



ZONING ORDINANCE

**BOROUGH OF HAWTHORNE
PASSAIC COUNTY, NEW JERSEY**

Prepared for Borough of Hawthorne
BA# 3285.01

**Introduced by the Governing Body on March 15,
2023**

|



ORDINANCE No.
AN ORDINANCE TO AMEND AND SUPPLEMENT THE CODE OF THE BOROUGH OF
HAWTHORNE SO AS TO REPEAL CERTAIN CODE SECTIONS AND TO CREATE A
NEW COMPREHENSIVE CHAPTER 540, ZONING

BE IT ORDAINED by the Municipal Council of the Borough of Hawthorne, in the County of Passaic, New Jersey, that:

Section 1. Chapter 293 Land Use Procedures, Chapter 437 Stormwater Management, and Chapter 450 Subdivision of Land is hereby repealed in its entirety.

Section 2. Chapter 540 Zoning is hereby repealed in its entirety and replaced with a new Chapter 540 entitled "Zoning and Land Development Ordinance of the Borough of Hawthorne" as follows:

Part 1: General Provisions and Administration

ARTICLE I

General

§ **540-1. Title.**

This chapter shall be known as the "Zoning and Land Development Ordinance of the Borough of Hawthorne."

§ **540-2. Purpose.**

It is the purpose of the Borough in adopting this chapter to exercise to the fullest the powers granted to the Borough by the State of New Jersey to manage land use through zoning, subdivision and site plan control, and through the police power generally. It is the further purpose of the Borough in adopting this chapter to organize and codify all such powers of land use management into one comprehensive cohesive system in order to facilitate the administration of land use procedure, while providing maximum protection of the public health, safety and general welfare in accordance with the provisions of N.J.S.A. 40:55D-2 et seq.

It is the intent and purpose of this chapter to:

- A. Encourage action to guide the appropriate use or development of all lands in the Borough of Hawthorne in a manner which will promote the public health, safety, morals and general welfare.
- B. Secure safety from fire, flood, panic and other natural and man-made disasters.
- C. Provide adequate light, air and open space.
- D. Ensure that the development of the Borough of Hawthorne does not conflict with the development and general welfare of neighboring municipalities, the county, and the state as a whole, provided that where there is conflict between Borough and adjoining municipal development patterns and regulations, the greater deference is to be given to the Borough planning and zoning provisions in evaluating the propriety of the Borough provisions.

- E. Promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment.
- F. Encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies.
- G. Provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements, in order to meet the needs of all citizens.
- H. Encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight.
- I. Promote a desirable visual environment through creative development techniques and good civic design and arrangements.
- J. Promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources and to prevent urban sprawl and degradation of the environment through improper use of land.
- K. Establish orderly and uniform procedures relating to land use and development regulation.
- L. Generally, achieve and advance the various purposes of the Municipal Land Use Law (P.L. 1975, c. 291) as set forth in the statement of purposes of said law in N.J.S.A. 40:55D-2.

§ 540-3. Scope.

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. Whenever this chapter imposes a greater restriction upon, including but not limited to, the use of buildings or premises, or upon the height of buildings or lot coverage, or requires greater lot area, or larger 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.

ARTICLE II

Planning Board

§ 540-4. Establishment; composition.

Pursuant to the provisions of N.J.S.A. 40:55D-23, the Borough of Hawthorne Planning Board shall be comprised of seven (7) members and two alternates consisting of the following four (4) classes:

- A. Class I: the Mayor or the Mayor's designee.
- B. Class II: one (1) of the officials of the municipality, other than a member of the governing body, to be appointed by the Mayor, provided that if there is an Environmental Commission, the member of the Environmental Commission who is also a member of the Planning Board as required by N.J.S.A. 40:56A-1 shall be deemed to be the Class II Planning Board member for purposes of this Act in the event that there be among the Class IV or alternate members of the Planning Board both a member of the Zoning Board of Adjustment and a member of the Board of Education.
- C. Class III: a member of the Borough Council, appointed by the Council.

- D. Class IV: four (4) other citizens of the municipality, to be appointed by the Mayor. The members of Class IV shall hold no other municipal office, except that one such member may be a member of the Zoning Board of Adjustment or historic preservation commission. A member of the Environmental Commission who is also a member of the Planning Board as required by N.J.S.A. 40:56A-1 shall be a Class IV Planning board member, unless there be amongst the Class IV or alternate members both a member of the Zoning Board or historic preservation commission and a member of the Board of Education, in which case the member common to the Planning Board and environmental commission shall be deemed a Class II member. Alternate members appointed to the Planning Board shall be Class IV members.

§ 540-5. Terms of members.

- A. The term of the member composing Class I shall correspond with his/her official tenure. The term of the member composing Class II shall be for one (1) year or terminate at the completion of his/her first term of office, whichever occurs first, except for a Class II member who is also a member of the Environmental Commission. The term of a Class II or Class IV member who is also a member of the Environmental Commission shall be for three (3) years or terminate at the completion of his/her term of office as a member of the Environmental Commission, whichever occurs first.
- B. The term of the member composing Class III shall be for one (1) year or terminate at the completion of his/her term of office, whichever occurs first.
- C. The term of a Class IV member who is also a member of the Board of Adjustment or Board of Education shall terminate whenever he/she is no longer a member of such other body or at the completion of his/her Class IV term, whichever occurs first.
- D. The terms of all Class IV members first appointed pursuant to this chapter shall be so determined that to the greatest practicable extent the expiration of such terms shall be distributed evenly over the first four (4) years after their appointment as determined by resolution of the governing body; provided, however, that no term of any member shall exceed four (4) years, and further provided that nothing herein shall affect the terms of any present members of the Planning Board, all of whom shall continue in office until the completion of the terms for which they were appointed. Thereafter, all Class IV members shall be appointed for terms of four (4) years, except as otherwise herein above provided. All terms shall run from January 1 of the year in which the appointment is made.

§ 540-6. Vacancies.

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

§ 540-7. Removal for cause.

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

§ 540-8. Organization.

The Planning Board shall elect a Chairperson and Vice Chairperson from the members of Class IV and select a Secretary who may be either a member of the Planning Board, a municipal employee designated by the Board or someone outside the employment of the municipality duly appointed and hired by the Planning Board.

§ 540-9. Alternate members.

- A. There shall be two (2) alternate members of the Planning Board appointed by the Mayor and meeting the qualifications of Class IV members of seven (7) member planning boards. The 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 (2) years, except that the terms of the alternate members shall be such that the term of not more than one (1) alternate member shall expire in anyone (1) year; provided, however, that in no instance shall the terms of the alternate members first appointed exceed two (2) years. Notwithstanding the aforesaid, the initial terms of the members shall be arranged so as to accomplish the intent of this section. A vacancy occurring otherwise than by expiration of term shall be filled by the Mayor for the unexpired term only.
- B. No alternate member shall be permitted to act on any matter in which he/she has, either directly or indirectly, any personal or financial interest. An alternate member may, after public hearing if he/she requests one, be removed by the Borough Council for cause.
- C. The 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.

