of all items to be covered by the maintenance guaranty.
  - (16) A letter from the Borough Engineer stating that the required improvements have been installed to conform with satisfaction and in accordance with applicable Borough specifications and that the performance guaranty is adequate to cover the cost of remaining improvements.
  - (17) A letter from the applicant's engineer stating that the final plat conforms to the preliminary plat as submitted and approved, except as provided in Subsection **B** below.
  - (18) Residential cluster details. In the case of a subdivision for a residential cluster, the following details or information shall be submitted:
    - (a) The amount and location of common open space to be provided.
    - (b) The location and description of any common facilities to be provided.
    - (c) A description of the organization to be established for the ownership and maintenance of any common open space and common facilities in accordance with Article **XII**.
  - (19) Such other information as may be indicated on Application Checklist (Attachment 2) for determining completeness of an application for final subdivision approval.
- B. Deviations from preliminary plat.** The final plat shall conform to the preliminary plat as approved by the Land Use Board, and any change from the approved plan shall require resubmission and reapproval in accordance with § **165-46**.

**§ 165-58 Preliminary site plan.**

- A.** The preliminary site plan shall be drawn at a scale of not more than 100 feet to the inch and shall include such details as may be necessary to properly evaluate the application and determine compliance with this chapter. The preliminary site plan shall be drawn by such New Jersey licensed professional

person or persons, depending upon the nature of the information to be provided, in accordance with the latest adopted rules and regulations of the state professional boards and shall bear the signature, seal and license number and address of said professional person. Where applicable to the proposed use or construction, the following information shall be clearly shown:

- (1) The date, name and location of the site, name of the owner, graphic scale and reference meridian.
- (2) The area of the lot and all lot line dimensions.
- (3) The location of all existing watercourses, wooded areas, easements, rights-of-way, streets, roads, highways, freeways, railroads, canals, rivers, buildings, structures, existing and proposed contours at two-foot intervals and any other feature directly on the property or beyond the property if such feature has an effect upon the use of said property.
- (4) The location, use and ground floor area of all existing and proposed buildings, with building setback, side line and rear yard distances.
- (5) Zone district boundary lines, if any, on or adjoining the property to be subdivided and a schedule indicating the required minimum lot area, lot width, lot depth and front, rear and side yards of each zone district located on the property.
- (6) Elevations at the corners of all proposed buildings and paved areas and at property corners if new buildings or paved areas are proposed.
- (7) The location and widths of proposed streets servicing the site plan.
- (8) Specifications for, and location of, proposed surface paving and curbing.
- (9) Location of all structures within 100 feet of the property.
- (10) The location and capacity of proposed off-street parking areas and loading and unloading facilities. The site plan must also show the calculation of the number of parking spaces as required by the Zoning Ordinance.
- (11) Proposed storm drainage and sanitary disposal facilities; specifically, the location, type and size of all existing and proposed catch basins, storm drainage facilities, utilities, plus all required design data supporting the adequacy of the existing or proposed facilities to handle future storm flows. Generally all storm drainage facilities and other utilities should be based on a design using parameters currently used in the area. In addition, the requirements of Article **XXXV**, Stormwater Management, of this chapter shall be met.
- (12) The location and treatment of proposed entrances and exits to public rights-of-way, including the possible utilization of traffic signals, channelization, acceleration and deceleration lanes, additional widths and any other devices necessary to traffic safety and/or convenience.
- (13) The location and identification of proposed open spaces, parks or other recreation areas.
- (14) Proposals for soil erosion and sedimentation control in accordance with the Borough Soil Erosion and Sedimentation Control Ordinance.
- (15) A landscape design plan in accordance with the landscape design plan submission requirements in § **165-77C**.
- (16) The location of sidewalks, walkways, traffic islands and all other areas proposed to be devoted to pedestrian use.

- (17) The nature and location of public and private utilities, including maintenance and solid waste disposal and/or storage facilities. Evidence of written approvals of appropriate Borough and state authorities and written agreements with serving utilities shall accompany the application.
  - (18) The specific location and design of traffic control devices, signs and lighting fixtures. The Land Use Board may require of the applicant expert testimony concerning the adequacy of proposed traffic control devices, signs and lighting fixtures.
  - (19) Preliminary architectural plans for the proposed buildings or structures, indicating typical floor plans, elevations, heights and general design or architectural styling.
  - (20) An estimate prepared by the applicant's engineer of construction costs of all on-site improvements, exclusive of buildings.
  - (21) The Land Use Board may require any additional information which is reasonably necessary to ascertain compliance with the provisions of this chapter.
  - (22) Residential cluster details. In the case of a site plan involving a residential cluster, the following details or information shall be submitted:
    - (a) The amount and location of common open space to be provided.
    - (b) The location and description of any common facilities to be provided.
    - (c) A description of the organization to be established for the ownership and maintenance of any common open space and common facilities in accordance with Article **XII**.
  - (23) An environmental impact statement (EIS) when required by § **165-72**.
  - (24) Such other information as may be indicated on Application Checklist (Attachment 2) for determining completeness of an application for preliminary site plan approval.
- B. If it can be demonstrated that because of peculiar conditions relating to the property or proposed construction, any of the above details are not necessary to properly evaluate the site plan, the Subdivision and Site Plan Committee may modify or waive any of the specific site plan details.
- C. In reviewing the site plan, the Land Use Board shall consider its conformity to the Master Plan and the other codes and ordinances of the Borough. Traffic flow, circulation and parking shall be reviewed to ensure the safety of the public and of the users of the facility and to ensure that there is no unreasonable interference with traffic on surrounding streets. Drainage, conservation features, aesthetics, landscaping and impact on surrounding development as well as on the entire Borough shall be a part of the Land Use Board review. In its review, the Land Use Board may request recommendation from traffic, conservation, recreation or other local, county, state or federal boards or agencies which may have an interest in the particular development for which site plan approval is being sought.
- D. A site plan for any manufacturing or industrial use as permitted in the CI and ROM Zones shall be accompanied by the following:
- (1) A description of any proposed machinery operation, products, by-products and processes to be contained on the site, including a description of raw materials or original materials from which products are to be manufactured.
  - (2) A statement containing estimates of daily water consumption, volume and nature of sewage, waste and water to be disposed of and descriptions of water supply and sewage treatment facilities.

(3) A statement on the anticipated number of shifts and number of employees per shift.

§ 165-59 **Final site plan.**

- A. The final site plan shall be drawn in the same manner as the preliminary site plan and shall clearly show all details prescribed in § **165-58**. In addition, the final site plan shall show or include the following:
- (1) Final contours of the property and for 100 feet outside the property at two-foot intervals when new buildings or parking areas are constructed. If only a portion of the property is being developed, contours need only be shown for said portion and 100 feet beyond.
  - (2) Final elevations at the corners of all buildings and paved areas and at property corners if new buildings or paved areas are constructed.
  - (3) Location signs and outdoor lighting.
  - (4) Such other information as may be indicated on Application Checklist (Attachment 2) for determining completeness of an application for final site plan approval.
- B. Final approval shall not be granted and a certificate of occupancy shall not be issued until all required improvements are installed.
- C. Land Use Board review. The Land Use Board shall review the final site plan in the same manner as the preliminary site plan and shall ascertain that all requirements of this chapter are complied with.
- D. The Borough Engineer may authorize minor variations between the final and preliminary site plans caused by field conditions and shall notify the Land Use Board of any change. All changes shall be shown on a final as-built site plan to be submitted to the Land Use Board before the issuance of a certificate of occupancy.

§ 165-60 (**RESERVED**).

Article IX  
**On-Tract and On-Site Improvements**

§ 165-61 **On-tract installations for subdivisions.**

Prior to the granting of final approval, the applicant shall have installed or furnished performance guaranties as set forth in § **165-49** for the ultimate installation of the improvements described below. All improvements shall be subject to approval and inspection by the Borough Engineer, and or the Lebanon Borough Sewer Authority's (LBSA) Engineer with regard to sanitary sewer facilities and appurtenances who shall be notified by the developer at least two weeks prior to the start of construction of any improvement in accordance with the provisions of § **165-73**, Roads and Improvements, this chapter. No underground installation shall be covered until inspected and approved.

- A. Streets and pavements. The subdivider shall design and construct streets and pavements to the minimum specifications as set forth in §165-73 or such other specifications as may be required by the Borough Engineer, where special circumstances so require. All streets shall further be designed and constructed in accordance with the schedule to Article **XI**.
- B. Curbs and sidewalks. The subdivider shall construct curbs and sidewalks, when required by the Land Use Board, in accordance within §165-73 or such specifications as may be required by the Borough Engineer where special circumstances so require.
- C. Storm drains and culverts. All streets shall be provided with sufficient catch basins, inlets, storm sewers,

culverts, water-detention basins and other drainage appurtenances for the proper drainage of the area in the light of existing and future conditions. All such facilities shall be constructed in accordance with the standards and requirements set forth in §165-73 or such other specifications as may be required by the Borough Engineer where special circumstances so require. Storm drainage features shall be designed in accordance with Resident Site Improvement Standards (RSIS) if required by the Borough Engineer. In addition, the requirements of Article XXXV, STORMWATER MANAGEMENT shall be met.

- D. Monuments. Monuments shall be of the size and shape required by law and shall be placed in accordance with said statute.
- E. Street name signs. Street name signs shall be placed at all street intersections within the subdivision. Such signs shall be of a type approved by the Borough of Lebanon and shall be placed in accordance with the standards of the Borough of Lebanon. No street shall have a name which will duplicate or so nearly duplicate as to be confused with the name of existing streets. The continuation of an existing street shall have the same name.
- F. Streetlighting. The subdivider shall be responsible for the installation of streetlighting facilities as approved by the Land Use Board and in accordance with the standards of § 165-74.
- G. Topsoil protection. Topsoil which shall be removed in the course of regrading a subdivision shall not be used as spoil or removed from the subdivision site. Such topsoil shall be redistributed so as to provide at least six inches of cover on areas to be used as building sites from which topsoil was removed and shall be stabilized by seeding or planting.
- H. The developer shall install the landscape design in accordance with § 165-77 and as approved by the approving authority. Prior to installation of any plantings on site, the landscape contractor shall meet with the Municipal Landscape Architect.
- I. Sanitary sewers.
  - (1) Where a public sanitary sewer system is reasonably accessible and capacity available, each lot within a subdivision area shall be provided with sewage disposal facilities by the required extension of sewer mains and connections thereto, the costs thereof to be borne by the subdivider. All such installation of sewer mains and connections shall be constructed in accordance with the specifications and requirements of the §165-73 and shall be subject to the approval of the Borough Engineer and by the LBSA Engineer.
  - (2) Where a public sanitary sewer system is not reasonably accessible, the subdivider may be required to install sewer lines and a sanitary sewage disposal plant at its own cost and expense and in accordance with the specifications and requirements of §165-73, and all such installations shall be subject to the approval of the Board of Health, the State Department of Environmental Protection and the LBSA Engineer.
  - (3) Where a public sanitary sewer is not reasonably accessible and where installation of sewer lines and a sanitary sewage disposal plant is not required, in accordance with Subsection I(2) above hereof, the subdivider may be required by the Land Use Board to install within the subdivision a complete sewer pipe system, including provision for connection thereto at each lot, provided that there is reliable information to indicate that connection of the development to a public sanitary sewerage system can be anticipated within a reasonable period of time. Under such circumstances, the subdivider shall be required to install individual sewage disposal systems for each lot at the time improvements are erected thereon. All such individual sewage disposal systems shall be constructed in accordance with the requirements of the State Department of Environmental Protection, and LBSA, and the Borough Board of Health, and all such sewer pipe systems shall be constructed in accordance with the requirements of the Borough and §165-73 and shall be subject to the approval of the Borough and LBSA Engineers. The

Land Use Board may require the installation of said house sewer service connection to the curblin, at which point the same shall be capped.

- J. Percolation tests. Where a sanitary sewer system is not accessible, the subdivider shall furnish to the Land Use Board satisfactory proof that substrata under each lot is sufficient to support a properly functioning individual sewage disposal system conforming to the requirements of the State Department of Environmental Protection and regulations issued thereunder, as well as the ordinances of the Borough of Lebanon, unless said subdivider shall provide individual sewer lines and a sanitary sewage disposal plant as provided in Subsection I.
- K. Water supply. When, in the opinion of the Land Use Board, a public water supply system is accessible for the subdivision, each lot within the subdivision shall be provided with water supplied by said water supply system. All facilities for said system shall be installed pursuant to and in accordance with the provisions of all ordinances pertaining thereto, including the §165-73, under the supervision of the Borough Engineer.
- (1) In the event that a public water supply system is not available to supply the proposed subdivision, the Land Use Board may require construction of a private water supply system in such manner that an adequate supply of potable water will be available to each lot within the subdivision at the time improvements are erected thereon and so that such system can be incorporated into the public supply system when and if it shall become available. The water treatment and distribution system shall be constructed and installed in conformity with applicable ordinances of the Borough of Lebanon, subject to the approval of the Borough Engineer. The adequacy, healthfulness and potability of the private water supply system shall be subject to the approval of the Borough Board of Health and the State Department of Environmental Protection when such approval is required. The developer shall file with the Borough a map of said water supply and distribution system, adequately locating the same.
- (2) All water systems shall be installed in such manner as to ensure adequate pressures and quantities and ample flows for hydrants.
- (3) If a public water supply system is not accessible and if construction of a private water supply is not required, each lot shall be served by an individual driven well constructed in accordance with Department of Environmental Protection and Lebanon Borough well codes. In such case and prior to preliminary approval, the subdivider shall submit evidence that underground potable water is available in sufficient quantity to serve the subdivision.
- L. Fire protection water supplies for fire suppression. Purpose and applicability. In recognition that it may not be entirely possible to ensure complete fire protection to all areas to the Borough, and to provide the Lebanon Volunteer of Fire Company with the minimum fire-fighting capabilities, all subdivisions of three or more new building lots, a minor subdivision of a property subdivided in the past three years which produces a total of three or more new building lots in the three-year period, and major site plans including 1,000 square feet or more of new building construction shall provide for a source of water for fire-fighting purposes pursuant to systems approved by the Lebanon Volunteer Fire Company Fire Chief or their designee, and in accordance with the following criteria:
- (1) Extension of public water for fire-fighting water supply.
- (a) Residential subdivisions and major site plans meeting the applicability standards outlined above shall bring public water, if available, to the site if the site is within 500 feet of a public water source as measured along the street right-of-way or publicly owned easement.
- (b) Fire hydrants shall be installed along the route to a residential subdivision or major site plan in accordance with Subsection L(2) below.

- (c) Residential subdivisions and major site plans located in areas where public water is neither available or required to be provided shall provide a fire-fighting water supply source in accordance with Subsection **L(3)** below.
- (2) In all areas where existing public or private central water supply is available and has been approved by the Borough Fire Chief or their designee for minimum fire-fighting purposes or where an extension of public water supply is required pursuant to Subsection **L(1)** of this section, the following standards shall apply:
  - (a) Fire hydrants shall be supplied by not less than an eight-inch water main.
  - (b) Fire hydrants shall be installed in accordance with applicable codes and as recommended by the Fire Chief, or their designee, and at distances between hydrants not exceeding 800 feet.
  - (c) Fire hydrants located in parking areas shall be protected by barriers that will prevent physical damage from vehicles or blockage of access by parked vehicles.
  - (d) Fire hydrants shall be located within three feet of the curblin of fire lanes, streets or private streets when installed along such accessways in new developments.
  - (e) The entire existing central water supply system and each new hydrant shall have the capacity to provide a minimum flow rate of 1,000 gallons per minute (gpm) at 20 pounds per square inch (psi) residual pressure for a minimum duration of two hours. Hydrants shall be installed in accordance with American National Standards Institute/American Water Works Association (ANSI/AWWA) C 502, "Dry Barrel Fire Hydrants", latest edition; painted as directed by the Borough Fire Official; and tested in accordance with National Fire Protection Association (NFPA) 291, "Recommended Practice for Fire Flow Testing and Marking of Hydrants," latest edition, to ensure compliance with fire flow requirements. Acceptance test data shall be provided to the Lebanon Volunteer Fire Company Fire Chief, or their designee, and the Borough Engineer for review and approval. In areas where public or private central water supply is available, but such water supply does not have the capacity to satisfy the foregoing minimum standards, such central water supply system shall be supplemented with additional measures to satisfy the minimum fire-protection requirements of the Borough. Such additional measures may involve any one or a combination of the following measures: installation of booster pumps with appurtenances, installation of underground water storage tanks with appurtenances, creation of drafting points with appurtenances or such other generally accepted means of increasing fire-fighting capabilities as may be recommended or approved by the Lebanon Volunteer Fire Company Fire Chief or their designee.
- (3) Areas where public water is not available for fire-fighting water supply. For major subdivisions of three or more new lots, a minor subdivision of a property subdivided in the past three years which produces a total of three or more new building lots in the three-year period, or all major site plans involving 1,000 square feet or more of new building construction, where public water is not available, underground storage tanks shall be installed to provide a source of water for fire fighting in accordance with the following minimum standards:
  - (a) In residential districts, underground water storage tanks shall be located and installed so that the furthest point of any dwellings is no farther than 800 linear feet from any such tank, or dry hydrant as measured along the street, either public or private, and the access driveway to the dwelling. In nonresidential districts, underground water storage tanks shall be located not farther than 800 feet from the farthest point of any principal structure. The capacity of every underground water storage tank or tanks shall be based on the proposed number of lots in the subdivision or the number of units in a residential site plan and NFPA 1142 "Water Supplies for Suburban and Rural Firefighting", latest edition, using 75% of the tank capacity. Notwithstanding the above, the minimum capacity of every underground storage tank within a residential zoning district shall be 30,000 usable gallons. Tank capacity for nonresidential developments shall be based upon NFPA 1142 and the degree of hazard of the proposed structures to be

protected.

- (b) The underground storage tank shall be constructed of fiberglass or other noncorrosive material and shall be anchored in place. It shall provide two six-inch suction intake pipes each with a six-inch NST female swivel connection and cap. It shall be located behind the curb, but no less than six feet and no greater than nine feet from the curb face or pavement edge. All connections must be air tight, fire rated for drafting operations and be installed at a height of no more than 36 inches above grade or the maximum height of the suction intake of the fire apparatus, whichever is greater. The total lift shall be no more than 20 feet in elevation when all losses are totaled. Suction pipe shall be protected from vehicular traffic by two bollards. The bollards shall be located so as not to obstruct Lebanon Volunteer Fire Company access to the connection. To facilitate circulation and filling a four-inch pipe located at the tank with two, two-and-one-half-inch female NST swivels, fire rated with threaded caps shall be installed at a maximum height of two feet above grade. The tank shall include a thirty-inch or greater manhole with a locking cover surrounded by a concrete pad at ground level. Venting of the tank shall be provided with an eight-inch minimum diameter pipe located at the tank, the vent is required to permit a minimum flow of 1,000 gpm. The vent must be separate from the water level indicator and constructed so as to prevent materials from easily being dropped into the tank. All piping used with the tank shall be steel or iron type and painted red.
- (c) The underground water storage tank shall provide for drawing water directly from an opening on the top or, if the topography permits, from an attached dry hydrant with sufficient head and size of connecting pipe to permit a flow of 1,000 gpm for 30 minutes. Suitable access for fire-fighting apparatus must be provided to the tank or dry hydrant without blocking the passage of other apparatus equipment. An apron capable of supporting fire apparatus shall be provided in front of the tank, extending past the length of the tank and off the main roadway. The tank must provide a method for determining water level and an alarm system to warn of low levels external to the tank. All underground water storage tanks shall have a well pump installed which has sensors that indicate when the water level is lowered. The well pump shall be wired so as when the pump is running a red light indicating a low level will turn on. Even if the pump breaks down or trips the breaker fuse, the red light will stay on as a sign of trouble. A green light shall be installed to indicate that system power is on. A sign shall be installed to indicate that the Lebanon Volunteer Fire Company shall be contacted when the red light is on. When dry hydrants are used in conjunction with a storage tank, they shall be limited to no more than two elbows and a maximum of two dry hydrants per tank spaced no more than 800 feet apart and a maximum of six feet from the edge of the road. A structure may not be more than 500 feet from the most remote dry hydrant.
- (d) Unless an equivalent alternate fire protection system is authorized by the Land Use and the Borough and the Fire Official, in consultation with the Fire Chief, underground water storage tanks shall be constructed and installed in accordance NFPA 1142 "Water Supplies for Suburban and Rural Fire Fighting" and the following:
  - [1] All tanks shall be installed in accordance with the manufacturer's specifications for installation and shall be provided with all necessary appurtenances and equipment, which shall be readily accessible to fire-fighting equipment. Riser connections shall be capable of producing 1,000 gpm for a minimum of 75% of the tank capacity. Design, location and installation of underground water storage tanks shall be approved by the Boards and Borough Fire Chief in conjunction with the Borough Engineer. Plan reviews, inspection and approvals for installation of the underground water storage tanks shall be in consultation with the Lebanon Volunteer Fire Company and the Borough Engineer.
- (e) The water storage tank location in nonresidential zones shall be delineated "No Stopping or Standing" zones on both sides of the street at each tank location for a distance of 75 feet in each direction from the water outlet device of such tank on both sides of the street. Such delineation shall be appropriately identified by signs meeting the Manual of Uniform Traffic Control Devices, latest edition and design

standards set forth by the New Jersey Department of Transportation. The owner shall be required to give the Borough the right-of-way to enforce these requirements under Title 39 of the New Jersey statutes.

- (f) Any underground water storage tank to be located within 800 feet of a building must be operational in accordance with NFPA 1142 "Water Supplies for Suburban and Rural Fire Fighting" prior to delivery of combustible building materials to the building site.
- (g) The storage tanks must be located just outside the road right-of-way along a proposed property line within a dedicated access easement to the Division of Fire and the Borough. The easement shall be restricted against any grading and must be maintained with no obstruction to the pipes, manholes and appurtenances.
- (h) A minimum ten-year guarantee on the storage tank must be provided to the Borough by the manufacturer prior to performance bond release.
- (4) If approved by the Boards and Borough Fire Chief, or their designee, in consultation with the Borough Engineer, ponds, retention basins, lakes, streams and residential sprinklers systems may serve as equivalent fire-protection systems. NFPA 1142 "Water Supplies for Suburban and Rural Fire Fighting" will apply where the following is not specific:
  - (a) For ponds or retention basins, the minimum capacity to supply an adequate source of water for fire protection is 30,000 gallons in volume excluding the bottom two feet of water in the pond or basin. The minimum capacity must be available throughout the year, even during drought conditions. Suitable access for fire-fighting apparatus must be provided to a dry hydrant or suitable drafting point connected to the pond or basin at all times. Installations and appurtenances shall be subject to the approval of the Fire Chief or their designee.
  - (b) Lakes or streams may be used, subject to the applicant's demonstration that the lake or stream meets the criteria set forth above for ponds.
  - (c) Any residential automatic sprinklers must be installed throughout a house in accordance with NFPA 13D and 13R.
- (5) In all cases where automatic sprinkler systems are required to be installed pursuant to the Uniform Construction Code, N.J.A.C. 5:23-1 et seq., the standards set forth in NFPA 13 shall govern.
- (6) Fire protection during construction shall be in accordance with the International Building Code (IBC), National Fire Protection Association (NFPA) standards, the International Fire Code (IFC) and as outlined below.
  - (a) Lebanon Volunteer Fire Company vehicular access to all structures under construction shall be provided at all times. In areas where ground surfaces are soft or likely to become soft, hard all-weather surface access roads shall be provided.
  - (b) The fire-protection water supply system, including fire hydrants, shall be installed and in service prior to bringing combustible materials to the site.
  - (c) Trash and debris shall be removed from the construction site as often as necessary to maintain a fire-safe construction site.
  - (d) Flammable or combustible liquids shall be stored, handled or used on the construction site in accordance with the applicable provisions of NFPA 30, NFPA 58, and NFPA 395.
- (7) The Occupational Health and Safety Administration (OSHA) "Fire Service Features of Building and Fire Protection Systems" and the 2006 IFC shall be used as a reference for site construction, fire

protection appurtenances and fire lanes. To facilitate access to the roof areas of buildings by fire company ladders, the finished grade, measured out from the point where the exterior wall or foundation of a building meets grade, shall not exceed a slope of 5% for a distance of at least 10 feet.

- (8) The location of all fire protection systems and appurtenances shall be satisfactory to the Borough Fire Chief, or their designee, at the time the development application is pending before the Boards. In all cases where a fire-protection system is required, no construction permit shall be issued for a dwelling or principal structure upon any lot within the subdivision or site plan until, to the extent necessary to afford fire protection to such a dwelling or principal structure, such system is installed and its operability tested and approved; prior to the issuance of an approval from the Fire Sub Code Official for a certificate of occupancy, the fire protection system shall be subject to the approval of the Borough Fire Chief or their designee.
- (9) A developer shall be required to include a provision in all deeds to property purchasers providing a right-of-way to the Borough and the local fire company as may be needed for access to any such fire-protection device. During the period of construction and until the release of the performance bond, the developer will be held responsible for any and all tests and maintenance which may become necessary or as ordered by the Borough Engineer, Fire Sub Code Official and in coordination with the Borough Fire Chief, or their designee, exclusive of hydrants connected to a public water supply. Following the release of the performance bond, the tank, its appurtenances, and the area of required access will become the property of the landowner for commercial properties and/or by a homeowners' association or some similar permanent organization which has the power to raise funds from the properties served. Those owners shall be responsible for annual testing, maintenance and upkeep, including, but not limited to, blockage from natural growth and snow removal. Under the direction of the Borough Fire Chief, their company shall test the system for proper function prior to the issuance of the first construction permit and again prior to the release of the performance bond. The Fire Chief shall review such test records for deficiencies and/or make recommendations regarding the installation.
- (10) Penalties. Failure to comply with any provisions of this section shall be considered as a failure to comply with above ordinance of the Borough. Penalties shall be assessed by the Borough Fire Official in accordance with the provisions of the Uniform Fire Code, N.J.A.C. 5:70-1 et seq.
- M. Electric, telephone and cable antenna television service. Except as otherwise provided in the regulations of the Board of Public Utility Commissioners, in all major subdivisions electric, telephone and cable antenna television facilities shall be installed underground and, where applicable, in accordance with the latest requirements of said Board. Arrangements for such underground installation shall be made with the appropriate utility companies.
- N. Easements. Easements of a width sufficient to allow proper maintenance shall be provided for the installation of all drains, storm drains, pipelines, gas mains, etc. Said easements shall be dedicated to the municipality by approved legal procedure.
- O. Landscape and buffering requirement. See § 165-63K for additional landscape and buffering requirements for subdivisions of five lots or more.

**§ 165-62 On-tract installations for site plans.**

Prior to the granting of final approval, the applicant shall have installed or furnished performance guaranties as set forth in § 165-49 for the ultimate installation of any required public on-tract improvements as the same are described in § 165-61. In addition, the Land Use Board may require the installation of on-site improvements, as described in § 165-63 below, prior to the granting of final approval, which improvements it finds essential, before the issuance of a building permit. All such improvements shall be subject to approval and inspection of the Borough Engineer as provided in § 165-61 above.

§ 165-63 **On-site installations for site plans.**

- A. Pavement. All parking and loading areas, entrance and exit driveways and all road and access drives shall be paved and constructed in accordance with the Schedule of Article **XI** and applicable provisions of § **165-73**, Roads and Improvements, of this chapter.
- B. All sites shall be drained and graded so as to control surface runoff efficiently. Storm drainage shall be connected to existing facilities whenever possible. In addition, the drainage design requirements of the Residential Site Improvement Standards, N.J.A.C. 5:21-1 et seq., shall apply to all nonresidential site plans.
- C. Parking spaces, pedestrian walkways and entrance and exit driveways shall be painted on the finished pavement in traffic paint.
- D. All paved areas shall be bounded by curbing of the type required by the Land Use Board in accordance with the Schedule to Article **XI** and applicable provisions of the §165-73.
- E. Sidewalks shall be constructed where required, in accordance with the Schedule to Article **XI** and applicable provisions of the §165-73 .
- F. Landscape design. The developer shall install the landscape design in accordance with § **165-77** and as approved by the approving authority. Prior to installation of any plantings on site, the landscape contractor shall meet with the Municipal Landscape Architect.
- G. Lighting. Adequate lighting shall be provided for parking lots and shall be designed in accordance with the standards of § **165-74**.
- H. Utilities. All uses shall be provided with adequate water supply and sanitary disposal facilities, all in accordance with applicable local and state requirements.
- I. The Land Use Board may require items of construction such as retaining walls, guardrails, safety fencing, traffic barricades or other devices necessary in the interest of public safety and convenience.

Article X

**Off-Tract Improvement**

§ 165-64 **Cash payment or improvement required.**

Prior to final approval of a subdivision or site plan, the applicant shall have made cash payments in the manner provided below with respect to the installation of any required off-tract improvements, or, at the applicant's option and with the consent of the Borough, the applicant shall have constructed any required off-tract improvement.

- A. Decision to construct. The Land Use Board shall recommend to the governing body when it believes that off-tract improvements are required because of a pending subdivision application. The Land Use Board shall forward to the governing body, together with its recommendation, an estimate of the cost of the off-tract improvements and the amount by which all properties to be serviced thereby, including the applicant's property, shall be benefited therefrom.
- B. Estimate of cost and benefits. If the governing body concurs in the recommendation of the Land Use Board, it shall notify the Land Use Board of its approval of the recommendation and the Land Use Board shall then, with the aid of the Borough Engineer and such other persons as have pertinent information or expertise, calculate:
  - (1) The cost of the improvement; and

- (2) The amount by which all properties to be serviced thereby, including the subdivider's property, will be specially benefited therefrom.
- C. Manner of construction. When those estimates are received, the governing body shall then decide whether the off-tract improvement is to be constructed by:
  - (1) The Borough as a general improvement;
  - (2) The Borough as a local improvement; or
  - (3) The applicant under a formula providing for partial reimbursement by the Borough for benefits to properties other than the subdivision, subject to agreement of the applicant to install the improvement.

**§ 165-65 Determination of special benefits.**

In determining benefits conferred on properties specially benefited by an off-tract improvement, the following formula shall, subject to adjustment for peculiar or exceptional conditions, be used:

- A. The development shall be allocated that percentage of 100 computed by dividing the development land area by the total land area benefited by the off-tract improvement.
- B. The development shall be allotted that percentage of 100 computed by dividing the maximum potential intensity use of the development by the maximum potential intensity of use under existing zoning limitations in the total land area benefited by the off-tract improvement. In the case of subdivision, an estimated number of lots may be used. In the case of site plans, estimated building floor area may be used.
- C. In the case of linear improvements, i.e., roads, curbing, sidewalks, pipes, drains, sewers, drainage easements, etc., the development shall be allotted that percentage of 100 computed by dividing the distance, measured along the course of the off-tract improvement, from the connecting facility to the farthest abutting point of the development by the sum of the distances of all intervening properties, including the applicant's, abutting the off-tract improvement similarly measured.
- D. The sum of Subsections **A** and **B** (and **C** if applicable) shall be divided by two (or three if Subsection **C** is included), to arrive at the percentage which, subject to discretionary adjustment as above stated, shall be the percentage of the total cost of the off-tract improvements which shall be apportioned to the applicant.

**§ 165-66 Payment of allocated costs.**

- A. The estimated costs of the off-tract improvement allocated to the applicant, if deposited in cash, shall be paid by the applicant to the Borough Treasurer, who shall provide a suitable depository therefor, and such funds shall be used only for the off-tract improvements for which they are deposited or improvements serving the same purpose, unless such improvements are not initiated by the Borough within a period of 10 years from the date of payment, after which time said funds so deposited shall be returned.
- B. In the event that the payment by the applicant to the Borough Treasurer provided for herein is less than its share of the actual cost of the off-tract improvements, then it shall be required to pay its appropriate share of the cost thereof.
- C. In the event that the payment by the applicant to the Borough Treasurer provided for above is more than its appropriate share of the actual cost of installation of the off-tract improvements, it or its successor or assigns shall be repaid an amount equal to the difference between the deposit and its share of the actual

cost.

- D. Where a developer pays the amount determined as an evidenced, pro rata share under protest, they shall institute legal action within one year of such payment in order to preserve the right to a judicial determination as to the fairness and reasonableness to such amount.

**§ 165-67 Assessment of properties.**

Upon receipt from the applicant of its allocated share of the costs of the off-tract improvements, the Borough may adopt a local improvement assessment ordinance for the purpose of construction and installation of the off-tract improvements based upon the actual cost thereof. Any portion of the cost of the improvements not defrayed by a deposit by the applicant may be assessed against benefiting property owners by the Borough. Any assessments for benefits conferred made against the applicant or their successors in interest shall be first offset by a pro rata share credit of the allocated costs previously deposited with the Borough Treasurer pertaining thereto. The applicant or their successors in interest shall not be liable for any part of an assessment for such improvements unless the assessment exceeds the pro rata share credit for the deposit, and then only to the extent of the deficiency.

**§ 165-68 Construction by applicant.**

- A. Credit for work performed. In the event that the applicant, with the Borough's consent, decides to install and construct the off-tract improvement, or any portion thereof, the certified cost shall be treated as a credit against any future assessment for that particular off-tract improvement, or portion thereof, constructed by the Borough in the same manner as if the applicant had deposited its apportioned cost with the Borough Treasurer, as provided herein.
- B. Installation of improvements by applicant.
- (1) The Borough may enter into a contract with the applicant, providing for the installation and construction of the off-tract improvements by the applicant upon contribution by the Borough of the remaining unallocated portion of the cost of the off-tract improvement.
  - (2) The portion contributed by the Borough shall be subject to possible certification and assessment as a local improvement against benefiting property owners in the manner provided by law, if applicable.

**Article XI  
Design Standards**

**§ 165-69 RESERVED.**

**§ 165-70 Subdivisions.**

- A. General. The applicant shall observe the following requirements and principles of land subdivision in the design of each subdivision or portion thereof:
- (1) Development pattern. The subdivision plat shall conform to design standards that will encourage good development patterns within the Borough.
  - (2) Conformance to Master Plan and Official Map. Where either or both an Official Map or Master Plan has or have been adopted, the subdivision shall conform to the proposals and conditions shown therein. The streets, drainage rights-of-way, school sites, public parks and playgrounds shown on an officially adopted Master Plan or Official Map shall be considered in the approval of subdivision plats.
- B. Streets.
- (1) The arrangement of streets not shown on the Master Plan or Official Map shall be such as to provide for the appropriate extension of existing streets.

- (2) All streets shall have rights-of-way and pavement widths sufficient to carry anticipated traffic, but in no event shall the right-of-way be less than shown on the Master Plan or Official Map. All streets shall be designed in accordance with the requirements of § 165-73, and in accordance with the Schedule to this Article **XI**.
- (3) Marginal access. In subdivisions that abut arterial streets and such other streets or portions of streets as the Land Use Board may designate on the Master Plan, the Land Use Board may require provision for marginal access roads, reverse frontage lots with buffer strips for planting or other design methods for the purpose of separating through and local traffic.
- (4) Right-of-way width. The right-of-way width shall be at least 50 feet unless a greater width is shown on the Master Plan or Official Map.
- (5) No subdivision showing reserve strips controlling access to streets shall be approved except where the control and disposal of land comprising such strips has been placed in the governing body under conditions approved by the Land Use Board.
- (6) 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 by easement along either one or both sides of said road. If the subdivision is along one side only, 1/2 of the required extra width shall be conveyed by easement to the Borough. Portions of existing streets on which the subdivision fronts shall be improved in accordance with the §165-73 and in accordance with the Schedule to this Article **XI**.
- (7) Grades of arterial and collector streets shall not exceed 8%. Grades on other streets shall not exceed 10%. No street shall have a minimum grade of less than 1% or as approved by the Land Use Board.
- (8) Street intersections shall be at right angles. The block corners at intersections shall be rounded at the property line and have a radius of not less than 25 feet.
- (9) Street jogs with center-line offsets of less than 125 feet shall be prohibited.
- (10) A tangent at least 100 feet long shall be introduced between reverse curves on arterial and collector streets.
- (11) When connecting street lines deflect from each other at any one point by more than 10° and not more than 45°, they shall be connected by a curve with a radius of not less than 100 feet for minor streets and 300 feet for arterial and collector streets.
- (12) All changes in grade shall be connected by vertical curves and shall provide a smooth transition and proper sight distance.
- (13) A dead-end street or cul-de-sac intended to serve one- and two-family dwellings shall not exceed 1,500 feet in length nor serve more than 24 lots. Dead-end streets shall have a turnaround at the end with a radius of not less than 63 feet to the right-of-way line and tangent whenever possible to the right side of the street. If a dead-end street is of a temporary nature, a similar turnaround shall be provided and provisions made for future extension of the street and reversion of the excess right-of-way to the adjoining properties.
- (14) No street shall have a name which will duplicate or so nearly duplicate as to be confused with the names of existing streets.

C. Blocks.

- (1) 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 regulations and to provide for convenient access, circulation control and safety of street traffic.

- (2) Pedestrian crosswalks may be required in blocks in locations deemed necessary by the Land Use Board. Such walkways shall be designed to meet NJDOT, ADA and MUTCD standards.
- (3) For commercial, group housing or industrial use, block size shall be sufficient to meet all area and yard requirements for such use.

D. Lots.

- (1) Dimensions. Lot dimensions and area shall be not less than the requirements of the zoning regulations.
- (2) Side lines. Insofar as practical, side lot lines shall be at right angles to straight streets and radial to curved streets.
- (3) Frontage. Each lot must front upon an approved street at least 50 feet in width.
- (4) Setbacks. Where extra width has been dedicated for widening of existing streets, lots shall begin at such extra-width line, and all setbacks shall be measured from such line.
- (5) Suitability. All lots shall be suitable for their intended uses and, where necessary, increased in size to compensate for conditions such as steep slopes, rock formations and flood conditions.

E. Public use and service areas.

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

F. Energy conservation. All subdivisions shall, to the greatest degree possible, follow energy-efficient design principles and maximize the use of renewable energy sources. Within the limits of practicability and feasibility, the criteria listed below shall be followed.

- (1) Streets. Streets shall be so oriented as to permit the buildings to be constructed thereon to maximize solar gain. Where possible, streets shall run in an east-west direction.
- (2) Lots. Lots shall also be oriented as to permit buildings to be constructed thereon to maximize solar gain. Where possible, the long access of a lot shall run in a north-south direction.
- (3) Topography. The development shall take advantage of topographic features to maximize solar gain and afford protection from winter winds. Where possible, development shall be oriented to southerly slopes.
- (4) Vegetation. Maximum use shall be made of natural vegetation which will afford protection from winter winds and provide shading in summer.

§ 165-71 **Site plans.**

- A. General. In general, site plans shall follow the principles of design relating to subdivisions where applicable. In reviewing said site development plans, the Land Use Board shall ascertain that the following requirements are complied with:
- (1) The provisions of the zoning regulations with respect to height, minimum lot areas, mandatory open spaces and the like are complied with.
  - (2) Adequate provision is made for off-street parking in accordance with Subsection **A(10)** below, and adequate traffic circulation, traffic safety and protection to adjoining property is provided. Each parking space shall contain at least 180 square feet with a minimum width of nine feet measured perpendicular to the axis of the length and a minimum length of 20 feet. However, the minimum size of the parking space may be reduced to 162 square feet with a minimum width of nine feet, measured perpendicular to the axis of the length and with a minimum length of 18 feet if a bumper overhang area of two feet in depth is provided, which does not encroach upon any required sidewalk or a parking divider of less than four feet width.
  - (3) Adequate provision is made for the disposal of stormwater as approved by the Borough Engineer. In addition, the requirements of the Lebanon Borough Stormwater Management Ordinance shall be met.
  - (4) The location, design or construction of any building is not likely to involve risks of traffic congestion, public safety or hazard.
  - (5) The design or construction of any building or use will not be so markedly incongruous with the character of the neighborhood as to materially affect the value of adjacent or nearby property.
  - (6) Lighting shall be designed in accordance with § **165-74**.
  - (7) All parking areas shall provide for adequate ingress and egress and safe and convenient traffic circulation. Access drives and aisles shall be of sufficient width to permit safe access to parking spaces and safe traffic movement. Driveways leading to common parking areas, exclusive of driveways serving only one dwelling unit, whether attached or detached shall not be less than 75 feet from any street intersection nor 20 feet from another driveway, measured along the curblin. In addition, except as provided in Subsection **B** of this section, all off-street parking and loading areas, except for parking which is accessory to one-family dwellings, shall, unless otherwise provided by this chapter, meet the location requirements prescribed in the following schedule:

**Schedule of Minimum Distances for Location  
of Parking and Loading Areas**

<b>Zone<sup>1</sup></b>	<b>From Buildings<sup>2</sup> (feet)</b>	<b>From Streets (feet)</b>	<b>From Property Lines (feet)</b>	<b>From Residential Zone (feet)</b>
R-P	0	10	5	5
M-F	12	25	25	25
AH-1	14 <sup>3</sup>	50 <sup>4</sup>	10	10
AH-2	10	25	10	10
AH-3	12	5	5	5
AH-4				
B	12	25 <sup>5</sup>	5	5
ROM-1	12	25 <sup>6</sup>	10	25
C-ROM-1	12	25 <sup>7</sup>	10	25
C-ROM-2	12	5	20	35

(8) Off-street parking areas shall be used solely for the parking of passenger automobiles, and no commercial repair work or service of any kind shall be conducted on the parking lot, nor shall such lots be used for the parking of disabled, dismantled, inoperable or unregistered vehicles.

<sup>1</sup> All uses except one and two-family dwellings.

<sup>2</sup> Loading areas excepted.

<sup>3</sup> Frontage road only.

<sup>4</sup> Includes driveways in front of garage.

<sup>5</sup> Internal streets only, not within the front yard.

<sup>6</sup> Internal streets only, not within the front yard.

<sup>7</sup> Internal streets only, not within the front yard.

(9) Parking service aisles.

(a) All parking areas shall be designed with service aisles to meet the following standards:

<b>Type of Parking (angle)</b>	<b>Width of Aisle (feet)</b>
Parallel	12
30°	12
45°	13
60°	18
90°	24

(b) In addition, there shall be a minimum distance between parallel parking spaces of six feet when found necessary to provide for convenient access.

(10) Off-street parking requirements.

(a) For all new buildings or uses or additions to existing buildings or uses in all zone districts, there shall be provided the number of parking spaces required by the specific use, as prescribed in the following schedule:

**Required Parking Spaces**

<b>Use</b>	<b>Number of Spaces</b>
Residential	Per RSIS
Church, auditorium, theater	1 for each 3 seating spaces or equivalent accommodation provided
School, studio, including nursery schools	1 for each 3 seats in public assembly areas; if no public assembly area, 1 space for each 100 square feet of floor area

## Required Parking Spaces

Use	Number of Spaces
Assembly hall, community building, social club, institution	1 for each 100 square feet of floor area
Funeral home, mortuary	10 for each slumber room
Retail store, shop or similar establishment	1 for each 200 square feet of floor area
Restaurant	
Eating and drinking place	1 for each 50 square feet of floor area
Fast-food	1 for each 3 seats, whether inside or outside the building, plus 1 for each 75 square feet of floor area; where no seating is provided, 1 for each 50 square feet of floor area
Business, professional, and executive office	
Less than 50,000 square feet gross floor area	4.5 per 1,000 square feet
50,000-99,999 square feet gross floor area	4.0 per 1,000 square feet
100,000 square feet or greater gross floor area	3.5 per 1,000 square feet
Bank and similar financial institution	1 for each 150 square feet of floor area
Conference center	1 for each 50 square feet of floor area, exclusive of areas devoted to sleeping accommodations, restaurants, recreation and similar ancillary facilities.
Nursing home	1 for each bed
Life-care facility	1 for each 2 dwelling units, plus 1 for each 2 nursing home beds
Hotel, motel	1 for each hotel or motel unit plus additional parking for other facilities available to persons other than hotel or motel guests as follows:
Restaurant	As specified elsewhere in this schedule

## Required Parking Spaces

Use	Number of Spaces
Banquet/ballroom facilities area devoted to such use	1 for each 100 square feet of floor
Medical office	1 for each 150 square feet of floor area
Building for tennis, racquet ball, bowling and similar indoor sports activities	2 for each person accommodated in maximum play
Post office	1 for each 150 square feet of floor area
Public garage, motor vehicle service station	1 for each 100 square feet of floor area
Shopping centers	
Less than 400,000 square feet gross floor area	4.0 per 1,000 square feet
400,000-599,999 square feet gross floor area	4.5 per 1,000 square feet
600,000 square feet or greater gross floor area	5.0 per 1,000 square feet
Computer and data processing center	1 for each 200 square feet of floor area
Furniture and appliance store, motor vehicle sales, wholesale store, building material store and similar hard good sales	1 for each 400 square feet of floor area
Manufacturing plant, research laboratory, industry	1 for each 500 square feet of floor area
Warehouse, storage building	1 for each 1,000 square feet of floor area
Trucking terminal	2 for each loading bay
Ambulatory care facilities	2 for each recovery bed or treatment room, whichever is greater, plus 1 for each employee on the shift with the greatest number of employees
Residential health care facilities	1 per dwelling unit

(b) Any building containing more than one use shall meet the combined parking space requirements for all

uses in the building. Any change in use within a building shall be required to meet the minimum parking requirements for the new use.

- (c) Parking space requirements for a use not listed above shall be determined by the Land Use Board on the basis of requirements of similar uses and on the basis of the specific nature of the use. In addition, the Land Use Board shall have the authority to require a greater number of parking spaces than required above or the reservation of area for additional future parking if, due to the nature of the use, a greater number of spaces is likely to be needed now or in the future.
- (d) If it can be clearly demonstrated that because of the peculiar nature of any use, all the required parking is not necessary, the Land Use Board may permit a reduction in the amount of parking area to be paved; provided, however, that the entire required parking area shall be shown on the site plan so that it will be available in the event future conditions should so require.
- (11) Off-street loading. In all districts, for every building or use requiring the receipt or distribution in vehicles of materials or merchandise, there shall be maintained on the same premises with such building or use at least one off-street loading space.
  - (a) Each loading space shall be at least 14 feet in width, 60 feet in length and have a sixteen-foot clearance above grade.
  - (b) Such space shall be located in the side or rear yard only, but in no case in a side yard adjoining a street.
- (12) The provisions of this chapter pertaining to screening and landscaping as contained in § **165-63F** and **H** shall be complied with.
- (13) For all nonresidential uses, provision shall be made for the orderly deposit, storage and collection of trash, garbage and other waste material. Any trash, garbage and waste material stored outside of buildings shall be stored in suitable containers and in fenced or walled enclosures. Said enclosures may adjoin the rear wall of a building or a side wall of a building which does not face on either a street or a residential district or may be located in the rear yard and apart from the building, provided that all accessory building setbacks are met. Said enclosures shall be screened from view from any adjoining street or property when deemed necessary by the Land Use Board. Any trash, garbage and waste material shall be so contained as to be protected from the elements and to eliminate potential for accumulation or scattering of debris. Garbage of an animal or vegetable nature, any trash or waste material that would attract vermin and insects and any other waste material which, by its nature, would present a health hazard if exposed to the elements shall be stored in airtight and/or leakproof, covered metal containers as may be necessary.
- (14) All other applicable provisions of this chapter are met.
- (15) The applicant has obtained necessary approvals of any state, county or municipal agencies.
- (16) The Land Use Board shall give consideration to such other elements or aspects of the site plan or proposed use as may relate to the design of the plan, the general environment of the area or the health, safety and general welfare of the public.
- B. Planned development site plan. In the case of a site plan for a planned development, including multifamily dwellings, review of the site plan shall consider the following criteria:
  - (1) General findings.
    - (a) The proposals for maintenance and conservation of the open space are reliable, and the amount, location and purpose of the open space are adequate.