§ 540-10. Employment of counsel, experts and staff.

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

§ 540-11. Powers and duties.

The Planning Board is authorized to adopt bylaws governing its procedural operation. It shall also have the following powers and duties:

- A. To make and adopt and from time to time amend a Master Plan for the physical development of the Borough, including any areas outside its boundaries which, in the Board's judgment, bear essential relation to the planning of the Borough, in accordance with the provisions of N.J.S.A. 40:55D-28.
- B. To approve conditional use applications as authorized by state statute.
- C. To administer the provisions of the Land Use and Development Ordinance of the Borough in accordance with the provisions of this chapter and the Municipal Land Use Law of 1975, N.J.S.A. 40:55D-1 et seq.
- D. To participate in the preparation and review of programs or plans required by state or federal law or regulations.
- E. To assemble data on a continuing basis as part of a continuing planning process.
- F. To review and make recommendations to the Council on the official map of the Borough pursuant to N.J.S.A. 40:55D-32 and N.J.S.A. 40:55D-26.
- G. To annually prepare a program of municipal capital improvement projects over a term of six (6) years, and amendments thereto, and recommend same to the governing body.
- H. To consider and make report to the governing body within thirty-five (35) days after referral as to any proposed development regulation submitted to it pursuant to the provisions of N.J.S.A. 40:55D-26a, and also

pass upon other matters specifically referred to the Planning Board by the Borough Council pursuant to the provisions of N.J.S.A. 40:55-D26(b).

- I. When reviewing applications for approval of subdivision plats, site plans or conditional uses, to grant, to the same extent and subject to the same restrictions as the Zoning Board of Adjustment:
 - 1. A variance pursuant to N.J.S.A. 40:55D-70(c).
 - 2. Direct the issuance of a permit for a building or structure either not related to a street (N.J.S.A. 40:55D-36) or in the bed of a mapped street or public drainage way, flood control basin or public area reserved on the Official Map (N.J.S.A. 40:55D-32).
 - 3. Whenever relief is requested pursuant to this subsection, notice of a hearing on the application for development shall include reference to the request for a variance or direction for issuance of a permit as the case may be.
- J. To perform such other advisory duties as are assigned to it by ordinance or resolution of the governing body or other agencies or officers.

§ 540-12. Rules and regulations.

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

ARTICLE III

Zoning Board of Adjustment

§ 540-13. Establishment; composition.

- A. A Zoning Board of Adjustment is hereby established pursuant to N.J.S.A. 40:55D-69 et seq., consisting of seven (7) regular members and two (2) alternate members, appointed by the Borough Mayor with the advice and consent of the Borough Council.
- B. All regular members and any alternate members shall be municipal residents.
- C. No member of the Zoning Board of Adjustment may hold any elective office or position under the municipality.

§ 540-14. Terms of members.

The regular members of the Zoning Board of Adjustment shall serve for terms of four (4) years from January 1 of the year of their appointment. The terms of the members first appointed shall be so determined that to the greatest practicable extent the expiration of such terms shall be distributed evenly over the first four (4) years after their appointment, provided that the initial term of no member shall exceed four (4) years. Nothing in this chapter shall, however, be construed to affect the terms of any present members of the Zoning Board of Adjustment, all of whom shall continue in office until the completion of the terms for which they were appointed.

§ 540-15. Vacancies.

A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term only.

§ **540-16. Removal for cause.**

A member may, after public hearing if he/she requests one, be removed by the Borough Council for cause.

§ **540-17. Organization.**

The Board of Adjustment shall elect a Chairperson and Vice Chairperson from its members and shall also select a Secretary who may be either a Board member or a municipal employee designated by it.

§ **540-18. Alternate members.**

- A. There shall be two (2) alternate members of the Board of Adjustment appointed by the Mayor with the advice and consent of the Borough Council. The alternate members shall be designated at the time of appointment as "Alternate No. 1" and "Alternate No. 2." The terms of the alternate members shall be for two (2) years, except that the terms of the alternate members shall be such that the term of not more than one (1) alternate member shall expire in anyone (1) year; provided, however, that in no instance shall the terms of the alternate members first appointed exceed two (2) years. Notwithstanding the aforesaid, the initial terms of the members shall be arranged so as to accomplish the intent of this section.
- B. The alternate members may participate in discussion proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

§ **540-19. Employment of counsel, experts and staff.**

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

§ **540-20. Powers and duties.**

- A. The Board of Adjustment shall have the following powers and duties, as granted by law:
 - 1. To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in the enforcement of the Zoning Ordinance.
 - 2. To hear and decide requests for interpretation of the Zoning Map or Zoning Ordinance or for decisions upon other special questions upon which such Board is authorized by the Zoning Ordinance to pass.
 - 3. To grant variances, as follows:
 - (a) Where: (1) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions, or by reason of other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation in the Zoning Ordinance would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, grant a variance from such strict application, so as to relieve such difficulties

or hardship; where (2) in an application or appeal relating to a specific piece of property the purposes of this ordinance would be advanced by a deviation from the Zoning Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from any regulation in the Zoning Ordinance; provided, however, that no variance shall be granted under this subsection from those departures enumerated in subsection b. below, and further provided that the proposed development does not require approval by the Planning Board of a subdivision, site plan or conditional use.

- (b) In particular cases and for special reasons, grant a variance to allow: (1) a principal use or structure in a district restricted against such use or principal structure; (2) an expansion of a nonconforming use; (3) a deviation from a specification or standard pertaining solely to a conditional use; (4) an increase in the permitted floor area ratio; (5) an increase in the permitted density, except as applied to the required lot area for a lot or lots for detached one (1) or two (2) family dwelling unit buildings, which lot or lots are either an isolated undeveloped sized lot or lots resulting from a minor subdivision; or (6) a height of a principal structure which exceeds by ten (10) feet or ten percent (10%) the maximum height permitted in the district for a principal structure. Such variances may only be granted by affirmative vote of at least five (5) members of the Board.

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

§ 540-21. Additional powers.

- A. The Zoning Board of Adjustment shall, in addition to the powers specified in § 540-20, have power given by law to:
 - 1. Direct issuance of a permit pursuant to N.J.S.A. 40:55D-34 for a public building or structure in the bed of a mapped street or public drainage way, flood control basin or public area reserved on the Official Map.
 - 2. Direct issuance of a permit pursuant to N.J.S.A. 40:55D-36 for a building or structure not related to a street.
- B. The Board of Adjustment shall have the power to grant, to the same extent and subject to the same restrictions as the Planning Board, subdivision or site plan approval or conditional use approval pursuant to N.J.S.A. 40:55D-67 whenever the Board is reviewing an application for approval of a variance pursuant to § 540-20(A)(3)(a) and (b) of this chapter.