- (b) Provision through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual enjoyment are adequate.
  - (c) The proposed development will not have an unreasonably adverse impact upon the area in which it is proposed to be established.
  - (d) 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.
- (2) Parking and circulation.
- (a) All off-street parking areas and internal roadways shall be paved, bounded by permanent curbing and constructed in accordance with applicable provisions of § **165-73**, Roads and Improvements, of this chapter, and in accordance with the Schedule to this Article **XI**.
  - (b) Parking areas and internal roadways shall be located at least 15 feet from a building, unless a driveway leading to a garage, at least 50 feet from a tract boundary line and at 25 feet from a street.
  - (c) Parking spaces or driveways serving individual dwelling units shall not be entered directly from a public street.
  - (d) Internal roadways shall be at least 20 feet in width for two-way traffic and 12 feet in width for one-way traffic and shall not enter a public street within 100 feet of an intersection. Parking in internal roadways shall be prohibited.
  - (e) The arrangement and location of garages, parking areas and internal roadways shall be subject to approval of the Land Use Board and shall be designed to ensure maximum safety, proper circulation and maximum convenience for residents and their guests. Large expanses of pavement and long, unbroken rows of parking spaces shall be avoided. Adjoining rows of parking spaces shall be separated by landscaped islands having a width of at least 10 feet, and no row of parking spaces shall contain more than 15 spaces unless broken by landscaped islands. Parking areas exceeding 10,000 square feet in area shall incorporate landscaped areas within them, said landscaped area amounting to at least 10% of the parking area. The parking area shall be determined by the outer limit of pavement on the site and the inner limit of pavement around or adjacent to the building.
- (3) Buffer zone requirements. Buffers and landscape design shall be in accordance with § **165-77**.
- (4) Building design. The design of all buildings shall be such as to enhance the quality and character of the area. All buildings shall be visually related to the terrain and to each other so as to create both visual harmony and functional variety. Such objectives shall be accomplished through measures such as the following:
- (a) Staggering of walls of building facades.
  - (b) The use of architectural designs which are harmonious and compatible.
  - (c) The use of exterior colors and roof and facade materials or a combination of colors and materials that are coordinated.
  - (d) Sensitive use of roof heights, roof and wall projections, building mass, lengths, widths and directions and ornamental features to create both variety and function.
  - (e) Clustered arrangement of smaller buildings as opposed to single, large buildings on a site is encouraged.

No building intended for retail trade, banks and offices shall have a ground floor area exceeding 40,000 square feet, nor shall the length or width of any such building exceed 200 feet.

- (5) Landscape design.
  - (a) Landscape design shall be in accordance with § **165-77**.
  - (b) Hardsurfaced sidewalks at least four feet in width shall be provided in such locations as will ensure convenient pedestrian traffic as required by the Land Use Board.
  - (c) Plantings and/or fencing shall be provided, where necessary, adjoining parking facilities, swimming pools and similar activity facilities in order to screen them from the view of adjoining streets and residential development.
  - (d) Adequate artificial lighting shall be provided in parking areas and along sidewalks, walkways and internal roadways. The direct source of lighting shall not be visible from buildings, adjoining streets and property lines.
- (6) Utilities.
  - (a) All utility systems shall be designed in accordance with accepted engineering practices and with all applicable municipal and state regulations.
  - (b) All new telephone and electric service on the property shall be underground.
  - (c) All trash and garbage shall be stored at all times in covered containers which shall be kept in centrally located, concealed areas.
- C. Nonresidential site plans. Site plans for nonresidential uses in all nonresidential zones shall adhere to the following design and performance criteria:
  - (1) Standards for development in critical areas.
    - (a) Coverage by impervious surfaces of prime aquifer recharge soils shall be avoided wherever possible. Not more than 50% of the prime aquifer recharge areas on any lot shall be covered by buildings and other impervious surfaces. Prime aquifer recharge areas are identified in the Natural Resources Inventory.
    - (b) Development in areas of slope exceeding 25% is prohibited.
    - (c) Coverage by buildings and other impervious surfaces of slopes ranging from 15% to 25% shall not exceed 50% less one percentage point for each acre or part thereof of lot area greater than five acres, provided that under no circumstances need the maximum coverage of such slopes be less than 25%.
    - (d) Development in flood hazard areas shall be as regulated in Chapter 163 of the State Code. In addition, there shall be no development by buildings and other impervious surfaces in a delineated floodway. In flood-fringe areas, development shall be limited to pavement and similar impervious surfaces. Coverage by such impervious surfaces of the flood-fringe area shall not exceed 25%.
  - (2) Any street serving the development and any nearby street providing access for the development to major access routes shall have a level of service during peak hours of better than "C" following establishment of the development. The Land Use Board may require improvements to such streets if the proposed development will cause the level of service to reach "C" or greater. "Level of service" is defined in the Highway Capacity Manual, Special Report No. 87, Highway Research Board.

- D. Site maintenance. All buildings, paved areas and landscaping shall be adequately maintained and shall be kept clean and free from debris at all times. Dead trees or shrubs shall be replaced by the owner. Failure of the owner to comply with these provisions within six months of notification by the Construction Official shall be considered a violation of this chapter.
- E. Energy conservation. All site plans shall, to the greatest degree possible, follow energy efficient design principles and maximize the use of renewable energy sources. Within the limits of practicability and feasibility, the criteria listed below shall be followed.

**§165-71.1 ELECTRIC VEHICLE SUPPLY/SERVICE EQUIPMENT (EVSE) & MAKE-READY PARKING SPACES**

**A. Purpose**

The purpose of this ordinance is to promote and encourage the use of electric vehicles by requiring the safe and efficient installation of EVSE and Make-Ready parking spaces through municipal parking regulations and other standards. EVSE and Make-Ready parking spaces will support the State's transition to an electric transportation sector, reducing automobile air pollution, greenhouse gas emissions, and storm water runoff contaminants. The goals are to:

1. Provide adequate and convenient EVSE and Make-Ready parking spaces to serve the needs of the traveling public.
2. Provide opportunities for residents to have safe and efficient personal EVSE located at or near their place of residence.
3. Provide the opportunity for non-residential uses to supply EVSE to their customers and employees.
4. Create standard criteria to encourage and promote safe, efficient, and cost-effective electric vehicle charging opportunities in all zones and settings for convenience of service to those that use electric vehicles.

**B. Definitions**

Certificate of occupancy: The certificate provided for in N.J.A.C. 5:23-2, indicating that the construction authorized by the construction permit has been completed in accordance with the construction permit, the act and the regulations. See "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and regulations adopted pursuant thereto.

Charging Level: The amount of voltage provided to charge an electric vehicle varies depending on the type of EVSE as follows:

1. Level 1 operates on a fifteen (15) to twenty (20) amp breaker on a one hundred twenty (120) volt AC circuit.
2. Level 2 operates on a forty (40) to one hundred (100) amp breaker on a two hundred eight (208) or two hundred forty (240) volt AC circuit.
3. Direct-current fast charger (DCFC) operates on a sixty (60) amp or higher breaker on a four hundred eighty (480) volt or higher three phase circuit with special grounding equipment. DCFC stations can also be referred to as rapid charging stations that are typically characterized by industrial grade electrical outlets that allow for faster recharging of electric vehicles.

Electric vehicle: Any vehicle that is licensed and registered for operation on public and private highways, roads, and streets; and operates either partially or exclusively using an electric motor powered by an externally charged on-board battery.

Electric Vehicle Supply/Service Equipment or (EVSE): The equipment, including the cables, cords, conductors, connectors, couplers, enclosures, attachment plugs, power outlets, power electronics, transformer, switchgear, switches and controls, network interfaces, point of sale equipment, and associated apparatus designed and used for the purpose of transferring energy from the electric supply system to a plug-in electric vehicle. "EVSE" may deliver either alternating current or, consistent with fast charging equipment standards, direct current electricity. "EVSE" is synonymous with "electric vehicle charging station."

Make-Ready Parking Space: means the pre-wiring of electrical infrastructure at a parking space, or set of parking spaces, to facilitate easy and cost-efficient future installation of Electric Vehicle Supply Equipment or Electric Vehicle Service Equipment, including, but not limited to, Level Two EVSE and direct current fast chargers. Make Ready includes expenses related to service panels, junction boxes, conduit, wiring, and other components necessary to make a particular location able to accommodate Electric Vehicle Supply Equipment or Electric Vehicle Service Equipment on a "plug and play" basis. "Make-Ready" is synonymous with the term "charger ready," as used in P.L.2019, c.362 (C.48:25-1 et al.).

Private EVSE: EVSE that has restricted access to specific users (e.g., single and two-family homes, executive parking fleet parking with no access to the general public).

Publicly-accessible EVSE: EVSE that is publicly available (e.g., park & ride, public parking lots and garages, on-street parking, shopping center parking, non-reserved parking in multi-family parking lots, etc.).

### **C. Approvals and Permits**

1. An application for development submitted solely for the installation of EVSE or Make-Ready parking spaces shall be considered a permitted accessory use and permitted accessory structure in all zoning or use districts and shall not require a variance pursuant to C.40:55D-70.
2. EVSE and Make-Ready Parking Spaces installed pursuant to Section D. below in development applications that are subject to site plan approval are considered a permitted accessory use as described in 1. above.
3. All EVSE and Make-Ready parking spaces shall be subject to applicable local and/or Department of Community Affairs permit and inspection requirements.
4. The administrative official shall enforce all signage and installation requirements described in this ordinance. Failure to meet the requirements in this ordinance shall be subject to the same enforcement and penalty provisions as other violations of Borough of Lebanon's land use regulations.
5. An application for development for the installation of EVSE or Make-Ready spaces at an existing gasoline service station, an existing retail establishment, or any other existing building shall not be subject to site plan or other land use board review, shall not require variance relief pursuant to C.40:55D-1 et seq. or any other law, rule, or regulation, and shall be approved through the issuance of a zoning permit by the administrative officer, provided the application meets the following requirements:
  - a. the proposed installation does not violate bulk requirements applicable to the property or the conditions of the original final approval of the site plan or subsequent approvals for the existing gasoline service station, retail establishment, or other existing building;
  - b. all other conditions of prior approvals for the gasoline service station, the existing retail establishment, or any other existing building continue to be met; and

- c. the proposed installation complies with the construction codes adopted in or promulgated pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), any safety standards concerning the installation, and any State rule or regulation concerning electric vehicle charging stations.
- 6. An application pursuant to Section 5. above shall be deemed complete if:
  - a. the application, including the permit fee and all necessary documentation, is determined to be complete,
  - b. a notice of incompleteness is not provided within 20 days after the filing of the application, or
  - c. a one-time written correction notice is not issued by the administrative official within 20 days after filing of the application detailing all deficiencies in the application and identifying any additional information explicitly necessary to complete a review of the permit application.
- 7. EVSE and Make-Ready parking spaces installed at a gasoline service station, an existing retail establishment, or any other existing building shall be subject to applicable local and/or Department of Community Affairs inspection requirements.
- 8. A permitting application solely for the installation of electric vehicle supply equipment permitted as an accessory use shall not be subject to review based on parking requirements.

**D. Requirements for New Installation of EVSE and Make-Ready Parking Spaces**

- 1. As a condition of preliminary site plan approval, for each application involving a multiple dwelling with five or more units of dwelling space, which shall include a multiple dwelling that is held under a condominium or cooperative form of ownership, a mutual housing corporation, or a mixed-use development, the developer or owner, as applicable, shall:
  - a. prepare as Make-Ready parking spaces at least 15 percent of the required off-street parking spaces, and install EVSE in at least one-third of the 15 percent of Make-Ready parking spaces;
  - b. within three years following the date of the issuance of the certificate of occupancy, install EVSE in an additional one-third of the original 15 percent of Make-Ready parking spaces; and
  - c. within six years following the date of the issuance of the certificate of occupancy, install EVSE in the final one-third of the original 15 percent of Make-Ready parking spaces.
  - d. Throughout the installation of EVSE in the Make-Ready parking spaces, at least five percent of the electric vehicle supply equipment shall be accessible for people with disabilities.
  - e. Nothing in this subsection shall be construed to restrict the ability to install electric vehicle supply equipment or Make-Ready parking spaces at a faster or more expansive rate than as required above.
- 2. As a condition of preliminary site plan approval, each application involving a parking lot or garage not covered in 1. above shall:
  - a. Install at least one Make-Ready parking space if there will be 50 or fewer off-street parking spaces.
  - b. Install at least two Make-Ready parking spaces if there will be 51 to 75 off-street parking spaces.
  - c. Install at least three Make-Ready parking spaces if there will be 76 to 100 off-street parking spaces.
  - d. Install at least four Make-Ready parking spaces, at least one of which shall be accessible for people with disabilities, if there will be 101 to 150 off-street parking spaces.

- e. Install at least four percent of the total parking spaces as Make-Ready parking spaces, at least five percent of which shall be accessible for people with disabilities, if there will be more than 150 off-street parking spaces.
- f. In lieu of installing Make-Ready parking spaces, a parking lot or garage may install EVSE to satisfy the requirements of this subsection.
- g. Nothing in this subsection shall be construed to restrict the ability to install electric vehicle supply equipment or Make-Ready parking spaces at a faster or more expansive rate than as required above.
- h. Notwithstanding the provisions of this Section, a retailer that provides 25 or fewer off-street parking spaces or the developer or owner of a single-family home shall not be required to provide or install any electric vehicle supply equipment or Make-Ready parking spaces.

### **E. Minimum Parking Requirements**

- 1. All parking spaces with EVSE and Make-Ready equipment shall be included in the calculation of minimum required parking spaces, pursuant to Ord. §165-71A(10).
- 2. A parking space prepared with EVSE or Make-Ready equipment shall count as at least two parking spaces for the purpose of complying with a minimum parking space requirement. This shall result in a reduction of no more than 10 percent of the total required parking.
- 3. All parking space calculations for EVSE and Make-Ready equipment shall be rounded up to the next full parking space.
- 4. Additional installation of EVSE and Make-Ready parking spaces above what is required in Section D. above may be encouraged, but shall not be required in development projects.

### **F. Reasonable Standards for All New EVSE and Make-Ready Parking Spaces**

- 1. Location and layout of EVSE and Make-Ready parking spaces is expected to vary based on the design and use of the primary parking area. It is expected flexibility will be required to provide the most convenient and functional service to users. Standards and criteria should be considered guidelines and flexibility should be allowed when alternatives can better achieve objectives for provision of this service.
- 2. Installation:
  - a. Installation of EVSE and Make-Ready parking spaces shall meet the electrical subcode of the Uniform Construction Code, N.J.A.C. 5:23-3.16.
  - b. Each EVSE or Make-Ready parking space that is not accessible for people with disabilities shall be not less than 9 feet wide or 18 feet in length. Exceptions may be made for existing parking spaces or parking spaces that were part of an application that received prior site plan approval.
  - c. To the extent practical, the location of accessible parking spaces for people with disabilities with EVSE and Make Ready equipment shall comply with the general accessibility requirements of the Uniform Construction Code, N.J.A.C. 5:23, and other applicable accessibility standards.
  - d. Each EVSE or Make-Ready parking space that is accessible for people with disabilities shall comply with the sizing of accessible parking space requirements in the Uniform Construction Code, N.J.A.C. 5:23, and other applicable accessibility standards.
- 3. EVSE Parking:

- a. Publicly-accessible EVSE shall be reserved for parking and charging electric vehicles only. Electric vehicles shall be connected to the EVSE.
- b. Electric vehicles may be parked in any parking space designated for parking, subject to the restrictions that would apply to any other vehicle that would park in that space.
- c. Public Parking. Pursuant to NJSA 40:48-2, publicly-accessible EVSE parking spaces shall be monitored by the municipality's police department and enforced in the same manner as any other parking. It shall be a violation of this Section to park or stand a non-electric vehicle in such a space, or to park an electric vehicle in such a space when it is not connected to the EVSE. Any non-electric vehicle parked or standing in a EVSE parking space or any electric vehicle parked and not connected to the EVSE shall be is subject to fine and/or impoundment of the offending vehicle as described in the general penalty provisions of this Municipal Code . Signage indicating the penalties for violations shall comply with Section 5. below. Any vehicle parked in such a space shall make the appropriate payment for the space and observe the time limit for the underlying parking area, if applicable.
- d. Private Parking. The use of EVSE shall be monitored by the property owner or designee.

#### 4. Safety

- a. Each publicly-accessible EVSE shall be located at a parking space that is designated for electric vehicles only and identified by green painted pavement and/or curb markings, a green painted charging pictograph symbol, and appropriate signage pursuant to Section 5. below.
- b. Where EVSE is installed, adequate site lighting and landscaping shall be provided in accordance with Borough of Lebanon's ordinances and regulations.
- c. Adequate EVSE protection such as concrete-filled steel bollards shall be used for publicly-accessible EVSE. Non-mountable curbing may be used in lieu of bollards if the EVSE is setback a minimum of 24 inches from the face of the curb. Any stand-alone EVSE bollards should be 3 to 4-feet high with concrete footings placed to protect the EVSE from accidental impact and to prevent damage from equipment used for snow removal.
- d. EVSE outlets and connector devices shall be no less than 36 inches and no higher than 48 inches from the ground or pavement surface where mounted, and shall contain a cord management system as described in e. below. Equipment mounted on pedestals, lighting posts, bollards, or other devices shall be designated and located as to not impede pedestrian travel, create trip hazards on sidewalks, or impede snow removal.
- e. Each EVSE shall incorporate a cord management system or method to minimize the potential for cable entanglement, user injury, or connector damage. Cords shall be retractable or have a place to hang the connector and cord a safe and sufficient distance above the ground or pavement surface. Any cords connecting the charger to a vehicle shall be configured so that they do not cross a driveway, sidewalk, or passenger unloading area.
- f. Where EVSE is provided within a pedestrian circulation area, such as a sidewalk or other accessible route to a building entrance, the EVSE shall be located so as not to interfere with accessibility requirements of the Uniform Construction Code, N.J.A.C. 5:23, and other applicable accessibility standards.
- g. Publicly-accessible EVSEs shall be maintained in all respects, including the functioning of the equipment. A 24-hour on-call contact shall be provided on the equipment for reporting problems with the equipment or access to it. To allow for maintenance and notification, Borough of Lebanon shall require the owners/designee of publicly-accessible EVSE to provide information on the EVSE's geographic location, date of installation, equipment type and model, and owner contact information.

## 5. Signs

- a. Publicly-accessible EVSE shall have posted regulatory signs, as identified in this section, allowing only charging electric vehicles to park in such spaces. For purposes of this section, "charging" means that an electric vehicle is parked at an EVSE and is connected to the EVSE. If time limits or vehicle removal provisions are to be enforced, regulatory signs including parking restrictions shall be installed immediately adjacent to, and visible from the EVSE. For private EVSE, installation of signs and sign text is at the discretion of the owner.
- b. All regulatory signs shall comply with visibility, legibility, size, shape, color, and reflectivity requirements contained within the Federal Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration.
- c. Wayfinding or directional signs, if necessary, shall be permitted at appropriate decision points to effectively guide motorists to the EVSE parking space(s). Wayfinding or directional signage shall be placed in a manner that shall not interfere with any parking space, drive lane, or exit and shall comply with b. above.
- d. In addition to the signage described above, the following information shall be available on the EVSE or posted at or adjacent to all publicly-accessible EVSE parking spaces:
  - 1) Hour of operations and/or time limits if time limits or tow-away provisions are to be enforced by the municipality or owner/designee;
  - 2) Usage fees and parking fees, if applicable; and
  - 3) Contact information (telephone number) for reporting when the equipment is not operating or other problems.

## 6. Usage Fees

- a. For publicly-accessible municipal EVSE: In addition to any parking fees, the fee to use parking spaces within the municipality identified as EVSE spaces shall be \_\_\_\_\_ for each hour that the electric vehicle is connected to the EVSE *{or per kWh}*.
  - b. This fee may be amended by a resolution adopted by the governing body.
  - c. Private EVSE: Nothing in this ordinance shall be deemed to preclude a private owner/designee of an EVSE from collecting a fee for the use of the EVSE, in accordance with applicable State and Federal regulations. Fees shall be available on the EVSE or posted at or adjacent to the EVSE parking space.
- (1) Buildings shall be oriented to maximize solar gain. Where possible, building walls with the greatest number of windows or window area shall face in a southerly direction. The use of active and passive solar energy gain systems in buildings is encouraged.
  - (2) Buildings shall be arranged to provide maximum protection to each other in terms of energy consuming elements.
  - (3) The use of energy efficient building materials and colors is encouraged.
  - (4) Site arrangement shall take advantage of topographic features to maximize solar gain and afford protection from winter winds.
  - (5) Natural vegetation and landscaping, including fences, walls and earthworks, shall be utilized to maximize protection from wind and channel breezes and shade buildings and pavement.
  - (6) The site shall be designed to minimize pavement and afford efficient circulation. The use of footpaths and bike paths in multifamily housing developments, in order to reduce motor vehicle use, is encouraged.

§ 165-72 **Environmental impact statement (EIS) requirements.**

- A. When required. An EIS is required as part of any application for development involving new buildings or any land disturbance where Land Use Board approval is required. The Land Use Board may grant an exemption from the requirement of part or all of an EIS under Subsection **G** below. An EIS is also required for all public and quasi-public projects unless they are exempt from the requirements of local law or by supervening county, state or federal law.
- B. Filing requirements. An application for development shall be accompanied by 12 copies of an EIS unless waiver is desired, in which case the application shall be accompanied by a request for waiver pursuant to Subsection **G**.
- C. Contents of EIS. The EIS shall discuss and analyze those factors required for the particular project as provided in Subsection **D** and any other factors pertinent to the project. Where the information is provided elsewhere in the application, it may be incorporated by reference. The applicant may request a preapplication conference with the Land Use Board to discuss the scope and detail of the EIS, and the Land Use Board may seek the advice of the Environmental Commission in determining said scope and detail. The EIS shall address each of the items outlined below to the degree and extent it is pertinent to the project. In preparing the EIS, the applicant may utilize resource information available from the Borough.
- (1) Plan and description of proposed project: a project description, complete with site plans, which shall specify the purpose of the proposed project, including products and services, if any, being provided, and the regional, municipal and neighborhood setting, including current land use of the project site and properties within 500 feet of the site.
  - (2) Inventory of existing natural resources: Generally, an inventory will consider the air quality, topography, surface water bodies, surface water quality, aquatic biota, soils, geology, groundwater, vegetation, wildlife, archaeological and historical features. Forest vegetation is to be classified by type and age class. The distribution of types and classes will be indicated on a map, the scale of which will be one inch equals 100 feet or such other scale as may be required. The location, species and diameter at 4 1/2 feet above the ground of all isolated trees four inches, or dogwoods three inches, or more in diameter are to be shown on the same or on a separate map.
  - (3) Assessment of environmental impact of project: an assessment supported by environmental data of the environmental impact of the project upon the factors described in Subsection **C(2)** above, and specifically the following:
    - (a) Wastewater management:
      - [i] An estimate of the expected quantity and type of wastewater expected from the proposed development. If any flow is expected, discuss:
        - [a] If disposal is on site, the relation to topography, soils and underlying geology, including water table, aquifer recharge areas and all wells within 500 feet of the disposal area; include results of percolation tests and soil logs required by ordinance.
        - [b] If disposal is to an existing private facility or to a public facility, identification, owner and location of the plant and location of the existing collection point to which the proposed project would be connected. Documentary evidence that the expected flows from the proposed facility will be accepted and can be treated adequately by the private or public facility must accompany the environmental impact statement.
        - [c] Compliance with all applicable state and Borough health regulations.
      - (b) Water supply:

- [ii] If the water is to be supplied from the site and a flow of 100,000 gallons per day or less is required, an impact assessment of water supply is required if the anticipated demand exceeds the available safe yield of the aquifer contained within the property limits indicated in the resource inventory maintained by the Environmental Commission. In such case the applicant must substantiate and explain the anticipated demand, present proof that the aquifer contained within the property limits can yield the desired amount of water, demonstrate that wells proposed for installation will meet acceptable standards and assess the effect of proposed withdrawals on existing and proposed wells and surface water bodies within the geologic formation. If the plan includes 50 or more dwelling units, certification of the adequacy of the proposed water supply and sewerage facilities must be obtained from the New Jersey Department of Environmental Protection and must be included in the EIS.
  - [iii] If the water is to be supplied from the site and the total project demand for water supply is in excess of 100,000 gallons per day, the applicant must obtain a diversion permit from the New Jersey Department of Environmental Protection. The applicant must assess the effect of proposed withdrawals on existing and proposed wells and surface water bodies within the geological formation. The applicant will supply copies of all resources information provided to the appropriate state water agency in support of the subject application for diversion grant. In addition, if the anticipated demand exceeds the available safe yield, the applicant must explain the anticipated demand and demonstrate to the satisfaction of the Land Use Board that the aquifer contained within the property limits can yield the desired amount of water.
  - [iv] If the water is to be supplied from any existing private or public facility, the identification, owner and location of the facility and the location of existing distribution point to which the proposed project would be connected shall be provided. The applicant will submit documentary proof that the facility has the available excess capacity in terms of its allowable diversion and equipment to supply the proposed project and is willing to do so. The applicant must demonstrate to the satisfaction of the Land Use Board that the total consumption of groundwater from on-site and off-site sources will not exceed the available safe yield of the aquifer contained within the property limits.
  - [v] Subsection **C(3)(b)[1], [2] and [3]** notwithstanding, for parcels of less than five acres before subdivision and for residential uses, the Land Use Board may weigh all factors affecting water supply and water need in deciding whether or not to require strict adherence to the requirement that demand not exceed safe sustainable yield from the aquifer within the property limits.
  - (a) Energy conservation: a description of the site in terms of its physical orientation to solar access and prevailing winds, addressing the building and site design and arrangement in terms of energy efficient principles and maximum utilization of renewable energy sources following criteria established in § **165-70H** or **165-71E**, as the case may be.
- D. Environmental impact statement requirements shall be as follows:

EIS Item (Section reference)	Residential			Non-Residential Disturbance Area		
	1 and 2 units	3 to 9 units	10 or more units	Less than 1 acre	1 to 5 acres	Over 5 acres
§ 165-72C(1) Description of project		X	X	X	X	X
§ 165-72C(2) Inventory of existing natural resources		X	X	X	X	X
§ 165-72C(3)(a) Wastewater management			X	X	X	X
§ 165-72C(3)(b) Water supply	X	X	X	X	X	X

§ 165-72C(3)(c) Surface drainage	X	X	X	X	X	X
§ 165-72C(3)(d) Stream corridors	X	X	X	X	X	X
§ 165-72C(3)(e) Solid waste disposal			X	X	X	X
§ 165-72C(3)(f) Air quality						X
§ 165-72C(3)(g) Noise		X	X		X	X
§ 165-72C(3)(h) Traffic			X	X	X	X
§ 165-72C(3)(i) Socio/economic			X		X	X
§ 165-72C(3)(j) Aesthetics			X	X	X	X
§ 165-72C(3)(k) Artificial lighting			X	X	X	X
§ 165-72C(3)(l) Critical areas	X	X	X	X	X	X
§ 165-72C(3)(m) Energy conservation		X	X		X	X
§ 165-72C(4) Environmental protection measures		X	X	X	X	X
§ 165-72C(5) Adverse impacts		X	X		X	X
§ 165-72C(6) EIS summary		X	X	X	X	X

E. Land Use Board review.

- (1) In reviewing an EIS, the Land Use Board shall take into consideration the effect of the proposed project upon all aspects of the environment, including but not limited to sewage disposal, water quality, water supply, preservation of trees and vegetation, protection of watercourses, protection of air resources, protection of aquifers, protection of public lands and their uses and ecosystems and the avoidance of any nuisance factors. The Land Use Board will submit the EIS for review to the Borough Environmental Commission and may submit such statement to such other governmental bodies and to such consultants as it may deem appropriate. The Land Use Board shall request that an advisory report shall be made to it by the governmental body or consultant within 45 days of the submission of the EIS to such governmental body or consultant. The Land Use Board shall reject the proposed project on an environmental basis, if it can reasonably determine that the proposed project:
  - (a) Will result in appreciable harm to the environment or to the public health and safety;

- (b) Has not been designed with a view toward the protection of natural resources; and
- (c) Will place any excessive demand upon the total resources available for such project and for any future project.

**§ 165-73 Roads and improvements.**

- A. Purpose. The purpose of this section shall be to apply rules, regulations and standards for the improvements required prior to the acceptance of roads or improvements into the municipal road or utility systems of the Borough. This section shall apply to new roads or improvements hereafter created and to existing roads, improvements or rights-of-way presently used but not accepted into the municipal road or improvement systems of the Borough and not heretofore accepted for full municipal maintenance.
- B. Required approval of plans.
  - (1) The Borough Engineer must review and approve the plans for construction of the improvements envisioned herein. Construction plans in detail similar to those required for submission to a state agency must be submitted in plan and profile view, together with cross sections, details and engineering calculations sufficient for a thorough review and adequate to be used as the plans for actual construction. Deviations from the approved plans will not be permitted until written approval is obtained from the Borough Engineer. All plans, profiles and cross sections shall be prepared to the scale and standards contained in the New Jersey Department of Transportation Sample Plans, Latest Edition.
  - (2) If the improvements to be installed hereunder are part of the requirements of subdivision approval, then the detailed construction plans approved by the Land Use Board and Borough Engineer may be used to satisfy the requirement of this subsection. The submission to the Borough Engineer must be accompanied by approval reports from any local, county, state or federal agency having an interest in the application.
- C. Construction standards; compliance required; contractors' qualifications.
  - (1) Subsequent to the adoption of this section, all roads and improvements shall comply with the following standards of construction before the same are accepted into the municipal road or improvement systems of the Borough and accepted for full municipal maintenance.
  - (2) The term "plan" as used herein shall be the road and improvement plan approved by the Land Use Board of Lebanon Borough where a new road or an improvement of an existing road or an individual improvement is required by virtue of a subdivision, or a road or improvement plan approved by the Borough Engineer in the case of an existing road or improvement being improved to Borough standards for the purpose of acceptance into the Borough road or improvement systems for full municipal maintenance.
  - (3) All installations shall follow good engineering and construction practices as currently used in the area and the standards of design and construction shall be in accordance with the New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction, latest edition and as amended (hereinafter referred to in this section as the "Standard Specifications" unless modified herein, and the NJDOT standard construction details.
  - (4) The contractor chosen by the developer/applicant must be qualified by experience to perform the type of work required and must be prepared to prove that he has done similar work satisfactorily in other municipalities. The contractor shall, on request of the Borough, submit a written statement showing as a minimum the proposed plan for doing the work, their commitments for the supply of materials, the equipment available to do the work and its condition, a list of past and present contracts and such other information and documentation as the Borough may require.

(5) The contractor chosen by the developer/applicant must have a full-time qualified superintendent on the project at all times when work is being done on the improvements. The name of this superintendent shall be furnished to the Borough Engineer at the pre-construction conference. This full-time superintendent shall be responsible for all subcontractors.

(6) The developer/applicant is at all times responsible for the contractor.

D. Earthwork.

(1) The Articles of the Standard Specifications must be strictly adhered to in the work. The applicant's attention is specifically called to the provisions for removal of unsuitable material from the subgrade and to the need for adequate compaction of all fills.

(2) Subbase material shall be placed in roadway areas to eliminate unstable conditions. The Borough Engineer shall inspect and direct to ensure the subbase material is properly placed.

(3) The project must be kept properly drained at all times during construction of the subgrade.

E. Pavements.

(1) Only those pavements shown on the detail drawing exhibits annexed to this section shall be permitted for the work.

(2) If macadam base course or a premixed or quarry-processed base course is permitted and to be used, it must be constructed with a stone spreader or stone box and at the density specified for the project by the Borough Engineer.

(3) All materials and mixes used must conform to current New Jersey State Department of Transportation Standards and must be from New Jersey State Department of Transportation approved sources of supply/manufacture.

(4) Weather limitations imposed the Standard Specifications will be strictly enforced.

(5) Rates and temperature of application of bituminous materials will be as specified by the Borough Engineer for the project.

(6) Clean stone is required for penetration macadam. The Borough Engineer shall inspect and determine whether the stone is proper. Any stone delivered to the project and determined by the Borough Engineer or their representative to be unsatisfactory shall not be unloaded.

(7) All pavements, regardless of type, must be constructed at suitable density. The Borough Engineer shall inspect and determine whether the density is suitable prior to construction.

(8) Paving may not commence until approval of the subgrade has been given by the Borough Engineer.

F. Bridge structures. Refer to Standard Specifications.

G. Road structures and drainage.

(1) Underdrain shall be constructed where necessary as construction progresses. The Borough Engineer shall inspect and determine whether underdrain is necessary.

(2) Only new reinforced concrete culvert pipe of the proper class may be used.

(3) All materials must be from a source of supply approved by the New Jersey State Department of

Transportation and shall be so marked where applicable.

- (4) Backfill of pipe trenches and areas around road structures shall be as required by the Standard Specifications.
- (5) Pipes are to be laid true to line and grade as established by the approved plans and no curvature or departure from a perfectly straight alignment, either vertically or horizontally, will be permitted.
- (6) Manholes and inlets are to be constructed so that castings bear evenly on all supporting walls. Cocked or unevenly supported castings will not be permitted. Weep holes must be provided in all storm sewer structures unless the Borough Engineer determines that weep holes are not necessary and waives this provision. Proper channels must be poured in all drainage structures and pipes are to be cut off flush with structure walls.
- (7) All curbing is to be constructed on a firm and thoroughly tamped subgrade. No departure from true alignment and grade will be permitted. Cracked or otherwise damaged curb will not be approved. Expansion joints are to be placed at twenty-foot intervals and false joints at the midpoint of each curb section. The full depth of curbing (20 inches) must be provided under depressed driveway openings.
- (8) Headwalls and inlets are to be cast in place. No precast structures are allowed.
- (9) The type of guardrail shall be as specified on the plans and as approved by the Borough for the project. Guardrail shall be constructed only by an experienced guardrail contractor.
- (10) The Borough Engineer is to be consulted for approval of the design criteria for items such as storm sewer sizing and spacing and locations of inlets.

H. Electrical work.

- (1) Refer to the Standard Specifications.
- (2) All utility trenches for electrical service or similar services, such as underground telephone, are to be backfilled and tamped as directed by the Borough Engineer similar to trenches for other utilities, including storm sewers. All road crossings must be made and backfilled prior to commencement of the paving operation.

I. Landscape design.

- (1) Landscape design shall be in accordance with § **165-77**.
- (2) All projects require a plan which complies with the Soil Erosion and Sedimentation Control Ordinance and Article XXXV, Stormwater Management Control. This plan must be approved by the Borough and be strictly adhered to.

J. Materials and tests. The Standard Specifications shall be adhered to unless the Borough Engineer determines that compliance with them is unnecessary under the particular circumstances. In the event the Borough Engineer waives compliance with any of the provisions of these divisions, he/she must state the specific reasons compliance is not necessary.

K. Sanitary sewers and appurtenances.

- (1) This is a special division which is not covered by the Standard Specifications. Where such regulations exist, the applicant is bound by any rules adopted by any Borough body having jurisdiction over sanitary sewers.

- (2) Sanitary sewers are to be located, designed and constructed in strict accordance with the rules and regulations currently in effect and promulgated by the New Jersey State Department of Environmental Protection. Permits required by the Department must be applied for and obtained by the applicant. Approval of plans is also required by the Borough Engineer and the Borough body having jurisdiction over sanitary sewers.
- (3) Sanitary sewers (including laterals) are to be bedded and backfilled as required by the Borough Engineer and the detail exhibit. Pipe trenches are to be backfilled and tamped as required by the Standard Specifications.
- (4) Gravity sanitary sewer pipe must be cast of ductile iron, vitrified clay or asbestos cement as shown on the plans. Approved classes and types of pipe must be appropriate for the intended installation. All pipe is to be installed in a manner designated by the Borough Engineer to protect against shear or any type of breakage. Force mains are to be constructed of ductile iron.
- (5) Sewers will be tested by the applicant under the inspection of and as directed by the Borough Engineer for infiltration and must meet infiltration standards established by the State Department of Environmental Protection. Sewers will be initially tested upon completion and subsequent tests will be required periodically until the sewer improvement is accepted by the Borough at the end of the maintenance period. All defects found will be corrected immediately. Hard-to-locate sources of infiltration or inflow may require televising at the expense of the applicant.
- (6) Treatment facilities, pumping stations, metering pits, force mains and other sanitary sewer appurtenances require approval permits and testing as required above for sanitary sewers.
- (7) All gravity house laterals are to be provided with an observation/cleanout hole at a location directed by the Borough Engineer.
- (8) It is the obligation of the applicant to arrange for the sewer capacity he/she requires with the appropriate agency.

L. Water service installations.

- (1) This is a special division which is not covered by the Standard Specifications. Where such regulations exist, the applicant is bound by any rules adopted by any Borough body having jurisdiction over public water facilities. If water is furnished within the Borough by a body other than the municipal government itself, such permits as may be required by that other body must be secured by the applicant and the rules of that body are to be adhered to as well as the rules herein.
- (2) Water facilities are to be located, designed and constructed in strict conformance with the rules and regulations promulgated by the New Jersey Department of Environmental Protection. Permits required by the Department must be applied for and obtained by the applicant. Approval of plans is also required by the Borough Engineer and the Borough body, if any, having jurisdiction over public water supplies.
- (3) Water mains and the portion of services within the road right-of-way are to be bedded and backfilled as required by the Borough Engineer and the detail exhibit. All pipe trenches are to be backfilled and tamped as required by the Standard Specifications.
- (4) Water pipe must be of the type and material specified by the agency responsible for supplying and/or regulating the supply of water within the Borough.
- (5) Fire hydrants are to be located where directed by the Lebanon Volunteer Fire Company serving the area of the project and must be the type designated by that Lebanon Volunteer Fire Company so as to be compatible with fire-fighting equipment.

- (6) Fire hydrants and the total water supply facility for the project must be certified by a qualified independent agency as meeting the minimum requirements for fire flows and domestic use. With respect to fire flows, certification is required from the Insurance Services Office of New Jersey.
  - (7) It is the obligation of the applicant to arrange for the water capacity he/she requires with the appropriate supplier and to furnish documented proof of the supplier's ability to supply.
- M. Other permit requirements. Any of the improvements to be installed under this section may require, in addition to the provisions hereof, permits for the construction and occupancy of structures falling under the jurisdiction of the State Uniform Construction Code and the Construction Official. It is the obligation of the applicant to ascertain the need for such additional permits and to obtain the same for items such as but not limited to pump houses, treatment facility buildings, construction offices and warehouses.
- N. Other improvements.
- (1) Improvements necessary to the proposed project or required for the project not specifically covered by the Standard Specifications or by other sections of this section must follow normally accepted standards for the design and construction of those improvements currently in use in the area. Examples of items which might fall under this category are stormwater detention-retention devices, drainage swales, recharge wells, filter berms and others, without limitation. Improvements of this nature are to be based on design criteria currently being used in the municipality and specifics are to be approved by the Borough Engineer.
  - (2) Unique or unusual engineering solutions to problems which result from improvements under the purview of this section will be reviewed on a case-to-case basis and the applicant is expected to supplement the submission of plans with proof that the solution has functioned satisfactorily elsewhere.
- O. Inspection fees.
- (1) All improvements, including electric, gas, sewer and water lines, shall be installed under the inspection of the Borough Engineer, the cost thereof to be borne by the developer or applicant. Inspection costs shall be computed by the Borough Engineer in accordance with the following schedule. If the total cost of required improvements is:
    - (a) Not over \$5,000, then the fee is \$500.
    - (b) Over \$5,000 but not over \$10,000, then fee is \$500 plus 4 1/2% of excess over \$5,000.
    - (c) Over \$10,000 but not over \$50,000, fee is \$500 plus 4% of excess over \$10,000.
    - (d) Over \$50,000 but not over \$75,000, fee is \$2,000 plus 3 1/2% of excess over \$50,000.
    - (e) Over \$75,000 but not over \$100,000, fee is \$3,000 plus 3% of excess over \$75,000.
    - (f) Over \$100,000, fee is \$4,000 plus 2 1/2% of excess over \$100,000.
  - (2) Such fee, by bank issued check, shall be deposited with the Borough Clerk before the commencement of any construction. Any unexpended portion of the inspection fee shall be returned to the developer; or the developer shall reimburse the Borough for inspection costs which exceed the inspection fee.
  - (3) For the purpose of establishing fee amounts, the applicant's engineer shall furnish to the Borough Engineer an estimate of the cost of the improvements based on prices currently common to municipal-type contracts in the area.

P. Notification of Engineer.

- (1) At least two weeks prior to the start of construction, the applicant shall notify the Borough Engineer in writing, with a copy to the Borough Clerk and Secretary of the Land Use Board, of the date when construction will begin, so that a preconstruction conference can be held and inspections may be conducted by the Borough Engineer. If, during installation of any required improvements, the developer fails to meet specification requirements or to correct unacceptable work, the Borough Engineer shall notify the developer verbally, confirmed in writing, of the developer's failure to comply. If, within 10 days of the date of receipt of the notice, the developer fails to perform in accordance with the Borough Engineer's directions, the Borough Engineer shall notify the governing body, which, in turn, shall cause the issuance of a stop order on further construction and take such remedial action as the circumstances require.
- (2) Any improvements installed and not inspected by the office of the Borough Engineer will not be accepted into the Borough road or improvement system.
- (3) A change in contractor(s) will require a new preconstruction conference.
- (4) Where required by the Borough Engineer, samples of concrete or any other materials used in the course of construction may be taken and tested in a Borough-approved testing laboratory, with the cost of the laboratory analysis to be paid by the developer or applicant independent of the inspection deposit.

Q. Filing of plans. The developer/applicant shall provide and file with the Borough one set of as-built improvement plans and profiles on Mylar showing actual construction as approved, prior to the granting of final subdivision approval and prior to the initial acceptance of the work.

R. Performance guaranties. The Borough may accept a performance guaranty for the installation of sidewalks, monuments and shade trees only. The performance guaranty for these improvements shall be equal to 150% of the cost of the improvements as estimated by the Borough Engineer. At least 20% of the performance guaranty shall be in the form of cash or a certified check made payable to Borough of Lebanon. The cash or certified check shall be deposited or invested by the Borough Treasurer in the manner prescribed by law for municipal funds, the principal amount to be refunded to the developer upon satisfactory completion of the improvements and release of the applicable performance bond, or sooner at the discretion of the Borough. The performance guaranty shall run for a term not to exceed 18 months from the date of approval. With the consent of the principal, the performance guaranty may be extended by the Borough after recommendation by the Land Use Board by resolution for an additional period not exceeding 18 months. The performance guaranty may be reduced or released in accordance with the procedures established pursuant to the provisions of N.J.S.A. 40:55D-53.

S. Terms and conditions of approval. Prior to any construction, the Land Use Board shall pass a resolution incorporating all the terms and conditions of approval imposed by the Land Use Board. The resolution shall establish a schedule of completion dates and period for completion of all improvements, which period shall not exceed 18 months. In addition, the resolution shall require that the developer:

- (1) Procure necessary drainage or other easements or rights-of-way, including those necessary to provide for adequate sight distance and stream encroachments.
- (2) Make such revisions in the plans as may be reasonably required before or during construction by the Borough Engineer and establish a procedure for approval of plan changes.
- (3) Procure all local, county, state or federal permits for all phases of the work, including but not limited to permits to construct and operate sanitary sewer and public water systems.
- (4) Provide for the payment of engineering review fees in cases where a subdivision has not been reviewed

as part of the application.

- (5) Provide for instruction in the operation of all equipment within or part of facilities to be accepted and operated by the municipality, such instruction to be by the manufacturer/installer of equipment and to be supplemented with copies of all pertinent operations manuals.

T. Maintenance guaranty.

- (1) Upon completion of all improvements and prior to release of the performance guaranty and approval of the work, the subdivider shall file a maintenance guaranty bond amounting to 10% of the cost of all improvements, to guarantee that the completed improvements will be maintained for a stated period not to exceed two years. The maintenance guaranty shall be reviewed by the Borough Engineer and approved by the Borough Attorney as to form, sufficiency and execution and shall be approved by the governing body. The maintenance guaranty bond shall be given at the time the Borough has certified that all the improvements have been installed in a satisfactory and acceptable manner. In addition, the maintenance guaranty shall cover regular maintenance, such as curb replacement and repair, cleaning out of catch basins and any other matters which would be necessary to put any of the required improvements in the condition as when certified by the Borough Engineer. The bond shall provide for a guaranty to replace, during said period, all work performed and all materials furnished found defective and make good any defects thereof which may become apparent before the expiration of the said period.
- (2) The governing body shall not accept any road or improvement into the municipal systems until the maintenance period expires or after the deficiencies are repaired, and then only if it is in the same condition as when certified. However, the Borough shall undertake to remove snow from the roads during the period between certification and final acceptance if the applicant presents a written request to the Borough Clerk and agrees in the request to hold harmless the Borough and its agents and employees from any damages caused by the snow removal.

U. Prerequisites for construction permits. If the improvements are part of a subdivision, a construction permit shall not be issued until the complete installation of all works, including but not limited to sanitary sewers, water, gas, storm drains, roads, curbs and street signs, all as specified in the plan, except those items covered by a performance guaranty as referred to in Subsection **R** above. Upon certification by the Borough Engineer that the installation is complete, construction permits shall be authorized.

V. Insurance required. The applicant and their contractors shall carry such insurance as may be required by the Borough.

W. Violations and penalties. Any person, firm or corporation who shall violate, disobey, omit, neglect or refuse to comply with any provision of this section shall, upon conviction thereof, be liable to the penalty stated in Chapter 1, § 1-20. Each and every day such violation continues shall constitute a separate and distinct offense.

X. Exhibits; availability for inspection. Detailed drawings shall be available for inspection at the office of the Borough Clerk and Land Use Board Clerk during regular business hours.

§ 165-74 **Lighting.**

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

- B. Outdoor lighting. All outdoor light fixtures installed and thereafter maintained, other than those serving one- and two-family dwellings [except as otherwise noted, see Subsection **B(8)** below], shall be outdoor enclosed light fixtures, and shall comply with the requirements specified in this section:
- (1) Where used for security purposes or to illuminate walkways, roadways and parking lots, only outdoor enclosed light fixtures shielded from public view and having the performance characteristics of a cutoff light fixture shall be used.
    - (a) For parking lots and walkways, light poles that are visible to the public shall not exceed 16 feet in height (base plus pole).
  - (2) Where used for commercial and industrial purposes such as in merchandise display areas, work areas, platforms, signs, architectural, landscape or sports or recreational facilities, all light fixtures shall be equipped with automatic timing devices and shall comply with the following:
    - (a) Lamp/luminaire combinations being considered to illuminate flags, statues or any other objects mounted on a pole, pedestal or platform shall have their candlepower curve plotted such that 100% of the beam angle used is not greater than the size of the object to be illuminated.
      - [1] In the case of flags that can move in the wind 360° around the pole, the beam angle shall be based on a circle having a radius equal to the width of the flag, except that flags having a width of 12 feet or more shall be illuminated by a beam with a radius not greater than 2/3 of the width of the flag.
    - (b) Other upward directed architectural, landscape or decorative light emissions shall have at least 90% of their total distribution pattern within the profile of the illuminated structure.
    - (c) Externally illuminated signs, including commercial billboard, building identification or other similar illuminated signs, shall comply with the following:
      - [1] Top-mounted light fixtures shall have illumination levels plotted such that 100% of the beam angle used is not greater than the size of the externally illuminated sign, and are preferred over any other positioned light fixtures.
      - [2] When top-mounted light fixtures are not feasible for good cause shown, illumination from other positioned light fixtures shall continue to be restricted to the sign area. Visors or other directional control devices shall be used to eliminate any spill light. Furthermore, when billboard or any other signage is viewed from the opposite side of that being illuminated, luminous portions of light fixtures, and stray light, shall not be visible.
  - (3) Detailed plans are to be provided to illustrate floodlight distribution patterns. Once properly installed, the fixtures are to be aimed, permanently affixed, and maintained in the approved position according to the terms of approval outlined in the approving resolution.
  - (4) Foundations supporting lighting poles installed less than four feet behind the curb shall not be less than 24 inches above the ground.
  - (5) Outdoor light fixtures for purposes of private, commercial or industrial usage shall not be attached or mounted to public property (i.e., public buildings, utility poles, telephone poles, streetlights, road/street signs). Furthermore, these fixtures shall not tap or extend power from sources servicing public lighting and/or power devices.
  - (6) To prevent visual adaptation for motorists approaching commercial properties from adjacent low luminance residential areas, vertical luminances on the commercial and industrial properties in these locations shall be limited to 100 fL for internally illuminated signs and five fL for externally illuminated

signs and building surfaces used as signs.