§ 540-22. Appeals.

- A. Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the municipality affected by any decision of the Administrative Officer. Each appeal shall be taken within the twenty (20) days prescribed by the statute by filing a notice of appeal with the officer from whom the appeal was taken, together with fourteen (14) copies of said notice with the Administrative Officer. Said notice of appeal shall specify the grounds of said appeal. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

- B. The Board of Adjustment shall render its decision not later than one hundred twenty (120) days after the date an appeal is taken from the decision of an Administrative Officer. Failure of the Board to render a decision within such one hundred twenty (120) day period or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant.
- C. An appeal stays all proceedings in furtherance of the action in respect to which the decision appealed from was made, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him/her that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order of the Superior Court of New Jersey on application or notice to the officer from whom the appeal is taken and on due cause shown.
- D. Upon appeal, the Board of Adjustment may, in conformity with the provisions of N.J.S.A. 40:55D-1 et seq. or amendments thereto or subsequent statutes applying, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and make such other requirement, decision or determination as ought to be made, and to that end have all the powers of the Administrative Officer from whom the appeal was taken.

§ 540-23. Rules and regulations.

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

ARTICLE IV

Provisions Applicable to Both Planning Board and Zoning Board of Adjustment

§ 540-24. Conflicts of interest.

No member of the Planning Board or Zoning Board of Adjustment shall act on any matter in which he/she has, either directly or indirectly, any personal or financial interest. Whenever any such member shall disqualify himself/herself from acting on a particular matter, he/she shall not continue to sit with the Board on the hearing of such matter or participate in any discussion or decision relating thereto.

§ 540-25. Meetings.

- A. Meetings of both the Planning Board and Zoning Board of Adjustment shall be scheduled no less often than once a month, and any meeting so scheduled shall be held as scheduled unless canceled for lack of applications for development to process.
- B. Special meetings may be provided for at the call of the Chairperson, on the request of any two (2) Board members, or by an Applicant which meetings shall be held on notice to the Board's members and the public in accordance with all applicable legal requirements. Special meetings requested by an Applicant shall be subject to the payment of the requisite special meeting fee required pursuant to §540-124(c) where such special meeting is requested and agreed to by the reviewing Board.
- C. No action shall be taken at any meeting without a quorum being present.
- D. All actions shall be taken by majority vote of a quorum except as otherwise required by any provision of this chapter or of law.

- E. All regular meetings and all special meetings shall be open to the public. Notice of all such meetings shall be given in accordance with the requirements of the Open Public Meetings Law, P.L. 1975, c. 231. An executive session for the purpose of discussing and studying any matters to come before either Board shall not be deemed a regular or special meeting in accordance with the provisions of N.J.S.A. 40:55D-9.

§ 540-26. Minutes of meetings.

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

§ 540-27. Hearings.

- A. Rules. The Planning Board and Zoning Board of Adjustment may make rules governing the conduct of hearings before such bodies, which rules shall not be inconsistent with the provisions of N.J.S.A. 40:55D-1 et seq. or of this chapter.
- B. Oaths. The officer presiding at the hearing or such person as he/she may designate shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, and the provisions of the County and the Municipal Investigations Law, P.L. 1953, c. 38 (N.J.S.A. 2A:67-1 et seq.), shall apply.
- C. Testimony. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer, and the right to cross-examine shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.
- D. Evidence. Technical rules of evidence shall not be applicable to the hearing, but the Board may exclude irrelevant, immaterial, or unduly repetitious evidence.
- E. Records. Each Board shall provide for the verbatim recording of the proceedings by either stenographer, mechanical or electronic means. The Board shall furnish a transcript or duplicate recording in lieu thereof on request to any interested party at his/her expense.
- F. Qualification. When any hearing before the Planning Board or Zoning Board of Adjustment shall carry over two (2) or more meetings, a member of the Board who was absent for one (1) or more of the meetings shall be eligible to vote on the matter upon which the hearing was conditioned, notwithstanding his/her absence from one (1) or more of the meetings; provided, however, that such Board member has available to him/her a transcript or recording of the meeting from which he/she was absent and certifies in writing to the Board that he/she has read such verbatim transcript or listened to such recording.

§ 540-28. Notices of hearings.

Notices of hearings shall be given for all applications for development except minor subdivision approval, minor site plan approval not requiring variance relief and final subdivision approval pursuant to N.J.S.A. 40:55D-12. Whenever a hearing is required on an application for development pursuant to this section, the applicant shall give notice thereof as follows:

- A. Public notice shall be given by publication in the official newspaper of the Borough, if there is one, or in a

newspaper of general circulation in the Borough at least ten (10) days prior to the date of the hearing.

- B. Notice shall be given to the owners of all real property, as shown on the current tax duplicate or duplicates, located within two hundred (200) feet in all directions of the property which is the subject of such hearing, provided that this requirement shall be deemed satisfied by notice to a condominium association, in the case of any unit owner whose unit has a unit above or below it, or a horizontal property regime, in the case of a co-owner whose apartment has an apartment above or below it. Such notice shall be given by either serving a copy thereof on the owner as shown on said current tax duplicate or his/her agent in charge of the property or by mailing a copy thereof by certified mail to the property owner at his /her address as shown on said current tax duplicate. 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.
- C. Notice of all hearings on applications for development involving property located within two hundred (200) feet of an adjoining municipality shall be given by personal service or certified mail to the Clerk of such municipality.
- D. Notice shall be given by personal service or certified mail to the County Planning Board of a hearing on an application for development of property adjacent to an existing county road or proposed road shown on the Official County Map or on the County Master Plan, adjoining other county land or situated within two hundred (200) feet of a municipal boundary.
- E. Notice shall be given by personal service or certified mail to the Commissioner of Transportation of a hearing on an application for development of property adjacent to a state highway.
- F. Notice shall be given by personal service or certified mail to the Director of the Division of State Regional Planning in the Department of Community Affairs of a hearing on an application for development of property which exceeds one hundred fifty (150) acres or five hundred (500) dwelling units. Such notice shall include a copy of any maps or documents required to be on file with the Borough Clerk pursuant to N.J.S.A. 40:55D-10b.
- G. Notice shall be given by personal service or certified mail of a hearing on an application of a major subdivision or a site plan not defined as a minor site plan to a public utility, cable television company or local utility which possesses a right-of-way or easement within the Borough and has registered with the Borough in accordance with N.J.S.A. 40:55D-12.1.
- H. All notices herein above specified in this section shall be given at least ten (10) days prior to the date fixed for hearing, and the applicant shall file an affidavit of proof of service with the Board holding the hearing on the application for development.
- I. Any notice made by certified mail as herein above required shall be deemed complete upon mailing in accordance with the provisions of N.J.S.A. 40:55D-14.
- J. Form of notice. All notices required to be given pursuant to the terms of this chapter shall state the date, time and place of the hearing; the nature of the matters to be considered; identification of the property proposed for development by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the Borough Tax Assessor's office; and the location and times at which any maps and documents for which approval is sought are available as required by law.

§ 540-29. List of property owners furnished.

Pursuant to the provisions of N.J.S.A. 40:55D-12c, the Tax Assessor of the Borough of Hawthorne shall, within seven (7) days after receipt of a request therefor and upon receipt of payment of a fee of ten dollars (\$10.00) make and certify a list from the current tax duplicate of names and addresses of owners to whom the applicant is required to give notice pursuant to § 540-28.B. of this chapter.

§ **540-30. Decisions.**

- A. Each decision on any application for development shall be set forth in writing as a resolution of the Board, which resolution shall include findings of fact and legal conclusions based thereon.
- B. A copy of the decision shall be mailed by the Board within ten (10) days of the date of decision to the applicant, or if represented, then to his/her attorney, without separate charge. A copy of the decision shall also be mailed to all persons who have requested it and have paid the fee prescribed by the Board for such service. A copy of the decision shall also be filed in the office of the Administrative Officer, who shall make a copy of such filed decision available to any interested party upon payment of a fee calculated in the same manner as those established for copies of other public documents in the municipality. In addition, a copy of the decision shall be forwarded to the following Borough Officials or Agencies:
- 1) Construction Code Official
 - 2) Zoning Officer
 - 3) Property Maintenance Officer
 - 4) Fire Prevention Bureau
 - 5) Police Chief
 - 6) Board of Health
 - 7) Borough Clerk
 - 8) Borough Attorney
- C. See § 540-44.B.3 and 4, wherein the statutory time frames for action by the approving authority on subdivision and site plan applications, respectively, are set forth.

§ **540-31. Publication of decisions.**

A brief notice of every final decision shall be published in the official newspaper of the municipality. Such publication shall be arranged by the Secretary/ Administrative Officer without separate charge to the applicant. Said notice shall be sent to the official newspaper for publication within ten (10) days of the date of any such decision.

§ **540-32. Payment of Taxes.**

Pursuant to the provisions of N.J.S.A. 40:55D-39 and N.J.S.A. 40:55D-65, every application for development submitted to the Planning Board or Zoning Board of Adjustment shall be accompanied by proof that no taxes or assessments for local improvements are delinquent on the property which is the subject of such application; or, if it is shown that taxes or assessments are delinquent on said property, approvals or other relief granted by either Board shall be conditioned upon either the prompt payment of such taxes or assessments or the making of adequate provision for the payment thereof in such a manner that the municipality will be adequately protected.

ARTICLE V

Administration, Enforcement and Fees

§ **540-33. Administration; applicability.**

- A. Administration. The Administrative Officer, as defined in this chapter, shall examine all applications under his/her jurisdiction and shall approve all required inspections to ensure compliance with this chapter.
- B. Applicability.
 - 1. Prior to the subdivision or re-subdivision of land and prior to the issuance of a construction permit or certificate of occupancy for any development, an application shall be submitted to and approved by the Planning Board or the Board of Adjustment as provided by statute, for its review and approval in accordance with the requirements of this chapter.
 - 2. When site plan approval is required.
 - (a) Except for single and two family residential use and buildings and accessory uses thereto, and change in non-residential tenancy otherwise exempted from site plan review by the Planning Board Tenancy Review Committee pursuant to Section 540-33.C, site plan approval shall be required for any new building, any addition to any existing building, any change of tenancy and/or occupancy for non-residential use, any off-street parking area or alteration of such a parking area, any change in use of a building or part thereof, any building accessory to or used in connection with a permitted farming and agricultural operation and the disturbance of more than five thousand (5,000) square feet of the surface area of any lot.
 - (b) Any non-residential change in tenancy, except as otherwise exempted under Section 540-33.B.2(a), shall require Planning Board review. All non-residential changes in tenancy shall be referred to the Planning Board Tenancy Review Committee created pursuant to Section 540-33.C.1.
 - (c) An applicant may apply for minor site plan approval to the Planning Board. In order to qualify as a minor site plan application, the minor site plan must satisfy the following criteria:
 - 1) It involves only a change in use or a change in tenancy of an existing building or is the first use in a new building having received site plan approval and the use is permitted in the zone or involves the tenancy for a building granted prior site plan approval but for which tenancy was not established at the time of approval.
 - 2) The use does not involve the handling or storage of hazardous materials as defined in N.J.A.C. 7:1G-1 to 7:1G-5.
 - 3) There is no outstanding health, fire, building code, zoning or traffic safety violations.
 - 4) There are no outstanding taxes or assessments payable.
 - 5) There are no changes to the exterior design or appearance of a building.
 - 6) No variances are created or existing nonconforming conditions are expanded.
 - (d) Minor site plan applications may also be referred to one (1) or more of the following Borough employees or their approved designees for recommendation:
 - 1) Zoning Officer.
 - 2) Construction Code Official.
 - 3) Traffic Safety Officer.

- 4) Borough Engineer.
- 5) Water and Sewer Department.
- 6) Health Officer.
- 7) Fire Official.
- 8) Borough Planner.

C. Planning Board Tenancy Review Committee.

- 1. There is hereby created a subcommittee of the Planning Board hereinafter referred to as the “Tenancy Review Committee” (Committee). The Committee shall consist of the Mayor as Class I member, the Council Representative as Class III Member and one Class IV Regular Member to be appointed by the Planning Board Chairman. The Committee shall review all changes in non-residential tenancy applications to determine whether minor or major site plan approval is required prior to the issuance of a zoning permit and certificate of occupancy.
- 2. A change in non-residential tenancy may be approved by the Committee as being exempt from minor or major site plan approval provided that all of the following requirements are satisfied:
 - (a) The Committee determines the change in tenancy is substantially equivalent to what existed prior to the tenancy application;
 - (b) Does not result in a physical expansion of the building footprint or changes to the existing building other than facade improvements and signage in conformance with Code requirements;
 - (c) Does not result in any physical changes to the property other than routine maintenance of existing site conditions; and
 - (d) Does not result in an increase in parking demand that cannot be accommodated on the subject property.
- 3. Following approval of a minor site plan, and unless otherwise exempted from site plan approval pursuant to this chapter, the Zoning Officer shall issue a zoning permit authorizing the occupancy or continued occupancy, as the case may be, of the premises. No use shall commence or continue without the issuance of said zoning permit.
- 4. Where a site plan has been duly approved by the Planning Board, but where the specific use or uses of the building are not known at the time of the site plan approval, such as in the case of a speculative building, no certificate of occupancy for any part of the building shall be issued until a site plan for the specific use is approved; provided, however, that the Planning Board may review the specific use or occupancy as a minor site plan provided the application satisfies the criteria for minor site plan as established in § 540-33.B2(c) above.

§ 540-34. Enforcement.