- (7) Outdoor recreational and sports facility lighting shall be shielded from public view, as observed from outside the playing field. Such lighting shall have directional and glare control devices, when necessary, to comply with Subsection C.
- (8) All outdoor light fixtures that serve one- and two-family dwellings and that have initial light outputs greater than 1,500 lumens shall be outdoor enclosed light fixtures. Light fixtures with initial light outputs less than 1,500 lumens such as decorative porch lights, wall sconces, post top lanterns and walkway fixtures may contain lamps and glass/plastic diffusing devices that extend beyond the opaque fixture enclosure. All outdoor light fixtures shall comply with the requirements as specified below:
  - (a) Light distributions generated by light fixtures shall be confined to the property on which they are installed.
  - (b) Outdoor light fixtures properly installed and maintained shall be directed so that there will not be any direct glare source visible from any adjacent residential property.
  - (c) Light fixtures installed within any setback area, including front, rear or side yard setbacks, shall contain shielding devices to prevent light spill and glare upward and onto adjacent properties.
- (9) LED light fixtures shall have a maximum color temperature of 3,000k.

**C. Light trespass (nuisance light).**

- (1) All light fixtures, except streetlighting maintained by a governmental authority, and those used on one- or two-family dwellings, shall be designed, installed and maintained to prevent light trespass, as specified below:
  - (a) Facade lighting on schools and other public buildings or incident illumination occurring above a height of five feet above the property line of the subject property shall not exceed 0.1 footcandle in a vertical plane on residentially zoned property.
  - (b) Outdoor light fixtures properly installed and thereafter maintained shall be directed so that there will not be any direct glare source visible from any property.
- (2) Note: Light fixtures near adjacent property may require special shielding devices to prevent light trespass.

**D. Illuminance and luminance requirements. Illuminance and luminance requirements shall be as set forth below:**

- (1) Streetlighting.

Category	Average Illuminance		Average Luminance		Ratio	Ratio
	Initial	Maintained	Initial	Maintained	(fc)	(fL)
Residential					Average to Minimum	Average to Minimum

Category	Average Illuminance (fc)		Average Luminance (fL)		Ratio (fc)	Ratio (fL)
	Initial	Maintained	Initial	Maintained	Average to Minimum	Average to Minimum
	Streetlighting local	0.6	0.4	0.12	0.09	5 to 1
Streetlighting collector	0.9	0.6	0.18	0.12	4 to 1	4 to 1
Commercial						
Streetlighting local	1.3	0.9	0.26	0.18	5 to 1	5 to 1
Streetlighting collector	1.7	1.2	0.34	0.24	4 to 1	3 to 1

(2) On-grade parking. Refer to Schedule A.

### Schedule A

#### Maintained Illuminance for Parking Lots

#### Initial Illuminance

	Basic	Enhanced Security	Basic	Enhanced Security
Horizontal Illuminance				
Minimum (fc)	0.2	0.5	0.3	0.7
Average (fc)	1.0	2.5	1.4	3.6
Uniformity ratios				
Average to minimum	5:1	5:1	5:1	5:1
Maximum to minimum	20:1	15:1	20:1	20:1
Minimum vertical illuminance (fc)	0.1	0.25	0:15	0.35

NOTES:

**Schedule A**

**Maintained Illuminance  
for Parking Lots**

**Initial Illuminance**

	<b>Basic</b>	<b>Enhanced Security</b>		<b>Basic</b>	<b>Enhanced Security</b>
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1. Minimum horizontal illuminance shall be no lower than 0.2 fc.
2. Average horizontal illuminance shall not exceed 2.5 fc.
3. Minimum vertical illuminance shall be measured at five feet above parking surface at the point of lowest horizontal illuminance, excluding facing outward along the boundaries.
4. For typical conditions. During periods of nonuse, the illuminance of certain parking facilities should be turned off or reduced to conserve energy. If reduced lighting is to be used only for the purpose of property security, it is desirable that the minimum (low point) not be less than 0.1 h.f.c. Reductions should not be applied to facilities subject to intermittent night use, such as apartments and active transportation areas.
5. High vehicular traffic locations should generally require the enhanced level of illumination. Exits, entrances, internal connecting roadways and such would be some examples.

Certain data above have been summarized from IESNA RP-20-98, titled "Lighting for Parking Facilities."

- (3) All other illuminance uses shall not exceed IESNA recommendations.
- (4) Internally illuminated signs shall not exceed 75% of IESNA luminance recommendations.
- (5) Externally illuminated signs. Luminance values are to be based on the following surface reflectances:

<b>Range of Surface Reflectance</b>	<b>Luminance Measured in Footlamberts (fL)</b>
10% to 20%	5 to 10
20% to 50%	4 to 10
50% to 100%	5 to 10

- (6) When building surfaces are used as signs, the luminance values and surface reflectances shall be the same as those indicated for "externally illuminated signs."

**E. Outdoor lighting energy conservation.**

- (1) All outdoor lighting not essential for safety and security purposes or to illustrate changes in grade or material shall be activated by automatic control devices and turned off during nonoperating hours. Illuminated signs are excluded from this requirement.
  - (a) Exterior retail and merchandise display lighting, e.g., automobile dealerships, nurseries/garden markets, shall not remain on after 10:00 p.m. Reduced levels of lighting in interior show or display windows may remain on for security purposes; provided, however, that these levels shall not exceed 25% of the

normal artificial lighting levels in the interior display or show windows.

- (b) Exterior lighting for recreational areas, athletic fields and courts shall not remain on after 10:00 p.m., except for exterior lighting serving accredited educational institutions, which shall not remain on after 11:00 p.m.
- (c) Exterior security lighting shall be classified as one of the following:
  - [1] Lighting which is essential to deter vandalism and/or break-in. This lighting shall be limited to exterior door locations. Fixtures used for normal operation at these locations may remain on. The fixtures shall be outdoor enclosed lighting fixtures. If window areas present possible break-in locations, reduced levels of interior lighting which is situated around the windows may remain on as a night light source to illuminate the window. Night light levels shall not exceed 50% of the normal interior artificial lighting levels around the windows.
  - [2] Normally off lighting that is activated by a sensor or detector. Typically, discharge lamp sources such as sodium vapor, mercury vapor, and metal halide are not instant start. Therefore, consideration should be given to using other lamp sources such as incandescent, tungsten halogen, and fluorescent which can be used for immediate activation. Normally off lighting activated by sensors or detectors shall be directed toward the vertical surfaces of buildings or objects of concern.
  - [3] Lighting that remains on for surveillance cameras. This lighting shall be confined to vertical building surfaces and vertical surfaces along the perimeter of a site, e.g. walls, trees, bushes. Illuminance levels for this lighting shall be coordinated with, and not exceed, the minimum illuminance threshold of the cameras being used. This data shall be provided with the submission of the plans, in accordance with Subsection **F** below.
- (2) All lighting shall be designed to prevent misdirected or excessive artificial light and to maximize energy efficiency in accordance with Subsection **C** above.

F. Submission of plans. Plans and evidence of compliance shall include the following:

- (1) Description of outdoor lamp/luminaire combinations, including component specifications such as lamps, reflectors, optics, angle of cutoff, supports, poles and include manufacturer's catalog cuts.
- (2) Locations and description of every outdoor enclosed light fixture and hours of operation, their aiming angles and mounting heights.
- (3) The initial horizontal and vertical illuminance shall be illustrated in footcandles (before depreciation). Illustrate relamping and cleaning cycles to arrive at maintained values of illumination. Separately state proposed maintained footcandles (horizontal and vertical).
  - (a) Maximum.
  - (b) Minimum.
  - (c) Average, during operating and nonoperating hours.
  - (d) Average to minimum uniformity ratio.
- (4) Computer-generated photometric grid showing footcandle readings every 10 feet and the average footcandles. Depending upon the design application, this can be for either or both facade (vertical) or horizontal illumination levels.
- (5) Foundation details for light poles.

- G. Prohibitions. Searchlights or flashing or animated signs are prohibited, other than as approved by the Borough Council.
- H. Notification. Any developer constructing new one- and two-family dwellings in the Borough shall provide home purchasers with a copy of § **165-74B(8)**, which addresses lighting standards for one- and two-family dwellings.

§ 165-75 **RESERVED.**

§ 165-76 **RESERVED.**

§ 165-77 **Landscape design.**

Applicability. All applications for major subdivisions, major site plans and variance applications shall comply with these provisions.

A. Purpose:

- (1) To protect existing woodland and encourage reforestation of nonagricultural land.
- (2) To prevent soil erosion and soil depletion and increase water retention and water quality.
- (3) To improve the appearance of off-street parking and vehicular use areas near public rights-of-way or adjoining uses.
- (4) To protect agricultural land use and historic areas from the impact of new development.
- (5) To screen residential and commercial subdivisions and development from public view.
- (6) To promote public health, welfare and safety by reducing noise and air pollution, visual pollution, air temperature and light glare.

B. Conceptual landscape design considerations. The site and surroundings should be thoroughly analyzed. The following items shall be reviewed to determine the design layout and/or plant material selection:

- (1) The shape and/or form of the land itself and its relationship to the existing and proposed buildings. Plantings shall give scale to the buildings and other site elements.
- (2) The geology and soil characteristics.
- (3) The surface and subsurface water conditions.
- (4) Existing vegetation patterns. (Except in urban and other highly disturbed sites, the native vegetation found on and around the site is usually a good indicator of which vegetation types will perform well.)
- (5) Solar orientation and exposure, accounting for land forms, existing vegetation and neighboring structures.
- (6) Local and regional climate (precipitation, temperature ranges, humidity, wind patterns, etc.).
- (7) Air, noise and water pollution.

- (8) Community, social, historical and cultural values.
- (9) Plantings adjacent to fire suppression access and utilities shall be done so as not to obstruct or hinder their operations in the event of an emergency.
- (10) Plantings shall also create human scale and space. Consider pedestrian safety and state of mind by providing appropriate lighting at pathways.
- (11) The approving authority may require items of construction such as retaining walls, guardrails, safety fencing, traffic barricades or other devices necessary in the interest of public safety and convenience.

C. Landscape design plan submission requirements:

- (1) Plan prepared and signed by a certified landscape architect.
- (2) Name, address and telephone number of the owner and developer.
- (3) Name, address, telephone number and qualifications of the professional who prepared the plan.
- (4) A legal description or boundary line survey of the site on which the work is to be performed.
- (5) A plan of the site at a scale of no less than one inch equals thirty (30) feet that shows:
  - (a) Where necessary, a key map at a larger scale to show the entirety of the site shall be provided.
  - (b) Existing and proposed topography at a maximum of two-foot contour intervals, except where the slopes equal or exceed 12% grade where five-foot contour lines shall be shown, extending at least 100 feet beyond the site boundary.
  - (c) Delineation of all forest areas.
  - (d) Delineation of the limit of disturbance.
  - (e) All six-inch DBH and larger trees within the limit of disturbance and 50 feet beyond the limit of disturbance.
  - (f) Indication of whether all six-inch diameter at breast height (DBH) and larger trees within the limit of disturbance and 50 feet beyond the limit of disturbance are proposed to be removed, preserved and/or transplanted. For each case, the size, species and health condition of each tree shall be noted.
  - (g) Identification of tree masses and understory groupings in areas outside of the 50 feet beyond the limit of disturbance.
  - (h) Identification of all existing features occurring on the site. Such features include, but are not limited to, rock outcroppings, boulders, stone rows, hedgerows, meadows and vistas.
  - (i) The location of all existing and proposed buildings and structures.
  - (j) The location of all existing and proposed easements.
  - (k) The location of all existing and proposed parking spaces and vehicular use areas.
  - (l) The location of all existing and proposed public rights-of-way.
  - (m) The location of all existing and proposed overhead and underground utilities.

- (n) The location of all existing and proposed stormwater management components.
- (o) The location of all existing and proposed standpipes.
- (p) The location of all existing and proposed hydrants and fire suppression tanks.
- (q) Plant location and labels indicating species type and quantity of species labeled for each plant or group of plants.
- (r) Zoning districts of the proposed site and adjacent properties.
- (s) North arrow respective to the direction of north on the site.
- (6) A planting listing for all proposed landscape materials showing caliper sizes, height of material, method of installation, botanical and common names, type and amount of mulch, ground cover, grasses and root type (bare root or balled and burlapped), and quantity of materials.
- (7) A landscape elevation drawing, drawn to scale, showing the height and density of proposed buffers, as required to accurately depict the proposed plan, including structures and existing plant material to remain. One elevation drawing representing the relationship with the building and the proposed buffer at installation and one at five years after installation for each buffer shall be required.
- (8) All areas of planting beds to receive mulch shall specify the depth and type of mulch.
- (9) Planting details, typical for evergreen trees, deciduous trees and shrubs.
- (10) The proposed planting dates.
- (11) A statement of intent to install and maintain all such landscaped areas in accordance with the requirements of this chapter.
- (12) A soil composition analysis and ph test.
- (13) Completion of Chart 165-77.1, below, indicating compliance with buffer requirements, per § 165-77 of the Lebanon Borough Land Use Regulations.

				<b>Total</b>					
<b>Yard</b>		<b>Buffer</b>		<b>Buffer</b>		<b>Area of</b>		<b>Total</b>	
<b>Length</b>	<b>Multiply</b>	<b>Depth</b>	<b>Equals</b>	<b>Area</b>	<b>Divide</b>	<b>Module</b>	<b>Equals</b>	<b>Modules</b>	
<b>Yard</b>	<b>(feet)</b>	<b>by</b>	<b>(feet)</b>	<b>Equals</b>	<b>(feet)</b>	<b>By</b>	<b>(feet)</b>	<b>Equals</b>	<b>Required</b>
Front		x	50	=		/	1,250	=	
Side		x	25	=		/	1,250	=	
Side		x	25	=		/	1,250	=	
Rear		x	25	=		/	1,250	=	

					<b>Total</b>				
	<b>Yard</b>		<b>Buffer</b>		<b>Buffer</b>		<b>Area of</b>		<b>Total</b>
	<b>Length</b>	<b>Multiply</b>	<b>Depth</b>		<b>Area</b>	<b>Divide</b>	<b>Module</b>		<b>Modules</b>
<b>Yard</b>	<b>(feet)</b>	<b>by</b>	<b>(feet)</b>	<b>Equals</b>	<b>(feet)</b>	<b>By</b>	<b>(feet)</b>	<b>Equals</b>	<b>Required</b>
									<b>Total Modules Required</b>

**Chart 165-77.1**

**Compliance with Buffer Requirements**

- D. Preservation of existing individual trees.
  - (1) All applications for development shall include a plan to preserve all existing trees that are in good health and an asset to the Borough.
  - (2) Desirable, healthy plants that are an obstacle to the design of the development of the property shall be transplanted or replaced elsewhere on the property with healthy plants at the discretion of the Municipal Landscape Architect. All efforts shall be made in developing a site to preserve desirable trees. The Municipal Landscape Architect may recommend adjustments to the site development rather than risk the health of the existing trees due to site disturbance.
  - (3) All trees to be preserved within the limit of disturbance shall have tree protection in accordance with the State standard for Soil Erosion and Sediment Control in New Jersey latest statutory edition.
  - (4) Trees with a six-inch or greater diameter at breast height (DBH) shall be saved whenever possible and shall be protected from damage to roots, trunk and branches. The Borough Landscape Architect, or other designated representative, shall designate those trees which are to be saved. Soil should not be added on top of the existing root zone(s). Tree wells are to be provided where necessary and trees to remain within the improvement project limits are to be trimmed as directed by the Borough Landscape Architect, or other designated representative.
  - (5) Large trees (greater than six-inch DBH) shall be replaced by a tree of similar caliper or may be replaced with multiple smaller-caliper trees at a 1:1 ratio (one caliper inch of new trees shall be provided for every one inch DBH removed). No tree planted as a replacement shall be less than two inches caliper.
  - (6) Trenching for utilities shall be done in such a manner as to avoid disturbance within ten (10) feet of the drip line of the tree. Air spading and other approved methods may be acceptable alternatives to realigning proposed utilities.
  - (7) Replacement trees shall be in addition to the count required to meet the buffering as set forth elsewhere in this section.
  - (8) The following shall be exempted from the prohibitions of this subsection:
    - (a) Trees located on a tract of land having a total area of less than one acre with a building located thereon;
    - (b) Any trees cut or removed in accordance with an approved management plan of a proper state or federal authority;

- (c) Any trees located on publicly owned lands;
  - (d) Any trees required to be cut in connection with the installation of public utilities once all other options have been investigated;
  - (e) Trees endangering public health and safety; and
  - (f) Trees located in commercial orchards or nurseries.
- E. Preservation and reforestation of existing forested areas.
- (1) Every effort should be made to preserve existing forest areas, including the overstory and understory vegetation within the forested areas. After every effort has been made through creative site Land Use techniques and sensitive grading and drainage design, and the approving authority agrees that it is necessary for clearing of forests to occur to accommodate site development, reforestation with native tree species shall be required according to Chart 165-77.2.

<b>Existing Forest Cover as a Percentage of the Site</b>	<b>Reforestation Requirement in Acres Removed/Acres Required to be Replaced</b>
Forest areas between 1% and 10% of the net tract acreage	1:2
Forest areas between 11% and 20% of the net tract acreage	1:1
Forest areas between 21% and 30% of the net tract acreage	1:0.5
Forest areas between 31% and 100% of the net tract acreage	1:0.25

**Chart 165-77.2**

**Reforestation Requirements.**

- (2) The method of reforestation shall be determined by individual site conditions and shall be approved by the approving authority. The planting may be comprised of a mix of tree sizes, with stocking rates determined as a percentage of each planting size proposed. Stocking rates for reforestation plantings shall be in accordance with Chart 165-77.3.

<b>Reforestation Method</b>	<b>Number of Trees Required per Acre</b>	<b>Number of Live Trees Required at End of Maintenance Period</b>
Container-grown seedling tubes	450	65% (290)
Container-grown 1-, 2- or 3-gallon containers	350	75% (260)
One-inch caliper	200	85% (170)

<b>Reforestation Method</b>	<b>Number of Trees Required per Acre</b>	<b>Number of Live Trees Required at End of Maintenance Period</b>
Two-inch caliper	100	100% (100)

**Chart 165-77.3**

**Reforestation Methods and Requirements.**

- (3) Reforestation plantings shall include at least 30 shrubs per acre.
- (4) Reforestation plans shall contain specifications for treatment of the ground plane with either two inches of wood chips or a native ground cover, a maintenance plan including the periodic removal of exotic/invasive plants, and deer protection measures.
- (5) All reforestation plantings shall be maintained for a period of two years.
- (6) All reforestation plantings shall be placed in a permanent conservation easement.

**F. Official list of plants.**

- (1) The following list of plants is provided to guide species selection. Species selection should be based on an appropriate woodland successional model, and shall include species that are native to the region and noninvasive, as deemed by the Municipal Landscape Architect.

(a) Canopy trees:

- [1] Red oak (*Quercus rubra*).
- [2] White Oak (*Quercus alba*).
- [3] Black oak (*Quercus velutina*).
- [4] Chestnut oak (*Quercus prinus*).
- [5] Pin oak (*Quercus palustris*).
- [6] Red maple (*Acer rubrum*).
- [7] Sugar maple (*Acer saccharum*).
- [8] American beech (*Fagus grandifolia*).
- [9] Tulip tree (*Liriodendron tulipifera*).
- [10] Sweet birch (*Betula lenta*).
- [11] River birch (*Betula nigra*).
- [12] Paper birch (*Betula papyrifera*).
- [13] Sweetgum (*Liquidambar styraciflua*)\*.
- [14] Sycamore (*Platanus occidentalis*)\*.

[15] Black gum or sour gum (*Nyssa sylvatica*).

[16] Basswood (*Tilia americana*).

Note: \*Locate tree trunk not closer than 40 feet to roadways, parking lots, pedestrian walkways, and bicycle paths.

(b) Ornamental/Understory trees:

[1] Common witchhazel (*Hamamelis virginiana*).

[2] Flowering dogwood (*Comus florida*).

[3] Shadtrees (*Amelanchier canadensis*).

[4] Sassafras (*Sassafras albidum*).

[5] Sweetbay magnolia (*Magnolia virginiana*).

[6] Eastern Hophornbeam (*Ostrya virginiana*).

[7] American Hornbeam (*Carpinus carolinian*).

[8] Red cedar (*Juniperus virginiana*) EG.

[9] American Holly (*Ilex opaca*) EG.

[10] White pine (*Pinus strobus*) EG.

[11] Red pine (*Pinus resinosa*) EG.

Note: EG = evergreen.

(c) Shrubs:

[1] Summersweet (*Clethra alnifolia*).

[2] Gray dogwood (*Cornus paniculata*).

[3] Silky dogwood (*Cornus amomum*).

[4] Inkberry (*Ilex glabra*) EG.

[5] Spicebush (*Lindera benzoin*).

[6] Highbush blueberry (*Vaccinium corymbosum*).

[7] Arrowwood viburnum (*Viburnum dentatum*).

[8] Maple-leaved viburnum (*Viburnum acerifolium*).

[9] Blackhaw viburnum (*Viburnum prunifolium*).

[10] Mountain laurel (*Kalmia latifolia*) EG.

[11] Rosebay rhododendron (*Rhododendron maximum*) EG.

Note: EG = evergreen.

G. Parking lot landscape design.

- (1) In every effort to minimize the visual impacts of large parking lot areas, the applicant shall install a parking lot buffer. Such buffer shall screen parking from the public right-of-way and adjacent uses both on- and off-site.
  - (a) The buffer shall consist of canopy trees, ornamental/understory trees, evergreen trees, shrubs and perennials within a ten-foot minimum width consistent with the parking perimeter.
  - (b) Where parking is located in a front yard, the approving authority may require construction of landscaped berms up to a height of five feet, with slopes at a ratio of not less than 3:1.
  - (c) Where off-street parking and loading areas adjoin or face premises situated in a residential zone, the approving authority may require the construction of a fence or stone wall not less than three feet nor more than six feet in height, maintained in good condition. Additionally, the approving authority may require construction of planted berms up to a height of five feet, with slopes at a ratio of not less than 3:1.
  - (d) Said buffer shall screen 60% of the automobile/parking lot from the road and pedestrian view during the time frame of November to April within two years of installation.
  - (e) Woody shrubs shall be set back from the curb three feet for vehicular overhang and snow removal.
  - (f) Plantings shall not obstruct visibility necessary for automobile and pedestrian circulation and safety within the facility.
  - (g) All plant material shall be subject to review by the approving authority and Municipal Landscape Architect.
- (2) Large expanses of pavement and long, unbroken rows of parking spaces shall be avoided. No row of parking spaces shall contain more than 15 spaces unless broken by landscaped islands.
  - (a) Landscape islands shall be a minimum width of 10 feet and a minimum depth of 18 feet.
  - (b) At a minimum, landscape islands shall contain one canopy tree.
  - (c) Adjoining rows of parking shall be separated by landscape islands having a width of at least 10 feet.
- (3) Ten percent of all surface parking areas and the top story of raised parking decks where no roof is provided shall be landscaped. The parking area shall be determined by the outer limit of pavement on the site and the inner limit of pavement around or adjacent to the building.
  - (a) Canopy trees are required to reduce heat island effect. At a minimum, one canopy tree for every three parking spaces for on-grade parking shall be planted at the perimeter or within said parking area.
- (4) Trash collection areas. Trash collection areas shall be enclosed by a masonry wall with a minimum height of six feet and shall be covered.
  - (a) Masonry walls shall consist of the same or complementary building materials as those used for the principal use on the site.

- (b) Access to the trash collection areas shall be provided by a pedestrian entry with opaque gate with a minimum height of six feet.
- [1] Gate materials shall be visually consistent with the appearance of the masonry walls enclosing the trash collection area and the principal use on the site.
- (5) Loading zones. All loading zones shall contain a buffer consisting of 60% evergreen plant material.
- (a) Said buffer shall screen 60% of all loading areas from the road and pedestrian view during the time frame of November to April within two years of installation.

H. Street and highway landscape design.

- (1) Street trees shall be required on all public and private roads in Lebanon Borough and shall be drought tolerant and salt resistant.
- (2) Species and tree placement shall be specific to the site design concept and site conditions and subject to approval by the approving authority.
- (3) The use of multiple species is required.
- (4) All street trees in a formal street tree planting shall be located within the street right-of-way and in such a manner as not to interfere with sidewalks and/or utilities.
- (5) Within formal street tree plantings, tree spacing shall correlate with road hierarchy and, in general, spacing shall range from a minimum of 30 feet on center to a maximum to 50 feet on center. At slower design speeds and at areas of special interest like town centers, the spacing shall be closer together (i.e., 30 feet on center). See Chart 165-77.4 for additional information.

**Road Design Speed**

<b>(mph)</b>	<b>Tree Spacing</b>
+50	50 feet on center
35 to 49	40 feet on center
0 to 34	30 feet on center

- (6) In order to preserve the rural character of a specific site, the board may request an informal street tree planting. Species shall be grouped / massed along roads in such a manner to fit appropriately within the site and shall be placed within a street tree easement.

I. Screening of utility and wellhead markers.

- (1) Wellheads not located within the building envelope shall be screened from street view.

- (2) Plantings shall screen utility structures, such as transformers, cable, or phone connection points, from the street view.
- J. Water quality facilities. Unless inconsistent with the New Jersey Stormwater Management Rules, the following shall apply:
- (1) The utilization of plant material within a stormwater quality treatment facility is required. Not only does the appropriate plant material aid in the removal of total suspended solids and other non-point source (NPS) pollutants, but also provides visual interruption from the cleared, graded area for the facility. Stormwater retention facilities are excluded from this section, except where specified.
  - (2) Plantings shall be included within such facilities. The species selected for such areas shall be tolerant of water inundation and drought conditions and is subject to review by the approving authority, Municipal Landscape Architect and Municipal Engineer.
  - (3) Detention basins and other similar stormwater management and design facilities shall be screened from the public right-of-way. The landscape plan shall include native grasses, ground cover, trees and shrubs to achieve a buffer that screens 60% of the view from November to April at a height of three feet, two years from installation.
  - (4) Creative grading solutions for such facilities shall be considered, to create landforms that blend the facility in with the existing site.
  - (5) For every 2,000 square feet of water quality facility area the applicant shall provide three canopy trees, five evergreen/ornamental/understory trees and 20 shrubs consistent with the size requirements set forth in the reforestation requirements.
  - (6) Planting of woody shrubs and trees shall not be located on top of any dam structures.
  - (7) Maintenance protocol of such structures shall be in accordance with best management practices.
  - (8) If retaining walls are necessary, such walls shall have plantings on top and/or below to provide a visual screen of the wall.
    - (a) Screening shall include native grasses, ground cover, trees and shrubs to achieve a buffer that screens 60% of the view from November to April at a height of three feet, two years from installation.
  - (9) Stormwater retention facilities.
    - (a) The stormwater retention facilities should be designed in such a way to benefit from the aesthetic as well as the physical attributes. Such facility shall be utilized as decorative water features within the landscape.
    - (b) The water's edge shall be planted with native vegetation at a minimum height of 30 inches to deter geese and promote biodiversity within such an ecosystem.
- K. Buffering of neighboring lands.
- (1) Buffer required. All subdivision and site plan applications subject to this section (§ 165-77) shall require a planted perimeter buffer as part of the development and landscape design plan. The perimeter buffer shall be provided along existing streets and along property lines adjacent to the subject property. The buffer shall consist of, for example, fencing, evergreens, canopy trees and shrubs to serve the purpose of maintaining the appearance of a rural community.
  - (2) The goal of the following buffer standards is to maintain and/or re-establish the traditional rural

boundaries of tree lines, hedgerows, walls and fences.

(3) Buffers shall screen 60% of the view from November to April at a height of six feet within two years from installation.

(4) On forested parcels, a minimum undisturbed buffer with a depth of 30 feet shall be maintained. Supplemental plantings may be required to fill in visual gaps in the buffer.

(5) Nonresidential site plans shall comply with the following standards, in addition to those above:

(a) Front yard buffers:

[1] C-ROM-1, ROM-1 Districts: 25 feet.

[2] C-ROM-1 Districts: 35 feet.

(b) Buffer where a nonresidential use abuts another nonresidential use: 10 feet.

(c) Buffer where nonresidential uses abut a residential use along a side or a rear lot line:

[1] C-ROM-1 Districts: 25 feet.

[2] C-ROM-2, 35 feet.

L. Buffer landscape design.

(1) Buffers separate and create enclosure of particular uses and zones within the community. Landscaped buffers are crucial to maintaining the diversity within the Borough.

(2) All plans and installation of plant material are subject to review and inspection by the Municipal Landscape Architect.

(3) Where plant materials are placed in two or more rows, plantings shall be staggered from row to row.

(4) The percentage of evergreen usage should be decided after completion of site analysis and the statement of design goals.

(5) The standard design buffer module measures 50 feet long by 25 feet wide, which consists of 1,250 square feet. This module shall be repeated as many times as necessary to fulfill the depth requirements for each zone and be in addition to any other planting requirements. See § **165-77** for the buffer size requirements.

(6) Each buffer module requires three canopy trees, five under story/evergreen trees and 20 shrubs. Species selection should be based on an appropriate woodland successional model.

(7) Rather than specify a modular design to be used on each design proposal, the following plant material density for a hypothetical fifty-foot-long by twenty-five-foot-wide module which could be repeated as many times as necessary both in length and width (e.g., a site with a highway frontage of 500 feet and a one-hundred-foot-wide buffer requirement would need 40 modules). The plant material requirements of these modules may be arranged to suit the specific landscape design objectives of the proposed plan.

				<b>Total</b>					
	<b>Yard</b>		<b>Buffer</b>		<b>Buffer</b>		<b>Area of</b>		<b>Total</b>
	<b>Length</b>	<b>Multiply</b>	<b>Depth</b>		<b>Area</b>	<b>Divide</b>	<b>Module</b>		<b>Modules</b>
<b>Yard</b>	<b>(feet)</b>	<b>by</b>	<b>(feet)</b>	<b>Equals</b>	<b>(feet)</b>	<b>By</b>	<b>(feet)</b>	<b>Equals</b>	<b>Required</b>
Front	150	x	50	=	7,500	/	1,250	=	6
Side	175	x	25	=	4,375	/	1,250	=	3.5
Side	250	x	25	=	6,250	/	1,250	=	5
Rear	150	x	25	=	3,750	/	1,250	=	3

Total Modules Required 17.5

**Chart 165-77.5**

**Buffer Module**

- (8) In this example, the applicant will need to provide 59 canopy trees, 98 understory/evergreen trees and 390 shrubs to meet the requirements set forth in the buffer section of this section.
- (9) Landscape buffers that are interrupted by specific site constraints relating to engineering components, such as septic, fire suppression, roadways, driveways and sight triangles, shall relocate the materials slated for those areas to another area on site.
- (10) Though material adjacent to the applicant's particular site may help with buffering, only material on the applicant's site shall be utilized in evaluating the buffer module requirements.

M. Planting and maintenance.

- (1) All plant material shall be insect and disease-free and in good condition at time of planting.
- (2) The selection, spacing and sizing of plant materials shall depend on the use to which the plantings are placed in keeping with the specifications adopted by the approving authority.
- (3) All plantings shall be planted according to sound horticultural practices as established by the Rutgers' Cooperative Extension Service, and shall be in a healthy, growing condition at installation.
- (4) The specific planting dates and transplanting dates, determined by the appropriate time of year and weather conditions, and subject to approval by the Municipal Landscape Architect.
- (5) A mixture of plant materials (evergreen and deciduous trees and shrubs) is required as a protective measure against disease and insect infestation. The landscape plan may allow plant materials to be used together in informal groupings in lieu of meeting the on-center spacing requirements set forth on the approved plan. However, the plant groupings must utilize the same number of plantings as required by these provisions.
- (6) An irrigation system may be used to establish plant material and sustain adequate moisture needs. All automatic irrigation systems shall be timer-controlled and provided with an automatic rainfall shutoff detection device. Proposed irrigation systems shall include maintenance specifications on the approved

landscape plan.

- (7) Plant materials, except creeping vine-type-plantings, shall not be located within four feet of property lines nor within any right-of-way.
- (8) All material shall conform to the latest version of the American Standard for Nursery Stock.
- (9) Soil conditions should be renovated if necessary to improve growing conditions.
- (10) No planting shall be installed unless it has been subject to proper root and top pruning (top pruning for shrubs only); proper timing (nursery stock must be dormant when planted); proper soil mix (based on the site and species); proper support; and proper maintenance.
- (11) Plants native to the physiographic province in which the site lies should comprise a minimum of 70% of the total number of plants proposed for installation.
- (12) All proposed tree material shall be balled and burlapped except for the reforestation option to use bare-root material. Container material is acceptable for shrub material only, provided that the material is not root bound.
  - (a) All bare-root tree plantings shall be at the discretion of the Municipal Landscape Architect and as required by the American Standard for Nursery Stock.
  - (b) No bare-root planting shall be installed unless it has been subject to proper root and top pruning (top pruning for shrubs only); proper timing (nursery stock must be dormant when planted); proper soil mix (based on the site and species); proper support; and proper maintenance.
- (13) A deer deterrent/protection wrap shall be installed on the trunks of trees.
- (14) Where turf is utilized, the type and mix of seed and the preparation method used shall be identified. Within the areas of lawn, mulching type, fertilizing, liming and watering specifications shall be specified. The use of natural and/or organic fertilizers is encouraged. The proposed sod shall be germinated in similar soil composition and characteristics as the soil existing on-site.
- (15) All areas of planting beds to receive mulch shall specify the depth and type of mulch and shall depict the mulch outline.
  - (a) Depth of mulch within planted areas shall be two inches.
  - (b) Mulch shall never come in contact with the root flare or trunk of the tree and shrub.
  - (c) Shredded hardwood mulch shall not contain any color or dyeing agent.
  - (d) All material shall conform to the latest version of the American Standard for Nursery Stock.
  - (e) All planting beds shall receive three (3) inches of shredded hardwood bark mulch, treated with pre-emergent herbicide.
  - (f) All trees to have a water saucer six (6) inch height added during planting to ensure water conservation and to concentrate moisture to the rootball.
  - (g) All plants shall be sprayed with an antidessicant within 24-hours of planting. In temperate zones, all plants shall be sprayed with an antidessicant at the beginning of their first winter following planting.
  - (h) All plants shall be watered thoroughly at the beginning of their first winter following planting.

- (i) All plants shall be watered thoroughly twice during the first 24-hour period after planting. All plants shall be watered weekly or more often, if environmental indicators make same necessary, during the first growing season.

(16) Planting sizes.

**K. Lelie to provide language to meet Zoning Officer suggestion (p.145).**

	<b>Canopy Trees</b>	<b>Ornamental and Evergreen Trees</b>	<b>Understory Trees</b>	<b>Shrubs</b>	<b>Branching Height</b>
General Material	3" to 3 1/2" caliper	7' to 8' height	5' height	18" to 24" height	N.A.
Buffer Material	2" caliper	7' to 8' height	5' height	36" minimum height	N.A.
Street Tree Material	3" to 3 1/2" caliper	N.A.	N.A.	N.A.	7' height
Reforestation (balled and burlapped)	2" to 2 1/2" caliper	N.A.	5' height	30/acre	N.A.
Reforestation (bare root)	1 1/2" to 2" caliper	N.A.	5' height	30/acre	N.A.

**Chart 165-77.6**

**Plant Material Size Quick Reference Chart**

(17) Landscape maintenance.

- (a) All plantings shall be maintained in an attractive and presentable condition free of weeds, refuse and debris, and shall be continuously maintained in a sound health and vigorous growing condition, free of plant disease and insects, per the final landscape plan.
- (b) The landscape is to be permanently maintained. All dead, diseased, missing plant material is to be replaced to the approval of the Borough Landscape Architect. Such replacements shall be resolved within four weeks from time of notification, weather permitting.
- (c) Landscape maintenance specifications shall be submitted as part of the submission set for all common areas. Such specifications shall be detailed to ultimately determine if the proposed landscape is going to be cared for after all guarantees are met by the developer.
- (d) The approved landscape plan shall designate the person or entity that shall be responsible for maintaining the landscape in a healthy growing condition. Such maintenance shall include watering, cultivation and weed control.

## **Open Space Organization**

### **§ 165-78 Establishment required.**

In the case of a planned development, the developer shall provide for an organization for the ownership and maintenance of any open space for the benefit of owners or residents of the development.

### **§ 165-79 Restrictions on dissolution and disposal of open space.**

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 nor dispose of any of its open space without first offering to dedicate the same to the Borough.

### **§ 165-80 Correction of deficiencies.**

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

### **§ 165-81 Assessment of municipal maintenance costs.**

The cost of such maintenance by the municipality 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 said properties and be added to and be a part of the taxes to be levied and assessed thereon and shall be enforced and collected with interest by the same officers and in the same manner as other taxes.

## **Article XIII**

### **Exceptions to Requirements**

### **§ 165-82 Granting of exceptions.**

The Land Use Board, when acting upon applications for preliminary or minor subdivision approval or for preliminary site plan approval, shall have the power to grant such exceptions from the requirements for approval as may be reasonable and within the general purpose and intent of the provisions herein, if the literal enforcement of one or more provisions herein is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

Article XIV  
**Penalties for Offenses**

**§ 165-83 Penalty for selling prior to final approval.**

If, before final subdivision approval has been granted, any person transfers or sells, except pursuant to an agreement expressly conditioned on final subdivision approval, as owner or agent, any land which forms a part of a subdivision, such person shall be subject to a penalty not to exceed \$1,250, and each lot disposition so made may be deemed a separate violation.

**§ 165-84 Civil remedies.**

- A. In addition to the penalty prescribed in the foregoing section, 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 contract of sale if a certificate of compliance has not been issued in accordance with Section 44 of P.L. 1975, c. 291.
- B. 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 their 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 years after the date of the recording of the instrument of transfer, sale or conveyance of said land, or within six years, if unrecorded.

Part 7  
Zoning Regulations **Part 7**  
**Zoning Regulations**

Article XV  
**Zone Districts; Enforcement**

**§ 165-85 Establishment of districts.**

For the purpose of this chapter, the Borough of Lebanon is hereby subdivided into 12 zone districts, known as:

R-15	One-Family Residential District (15,000)
R-20	One-Family Residential District (20,000)
R-P	One-Family Residential/Professional
M-F	Multi-Family Residential
AH-1	Affordable Housing District

AH-2	Affordable Housing District
AH-3	Affordable Housing District
AH-4	Affordable Housing District
B	Local Business
C-ROM-2	Commercial – Research, Office and Manufacturing District (200,000)
ROM-1	Research, Office and Manufacturing District (100,000)

**§ 165-86 Zoning Map and Schedule of Zoning Requirements.**

The map entitled, "Zoning Map, Borough of Lebanon, Hunterdon County, NJ" dated October 18, 2023, and the Schedule of Zoning Requirements, October 18, 2023 (Chapter **165**, Attachment 3), which accompany and are referenced in this Part **7** are hereby declared to be part hereof.

**§ 165-87 Boundaries.**

The zone boundary lines shown on the Zoning Map are intended to coincide with property lines, the center lines of streets, easements, railroads or drainage courses as they existed at the time of adoption of this chapter or as they are designated on the Zoning Map by figures or dimensions. In case of uncertainty as to the location of any zone boundary line, the determination thereof shall be with the Land Use Board in its capacity as the Zoning Board of Adjustment.

**§ 165-88 Enforcement.**

- A. This part shall be enforced by an agent appointed by the Borough Council, who shall be known as the "Zoning Officer," or designated deputy. The Construction Official shall in no case issue a construction permit for the erection or structural alteration of any building nor issue a certificate of occupancy for any building or use unless such building or use has been approved by the Zoning Officer as conforming to this chapter and other related ordinances and regulations of the Borough.
- B. It shall be the further duty of the Zoning Officer or the Zoning officer's designated deputy to investigate any violations of this Part coming to their attention, whether by complaint or arising from their own personal knowledge; and if a violation is found to exist, he shall serve notice upon the owner and notify the governing body, which shall take such action as it deems appropriate in the circumstances.
- C. No building or structure, including, but not limited to, fences and sheds, as defined in § **165-103**, or similar structure, or part thereof, shall be erected, constructed, reconstructed, structurally altered or moved until a zoning permit therefor has been issued by the Zoning Officer.
- D. No zoning permit shall be issued for the erection, construction, reconstruction, structural alteration or moving of any building or structure, or part thereof, unless the plans and intended use indicate that such building or structure is designed and intended to conform in all respects to the provisions of this Part. The applicant shall include as part of the application a survey, plat or plan signed and sealed by a New Jersey licensed Professional Land Surveyor, Professional Engineer, Professional Planner, Architect, or Landscape Architect accurately showing existing conditions.
- E. Where a subdivision or site plan, as required by this chapter, has been duly reviewed and approved by the Land Use Board, the erection or alteration of the building shall not be deemed to be completed until

all the requirements of the approved subdivision or site plan are met. Where weather conditions or other forces beyond the control of the applicant unduly delay the reasonable occupancy of a building under this subsection, a temporary certificate of occupancy may be issued, but only in accordance with the provisions of § 165-49C.

## Article XVI General Provisions

### § 165-89 **Conformance required.**

No land or premises shall be used, and no building or structure shall be erected, raised, moved, extended, enlarged, altered or used, for any purpose other than a purpose permitted herein for the zone district in which it is located, and all construction shall be in conformity with the regulations provided for the zone district in which such building or premises is located.

### § 165-90 **Applicability.**

Each of the sections and provisions of this article shall apply to all zone districts unless otherwise stated.

### § 165-91 **(Reserved)**

#### A. § 165-92 **Subdivision of lot.**

When a new lot or lots are formed from part of a parcel of land, the division must be effected in such a manner as not to impair any of the provisions of this part. Subdivision shall be effected in accordance with Part 6.

### § 165-93 **Prohibited uses.**

A. Where a use is not specifically permitted in a zone district, it is prohibited.

B. In addition, the following uses are expressly prohibited in all zone districts:

- (1) The operation of any and all classes of cannabis establishments or cannabis distributors or cannabis delivery services as said terms are defined in this chapter and in Section 3 of P. L. 2021, c. 16, but not the delivery of cannabis items and related supplies within the Borough by a cannabis delivery service located outside the Borough.

### § 165-94 **On-lot requirements.**

Unless otherwise provided herein, all yards, open spaces and off-street parking must be contained on the lot and within the zone district in which the use is located.

### § 165-95 **Area and dimension reduction restricted.**

No lot, yard, parking area or other space shall be so reduced in area or dimension as to make said area or dimension less than the minimum required under this part. If already less than the minimum required under this part, said area or dimension shall not be further reduced.

### § 165-96 **Principal buildings.**

A. Residential uses shall have only one principal building per lot, except for multifamily dwelling complexes, such as townhouses and apartments as hereinafter permitted in this part.

B. Nonresidential uses may have more than one principal building on a lot.

- C. Unless otherwise regulated in this part, no principal building shall be located closer to another building than the height of one of the buildings, but in no event less than 25 feet.

**§ 165-97 Accessory buildings and structures.**

Except as otherwise provided in this part, buildings and structures which are accessory to a principal use or building shall be subject to the following regulations:

A. Maximum height.

- (1) Residential uses: 16 feet for detached garages; 10 feet for storage sheds.
- (2) Farm uses: 45 feet.
- (3) Nonresidential uses: maximum height for principal buildings.

B. Minimum setback from streets: same as for principal buildings, but the accessory building shall not be located closer to a street than the principal building. On corner lots, accessory buildings shall not be located closer to a side street than the minimum front yard requirement for the adjoining lot.

C. Side and rear yards.

- (1) Accessory buildings for residential uses; same as for principal buildings, except for storage shed and detached private garages in which cases the side and rear yard setbacks shall be 3-feet including the roof overhang.
- (2) If the storage shed or detached garage is set back less than 10-feet from the side or rear property line, then the roof runoff must be controlled and channeled away from the neighboring property.
- (3) Buildings accessory to nonresidential uses shall meet the side and rear yard requirements for principal buildings. A farm building or an accessory building used on a farm shall not be closer to a property line than the height of the building or the minimum side or rear yard for a principal building, whichever is greater.

D. Minimum distance between buildings:

- (1) For residential uses: 10 feet.
- (2) For nonresidential uses: height of either building, but not less than 15 feet.

E. Electric vehicle (EV) charging stations.

- (1) Indoor EV charging stations, or those enclosed by a building or within a garage, shall be permitted in all zones.
- (2) Outdoor EV charging stations shall only be permitted where off-street parking is provided, excluding surface parking areas for detached single- and two-family uses and along driveways or street rights-of-way.
- (3) EV charging stations operated by a third party for profit shall constitute a separate and distinct principal use subject to the requirements of this chapter.
- (4) All exterior or outdoor EV equipment, excluding the electrical dispensing units, shall be screened from public view.

### § 165-98 **Yard requirements.**

Every lot must provide front, rear and side yards as required by its zone district. In addition, the following requirements shall be met:

- A. All front yards must face upon a dedicated public street or a private street approved by the Land Use Board.
- B. The following structures are hereby permitted within required yard setback areas in all zoning districts:
  - (1) Driveway crossings and curbs.
  - (2) Landforms associated with required buffers.
  - (3) Underground utility crossings.
  - (4) Fences pursuant to § **165-116**.
  - (5) Roofs, eaves, cornices, bays, railings, and stairs of buildings may extend into a required yard setback no more than three feet, as measured from the required yard setback, without the need for variance relief. Such an encroachment shall be limited to those buildings that are in compliance with the maximum permitted building height and floor area ratio of the zone district within which they are located. Encroachments pursuant to this provision shall not be permitted for buildings that contain a use(s) that is not permitted, or which building itself is not permitted.
- C. All structures not specifically permitted herein are prohibited within yard setback areas, including, but not limited to, lighting, concrete pads, trash enclosures, above ground tanks, storage tanks, and retaining walls in excess of four (4) feet in height.

### § 165-99 **Corner lots and multi-frontage lots.**

Where a lot is bounded by more than one street, the front yard setback requirement and minimum lot width requirement from each abutting street shall be met. A corner lot or a multi-frontage lot, shall have two front yards and the remaining yards shall be side yards.

### § 165-100 **Exceptions to height requirements.**

The height provisions of this part shall not apply to bulkheads, elevator enclosures, water tanks or similar accessory structures occupying an aggregate of 10% or less of the area of the roof on which they are located, provided that such structures do not exceed the height limit by more than 10 feet. Nothing in this part shall prevent the erection above the height limitation of a parapet wall or cornice extending above such height limit not more than three feet.

### § 165-101 **Temporary permit.**

No transportable or wheel-based structures or other temporary structure used as an office, storage shed or other use incidental to and in connection with a permitted construction project or building shall be placed on the site unless the Construction Official shall first have issued a temporary permit therefor. Such structure shall not be located so as to be detrimental to any adjoining property and shall be removed from the site prior to the issuance of a certificate of occupancy for the permitted construction project or building.

### § 165-102 **Outdoor storage.**

- A. In the residential, including but not limited to Multi-Family and Affordable Housing Zones, outdoor storage is prohibited. Except for the storage of firewood, in residential zones, for use on the premises.