- A. The rules, regulations and standards contained in this chapter shall be considered the minimum requirements for the protection of the public health, safety and welfare of the citizens of the Borough. Any action taken by the Borough under the terms of this chapter shall give primary consideration to the purposes and provisions

of this chapter and to the welfare of the entire community. Moreover, if an applicant or his/her agent can clearly demonstrate that, because of the peculiar conditions pertaining to his/her land, the literal enforcement of one (1) or more of these regulations is impractical or will exact undue hardship, the appropriate municipal agency may permit such exceptions or exceptions as may be reasonable and within the general purpose and intent of the rules, regulations and standards established by this chapter.

- B. It shall be the duty of the Zoning Officer to enforce the provisions of this chapter and, in so doing, to inspect periodically the structures and land in the Borough, to investigate violations of the chapter coming to his/her attention, to serve notice upon property owners, to abate any condition found to exist in violation of any provision(s) of this chapter, to sign complaints where justified and to cooperate with other Borough officials in the prosecution of violators. The enumeration herein of the duties of the Construction Code Officer and Zoning Officer shall not mean that other officials and employees shall be relieved of their obligation to enforce this chapter. The Construction Code Officer, Zoning Officer, Borough Engineer, or other Borough employees authorized by the Borough shall have the right to inspect any lot or building at reasonable times for the purpose of investigating possible violations of this chapter.
- C. If the Zoning Officer finds any substantial deviation from any approved plans, he/she shall notify the permittee in writing of the deviation. The Zoning Officer and the Borough may take such action as is provided in this chapter to enforce the requirements of this Chapter.

§ 540-35. Zoning permits; building permits; certificates of occupancy.

- A. Zoning permits.
 - 1. Purpose. The zoning permit looks to the location and use of the building considering the requirements of this chapter, and certifies that such location and use is permitted, or that it exists as a nonconforming use and/or nonconforming structure or is permitted by the terms of a variance. To ensure compliance with the provisions of this chapter, no person shall erect, alter or convert any structure or building or part thereof or alter the use of any land subsequent to the adoption of this chapter, until a zoning permit has been issued by the Zoning Officer.
 - 2. Application for Zoning Permit. All zoning permit applications shall be made in writing by the owner or his/her authorized agent and shall include a statement to the use or intended use and shall be accompanied by a plan of the plot showing thereon the exact size, shape and location of all existing and proposed structures and such other information as may be necessary to provide for the enforcement of this chapter. The zoning permits shall be granted or denied within ten (10) business days from the date that a written application is filed with the Zoning Officer.
 - 3. Issuance of Zoning Permit. Zoning permits shall be secured from the Zoning Officer prior to construction, erection or alteration of any structure or part of a structure or use of a structure or land. It shall be the duty of the Zoning Officer to issue a zoning permit, provided that person is satisfied that the proposed use conforms with all requirements of this chapter. It is the applicant's responsibility that all other reviews and actions, if any, called for in this chapter or any other Borough ordinance have been complied with and all necessary approvals secured therefor.
 - 4. Denial of Zoning Permit When the Zoning Officer is not satisfied that the applicant's proposed development will meet the requirements of this chapter, the Zoning Officer shall refuse to issue a zoning permit. When an application for a zoning permit is denied, it is the duty of the Zoning Officer to specify what sections of the application are not in conformance with the zoning ordinance. The applicant may appeal to the Zoning Board of Adjustment.
 - 5. Records of Zoning Permits It shall be the duty of the Zoning Officer to keep a record of all applications for zoning permits issued, together with a notation of all special conditions involved. The Zoning Officer shall prepare a monthly report for the Borough Council, Planning Board, Zoning Board of Adjustment, and Tax Assessor, summarizing for the period since his/her previous report

all zoning permits issued by him/her and all complaints of violations and the action taken by him/her consequent thereon

B. Building permits.

1. No building or structure or part thereof shall be erected, constructed, reconstructed, structurally altered or moved until a building permit has been procured from the Construction Code Officer. All applications for building permits shall be filed in accordance with the Uniform Construction Code.
2. No building permit shall be issued for the erection, construction, reconstruction, structural alteration or moving of any building or structure or part thereof until the Zoning Officer has certified that the plans and intended use indicate that such building or structure is designed and intended to conform in all respects to the provisions of this chapter. The Zoning Officer's certification shall be considered a prior approval required prior to the issuance of a building permit by the Construction Official.
3. A record of all applications, plot plans and permits shall be kept by the Construction Department pursuant to the New Jersey Uniform Construction Code.
4. Before a building permit is issued for a new building or for an extension or relocation of an existing building or before a permit is issued for the installation of any improvements required by this chapter or by a plot plan approved by the Planning Board, a licensed engineer or land surveyor shall visibly locate said building or improvements, together with the lot lines of the intended site for inspection by the Zoning Officer. The Zoning Officer shall ascertain that all requirements of this chapter and/or the approved plot plan are complied with before the issuance of a building permit.
5. Following construction of the foundation of a new building and prior to the start of framing, the applicant shall submit an accurate foundation survey in accordance with N.J.A.C. 13:40-5, in triplicate to the Zoning Officer for his/her review for compliance with this chapter. This survey shall show the dimensions of the new foundation, the distance from front and both side property lines of the two (2) foundation corners nearest to these property lines and the elevation of the top of the foundation. If the building will be served by an individual sewage disposal system, and/or an individual water system (well), the Zoning Officer shall forward the foundation survey to the Board of Health for its review and approval in order to determine the proper relationship between the elevations of the building and the disposal system and ensure adequate gravity flow into the system. If a disposal field is to be built up by fill to more than two (2) feet, a grading plan as required by the New Jersey Department of Environmental Protection Standards for the Construction of Individual Subsurface Sewage Disposal Systems shall first be reviewed and approved by the Borough Engineer, who may establish such conditions as he deems appropriate. Following approval of the foundation survey by the Zoning Officer and approvals by the Board of Health and the Borough Engineer as may be required, the Zoning Officer may authorize the completion of the building.

C. Certificates of Occupancy.

1. No land shall be occupied or used and no building hereafter erected or altered shall be occupied or used, in whole or in part, for any purpose whatsoever until a certificate of occupancy shall have been issued.
2. A certificate of occupancy shall not be issued until the Zoning Officer has certified that the land, use, building, structure, or premises complies with all provisions of this chapter and all other applicable Borough and state requirements and, if involved, with such conditions as have been imposed by any required site plan approval pursuant to this chapter. The Zoning Officer's certification shall be considered a prior approval required prior to the issuance of a certificate of occupancy by the Construction Official. When issued, the certificate of occupancy shall state that such compliance has been achieved.
3. The certificate of occupancy shall specify the use of land or building, and any circumstances or

conditions imposed by any public agency, code or regulation. Any change in use, including a change from one permitted use to another kind of permitted use in the same zone, as well as any change in occupancy or tenancy in the nonresidential zones, will be treated as a new use, and a new certificate of occupancy shall be required. Prior to the issuance of a certificate of occupancy from said changes in use, all provisions of this chapter shall be complied with in the same manner as if the new use were a new structure or a new use of land, including site plan review requirements, except for those improvements or uses exempted from site plan approval pursuant to § 540-33.B.2.(a) in which case the certificate of occupancy may be issued administratively without Planning Board review.