- B. In all other zones, no article or material shall be kept, stored or displayed outside the confines of a building unless the same is screened by special planting and/or fencing, as approved by the Land Use Board. No storage area shall be located in a front yard nor in a side yard adjoining a street. Said storage area shall meet the location requirements for accessory buildings. This shall not be deemed to include the display and sale of seasonal farm produce or specifically permitted outdoor uses, the outdoor parking of farm machinery or vehicles in use on a farm. These provisions shall not preclude:
- (1) The outdoor storage and display in any yard of plant material by commercial greenhouses and plant nurseries nor motor vehicles being offered for sale by motor vehicle sales establishments, provided that such storage or display is located at least 50 feet from a street and 25 feet from a property line;
  - (2) The outdoor storage of water-insoluble bulk materials, such as gravel, sand, dense-graded aggregate, mulch, etc., provided the storage meets the locational requirements of § **165-102B**, above, and is located no closer than 50 feet to any stormwater inlets, stormwater conveyance structures (including swales and basins) and surface water bodies. In no case shall bulk materials be located within regulatory buffers or transition areas associated with riparian areas or wetlands.
  - (3) The storage of water-soluble bulk materials, such as salt, chemicals, fertilizer, etc. within accessory containment structures, outside of a principal building, that meet the following requirements:
    - (a) The containment structure shall provide for the containment of the bulk material on at least three sides, and shall prevent spilling or migrating of the material beyond the footprint of the containment structure; one side may remain free of containment in order to provide for access to the material that is being stored.
    - (b) The containment structure shall have a roof that is sufficient to prevent the exposure of the bulk material that is being contained to precipitation.
    - (c) The containment structure shall have an impervious floor that prevents bulk material from mixing with the ground or soil below the structure.
    - (d) The containment structure shall comply with the standards for accessory buildings contained in § **165-97**.
    - (e) The footprint of a containment structure shall be considered impervious coverage, but shall not be counted towards the calculation of floor area ratio.
- C. Except as provided for in § **165-102B(3)**, in any zone, there shall be no outdoor storage in any zone of water-soluble bulk materials including, but not limited to, salt, chemicals, fertilizer, etc. for any purpose, including landscaping, road and parking area maintenance.]

§ 165-103 **Storage sheds and residential detached private garages.**

- A. Intent. It is in the interest of the safety of the residents of the Borough to be allowed to construct safe and securely anchored sheds for the storage of materials and equipment, and residential detached private garages for the storage of vehicles. Tools and mowers with their accompanying oil and gasoline cans, paints, solvents and similar materials are more safely stored in a shed than in a house or garage. One of the intents of this section is to permit such storage sheds to be built to reduced requirements and restrictions.
- B. Setbacks. Setbacks from the side and rear yard lines may be reduced to 10 feet, except in zones R-15, R-20, and RP Zones, where the setback may be reduced to three (3) feet, including roof overhang.
- C. Number of sheds permitted. One shed shall be permitted on each lot in a residential zone. Any additional buildings or structures shall be subject to the provisions regulating the placement of accessory

buildings and structures pursuant to §165-97.

- D. Number of residential detached private garages. One residential detached private garage shall be permitted on each lot in a residential zone. Any additional buildings or structures shall be subject to the provisions regulating the placement of accessory buildings and structures pursuant to §165-97.
- E. Number of bays permitted in a residential detached private garage. There shall be no more than three (3) bays in a residential detached private garage.
- F. Permit required. Prior to the construction or installation of a shed, a zoning permit shall be obtained from the Zoning Official. Sheds with dimensions measuring greater than 100 square feet in area, or as may be required by the Uniform Construction Code, shall require, in addition to a zoning permit, a construction obtained from the Construction Official per the fee schedule.
- G. Violations and penalties. Any person who shall violate any provision of this chapter shall, upon conviction thereof, be liable to the penalty established in Chapter 1, § 1-20.

§ 165-104 **Dedication of right-of-way.**

Whenever additional street right-of-way is obtained by the Borough, County of Hunterdon or State of New Jersey for a road improvement, by purchase, donation, dedication, condemnation or by other legal means, the required minimum lot area of an existing lot shall be reduced by the same area deeded to the Borough, county or state as aforesaid.

§ 165-105 **Visibility at intersections.**

On a street corner a fence, structure or planting over 24 inches in height above the curb or edge of roadway shall not be erected or maintained within a triangle formed by the intersecting street right-of-way lines and a line connecting said right-of-way lines and located 25 feet from their point of intersection.

§ 165-106 **Storage of commercial vehicles in residential districts.**

Not more than two commercial vehicles shall be parked outdoors on a lot zoned for residential purposes. Said vehicle shall be owned, leased or regularly used by a resident of the premises and shall be limited to the single-wheel variety. This provision shall not be deemed to limit the number or type of commercial vehicles in use on a farm. No vehicle shall be parked on any lot for advertising purposes.

§ 165-107 **Storage of recreational vehicles in residential districts.**

The outdoor storage or parking in the open in residential districts of recreational equipment and vehicles, such as, but not limited to, trailers of any kind, boats, pickup coaches and motorized homes, is only permitted subject to the following conditions:

- A. Any such vehicle or piece of equipment shall be owned or leased by a resident of the premises.
- B. Any such vehicle or piece of equipment shall be located in a side or rear yard only, but in no event in a side yard adjoining a street.
- C. Any such vehicle or piece of equipment shall be located so as to meet yard and setback requirements applicable to accessory buildings.
- D. No such parking or storage shall preempt any required off-street parking area.
- E. Any such vehicle or piece of equipment shall be screened from view from an adjoining property or street by fencing or dense evergreen planting, except where existing natural screening exists or where topographic conditions would render such screening ineffective.

§ 165-108 **Storage of flammable and combustible liquids.**

- A. Aboveground storage tanks (ASTs) are permitted for residential, farm, industrial, governmental and commercial uses where the ASTs are used only for fueling vehicles, residential heating and cooking and other residential uses, and only in connection with their own operations. All tanks shall have Underwriter's or American Petroleum Institute (API) approval. Tank locations shall be at least equal to the setback requirements for principal structures in the zone and at least 10 feet from any building, and shall meet the distance setback requirements specified in National Fire Protection Association, Inc. (NFPA) Flammable and Combustible Liquids Code (NFPA 30) and Automotive and Marine Service Station Code (NFPA 30A). ASTs shall be labeled with six-inch letters as to the tank content, and the AST shall be painted with rust-inhibiting white paint. Such ASTs shall be considered an accessory use.
- B. The storage of combustible and flammable liquids shall be in conformance with the National Fire Protection Association, Inc. (NFPA) Flammable and Combustible Liquids Code (NFPA 30) and Automotive and Marine Service Station Code (NFPA 30A).
- C. Individual tanks serving farm, industrial, governmental and commercial uses shall not exceed 10,000 gallons in capacity with a maximum aggregate capacity of 18,000 gallons per facility.
- D. Individual, above ground tanks serving residential uses shall not exceed 550 gallons in capacity for flammable liquids and 550 gallons in capacity for combustible liquids.

§ 165-109 **Signs.**

- A. Short title. This section shall be known as the "Sign Regulations of the Borough of Lebanon, Hunterdon County, New Jersey."
- B. Purpose, intent and scope. It is the purpose of this section to promote the public health, safety and general welfare through reasonable, consistent and nondiscriminatory sign standards. The sign regulations in this section are not intended to censor speech or to regulate viewpoints, but instead are intended to regulate the secondary effects of speech, and especially insofar as those secondary effects may adversely affect aesthetics and traffic and pedestrian safety. In order to preserve and enhance the Borough as a desirable community in which to live and do business, a pleasing, visually attractive environment is of foremost importance. The regulation of signs within the Borough is a highly contributive means by which to achieve this desired end. These sign regulations have been prepared with the intent of enhancing the visual environment of the Borough and promoting its continued well-being, and are intended to:
  - (1) Encourage the effective use of signs as a means of communication in the Borough;
  - (2) Maintain and enhance the aesthetic environment and the Borough's ability to attract sources of economic development and growth;
  - (3) Improve pedestrian and traffic safety;
  - (4) Minimize the possible adverse affect of signs on nearby public and private property;
  - (5) Foster the integration of signage with architectural and landscape designs;
  - (6) Lessen the visual clutter that may otherwise be caused by the proliferation, improper placement, illumination, animation, excessive height, and excessive size (area) of signs which compete for the attention of pedestrian and vehicular traffic;

- (7) Allow signs that are compatible with their surroundings and aid orientation, while precluding the placement of signs that contribute to sign clutter or that conceal or obstruct adjacent land uses or signs;
  - (8) Encourage and allow signs that are appropriate to the zoning district in which they are located and consistent with the category of use and function to which they pertain;
  - (9) Curtail the size and number of signs and sign messages to the minimum reasonably necessary to identify a residential or business location and the nature of any such business;
  - (10) Establish sign size in relationship to the scale of the lot and building on which the sign is to be placed or to which it pertains;
  - (11) Categorize signs based upon the function that they serve and tailor the regulation of signs based upon their function;
  - (12) Preclude signs from conflicting with the principal permitted use of the site and adjoining sites;
  - (13) Regulate signs in a manner so as to not interfere with, obstruct the vision of or distract motorists, bicyclists or pedestrians;
  - (14) Except to the extent expressly preempted by state or federal law, ensure that signs are constructed, installed and maintained in a safe and satisfactory manner, and protect the public from unsafe signs;
  - (15) Preserve, conserve, protect, and enhance the aesthetic quality and scenic beauty of all districts of the Borough;
  - (16) Allow for traffic control devices consistent with national standards and whose purpose is to promote highway safety and efficiency by providing for the orderly movement of road users on streets and highways, and that notify road users of regulations and provide warning and guidance needed for the safe, uniform and efficient operation of all elements of the traffic stream;
  - (17) Protect property values by precluding to the maximum extent possible sign types that create a nuisance to the occupancy or use of other properties as a result of their size, height, illumination, brightness, or movement;
  - (18) Protect property values by ensuring that sign types, as well as the number of signs, are in harmony with buildings, neighborhoods, and conforming signs in the area;
  - (19) Regulate the appearance and design of signs in a manner that promotes and enhances the beautification of the Borough and that complements the natural surroundings in recognition of the Borough's reliance on its natural surroundings and beautification efforts in retaining economic advantage for the community;
  - (20) Preserve and enhance the rural and historic character of the Borough; and
  - (21) Enable the fair and consistent enforcement of these sign regulations.
  - (22) Provide for reasonable conditions for the placement of temporary off-site signs without causing undue regulatory burdens on the community, which shall not be construed in any way to permit, allow or authorize the erection of permanent off-site signs or billboards.
- C. Prohibited signs. The following signs and sign types are prohibited within the Borough and shall not be erected. Any lawfully existing permanent sign or sign type that is among the prohibited signs and sign types listed below shall be deemed a nonconforming sign subject to the provisions of § **165-109D**.

- (1) Billboards. Such prohibition shall not be deemed to be a prohibition on temporary off-site signs as permitted herein.
- (2) Revolving signs.
- (3) Flashing signs.
- (4) Animated signs.
- (5) Wind signs.
- (6) Portable signs.
- (7) Roof signs.
- (8) Abandoned and discontinued signs.
- (9) Snipe signs; bandit signs.
- (10) Projecting signs, except as expressly allowed.
- (11) Bus bench advertising signs; bus shelter advertising signs.
- (12) Signs that emit smoke, visible vapor or smoke, sound, odor, or visible particles or gaseous matter.
- (13) Signs that have unshielded illuminating devices and/or that do not fully comply with the Borough's lighting ordinance regulations contained within § **165-74**.
- (14) Signs that obstruct, conceal, hide or otherwise obscure from view any official traffic or governmental sign, signal or device.
- (15) Wall signs that exceed 200 square feet in sign area.
- (16) Freestanding signs that are higher than 15 feet.
- (17) Signs within a sight triangle.
- (18) Signs in the public right-of-way, other than traffic control device signs, warning signs or safety signs.
- (19) Signs other than a traffic control device sign that use the word "stop" or "danger," or present or imply the need or requirement of stopping or the existence of danger, or which copy or imitate an official traffic control device signs, and which are adjacent to the right-of-way of any road, street, or highway.
- (20) Signs prohibited by state or federal law.
- (21) Vehicle sign or signs which have a total sign area on any vehicle in excess of 10 square feet, when the vehicle is not regularly used in the conduct of the business or activity advertised on the vehicle, and is visible from a street right-of-way within 100 feet of the vehicle; and is parked for more than five consecutive hours within 100 feet of any street right-of-way. A vehicle shall not be considered "regularly used in the conduct of the business or activity" if the vehicle is used primarily for advertising, or for the purpose of advertising, or for the purpose of providing transportation for owners or employees of the business or activity advertised on the vehicle.
- (22) Signs located on real property without the permission of the property owner.
- (23) Beacon signs, except as required by federal or state law.

- (24) Intermittent signs.
  - (25) Sandwich board signs.
  - (26) Signs located, painted or affixed on a water tower, storage tower, or cell tower that are visible from a public street or roadway.
- D. Nonconforming signs. A nonconforming sign that was lawfully erected may continue to be maintained until the nonconforming sign is substantially damaged or destroyed. At such time that the nonconforming sign is substantially damaged or destroyed, the nonconforming sign must either be removed or be brought into conformity with this section and with any other applicable law or regulation.
- E. Exemptions. This section does not pertain to the following:
- (1) A sign, other than a window sign, located entirely inside the premises of a building or enclosed space.
  - (2) A sign on a car, other than a prohibited vehicle sign or signs.
  - (3) A statutory sign.
  - (4) A traffic control device sign.
  - (5) Any sign not visible from a public street, sidewalk or right-of-way; except that the foregoing does not exempt a sign for a commercial use that is visible from an abutting residential use.
- F. Permits.
- (1) Building permits. It shall be unlawful for any person or business or the person in charge of the business to erect, construct, or alter a permanent sign structure whose construction is subject to the New Jersey Uniform Construction Code, without first obtaining such building permit from the Borough as may be required by the New Jersey Uniform Construction Code. Permit fees, if any, shall be paid in accordance with the applicable fee schedules. The requirement of a building permit under the New Jersey Uniform Construction Code is separate and independent of the requirement for a sign permit under this section.
  - (2) Sign permits.
    - (a) Allowed temporary signs, of the type described in Subsections **L** and **M(3)** of this section, shall be exempt from sign permitting hereunder.
    - (b) Allowed permanent signs of the type described in Subsections **L** and **N(3)** of this section shall be exempt from sign permitting hereunder.
    - (c) No sign permit shall be issued for the erection of a prohibited sign.
    - (d) Unless exempt from permitting as provided in Subsections **L** and **N(3)** of this section, no permanent sign shall be erected, altered, relocated, maintained or displayed until a sign permit is obtained from and appropriate fee, if any, is paid to the Borough.
    - (e) A sign lawfully erected under permit may be repainted or have ordinary and customary repairs performed, including replacement of plastic or glass panels, without a new sign permit; however, if such sign is to be structurally altered in any manner, a new sign permit shall be required and the altered sign must meet all requirements of this section and this Code.
  - (3) Sign permit application and issuance of sign permit.

- (a) A sign permit application shall be made upon a form provided by the Borough. The sign permit application is in addition to any building permit application required by the New Jersey Uniform Construction Code. The sign permit application shall be accompanied by plans and specifications drawn to scale, together with any site plan required by this section or this Code. The applicant shall furnish the following information on or with the sign permit application form:
- [1] The block, lot and street address of the real property where the sign is proposed to be located.
  - [2] The zoning district for the real property on which the sign will be located.
  - [3] The name, mailing address and telephone number (where available) of the owner(s) of the real property where the sign is proposed to be located.
  - [4] A notarized statement of authorization signed by the owner(s) consenting to the placement of the proposed sign on the real property.
  - [5] The name, mailing address and telephone number of the sign contractor.
  - [6] Type of proposed sign (e.g., wall sign or freestanding sign).
  - [7] The proposed sign area.
  - [8] The cost of the proposed sign.
  - [9] If the proposed sign is a freestanding sign:
    - [a] The height of the proposed freestanding sign.
    - [b] The sign area of the freestanding sign and the dimensions utilized to calculate the size.
    - [c] The distance between the closest existing freestanding sign and the proposed freestanding sign as measured in each direction along each abutting street or right-of-way.
    - [d] The location, height and area of any existing freestanding sign on the same lot where the proposed freestanding sign will be located.
    - [e] The front and side yard setbacks for the proposed sign.
  - [10] If the proposed sign is an attached sign, the building frontage for the building to which the attached sign shall be affixed.
  - [11] The number, type, location, and surface area for all existing signs on the same lot and/or building on which the sign will be located.
  - [12] Whether the proposed sign will be an illuminated or nonilluminated sign.
- (b) An applicant shall deliver a sign permit application for a permanent sign to the Borough's Zoning Officer or their designee, or such other person as designated by the Borough. The sign permit application shall be reviewed for a determination of whether the proposed sign meets the applicable requirements of this section and any applicable zoning law. The review of the sign permit application shall be completed within 10 calendar days from the date of receipt of the application, and the application shall be granted or denied within that time frame. In the event that no decision is rendered within 10 calendar days following submission, the application shall be deemed granted; however, the application shall be deemed denied if the application is for a prohibited sign and the applicant may appeal to the Municipal Land Use Board pursuant to the MLUL.

- (4) Fees.
  - (a) Sign permit fees. Every person making an initial application for a sign permit shall pay a sign permit fee to the Borough at the time of the application. This sign permit fee shall be deemed a zoning permit fee and shall be in accordance with the zoning permit fee schedule set forth in § **165-13** of this Code.
  - (b) Building permit fees distinguished. The sign permit fee, if any, shall be separate and apart from any required fee for a building permit for the erection of a sign covered by the New Jersey Uniform Construction Code.
- (5) Conditions.
  - (a) Duration of permit. If the work authorized under a sign permit has not been completed within 180 days after the date of issuance, the permit shall become null and void and a new application for a sign permit shall be required.
  - (b) Maintenance of signs.
    - [1] All visible portions of a sign and its supporting structure shall be maintained in a safe condition and neat appearance according to the following:
      - [a] If the sign is lighted, all lights shall be maintained in working order and functioning in a safe manner.
      - [b] If the sign is painted, the painted surface shall be kept in good condition.
      - [c] Every sign shall be kept in such manner as to constitute a complete or whole sign.
    - [2] Lawfully erected nonconforming signs may suffer only ordinary and customary repairs and maintenance. A lawfully erected nonconforming sign shall not be structurally altered except in full conformance with this section.
- G. Sign illumination. The illumination of signs, where allowed, shall comply with § **165-74** of the Land Use Regulations of Lebanon Borough.
- H. Substitution of noncommercial speech for commercial speech. Notwithstanding anything contained in this section or this Code to the contrary, any sign erected pursuant to the provisions of this section or this Code with a commercial message may, at the option of the owner, contain a noncommercial message unrelated to the business located on the premises where the sign is erected. The noncommercial message may occupy the entire sign face or any portion thereof. The sign face may be changed from a commercial to a noncommercial message, or from one noncommercial message to another, as frequently as desired by the owner of the sign, provided that the sign is not a prohibited sign or sign type, and provided that the size, height, setback and other dimensional criteria contained in this section and this Code have been satisfied.
- I. Content neutrality as to sign message (viewpoint). Notwithstanding anything in this section or this Code to the contrary, no sign or sign structure shall be subject to any limitation based upon the content (viewpoint) of the message contained on such sign or displayed on such sign structure.
- J. Setback measurement. Required setbacks for signs in all zoning districts shall be measured from the property line to the nearest part of the sign.
- K. Double-faced signs. Double-faced signs shall be permitted in all zoning districts, provided the signs are designed and constructed such that the two sign faces are back to back with a maximum distance of 18 inches between the two sign faces and directionally oriented 180° from each other. The maximum sign area allowed shall be permitted for each sign face.

- L. All districts. The regulations in this section apply in every zoning district, except where otherwise specified or indicated. Sign permits are not required for the signs and sign types described and identified in this subsection.
- (1) Street address signs. For each parcel, residence or business, one street address sign may be displayed. For each residence, the street address sign shall not exceed two square feet in sign area unless required by applicable law. For each business or parcel in nonresidential use, the street address sign shall not exceed six square feet in sign area unless required by applicable law.
  - (2) Nameplate or occupant identification signs. For each residence, business or other occupancy, one nameplate sign may be displayed. For residences the nameplate or occupant identification signs shall not exceed two square feet in sign area. For any nonresidential use, the nameplate or occupant identification sign shall not exceed six square feet in sign area.
  - (3) Directional signs. Noncommercial on-site directional signs, not exceeding four square feet in sign area, shall be allowed on each parcel.
  - (4) Parking space signs. Noncommercial on-site parking space number signs, not exceeding one square foot of sign area, shall be for a noncommercial use having multiple parking spaces on site. One such sign shall be allowed for each parking space.
  - (5) Free expression signs. For each parcel, one free expression sign not exceeding four square feet in sign area may be displayed. The free expression sign may be displayed as an attached sign or as a freestanding sign; if displayed as a freestanding sign, the freestanding sign shall not exceed three feet in height. A free expression sign is in addition to any other sign permitted under this section and is permitted in any zoning district. Only one such sign shall be permitted on each lot.
  - (6) Election signs. For each parcel, one election sign for each candidate and each issue may be displayed. An election sign may be displayed as an attached sign or as a freestanding sign. The election sign shall not exceed four square feet in sign area if located on a lot in a residential district and shall not exceed 24 square feet in sign area if located on a lot in a nonresidential district. If the election sign is displayed as a freestanding sign on the parcel, the election sign shall not exceed three feet in height. An election sign shall be removed within seven calendar days following the election to which it pertains.
  - (7) Flagpoles. One flagpole is allowed for each parcel. A flagpole shall not exceed 35 feet in height and shall be subject to setbacks in the applicable zones in which it is located.
  - (8) Flags. For each flagpole, two flags not greater than 24 square feet in sign area each may be displayed.
  - (9) Warning signs and safety signs. Warning signs and safety signs, not exceeding four square feet in sign area, shall be allowed in all districts.
  - (10) Temporary construction signs. One temporary construction sign shall be allowed on a lot, subject to the following limitations:
    - (a) Number. For each lot, one temporary construction sign shall be permitted.
    - (b) Size and height. For a lot in a residential district, a temporary construction sign shall not exceed four square feet in sign area and three feet in height; and for a lot in a nonresidential district, a temporary construction sign shall not exceed 24 square feet in sign area and six feet in height.
    - (c) Setback. Temporary construction signs shall be set back from any lot line by at least five feet.
    - (d) Duration. Temporary construction signs shall be removed within seven days following the issuance of the certificate of occupancy or the expiration date of any applicable building permit, whichever shall

first occur.

- (11) Temporary real estate signs.
  - (a) Number. One temporary real estate sign may be displayed on each parcel of land or part thereof that is for sale, lease, or rent; however, when more than one dwelling unit or nonresidential space on a parcel of land is for sale, lease, or rent, there may be one real estate sign for each such unit or space. For a parcel with dual street frontage, such parcels may have one additional temporary real estate sign per frontage.
  - (b) Size and height. For residential uses, the temporary real estate sign shall not exceed four square feet in sign area and three feet in height; and for a nonresidential use, the temporary real estate sign shall not exceed 24 square feet in sign area and six feet in height.
  - (c) Setback. Temporary real estate signs shall be set back from any lot line by at least five feet.
  - (d) Duration. Temporary real estate signs shall be removed within seven days following the closing or settlement of a sale, lease or rental of the real estate that was offered for sale, lease, or rent.
- (12) Temporary garage-yard sale signs. For each parcel with a lawful residential use, a temporary garage-yard sale sign may be displayed, subject to the following limitations:
  - (a) Number. One temporary garage-yard sale sign may be displayed.
  - (b) Size and height. A temporary garage-yard sale sign shall not exceed four square feet in sign area and three feet in height.
  - (c) Setback. A temporary garage-yard sale sign shall be set back from any lot line by at least five feet.
  - (d) Duration. A temporary garage-yard sale sign may not be displayed for a period longer than three days twice a year.
- (13) Temporary window signs. For each lot, one or more temporary window signs may be displayed. On lots that are in residential use, the temporary window sign(s) shall not exceed an aggregate of three square feet in sign area. On lots that are in nonresidential use, the temporary window sign(s) shall not exceed an aggregate of 24 square feet in sign area. Temporary window signs shall not cover more than 25% of any window surface.
- (14) Temporary future development signs. A temporary future development sign shall be allowed in new subdivisions, subject to the following limitations:
  - (a) Number. No more than one such sign shall be allowed upon any property held in single and separate ownership.
  - (b) Size and height. A temporary future development sign shall not exceed 24 square feet in sign area. A temporary future development sign shall not exceed six feet in height.
  - (c) Setback. A temporary future development sign shall be set back from any lot line by at least five feet.
  - (d) Duration. Temporary future development signs shall be removed within seven days after the last dwelling has been sold.
- (15) Temporary special event signs. Temporary on-site or off-site special event signs shall be permitted in all districts subject to the following limitations:

- (a) Temporary special event signs shall provide notice of a special event as defined in the definition of "special event sign" in § 165-4, Definitions.
  - (b) Temporary on-site special event signs shall be limited to one per event.
  - (c) Temporary off-site special event signs shall be limited to one per property or lot.
  - (d) Temporary on-site special event signs shall not be located closer than 15 feet to a front property line or street right-of-way; however, a temporary on-site special event sign that does not exceed four square feet in area and three feet in height may be located no closer than five feet to a front property line or street right-of-way.
  - (e) Temporary on-site special event signs shall not exceed 24 square feet in sign area and six feet in height; for each additional foot of setback beyond 15 feet from a street right of way, the sign area may be increased by an additional five square feet, but in no event shall the sign area exceed 200 square feet.
  - (f) Temporary off-site special event signs shall not be located closer than five feet to a property line or street right-of-way.
  - (g) Temporary off-site special event signs shall not exceed four square feet in sign area and three feet in height.
  - (h) Temporary special event signs shall not conceal or obstruct adjacent land uses or signs.
  - (i) Temporary special event signs shall not conflict with the permitted principal use of the site or adjoining sites.
  - (j) Temporary special event signs shall not interfere with, obstruct the vision of or distract motorists, bicyclists or pedestrians.
  - (k) Temporary special event signs shall be installed and maintained in a safe manner.
  - (l) The display of temporary special event signs shall not begin any earlier than three weeks before the event and shall be removed within two business days after the event.
  - (m) Temporary off-site special event signs shall only be permitted where the owner of the property upon which the temporary sign is located has consented to the placement of the sign.
- M. Rural and residential districts.** In addition to the permanent and temporary signs and sign types that are allowed pursuant to Subsection **M** of this section, the following permanent and temporary signs are also allowed within the rural and residential districts designated in the Lebanon Borough Land Use Regulations, as amended from time to time. The permanent signs described below require a sign permit.
- (1) Freestanding signs and wall-mounted signs for multifamily residential uses. For each permitted multifamily residential use, there may be one permanent freestanding identification sign located on each public street frontage from which public vehicular access is derived and one wall identification sign for each building. A permanent freestanding identification sign shall not exceed 24 square feet in sign area and shall not exceed six feet in height. A permanent wall identification sign shall not exceed eight square feet in sign area.
  - (2) Freestanding signs and wall-mounted signs for institutional, quasi-public and public uses. For each permitted institutional, quasi-public or public use, there may be one permanent freestanding or wall-mounted identification sign that does not exceed 20 square feet in sign area. Freestanding signs shall not exceed six feet in height.

- (3) Temporary agricultural produce signs. For an allowed agricultural use, one temporary agricultural produce sign may be displayed. A temporary agricultural produce sign shall not exceed four square feet in sign area. A temporary freestanding agricultural produce sign shall not exceed six feet in height.
- N. Nonresidential districts. In addition to the permanent and temporary signs and sign types that are allowed pursuant to Subsection **M** of this section, the following permanent signs are also allowed within the nonresidential districts designated in the Lebanon Borough Land Use Regulations, as amended from time to time. Other than incidental signs, the permanent signs described below require a sign permit.
- (1) Permanent freestanding signs. Permanent freestanding signs are allowed as follows:
- (a) Number. One permanent freestanding sign is permitted for each lot containing a permitted use.
- (b) Height. The height of a permanent freestanding sign shall not exceed eight feet.
- (c) Size. The maximum sign area of a permanent freestanding sign shall not exceed 25 square feet. For each additional foot of setback above the minimum fifteen-foot setback requirement, the sign area may be increased by an additional five square feet, but in no event shall the sign area exceed 200 square feet.
- (d) Setbacks. The following setbacks shall apply:
- [1] A permanent freestanding sign shall be set back at least 15 feet from each lot line and right-of-way.
- [2] A permanent freestanding sign shall be offset at least 100 feet from any other permanent freestanding sign.
- [3] If a permanent freestanding sign is on a corner lot, it shall be offset at least 300 feet, measured along the right-of-way, from any other permanent freestanding sign.
- [4] A permanent freestanding sign shall comply with any additional setback requirements in this Code.
- (2) Permanent wall signs.
- (a) Number. Two permanent wall signs per principal building facade that faces a street are permitted.
- (b) Size. The aggregate sign area for wall signs shall not exceed 10% of the front facade area of the principal building to which the signs are affixed, or 200 square feet, whichever is less.
- (3) Incidental signs. Up to four incidental signs are permitted to be attached to a freestanding sign structure or to a building wall, but not perpendicular to the wall. An incidental sign shall not exceed one square foot in size.
- (4) Window signs. Subject to the following limitations and requirements, permanent and temporary window signs shall be permitted on or in the glass (or similar substitute) surface of each window or door that faces a public street or public access:
- (a) Said signs shall be located on the same story of the building that the business being advertised is located.
- (b) Seventy-five percent of the surface area of the glass (or similar substitute) of each such window or door shall remain free of signs.
- O. Administration and enforcement.
- (1) The Zoning Officer shall be the enforcing official of this section.

- (2) Whenever a temporary sign is erected or maintained in violation of this section, the Zoning Officer or the Zoning Officer's designee may remove the same at any time without notice.
  - (3) Whenever a temporary sign is erected or posted on public property in violation of this section the same shall be considered litter and may be removed at any time.
  - (4) Whenever a permanent sign is erected or maintained in violation of this section or any other provision of this Code, or whenever in the opinion of the Zoning Officer any sign becomes unsafe or endangers the safety of a building or premises or the public safety, the Zoning Officer shall send a letter by certified mail to the owner of said sign and/or the owner of the premises on which the sign is located, ordering that such sign be brought into conformance or removed within 30 days of receipt of the letter. If the sign is not brought into conformity or removed by the end of the thirty-day period, the Zoning Officer may cause the same to be removed at the expense of the owner of the sign and the owner of the premises on which the sign is located.
  - (5) The Zoning Officer may cause any sign or sign structure to be removed summarily and without written notice at the expense of the owner of the sign and the owner of the premises on which the sign is located, if it is an immediate peril to persons or property by virtue of its construction or moorings.
- P. Appeals to the Board of Adjustment. Whenever it is alleged that there has been an error in any order, action, decision, determination, or requirement by an administrative official in the enforcement and application of any provision contained within this section (including any allegation that an administrative official has failed to act within applicable time frames), the aggrieved party shall file a written appeal with the Board of Adjustment in accordance with the provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-70. The appellate decisions of the Board of Adjustment shall be deemed final, subject to judicial review as provided by law.
- Q. Violations and penalties. Any person, firm or corporation who shall violate, disobey, omit, neglect or refuse to comply with any provision of this section shall be, upon conviction thereof, liable to all of the penalties set forth in Article **XXXVIII** of this chapter except imprisonment.
- R. Transition rules. Any permit issued prior to the effective date of the adoption of the sign regulations that comprise this section shall remain valid until the earlier of the date that said permit expires by its own terms or 90 days after the effective date of the adoption of this section.
- S. Severability.
- (1) Generally; severability where less speech results. If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this section is declared or held to be invalid or unconstitutional by any court of competent jurisdiction, such declaration or holding shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this section, even if such severability would result in less speech, whether by subjecting previously exempt signs to this section's permitting requirements, or otherwise.
  - (2) Severability of provisions pertaining to billboards and other prohibited signs and sign types. Without diminishing or limiting in any way the declaration of severability set forth above or elsewhere in this section, this Code or in any adopting ordinance, if any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this section or any other law is declared or held to be unconstitutional or invalid by any court of competent jurisdiction, such declaration or holding shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this section that pertains to prohibited signs, including specifically the prohibition on billboards and those signs and sign types prohibited and not allowed under Subsection **C** of this section.

§ 165-110 **Utilities.**

- A. Public utilities. Nothing in this part shall be interpreted as prohibiting public utility distribution facilities, such as water distribution lines, sanitary sewers and telephone and electric distribution lines, along with related attendant facilities intended for local service, which utility systems are permitted in all zone districts when approved by the appropriate serving utility agency.
- B. Private utilities.
  - (1) Solar energy systems.
    - (a) Purpose. The primary purpose of a solar energy system, whether arranged as a single solar panel or a solar panel array, shall be to provide energy for the principal use and other permitted accessory uses on the property where the solar energy system is located and shall not be for the generation of power to be sold for commercial purposes. This provision shall not be interpreted to prohibit the disposition of excess power generated from a solar energy system back to a public electric utility provider by which the principal use is served.
    - (b) Roof-mounted solar energy systems.
      - [1] Roof-mounted solar energy systems are permitted accessory uses in all zones.
      - [2] Installation of a roof-mounted solar energy system on a conforming single- or two- family residential building, or on a conforming building that is accessory to a single- or two-family residential building, shall require a zoning permit. Installation of a roof-mounted solar energy system on any other structure shall require minor site plan approval, in accordance with § **165-55**.
      - [3] A roof-mounted solar energy system shall not be more than six feet higher than the height of the finished roof. In no instance shall any part of the system extend beyond the peak of the roof, extend beyond the maximum height of the roofline, or exceed the maximum height that is permitted for a principal or accessory building in that zone.
    - (c) Ground-mounted solar energy systems.
      - [1] Ground-mounted solar energy systems containing 400 square feet or less of total solar panel surface shall be a permitted accessory use in all zones, shall require a zoning permit and are subject to the following standards:
        - [a] Systems shall not be counted in the calculation of maximum impervious coverage as regulated within the Land Development Ordinance.
        - [b] Systems shall conform to the setback requirements for accessory structures in side and rear yards and shall not be located in front yards.
        - [c] Systems shall not exceed 10 feet in height.
      - [2] Ground-mounted solar energy systems containing greater than 400 square feet of solar panel area are prohibited in residential zones or as an accessory structure to a single- or two-family residential use in a nonresidential zone.
      - [3] Ground-mounted solar energy systems containing greater than 400 square feet of solar panel area require minor site plan approval, in accordance with § **165-55**, prior to obtaining a zoning permit and are subject to the following standards:

- [a] Systems shall not be counted in the calculation of maximum impervious coverage as regulated within the Land Development Ordinance. Nevertheless, design of the system shall comply with all stormwater, grading, and soil disturbance regulations of the Land Development Ordinance;
- [b] Systems shall not be constructed in uninterrupted structures, but shall be arranged so that no single contiguous panel area exceeds 400 square feet.
- [c] Systems shall conform to the setback requirements for accessory structures in side and rear yards and shall not be located in front yards.
- [d] Systems shall not exceed 10 feet in height unless erected above a parking lot, in which instance the system shall not exceed 18 feet in height.
- [e] Systems shall be located and installed so that sun glare is directed away from an adjoining property or public rights-of-way.
- [f] Systems shall be screened from public rights-of-way and adjacent properties via fencing or landscaping.
- [g] Systems shall be designed to blend the system into the existing setting and environment.

§ 165-111 (**Reserved**)

§ 165-112 **Child-care centers.**

Child-care center shall be a permitted principal or accessory use in all nonresidential zones in Lebanon Borough. The following standards shall apply to this use when proposed in the B, C-ROM-1, C-ROM-2 and ROM-1 Districts:

- A. All portions of any child-care center to be used by children shall be located on the principal entrance floor and any other level which is not more than 1/2 story above or below grade at the location from which egress is provided to the street.
- B. A minimum of 1,000 square feet plus 50 square feet per child of outdoor space, adjacent the center shall be provided and shall be adequately fenced or otherwise protected from hazards, traffic and driveways. The per child outdoor area requirement shall be calculated utilizing the licensed capacity authorized.
- C. The hours of operation shall be limited to 6:30 a.m. to 7:00 p.m.
- D. Child-care centers shall provide one parking space per employee plus one additional parking space for every five children. Adequate space shall be provided for the loading and unloading of children which shall take place on site and not in a public right-of-way.
- E. The internal pedestrian circulation pattern shall be adequate to assure the safe movement of children and parents into and out of the child-care facility. Design features to be incorporated include the use of sidewalks and pedestrian cross walks to connect the parking area with the child-care center facility.
- F. Parking areas and pedestrian walkways shall be illuminated to provide safe entrance and egress from the center for both pedestrian and automobile traffic.
- G. Location of access driveways, landscaping, signage and general site plan design shall be compatible with the neighborhood in which the center is to be located. The location of any child-care center shall be appropriately situated in relation to the use or area it is intended to serve. No child-care center shall be permitted to be located near or adjacent to areas determined to be hazardous to the physical health and safety of the children.
- H. Where a child-care center is provided as an accessory use to a principal use located on the same lot, the

gross floor area devoted to the child-care center shall be excluded from calculating the parking and lot coverage requirements for the zone.

- I. Where a child-care center is provided as a principal use the area and yard requirements shall apply as noted in the applicable district standards, except in the OB-2 District, where a minimum lot area of 40,000 square feet shall apply.
- J. Adequate landscape screening may include the use of earth berms, evergreen plantings and landscape plantings, solid fencing used individually or in combination so as to visually separate the child-care center lot from the adjoining parcels. Each child-care center shall provide landscaped buffers adjacent to any side or rear lot line equal to at least 10% of the lot width.
- K. Any child-care center shall comply with all state standards and any local approval shall be conditioned upon receipt of a state license.
- L. All other applicable requirements of this chapter shall apply, except where the Land Use Board determines that such requirements are not appropriate for child-care centers.

§ 165-113 **Wireless telecommunications equipment and facilities.**

- A. Purpose. The purpose of this section is to provide sound land use policies, procedures and regulations for the location and placement of wireless telecommunications structures, antennas and equipment within the Borough of Lebanon in order to protect the community from the visual and other adverse impacts of wireless telecommunications facilities and to preserve the scenic and historic character of the countryside that the Lebanon Borough Master Plan seeks to protect. This section seeks to meet the mandate of the Telecommunications Act of 1996, and at the same time, without limiting the generality of the foregoing, to:
  - (1) Protect residential areas and land uses from the potential adverse impacts of towers and antennas;
  - (2) Encourage the location of towers in nonresidential areas and along major transportation corridors;
  - (3) Minimize the total number of towers throughout the community;
  - (4) Strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;
  - (5) Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
  - (6) Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape, screening, and innovative camouflaging techniques;
  - (7) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;
  - (8) Consider the public health and safety of communications towers; and
  - (9) Avoid potential damage to adjacent properties from tower failure through proper engineering and careful siting of tower structures.
- B. Permitted use/conditional use treatment.

- (1) Notwithstanding anything in this Chapter **165** to the contrary, the installation of wireless telecommunications antennas on existing structures, subject to minor site plan approval under § **165-45** of this chapter and consistent with the visual compatibility requirements of Subsection **C** below, shall be a permitted use in all nonresidential zone districts and a conditional use in all residential zone districts of the Borough. When proposed as a conditional use, the applicant shall meet the standards of Subsection **D**. When antennas are proposed as a permitted use on an existing structure in a nonresidential zone district, the applicant shall meet the standards of § **165-113D(1)(a)**.
- (2) Notwithstanding anything in this Chapter **165** to the contrary, wireless telecommunications towers consistent with the provisions of Subsections **C(1)**, **(2)** and **(3)** and **D** shall be a conditional use within all nonresidential zone districts of the Borough.
- (3) Notwithstanding anything in this Chapter **165** to the contrary, no new wireless telecommunications tower shall be permitted unless the applicant demonstrates with convincing clarity to the Land Use Board that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's need for a proposed antenna. Costs of alternative technology that exceed new wireless telecommunications tower or wireless telecommunications antenna development shall not be presumed to render any alternative technology unsuitable or unavailable.

C. Visual compatibility requirements.

- (1) Wireless telecommunications antennas on existing structures or buildings and wireless telecommunications towers shall be designed, located and screened to blend with and into the existing natural or built surroundings so as to eliminate, to the maximum extent practicable and without regard to cost, adverse visual impacts through the use of color and camouflaging, architectural treatment, landscaping, and other appropriate means which shall cause the visual impact of such antennas and towers to be compatible with neighboring residences and the character of the community as a whole.
- (2) Wireless telecommunications antennas on existing structures or buildings and wireless telecommunications towers shall be placed to ensure that historic districts, historically significant views, streetscapes, and landscapes are not visually impaired and are protected against any visual impairment from wireless telecommunications facilities. The views of and vistas from architecturally and/or significant structures shall not be impaired or diminished by the placement of telecommunications facilities.
- (3) The wireless telecommunications equipment compound shall be located to avoid being visually solitary or prominent when viewed from residential areas and the public way.
- (4) The wireless telecommunications equipment compound shall be enclosed within a solid wooden fence at least seven feet and no more than eight feet high, as approved by the Borough Engineer, which shall include a locking security gate. The height of the equipment building shall not exceed 12 feet.
- (5) A wireless telecommunications equipment compound consisting of no more than 1,500 square feet may be erected in support of wireless telecommunications antenna but only if:
  - (a) It is situated behind existing vegetation, tree cover, structures, buildings or terrain features which will shield completely the wireless telecommunications equipment compound from public view; or
  - (b) When a location completely out of public view is not possible, a landscape buffer of 20 feet in width shall be provided outside the fence around the wireless telecommunications equipment compound, to shield completely the facility from public view. Landscaping shall include native evergreen and deciduous trees at least eight feet high at the time of planting, and the number of trees shall be based on the equivalent of staggered double rows at 15 feet on center; and

- (c) It otherwise complies with the requirements of this chapter.
- D. Conditional use standards for the location of wireless telecommunications antennas or towers.
- (1) An applicant desiring to construct wireless telecommunications antennas in residential zones or towers in any nonresidential zone shall demonstrate to the satisfaction of the Land Use Board, through the presentation and introduction of documentary and parole evidence, each of the following, while an applicant desiring to construct wireless telecommunications antennas in nonresidential zones shall meet the standards of Subsection **D(1)(a)**.
- (a) The need for wireless telecommunications antennas at the proposed location. The evidence presented and introduced to the Land Use Board shall describe in detail the wireless telecommunications network layout and its coverage area requirements and the need for new wireless telecommunications facilities at a specific location within the Borough. The applicant shall also provide evidence to the satisfaction of the Land Use Board of all alternate wireless network plan designs which would not require the applicant to construct a wireless telecommunications tower at the proposed location.
- (b) That the applicant has exercised its best efforts to locate the wireless telecommunications antennas on existing buildings or structures within the applicant's search area. Without otherwise limiting the nature of the evidence to be provided by the applicant in order to meet its burden on this issue, the applicant shall provide to the Land Use Board copies of all correspondence from and between the wireless telecommunications provider and the property owners of the existing buildings or structures. The failure of the applicant to present evidence of the foregoing shall constitute a rebuttable presumption that that applicant has not exercised its best efforts as required herein. Evidence demonstrating that no existing wireless telecommunications tower or building or structure can accommodate the provider's proposed antenna may consist of any one or more of the following:
- [1] No existing towers or structures are located within the geographic area that is necessary to meet the provider's radio frequency engineering requirement to provide reliable coverage.
- [2] Existing towers or structures are not of sufficient height and cannot be made to be of sufficient height to meet the provider's radio frequency engineering requirements, or do not have sufficient structural strength to support the provider's proposed antenna and related equipment.
- [3] The provider's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures or the antenna on the existing towers or structures would cause interference with the provider's proposed antenna.
- [4] The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are patently unreasonable. Actual, direct costs exceeding new tower design, development, and construction are presumed to be patently unreasonable.
- [5] The provider demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
- (c) The locations of all existing communications towers and other structures of not more than 140 feet in height within the applicant's search area and provide competent testimony by a radio frequency engineer regarding the suitability of each location so identified by the applicant in light of the design of the wireless telecommunications network, and the alternate network designs identified pursuant to Subsection **D(1)(a)** above.
- (d) Where a suitable location on an existing tower or other structure is found to exist, but the applicant is unable to secure an agreement to collocate its equipment on such tower or other structure, the applicant

shall provide sufficient and credible written evidence of its attempt or attempts to collocate.

- (e) A full, complete description of all alternative technologies not requiring the use of towers or other structures to provide the services to be provided by the applicant through the use of the proposed tower.
- (f) That the applicant has exercised its best efforts to site new wireless antennas, equipment or towers within the applicant’s search area according to the priority schedule below. Without otherwise limiting the nature of the evidence to be provided by the applicant in order to meet its burden on this issue, the applicant shall provide to the Land Use Board the block and lot number of any parcel for which the wireless provider has attempted to secure a lease or purchase agreement and copies of all correspondence from and between the wireless provider and the property owner; the failure of the applicant to present evidence of the foregoing shall constitute a rebuttable presumption that the applicant has not exercised its best efforts as required herein.

Priority	Zone*	Equipment	Location	Permitted or Conditional
1	Commercial/ Transportation	Antenna	Collocated with other antennas on existing structure or tower within a transportation corridor	P
2	Commercial/ Transportation	Antenna	Existing structure or tower within a transportation corridor	P
3	Commercial	Antenna	Collocated with other antennas on existing structures or towers	P
4	Commercial	Antenna	Existing structure or tower	P
5	Residential/ Transportation	Antenna	Collocated with other antennas on existing structures or tower within a transportation corridor	C
6	Residential/ Transportation	Antenna	Existing structure or tower	C
7	Residential	Antenna	Collocated with other antenna on existing structure or	C

Priority	Zone*	Equipment	Location	Permitted or Conditional
			tower	
8	Residential	Antenna	Existing structure or tower	C
9	Commercial/ Transportation	Tower	Construct a tower within a commercial transportation corridor	C
10	Commercial	Tower	Construct a tower in a commercial area	C

\* NOTE:

"Commercial" includes the C-ROM-1, C-ROM-2, and ROM-1 Zones.

"Transportation" means the lot has frontage on Route 22 or I-78.

- (g) Compliance with the Borough standard that no wireless telecommunications towers shall be permitted which would require lighting affixed thereto under FCC, FAA or any other governmental agency regulations or requirements.
- E. Bulk standards. An applicant desiring to construct a wireless telecommunications tower who has satisfied the requirements of Subsection **D** above shall also satisfy the following bulk standards, which bulk standards shall be interpreted and reviewed pursuant to N.J.S.A. 40:55D-70c:
- (1) Minimum lot size: As required by the zone district in which located, or two acres, whichever is larger.
  - (2) Minimum setback of wireless telecommunications tower from:
    - (a) Any property line: the zone district setback requirement or the tower height, whichever is greater.
    - (b) Any existing residence: 500 feet.
    - (c) Any wireless telecommunications tower: 5,280 feet.
  - (3) Minimum setback for equipment compound from any property line: The zone district setback requirements for an accessory building.
  - (4) Maximum height of wireless telecommunications tower (exclusive of lightning rod) designed to accommodate:
    - (a) Three or more vendors: 140 feet.
    - (b) Two vendors: 120 feet.
    - (c) Single vendor: 100 feet.
  - (5) Maximum height of attached antenna: 10 feet beyond the edge of the building or structure on which attached.

F. Site plan application requirements for the installation of wireless telecommunications towers.

- (1) All site plan details required by § **165-58** shall be provided and shall include the site boundaries; tower location; existing and proposed structures, including accessory structures; existing and proposed ground-mounted equipment; vehicular parking and access; and uses, structures, and land use designations on the site and abutting parcels.
- (2) Landscape design shall be in accordance with § **165-77**.
- (3) A report from a qualified expert certifying that the wireless telecommunications tower and equipment facility comply with the latest structural and wind-loading requirements as set forth in the Building Officials and Code Administrators (BOCA) International, Inc. Code; or the Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision F Standard, entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures" (or equivalent), as it may be updated or amended; or such other code as may apply to these facilities, including a description of the number and type of antennas it is designed to accommodate.
- (4) A binding, irrevocable letter of commitment by the applicant to lease excess space on the tower to other potential users at prevailing market rates and conditions. The applicant's counsel shall simultaneously submit a separate opinion of counsel expressing such counsel's opinion as to the enforceability of such binding, irrevocable letter of commitment by the Borough under the laws of the State of New Jersey. The letter of commitment shall be recorded prior to issuance of a building permit. The letter shall commit and be binding upon the tower owner and successors in interest.
- (5) Elevations of the proposed tower and accessory building generally depicting all proposed antennas, platforms, finish materials, and all other accessory equipment.
- (6) A copy of the lease or deed for the property.
- (7) A plan which shall reference all existing wireless telecommunications facilities in the Borough, any such facilities in the abutting towns which provide service to areas within Lebanon Borough, and any changes proposed within the following twelve-month period, including plans for new locations and the discontinuance or relocation of existing facilities.
- (8) A three-hundred-sixty-degree perspective of the proposed tower at the proposed location from distances of 1,000 feet, 1/2 mile, one mile and two miles drawn to an appropriate scale.

G. Design standards.

- (1) The wireless telecommunications tower shall be designed and constructed so as to accommodate at least three antenna arrays of separate telecommunications providers (the applicant's plus two collocators).
- (2) Signs shall not be permitted except for a sign displaying owner contact information, warnings, equipment information, and safety instructions. Such sign shall not exceed two square feet in area. No commercial advertising shall be permitted on any wireless telecommunications facility.
- (3) No lighting is permitted except as follows:
  - (a) Wireless telecommunications equipment compounds enclosing electronic equipment may have security and safety lighting at the entrance, provided that the light is attached to the facility, is focused downward and is on timing devices and/or sensors so that the light is turned off when not needed for safety or security purposes; and
  - (b) No lighting is permitted on a wireless telecommunications tower.

- (4) Wireless telecommunications antennas and towers shall be maintained to assure their continued structural integrity. The owner of the tower or antenna shall also perform such other maintenance of the structure and of the site as to assure that it does not create a visual nuisance.
- (5) Wireless telecommunications towers shall be of a color appropriate to the tower's locational context and to make it as unobtrusive as possible, unless otherwise required by the Federal Aviation Administration (FAA).
- (6) Wireless telecommunications facilities shall be surrounded by security features such as a fence. All towers shall be designed with anti-climbing devices in order to prevent unauthorized access. Additional safety devices shall be permitted or required, as needed, and as approved by the approving authority.
- (7) Any proposed new telecommunications tower shall be a monopole unless the applicant can demonstrate that a different type pole is necessary for the collocation of additional antennas on the tower. Such towers may employ camouflage technology.
- (8) No equipment shall be operated so as to produce noise in excess of the limits set by the local noise ordinance, except for in emergency situations requiring the use of a backup generator.
- (9) Wireless telecommunications towers and antennas shall be constructed to the Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision F Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures" (or equivalent), as it may be updated or amended.

H. Antenna modifications.

- (1) Whenever antennas are modified, operators of wireless telecommunications facilities shall provide to Lebanon Borough a report from a qualified expert certifying that a wireless telecommunications tower or building or other support structure as modified complies with the latest structural and wind-loading requirements as set forth in the Building Officials and Code Administrators (BOCA) International, Inc. Code and the EIA/TIA Standard referenced above. Such modifications shall be subject to site plan review and approval.
- (2) Operators of wireless telecommunications facilities shall notify Lebanon Borough when the use of such antennas and equipment is discontinued. Facilities that are not in use for wireless telecommunications purposes for six months shall be removed by the provider at its cost. This removal shall occur within 90 days of the end of such six-month period. Upon removal, the site shall be cleared, restored, and revegetated to blend with the existing surrounding vegetation at the time of abandonment.

I. Collocation and shared facilities and sites.

- (1) FCC licensed wireless telecommunications providers are encouraged to construct and site their facilities with a view toward sharing facilities with other utilities, collocating with other existing wireless facilities and accommodating the collocation of other future facilities where technically, practically, and economically feasible.

J. Application and escrow fee. Site plan application fees and escrows for wireless telecommunications installations shall be as set forth in § 165-13 of this chapter.

§ 165-114 (Reserved)

§ 165-115 Steep slope regulations.

- A. The following standards shall apply to all new lots created through subdivision and all site plans with slopes in excess of 15.
  - (1) In areas with slopes that exceed 25%, no development, regrading or removal of vegetation shall be permitted.
  - (2) In areas with slopes of 15% to 25%, no more than 15% of such areas shall be developed, regraded or cleared of vegetation.
  - (3) A steep slope analysis showing slope classes 0% to 14.99%, 15% to 25% and greater than 25% shall be delineated on the subdivision plat or site plan. The slope classifications shall be calculated utilizing a two-foot contour interval.
- B. Any existing residential lot of record at the time of the passage of this section shall be exempt from the above provisions, unless and until an application for subdivision or site plan approval of that lot is made.
- C. The following standards shall apply to existing lots of record if the construction of a residence and associated improvements is proposed on slopes greater than 15%:
  - (1) A lot grading plan which indicates the proposed driveway plan and profile, residential and other site grading necessary for the property shall be submitted for review and approval by the Borough Engineer. Such plan shall also provide for the proper protection and stabilization of all disturbed areas consistent with the design techniques established by the Soil Erosion and Sediment Control Standards, adopted as amended by the New Jersey State Soil Conservation Committee. The approval of the Borough Engineer shall be required prior to the issuance of a building permit.
  - (2) The Borough Engineer shall verify that the proposed residential driveway design is capable of providing access for emergency vehicles and equipment under all weather conditions.

§ 165-116 **Fences.**

- A. Purpose. The purposes of this section are as follows:
  - (1) To regulate the height, location, and type of fencing that is erected within the Borough.
  - (2) To ensure that the visual character from public rights-of-way are not unduly obscured by fences and walls.
- B. General requirements for all zoning districts.
  - (1) All fences shall be situated on a lot in such a manner that the finished side of the fence shall face adjacent properties.
  - (2) All fences shall be uniform and symmetrical in appearance, shall have posts or columns separated by identical distances, except for deviations required by construction factors, and shall consist of materials conforming to a definite pattern.
  - (3) No fence shall be erected of barbed wire, razor wire, topped with metal spikes or other sharp objects, nor constructed of any material or in any manner which may be dangerous to persons or animals, except wire fences shall be permitted for qualified (under the New Jersey Farmland Assessment Act) farms. For qualified farms, wire farm fences are allowed in any yard and may be constructed in generally accepted farm use manner.
  - (4) Fences may be placed with the outer face located on the property line, except where a setback from the property line is required as specified in this section.

- (5) No fence shall be constructed or located in such a manner as to block or otherwise interfere with any drainage way, natural drainage flow, surface water, or surface water runoff as said terms as defined in §165-224.
- (6) Chain link fences shall be prohibited in front yards and in side yards between the street right-of-way and the front yard setback line in all zones in the Borough.
- (7) The installation of all fences shall require a zoning permit issued by the Borough Zoning Officer and any fence that is over six feet in height shall also require a building permit issued by the Borough Construction Official.
- (8) No fence shall be constructed within any public right-of-way, a sight triangle area or within a publicly owned easement area.
- (9) All fences shall be maintained in a safe, sound, upright and painted (if the original fence was painted) condition.
- (10) The location of retaining walls, guardrails, and other structural or safety elements intended for purposes other than screening or decoration are exempt from the regulations contained in this section.
- (11) Fencing as required by the Uniform Construction Code for pools and other designated locations shall conform to the standards required in the Uniform Construction Code.
- (12) A dog run may have fencing a maximum seven feet in height provided it is located in rear yard areas only and conforms with the required setback from any side or rear lot line as required for accessory buildings and structures as specified in this chapter.
- (13) A deer protection fence, consisting of a fence material which shall be an open-type wire grid so as to minimize the fence's visual impact on surrounding properties, shall be permitted in side and rear yards only, provided that in side yards it is located no closer to the street right-of-way than the front yard setback line, and may be no more than eight feet in height.

C. Fences in residential districts.

- (1) A fence, four feet or less in height shall be permitted in the front yard, provided that the fence is located at least two feet from the front property line. For the purposes of this section, any yard lying between the street right-of-way and the principal building, as in a corner lot, shall be considered a front yard.

Fences shall be permitted in the front yard provided that the portion that is in the front or in front of the setback line (whichever is further back) does not exceed thirty-six (36") inches in height, is not located within a sight triangle and does not extend into the road right of way. Fences in the front yard must be of colonial or Victorian style, either picket made of wood or vinyl, decorative wire or decorative cast iron. Chain link or plain wire fences are not be permitted. The decorative or finished side of the fence must be facing out.

- (2) A fence, six (6) feet or less in height shall be permitted in a side or rear yard, except that fences in a side yard located between the front lot line and the front yard setback line may not exceed four feet in height.
- (3) Gates or pillars in the front yard shall be permitted, not to exceed four feet in height and located only at the main entry drive to any residential property. Such gates or pillars shall slope downward to four feet in height within 10 feet of the inside face of the pillar or gatepost closest to the driveway.

D. Fences in nonresidential districts. Fences in nonresidential districts may be required by the Land Use Board as part of a site plan application. In such circumstances the fence shall conform to the following

standards:

- (1) A fence, four feet or less in height shall be permitted in the front yard, provided that the fence is located at least two feet from the front property line or the right-of-way line, whichever is closer. For the purposes of this section, any yard lying between the street right-of-way and the principal building, as in a corner lot, shall be considered a front yard.

Fences shall be permitted in the front yard provided that the portion that is in the front or in front of the setback line (whichever is further back) does not exceed thirty-six (36") inches in height, is not located within a sight triangle and does not extend into the road right of way.

Fences in the front yard must be of colonial or Victorian style, either picket made of wood or vinyl, decorative wire or decorative cast iron. Chain link or plain wire fences are not be permitted. The decorative or finished side of the fence must be facing out.

- (2) A fence not to exceed six feet in height may be constructed in a side or rear yard, except that fences in a side yard located between the street right-of-way and the front yard setback line may not exceed four feet in height.

#### § 165-117 **Sidewalk sales.**

A. Purpose. The purposes of this section are as follows:

- (1) To provide for occasional, temporary display and sales of retail merchandise and services on the exterior grounds of a permitted principal retail use within the Borough; and
- (2) To provide additional opportunities for retail businesses to highlight their merchandise and services and, thus, strengthen the overall business economy within the Borough; and
- (3) To ensure that the frequency, duration and location of temporary, occasional outdoor display and sales of retail merchandise and services does not result in significant negative impacts upon adjacent uses or the public at large.

B. Criteria for sidewalk sales. Sidewalk sales do not require a site plan approval but require a zoning permit, which shall be subject to the following criteria:

- (1) The business that will conduct the sidewalk sale shall be a permitted principal use.
- (2) Sidewalk sales shall only be permitted in nonresidential zones.
- (3) Sidewalk sales shall take place on the same premises/lot as the "permanent" business to which it is related.
- (4) Duration. A sidewalk sale shall not exceed 10 consecutive business days in duration.
- (5) Frequency. No more than three permits shall be issued for a property to conduct sidewalk sales during a calendar year.
- (6) Sidewalk sales shall conform to the following site control regulations:
  - (a) Merchandise, temporary structures or other elements related to a sidewalk sale shall be located no less than 20 feet from a residential property line.
  - (b) Merchandise, temporary structures or other elements related to a sidewalk sale shall not be located in such a manner as to create a minimum clearance that is less than three feet for pedestrian travel on walkways.

- (c) Sidewalk sales may occupy up to 10% of an off-street parking lot but shall not occupy any barrier-free parking spaces or related access aisles; adequate vehicular access and illumination shall be maintained for the remainder of the parking lot that is not occupied by the sidewalk sale.

C. Submission requirements.

- (1) Applicants shall submit a copy of a survey, a plot plan or a copy of an approved site plan for the property on which the sidewalk sale is to be conducted. The survey, plot plan or site plan should be clearly marked to depict the location and extent of the sidewalk sale so that the Zoning Officer may determine if the application meets the criteria of § **165-117B**. Such depictions do not require the engagement of a design professional in order to satisfy this submission requirement.

§ 165-117.1 **Farmer's markets.**

A. Purpose. The purposes of this section are as follows:

- (1) To provide for occasional, temporary sale to the general public of a variety of locally grown or produced seasonal fruits and vegetables and value-added products, including but not limited to uncut, unprocessed produce and fruit, cut and/or potted flowers and shrubs, pickles, jams, honey, cheeses, meats, processed meat products, juices, ciders, teas, fruit butters, farm-baked cakes, cookies and pies, and ready-to-eat or ready-to-heat foods; and
- (2) To provide an opportunity for local growers and producers to sell farm-fresh products to the public in order to promote healthy eating and education; and
- (3) To provide local restaurants and retail businesses an opportunity to attract a variety of customers and to provide those customers with diverse offerings; and
- (4) To ensure that the frequency, duration and location of the temporary sale of these products does not result in significant negative impacts on adjacent uses or the public at large.

B. Definition. For purposes of this section, the term "farmer's market" means a vendor or group of vendors offering for sale to the general public a variety of locally grown or produced seasonal fruits and vegetables and value-added products, including but not limited to uncut, unprocessed produce and fruit, cut and/or potted flowers and shrubs, pickles, jams, honey, cheeses, meats, processed meat products, juices, ciders, teas, fruit butters, farm-baked cakes, cookies and pies, and ready-to-eat or ready-to-heat foods.

C. Use permitted in all nonresidential zones. Notwithstanding any provisions of Lebanon's land use regulations limiting the number of principal uses on a single lot, a farmer's market as defined herein shall be deemed a permitted use on all lots in all nonresidential zones of the Borough even if there is another principal use on the lot, but subject to the terms and conditions set forth hereinbelow.

D. Terms and conditions.

- (1) No such use may operate without having first obtained the approval of the Zoning Officer (as to compliance with the requirements of this chapter) and the Police Director or officer in charge (as to safety of ingress, egress, circulation, and traffic). Provided all of the terms and conditions set forth herein are satisfied, site plan approval shall not be required.
- (2) Such use shall be permitted only on lots having an existing improved (paved or gravel) parking lot capable of holding at least 30 cars.
- (3) Such use may only be conducted out of doors from temporary stands, stalls or vehicles, or within an existing structure.

- (4) Such use may only be conducted between Memorial Day and Thanksgiving.
- (5) Such use may only be conducted one day per week, during daylight hours only and for a maximum of four hours per day.
- (6) All stands, stalls or vehicles used as part of the farmer's market shall be set back a minimum of 20 feet from any residential property line and 10 feet from any sidewalk or curblin where no sidewalk exists.
- (7) No stand, stall or vehicle used as part of the farmer's market shall obstruct vehicular or pedestrian traffic in any way or occupy any barrier-free parking spaces or related access aisles.
- (8) Vendors shall be required to comply with all applicable health, sanitation and food safety requirements and shall procure all licenses and permits as may be required in connection therewith.
- (9) Every zoning permit application shall be accompanied by:
  - (a) A marked-up copy of a survey, plot plan or approved site plan for the property on which the farmer's market is to be conducted, which shall clearly identify the number of vendors and depict the location and extent of the stands, stalls or vehicles used in the farmer's market, the distance in feet from any sidewalk, curblin, or residential property line, the means of ingress and egress, and the location and amount of customer parking, as well as any traffic management measures (if applicable) and temporary signage (if applicable), which plan shall be subject to the review and approval of both the Zoning Officer and the Police Director or officer in charge.
  - (b) Evidence that all necessary permits, licenses or other outside approvals have been obtained.
- (10) The farmer's market shall be conducted strictly in compliance with the approved plan and the requirements set forth in this section.

## Article XVII

### Nonconforming Buildings and Uses

#### § 165-118 **Continuance.**

Any lawfully created nonconforming use which existed at the time of the passage of this chapter may be continued, and any existing building designed, arranged, intended or devoted to a nonconforming use may be reconstructed or structurally altered, subject to the following regulations:

- A. Such building shall in no case be enlarged unless the use therein is changed to a conforming use; provided, however, that the provisions of this subsection shall not apply to an existing residence located in a nonresidential zone wherein residential uses are prohibited. Such an existing residence may be extended or enlarged, provided that the yard requirements of the residential zone whose minimum lot size requirement most closely approximates the area of the residential lot are met.
- B. A nonconforming use shall not be extended at the expense of a conforming use.
- C. A nonconforming use changed to a conforming use may not thereafter be changed back to a nonconforming use.
- D. A nonconforming use shall not be permitted to be changed to another nonconforming use.
- E. In the event that there is a cessation of operation of any nonconforming use for a period of 12 consecutive calendar months, the same shall be presumed to be an abandonment of such nonconforming use. Any subsequent exercise of such abandoned nonconforming use shall be deemed a violation of the terms of this chapter, except that such shall not apply to a nonconforming use because of height and area violations.

F. A building which is conforming in use but violates the yard, setback or height requirements may not be extended within any required yard or setback area nor extended above the height limits of this chapter.

**§ 165-119 Restoration.**

Nothing in this chapter shall prevent the restoration of a nonconforming building partially destroyed by fire, explosion, act of God or act of public enemy, provided that any building partially destroyed in the manner aforesaid may be reconstructed and thereafter used only in such a manner as to not further violate the reasons for nonconformity. Any building totally destroyed in the manner aforesaid may only be rebuilt as a conforming use.

**§ 165-120 Completion of buildings.**

Nothing in this chapter shall require any change in plans, construction or designated use of a building for which a building permit has been heretofore issued and construction is diligently prosecuted within 60 days of the date of such permit.

**§ 165-121 Continuation of uses in violation of prior regulations prohibited.**

Nothing in this chapter shall be interpreted as authorization for or approval of the continuance of the use of a structure or premises in violation of zoning regulations in effect at the time of the effective date of this chapter.

**§ 165-122 Applicability to nonconformity due to reclassification.**

The foregoing provisions of this article shall also apply to buildings, structures, land or uses which hereafter become nonconforming due to any reclassification of zone districts under this chapter or any subsequent change in the regulations of this chapter.

## Article XVIII Right to Farm

**§ 165-123 Right to farm.**

A. The right to farm land is hereby recognized to exist in this Borough and is hereby declared a permitted use in all zones of this Borough notwithstanding specified and prohibited uses set forth elsewhere in this chapter, subject to the standards and regulations for intensive fowl or livestock use as set forth below, subject to Section 40-199, and applicable health and sanitary codes. This right to farm includes, but not by way of limitation:

- (1) Use of irrigation pumps and equipment, aerial and ground seeding and spraying, tractors and other equipment.
- (2) Use of necessary farm laborers.
- (3) The application of chemical fertilizers, insecticides and herbicides in accordance with manufacturers' instructions and the application of manure.
- (4) The grazing of animals and use of range for fowl, subject to standards and regulations for intensive fowl and livestock use.
- (5) Construction of fences for these animals and livestock.
- (6) The traveling and transportation of large, slow-moving equipment over roads within the Borough.
- (7) The control of vermin and pests, provided that such control is practiced under applicable state fish and game laws.
- (8) The use of land for recreational use, e.g. hunting, shall be done only with the permission of farm owner.

Any recreational use of the farmland which changes the underlying agricultural nature of the use shall be subject to the usual site plan review, variance application and all permits where otherwise required.

- B. The purpose of these rights is to produce agricultural products, e.g., vegetables, grains, hay, fruits, fibers, wood, trees, plants, shrubs, flowers and seeds.
- C. The foregoing uses, activities and rights, when reasonable and necessary for farming, livestock or fowl production and when conducted in accordance with generally accepted agricultural practices, may occur on holidays, Sundays, and weekends by day or night and shall include the attendant or incidental noise, odors, dust and fumes associated with these practices.
- D. It is hereby determined that whatever nuisance may be caused to others by these uses and activities is more than offset by the benefits from farming to the neighborhood community and society in general by preservation of open space, the beauty of the countryside and clean air. The preservation and continuance of farming operations in Lebanon Borough and New Jersey is a source of agricultural products for this and future generations and saves a nonreplenishable resource, i.e. the land.
- E. Deed conveyance. Each deed of conveyance of land in any agricultural area prepared after the effective date of this section, and each offering for the sale of land shall contain a recital as follows: The Borough of Lebanon acknowledges that a substantial quantity of land is devoted to active agricultural uses and the right of that landowner to continue to farm. Therefore, the grantee, their heirs and assigns are hereby on notice that the adjoining land or lands in the vicinity are actively being farmed and the other owner has the continued right to farm under the provisions of the Land Use Regulations of the Borough of Lebanon.

## Article XIX Conditional Uses

### § 165-124 **Applications.**

Pursuant to P.L. 1975, c. 291, the Land Use Board may grant conditional uses wherever hereinafter permitted in this part. Application for a conditional use shall be made in accordance with the procedures set forth in Part 6 for preliminary subdivision plat and/or site plan approval, and the Land Use Board shall act on the application in accordance with said procedures for preliminary subdivision plat and/or site plan approval. Application for a conditional use shall be granted if same will not be detrimental to the health, safety and general welfare of the community, is not likely to involve unusual risks of traffic safety or traffic congestion and is reasonably necessary for the convenience of the community. Unless otherwise provided below, conditional uses permitted in this chapter shall meet the requirements and limitations contained in the Schedule of Zoning Requirements referred to in § 165-86. In addition all applicable provisions of Part 6 relating to site plan approval shall be complied with. The Board may impose such conditions as it may deem appropriate with respect to, among other matters, traffic and parking arrangement, the amount of off-street parking, building design and appearance and landscaping.

### § 165-125 **Houses of Worship and Schools.**

The conditional use standards for houses of worship and schools shall be as follows:

- A. No building shall exceed the height limit of its zone district, except as provided in § 165-100.
- B. There shall be a minimum lot area of 22,500 square feet and a minimum lot width of 150 feet.
- C. All buildings shall be located at least 35 feet from the front property line, 25 feet from the side property lines, and at least 30 feet from the rear property line.
- D. There shall be a minimum distance between buildings of 25 feet, but no less than the height of the

shorter building.

E. The lot coverage shall not exceed sixty (60) percent.

**§ 165-126 Restaurants.**

The conditional use standards for restaurants (including those with drive-throughs) shall be as follows:

A. The minimum lot area and yard requirements of the zone in which the use is located shall be met.

B. The lot shall be at least 1,000 feet, measured in a straight line, from the nearest property line of another restaurant which is located on either the same or opposite side of the street. Said lot shall also be at least 1,000 feet from any residential zone which is located on either the same or opposite side of the street. These limitations shall not apply where the restaurant is located on the opposite side of a street or highway divided by a median or barrier from another fast-food restaurant or residential zone.

C. The lot shall have frontage on State Highway Route 22 with access to/from the lot on said State highway.

D. The minimum lot frontage along State Highway Route 22 shall be 150 feet.

**§ 165-127 Public garages and motor vehicle service stations.**

The conditional use standards for public garages and motor vehicle service stations shall be as follows:

A. The minimum lot area and yard requirements of the zone in which the use is located shall be met.

B. The lot shall be at least 1,000 feet, measured in a straight line, from the nearest property line of another fast-food restaurant which is located on either the same or opposite side of the street. Said lot shall also be at least 1,000 feet from any residential zone which is located on either the same or opposite side of the street. These limitations shall not apply where the restaurant is located on the opposite side of a street or highway divided by a median or barrier from another fast-food restaurant or residential zone.

C. The lot shall have frontage on State Highway Route 22 with access to/from the lot on said State highway.

D. The minimum lot frontage along State Highway Route 22 shall be 150 feet.

E. No merchandise shall be displaced or kept for sale out-side the building except petroleum products and automobile accessories reasonably connected with or necessary for the sale or lawful operation of motor vehicles. Any case or rack for the display of petroleum products and automobile accessories reasonably connected or necessary for the safe or lawful operation of motor vehicles hereinafter erected or placed outside of the building shall be constructed of metal and may not exceed six (6) feet in height and shall conform to all set-back requirements of the zone.

F. The provisions of the Borough's sign Ordinance §165-109 shall apply as conditional use standards for public garages and motor vehicle service stations so that any requests for a variance shall be a D-3 and not a C variance.

G. Repair work, other than incidental minor repairs, shall take place only within the building and all repair or service apparatus shall be located within the building.

**Article XX  
Driveways**

## § 165-128.1 Purpose

The purpose of this Chapter is to set certain standards for the design, location and construction of driveways and driveway openings, and to ensure the safe and clear passage of vehicles, in order to promote the safety, public well-being, convenience and general welfare of the Borough through, among other things, ensuring emergency vehicle access, the promotion of traffic safety and the preservation of municipal road structures.

## § 165-128.2 Definitions.

For the purpose of this Chapter, the following words or terms shall mean:

### **ALTERED**

An existing driveway is "altered," within the meaning of this Chapter, when its horizontal location or vertical elevation is changed or when drainage facilities are installed or replaced within the Borough right-of-way. An existing driveway is "not being altered" within the meaning of this Chapter, when it is paved, widened or narrowed.

### **DRIVEWAY**

Any lane, way, opening, construction entrance or privately owned road entering upon any public road within the Borough of Lebanon, including access to farm buildings, except openings to nonresidential land used exclusively for farming purposes.

### **UPHILL DRIVEWAY**

A driveway whose grade rises in elevation from the existing grade at the edge of the municipal roadway.

## § 165-128.3 Permit required; fee.

No driveway may be constructed nor shall any existing driveway be altered within or along an existing Borough street unless the owner first obtains a driveway permit from the Borough Construction Department. The fee for such driveway permit shall be as set forth in the fee schedule § **165-13** of this Code. The applicant shall pay the Borough an escrow fee as set forth § **165-13** of this Code which covers the cost of professional review of the application by the Borough Engineer, including a site inspection of the construction and completion of the portion within the Borough right-of-way.

## § 165-128.4 Construction or alteration requirements.

All driveways to be constructed or existing driveways to be altered within any existing or future Borough road right-of-way shall be constructed or altered in accordance with the following minimum requirements:

### A. One-family residential uses

- (1) All new and/or altered driveways serving one-family residential dwellings shall be adequately paved as specified in § **165-128.13** for at least 20 feet from the roadway servicing the driveway.
- (2) There shall be a maximum of two driveways on any lot crossing the right-of-way. Within the right-of-way, a minimum distance of 45 feet shall separate any two driveways on the same premises entering upon a single municipal roadway, as measured parallel to the right-of-way line.
- (3) A minimum distance of 10 feet shall separate a driveway from an adjacent property line at all points, including parking and turn-around areas, except in the R-15 and R-P zones where said separation distance shall not be less than 2 feet.
- (4) All driveways serving single dwelling units shall have a minimum width of 8 feet. No such driveway shall exceed a width of 16 feet at the street line and or exceed a maximum width of 20 feet at any point, excluding turn-around areas. The driveway width at the curb line or pavement edge shall not exceed 20 feet.
- (5) No parking of vehicles shall be permitted in landscaped, lawn or sidewalk areas, nor within any

street right-of-way.

- (6) All driveways constructed or altered within a Borough road right-of-way shall be constructed so as to be perpendicular to the existing pavement or traveled way. Any curved or angular approach of the driveway for aesthetic or topographical reasons shall be accomplished outside of the Borough road right-of-way or 25 feet from the center line of the existing roadway, whichever is greater.

**B. Multi-unit residential uses**

- (1) All driveways and parking areas and internal roadways serving multi-unit residential development shall be designed in accordance with the Residential Site Improvement Standards and or the provisions of the applicable zone district.
- (2) All driveways and parking areas serving multi-unit residential developments shall be designed to meet the minimum distances for location in accordance with § 165-73.
- (3) There shall be a maximum of two driveways on any lot crossing the right-of-way. Within the right-of-way, a minimum distance of 45 feet shall separate any two driveways on the same premises entering upon a single municipal roadway, as measured parallel to the right-of-way line.
- (4) The driveway width at the curb line or pavement edge shall not exceed 24 feet.

**C. Nonresidential uses**

- (1) All driveways and parking areas and internal roadways serving nonresidential uses shall be designed in accordance with § 165-73.
- (2) The driveway width at the curb line or pavement edge shall not exceed 30 feet.

**§ 165-128.5 Driveways to be perpendicular to pavement.**

All driveways constructed or altered within a Borough road right-of-way shall be constructed so as to be perpendicular to the existing pavement or traveled way. Any curved or angular approach of the driveway for aesthetic or topographical reasons shall be accomplished outside of the Borough road right-of-way, 25 feet from the center line of the existing roadway.

**§ 165-128.6 Maximum grades and surfacing.**

No new driveway shall be constructed at a profile grade exceeding 15% at any point. If a proposed uphill driveway will exceed a profile grade of 8% anywhere within the first 20 feet, as measured from the road right-of-way line along the driveway center line, then that portion of the driveway which exceeds 8% within the first 20 feet shall be paved with a hot mix asphalt or portland cement concrete surface.

**§ 165-128.7 Maintenance and prevention of erosion.**

- A. All driveways shall be constructed and maintained at all times in such a manner as to prevent erosion of the soil from them and land behind them. Water and silt must be prevented from running onto and accumulating upon the traveled way of the Borough road, or filling up road gutters, catch basins, inlets or pipe drains.
- B. In the event that the construction of any particular driveway in the Borough of Lebanon is subject to the provisions of the Lebanon Borough Soil and Soil Removal Ordinance (or to the provisions of the Hunterdon County Soil Conservation District), the standards contained in such ordinance shall apply whenever such standards are more stringent, detailed or comprehensive than the standards contained herein.

- C. Gravel and/or any debris must be prevented from running onto and accumulating upon any sidewalk and/or any traveled way of the Borough, or filling up road gutters, catch basins, inlets or pipe drains.

**§ 165-128.8 Interference with drainage.**

All driveways constructed or altered within the Borough road right-of-way shall be constructed in such a manner as not to interfere with the drainage along the existing pavement or traveled way. Under no circumstances shall the driveway be allowed to extend beyond the edge of the existing ditch line at an elevation creating an uneven flow line in the gutter or ditch or beyond the existing edge of pavement creating a hump or uneven driving surface.

**§ 165-128.9 Permissible gutters.**

The construction of a properly sized dish-type gutter will be permitted, provided that the existing Borough water flow will not be blocked, altered or changed in any manner.

**§ 165-128.10 Installation of concrete pipe or culvert.**

The installation of a suitably sized reinforced concrete pipe or culvert will be required in the event that the existing flow line or ditch cannot be crossed with a shallow dish-type gutter. The size of the pipe or culvert required shall be determined by the Borough Engineer and shall be a minimum of 24 feet in length. In any event any pipe must be at least 15 inches in diameter.

**§ 165-128.11 Corner lots.**

When a site or lot occupies a corner formed by two intersecting roads, no driveway entrance or exit shall be located within 25 feet of the point of tangency of the existing or proposed curb radius of either road.

**§ 165-128.12 Prohibited locations.**

No entrance or exit driveway shall be located on the following portions of a road: a rotary, a ramp or interchange or within 25 feet of the beginning of any ramp or other portion of an interchange. Driveways located on cul-de-sac road turnarounds are permitted.

**§ 165-128.13 Driveway materials.**

- A. All driveways constructed or altered within Borough road right-of-way shall be constructed of the following materials:
- (1) Driveways entering unpaved roads: six inches (compacted thickness) of one-and-one-half-inch quarry process (blend) stone thoroughly rolled and compacted at the specified width.
  - (2) Driveways entering paved roads.
    - (a) Base course: six inches (compacted thickness) of one-and-one-half-inch quarry process (blend) stone thoroughly rolled and compacted.
    - (b) Surface course: two inches (compacted thickness) of hot mix asphalt surface course.
- B. All materials and methods of construction shall comply with the New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction, latest Edition, and all amendments and revisions thereto.
- C. Site improvements shall conform to the applicable development approvals and/or ordinances.

**§ 165-128.14 Submission of application and plan.**

- A. The Borough Council will require the person or persons, firm or corporation applying for a driveway permit to submit an application, together with a plan in sufficient detail, to the Construction Department for checking by the Borough Engineer and for approval prior to the issuance of the permit. The plan

shall be prepared by a New Jersey licensed professional engineer (signed and sealed) or include the following information:

- (1) A plot or site plan showing the driveway for its entire length and its relation to the Borough road, and shall show the proposed location of dwellings or structures, septic systems, existing or proposed surface water swales, diversions, etc.
  - (2) A profile of the driveway showing existing and proposed center line grades and elevations for its entire length for any driveway where existing lot grades exceed 10%.
  - (3) A plan showing the type of storm drainage to be constructed at the driveway entrance to the Borough road, i.e., dish-type gutter, pipe or culvert. Sizes of pipes, culverts and gutters, grades, elevations, typical cross sections, construction details and any other information deemed necessary to the proper analysis of the installation shall also be shown.
- B. If storm drainage is to be altered or constructed within the Borough right-of-way, the Borough Engineer shall review the plans and make required inspections and set the fee for same to cover the actual cost. This requirement may be waived at the discretion of the Borough Engineer.

**§ 165-128.15 Issuance of building permit where driveway permit required.**

- A. No building permit shall be issued for the construction or alteration of any structure where inherent in any application for such permit a driveway permit is required in accordance with the terms of this Chapter until the driveway permit and all work required thereby shall be completed, except that the improvement required by § 165-13A(2)(b) may be completed at any time prior to issuance of the certificate of occupancy.
- B. In the event that the necessary work and improvements cannot be completed at the time of application for the certificate of occupancy because the asphalt plants are no longer producing surface course, the certificate of occupancy may be issued, provided that a performance guaranty, in the form of cash or a bond, in amount of \$3,000, is filed with the Borough Clerk. Under special circumstances, the certificate of occupancy may be issued without a completed apron, when the plants are open, if a performance guaranty in the amount of \$3,000 is posted, the circumstances are accepted by the Construction Department, and a written correspondence is provided as to when the apron will be completed.
- C. Upon certification by the Borough Engineer that all work and improvements required by the driveway permit have been completed, the Clerk shall return any remaining amount of the performance guaranty to the person who supplied the same or to the present owner of the property, whoever submitted the bond, and the Construction Department shall consider the issuance of any related certificate of occupancy.

**§ 165-128.16 Responsibility for damage to roads.**

Any person or persons, firm, or corporation violating any provision of this Chapter which results in damage to or obstruction of any Borough road, gutter, storm drain, ditch, basin, inlet or culvert shall be responsible for all expenses incurred by the Borough in repairing the damage or removing the obstruction, in addition to the penalty herein provided.

**§ 165-128.17 Violations and penalties.**

Any person or persons, firm, or corporation violating any of the provisions of this Chapter shall, upon conviction thereof, be subject to the penalty stated in Chapter 1, § 1-21.

**§ 165-128.18 Blocking shared driveways.**

- A. Definition. As used in this section, the following term shall have the meaning indicated:

**SHARED DRIVEWAYS**

Driveway as defined in this Chapter, or a private strip of land over which designated parties have the

right to pass, that is used in common by two or more lots.

- B. Blocking shared driveways prohibited. No person shall impede, block or prevent ready access to, over, in or through a shared driveway, whether by parking vehicles, erecting barriers or other means.
- C. Violations and penalties. Any person or persons, firm, or corporation violating this section shall be subject to fines and penalties as set forth in Chapter 1, § 1-21.

§ 165-129 (Reserved).

§ 165-130 (Reserved).

§ 165-131 (Reserved).

§ 165-132 (Reserved).

§ 165-133 (Reserved).

## Article XXI Residence Districts

### § 165-134 R-15 Residential District.

#### A. Permitted Principal Uses in the R-15 District

The following uses are permitted principal uses.

- (1) One-family dwellings.
- (2) Not more than two (2) non-family boarders per one-family dwelling.
- (3) Municipal uses and facilities.

#### B. Permitted Accessory Uses in the R-15 District.

The following uses are permitted accessory uses.

- (1) One (1) private garage, not to exceed three bays.
- (2) One (1) residential storage shed.
- (3) Other normal residential structures, such as private swimming pools, fireplaces, pet shelters, trellises, lamp posts, fences, patios and decks that are utilized with and form a part of an accessory structure and not attached or utilized with the principal building and other similar or like uses.
- (4) Off-street parking areas in accordance with § 165-71A(10).
- (5) Signs, in accordance with § 165-109, Signs, of this chapter.
- (6) The sale of seasonal farm produce which has been raised on the property from which it is to be sold, provided that the sale of such produce takes place no closer than 25 feet to any side lot line nor 3 feet from the edge of the pavement in the street.
- (7) Uses by temporary permit, as regulated in § 165-101.

- (8) Private greenhouses solely for the personal use of the property owner, provided that the total floor area of the greenhouse shall not exceed 0.75% of the lot area.

**C. Conditional Uses in the R-15 District.**

The following conditional uses, as regulated in Article **XIX**, are permitted

- (1) Houses of worship of recognized religious groups, which may include attendant parish houses, convents, religious education buildings, cemeteries, and mausoleums.
- (2) Public and private schools teaching academic subjects.

**D. Zoning Requirements in the R-15 District.**

Except as otherwise provided in this part, the requirements and limitations contained in the Schedule of Requirements referred to in § **165-86** shall be complied with.

**§ 165-135 R-20 District.**

**A. Permitted Principal Uses in the R-20 District**

The following uses are permitted principal uses.

- (1) One-family dwellings.
- (2) Municipal uses and facilities.

**B. Permitted Accessory Uses in the R-20 District.**

The following uses are permitted accessory uses.

- (1) One (1) residential private detached garage, not to exceed three (3) bays.
- (2) One (1) residential storage structure or shed.
- (3) Other normal residential structures, such as private swimming pools, fireplaces, pet shelters, trellises, lamp posts, fences, patios and decks that are utilized with and form a part of an accessory structure and not attached or utilized with the principal building and other similar or like uses.
- (4) Off-street parking areas in accordance with § **165-71A(10)**.
- (5) Signs, in accordance with § **165-109**, Signs, of this chapter.
- (6) The sale of seasonal farm produce which has been raised on the property from which it is to be sold, provided that the sale of such produce takes place no closer than 25 feet to any side lot line nor 3 feet from the edge of the pavement in the street.
- (7) Uses by temporary permit, as regulated in § **165-101**.
- (8) Private greenhouses solely for the personal use of the property owner, provided that the total floor area of the greenhouse shall not exceed 0.75% of the lot area.

**C. Conditional Uses in the R-20 District.**

The following conditional uses, as regulated in Article **XIX**, are permitted:

- (1) Houses of worship of recognized religious groups, which may include attendant parish houses, convents, religious education buildings, cemeteries, and mausoleums.
- (2) Public and private schools teaching academic subjects.

**D. Zoning Requirements in the R-20 District.**

Except as otherwise provided in this part, the requirements and limitations contained in the Schedule of Requirements referred to in § **165-86** shall be complied with.

**§ 165-136 R-P District.**

**A. Permitted Principal Uses in the R-P District**

The following uses are permitted principal uses:

- (1) One-family dwellings.
- (2) Municipal uses and facilities.

**B. Permitted Accessory Uses in the R-P District.**

The following are permitted accessory uses:

- (1) One (1) residential private detached garage, not to exceed three (3) bays.
- (2) One (1) residential storage structure or shed.
- (3) Other normal residential structures, such as private swimming pools, fireplaces, pet shelters, trellises, lamp posts, patios and decks that are utilized with and form a part of an accessory structure and not attached or utilized with the principal building and other similar or like uses.
- (4) Off-street parking areas in accordance with § **165-71A(10)**.
- (5) Signs, in accordance with § **165-109**, Signs, of this chapter.
- (6) The sale of seasonal farm produce which has been raised on the property from which it is to be sold, provided that the sale of such produce takes place no closer than 25 feet to any side lot line nor 3 feet from the edge of the pavement in the street.
- (7) Uses by temporary permit, as regulated in § **165-101**.
- (8) The office or studio of a doctor, physician, surgeon, dentist, teacher of academic subjects, artist, musician, lawyer, architect, engineer or like professional person as may be determined by the Land Use Board in its capacity as the Board of Adjustment, residing on the premises, provided that not more than four (4) persons, including the resident in said dwelling, practitioners, associates, assistants, partners and office personnel of the above listed office will be allowed to operate therein. Such office shall be limited to the first floor or the basement of such residence and not more than fifty (50%) percent of the first floor or the basement floor area shall be devoted to such use.
- (9) Private greenhouses solely for the personal use of the property owner, provided that the total floor area of the greenhouse shall not exceed 0.75% of the lot area.

**C. Conditional Uses in the R-P District.**

The following conditional uses, as regulated in Article **XIX**, are permitted:

- (1) Houses of worship of recognized religious groups, which may include attendant parish houses, convents, religious education buildings, cemeteries, and mausoleums.
- (2) Public and private schools teaching academic subjects.

**D. Zoning requirements in the R-P District.**

Except as otherwise provided in this part, the requirements and limitations contained in the Schedule of Requirements referred to in § **165-86** shall be complied with.

**§ 165-137 M-F Multi-Family Residential District.**

**A. Permitted Principal Uses in the M-F District**

The following uses are permitted principal uses.

- (1) Garden apartments.

- (2) Townhouses.

**B. Required conditions for Garden Apartments.**

The following zoning standards shall apply to garden apartments in the M-F District:

- (1) Density: The total number of bedrooms contained therein shall not exceed ten (10) times the gross tract acres.
- (2) Lot Area: There shall be a minimum lot area of two hundred twenty thousand (220,000) square feet, such area shall be within one thousand five hundred (1,500) feet of the front street property line, and all lands to be included as part of the tract shall be put into one (1) parcel.
- (3) Lot Width: There shall be a minimum total street frontage of one hundred fifty (150) feet.
- (4) Driveway Width: The driveway width at any intersecting street shall not exceed forty percent (40%) of the lot frontage and no driveway width shall exceed thirty (30) feet.
- (5) Lot Coverage: The combined open spaces in the parcel of land shall not be less than seventy-five percent (75%) after deducting the area of the main structure and all accessory buildings.
- (6) Setbacks
  - a. No building shall be located within fifty (50) feet from a street line.
  - b. No principal building shall be located within thirty (30) feet of a property line.
- (7) Distance between buildings:
  - a. There shall be a distance of not less than thirty (30) feet between principal buildings.
  - b. There shall be a distance of not less than fifty (50) feet between buildings where an access drive is located between buildings.
  - c. There shall be a distance of not less than thirty (30) feet between the buildings where the walls of the building are parallel to each other and overlap the walls of another building, provided however, that for every five (5) feet or part thereof, of overlap, the buildings shall be an additional five (5) feet apart, except that the distance between buildings need not exceed sixty (60) feet.
  - d. The term “parallel” as used on this section, shall include the meaning approximately or approaching parallel positions, but not exceeding twenty (20) degrees divergence.
- (8) Architecture:
  - a. The structure shall be of a gabled or hipped roof design (or as otherwise approved by the Land Use Board) and all exterior walls shall be faced with not less than fifty percent (50%) of said area with brick or stone, or as otherwise approved by the Land Use Board.
  - b. Length: No building shall exceed one hundred fifty (150) feet in length.
  - c. Height: No building shall exceed two and one-half (2 ½) stories or thirty-five (35) feet in height, whichever is the lesser.
  - d. Units per Building: No building shall contain less than four (4) or more than twelve (12) dwelling units and said building shall be designed and used only for dwelling units on the two (2) floors above the basement or cellar. Not more than two (2) units shall have access to a common entry.
- (9) Other requirements:
  - a. Coin operated laundry washing and drying machines may be located in the basement or cellar area of the buildings for the sole use of the occupants.

- b. Each building shall contain for each dwelling unit a minimum of five hundred (500) cubic feet of storage area in a convenient place in the basement or ground floor, where personal belongings and effects of occupants may be stored without constituting a fire or health hazard
- c. Each building shall contain for each dwelling unit therein, one hundred (100) cubic feet of common storage area for bicycles, carriages and similar types of frequently used equipment and utensils.
- d. In each apartment or townhouse development, television antennas shall be built into the building (s) and individual antennas shall not be erected on the exterior of the buildings.

(10) Dwelling Unit Requirements:

- a. Floor Area: Each dwelling unit shall have a minimum floor area in accordance with the following schedule:

No. of Bedrooms	Square feet (minimum)
1 bedroom efficiency	750
1 bedroom	900
2 bedroom	1,100
3 bedroom	1,300
4 bedroom	1,500

(11) Garages and Accessory Buildings: Garages may be built into the apartment or townhouse structure (attached) or constructed separately (detached) as herein provided:

- a. Size: Each garage space shall not be less than ten (10) feet in width and twenty (20) feet in depth. Each group of attached garages shall have joint occupancy of not more than ten (10) automobile spaces, arranged in a row.
- b. Height: The maximum height of any garage or accessory building shall not exceed sixteen (16) feet.
- c. Architecture: Architectural design and materials used in the construction of the garages and accessory buildings or structures shall conform with those used in the construction of the principal buildings.
- d. Setbacks: Garages and accessory buildings shall not be erected in the setback area, and shall not be less than twenty (20) feet from the principal buildings. A minimum distance of ten (10) feet from the property lines shall be maintained. This shall not prohibit garages within the principal buildings.

(12) Parking and Traffic Circulation: Off-street parking facilities shall be provided in accordance with Article 6 and in addition shall meet the following requirements:

- a. Parking spaces per unit: There shall be at least two (2) parking spaces for each dwelling unit. Twenty-five percent (25%) of these parking spaces shall be enclosed garages.
- b. Off-street location of parking areas: : Off-street parking areas shall not be located in any setback area or between principal buildings less than one hundred (100) feet apart. All parking areas shall be at least fifteen (15) feet from the property lines.
- c. Access drives: Access drives shall not exceed forty percent (40%) of the street frontage and no access shall exceed thirty (30) feet in width and shall be located not closer than fifteen (15) feet to any building or property line. Access drives shall not enter a street closer than fifty (50) feet from an intersection. Parking areas and access drives shall be arranged so as to provide

safe traffic movements including fire department apparatus. No such facilities shall be approved that are likely to involve any risk of vehicular or pedestrian traffic safety.

- (13) Landscaping and Open Space: All portions of the site not used for buildings, off-street parking, access drives, walks and recreational facilities shall be attractively landscaped with trees, shrubs, grass, lawns or as otherwise approved by the Site Plan Committee. At least twenty percent (20%) of the gross site area shall be devoted to common open space suitable for use by the residents. Screening or fencing shall be provided along the rear property lines, and around parking areas as required by the Site Plan Committee.
- (14) Refuse and Rubbish: A concealed area or areas suitable for the orderly deposit and pickup of refuse and rubbish shall be provided. Said area or areas shall be a minimum distance of fifteen (15) feet from the property lines.

### **C. Required conditions for Townhouses.**

The following zoning standards shall apply to townhouses in the M-F District:

- (1) Density: The total number of bedrooms contained therein shall not exceed ten times the gross tract acres.
- (2) Lot Area: The minimum size of a tract or parcel of land proposed for townhouse development shall be not less than 10 acres. The dwelling unit owner shall acquire legal title only to those lands upon which the dwelling unit is constructed. All other lands shall, prior to the issuance of any Certificate of Occupancy, be deeded to a Homeowners Association.
- (3) Building Coverage: Building coverage shall not exceed 20% of the gross tract area.
- (4) Setbacks: No building shall be located within 50 feet of any street line and/or property line.
- (5) Distance between buildings: There shall be a distance of no less than 30 ft between principal buildings and not less than 50 ft between principal buildings where an access drive or other road is located between said buildings.
- (6) Architecture:
  - a. Each townhouse dwelling unit and/or combined complex of townhouse dwelling units shall have a compatible architectural theme with variations in design to provide attractiveness to the development which shall include consideration of landscaping techniques, building orientation to the site and to other structures, topography, natural features and individual dwelling unit design such as varying unit widths, staggering unit setbacks, providing different exterior materials, changing roof lines and roof designs, altering building heights and changing types of windows, shutters, doors, porches, and vertical or horizontal orientation of the facades, singularly in combination for each dwelling unit. Any overall structure or attached townhouse shall provide that no more than two (2) adjacent dwelling units have the same setback.
  - b. Height: No building shall exceed 35 feet in height.
  - c. Building ingress and egress: Each dwelling unit shall contain a minimum of two means of ingress and egress.
- (7) Other requirements:
  - a. Laundry: 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.