4. A certificate of occupancy shall be issued within ten (10) business days after receipt of an application for the certificate and after the building has been completed in accordance with § 540-35.B. above, but not prior to any required authorization by the Planning Board in connection with site plan approval pursuant to this chapter. A record of all certificates shall be kept on file in the office of the Construction Department, and copies shall be furnished upon request to any person having a proprietary or leasehold interest in the building or land affected.
5. Where a preliminary site plan, as required by this chapter, has been duly reviewed and approved by the Planning Board, the erection or alteration of the building shall not be deemed to be completed until all the requirements of the approved site plan are met.
6. No certificate of occupancy shall be issued for any building or structure unless and until there shall be a street sign first installed on the street on which such building or structure is located.
7. In the case of a site plan for multifamily housing, a certificate of occupancy for any dwelling unit shall not be issued until all safety-related improvements have been installed pursuant to § 540-35.B.

§ 540-36. Stop orders and permit revocations.

- A. Stop orders. In the event that a permittee shall fail to comply with any condition or regulation or provisions of an approved plan, the Borough Engineer, Zoning Officer, and/or Construction Code Officer may issue a stop order on all construction work within the area encompassed by the approved plan and which order may include requirements for the prompt correction of adverse conditions. Thereafter, no construction work of any type shall be performed within the area of the approved plan except such work as is in accordance with the requirements of the Borough Official as set forth in said order or in accordance with the approved plan.
- B. Revocation of permits or certificates of occupancy.
 1. In the event of a failure to comply with any provisions or requirements of this Chapter, the Borough Construction Official or their designee may revoke any building or construction permit for any property upon which such noncompliance occurs or for any property affected by such noncompliance. The Borough may also seek to enjoin the violation, or take such other steps as permitted by law.
 2. In the event of a failure to comply with any condition of final site plan or minor site plan approval having been granted by the Planning Board, the Construction Code Official on his/her initiative, may revoke the building permit, construction permit or certificate of occupancy, as the case may be, and seek to enjoin the violation, or such other steps as permitted by law. In addition, the Borough Zoning Officer or Borough Engineer may also, on his/her initiative, seek to enjoin the violation, or take other such steps as permitted by law to enforce requirements of this Chapter or conditions of approvals attached to final and minor site plan approvals.

§ 540-37. Violations and Penalties.

- A. Any person who violates any of the provisions of this chapter or who fails to comply with any of the requirements thereof or who erects, raises, moves, extends, enlarges, alters or demolishes any structure in violation of any detailed statement or plan submitted hereunder, or who puts into use any lot or premises in violation of any detailed statement or plans submitted hereunder or who refuses reasonable opportunity to inspect any premises shall be subject to such penalties as are provided for in Chapter 1, Article III, General Penalty.
- 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 misdemeanor and, upon conviction thereof, shall each be liable to the penalty specified in subsection A of this section.
- C. If before final subdivision approval has been granted any person as owner or agent transfers or sells or agrees to transfer or sell, except pursuant to an agreement expressly conditioned on final subdivision for which municipal approval is required, such persons shall be subject to a penalty not to exceed one thousand dollars (\$2,000.00) and each lot disposition so made may be deemed a separate violation.
- D. In addition, the Borough may institute and maintain a civil action:
 - 1. For injunctive relief;
 - 2. To set aside and invalidate any conveyance made pursuant to such a contract of sale if a certificate of compliance has not been issued in accordance with N.J.S.A. 40:55D-56, but only if the municipality has a Planning Board and has adopted, by ordinance, standards and procedures in accordance with N.J.S.A. 40:55D-38.
- E. In any such action, the transferee, purchaser or grantee shall be entitled to a lien upon the portion of the land from which the subdivision was made that remains in the possession of the developer or his assigns or successors, to secure the return of any deposits made or purchase price paid and, also, a reasonable search fee, survey expense and title closing expense, if any. Any such action must be brought within two (2) years after the date of the recording of the instrument of transfer, sale or conveyance of said land or within six (6) years if unrecorded.

§ 540-38. Fees.

There is hereby established, in connection with various applications for development and other matters which fees are the subjects of this chapter, a schedule of fees, which fees shall be paid by the applicant. Said schedule of fees is included in Chapter 220 Fee Schedule of the Borough Code of Ordinances.

- A. Development application fees and related charges. The developer shall, at the time of filing a submission, pay the nonrefundable fee specified in Chapter 220 Fee Schedule to the Administrative Officer. Proposals involving more than one (1) use shall pay a fee equaling the sum of the fees for the component elements of the plat. Proposals requiring a combination of approvals, such as subdivision, site plan and/or a variance, shall pay a fee equal to the sum of the fee for each element.
- B. Technical review escrow deposits.
 - 1. In addition to the filing fees or any other fees required in this article, an applicant shall file with the Administrative Officer an escrow deposit fee of adequate funds to cover the costs of professional services in connection with the review of an application for development by planners, engineers, attorneys and other professional and/or experts whose services are deemed necessary with respect to processing the application by the approving authority in order to assure compliance with the provisions of this chapter. Technical review fees shall be calculated in accordance with the actual time required for review at rates set forth in a schedule of professional fees established each year by

resolution of the Planning Board maintained in the office of the Borough Clerk and Administrative Officer for public inspection. The administration of technical review escrow deposits and payments made to professionals from said deposits shall be in accordance with the provisions of N.J.S.A. 40:55D-53.1 and Section 13 of P.L. 1991, c. 256.