- b. Fire Walls: Each overall structure or attached townhouse shall provide fire walls of concrete or cinder block material extending through the roof surface by at least six (6) inches in the form of either extensions of the wall through the roof surface or by off-setting roof lines and shall be constructed as the side walls of all dwelling units.
- c. Acoustical Control: Walls, partitions and floor-ceiling constructions separating dwelling units from each other or from halls, corridors or stairs shall have a minimum sound transmission class (STC) rating of 45 and a minimum impact noise rating (INR) of -5. Where practical, each apartment or townhouse shall be separated from adjacent apartments or townhouses by other than living spaces such as bathrooms, kitchens, closets, stairs, or mechanical areas. Penetrations or openings in walls, partitions or floors shall be packed, sealed, lined, back-plastered or otherwise isolated by sufficient mass to maintain the required STC ratings.
- d. Antennas: No television antenna equipment shall be constructed so as to be visible from the exterior of any building and/or dwelling unit.
- e. Storage: Each dwelling unit shall contain therein not less than 100 square feet of storage area other than closet space.

(8) Dwelling Unit Requirements:

- a. Floor Area: Each dwelling unit shall have a minimum habitable floor area in accordance with the following schedule:

No. of Bedrooms	Square feet (minimum)
1 bedroom efficiency	750
1 bedroom	900
2 bedroom	1,100
3 bedroom	1,300

(9) Garages and Accessory Buildings: Garages may be built into the apartment or townhouse structure (attached) or constructed separately (detached) as herein provided:

- a. Size: Each garage space shall not be less than ten (10) feet in width and twenty (20) feet in depth. Each group of attached garages shall have joint occupancy of not more than ten (10) automobile spaces, arranged in a row.
- b. Height: The maximum height of any garage or accessory building shall not exceed sixteen (16) feet.
- c. Architecture: Architectural design and materials used in the construction of the garages and accessory buildings or structures shall conform with those used in the construction of the principal buildings.
- d. Setbacks: Garages and accessory buildings shall not be erected in the setback area, and shall not be less than twenty (20) feet from the principal buildings. A minimum distance of ten (10) feet from the property lines shall be maintained. This shall not prohibit garages within the principal buildings.

(10) Parking and Access Streets.

- a. Parking: There shall be at least two (2) parking spaces for each one-bedroom dwelling unit, with one additional space for each additional bedroom. All parking facilities shall be located within 150 feet of the nearest entrance of the building they are intended to serve. No parking

shall be permitted along interior streets. All parking areas shall be at least 25 ft from the tract perimeter line.

- b. Access Streets: All access streets shall comply with the requirements of the Section 165-73.
  - c. Access Drives: Access drives shall not exceed forty percent (40%) of the street frontage and no access shall exceed thirty (30) feet in width and shall be located not closer than fifteen (15) feet to any building or property line. Access drives shall not enter a street closer than fifty (50) feet from an intersection. Parking areas and access drives shall be arranged so as to provide safe traffic movements including fire department apparatus. No such facilities shall be approved that are likely to involve any risk of vehicular or pedestrian traffic safety.
- (11) Landscaping and Open Space: A minimum of fifty percent (50%) of the total lot area shall be maintained as open area. This required open area shall not be covered by buildings nor shall it be devoted to service driveways, off-street parking or loading spaces. It is further provided that fifty percent (50%) of the above referenced open area be suitable for usable recreational space (not located in flood plain) and each such recreational space shall contain a minimum area of ten thousand (10,000) square feet. In all instances, a minimum sixty percent (60%) of the usable recreational area shall be suitable for dry ground recreation uses of which not more than one-half shall exceed five percent (5%) grade.
- (12) Refuse and Rubbish: Garbage receptacles shall be of such construction and in such location as shall be approved by the Land Use Board. No waste or other refuse shall be stored or collected other than in approved receptacles. All receptacles shall be emptied at least twice a week. Density: The total number of bedrooms contained therein shall not exceed ten times the gross tract acres.
- (13) Site Plan Approval: No building permits shall be issued and no building shall be erected in a townhouse development until a site plan, with details as specified in this Chapter have has been reviewed and approved by the Land Use Board and all of the necessary certifications and approvals have been obtained from State, County, and Local agencies.
- (14) Utilities: All utilities shall be constructed underground.
- (15) Homeowners Association: A Homeowners Association shall be established for the purpose of owning and maintaining common open spaces, recreational areas, access roads, parking lots, garbage collection and all other lands not located immediately underneath the dwelling unit. The individual dwelling unit shall be given an interest in said Homeowners Association in proportion to the total number of dwelling units. The proposed Homeowners Association rules, regulations and by-laws shall be presented to and approved by the Land Use Board as part of the over-all townhouse application. Said Homeowners Association shall be in accordance with the following provisions:
- a. Membership in said Association by all property owners shall be mandatory and shall be in writing between the Association and the individual in the form of a covenant contained in the deed of conveyance to said individual homeowners.
  - b. Such Homeowners Association shall be responsible for the maintenance of all roads, parking areas, open spaces, recreation areas, the collection of garbage, and all other areas not located immediately underneath the dwelling unit.
  - c. The assessment levied by the Association may become lien on the private properties in the development.
  - d. Such Association shall be responsible for payment of all taxes assessed upon said lands and for the providing of liability insurance thereof.

- e. In the event the Homeowners Association shall fail to maintain the common open space in a reasonable order and condition, the Borough of Lebanon may serve notice, hold hearings, and if deemed necessary, enter upon said common open space in order to maintain the same, and the cost such maintenance by the Borough of Lebanon shall be assessed ratably against the properties within the development and shall become a tax lien on said properties.
- f. The by-laws shall contain a provision allowing State and Local police upon the lands owned by the Association.

- (16) Subdivision Ordinance: All provisions of the Borough of Lebanon Subdivision Ordinance applicable to townhouse development (e.g., roads, street lighting, topsoil, etc.) shall be adhered to unless specifically waived by the Land Use Board. In the even the Land Use Board has approved a sectionalized building plan, all fees therein provided applicable to include but not limited to estimated engineer review fee shall be paid upon application, In the event no sectionalized plan is approved, all improvements must be completed prior to the issuance of a Certificate of Occupancy. Landscaping and Open Space: A minimum of fifty percent (50%) of the total lot area shall be maintained as open area. This required open area shall not be covered by buildings nor shall it be devoted to service driveways, off-street parking or loading spaces. It is further provided that fifty percent (50%) of the above referenced open area be suitable for usable recreational space (not located in flood plain) and each such recreational space shall contain a minimum area of ten thousand (10,000) square feet. In all instances, a minimum sixty percent (60%) of the usable recreational area shall be suitable for dry ground recreation uses of which not more than one-half shall exceed five percent (5%) grade.
- (17) Certificate of Occupancy: No Certificate of Occupancy shall issue for any principal building until all streets, drainage, parking facilities, water and sewer facilities, fire hydrants, etc. servicing said principal building are properly completed and functioning as determined by the Borough Engineer.
- (18) Fire Hydrants: A sufficient number of fire hydrants to provide adequate fire protection shall be installed, the number and location of which shall be approved by the Borough Land Use Board, the Borough of Lebanon Fire Company, and any state insurance rating service
- (19) Sewer and Water: Public sewer and water shall be provided to all dwelling units. In the event no public sewer exists at the time the project is approved the developer may, provided all State and Local approvals are obtained, construct a package sewage treatment plant, however, upon completion of the installation of public sewer the developer and/or the Homeowners Association shall discontinue use of said package sewage treatment plant and shall connect into and shall use the public sewage system.

§ 165-138 (Reserved)

§ 165-139 (Reserved)

§ 165-140 (Reserved)

## Article XXII Affordable Housing Districts

### § 165-141 AH-1 Affordable Housing District

The purpose of the AH-1 Affordable Housing District is to establish regulations and standards governing the development of Block 10, Lot 2 (commonly known as “The Heights”) with inclusionary provisions for the construction of low and moderate income housing units, all in accordance with the provisions set forth below and in accordance with the provisions of the New Jersey Fair Housing Act.

**A. Permitted principal uses.**

Townhouses and/or apartments, provided adequate sewage capacity exists.

**B. Required conditions.**

The following zoning standards shall apply to development in the AH-1 District:

- (20) **Density:** The total number of units shall not exceed twelve (12) per acre. The acreage (1.30 acres) located in Clinton Township shall be included to calculate units. A maximum of one hundred and twenty (120) units shall be permitted in Lebanon Borough.
- (21) **Lot Coverage:** The maximum impervious coverage on the tract, including the portion in Clinton Township, shall not exceed forty (40%) percent.
- (22) **Setbacks**
  - a. No building shall be located within 50 feet of any frontage road, be it public or private. No building shall be located within fifteen (15) feet of any internal road. At driveways, no building shall be located closer than eighteen (18) feet from any sidewalk, or from the curb line if no sidewalk is provided.
  - b. No building shall be located within 30 feet of a property line
- (23) **Distance between buildings:**
  - c. There shall be a distance of not less than thirty (30) feet between principal buildings.
  - d. There shall be a distance of not less than fifty (50) feet between buildings where an access drive is located between buildings.
  - e. The minimum back-to-back or front to front distance between principal buildings shall be sixty (60) feet.
  - f. The minimum side to front or side to rear distances between principal buildings shall be 45 feet.
- (24) **Landscaping and open space:**
  - g. All portions of the site not used for buildings, off-street parking, access drives, walks and recreational facilities shall be attractively landscaped with trees, shrubs, grass, lawns or as otherwise approved by the Site Plan Committee.
  - h. Screening or fencing shall be provided along the side and rear property lines, and around parking areas as required by the Site Plan Committee.
  - i. Building Requirements.
- (25) **Building Requirements:**
  - j. A building shall contain no more than 36 units.
  - k. The maximum length of any building shall not exceed 250 feet.
  - l. The maximum height of any building shall not exceed 3 ½ stories or 35 feet, whichever be the less
- (26) **Architecture:** The structure shall be of a gabled or hipped roof design (or as otherwise approved by the Land Use Board) and all exterior walls shall be faced with not less than ten (10%) percent of said area with brick or stone (or as otherwise approved by the Land Use Board).
- (27) **Other requirements:**

- m. Each building shall contain for each dwelling unit without a garage, a minimum of two hundred (200) cubic feet of storage area in a convenient place in the basement or ground floor, where personal belongings and effects of occupants may be stored without constituting a fire or health hazard. Minimum garage size shall be twenty (2) feet by eighteen (18) feet.
  - n. In each apartment or townhouse development, television antennas and or cable connections shall be built into the building(s) and individual antennas shall not be erected on the exterior of the buildings.
- (28) Parking and Traffic:
- o. Not less than two parking spaces per unit shall be provided.
  - p. Parking spaces shall be at least 9 feet by 18 feet.
  - q. Parking driveway aisles shall be at least 24 feet wide.
  - r. Off-street parking areas, which shall not include driveways in front of garages which are built into the apartment or townhouse structure, shall not be located in any setback area or between principal buildings less than 100 feet apart. All parking areas shall be at least 14 feet from the principal building and at least 10 feet from the property line.
  - s. Access drives shall not exceed forty (40%) percent of the street frontage and no access shall be closer than fifteen (15) feet to any building or property line. Access drives shall not enter a street closer than fifty (50) feet from an intersection. Parking areas and access drives shall be arranged as to provide safe traffic movements including fire department apparatus. No such facilities shall be approved that are likely to involve any risk of vehicular or pedestrian traffic safety.
- (29) Refuse and Rubbish: Concealed areas suitable for orderly deposit, both common and individual, and pickup of refuse and rubbish shall be provided. Said area or areas shall be a minimum distance of fifteen (15) feet from the property lines and ten (10) feet from any building or as approved by the Land Use Board.

### **C. Homeowners Association.**

In the event the units are offered for sale, a Homeowners Association shall be established for the purpose of owning and maintaining common open spaces, recreational areas, access roads, parking lots, garbage collection and all other lands not located immediately underneath a dwelling unit. The individual dwelling unit shall be given an interest in said Homeowners Association in proportion to the total number of dwelling units. The proposed Homeowners Association rules, regulations and by-laws shall be presented to and approved by the Land Use Board as part of the over-all townhouse application. Said Homeowners Association shall be in accordance with the following provisions.

- (1) Membership in said Association by all property owners shall be mandatory and shall be in writing between the Association and the individual in the form of a covenant contained in the deed of conveyance to said individual homeowner.
- (2) Such Homeowners Association shall be responsible for the maintenance of all roads, parking areas, open spaces, recreation areas, the collection of garbage, and all other areas not located immediately underneath the dwelling unit.
- (3) The assessment levied by the Association may become a lien on the private properties in the development.
- (4) Such Association shall be responsible for payment of all taxes assessed upon said lands and for the providing of liability insurance therefore.

- (5) In the event the Homeowners Association shall fail to maintain the common open space in a reasonable order and condition the Borough of Lebanon may serve notice, hold hearings, and if deemed necessary, enter upon said common open space in order to maintain the same, and the cost of such maintenance by the Borough of Lebanon shall be assessed ratably against the properties within the development and shall become a tax lien on said properties.
- (6) The by-laws shall contain a provision allowing State and Local police upon the lands owned by the Association.

#### **D. Garages and accessory buildings**

Garages may be built into the apartment or townhouse structure or constructed separately as herein provided:

- (1) Size: Each garage space shall not be less than ten (10) feet in width and twenty (20) feet in depth. Each group of attached garages shall have joint occupancy of not more than ten (10) automobile spaces, arranged in a row.
- (2) Height: The maximum height of any garage or accessory building shall not exceed sixteen (16) feet.
- (3) Architecture: Architectural design and materials used in the construction of the garages and accessory buildings or structure, shall conform with those used in the construction of the principal buildings.
- (4) Setbacks: Garages and accessory buildings shall not be erected in the setback area, and shall not be less than twenty (20) feet from the principal buildings. A minimum distance of ten (10) feet from the property line shall be maintained. This shall not prohibit garages within the principal buildings.

#### **E. Site plan approval**

No building permits shall be issued and no building shall be erected in a development until a site plan, with details as specified in Article 16, has been reviewed and approved by the Land Use Board and all of the necessary certifications and approvals have been obtained from State, County, and Local agencies.

#### **F. Utilities**

All utilities shall be constructed underground. Above ground utility equipment (boxes) shall be landscaped and screened as approved by the Land Use Board.

#### **G. Subdivision ordinance**

All provisions of the Lebanon Borough Subdivision Ordinance applicable to townhouse development (e.g. roads, street lighting, topsoil, etc.) shall be adhered to unless specifically waived by the Land Use Board. In the event the Land Use Board has approved a sectionalized building plan, all fees therein provided applicable to include but not limited to estimated engineer review fees shall be paid upon application. In the event no sectionalized plan is approved, all improvements must be completed prior to the issuance of a Certificate of Occupancy.

#### **H. Certificates of Occupancy**

No Certificate of Occupancy shall issue for any principal building until all site plan conditions and all required improvements (streets, drainage, parking facilities, water and sewer facilities, fire hydrants, landscaping, etc.) servicing said principal building are properly completed and functioning as determined by the Borough Engineer.

#### **I. Fire hydrants**

A sufficient number of fire hydrants to provide adequate fire protection shall be installed, the number and location of which shall be approved by the Borough Land Use Board, the Borough of Lebanon Fire Department, and any state insurance rating service.

#### **J. Other requirements**

- (1) 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.
- (2) Each overall structure or attached townhouse shall provide fire walls of concrete or cinder block material extending through the roof surface by at least six (6) inches in the form of either extensions of the wall through the roof surface or by off-setting roof lines and shall be constructed as the side walls of all dwelling units.
- (3) Acoustical Control: Walls, partitions, and floor-ceiling constructions separating dwelling units from each other or from halls, corridors or stairs shall satisfy sound transmission class (STC) requirements. Penetrations or openings in walls, partitions or floors shall be packed, sealed, lined, back-plastered or otherwise isolated by sufficient mass to maintain the required STC ratings.

**K. Low and Moderate Housing Requirements**

- (1) In the event the units are offered for sale, at least twenty (20%) of the sale units shall be affordable and made available to low and moderate income households as discussed and defined in the Fair Share Housing Act, N.J.S.A. 52:27D-301 et seq., and the substantive rule of the New Jersey Council on Affordable Housing (“COAH”), N.J.A.C. 5:93-1.1 et seq. In the event the units are offered for rental, at least ten (10%) percent of the rental units shall be non-age restricted, affordable and made available to such low and moderate income households, provided COAH rules at the time of preliminary site plan approval confer two (2) affordable housing credits for each such units, it being the intent of this ordinance section that this zone provide affordable unit credits under the then applicable COAH rules at the time of preliminary site plan approval equal to twenty (20%) percent of the total number of units.
- (2) The application shall submit for approval both by the Land Use Board and by the Affordable Housing Council, a narrative description of the mechanism to be used to ensure that the required affordable dwelling units are rented or sold, only to low- and moderate-income households for a period of not less than thirty years. In addition to such description, actual samples of language to be included in the nature of covenants shall be submitted. The submitted description shall provide regulation of occupants and other relevant considerations. No Land Use approvals shall issued until the same has been approved by the Affordable Housing Council and the Land UseBoard. The applicant shall also submit to the Affordable Housing Board sufficient monies as determined by said Board to cover said Board’s expenses for engineering, legal, and secretarial services.
- (3) Every low and moderate income housing unit shall be sold at a monthly carrying cost (assuming a five (5%) percent down payment and including mortgage principal and interest payments, property taxes, homeowners association fees and insurance, but excluding utilities not exceeding 28%) of the household’s annual gross income, or rented at a monthly rent (including an allowance for utilities) not exceeding 30% of the household’s annual gross income. Maximum rents and sale prices shall be established based on the following assumptions on occupancy of units by household size:
  - Efficiency 1 person
  - 1 bedroom 1.5 persons
  - 2 bedroom 3 persons
  - 3 bedroom 4.5 persons
- (4) For purposes of this Ordinance, “low income households” are those with an income no greater than 50% of the median household income of the Middlesex-Somerset-Hunterdon Primary Metropolitan Statistical Area (PMSA), for the year, or year prior to sale if present year is not

available, adjusted for household size. And “moderate income households” are those with incomes no greater than 80% and no less than 50% of the median household income of the Middlesex-Somerset-Hunterdon Primary Metropolitan Statistical Area, adjusted for household size. These maximum household income levels for low and moderate income households correspond to the “very low income” and “low income” levels designated by the U.S. Department of Housing and Urban Development (HUD) for its Section 8 Rental Assistance Program and available from its Newark Area Office.

- (5) Should the Affordable Housing Board so decide, up to 25 percent (25%) of the low and moderate income units shall be made available for purchase by the Affordable Housing Board, namely three one-bedroom units and two two-bedroom units.
- (6) The developer shall ensure that fifty (50%) percent of the affordable units, whether sale or rental units, shall be provided for low income households and fifty (50%) percent for moderate income households. Moreover, the bedroom mix of the low and moderate income units shall at a minimum contain the following distribution of unit types: 1-bedroom (10%), 2-bedroom (30%), and 3-bedroom (20%). Such units shall contain an overall square footage of not less than eighty percent (80%) of comparable non-affordable units.
- (7) “Low” and “moderate” income housing units shall be situated on the development tract in locations no less desirable than the other dwelling units within the development, and shall be at least equally accessible to common open space, community facilities and shopping facilities.
- (8) Final site plan approval shall not be granted for any section of the development unless, within the entire development if developed in one stage or within each stage of the development if staged, the construction and issuance of Certificates of Occupancy for “low” and “moderate” income units has not yet met the following phasing schedule to assure that the construction of both types of units occurs in tandem:

Market Rate Housing Percentage (Maximum)	Low and Moderate Income Housing Percentage (Minimum)
Up to 25%	0% (none required)
25% + 1 Unit	At least 10%
Up to 50%	At least 25%
Up to 75%	At least 50%
75% + 1 Unit	At least 75%
Up to 100%	100%

**§ 165-142 AH-2 Affordable Housing District**

The purpose of the AH-2 Affordable Housing District is to establish regulations and standards governing the development of Block 3, Lot 1 (commonly known as “Presidential Place”) with inclusionary provisions for the construction of low and moderate income housing units, all in accordance with the provisions set forth below and in accordance with the provisions of the New Jersey Fair Housing Act.

**A. Permitted uses.**

Multifamily units, provided adequate sewage capacity exists

**B. Zone requirements.**

The following zoning standards shall apply to development in the AH-2 District:

- (1) Lot Area: The minimum gross lot area shall be seven (7) acres.

- (2) Lot Width: The minimum lot width shall be three hundred and fifty (350) feet.
- (3) Number of Units: The maximum number of dwelling units shall be one hundred and fifty (150). At least twenty percent (20%) of the total number of units shall be affordable to households of low- and moderate-income in accordance with NJAC 5:94, 5:95 and 5:80-26.1 et seq.
- (4) Building Coverage: Total building coverage shall not exceed twenty-five percent (25%) of the total lot area.
- (5) Impervious Coverage: Total impervious surface coverage shall not exceed fifty percent (50%) of the total lot area.
- (6) Building Height: The maximum permitted building height for a principal building shall be fifty-nine (59) feet, or four stories, whichever is the lesser. Building height shall be the vertical distance measured from the average ground elevation of the finished grade around the building to the level of the highest point of the roof surface if the roof is flat or, in the case of sloping roofs, to a point  $\frac{1}{2}$  the distance between the top of the uppermost plate and the highest point of the roof. The average ground elevation shall be the average of the highest and lowest elevations along the finished grade around the perimeter of the building. The maximum height measured from the first-floor elevation to the mid-point of the roof shall not exceed fifty-three (53) feet. The maximum height measured from the first-floor elevation to the peak of the roof shall not exceed fifty-eight (58) feet. Parking under the building shall be permitted, provided that to the extent possible, a minimal amount of the exterior portion of the building which encloses such parking shall be above finished grade. Such parking shall not count as a story for the purposes of determining the maximum number of stories permitted. No accessory structure or building shall exceed one story or a height of twenty (20) feet measured from finished grade to the topmost portion of the structure or building, whichever is the lesser.
- (7) Building Width: The building width shall not exceed 90 feet provided that an overhang of any roof, bay window, balcony, deck, patio or porch up to a maximum of four feet on each side shall be permitted and shall not be deemed part of the 90-foot maximum width

### **C. Setbacks**

- (1) Setbacks from roadways. No principal building or any part of a principal building shall be set back any closer than thirty (30) feet to a public or private road, but the average setback of all the buildings fronting on such public or private road shall be forty (40) feet. Wherever possible, a fifty (50) foot setback shall be provided.
- (2) Side or rear property lines: No principal building shall be set back any closer than twenty-five (25) feet to a side or rear property line.
- (3) Parking and driveway setbacks: No off-street parking area and no driveway or internal roadway shall be set back any closer than ten (10) feet to a principal or accessory building, or twenty-five (25) feet to a front property line, including frontage on the I-78 ramp, or 10 feet from a side property line.

### **D. Distance between buildings**

- (1) Principal Buildings: There shall be a distance of not less than forty-five (45) feet between one principal building and another, measured from building wall to building wall.
- (2) Accessory Buildings: There shall be a distance of not less than twenty-five (25) feet between a principal building and an accessory building, measured from building wall to building wall

### **E. Landscaping and Buffering**

All portions of the site not used for buildings, off-street parking, internal roadways or driveways, pedestrian walkways or sidewalks, and recreational facilities such as swimming pools, shall be attractively landscaped with trees, shrubs, grass or lawns. At least five percent (5%) of the gross site area shall be devoted to common open space suitable for use by the residents. Landscape screening shall be provided around the perimeter of all off-street parking areas and along all driveways or internal roadways which are visible from a public road. Fencing shall be provided at the top of walls which are over three (3) feet in height. Such fencing shall also be screened by vegetation. Attractive fencing, not including chain-link fencing, of at least four (4) feet in height shall be provided around any swimming pool area, around any above-ground detention basin, and around the perimeter of the property.

### **F. Building Requirements.**

- (1) Maximum per Building: No principal building shall contain more than twenty-five (25) dwelling units.
- (2) Maximum Length: The maximum length of any exterior wall of a principal building shall be two hundred and thirty (230) feet.
- (3) Noise Attenuation: All buildings shall utilize noise attenuation construction, including use of appropriate building construction technology and materials to reduce interior noise levels, including noise attenuating walls, windows and doors. Penetration of exterior openings in walls, partitions or floors shall be packed, sealed, lined, back plastered or otherwise isolated by sufficient mass to ensure compliance with HUD day and nighttime noise standards. Such details shall be provided as part of site plan approval. All interior living spaces shall be fully heated and air conditioned.
- (4) Roof: All principal buildings shall have a pitched gable or hip roof.
- (5) Exterior Walls: The exterior walls of all principal buildings shall use a variety of building materials, including brick, stone, hard coat stucco, Hardi-plank, and equal quality building materials

### **G. Parking and traffic.**

- (1) Parking: All off-street parking shall be in accordance with the Residential Site Improvement Standards.
- (2) The under-building parking garage shall maintain a minimum floor-to-ceiling utility/clearance height throughout, so as to accommodate Lebanon Borough's firefighting equipment which has a height of seven and a half (7.5) feet.
- (3) The under-building parking spaces shall be assigned in such a manner that each unit shall have at least one assigned under-building parking space.
- (4) Each under-building parking space shall be at least nine (9) feet wide by eighteen (18) feet deep, and driveway aisles shall be at least twenty-four (24) feet in width.
- (5) The access point for the driveway or internal roadway into the project shall be located at least fifty (50) feet from the intersection of two public streets or roadways. The internal roadway and/or driveways and parking layout shall be arranged so as to facilitate safe traffic, parking and loading movements, and so as to facilitate access by fire department and other emergency service vehicles and apparatus.

### **H. Refuse and Rubbish**

Areas suitable for the orderly deposit, both common and individual, and pickup of refuse and rubbish shall be provided. If such areas are not contained within a principal building, they shall be contained in a

fully enclosed and sealed enclosure; and shall be located no closer than ten (10) feet from the building.

**I. Site plan approval**

No building permits shall be issued, and no building shall be erected until a site plan, with details as specified in Article 16, has been reviewed or approved by the Lebanon Borough Land Use Board, and all necessary certifications and approvals have been obtained from State, County and other outside agencies.

**J. Utilities**

All utilities shall be constructed underground. Any above-ground utilities, such as equipment boxes, shall be landscaped and screened as approved by the Land Use Board.

**L. Certificates of Occupancy**

No Certificate of Occupancy shall be issued for any principal building until all site plan conditions and all required improvements (streets, drainage, parking facilities, water and sewer facilities, fire hydrants, etc.) servicing said principal building are properly completed and functioning as determined by the Borough Engineer, as per the Developer's Agreement.

**M. Fire hydrants**

A sufficient number of fire hydrants to provide adequate fire protection shall be installed, the number and location of which shall be approved by the Borough Land Use Board, the Borough of Lebanon Fire Department, and any state insurance rating service.

**N. Low and Moderate Housing Requirements**

Twenty (20%) percent of the total units shall be made available as rental units to low- and moderate-income households in accordance with current Council on Affordable Housing (COAH) regulations (N.J.A.C. 5:94, 5:95 and 8:80-26.1 et seq.) and shall not be age-restricted.

**§ 165-143 AH-3 Affordable Housing District**

The purpose of the AH-3 Affordable Housing District is to establish regulations and standards governing the development of Block 13, Lot 22 (commonly known as "Villa on Main") with inclusionary provisions for the construction of low and moderate income housing units, all in accordance with the provisions set forth below and in accordance with the provisions of the New Jersey Fair Housing Act.

**A. Permitted principal uses**

- (1) Two-family dwellings.
- (2) Multi-family dwellings.

**B. Permitted accessory uses**

Permitted accessory uses shall be as follows:

- (1) Public or private recreation facilities.
- (2) Fences and walls.
- (3) Off-street parking and garages.
- (4) Trash enclosures.
- (5) Signs as regulated in the Lebanon Borough Sign Ordinance.
- (6) Public and private utilities.

**C. Area, Bulk and Yard Requirements**

- (1) Minimum lot size - 3 acres.
- (2) Minimum front yard setback - 30 feet.
- (3) Minimum side yard setback - 20 feet

- (4) Minimum rear yard setback - 30 feet
- (5) Density. Maximum density of the site shall not exceed ten (10) units per acre.
- (6) Minimum distance between buildings.
  - a. Front to front - 60 feet
  - b. Side to side - 25 feet
  - c. Rear to rear - 50 feet
  - d. Other configuration - 30 feet
- (7) Maximum building length - 100 feet
- (8) Maximum building coverage - 45%
- (9) Maximum impervious coverage – 60%
- (10) Maximum building height - 2 stories and 35 feet.

**D. Affordable Housing Requirements**

- (1) Twenty (20%) percent of the units shall be reserved for, and affordable to, low- and moderate-income households regardless of tenure. The units shall meet the low-/moderate-income split required by the Uniform Housing Affordability Controls (“UHAC”) except in lieu of ten (10%) percent of units at thirty-five (35%) percent of median income, the developer shall provide at least thirteen (13%) percent of the units as very-low income units at thirty (30%) percent of median income within each bedroom distribution.
- (2) The affordable units shall have a minimum thirty (30) year deed restriction. Any such affordable unit shall comply with UHAC, applicable affordable housing regulations, the Fair Housing Act, any applicable order of the Court, and other applicable laws.
- (3) The units shall meet the bedroom distribution required by the UHAC.
- (4) The developer shall be responsible for retaining the Borough’s Administrative Agent, or an approved equivalent as approved by the Borough, at the developer’s sole cost and expense.
- (5) All necessary steps shall be taken to make the affordable units provided creditworthy pursuant to applicable law.
- (6) The affordable units shall be dispersed throughout the site and be designed to be architecturally consistent with the market-rate units.

**E. Lighting**

- (1) Parking lot lighting shall be no more than twenty (20) feet in height.
- (2) A minimum average of one-half (0.5) footcandle shall be maintained within parking lots. A minimum average of 0.3 footcandle shall be maintained over all pedestrian walkways.
- (3) Parking lot fixtures shall be full cut off.
- (4) Footcandles at the tract boundary shall not exceed one (1) footcandle, except where there are entrance/exit driveways.

**F. Off-Street Parking requirements**

- (1) All parking spaces shall measure no less than nine (9) feet in width by eighteen (18) feet in length.
- (2) Off-street parking shall be provided in accordance with RSIS.
- (3) There shall be no parking of recreational vehicles, trailers, or boats.
- (4) Hairpin striping shall be utilized to delineate parking spaces.

## **G. Building Design**

- (1) Parking lot lighting shall be no more than twenty (20) feet in height.
- (2) A minimum average of one-half (0.5) footcandle shall be maintained within parking lots. A minimum average of 0.3 footcandle shall be maintained over all pedestrian walkways.
- (3) Parking lot fixtures shall be full cut off.
- (4) The architectural treatment of a façade shall be completely continued around all street-facing façades of a building. All sides of a building shall be architecturally designed to be consistent regarding style, materials, colors, and details.
- (5) If the building has a flat roof, a parapet shall project vertically to hide any roof-mounted mechanical equipment.
- (6) Roofline offsets shall be provided along any gable roof measuring more than forty (40) feet in length. The maximum spacing between such offsets shall be forty-five (45') feet.
- (7) Building façades visible from any street shall consist of durable, long-lasting materials such as brick, stone, cast stone, Hardie plank or other high-quality material.
- (8) Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall be screened or otherwise specially treated to be, as much as possible, inconspicuous as viewed from the public right-of-way and adjacent properties.

## **H. Landscaping**

- (1) Areas of the property not used for buildings, parking or other impervious surfaces shall be landscaped.
- (2) Landscaping shall be provided to promote a desirable visual environment, to accentuate building design, define entranceways, screen parking areas, mitigate adverse visual impacts, provide windbreaks for winter winds and summer cooling for buildings, and enhance buffer areas. Plants and other landscaping materials shall be selected in terms of aesthetic and functional considerations. The landscape design shall create visual diversity and contrast through variation in size, shape, texture, and color. The selection of plants in terms of susceptibility to disease and insect damage, wind and ice damage, habitat, soil conditions, growth rate, longevity, root pattern, maintenance requirements, etc., shall be considered.
- (3) There shall be a minimum ten- (10) foot-wide landscaped buffer adjacent to any existing single-family properties. The only improvements that are permitted to encroach on this buffer are utilities and driveways.
- (4) Buffer plantings shall consist of a combination of shade trees, evergreen trees, ornamental trees, and shrubs. Existing shade and evergreen trees within the buffer area may be counted in fulfilling the required buffer planting.
- (5) Buffer plants shall include, at a minimum, the following:
  - a. One shade tree for every seventy-five (75) linear feet of buffer.
  - b. One evergreen tree for every forty (40) linear feet of buffer; and
  - c. Ten (10) shrubs for every fifty (50) linear feet of buffer.
- (6) Buffer plants shall be the following size at the time of planting:

- a. Shade trees shall be planted at a minimum three (3”) inch caliper and shall be a minimum of twelve (12) to fourteen (14) feet in height, balled and burlapped.
  - b. Evergreen trees shall be planted at a minimum height of seven (7’) feet, balled and burlapped.
  - c. Shrubs shall be planted at a minimum of three (3’) feet in height. All shrubs shall be evergreen.
- (7) Foundation plantings shall be provided around all buildings. These plantings shall include species that provide seasonal interest at varying heights to complement and provide pedestrian scale to the proposed architectural design of the buildings. The foundation planting shall incorporate evergreen shrubs and groupings of small trees in order to provide human scale to building facades and winter interest.
- (8) Street trees
- a. Street trees shall be provided along all public streets, planted at an average of fifty (50) feet on center.
  - b. The following species are permitted: October Glory Maple, Greenspire Linden, Village Green Zelkova, Red Sunset Maple, London Plane.
  - c. Street trees shall be a minimum three (3”) inch caliper.

#### **I. Signs**

The following signs shall be permitted.

- (1) Monument Sign
  - a. One monument sign per street frontage.
  - b. The maximum sign area (excluding the base) shall be thirty (30) square feet per side.
  - c. The maximum sign height shall be five (5’) feet.
  - d. Monument signs shall be setback a minimum of ten (10’) feet from any property line.
  - e. Monument signs may be illuminated.

#### **J. Refuse.**

- (1) Trash and recycling receptacles shall not be visible from the public street and shall be located in the rear or side yard.
- (2) All trash and recycling receptacles shall be screened by a solid fence or decorative masonry wall on three sides and a heavy-duty gate on the fourth.

#### **K. Utilities**

All utilities shall be underground.

#### **L. Fences and Walls**

- (1) Fences and walls within the front yard shall be a maximum of four (4’) feet in height.
- (2) Fences and walls within the side and rear yards shall be a maximum of six (6’) feet in height.

### **§ 165-144 AH-4 Affordable Housing District**

The purpose of the AH-4 Affordable Housing District is to establish regulations and standards governing the development of Block 4, Lots 1.03 and 1.04 (commonly known as “Town Center at Lebanon”) with inclusionary provisions for the construction of low and moderate income housing units, all in accordance with the provisions set forth below and in accordance with the provisions of the New Jersey Fair Housing Act

**A. Permitted Principal Uses**

- (1) Multi-family dwellings

**B. Permitted Accessory Uses**

- (1) Public or private recreation facilities, including pools and decks.
- (2) Fences and walls.
- (3) Off-street parking.
- (4) Parking garages and/or deck incorporated into the building design.
- (5) Trash enclosures.
- (6) Signs.
- (7) Public and private utilities.
- (8) Leasing and management office, mail room, lounges, game rooms, and similar interior tenant amenities.
- (9) Storage spaces unattached to the units, but used by occupants of units, which are incorporated into, and located within, the multi-family residential building. Storage spaces shall be a minimum of 300 cubic feet per unit.
- (10) Dog spa or pet grooming facility, not including boarding or veterinarian services, intended only for the residents of the multi-family development and located within the principal structure.
- (11) Electric vehicle charging stations.
- (12) Emergency generators.

**C. Area, Bulk and Yard Requirements**

- (1) Minimum tract area – 22 acres, inclusive of Corporate Drive.
- (2) The standards in subsection (3) through (10) below shall apply to the entire tract.
- (3) Minimum building setbacks:
  - a. Front yard setback (measured from the Corporate Drive right-of-way and/or easement) – 20 feet.
  - b. Rear yard setback (Route 78) – 30 feet.
  - c. Side yard – 40 feet.
- (4) Density – 12.7 units per acre, up to a maximum of 280 units.
- (5) Minimum distance between buildings – 22 feet.
- (6) Maximum building length of any facade – 350 feet.
- (7) Maximum building coverage - 15%.
- (8) Maximum lot coverage - 60%.
- (9) Maximum building height – 4 stories and 55 feet, which is measured to the midpoint of a pitched roof.
- (10) Maximum number of principal buildings – two per lot, four per zone.

**D. Affordable Housing Requirements**

- (1) Fifty-six (56) units shall be reserved for, and affordable to, very-low, low- and moderate-income households regardless of tenure. The affordable units shall be family rental units.
- (2) The income distribution of the affordable units shall be: twenty-eight (28) units reserved for moderate-income households, twenty (20) units shall be reserved for low-income households, and eight (8) units shall be reserved for very-low income households.
- (3) The affordable units shall have at least a thirty- (30) year deed restriction. Any such affordable unit shall comply with UHAC, applicable affordable housing regulations, the Fair Housing Act, any applicable order of the Court, and other applicable laws.
- (4) The bedroom distribution shall be: twelve (12) three-bedroom units, thirty-three (33) two-bedroom units, and eleven (11) one-bedroom units. Each income distribution of the affordable units shall be proportionally distributed across each bedroom category.
- (5) The developer shall be responsible for retaining the Borough's Administrative Agent, or an approved equivalent as permitted by the Borough, at the developer's sole cost and expense.
- (6) All necessary steps shall be taken to make the affordable units provided creditworthy pursuant to applicable law.
- (7) The affordable units shall be dispersed throughout the site and provided in accordance with the phasing schedule in N.J.A.C. 5:93-5.6(d).

**E. Lighting**

- (1) LED lights of the warm white category, 2,700K color temperature, shall be used in parking areas.
- (2) Parking lot lighting shall be no more than twenty (20) feet in height.
- (3) A minimum of one-fifth (0.2) footcandle and an average of one (1) footcandle shall be maintained within parking areas. A minimum average of 0.3 footcandle shall be maintained over all pedestrian walkways.
- (4) Parking lot fixtures shall be full cut off, with no light emitted above 90 degrees.
- (5) Footcandles at the tract boundary shall not exceed one (1) footcandle, except where there are entrance/exit driveways and common access drives.
- (6) The entire outdoor lighting design shall be analyzed using industry standard lighting software.

**F. Parking Requirements**

- (1) All parking spaces shall measure no less than nine (9) feet in width by eighteen (18) feet in length, except ADA accessible parking designed in accord with ADA standards.
- (2) Off-street parking shall be provided in accordance with RSIS.
- (3) There shall be no parking of recreational vehicles, trailers, or boats.
- (4) Hairpin striping shall be utilized to delineate parking spaces.
- (5) Off-street parking shall be designed to prohibit vehicles from backing up into any access driveway within fifty (50) feet of the curb line of an intersecting street.
- (6) Up to four (4%) percent of the parking may be compact spaces, which shall measure no less than eight and one-half (8.5) feet by sixteen (16) feet. If compact spaces are utilized, they shall be clearly marked as such.
- (7) Handicapped parking shall be located and detailed as per State regulations.

**G. Pedestrian Circulation**

- (1) Walkways and/or sidewalks shall link all buildings within each section of the development. Said walkways/sidewalks shall be a minimum of four (4) feet wide.
- (2) Where walkways and/or sidewalks traverse streets, driveways, and/or access aisles, crosswalks shall be delineated by striping of a contrasting color or material.
- (3) Benches shall be located throughout the site along the pedestrian network. Benches shall be installed, at a minimum of one (1) for every six hundred (600) linear feet of walkway.

#### **H. Recreation and Open Space**

- (1) A minimum of five (5%) percent of the tract shall be open space for the use of residents. This may be linear walking paths, passive spaces, active recreation areas or the like.
- (2) Due to the zone's location, on the opposite side of Route 22 as the Borough's park, an active recreation area shall be provided for children living within the development. This recreation area shall include, at a minimum, three pieces of equipment. Examples include, but are not limited to swings, slide, nets, and climbers.

#### **I. Building Design**

- (1) There shall be no market-rate units containing more than two bedrooms. Any market-rate units proposed to include a den shall include a lease restriction prohibiting the use of the den as a bedroom.
- (2) In order to avoid long, monotonous, uninterrupted walls or roof planes, building wall offsets, including projections and recesses, shall be provided in order to provide architectural interest and variety to the massing of a building and relieve the negative visual effect of a single, long wall.
- (3) The maximum spacing between such offsets shall be sixty (60) feet. The minimum projection or depth of any individual vertical offset shall not be less than one (1) foot.
- (4) Vertical offsets can include, but are not limited to, pilasters, projecting bays, changes in façade materials, canopies, and balconies.
- (5) The architectural treatment of a façade shall be completely continued around all street-facing façades of a building. All sides of a building shall be architecturally designed to be consistent regarding style, materials, colors, and details.
- (6) Roofline offsets, such as dormers and gables, shall be provided along any roof measuring more than ninety (90) feet in length to relieve the visual effect of a single long roof. The maximum spacing between such offsets shall be forty-five (45) feet.
- (7) Building façades visible from any public or private street shall consist of durable, long-lasting materials such as brick, stone, cast stone, vinyl, HardiePlank or other high-quality material.
- (8) If the building has a flat roof, a parapet shall project vertically to hide any roof-mounted mechanical equipment.
- (9) Windows shall be vertically proportioned.
- (10) All building entrances shall be clearly articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, etc.
- (11) Heating, ventilating and air-conditioning systems, utility meters and regulators, emergency generators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall be screened or otherwise specially treated to be, as much as possible, inconspicuous as viewed from the public right-of-way and adjacent properties.

## **J. Landscaping**

- (1) Areas of the property not used for buildings, parking or other impervious surfaces shall be landscaped.
- (2) Landscaping shall be provided to promote a desirable visual environment, to accentuate building design, define entranceways, screen parking areas, mitigate adverse visual impacts, provide windbreaks for winter winds and summer cooling for buildings, and enhance buffer areas. Plants and other landscaping materials shall be selected in terms of aesthetic and functional considerations. The landscape design shall create visual diversity and contrast through variation in size, shape, texture, and color. Plant selection shall consider susceptibility to disease and insect damage, wind and ice damage, habitat, soil conditions, growth rate, longevity, root pattern, and maintenance requirements.
- (3) Parking lot landscaping.
  - a. One (1) landscaped area of at least 162 square feet, shall be provided for every twenty (20) surface parking spaces. Said landscaping may be located around the perimeter of the parking area, within five feet of the curb, instead of within the parking area.
  - b. The landscaped area shall contain one (1) tree with a caliper of at least three (3) inches or three (3) shrubs planted at a height of at least two and a half (2.5) feet.
  - c. Parking areas visible from Corporate Drive shall be screened by landscaping at least four (4) feet in height at the time of planting, except within sight triangle easements.
- (4) Foundation plantings shall be provided around all buildings. These plantings shall include species that provide seasonal interest at varying heights to complement and provide pedestrian scale to the proposed architectural design of the buildings. The foundation planting shall incorporate evergreen shrubs and groupings of small trees in order to provide human scale to building facades and winter interest.
- (5) Street trees.
- (6) Street trees shall be provided along Corporate Drive, planted at an average of fifty (50) feet on center.
- (7) Existing trees may be counted in meeting the requirement if they are within fifteen (15) feet of the cartway.
- (8) Street trees shall be a minimum three (3) inch caliper.

## **K. Signs**

The following types of signs shall be permitted:

- (1) Monument sign.
  - a. A maximum of three monument signs shall be permitted.
  - b. The maximum sign area for each sign (excluding the base) shall be forty (40) square feet per side.
  - c. The maximum sign height shall be five (5) feet, including based/ pedestal.
  - d. Monument signs shall be setback a minimum of ten (10) feet from any driveway, accessway, and/or public or private street right of way.
  - e. Monument signs may be internally illuminated.

## **L. Refuse**

- (1) Trash and recycling receptacles shall not be visible from any public or private street and shall be located in the rear or side yard.
- (2) All trash and recycling receptacles shall be screened by a solid fence or decorative masonry wall on three sides and a heavy-duty gate on the fourth.

- (3) Trash and/or recycling may be stored inside the buildings.

**M. Utilities**

All utilities shall be underground.

**N. Fences and Walls**

- (1) Fences and walls between the building façade and Corporate Drive shall be a maximum of four (4) feet in height.
- (2) Retaining walls located elsewhere on the site shall be a maximum of thirteen (13) feet in height. Fall protection shall be provided in accordance with State law.
- (3) Fences and/or walls around trash and/or recyclable containers may be a maximum of eight (8) feet in height.
- (4) Where a fence is installed on top of a retaining wall and located within six feet of the face of the wall, the height of the fence shall include the height of the retaining wall. Safety fences four (4) feet or less in height shall be excluded from this provision.
- (5) The use of barbed wire, razor wire, or similar is prohibited, unless the use of such fence is required by state or federal statute or regulation.

**O. Site Improvement Standards**

- (1) Site Improvement Standards. Streets, curbs, gutters, sidewalks, pavements, street signs, parking lots, water supply system, fire hydrants, and sanitary sewer system shall be designed in accordance with the Residential Site Improvement Standards.
- (2) Stormwater management. Stormwater management and control shall comply with Chapter 252 entitled “Highlands Region Stormwater Management Program and Stormwater Control”.

**P. Off-site Improvements**

- (1) In order to assess the design and circulation patterns on-site and off-site, including vehicular and pedestrian circulation, a traffic report shall be submitted with any application within the AH-4 Zone.
- (2) This analysis shall include any necessary vehicular and pedestrian improvements at the intersection of Corporate Drive and Route 22, Corporate Drive and Cokesbury Road, and Route 22 and Cokesbury Road.

§ 165-145 (Reserved)

§ 165-146 (Reserved)

§ 165-147 (Reserved)

§ 165-148 (Reserved)

Article XXIII  
**Local Business District**

**§ 165-150 B Local Business District**

**A. Permitted Principal Uses**

Only the following uses are permitted in the Business Zone:

- (1) A store or shop for retail business or wholesale display within the confines of a building.
- (2) An office of any professional, business, financial institution or firm.
- (3) Public utilities and municipal uses.

- (4) A public or privately operated parking facility.
- (5) Uses permitted in the Business District shall not be interpreted to include any process of manufacture, fabrication, assembly, disassembly, treatment, conversion, or alteration of any material unless clearly incidental or accessory to the principal use.
- (6) Detached One-Family dwellings.

**B. Permitted Accessory Uses**

The following are permitted accessory uses:

- (1) Off-street parking as regulated in accordance with § **165-71A(10)**.
- (2) Signs in accordance with the Lebanon Borough Sign Ordinance.
- (3) Temporary permits as regulated in § **165-101**.
- (4) Outdoor growing and display of nursery stock in connection with commercial greenhouses or plant nurseries.
- (5) Other accessory uses customarily incident to the uses listed in § **165-150A**.

**C. Conditional Uses**

The following conditional uses, as regulated in Article **XIX**, are permitted:

- (1) Houses of worship of recognized religious groups, which may include attendant parish homes, convents, religious education buildings, cemeteries and mausoleums.
- (2) Public and private schools teaching academic subjects.

**D. Zoning Requirements**

Except as otherwise provided in this part, the requirements and limitations contained in the Schedule of Requirements referred to in § **165-86** shall be complied with.

§ 165-151 (**Reserved**)

Article XXIV

**Commercial – Research, Office and Manufacturing Districts**

§ **165-152 C-ROM-1 Commercial – Research, Office and Manufacturing District (100,000)**

**A. Permitted Principal Uses**

The following uses are principal permitted uses:

- (1) Office for business, professional, executive or administrative purposes.
- (2) Home Office
- (3) Regional offices
- (4) Accounting offices
- (5) Computer Centers
- (6) Research Offices
- (7) Research and scientific laboratories
- (8) Process of manufacturing, fabrication, treatment or conversion of products.
- (9) A store or shop for retail business or wholesale display entirely within the confines of a building.
- (10) An indoor theatre

(11) Any use by the Borough

#### **B. Permitted Accessory Uses**

The following are permitted accessory uses:

- (1) Off-street parking in accordance with § **165-71A(10)**.
- (2) Signs in accordance with the Lebanon Borough Sign Ordinance, § **165-109**.
- (3) Outdoor storage only as an accessory to a principally permitted use listed in § 165-152A, and such storage shall be adequately screened and shall not exceed Twenty-Five percent (25%) of the lot area.
- (4) Outdoor growing and display of nursery stock in connection with commercial greenhouses or plant nurseries.
- (5) Other accessory uses customarily incidental to the principal permitted use listed in § 165-152A.

#### **C. Conditional Uses**

The following conditional uses, as regulated in Article **XIX**, are permitted:

- (1) Restaurants
- (2) Public garages and motor vehicle service stations

#### **D. Prohibited Uses**

The following uses are expressly prohibited:

- (1) Warehouses.
- (2) Distribution centers or facilities.

#### **E. Zoning Requirements.**

Except as otherwise provided in this Part **7**, the requirements and limitations contained in the Schedule of Requirements referred to in § **165-86** shall be complied with.

#### **F. Performance standards.**

- (1) All uses and operations shall comply with any applicable state and federal regulations relating to noise, vibration, smoke, fumes, dust, odor or other form of air pollution, glare and heat, fire hazards and explosives, chemical and industrial waste or other potentially objectionable condition. Any such condition or potential condition shall be addressed in an environmental impact statement as provided in § **165-72**.
- (2) **FIRE and EXPLOSION HAZARDS.** All activities shall be carried on only in fireproof structures which conform to the standards of the National Board of fire Underwriters or the Borough Building Code or Fire Prevention Code, whichever is more restrictive. All explosive new materials, fuels, liquids and finished products shall be stored in accordance with the standards of said Bord of Fire Underwriters.
- (3) **RADIOACTIVITY.** Any and all machines, devices, testing equipment or anything similar that emits any radiation or radioactive rays do not exceed the “maximum permissible limits” established by either a federal or state agency having jurisdiction over emissions of radiation or radio-active rays and where such machines, devices, testing equipment or anything similar is registered with and approved by either a federal or state agency have jurisdiction over such machines, devices, testing equipment or anything similar.

- (4) EMISSIONS: No emissions of any objectionable smoke, fumes, gas, vapors, dust, or odors or any other atmospheric pollutant is permitted beyond the boundaries of the lot occupied for such use.
- (5) LIQUID or SOLID WASTES: The discharge of industrial wastes into either a septic or sanitary sewer system shall be in accordance with the rules and regulations of the New Jersey Department of Environmental Protection, as well as any other applicable statutes of the State of New Jersey and the Federal Government in addition to any County and Borough resolution or ordinance, respectively. In addition, no industrial use shall discharge into any public sanitary sewer system quantities of water and/or industrial wastes beyond the capacity of said sewer system. The amount of effluent permitted shall be approved by the Borough Engineer or the Sewer Authority Engineer, whichever is appropriate.
- (6) No industrial research, scientific operation or the like shall discharge wastes of any kind into any reservoir, pond, or lake. The methods of sewerage and waste treatment and disposal shall be approved by Borough, County and New Jersey State health Department, where applicable.
- (7) EFFLUENT FROM A TREATMENT PLANT shall at all times comply with the following standards:
  - a) Maximum 5-day biochemical oxygen demand – five (5) parts million.
  - b) Maximum quantity of effluent – ten percent (10%) of minimum daily stream flow.
    - c) Maximum five (5) day biochemical oxygen demand after dilution (B.O.D.) of effluent multiplied by quantity of effluent divided by the quantity of stream flow – one-quarter (0.25) parts per million.
    - d) No effluent shall contain any acids, oils dust, toxic metals, corrosive or other toxic substance in solution or suspension which create odors or discolor, poison or otherwise pollute the stream in any way.
- (8) VIBRATION: No vibration is permitted which is discernible to the human sense of feeling beyond the immediate site on which such use is conducted.
- (9) NOISE: There shall be no noise emanating from the operation or use measured from any point on the property line of the lot on which a manufacturing, industrial, research, scientific or the like operation is located which shall exceed the values given in the following table in any octave band or frequency:

OCTAVE BAND CENTER FREQUENCY  
IN HERTZ 9100DYNE/CM

SOUND PRESSURE LEVEL  
DECIBLS re 9,0002

31.5	59
63	58
125	57
250	50
500	45
1000	40
2000	37
4000	33
8000	29

- i. The sound pressure level shall be measured with sound level meters and/or analyzers conforming with “United States of America Standard Specifications for General Purpose Sound Level Meters, SI 4-1961”, or latest revision, “United States of America Standards Specifications of Octave, Half-Octave, and Third-Octave Bank Filter Sets”, SI 11-1966, or latest revision, published by the United State of America Standards Institute, New York, N.Y.
  - ii. Objectionable noises due to intermittence beat frequency or hammering if the noise is not smooth and continuous, or any noise that takes place between 10 P.M. and 8 A.M, corrections shall be made to the above table by subtracting five (5) decibels of each of the decibel levels given.
- (10) GLARE: Direct or sky-reflected glare exceeding five (5) foot candles measurable beyond the property line of the lot occupied by such use is not permitted. This regulation need not apply to lights used at the entrance or exit of service drives, and can be modified at the discretion of the Land Use board.

**§ 165-153 C-ROM-2 Commercial – Research, Office and Manufacturing District (200,000)**

**A. Permitted Principal Uses**

The following uses are principal permitted uses:

- (1) Office for business, professional, executive or administrative purposes.
- (2) Home Office
- (3) Regional offices
- (4) Accounting offices
- (5) Computer Centers
- (6) Research Offices
- (7) Research and scientific laboratories
- (8) Process of manufacturing, fabrication, treatment or conversion of products
- (9) Industrial and commercial warehouses and wholesale distribution centers
- (10) A store or shop for retail business or wholesale display entirely within the confines of a building
- (11) A theatre
- (12) Any use by the Borough excepting workshops, warehouses, or storage areas

## **B. Permitted Accessory Uses**

The following are permitted accessory uses:

- (1) Off-street parking in accordance with § **165-71A(10)**.
- (2) Signs in accordance with the Lebanon Borough Sign Ordinance, § **165-109**.
- (3) Outdoor storage only as an accessory to a principally permitted use listed in § 165-153A, and such storage shall be adequately screened and shall not exceed Twenty-Five percent (25%) of the lot area.
- (4) Outdoor growing and display of nursery stock in connection with commercial greenhouses or plant nurseries.
- (5) Other accessory uses customarily incidental to the principal permitted use listed in § 165-153A.

## **C. Conditional Uses**

The following conditional uses, as regulated in Article **XIX**, are permitted:

- (1) Restaurant
- (2) Public garage and motor vehicle service stations
- (3) Motels and Hotels

## **D. Zoning Requirements**

Except as otherwise provided in this article, the requirements and limitations contained in the Schedule of Requirements referred to in § **165-86** shall be complied with.

## **E. Performance Standards**

- (1) All uses and operations shall comply with any applicable state and federal regulations relating to noise, vibration, smoke, fumes, dust, odor or other form of air pollution, glare and heat, fire hazards and explosives, chemical and industrial waste or other potentially objectionable condition. Any such condition or potential condition shall be addressed in an environmental impact statement as provided in § **165-72**.
- (2) Except as otherwise provided in this article, the performance standards contained in § **165-152C** shall be complied with.

## **Article XXV**

### **Research, Office and Manufacturing Districts**

#### **§ 165-154 ROM-1 Research, Office and Manufacturing District (100,000)**

##### **A. Permitted Principal Uses**

The following uses are principal permitted uses:

- (1) Office for business, professional, executive or administrative purposes.
- (2) Home Office
- (3) Regional offices
- (4) Accounting offices
- (5) Computer Centers
- (6) Research Offices
- (7) Research and scientific laboratories

- (8) Process of manufacturing, fabrication, treatment or conversion of products
- (9) Industrial and commercial warehouses and wholesale distribution centers
- (10) Any use by the Borough excepting workshops, warehouses, or storage areas

**B. Permitted Accessory Uses.**

The following are permitted accessory uses:

- (1) Off-street parking in accordance with § **165-71A(10)**.
- (2) Signs in accordance with the Lebanon Borough Sign Ordinance, § **165-109**.
- (3) Outdoor storage only as an accessory to a principally permitted use listed in § 165-154A, and such storage shall be adequately screened and shall not exceed Twenty-Five percent (25%) of the lot area.
- (4) Outdoor growing and display of nursery stock in connection with commercial greenhouses or plant nurseries.
- (5) Other accessory uses customarily incidental to the principal permitted use listed in § 165-154A.

**C. Zoning Requirements**

Except as otherwise provided in this article, the requirements and limitations contained in the Schedule of Requirements referred to in § **165-86** shall be complied with.

**D. Performance Standards.**

- (1) All uses and operations shall comply with any applicable state and federal regulations relating to noise, vibration, smoke, fumes, dust, odor or other form of air pollution, glare and heat, fire hazards and explosives, chemical and industrial waste or other potentially objectionable condition. Any such condition or potential condition shall be addressed in an environmental impact statement as provided in § **165-72**.
- (2) Except as otherwise provided in this article, the performance standards contained in § **165-152C** shall be complied with.

## Part 8 Stormwater Management

### Article XXXV

#### Highlands Region Stormwater Management program and Stormwater Control Ordinance

The following exhibits are hereby attached to Article XXXV and are incorporation into the code.

Exhibit A: Net Water Availability

Exhibit B: Lebanon Groundwater Recharge Areas

**§ 165-223 Scope, purpose, and general intent.**

**A. Policy Statement.**

The Stormwater Management rules, N.J.A.C. 7:8, establish design and performance standards for management of stormwater that address water quality, water quantity and recharge. Flood control, groundwater recharge and pollutant reduction shall be achieved through the use of stormwater management measures, including green infrastructure Best Management Practices (GI BMPs) and nonstructural stormwater management strategies. GI BMPs and low impact development (LID) should

be utilized to meet the goal of maintaining natural hydrology to reduce stormwater runoff volume, reduce erosion, encourage infiltration and groundwater recharge and reduce pollution. GI BMPs and LID should be developed based upon physical site conditions and the origin, nature and the anticipated quantity, or amount, of potential pollutants. Multiple stormwater management BMPs may be necessary to achieve the established performance standards for water quality, quantity and groundwater recharge.

B. Purpose.

The purpose of this chapter is to establish minimum stormwater management requirements and controls on all development within the Borough, as defined below in **§165-224.**, unless otherwise exempted therefrom under this chapter.

C. Applicability.

1. This chapter shall be applicable to the following developments.
  - a. Non-residential major developments.
  - b. Aspects of residential major developments that are not pre-empted by the Residential Site Improvement Standards at N.J.A.C. 5:21.; and
  - c. Minor developments, pursuant to **§165-225. B.**
2. This chapter shall also be applicable to all major developments undertaken by the Borough of Lebanon.

D. Compatibility with other permit and ordinance requirements.

Development approvals issued pursuant to this chapter are to be considered an integral part of development approvals and do not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated by any other applicable code, rule, act or ordinance. In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.

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

**§ 165-224 Definitions.**

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this Chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The definitions below are the same as or based on the corresponding definitions in the Stormwater Management Rules at N.J.A.C. 7:8-1.2.

**CAFRA Centers, Cores or Nodes** means those areas with boundaries incorporated by reference or revised by the Department in accordance with N.J.A.C. 7:7-13.16.

**CAFRA Planning Map** means the map used by the Department to identify the location of Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes. The CAFRA Planning Map is available on the Department's Geographic Information System (GIS).

**Carbonate Rock Area** means an area where rock consisting chiefly of calcium and magnesium carbonates, such as limestone and dolomite, has been identified.

**Community basin** means an infiltration system, sand filter designed to infiltrate, standard constructed wetland, or wet pond, established in accordance with N.J.A.C. 7:8- 4.2(c)14, that is designed and constructed in accordance with the New Jersey Stormwater Best Management Practices Manual, or an alternate design,

approved in accordance with N.J.A.C. 7:8-5.2(g), for an infiltration system, sand filter designed to infiltrate, standard constructed wetland, or wet pond and that complies with the requirements of this chapter.

**Compaction** means the increase in soil bulk density.

**Contributory drainage area** means the area from which stormwater runoff drains to a stormwater management measure, not including the area of the stormwater management measure itself.

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

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

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

**Current Deficit Area** means any United States Geological Survey 14-digit Hydrologic Unit Code subwatershed area that is identified in the Highlands Regional Master Plan as having negative Net Water Availability, meaning that existing consumptive and depletive water uses exceed the capacity of the ground water supply to sustain.

**Department** means the Department of Environmental Protection.

**Designated Center** means a State Development and Redevelopment Plan Center as designated by the State Planning Commission such as urban, regional, town, village, or hamlet.

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

**Development** means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure, any mining excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission is required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. Disturbance for the purpose of this rule is as defined below.

**Development, Exempt** means an individual development, as well as multiple developments that individually or collectively create less than one thousand (1,000) square feet of new impervious area in total and disturbs less than two thousand five hundred (2,500) square feet of land. Any project meeting the definition of exempt development shall be exempt from the provisions of this chapter.

**Development, Minor** means an individual development, as well as multiple developments that individually or collectively does not meet the definition of "exempt development" as defined herein or the definition of "major development" as defined herein.

**Development, Major** means an individual "development," as well as multiple developments that individually or collectively result in:

1. The disturbance of one or more acres of land since February 2, 2004;
2. The creation of one-quarter acre or more of "regulated impervious surface" since February 2, 2004;
3. The creation of one-quarter acre or more of "regulated motor vehicle surface" since March 2, 2021 {or the effective date of this chapter, whichever is earlier}; or
4. A combination of 2 and 3 above that totals an area of one-quarter acre or more. The same surface shall not be counted twice when determining if the combination area equals one-quarter acre or more.

Major development includes all developments that are part of a common plan of development or sale (for example, phased residential development) that collectively or individually meet any one or more of paragraphs 1, 2, 3, or 4 above. Projects undertaken by any government agency that otherwise meet the definition of “major development” but which do not require approval under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., are also considered “major development.”

In the case of development of agricultural land, development means: any activity that requires a State permit, any activity reviewed by the County Agricultural Board (CAB) and the State Agricultural Development Committee (SADC), and municipal review of any activity not exempted by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.

**Disturbance** means the placement or reconstruction of impervious surface or motor vehicle surface, or exposure and/or movement of soil or bedrock or clearing, cutting, or removing of vegetation or the redevelopment of previously developed sites. Milling and repaving is not considered disturbance for the purposes of this definition.

**Drainage area** means a geographic area within which stormwater, sediments, or dissolved materials drain to a particular receiving waterbody or to a particular point along a receiving waterbody.

**Environmentally constrained area** means the following areas where the physical alteration of the land is in some way restricted, either through regulation, easement, deed restriction or ownership such as: wetlands, floodplains, threatened and endangered species sites or designated habitats, and parks and preserves. Habitats of endangered or threatened species are identified using the Department's Landscape Project as approved by the Department's Endangered and Nongame Species Program.

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

**Empowerment Neighborhoods** means neighborhoods designated by the Urban Coordinating Council “in consultation and conjunction with” the New Jersey Redevelopment Authority pursuant to N.J.S.A. 55:19-69.

**Erosion** means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

**Green infrastructure** means a stormwater management measure that manages stormwater close to its source by:

1. Treating stormwater runoff through infiltration into subsoil;
2. Treating stormwater runoff through filtration by vegetation or soil; or
3. Storing stormwater runoff for reuse.

**HUC 14 or hydrologic unit code 14** means an area within which water drains to a particular receiving surface water body, also known as a subwatershed, which is identified by a 14-digit hydrologic unit boundary designation, delineated within New Jersey by the United States Geological Survey.

**Highlands Designated Center** means an area within a Highlands conforming municipality, within the Planning Area, for which the Highlands Council has approved a petition for Highlands Center Designation, in accordance with the Highlands Council center designation procedures as found at <https://www.nj.gov/njhighlands/planconformance/guidelines/centers.html> . A Highlands Designated Center is developed through a planning process that addresses development/redevelopment needs, while maintaining consistency with the Regional Master Plan with regard to resource protection standards.

**Highlands Open Waters** means all springs, wetlands, intermittent and ephemeral streams, perennial streams and bodies of surface water, whether natural or artificial, located wholly or partially within the boundaries of the Highlands Region, but shall not mean swimming pools.

**Impervious surface** means any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces or improvements. To be considered an impervious surface, the structure, surface or improvement must have the effect of reducing or preventing stormwater absorption.

**Infiltration** is the process by which water seeps into the soil from precipitation.

**Karst** means a distinctive topography that indicates solution of underlying carbonate rocks (such as limestone and dolomite) by surface water or groundwater over time, often producing surface depressions, sinkholes, sinking streams, enlarged bedrock fractures, caves, and underground streams.

**Lead planning agency** means one or more public entities having stormwater management planning authority designated by the regional stormwater management planning committee pursuant to N.J.A.C. 7:8-3.2, that serves as the primary representative of the committee.

**Maximum extent practicable** means designing stormwater management systems so that all reasonable opportunities for using non-structural stormwater practices are exhausted and a structural BMP is implemented only where absolutely necessary.

**Mitigation** means an action by an applicant providing compensation or offset actions for onsite stormwater management requirements where the applicant has demonstrated the inability or impracticality of strict compliance with the stormwater management requirements set forth in N.J.A.C. 7:8, in an adopted regional stormwater management plan, or in this chapter, and has received a waiver from strict compliance from the municipality. Mitigation shall include the implementation of the approved mitigation plan within the same drainage area where the subject project is proposed, or a contribution of funding toward a municipal stormwater control project, or provision for equivalent treatment at an alternate location, or any other equivalent water quality benefit as approved by the municipality.

**Motor vehicle** means land vehicles propelled other than by muscular power, such as automobiles, motorcycles, autocycles, and low speed vehicles. For the purposes of this definition, motor vehicle does not include farm equipment, snowmobiles, all-terrain vehicles, motorized wheelchairs, go-carts, gas buggies, golf carts, ski-slope grooming machines, or vehicles that run only on rails or tracks.

**Motor vehicle surface** means any pervious or impervious surface that is intended to be used by “motor vehicles” and/or aircraft, and is directly exposed to precipitation including, but not limited to, driveways, parking areas, parking garages, roads, racetracks, and runways.

**Municipality** means any city, borough, town, township, or village.

**Municipally Important Ground Water Recharge Area** means preserved or constrained lands that cannot be developed or built upon under current regulations. These areas have recharge rates above the median recharge rate for the subwatershed in which they are located; meaning they provide 40% or greater total recharge volume for the subwatershed. Constrained lands are comprised of undeveloped lands within the Highlands Open Water buffer as well as moderately and severely constrained steep slopes. Preserved lands are those that are permanently preserved by local, county, state, federal or non-profit entities.

**New Jersey Stormwater Best Management Practices (BMP) Manual or BMP Manual** means the manual maintained by the Department providing, in part, design specifications, removal rates, calculation methods, and soil testing procedures approved by the Department as being capable of contributing to the achievement of the stormwater management standards specified in this chapter. The BMP Manual is periodically amended by the Department as necessary to provide design specifications on additional best management practices and new information on already included practices reflecting the best available current information regarding the particular practice and the Department’s determination as to the ability of that best management practice to contribute to compliance with the standards contained in this chapter. Alternative stormwater management measures, removal rates, or calculation methods may be utilized, subject to any limitations specified in this

chapter, provided the design engineer demonstrates to the municipality, in accordance with of §165-226.F. of this chapter and N.J.A.C. 7:8-5.2(g), that the proposed measure and its design will contribute to achievement of the design and performance standards established by this chapter.

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

**Non-Exempt Project** means any project not eligible for an exemption from the Highlands Water Protection and Planning Act Rules, pursuant to N.J.A.C. 7:38-2.3.

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

**Person** means any individual, corporation, company, partnership, firm, association, political subdivision of this State and any state, interstate or Federal agency.

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

**Recharge** means the amount of water from precipitation that infiltrates into the ground and is not evapotranspired.

**Redevelopment** means land-disturbing activity that results in the creation, addition, or replacement of impervious surface area on an already developed or disturbed site. Redevelopment includes, but is not limited to: the expansion of a building footprint, addition or replacement of a structure, replacement of impervious surface area that is not part of a routine maintenance activity, and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

**Regional Master Plan** means the Highlands regional master plan or any revision thereof adopted by the Highlands Water Protection and Planning Council pursuant to N.J.S.A. C.13:20-8.

**Regulated impervious surface** means any of the following, alone or in combination:

1. A net increase of impervious surface;
2. The total area of impervious surface collected by a new stormwater conveyance system (for the purpose of this definition, a "new stormwater conveyance system" is a stormwater conveyance system that is constructed where one did not exist immediately prior to its construction or an existing system for which a new discharge location is created);
3. The total area of impervious surface proposed to be newly collected by an existing stormwater conveyance system; and/or
4. The total area of impervious surface collected by an existing stormwater conveyance system where the capacity of that conveyance system is increased.

**Regulated motor vehicle surface** means any of the following, alone or in combination:

1. The total area of motor vehicle surface that is currently receiving water;
2. A net increase in motor vehicle surface; and/or quality treatment either by vegetation or soil, by an existing stormwater management measure, or by treatment at a wastewater treatment plant, where the water quality treatment will be modified or removed.

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

**Site** means the lot or lots upon which a development is to occur or has occurred.

**Soil** means all unconsolidated mineral and organic material of any origin.

**State Development and Redevelopment Plan Metropolitan Planning Area (PA1)** means an area delineated on the State Plan Policy Map and adopted by the State Planning Commission that is intended to be the focus for much of the State's future redevelopment and revitalization efforts.

**State Plan Policy Map** is defined as the geographic application of the State Development and Redevelopment Plan's goals and statewide policies, and the official map of these goals and policies.

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

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

**Stormwater management measure** means any practice, technology, process, program, or other method intended to control or reduce stormwater runoff and associated pollutants, or to induce or control the infiltration or groundwater recharge of stormwater or to eliminate illicit or illegal non-stormwater discharges into stormwater conveyances.

**Stormwater runoff** means water flow on the surface of the ground or in storm sewers, resulting from precipitation.

**Stormwater management planning agency** means a public body authorized by legislation to prepare stormwater management plans.

**Stormwater management planning area** means the geographic area for which a stormwater management planning agency is authorized to prepare stormwater management plans, or a specific portion of that area identified in a stormwater management plan prepared by that agency.

**Tidal Flood Hazard Area** means a flood hazard area in which the flood elevation resulting from the two-, 10-, or 100-year storm, as applicable, is governed by tidal flooding from the Atlantic Ocean. Flooding in a tidal flood hazard area may be contributed to, or influenced by, stormwater runoff from inland areas, but the depth of flooding generated by the tidal rise and fall of the Atlantic Ocean is greater than flooding from any fluvial sources. In some situations, depending upon the extent of the storm surge from a particular storm event, a flood hazard area may be tidal in the 100-year storm, but fluvial in more frequent storm events.

**Urban Coordinating Council Empowerment Neighborhood** means a neighborhood given priority access to State resources through the New Jersey Redevelopment Authority.

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

**Urban Redevelopment Area** is defined as previously developed portions of areas:

1. Delineated on the State Plan Policy Map (SPPM) as the Metropolitan Planning Area (PA1), Designated Centers, Cores or Nodes;
2. Designated as CAFRA Centers, Cores or Nodes;
3. Designated as Urban Enterprise Zones; and
4. Designated as Urban Coordinating Council Empowerment Neighborhoods.

**Water control structure** means a structure within, or adjacent to, a water, which intentionally or coincidentally alters the hydraulic capacity, the flood elevation resulting from the two-, 10-, or 100-year

storm, flood hazard area limit, and/or floodway limit of the water. Examples of a water control structure may include a bridge, culvert, dam, embankment, ford (if above grade), retaining wall, and weir.

**Waters of the State** means the ocean and its estuaries, all springs, streams, wetlands, and bodies of surface or groundwater, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

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

#### **§165-225. Design and performance standards for stormwater management measures.**

- A. Exempt Developments: Any project meeting the definition of exempt development shall be exempt from the provisions of this section.
- B. Minor Developments: Minor developments shall be designed to include the following stormwater management measures:
- (1) Water Quality Measures: Soil erosion and sediment control measures shall be installed in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey.
  - (2) Runoff Quantity Control: Seepage pits or other infiltration measures shall be provided with a capacity of three (3") inches of runoff for each square foot of new impervious area. Stone used in the infiltration devices shall be two and one-half (2-1/2") inch clean stone and a design void ratio of thirty-three (33%) percent shall be used. Infiltration devices shall be placed on a minimum 12-inch thick bed of clean stone. The 12-inch thick stone bed shall be excluded from the storage volume calculations. The infiltration measures shall be designed with an overflow to the surface which shall be stabilized and directed to an existing stormwater conveyance system or in a manner to keep the overflow on the developed property to the greatest extent feasible. If the new impervious surface is not roof area, an equivalent area of existing roof may be directed to the infiltration system. This shall be permitted where the existing roof is not already directed to infiltration devices or other stormwater management control structures.
- C. Major Developments: Stormwater management measures for major development shall be designed to provide erosion control, groundwater recharge, stormwater runoff quantity control and stormwater runoff quality treatment as follows:
- (1) The minimum standards for erosion control are those established under the Soil and Sediment Control Act, N.J.S.A. 4:24-39 et seq., and implementing rules at N.J.A.C. 2:90.
  - (2) The minimum standards for groundwater recharge, stormwater quality, and stormwater runoff quantity shall be met by incorporating green infrastructure.

The standards in this chapter apply only to new major development and are intended to minimize the impact of stormwater runoff on water quality and water quantity in receiving water bodies and maintain groundwater recharge. The standards do not apply to new major development to the extent that alternative design and performance standards are applicable under a regional stormwater management plan or Water Quality Management Plan adopted in accordance with Department rules.

#### **§165-226 Stormwater Management Requirements for Major Development.**

- A. The development shall incorporate a maintenance plan for the stormwater management measures incorporated into the design of a major development in accordance with **§165-232**.
- B. Stormwater management measures shall avoid adverse impacts of concentrated flow on habitat for threatened and endangered species as documented in the Department's Landscape Project or Natural Heritage Database established under N.J.S.A. 13:1B15.147 through 15.150, particularly *Helonias bullata* (swamp pink) and/or *Clemmys muhlenbergi* (bog turtle).

- C. The following linear development projects are exempt from the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity requirements of **§165-226**, subsections P, Q and R:
- (1) The construction of an underground utility line provided that the disturbed areas are revegetated upon completion;
  - (2) The construction of an aboveground utility line provided that the existing conditions are maintained to the maximum extent practicable; and
  - (3) The construction of a public pedestrian access, such as a sidewalk or trail with a maximum width of 14 feet, provided that the access is made of permeable material.
- D. A waiver from strict compliance from the green infrastructure, groundwater recharge, stormwater runoff quality and stormwater runoff quantity requirements of **§165-226**, subsections O, P, Q and R may be obtained for the enlargement of an existing public roadway or railroad; or the construction or enlargement of a public pedestrian access, provided that the following conditions are met:
- (1) The applicant demonstrates that there is a public need for the project that cannot be accomplished by any other means;
  - (2) The applicant demonstrates through an alternatives analysis, that through the use of stormwater management measures, the option selected complies with the requirements of **§165-226**, subsections O, P, Q and R to the maximum extent practicable;
  - (3) The applicant demonstrates that, in order to meet the requirements of **§165-226**, subsections O, P, Q and R, existing structures currently in use, such as homes and buildings, would need to be condemned; and
  - (4) The applicant demonstrates that it does not own or have other rights to areas, including the potential to obtain through condemnation lands not falling under **§165-226**, D.(3) above within the upstream drainage area of the receiving stream, that would provide additional opportunities to mitigate the requirements of **§165-226**, subsections O, P, Q and R that were not achievable onsite.
- E. Tables 1 through 3 below summarize the ability of stormwater best management practices identified and described in the New Jersey Stormwater Best Management Practices Manual to satisfy the green infrastructure, groundwater recharge, stormwater runoff quality and stormwater runoff quantity standards specified in **§165-226**, subsections O, P, Q and R. When designed in accordance with the most current version of the New Jersey Stormwater Best Management Practices Manual, the stormwater management measures found at N.J.A.C. 7:8-5.2 (f) Tables 5-1, 5-2 and 5-3 and listed below in Tables 1, 2 and 3 are presumed to be capable of providing stormwater controls for the design and performance standards as outlined in the tables below. Upon amendments of the New Jersey Stormwater Best Management Practices to reflect additions or deletions of BMPs meeting these standards, or changes in the presumed performance of BMPs designed in accordance with the New Jersey Stormwater BMP Manual, the Department shall publish in the New Jersey Register a notice of administrative change revising the applicable table. The most current version of the BMP Manual can be found on the Department's website at:
- [https://njstormwater.org/bmp\\_manual2.htm](https://njstormwater.org/bmp_manual2.htm).
- F. Where the BMP tables in the NJ Stormwater Management Rule are different due to updates or amendments with the tables in this chapter the BMP Tables in the Stormwater Management rule at N.J.A.C. 7:8-5.2(f) shall take precedence.

<b>Table 1 Green Infrastructure BMPs for Groundwater Recharge, Stormwater Runoff Quality, and/or Stormwater Runoff Quantity</b>				
<b>Best Management Practice</b>	<b>Stormwater Runoff Quality TSS Removal Rate (percent)</b>	<b>Stormwater Runoff Quantity</b>	<b>Groundwater Recharge</b>	<b>Minimum Separation from Seasonal High Water Table (feet)</b>
Cistern	0	Yes	No	--
Dry Well <sup>(a)</sup>	0	No	Yes	2
Grass Swale	50 or less	No	No	2 <sup>(e)</sup> 1 <sup>(f)</sup>
Green Roof	0	Yes	No	--
Manufactured Treatment Device <sup>(a) (g)</sup>	50 or 80	No	No	Dependent upon the device
Pervious Paving System <sup>(a)</sup>	80	Yes	Yes <sup>(b)</sup> No <sup>(c)</sup>	2 <sup>(b)</sup> 1 <sup>(c)</sup>
Small-Scale Bioretention Basin <sup>(a)</sup>	80 or 90	Yes	Yes <sup>(b)</sup> No <sup>(c)</sup>	2 <sup>(b)</sup> 1 <sup>(c)</sup>
Small-Scale Infiltration Basin <sup>(a)</sup>	80	Yes	Yes	2
Small-Scale Sand Filter	80	Yes	Yes	2
Vegetative Filter Strip	60-80	No	No	--

*(Notes corresponding to annotations (a) through (h) are found at the end of Table 3)*

<b>Table 2</b> <b>Green Infrastructure BMPs for Stormwater Runoff Quantity</b> <b>(or for Groundwater Recharge and/or Stormwater Runoff Quality</b> <b>with a Waiver or Variance from N.J.A.C. 7:8-5.3)</b>				
<b>Best Management Practice</b>	<b>Stormwater Runoff Quality TSS Removal Rate (percent)</b>	<b>Stormwater Runoff Quantity</b>	<b>Groundwater Recharge</b>	<b>Minimum Separation from Seasonal High Water Table (feet)</b>
Bioretention System	80 or 90	Yes	Yes <sup>(b)</sup> No <sup>(c)</sup>	2 <sup>(b)</sup> 1 <sup>(c)</sup>
Infiltration Basin	80	Yes	Yes	2
Sand Filter <sup>(b)</sup>	80	Yes	Yes	2
Standard Constructed Wetland	90	Yes	No	N/A
Wet Pond <sup>(d)</sup>	50-90	Yes	No	N/A

(Notes corresponding to annotations (a) through (h) are found on at the end of Table 3

<b>Table 3</b> <b>BMPs for Groundwater Recharge, Stormwater Runoff Quality, and/or</b> <b>Stormwater Runoff Quantity</b> <b>only with a Waiver or Variance from N.J.A.C. 7:8-5.3</b>				
Best Management Practice	Stormwater Runoff Quality TSS Removal Rate (percent)	Stormwater Runoff Quantity	Groundwater Recharge	Minimum Separation from Seasonal High Water Table (feet)
Blue Roof	0	Yes	No	N/A
Extended Detention Basin	40-60	Yes	No	1
Manufactured Treatment Device <sup>(h)</sup>	50 or 80	No	No	Dependent upon the device
Sand Filter <sup>(c)</sup>	80	Yes	No	1
Subsurface Gravel Wetland	90	No	No	1
Wet Pond	50-90	Yes	No	N/A

Notes to Tables 1, 2, and 3:

- (a) subject to the applicable contributory drainage area limitation specified at Section IV.O.2;
- (b) designed to infiltrate into the subsoil;
- (c) designed with underdrains;
- (d) designed to maintain at least a 10-foot wide area of native vegetation along at least 50 percent of the shoreline and to include a stormwater runoff retention component designed to capture stormwater runoff for beneficial reuse, such as irrigation;
- (e) designed with a slope of less than two percent;
- (f) designed with a slope of equal to or greater than two percent;
- (g) manufactured treatment devices that meet the definition of green infrastructure at Section II;
- (h) manufactured treatment devices that do not meet the definition of green infrastructure at Section II.

G. An alternative stormwater management measure, alternative removal rate, and/or alternative method to calculate the removal rate may be used if the design engineer demonstrates the capability of the proposed alternative stormwater management measure and/or the validity of the alternative rate or method to the municipality. A copy of any approved alternative stormwater management measure, alternative removal rate, and/or alternative method to calculate the removal rate shall be provided to the Department in accordance with **§165-228**. B. Alternative stormwater management measures may be used to satisfy the requirements at **§165-226.O** only if the measures meet the definition of green infrastructure at **§165-224**. Alternative stormwater management measures that function in a similar manner to a BMP listed at **§165-226. O.2** are subject to the contributory drainage area limitation specified at **§165-226. O.2** for that similarly functioning BMP. Alternative stormwater management measures approved in accordance with this subsection that do not function in a similar manner to any BMP listed at **§165-226. O.2** shall have a contributory drainage area less than or equal to 2.5 acres, except for alternative stormwater management

measures that function similarly to cisterns, grass swales, green roofs, standard constructed wetlands, vegetative filter strips, and wet ponds, which are not subject to a contributory drainage area limitation. Alternative measures that function similarly to standard constructed wetlands or wet ponds shall not be used for compliance with the stormwater runoff quality standard unless a variance in accordance with N.J.A.C. 7:8-4.6 or a waiver from strict compliance in accordance with **§165-226. D** is granted from **§165-226. O**.

- H. Whenever the stormwater management design includes one or more BMPs that will infiltrate stormwater into subsoil, the design engineer shall assess the hydraulic impact on the groundwater table and design the site, so as to avoid adverse hydraulic impacts. Potential adverse hydraulic impacts include, but are not limited to, exacerbating a naturally or seasonally high water table, so as to cause surficial ponding, flooding of basements, or interference with the proper operation of subsurface sewage disposal systems or other subsurface structures within the zone of influence of the groundwater mound, or interference with the proper functioning of the stormwater management measure itself.
- I. Design standards for stormwater management measures are as follows:
- (1) Stormwater management measures shall be designed to take into account the existing site conditions, including, but not limited to, environmentally critical areas; wetlands; flood-prone areas; slopes; depth to seasonal high water table; soil type, permeability, and texture; drainage area and drainage patterns; and the presence of solution-prone carbonate rocks (limestone);
  - (2) Stormwater management measures shall be designed to minimize maintenance, facilitate maintenance and repairs, and ensure proper functioning. Trash racks shall be installed at the intake to the outlet structure, as appropriate, and shall have parallel bars with one-inch spacing between the bars to the elevation of the water quality design storm. For elevations higher than the water quality design storm, the parallel bars at the outlet structure shall be spaced no greater than one-third the width of the diameter of the orifice or one-third the width of the weir, with a minimum spacing between bars of one inch and a maximum spacing between bars of six inches. In addition, the design of trash racks must comply with the requirements of **§165-230.C**;
  - (3) Stormwater management measures shall be designed, constructed, and installed to be strong, durable, and corrosion resistant. Measures that are consistent with the relevant portions of the Residential Site Improvement Standards at N.J.A.C. 5:21-7.3, 7.4, and 7.5 shall be deemed to meet this requirement;
  - (4) Stormwater management BMPs shall be designed to meet the minimum safety standards for stormwater management BMPs at **§165-230**; and
  - (5) The size of the orifice at the intake to the outlet from the stormwater management BMP shall be a minimum of two and one-half inches in diameter.
- J. Manufactured treatment devices may be used to meet the requirements of this subchapter, provided the pollutant removal rates are verified by the New Jersey Corporation for Advanced Technology and certified by the Department. Manufactured treatment devices that do not meet the definition of green infrastructure at **§165-224** may be used only under the circumstances described at **§165-226. O.(4)**.
- K. Any application for a new agricultural development that meets the definition of major development at **§165-224**, shall be submitted to the Soil Conservation District for review and approval in accordance with the requirements at **§165-226**, subsections O, P, Q and R and any applicable Soil Conservation District guidelines for stormwater runoff quantity and erosion control. For purposes of this subsection, "agricultural development" means land uses normally associated with the production of food, fiber, and livestock for sale. Such uses do not include the development of land for the processing or sale of food and the manufacture of agriculturally related products.
- L. If there is more than one drainage area, the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards at **§165-226**, subsections P, Q and R shall be met in each drainage area, unless the runoff from the drainage areas converge onsite and no adverse environmental impact

would occur as a result of compliance with any one or more of the individual standards being determined utilizing a weighted average of the results achieved for that individual standard across the affected drainage areas.

- M. Any stormwater management measure authorized under the municipal stormwater management plan or ordinance shall be reflected in a deed notice recorded in the Office of the Hunterdon County Clerk. A form of deed notice shall be submitted to the municipality for approval prior to filing. The deed notice shall contain a description of the stormwater management measure(s) used to meet the green infrastructure, groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards at **§165-226**, subsections O, P, Q and R and shall identify the location of the stormwater management measure(s) in NAD 1983 State Plane New Jersey FIPS 2900 US Feet or Latitude and Longitude in decimal degrees. The deed notice shall also reference the maintenance plan required to be recorded upon the deed pursuant to **§165-232**, B.(5). Prior to the commencement of construction, proof that the above required deed notice has been filed shall be submitted to the municipality. Proof that the required information has been recorded on the deed shall be in the form of either a copy of the complete recorded document or a receipt from the clerk or other proof of recordation provided by the recording office. However, if the initial proof provided to the municipality is not a copy of the complete recorded document, a copy of the complete recorded document shall be provided to the municipality within 180 calendar days of the authorization granted by the municipality.
- N. A stormwater management measure approved under the municipal stormwater management plan or ordinance may be altered or replaced with the approval of the municipality, if the municipality determines that the proposed alteration or replacement meets the design and performance standards pursuant to **§165-226** of this chapter and provides the same level of stormwater management as the previously approved stormwater management measure that is being altered or replaced. If an alteration or replacement is approved, a revised deed notice shall be submitted to the municipality for approval and subsequently recorded in the Office of the Hunterdon County Clerk and shall contain a description and location of the stormwater management measure, as well as reference to the maintenance plan, in accordance with M above. Prior to the commencement of construction, proof that the above required deed notice has been filed shall be submitted to the municipality in accordance with M above.
- O. Green Infrastructure Standards.
- (1) This subsection specifies the types of green infrastructure BMPs that may be used to satisfy the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards.
  - (2) To satisfy the groundwater recharge and stormwater runoff quality standards at **§165-226**, P and Q, the design engineer shall utilize green infrastructure BMPs identified in Table 1 at **§165-226**, F. and/or an alternative stormwater management measure approved in accordance with **§165-226**, G. The following green infrastructure BMPs are subject to the following maximum contributory drainage area limitations:

<b>Best Management Practice</b>	<b>Maximum Contributory Drainage Area</b>
Dry Well	1 acre
Manufactured Treatment Device	2.5 acres
Pervious Pavement Systems	Area of additional inflow cannot exceed three times the area occupied by the BMP
Small-scale Bioretention Systems	2.5 acres
Small-scale Infiltration Basin	2.5 acres
Small-scale Sand Filter	2.5 acres

- (3) To satisfy the stormwater runoff quantity standards at **§165-226. R**, the design engineer shall utilize BMPs from Table 1 or from Table 2 and/or an alternative stormwater management measure approved in accordance with **§165-226. G**.
- (4) If a waiver/exception in accordance with N.J.A.C. 7:8-4.6 or a waiver from strict compliance in accordance with **§165-226. D** is granted from the requirements of this subsection, then BMPs from Table 1, 2, or 3, and/or an alternative stormwater management measure approved in accordance with **§165-226.G** may be used to meet the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards at **§165-226. subsections P, Q and R**.
- (5) For separate or combined storm sewer improvement projects, such as sewer separation, undertaken by a government agency or public utility (for example, a sewerage company), the requirements of this subsection shall only apply to areas owned in fee simple by the government agency or utility, and areas within a right-of-way or easement held or controlled by the government agency or utility; the entity shall not be required to obtain additional property or property rights to fully satisfy the requirements of this subsection. Regardless of the amount of area of a separate or combined storm sewer improvement project subject to the green infrastructure requirements of this subsection, each project shall fully comply with the applicable groundwater recharge, stormwater runoff quality control, and stormwater runoff quantity standards at **§165-226. subsections P, Q and R**, unless the project is granted a waiver from strict compliance in accordance with **§165-226.D**.

**P. Groundwater Recharge Standards.**

- (1) This subsection contains the minimum design and performance standards for groundwater recharge as follows:
  - (2) The design engineer shall, using the assumptions and factors for stormwater runoff and groundwater recharge calculations at **§165-227.**, either:
    - (a) Demonstrate through hydrologic and hydraulic analysis that the site and its stormwater management measures maintain 100 percent of the average annual pre-construction groundwater recharge volume for the site; or
    - (b) Demonstrate through hydrologic and hydraulic analysis that the increase of stormwater runoff volume from pre-construction to post-construction for the 2-year storm is infiltrated.  
Additional standards set forth below may apply as required.
  - (c) Non-Exempt Projects located in a Current Deficit Area (see Exhibit A): Where the project is located in a Current Deficit Area, the project shall demonstrate through hydrologic and hydraulic analysis that the site and its stormwater management measures provide for enhanced recharge standards set forth in paragraph (4) below.
- (3) Non-Exempt Projects located in a Municipally Important Ground Water Recharge Area (see Exhibit B): Where the project is located in a Municipally Important Ground Water Recharge Area, the following standards shall apply:
  - (a) Where disturbance is permitted in accordance with this subsection, it shall be limited to no greater than 15% of the Municipally Important Ground Water Recharge Area on the site and shall preferentially be sited on that portion of Municipally Important Ground Water Recharge Area that has the lowest groundwater recharge rates.
  - (b) Where disturbance to the Municipally Important Ground Water Recharge Area is permitted, the project shall demonstrate through hydrologic and hydraulic analysis that the site and its stormwater management measures provide for enhanced recharge standards set forth in paragraph (4) below.
- (4) Enhanced Recharge Standards: Non-Exempt Projects that are subject to the enhanced recharge requirements by **§165-226. P.(2)**, or (3) above, shall apply the following standards, either:

- (a) Recharge 125 percent of the percentage of the average annual preconstruction groundwater recharge volume for the site; or
- (b) In addition to complying with the infiltration requirements of §165-226. P(2)(b), retain on-site with no discharge, the Stormwater Quality Design Volume (SWQDV), defined as the runoff from the 1.25-inch, 2-hour rainfall event. Where meeting the infiltration requirement will not result in retention of the full SWQDV, the major development shall retain any additional volume to meet the requirements of this section through additional infiltration, or through evapotranspiration or capture and on-site re-use of rainfall.
- (5) This groundwater recharge requirement does not apply to projects within the “urban redevelopment area,” or to projects subject to paragraph (6) below.
- (6) The following types of stormwater shall not be recharged:
  - (a) Stormwater from areas of high pollutant loading. High pollutant loading areas are areas in industrial and commercial developments where solvents and/or petroleum products are loaded/unloaded, stored, or applied, areas where pesticides are loaded/unloaded or stored; areas where hazardous materials are expected to be present in greater than “reportable quantities” as defined by the United States Environmental Protection Agency (EPA) at 40 CFR 302.4; areas where recharge would be inconsistent with Department approved remedial action work plan or landfill closure plan and areas with high risks for spills of toxic materials, such as gas stations and vehicle maintenance facilities; and
  - (b) Industrial stormwater exposed to “source material.” “Source material” means any material(s) or machinery, located at an industrial facility, that is directly or indirectly related to process, manufacturing or other industrial activities, which could be a source of pollutants in any industrial stormwater discharge to groundwater. Source materials include, but are not limited to, raw materials; intermediate products; final products; waste materials; by-products; industrial machinery and fuels, and lubricants, solvents, and detergents that are related to process, manufacturing, or other industrial activities that are exposed to stormwater.
  - (c) Carbonate Rock Areas, where surficial or subsurface karst features have been identified and recharge facilities cannot be designed in a manner that would eliminate the concentrated subsurface release of stormwater. (Note: the mere presence of carbonate bedrock does not constitute a karst feature).
- (7) Mitigation Required for Non-Exempt Projects: In lieu of onsite recharge, the applicant shall be responsible for providing mitigation of the groundwater recharge volume in the required amount. The applicant should provide mitigation within the following areas, in order of priority:
  - (a) the same development site where feasible;
  - (b) the same HUC14 subwatershed, or
  - (c) an interrelated HUC14 subwatershed where no feasible option exists in the same HUC14 subwatershed.

If none of the above options are feasible or achievable, then the applicant shall comply with the mitigation requirements set forth in paragraph (8) below:

- (8) Mitigation Required for Non-Exempt Projects: A waiver from strict compliance with the requirements of the Municipal Stormwater ordinance shall be approved by the municipality only in those cases where an applicant has demonstrated the inability to strictly comply with any standard of the municipal stormwater ordinance. A waiver from strict compliance for such projects can only be obtained if the applicant agrees to undertake a suitable mitigation measure identified in the mitigation section of the municipality’s Stormwater Management Plan. In such cases, the applicant must submit a mitigation plan detailing how the project’s failure to strictly comply will be compensated. In cases where a waiver is granted, an applicant should provide mitigation, if possible and/or practical, within the same drainage area within which the subject project is proposed, or

contribute funding toward a municipal stormwater control project, or provide for equivalent treatment at an alternate location, or provide for another equivalent water quality benefit, in lieu of implementing the required stormwater control measures on their specific site.

Q. Stormwater Runoff Quality Standard.

- (1) This subsection contains the minimum design and performance standards to control stormwater runoff quality impacts of major development. Stormwater runoff quality standards are applicable when the major development results in an increase of one-quarter acre or more of regulated motor vehicle surface.
- (2) Stormwater management measures shall be designed to reduce the postconstruction load of total suspended solids (TSS) in stormwater runoff generated from the water quality design storm as follows:
  - (a) Eighty (80%) percent TSS removal of the anticipated load, expressed as an annual average shall be achieved for the stormwater runoff from the net increase of motor vehicle surface.
  - (b) If the surface is considered regulated motor vehicle surface because the water quality treatment for an area of motor vehicle surface that is currently receiving water quality treatment either by vegetation or soil, by an existing stormwater management measure, or by treatment at a wastewater treatment plant is to be modified or removed, the project shall maintain or increase the existing TSS removal of the anticipated load expressed as an annual average.
- (3) The requirement to reduce TSS does not apply to any stormwater runoff in a discharge regulated under a numeric effluent limitation for TSS imposed under the New Jersey Pollutant Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A, or in a discharge specifically exempt under a NJPDES permit from this requirement. Every major development, including any that discharge into a combined sewer system, shall comply with 2 above, unless the major development is itself subject to a NJPDES permit with a numeric effluent limitation for TSS or the NJPDES permit to which the major development is subject exempts the development from a numeric effluent limitation for TSS.
- (4) The water quality design storm is 1.25 inches of rainfall in two hours. Water quality calculations shall take into account the distribution of rain from the water quality design storm, as reflected in Table 4, below. The calculation of the volume of runoff may take into account the implementation of stormwater management measures.