2. At the time of filing an application for development, the applicant shall pay to the Borough an initial deposit for technical review fees in accordance with Chapter 220 Fee Schedule. The amount shown represents only the initial deposit. An applicant will be required to deposit additional funds when professional costs necessitate. In addition, deposit of escrow amounts may be required even when an initial deposit is not required if professional services become warranted. The amount of such fees shall be determined by the Administrative Officer and may include, but are not necessarily limited to, the following:
 - (a) Pre-application conferences.
 - (b) Planning Board meetings.
 - (c) Special meetings and other extraordinary services required by an application.
 3. An application shall not be deemed complete until the application fee and initial escrow deposit have been paid. In the event a project is of a nature that is not expressly included in one of the categories in Chapter 220 Fee Schedule, the amount of the fee and deposit shall be determined by the Administrative Officer applying the standard applicable to other applications most closely resembling the project. Also, additional funds may be required when the original amount is depleted by sixty percent (60%) or more and the application is still in process. The additional amount shall be determined by the Administrative Officer.
- C. Inspection fees. The developer shall reimburse the Borough for all reasonable inspection fees incurred by the Borough Engineer for the inspection of improvements, provided that the Borough may require of the developer a deposit for the inspection fees in an amount not to exceed, except for extraordinary circumstances, the amount set forth in Chapter 220 Fee Schedule, which cost shall be determined pursuant to N.J.S.A. 40:55D-53.4 and which shall be subject to the following conditions:
1. Fees for engineering inspections during and after construction, and during the maintenance period, shall be deposited in cash, or by certified check, with the Borough, prior to the issuance of a construction permit by the Borough Engineer.
 2. In the event that construction proceeds at a very slow rate, outside of the time frame as established in the developer's agreement, and the work is not pursued in a diligent manner, resulting in an unreasonable number of engineering inspections or, in the event of faulty installations, inferior materials or workmanship causing an unreasonable number of engineering inspections, an additional fee shall be paid by the applicant to cover the engineering cost of such additional inspections.
 3. No remaining portion of an engineering inspection fee, if any, shall be returned to a developer or his/her successor until the expiration of the maintenance period.
- D. Exemptions. All political entities and Borough entities shall be exempt from payment of any fee under this chapter including review escrow deposits. All charitable, philanthropic, fraternal and religious nonprofit organizations holding a tax-exempt status under the Federal Internal Revenue Code of 1954 [26 U.S.C. § 501(c) or (d)] shall be exempt from any application charge established under this chapter. The aforementioned organizations shall, however, be required to make all review fee escrow deposits established under this chapter.
- E. Disputes. An applicant shall notify in writing the governing body with copies to the Borough's Chief Financial Officer (CFO), the approving authority and the professional whenever the applicant disputes the charges made by a professional for service rendered to the municipality in reviewing applications for

development, review and preparation of documents, inspection of improvements, or other charges made pursuant to the provisions of P.L.1975, c.291. The governing body, or its designee, shall within a reasonable time period attempt to mediate 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. The appeals process shall be as set forth in N.J.S.A. 40:55D-53.2a.

§ **540-39. Improvements; performance and maintenance guarantees.**

A. Before filing a final subdivision plat or recording a minor subdivision deed or as a condition of final site plan approval or as a condition to the issuance of a zoning permit pursuant to subsection d. of N.J.S.A. 40:55D-65, a developer shall furnish a performance guarantee, and provide for a maintenance guarantee in accordance with the provisions of this subsection.

1. The 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 section 15 of *P.L.1991, c.256 (C.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 (*C.46:23-9.9* et seq.; repealed by section 2 of *P.L.2011, c.217*) or *N.J.S.A.46:26B-8* through *N.J.S.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.
2. The performance guarantee shall be in the Borough's prescribed form of performance bond on which the subdivider shall be principal, and secured either by a bonding or surety company approved by the Council or by a certified bank or cashier's check, the proceeds of which shall be returnable to the subdivider without interest after full compliance by the subdivider with all of the requirements of this chapter and the developer's agreement.
3. The performance guarantee shall be approved by the Borough Attorney as to form, sufficiency and execution. Such performance guarantee shall run for a period to be fixed by the Planning Board but, in no case, for a term of more than three years. However, with the consent of the owner and of the surety, if there be one, the Council may, by resolution, extend the term of such performance guarantee for an additional period or periods not to exceed, in the aggregate, three years. 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, as determined as of the time of the passage of the resolution. The amount of the performance guarantee may be reduced by the Council by resolution when portions of the required improvements have been installed.
4. A successor developer must furnish a replacement performance guarantee, as a condition to the approval of a permit update under the State Uniform Construction Code, for the purpose of updating the name and address of the owner of property on a construction permit.
5. The Borough Engineer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee, which itemized cost estimate shall be appended to each performance guarantee posted by the obligor.
6. A performance guarantee shall include, within an approved phase or section of a development privately-owned perimeter buffer landscaping, as required by Borough ordinance or imposed as a condition of approval.
7. At the developer's option, a separate performance guarantee may be posted for the privately-owned

perimeter buffer landscaping.

8. In the event that the developer shall seek a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, as a condition of the issuance thereof, the developer shall furnish a separate guarantee, referred to herein as a "temporary certificate of occupancy guarantee," in favor of the Borough in an amount equal to 120% of the cost of installation of only those improvements or items which remain to be completed or installed under the terms of the temporary certificate of occupancy and which are required to 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. Upon posting of a "temporary certificate of occupancy guarantee," all sums remaining under a performance guarantee, required pursuant to Section 540-39 A. (1), which relate to the development, unit, lot, building, or phase of development for which the temporary certificate of occupancy is sought, shall be released. The scope and amount of the "temporary certificate of occupancy guarantee" shall be determined by the zoning officer, Borough Engineer, or other municipal official designated by ordinance. At no time may the Borough hold more than one guarantee or bond of any type with respect to the same line item. The "temporary certificate of occupancy guarantee" shall be released by the zoning officer, Borough Engineer, 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.
9. 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, only in the circumstance that:
 - (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 recommenced 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 certified mail or other form of delivery providing evidence of receipt.
 - (c) The amount of a "safety and stabilization guarantee" for a development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000.
 - (d) The amount of a "safety and stabilization guarantee" 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) \$5,000 for the first \$100,000 of bonded improvement costs, plus two and a half percent of bonded improvement costs in excess of \$100,000 up to \$1,000,000, plus one percent of bonded improvement costs in excess of \$1,000,000.
 - (2) 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 paragraph.

(3) 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.

- B. The developer shall post with the Borough, prior to the release of a performance guarantee required pursuant to Section 540-39 A (1) through (8), a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the improvements which are being released.
- C. 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, in-flow and water quality structures within the basins, and the out-flow 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 (C.40:55D-53.4).
1. 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.
 2. 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.
- D. 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 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 calculation set forth in section 15 of P.L.1991, c.256 (C.40:55D-53.4) as of the time of the passage of the resolution.
- E. If the required bonded improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the Borough for the reasonable cost of the improvements not completed or corrected and the Borough may either prior to or after the receipt of the proceeds thereof complete such improvements.
- F. 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 obligor may request of the governing body in writing, by certified mail addressed in care of the municipal 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 subsection a. of this section, a list of all uncompleted or unsatisfactory completed bonded improvements. If such a request is made, the obligor 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 obligor. Thereupon the Borough Engineer shall inspect all bonded improvements covered by obligor'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 obligor not later than 45 days after receipt of the obligor's request.
1. The list prepared by the Borough Engineer shall state, in detail, with respect 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.

2. 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 subsection a. of this section.
- G. 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 subsection a. of this section. 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 obligor 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.
- H. For the purpose of releasing the obligor 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 Section 540-39.A.1 of this section, including any contingency factor applied to the cost of installation. If the sum of the approved bonded improvements would exceed 70 percent of the total amount of the performance guarantee, then the Borough may retain 30 percent 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 percent.
- I. If the Borough Engineer fails to send or provide the list and report as requested by the obligor pursuant to Section 540-39.F.1 within 45 days from receipt of the request, the obligor 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 applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.
- J. 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 obligor 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 subsection a. of this section; and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.
- K. In the event that the obligor 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."