**Table 4 - Water Quality Design Storm Distribution**

Time (Minutes)	Cumulative Rainfall (Inches)	Time (Minutes)	Cumulative Rainfall (Inches)	Time (Minutes)	Cumulative Rainfall (Inches)
1	0.00166	41	0.1728	81	1.0906
2	0.00332	42	0.1796	82	1.0972
3	0.00498	43	0.1864	83	1.1038
4	0.00664	44	0.1932	84	1.1104
5	0.00830	45	0.2000	85	1.1170
6	0.00996	46	0.2117	86	1.1236
7	0.01162	47	0.2233	87	1.1302
8	0.01328	48	0.2350	88	1.1368
9	0.01494	49	0.2466	89	1.1434
10	0.01660	50	0.2583	90	1.1500
11	0.01828	51	0.2783	91	1.1550
12	0.01996	52	0.2983	92	1.1600
13	0.02164	53	0.3183	93	1.1650
14	0.02332	54	0.3383	94	1.1700
15	0.02500	55	0.3583	95	1.1750
16	0.03000	56	0.4116	96	1.1800
17	0.03500	57	0.4650	97	1.1850
18	0.04000	58	0.5183	98	1.1900
19	0.04500	59	0.5717	99	1.1950
20	0.05000	60	0.6250	100	1.2000
21	0.05500	61	0.6783	101	1.2050
22	0.06000	62	0.7317	102	1.2100
23	0.06500	63	0.7850	103	1.2150
24	0.07000	64	0.8384	104	1.2200
25	0.07500	65	0.8917	105	1.2250
26	0.08000	66	0.9117	106	1.2267
27	0.08500	67	0.9317	107	1.2284
28	0.09000	68	0.9517	108	1.2300
29	0.09500	69	0.9717	109	1.2317
30	0.10000	70	0.9917	110	1.2334
31	0.10660	71	1.0034	111	1.2351
32	0.11320	72	1.0150	112	1.2367
33	0.11980	73	1.0267	113	1.2384
34	0.12640	74	1.0383	114	1.2400
35	0.13300	75	1.0500	115	1.2417
36	0.13960	76	1.0568	116	1.2434
37	0.14620	77	1.0636	117	1.2450
38	0.15280	78	1.0704	118	1.2467
39	0.15940	79	1.0772	119	1.2483
40	0.16600	80	1.0840	120	1.2500

- (5) If more than one BMP in series is necessary to achieve the required 80 percent TSS reduction for a site, the applicant shall utilize the following formula to calculate TSS reduction:

$$R = A + B - (A \times B) / 100,$$

Where

R = total TSS Percent Load Removal from application of both BMPs, and

A = the TSS Percent Removal Rate applicable to the first BMP

B = the TSS Percent Removal Rate applicable to the second BMP.

- (6) Stormwater management measures shall also be designed to reduce, to the maximum extent feasible, the post-construction nutrient load of the anticipated load from the developed site in stormwater runoff generated from the water quality design storm. In achieving reduction of nutrients to the maximum extent feasible, the design of the site shall include green infrastructure BMPs that optimize nutrient removal while still achieving the performance standards in **§165-226** subsections P, Q and R.
- (7) In accordance with the definition of FW1 at N.J.A.C. 7:9B-1.4, stormwater management measures shall be designed to prevent any increase in stormwater runoff to waters classified as FW1.
- (8) The Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-4.1(c)1 establish 300-foot riparian zones along Category One waters, as designated in the Surface Water Quality Standards at N.J.A.C. 7:9B, and certain upstream tributaries to Category One waters. A person shall not undertake a major development that is located within or discharges into a 300-foot riparian zone without prior authorization from the Department under N.J.A.C. 7:13.
- (9) Pursuant to the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-11.2(j)3.i, runoff from the water quality design storm that is discharged within a 300-foot riparian zone shall be treated in accordance with this subsection to reduce the postconstruction load of total suspended solids by 95 percent of the anticipated load from the developed site, expressed as an annual average.
- (10) These stormwater runoff quality standards do not apply to the construction of one individual single-family dwelling, provided that it is not part of a larger development or subdivision that has received preliminary or final site plan approval prior to December 3, 2018, and that the motor vehicle surfaces are made of permeable material(s) such as gravel, dirt, and/or shells.

#### R. Stormwater Runoff Quantity Standards.

- (1) This subsection contains the minimum design and performance standards to control stormwater runoff quantity impacts of major development.
- (2) In order to control stormwater runoff quantity impacts, the design engineer shall, using the assumptions and factors for stormwater runoff calculations at **§165-227**, complete one of the following:
- (a) Demonstrate through hydrologic and hydraulic analysis that for stormwater leaving the site, post-construction runoff hydrographs for the 2-, 10-, and 100- year storm events do not exceed, at any point in time, the pre-construction runoff hydrographs for the same storm events;
- (b) Demonstrate through hydrologic and hydraulic analysis that there is no increase, as compared to the pre-construction condition, in the peak runoff rates of stormwater leaving the site for the 2-, 10- and 100-year storm events and that the increased volume or change in timing of stormwater runoff will not increase flood damage at or downstream of the site. This analysis shall include the analysis of impacts of existing land uses and projected land uses assuming full development under existing zoning and land use ordinances in the drainage area;
- (c) Design stormwater management measures so that the post-construction peak runoff rates for the 2-, 10- and 100-year storm events are 50, 75 and 80 percent, respectively, of the pre-construction peak runoff rates. The percentages apply only to the post-construction stormwater

runoff that is attributable to the portion of the site on which the proposed development or project is to be constructed; or

- (d) In tidal flood hazard areas, stormwater runoff quantity analysis in accordance with paragraphs (2)(a), (b), and (c) above is required unless the design engineer demonstrates through hydrologic and hydraulic analysis that the increased volume, change in timing, or increased rate of the stormwater runoff, or any combination of the three will not result in additional flood damage below the point of discharge of the major development. No analysis is required if the stormwater is discharged directly into any ocean, bay, inlet, or the reach of any watercourse between its confluence with an ocean, bay, or inlet and downstream of the first water control structure.
- (3) The stormwater runoff quantity standards shall be applied at the site's boundary to each abutting lot, roadway, watercourse, or receiving storm sewer system.

### **§165-227 Calculation of Stormwater Runoff and Groundwater Recharge.**

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

(1) The design engineer shall calculate runoff using one of the following methods:

- (a) The USDA Natural Resources Conservation Service (NRCS) methodology, including the NRCS Runoff Equation and Dimensionless Unit Hydrograph, as described in Chapters 7, 9, 10, 15 and 16 Part 630, Hydrology National Engineering Handbook, incorporated herein by reference as amended and supplemented. This methodology is additionally described in Technical Release 55 - Urban Hydrology for Small Watersheds (TR-55), dated June 1986, incorporated herein by reference as amended and supplemented. Information regarding the methodology is available from the Natural Resources Conservation Service website at:

[https://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1044171.pdf](https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1044171.pdf)

or at United States Department of Agriculture Natural Resources Conservation Service, 220 Davison Avenue, Somerset, New Jersey 08873; or

- (b) The Rational Method for peak flow and the Modified Rational Method for hydrograph computations. The rational and modified rational methods are described in "Appendix A-9 Modified Rational Method" in the Standards for Soil Erosion and Sediment Control in New Jersey, January 2014. This document is available from the State Soil Conservation Committee or any of the Soil Conservation Districts listed at N.J.A.C. 2:90-1.3(a)3. The location, address, and telephone number for each Soil Conservation District is available from the State Soil Conservation Committee, PO Box 330, Trenton, New Jersey 08625. The document is also available at:

<https://www.nj.gov/agriculture/divisions/anr/pdf/2014NJSoilErosionControlStandardsComplete.pdf>

- (2) For the purpose of calculating runoff coefficients and groundwater recharge, there is a presumption that the pre-construction condition of a site or portion thereof is a wooded land use with good hydrologic condition. The term "runoff coefficient" applies to both the NRCS methodology above at §165-227. A.(1)(b) and the Rational and Modified Rational Methods at §165-227. A.(1)(b). A runoff coefficient or a groundwater recharge land cover for an existing condition may be used on all or a portion of the site if the design engineer verifies that the hydrologic condition has existed on the site or portion of the site for at least five years without interruption prior to the time of application. If more than one land cover has existed on the site during the five years immediately prior to the time of application, the land cover with the lowest runoff potential shall be used for the computations. In addition, there is the presumption that the site is in good hydrologic condition (if the land use type is pasture, lawn, or park), with good cover (if the land use type is woods), or with good hydrologic condition and conservation treatment (if the land use type is cultivation).

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

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

The New Jersey Geological Survey Report GSR-32, A Method for Evaluating Groundwater-Recharge Areas in New Jersey, incorporated herein by reference as amended and supplemented. Information regarding the methodology is available from the New Jersey Stormwater Best Management Practices Manual; at the New Jersey Geological Survey website at:

<https://www.nj.gov/dep/njgs/pricelst/greport/gsr32.pdf>

or at New Jersey Geological and Water Survey, 29 Arctic Parkway, PO Box 420 Mail Code 29-01, Trenton, New Jersey 08625-0420.

**§165-228 Sources for Technical Guidance:**

A. Technical guidance for stormwater management measures can be found in the documents listed below, which are available to download from the Department’s website at:

[http://www.nj.gov/dep/stormwater/bmp\\_manual2.htm](http://www.nj.gov/dep/stormwater/bmp_manual2.htm).

- (1) Guidelines for stormwater management measures are contained in the New Jersey Stormwater Best Management Practices Manual, as amended and supplemented. Information is provided on stormwater management measures such as, but not limited to, those listed in Tables 1, 2, and 3.

- (2) Additional maintenance guidance is available on the Department’s website at:

[https://www.njstormwater.org/maintenance\\_guidance.htm](https://www.njstormwater.org/maintenance_guidance.htm).

B. Submissions required for review by the Department should be mailed to:

The Division of Water Quality, New Jersey Department of Environmental Protection, Mail Code 401-02B, PO Box 420, Trenton, New Jersey 08625-0420.

**§165-229 Solids and Floatable Materials Control Standards:**

A. Site design features identified under **§165-226**, F above, or alternative designs in accordance with **§165-226**, G above, to prevent discharge of trash and debris from drainage systems shall comply with the following standard to control passage of solid and floatable materials through storm drain inlets. For purposes of this paragraph, “solid and floatable materials” means sediment, debris, trash, and other floating, suspended, or settleable solids. For exemptions to this standard see **§165-229**, A.(2) below.

- (1) Design engineers shall use one of the following grates whenever they use a grate in pavement or another ground surface to collect stormwater from that surface into a storm drain or surface water body under that grate:

- (a) The New Jersey Department of Transportation (NJDOT) bicycle safe grate, which is described in Chapter 2.4 of the NJDOT Bicycle Compatible Roadways and Bikeways Planning and Design Guidelines; or

- (b) A different grate, if each individual clear space in that grate has an area of no more than seven (7.0) square inches, or is no greater than 0.5 inches across the smallest dimension.

Examples of grates subject to this standard include grates in grate inlets, the grate portion (non-curb-opening portion) of combination inlets, grates on storm sewer manholes, ditch grates, trench grates, and grates of spacer bars in slotted drains. Examples of ground surfaces include surfaces of roads (including bridges), driveways, parking areas, bikeways, plazas, sidewalks, lawns, fields, open channels, and stormwater system floors used to collect stormwater from the surface into a storm drain or surface water body.

- (c) For curb-opening inlets, including curb-opening inlets in combination inlets, the clear space in that curb opening, or each individual clear space if the curb opening has two or more clear spaces, shall have an area of no more than seven (7.0) square inches, or be no greater than two (2.0) inches across the smallest dimension.

(2) The standard in **§165-229**. A.(1) above does not apply:

- (a) Where each individual clear space in the curb opening in existing curb-opening inlet does not have an area of more than nine (9.0) square inches;
- (b) Where the municipality agrees that the standards would cause inadequate hydraulic performance that could not practicably be overcome by using additional or larger storm drain inlets;
- (c) Where flows from the water quality design storm as specified in N.J.A.C. 7:8 are conveyed through any device (e.g., end of pipe netting facility, manufactured treatment device, or a catch basin hood) that is designed, at a minimum, to prevent delivery of all solid and floatable materials that could not pass through one of the following:

- [1] A rectangular space four and five-eighths (4.625) inches long and one and one-half (1.5) inches wide (this option does not apply for outfall netting facilities); or
- [2] A bar screen having a bar spacing of 0.5 inches.

Note that these exemptions do not authorize any infringement of requirements in the Residential Site Improvement Standards for bicycle safe grates in new residential development (N.J.A.C. 5:21-4.18(b)2 and 7.4(b)1).

- (d) Where flows are conveyed through a trash rack that has parallel bars with one inch (1 inch) spacing between the bars, to the elevation of the Water Quality Design Storm as specified in N.J.A.C. 7:8; or
- (e) Where the New Jersey Department of Environmental Protection determines, pursuant to the New Jersey Register of Historic Places Rules at N.J.A.C. 7:4- 7.2(c), that action to meet this standard is an undertaking that constitutes an encroachment or will damage or destroy the New Jersey Register listed historic property.

### **§165-230 Safety Standards for Stormwater Management Basins:**

- A. This section sets forth requirements to protect public safety through the proper design and operation of stormwater management BMPs. This section applies to any new stormwater management BMP.
- B. The provisions of this section are not intended to preempt more stringent municipal or county safety requirements for new or existing stormwater management BMPs. Municipal and county stormwater management plans and ordinances may, pursuant to their authority, require existing stormwater management BMPs to be retrofitted to meet one or more of the safety standards in **§165-230**. C.(1), C.(2), and C.(3) for trash racks, overflow grates, and escape provisions at outlet structures.
- C. Requirements for Trash Racks, Overflow Grates and Escape Provisions

- (1) A trash rack is a device designed to catch trash and debris and prevent the clogging of outlet structures. Trash racks shall be installed at the intake to the outlet from the Stormwater

management BMP to ensure proper functioning of the BMP outlets in accordance with the following:

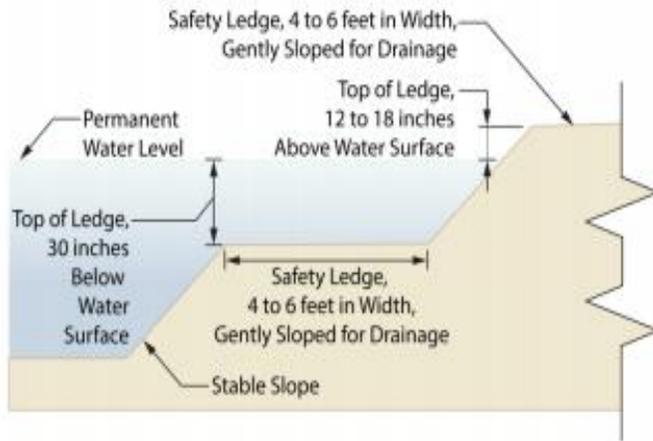
- (a) The trash rack shall have parallel bars, with no greater than six-inch spacing between the bars;
  - (b) The trash rack shall be designed so as not to adversely affect the hydraulic performance of the outlet pipe or structure;
  - (c) The average velocity of flow through a clean trash rack is not to exceed 2.5 feet per second under the full range of stage and discharge. Velocity is to be computed on the basis of the net area of opening through the rack; and
  - (d) The trash rack shall be constructed of rigid, durable, and corrosion resistant material and designed to withstand a perpendicular live loading of 300 pounds per square foot.
- (2) An overflow grate is designed to prevent obstruction of the overflow structure. If an outlet structure has an overflow grate, such grate shall meet the following requirements:
- (a) The overflow grate shall be secured to the outlet structure but removable for emergencies and maintenance.
  - (b) The overflow grate spacing shall be no less than two inches across the smallest dimension.
  - (c) The overflow grate shall be constructed and installed to be rigid, durable, and corrosion resistant, and shall be designed to withstand a perpendicular live loading of 300 pounds per square foot.
- (3) Stormwater management BMPs shall include escape provisions as follows:
- (a) If a stormwater management BMP has an outlet structure, escape provisions shall be incorporated in or on the structure. Escape provisions include the installation of permanent ladders, steps, rungs, or other features that provide easily accessible means of egress from stormwater management BMPs. With the prior approval of the municipality pursuant to **§165-230. C**, a free-standing outlet structure may be exempted from this requirement;
  - (b) Safety ledges shall be constructed on the slopes of all new stormwater management BMPs having a permanent pool of water deeper than two and one-half feet. Safety ledges shall be comprised of two steps. Each step shall be four to six feet in width. One step shall be located approximately two and one-half feet below the permanent water surface, and the second step shall be located one to one and one-half feet above the permanent water surface. See **§165-230. E** for an illustration of safety ledges in a stormwater management BMP; and.
  - (c) In new stormwater management BMPs, the maximum interior slope for an earthen dam, embankment, or berm shall not be steeper than three-horizontal to one-vertical (3:1).

#### D. Exemption from Safety Standard

An exemption from the safety standards for stormwater management BMPs may be granted only upon a written finding by the municipality that the variance or exemption will not constitute a threat to public safety.

#### E. Safety Ledge Illustration

Elevation View –Basin Safety Ledge Configuration



NOTE:  
Only For Basins with Permanent Pool of Water

Not to Scale

### §165-231 Requirements for a Site Development Stormwater Plan

#### A. Submission of Site Development Stormwater Plan

- (1) Whenever an applicant seeks municipal approval of a development subject to this chapter, the applicant shall submit all of the required components of the Checklist for the Site Development Stormwater Plan at §165-231. C below as part of the submission of the application for approval.
- (2) The applicant shall demonstrate that the project meets the standards set forth in this chapter.
- (3) The applicant shall submit a PDF and 4 copies of the materials listed in the checklist for site development stormwater plans in accordance with §165-231. C of this chapter.

#### B. Site Development Stormwater Plan Approval

The applicant's Site Development project shall be reviewed as a part of the review process by the municipal board or official from which municipal approval is sought. That municipal board or official shall consult the municipality's review engineer to determine if all of the checklist requirements have been satisfied and to determine if the project meets the standards set forth in this chapter.

#### C. Submission of Site Development Stormwater Plan

The following information shall be required:

- (1) Topographic Base Map: The reviewing engineer may require upstream tributary drainage system information as necessary. It is recommended that the topographic base map of the site be submitted which extends a minimum of 200 feet beyond the limits of the proposed development, at a scale of 1"=200' or greater, showing 2-foot contour intervals. The map as appropriate may indicate the following: existing surface water drainage, shorelines, steep slopes, soils, erodible soils, perennial or intermittent streams that drain into or upstream of the Category One waters, wetlands and flood plains along with their appropriate buffer strips, marshlands and other wetlands, pervious or vegetative surfaces, existing man-made structures, roads, bearing and distances of property lines, and significant natural and manmade features not otherwise shown.
- (2) Environmental Site Analysis: A written and graphic description of the natural and man-made features of the site and its surroundings should be submitted. This description should include a discussion of soil conditions, slopes, wetlands, waterways and vegetation on the site. Particular attention should be given to unique, unusual, or environmentally sensitive features and to those that provide particular opportunities or constraints for development.
- (3) Project Description and Site Plans: A map (or maps) at the scale of the topographical base map indicating the location of existing and proposed buildings roads, parking areas, utilities, structural

facilities for stormwater management and sediment control, and other permanent structures. The map(s) shall also clearly show areas where alterations will occur in the natural terrain and cover, including lawns and other landscaping, and seasonal high groundwater elevations. A written description of the site plan and justification for proposed changes in natural conditions shall also be provided.

- (4) Land Use Planning and Source Control Plan: This plan shall provide a demonstration of how the goals and standards of **§165-225**, through of **§165-227**, are being met. The focus of this plan shall be to describe how the site is being developed to meet the objective of controlling groundwater recharge, stormwater quality and stormwater quantity problems at the source by land management and source controls whenever possible.
- (5) Stormwater Management Facilities Map: The following information, illustrated on a map of the same scale as the topographic base map, shall be included:
  - (a) Total area to be disturbed, paved or built upon, proposed surface contours, land area to be occupied by the stormwater management facilities and the type of vegetation thereon, and details of the proposed plan to control and dispose of stormwater.
  - (b) Details of all stormwater management facility designs, during and after construction, including discharge provisions, discharge capacity for each outlet at different levels of detention and emergency spillway provisions with maximum discharge capacity of each spillway.
- (6) Calculations:
  - (a) Comprehensive hydrologic and hydraulic design calculations for the predevelopment and post-development conditions for the design storms specified in **§165-226**, of this chapter.
  - (b) When the proposed stormwater management control measures depend on the hydrologic properties of soils or require certain separation from the seasonal high-water table, then a soils report shall be submitted. The soils report shall be based on onsite boring logs or soil pit profiles. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soils present at the location of the control measure.
- (7) Maintenance and Repair Plan: The design and planning of the stormwater management facility shall meet the maintenance requirements of **§165-232**.
- (8) Waiver from Submission Requirements: The municipal official or board reviewing an application under this chapter may, in consultation with the municipality's review engineer, waive submission of any of the requirements in **§165-231**, C.(1) through C.(6) of this chapter when it can be demonstrated that the information requested is impossible to obtain or it would create a hardship on the applicant to obtain and its absence will not materially affect the review process.

#### **§165-232 Maintenance and Repair:**

- A. Applicability: Projects subject to review as in **§165-223**, C of this chapter shall comply with the requirements of **§165-232**, B and C.
- B. General Maintenance
  - (1) The design engineer shall prepare a maintenance plan for the stormwater management measures incorporated into the design of a major development.
  - (2) The maintenance plan shall contain specific preventative maintenance tasks and schedules; cost estimates, including estimated cost of sediment, debris, or trash removal; and the name, address, and telephone number of the person or persons responsible for preventative and corrective maintenance (including replacement). The plan shall contain information on BMP location, design, ownership, maintenance tasks and frequencies, and other details as specified in Chapter 8 of the NJ BMP Manual, as well as the tasks specific to the type of BMP, as described in the applicable chapter containing design specifics.

- (3) If the maintenance plan identifies a person other than the property owner (for example, a developer, a public agency or homeowners' association) as having the responsibility for maintenance, the plan shall include documentation of such person's or entity's agreement to assume this responsibility, or of the owner's obligation to dedicate a stormwater management facility to such person under an applicable ordinance or regulation.
- (4) Responsibility for maintenance shall not be assigned or transferred to the owner or tenant of an individual property in a residential development or project, unless such owner or tenant owns or leases the entire residential development or project. The individual property owner may be assigned incidental tasks, such as weeding of a green infrastructure BMP, provided the individual agrees to assume these tasks; however, the individual cannot be legally responsible for all of the maintenance required.
- (5) If the party responsible for maintenance identified under §165-232. B.(3) above is not a public agency, the maintenance plan and any future revisions based on §165-232. B.(7) below shall be recorded upon the deed of record for each property on which the maintenance described in the maintenance plan must be undertaken.
- (6) Preventative and corrective maintenance shall be performed to maintain the functional parameters (storage volume, infiltration rates, inflow/outflow capacity, etc.) of the stormwater management measure, including, but not limited to, repairs or replacement to the structure; removal of sediment, debris, or trash; restoration of eroded areas; snow and ice removal; fence repair or replacement; restoration of vegetation; and repair or replacement of non-vegetated linings.
- (7) The party responsible for maintenance identified under §165-232. B.(3) above shall perform all of the following requirements:
  - (a) Maintain a detailed log of all preventative and corrective maintenance for the structural stormwater management measures incorporated into the design of the development, including a record of all inspections and copies of all maintenance-related work orders;
  - (b) Evaluate the effectiveness of the maintenance plan at least once per year and adjust the plan and the deed as needed; and
  - (c) Retain and make available, upon request by any public entity with administrative, health, environmental, or safety authority over the site, the maintenance plan and the documentation required by §165-232. B.(6) and B.(7) above.
- (8) A two-year maintenance guarantee in accordance with N.J.S.A. 40:55D-53, shall be posted. Maintenance and inspection guidance can be found on the Department's website at: [https://www.njstormwater.org/maintenance\\_guidance.htm](https://www.njstormwater.org/maintenance_guidance.htm)
- (9) In the event that the stormwater management facility becomes a danger to public safety or public health, or if it is in need of maintenance or repair, the municipality shall so notify the responsible person in writing. Upon receipt of that notice, the responsible person shall have fourteen (14) days to effect maintenance and repair of the facility in a manner that is approved by the municipal engineer or his designee. The municipality, in its discretion, may extend the time allowed for effecting maintenance and repair for good cause. If the responsible person fails or refuses to perform such maintenance and repair, the municipality or County may immediately proceed to do so and shall bill the cost thereof to the responsible person. Nonpayment of such bill may result in a lien on the property.

C. Nothing in this subsection shall preclude the municipality in which the major development is located from requiring the posting of a performance or maintenance guarantee in accordance with N.J.S.A. 40:55D-53.

### **§165-233 Penalties**

Any person(s) who erects, constructs, alters, repairs, converts, maintains, or uses any building, structure or land in violation of this chapter shall be in accordance with §165-263.

## **§165-234 Application and Escrow Fees**

- A. Application and escrow fees shall be in accordance with **§165-13**.
- B. Stormwater Management Review Applications to the Borough Engineer shall be accompanied by a review escrow in accordance with **§165-13.H**. If a development project reviewed pursuant to this section is approved by the Borough Engineer, an initial inspection escrow deposit shall be made in an accordance with **§165-13.H**.

## **SECTION 2. Severability.**

The various parts, sections, and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

## **SECTION 3. Repealer.**

Any Ordinances or parts thereof in conflict with the provisions of these Ordinance are hereby repealed as to their inconsistencies only.

## **SECTION 4. Effective Date.**

This Ordinance shall take effect upon final adoption and publication in accordance with the law.

§ 165-235 - 248 (**RESERVED**).

# Part 9 **Soil Regulations**

## Article XXXVII **Soil and Soil Removal**

### **§ 165-249 Purposes.**

This article is deemed essential and necessary to protect the public health, safety and welfare of the citizens of Lebanon Borough and the surrounding communities by accomplishing the following purposes:

- A. Maintain the useful life of reservoirs by preventing sedimentation.
- B. Prevent dangers to life and property from flooding resulting from excessive water runoff and clogging of drainage structures.
- C. Preserve the recreational use of water bodies for swimming and fishing by preventing stagnation.
- D. Enhance the recycling of wastewater by maintaining sufficient flows in streams and rivers to maintain oxygen levels.
- E. Prevent toxic materials, nitrates and pesticides from entering public water supplies.
- F. Reduce public expenditures for repair of public facilities resulting from soil erosion and sedimentation.
- G. Conserve the taxable value of property by enhancing the environmental character of the Borough

### **§ 165-250 Definitions.**

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

### **AS-BUILT SOIL DISTURBANCE AND GRADING PLAN**

A plan in accordance with the broad principles contained within this article which shows the constructed

location and elevation of the structure, driveway and grade.

**CUT**

The portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to excavated surface.

**DIVERSION**

A channel with or without a supporting ridge on the lower side, constructed across or at the bottom of a slope.

**EMBANKMENT**

A man-made deposit of soil, rock or other material.

**EROSION**

The wearing away of the land surface by the action of wind, water or gravity.

**EXCAVATION**

See "cut."

**EXISTING GRADE**

The vertical location (i.e. elevation) of the existing ground surface prior to cutting or filling.

**FILL**

See "embankment."

**FINISHED GRADE**

The final elevation of the ground surface conforming to the proposed design.

**FOUNDATION PLAN/LOCATION SURVEY**

A plan developed in accordance with the broad principles contained within this article which is to be submitted to the Borough Official designated by the Borough Administrator for distribution to the Borough Engineer and Zoning Officer for review and approval once the foundation is complete and prior to proceeding with the framing of the structure.

**GRADING**

Any stripping, cutting, filling, stockpiling or any combination thereof.

**GRADING PERMIT**

A permit issued to authorize work to be performed under this article as shown on the approved soil disturbance and grading plan.

**GRASSED WATERWAY**

A natural or constructed path, usually broad and shallow, covered with erosion-resistant grasses, used to conduct surface water from a field, diversion or other site feature.

**INDIVIDUAL STORMWATER MANAGEMENT**

One or more underground recharge system(s) designed to contain the increased surface water associated with the proposed impervious coverage during a two-year storm.

**MULCHING**

The application of plant or other suitable materials on the soil surface to conserve moisture, hold soil in place and aid in establishing plant cover.

**NATURAL GROUND SURFACE**

The ground surface in its original state before any grading, excavation or filling.

**PERMANENT FINAL PLANT COVER**

Final grade in compliance with approved plan with established vegetative cover over 95% of the disturbed area.

**SEDIMENT**

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

**SLOPE**

The degree of deviation of a surface from the horizontal plane, usually expressed in percent or degree.

**SOIL**

All unconsolidated mineral and organic material of whatever origin that overlies bedrock and which can be readily excavated.

**SOIL DISTURBANCE AND GRADING PLAN**

A plan developed in accordance with the broad principles contained in this article and based on the specific standards and specifications of the Standards for Soil Erosion and Sediment Control in New Jersey, as promulgated by the State Soil Conservation Committee. Individual stormwater management must be provided if the surface water runoff associated with the increased impervious coverage is not accounted for in the overall subdivision approval. The soil disturbance and grading plan must comply with all applicable conditions of any prior subdivision approval.

**STRIPPING**

Any activity, which removes or disturbs the vegetative surface cover, including clearing and grubbing operations.

**TEMPORARY PROTECTION**

Shall be in accordance with standards for Soil Erosion and Sediment Control in New Jersey.

**TOPSOIL**

Native material stripped from the site (minimum organic content of not less than 2.75% by weight) containing no stones, lumps, roots or similar objects larger than two inches in any dimension and not less than a 5.8 pH value.

**UNDERGROUND RECHARGE SYSTEM(S)**

Shall consist of infiltration tanks and clean stone, not recharge trenches. The bottom of the tanks shall be a minimum of three feet above the seasonal groundwater table or bedrock. The underground recharge system must be a minimum of 20 feet from any building foundation and 100 feet from any septic system. The surrounding soils must have a soil infiltration rate of 0.5 inches per hour or greater. An overflow system shall be provided that connects to the nearest surface drainage facility of adequate hydraulic capacity or discharges away from all structures and septic systems.

**VEGETATIVE PROTECTION**

Stabilization of erosive or sediment-producing areas by covering the soil with:

- A. Permanent seeding, producing long-term vegetative cover;
- B. Short-term seeding, producing temporary vegetative cover; or

- C. Sodding, producing areas covered with a turf of perennial sod-forming grass.

## **WATERCOURSE**

Any natural or artificial waterway, stream, river, creek, ditch, channel, canal, conduit, culvert, drain waterway, gully, ravine or wash in which water flows in a definite direction or course, either continuously or intermittently, and which has a definite channel bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or floodwater.

### **§ 165-251 Soil disturbance and grading plan required; applicability; exemptions.**

- A. A soil disturbance and grading plan shall be reviewed and approved by the Borough Engineer in accordance with regulations set forth hereinafter and on behalf of the Borough for any project, not subject to review by the Land Use Board, causing either a grade change greater than 2%, or a soil disturbance (alteration of topography or change in vegetative cover) of more than 2,500 square feet of surface area of land for any of the following reasons: the accommodation of construction for which the State Uniform Construction Code would require a construction permit including the construction of a single-family dwelling unit; the demolition of one or more structures; the operation of any mining or quarry activity; or the clearing or grading of any land for other than agricultural or horticultural purposes. A building permit shall not be issued by the Construction Official until approval of a soil disturbance and grading plan is received from the Borough Engineer.
- B. This article is not applicable to soil disturbance associated with site improvements defined in a Land Use Board approved site plan or subdivision.
- C. Soil disturbance in excess of 2,500 square feet associated with a swimming pool, septic system modification or driveway modification shall also require approval of a soil disturbance and grading plan in accordance with this article. A foundation plan/location survey and as-built soil disturbance and grading plan shall not be required for a swimming pool.
- D. A soil disturbance for crop farming purposes shall be exempt from this article, provided that farming is carried out in accordance with a farm conservation plan and Natural Resources Conservation Services land practices and the Borough Engineer deems exempt based on information submitted. A copy of the NRCS approval and approved plan must be submitted to the Borough official designated by the Borough Administrator for distribution to the Borough Engineer for the activities to be considered exempt.
- E. Planting beds for commercial nursery stock shall not be exempt from this article.

### **§ 165-252 Procedures.**

- A. The applicant shall submit four signed and sealed copies of the soil disturbance and grading plan prepared by a licensed professional engineer in the State of New Jersey to the Borough official designated by the Borough Administrator. The plan shall be drawn at a minimum scale of one inch equals 30 feet and should show the following:
  - (1) Existing grades;
  - (2) Proposed grading around the building site;
  - (3) Proposed building location, including dimensional ties from the building to the property lines, adjacent buildings, tract lines, etc.;
  - (4) Spot elevations and flow arrows;
  - (5) Location of the proposed septic system and driveway, including the materials of construction and grade of the driveway;

- (6) Calculations of the storage capacity of the recharge system versus the increased surface water associated with the impervious coverage;
  - (7) Seed mixture of 40% turf-type tall fescue, 10% creeping red fescue, 10% chewing fescue, 10% Kentucky bluegrass, and 30% turf-type perennial rye grass or a mixture of 60% of Kentucky bluegrass, 20% turf-type perennial ryegrass and 20% chewing fescue shall be identified. The seed mixture shall be applied at a rate of 200 pounds per acre during optimal seeding period from March 1 to May 15 and August 15 to October 1. Outside the optimal seeding period the seeding rate shall be increased by 50%;
  - (8) Proposed limit of tree clearing;
  - (9) Soil erosion and control devices;
  - (10) Proposed finished floor elevation;
  - (11) Top of foundation elevation for the structure; and
  - (12) The controlling floodplain elevation for the site.
- B. The applicant shall be provided with written notice, from the Borough official designated by the Borough Administrator, within five business days of submission that:
- (1) The plan was approved; or
  - (2) The plan was approved subject to the attached conditions; or
  - (3) The plan was denied approval with the reasons for denial stated therein.
- C. Following Borough approval of the soil disturbance and grading plan, a grading permit will be issued. Upon issuance of the grading permit and receipt of a building permit (if applicable), soil disturbance activities may begin. The extent of soil disturbance should be minimized whenever possible. Careful attention should be made to any and all conservation easements on the property and Borough owned structures. An example of a grading permit is attached to this article.
- D. Foundation plan/location survey.
- (1) The applicant shall provide three copies of the foundation plan/location survey to the Borough official designated by the Borough Administrator showing the actual location of the foundation as constructed prior to proceeding with the framing of the structure. The applicant's surveyor shall certify the building tie dimensions to determine compliance with all of the specific zoning regulations, including relationship between buildings. The certified survey should show:
    - (a) As-built elevations of the top of foundation;
    - (b) Minimum required floodplain elevation; and
    - (c) The dimensions from building to property lines.
  - (2) One of the three copies of the foundation plan/location survey will be forwarded to the Zoning Officer to confirm continued compliance with setbacks as defined by the Zoning Ordinance or action taken by the Land Use Board with any subdivision approval. The second copy will be forwarded to the Borough Engineer to confirm compliance with the approved soil disturbance and grading plan and the requirements of this article. An example of a foundation plan/location survey review form is attached to this section.

- E. In the event of any proposed change in the approved soil disturbance and grading plan, a revised plan must be submitted for review and approval by the Borough when the foundation plan/location survey is submitted. In the event of a swimming pool, septic system modification or driveway modification, a revised soil disturbance and grading plan will be required prior to the issuance of a certificate of occupancy. The amended plan will be reviewed by the Borough Engineer and a revised grading permit will be issued.
- F. Prior to issuance of the certificate of occupancy, the applicant must submit three copies of the as-built soil disturbance and grading plan to the Borough official designated by the Borough Administrator. This plan must show as-built final grading around the proposed structure and final location survey of the structure and any related driveway, sidewalk, deck or patio improvements that may have been installed. Topsoil, seed and mulch must be spread on the finished grade, and signs of vegetative growth must be present on 80% of the disturbed areas and permanent final plant cover must be present in grassed swales and slopes in excess of 5% prior to issuance of a certificate of occupancy.
- G. Following Borough Engineer inspection of the site conditions versus the approved grading permit, the Borough Engineer will either recommend certificate of occupancy release or not recommend certificate of occupancy release. The applicant will be notified of the Borough Engineer decision via a certificate of occupancy inspection form within three business days of the inspection request made directly to the Borough Engineer by the applicant. An example is attached.
- H. Following complete vegetation of the disturbed area, the Borough Engineer will recommend the release of the performance guarantee. The area of disturbance must have permanent final plant cover for the performance guarantee to be released. An example of the performance bond inspection form is attached.

**§ 165-253 Approval of plan.**

- A. The soil disturbance and grading plan or any major amendment shall be reviewed and approved by the Borough Engineer on behalf of the Borough in the manner and form according to the regulations hereafter set forth. In the case of site plans, such review and approval shall be part of the site plan review process. In all other instances, review and approval or denial shall be made within 10 days of submission of a complete application.
- B. The applicant shall be provided with a written notice of such decision by the Borough Engineer. The Borough, in approving the soil disturbance and grading plan, may impose lawful conditions or requirements designated or specified on or in connection therewith. These conditions and requirements shall be provided and maintained as a condition to the establishment, maintenance, and continuance of any use or occupancy of any structure or land.

**§ 165-254 General standards.**

In the preparation of a soil disturbance and grading plan, the following general principles of design shall be adhered to:

- A. The smallest practical area of land shall be exposed at any one time during development, and when feasible, natural vegetation shall be retained and protected.
- B. Temporary plant cover and/or mulching shall be used to protect critical erosion areas during construction or other disturbance.
- C. Temporary diversions and outlets shall be constructed and/or installed to accommodate the increased runoff caused by the changed soil and surface conditions during development.
- D. Sediment shall be retained on the site to the maximum extent feasible.
- E. Permanent final plant cover (lawn, ground cover, etc.) shall be installed as quickly as possible on any

site but must be installed within 90 days.

- F. Permanent final plant cover must be established in grassed swales and on slopes in excess of 5% prior to issuance of a certificate of occupancy unless weather conditions commonly encountered during winter months (December to March) prohibit vegetative growth. All other areas must have signs of vegetative growth from planted grass seeds on 80% of the disturbed areas prior to issuance of a certificate of occupancy, unless weather conditions identified above exist.
- G. The finished grade around mature trees, which are to remain, should be the same as the existing grade. Tree wells or other means may be necessary to assure the health of existing mature trees upon completion of grading activities.
- H. Permanent final plant cover must be fully established throughout the entire area of disturbance and grading must be per the approved plan prior to the release of any performance guarantees.
- I. The plan shall coordinate with the stormwater management plan approved by the Land Use Board, if part of a major subdivision. Inlets and drainage patterns of the major subdivision must be considered in the preparation of the soil disturbance and grading plan.
- J. All soil disturbance and grading plans must contain individual stormwater detention unless otherwise noted in the resolution of approval for the subdivision. The individual stormwater management system must be able to contain the increased surface water associated with development of the vacant lot for a two-year storm. The construction details of the system must be defined on the plan. The Borough Engineer must be notified of the installation of the system in order to schedule an inspection.
- K. The disturbed area shall have four inches of topsoil spread to finished grade according to the approved soil disturbance and grading plan. The seed mixture shall be incorporated into the top 1/4 inch to 1/2 inch of the topsoil at a rate of 200 pounds per acre. Outside the optional seeding periods of March 1 to May 15 and August 15 to October 1, the rate of seeding shall be increased by 50%. Seedings shall receive an application of fertilizer such as 10-10-10 or equivalent approximately six months after the first application. Straw or hay mulch shall be spread uniformly at a rate of 2 to 2 1/2 tons per acre when vegetative cover can not be established due to the season or other conditions. Jute matting shall be installed in critical drainage swales.
- L. Minimum of 2% slope shall be provided for all overland areas and swales.
- M. No slopes greater than 3:1 shall be created by the proposed land disturbance.
- N. All conditions of the Driveway Ordinance shall be complied with.
- O. A minimum rear yard area must be provided extending 25 feet from the rear of the building for the entire width of the building. The slope must be at least 2% and no greater than 5%.
- P. The individual stormwater management systems must be at least 20 feet from the building foundation and 100 feet from any septic system.
- Q. Landscape retaining walls may be proposed in accordance with the Design Standards and must meet the zoning requirements of an accessory structure.

**§ 165-255 Detailed standards.**

- A. The detailed plans, specifications and standards in any soil disturbance and grading plan shall be dictated by the characteristics of the site to be developed and the nature of the development. All such plans shall utilize the Standards for Soil Erosion and Sediment Control in New Jersey, as promulgated by the State Soil Conservation Committee.

§ 165-256 **Revocation of building permit or certificate of occupancy.**

- A. Inspection shall be by the Borough Engineer during construction, and the applicant shall be required to have a certified plan on site during construction. The applicant shall allow for at least three business days from request for inspection for the performance of the inspection and the issuance of any approval or denial.
- B. The Borough may issue a stop-construction order if a project is not being executed in compliance with the certified plan.
- C. No certificate of occupancy shall be issued unless there has been compliance with the provisions of approved soil disturbance and grading plan and grading permit. A formal report of such compliance shall be filed with the Construction Official, with a copy to the Hunterdon County Soil Conservation District. An example of the certificate of occupancy inspection is attached to this section.

§ 165-257 **Time for construction.**

- A. Soil erosion and sediment control measures must be installed prior to site disturbance.
- B. Construction must begin within six months of any approval or the approval is null and void, and a new application must be submitted for review and approval.

§ 165-258 **Fees and Deposits.**

- A. The applicant shall pay application, escrow review and escrow inspection at the time of submission of the soil disturbance and grading plan in accordance with §165-13.
- B. The inspection escrow shall be submitted to the Borough prior to the approval of the soil disturbance and grading plan. The inspection escrow shall be for the performance of site inspections and review of the as-built soil disturbance and grading plan to confirm site conditions are in accordance with the approved plans.
- C. The applicant may be required to supplement the review and/or inspection escrow based on additional reviews or inspections not anticipated.
- D. Prior to the issuance of the certificate of occupancy, sufficient funds must be available to cover all escrow charges.
- E. Upon request, all unused escrow will be returned following completion and billing of all professional services.

§ 165-259 **Performance guarantees; maintenance bonds.**

- A. A performance guarantee shall be posted by the applicant for the performance and completion of the grading and permanent vegetation cover per the approved soil disturbance and grading plan. The Borough may provide for the posting of an additional performance bond to address uncompleted work defined in the approved plan prior to issuance of the certificate of occupancy when frozen ground prevents spreading of topsoil or winter months prevent growth or vegetative cover. All work covered under the above bonds must be completed by May 1.
- B. All necessary soil erosion and sediment control measures installed under this article shall be adequately maintained for a minimum of one year after initiation of site disturbance or until such measures are permanently stabilized as determined by the Borough Engineer. The Borough Engineer shall give the applicant, upon request, a certificate indicating the date on which the measures called for in the approved plan were completed.

§ 165-260 **Review of plans.**

The Borough may refer review/approval of the soil disturbance and grading plan for soil erosion and

sedimentation control measures to the Hunterdon County Soil Conservation District or such other local, county, state, or federal agency as may be particularly qualified to review the plan.

**§ 165-261 Violations and penalties.**

- A. If any person violates the provisions of this article, any standards promulgated pursuant to the provisions of this article, or fails to comply with the provisions of the certified plan, the Borough may institute a civil action in Superior Court for injunctive relief to prohibit and prevent such violation or violations, and the Court may proceed in a summary manner. The person will be liable to a penalty of not less than \$25 and not more than \$3,000 to be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-1 et seq.). The Superior Court, County Court, County District Court and Municipal Court shall have jurisdiction to enforce such Penalty Enforcement Law.
- B. If the violation is of a continuing nature, each day during which it continues shall constitute an additional separate and distinct offense.

## Part 10 Pending Applications; Penalties; Conflicts

### Article XXXVIII Pending Applications; Penalties; Conflicts

**§ 165-262 Effect on pending applications.**

All applications for development filed prior to the effective date of this chapter may be continued, but any appeals arising out of decisions made on any such applications shall be governed by the provisions of §§ 165-9 and 165-28 of this chapter.

**§ 165-263 Violations and penalties.**

- A. Any owner or agent and any person or corporation who shall violate any of the provisions of this chapter or fail to comply therewith or with any of the requirements thereof; or who shall erect, structurally alter, enlarge, rebuild or move any building or buildings or any structure; or who shall put into use any lot or land in violation of any detailed statement or plan submitted hereunder; or who shall refuse reasonable opportunity to inspect any premises, shall be liable to a fine of not less than \$100 and not more than \$1,000 or to imprisonment for not more than 90 days, or both such fine and imprisonment. Each and every day such violation continues shall be deemed a separate and distinct violation.
- B. The owner of any building or structure, lot or land, or part thereof, where anything in violation of this chapter shall be placed or shall exist, and any architect, builder, contractor, agent, person or corporation employed in connection therewith and who assists in the commission of such violation, shall each be guilty of a separate offense and, upon conviction thereof, shall each be liable to the fine or imprisonment, or both, specified in Subsection A.

**§ 165-264 Repealer; exception.**

Any and all other ordinances or parts thereof in conflict or inconsistent with any of the terms of this chapter are hereby repealed to such extent as they are so in conflict or inconsistent; provided, however, that the adoption of this chapter shall not prevent or bar the continuance or institution of any proceedings or offenses heretofore committed in violation of any existing ordinances of the Borough of Lebanon.

## PART 11

**Attachments and Exhibits: (Hyperlinks)**

[Attachment 1 – Lebanon Borough Administrative Waiver of Site Plan Review Application and Waiver Application-](#)

[Attachment 2 – Application Checklist-](#)

[Attachment 3 – Zoning Map](#)

[Attachment 4 – Schedule Zoning Requirements](#)

Exhibit A – Net Water Availability.

Exhibit B – Lebanon Borough Groundwater Recharge Areas.

Vote after public hearing and upon final adoption:

Burton_____	Ordinance approved by the Governing Body and presented to the Mayor on
Berger_____	
Crawford_____	
Logan _____	
Kirchofer _____	
Lance _____	
	_____, 2023

Veto in Whole or Part:

Approved:

_____	{or}	_____
James Pittinger, Mayor		James Pittinger, Mayor
Date:		Date:

Returned to Borough Clerk with statement attached on \_\_\_\_\_, 2023

**NOTICE**

TAKE NOTICE that the above ordinance was introduced at a regular meeting of the Borough Council of the Borough of Lebanon on September 20, 2023, and will be considered for final passage after public hearing at a regular meeting of the Borough Council of the Borough of Lebanon to be held on October 18, 2023, at 7:30 p.m. in the Municipal Building, located at 6 High Street, Lebanon, New Jersey

\_\_\_\_\_  
Karen M. Romano, Borough Adm/Clerk

**BOROUGH OF LEBANON  
COUNTY OF HUNTERDON  
STATE OF NEW JERSEY  
ORDINANCE NO. 2023-03**

**AN ORDINANCE BY THE MAYOR AND COUNCIL AMENDING THE BOROUGH OF LEBANON CODE OF LAND USE ORDINANCES TO REPEAL LEBANON BOROUGH LAND USE ORDINANCES REVISED IN 2004. CHAPTER 165 LAND USE REGULATIONS ORDINANCE; TO ADOPT CHAPTER 165 LAND USE ORDINANCE; AND TO ADOPT ADMINISTRATIVE WAIVER OF SITE PLAN REVIEW APPLICATION AND WAIVER CHECKLIST TO ADOPT CHECK LISTS, TO ADOPT ZONING MAP AND SCHEDULE OF ZONING REQUIREMENTS.**

The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

Codes should be viewed online or in the clerk's office locate at 6 High Street Lebanon, NJ 08833.

NOTICE is hereby given that the above Ordinance was introduced and passed on first reading at a meeting of the Borough Council of the Borough of Lebanon, in the County of Hunterdon, State of New Jersey, held in the Municipal Building on the 20th day of September 2023, and the same came up for final passage at a meeting of the said Borough Council on the 18th day of October 2023 at which time, after persons interested were given an opportunity to be heard concerning said ordinance, the same was passed and will be in full force in the Borough according to law by order of the Borough Council of the Borough of Lebanon, County of Hunterdon and State of New Jersey.

Karen M. Romano, RMC  
Borough Administrator/ Clerk

**INTRODUCED: September 20, 2023  
ADOPTED: October 18, 2023**