- L. If any portion of the required bonded improvements is rejected, the approving authority may require the obligor 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.
- M. Nothing herein, however, shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the governing body or the Borough Engineer.
- N. The obligor shall reimburse the Borough for reasonable inspection fees paid to the Borough Engineer for the foregoing inspection of improvements; which fees shall not exceed the sum of the amounts set forth in subparagraphs (1) and (2) of this paragraph. The Borough may require the developer to post the inspection fees in escrow in an amount:
 - 1. not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of bonded improvements that are subject to a performance guarantee under subparagraph (1), subparagraph (7), or both subparagraph (1) and subparagraph (7) of Section 540-39.A; and
 - 2. not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee under Section-39.A.1, which cost shall be determined pursuant to section 15 of P.L. 1991, c.256 (C.40:55D-53.4).
- O. For those developments for which the inspection fees total less than \$10,000, fees may, at the option of the developer, be paid in two installments. The initial amount deposited in escrow by a developer shall be 50% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Borough Engineer for inspections, the developer shall deposit the remaining 50% of the inspection fees.
- P. For those developments for which the inspection fees total \$10,000 or greater, fees may, at the option of the developer, be paid in four installments. The initial amount deposited in escrow by a developer shall be 25% of the inspection fees. When the balance on deposit drops to 10% of the inspection 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 inspection fees.
- Q. If the Borough determines that the amount in escrow for the payment of inspection fees, as calculated pursuant Section 540-39 A., is insufficient to cover the cost of additional required inspections, the Borough may require the developer to deposit additional funds in escrow provided that the Borough delivers to the developer a written inspection escrow deposit request, signed by the Borough Engineer, which informs the developer of the need for additional inspections, details the items or undertakings that require inspection, estimates the time required for those inspections, and estimates the cost of performing those inspections.
- R. In the event that final approval is by stages or sections of development pursuant to subsection a. of section 29 of P.L.1975, c.291 (C.40:55D-38), the provisions of this section shall be applied by stage or section.
- S. To the extent that any of the improvements have been dedicated to the Borough on the subdivision plat or site plan, the municipal governing body shall be deemed, upon the release of any performance guarantee required pursuant to Section 540-39A.1, 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.

§ **540-40. Developer's agreement.**

- A. Within ninety (90) days of the adoption of a resolution granting final subdivision or final site plan approval and prior to the execution of the final subdivision plat or signing of a final site plan by the Borough, there shall be executed and delivered to the Borough Attorney an agreement between the developer and the Borough incorporating all the terms and conditions of final approval. The agreement shall be drawn by the Borough Attorney and shall be executed by the owner and developer of the subdivision.
- B. The agreement must contain the following provision: "It is hereby understood and agreed that in the event the principal shall default in the performance of its obligation under this agreement, then the Borough shall perform said principal's obligation at the option of the Borough Council."
- C. Implicit in every preliminary approval and part of each such agreement in connection with final approval shall be the agreement of the developer to:
 - 1. Procure all necessary drainage easements of any nature whatsoever.
 - 2. Make such revisions in the drainage plan as may be reasonably required before or during construction by the Borough Engineer. All drainage problems shall be resolved to the satisfaction of the Borough Engineer prior to the issuance of the final certificate of occupancy in the subdivision or site plan.
 - 3. Make changes to the approval and/or plan in the interest of public health and safety.
- D. In the event that all of the improvements have not been installed within the time period set forth in the developer's agreement, the developer may request, in writing, to the Borough Council, a one (1) year extension of the time in which to complete all improvements. No more than two (2) such extensions will be considered unless the developer's agreement shall be accompanied by an application fee of three hundred dollars (\$300.00) to cover the engineering and legal fees associated with the processing of the application.

§ **540-41. Off-tract improvements.**

- A. Construction or contribution required. Pursuant to the powers established in N.J.S.A. 40:55D-39 and N.J.S.A. 40:55D-42, construction of or contributions for off-tract water, sewer, drainage and street improvements may be required in accordance with the following criteria:
 - 1. Improvements to be constructed at the sole expense of the applicant. In cases where reasonable and necessary need for an off-tract improvement or improvements is necessitated or required by the proposed development application, and where no other property owners receive a special benefit thereby, the Planning Board may require the applicant, as a condition of subdivision approval, at the applicant's sole expense, to provide for and construct such improvements as if such were on-tract improvements in the manner provided hereafter and as otherwise provided by law.
 - 2. Contributions by developer toward required off-tract improvements:
 - (a) In cases where the need for any off-tract improvement is necessitated by the proposed development application, and where the Planning Board determines that properties outside the development will also be benefited by the improvements, the Planning Board shall utilize the criteria set forth in § 540-41.C below in determining the developer's proportionate share of such improvements. In addition, the Board shall be guided by the rules and regulations specified in this chapter and the Master Plan. The

Board may also be guided by counsel from the Board Attorney, Engineer, Planning Consultant and other qualified experts and municipal officials relative to the subject matter.

- (b) In the event that the Board determines that one (1) or more improvements constitute an off-tract improvement the Board shall notify the Borough Council of the same specifying the Borough's recommendation relative to the estimated cost of same, the applicant's prorated share of the cost, and possible methods or means to implement same, including but not limited to performance and maintenance guarantees, case contributions, development agreements and other forms of surety.
- (c) The Board shall not grant final approval on the subdivision until all aspects of such conditions have been mutually agreed upon by both the applicant and the Borough Council and a written resolution to that effect by the Borough Council has been transmitted to the Board.

B. Methods of implementation.

- 1. Performance and maintenance guarantees. Where a performance or maintenance guarantee or other surety is required in connection with an off-tract improvement the applicant shall be required to follow the same procedures and requirements as specified in this chapter for other improvements.
- 2. Development agreement. Where a development agreement is required governing off-tract improvements or other conditions as may be required by this chapter or by the Board, said agreement shall be approved as to form, sufficiency and execution by the Board Attorney and Borough Attorney. Said agreement shall specify the amount of cash contributions, if any, the method of payment, the relative timing of such payment, and the obligation or obligations to be undertaken by the Borough of Hawthorne.
- 3. Cash contributions, when not required. Cash contributions for off-tract improvements shall not be required under the following conditions:
 - (a) Where another county or state agency has jurisdiction over the subject improvement and requires cash contribution, guarantee or other surety of the applicant in lieu of such conditions imposed by the Borough of Hawthorne;
 - (b) Where a benefit assessment or other similar tax levy is imposed upon the applicant for the off-site improvement provided; or
 - (c) Where the applicant, where legally permissible, can undertake the improvements in lieu of the municipality, subject to standards and other conditions as may be imposed by the Borough of Hawthorne.
- 4. Cash contributions, method of payment. Where a cash contribution is required by this chapter said contribution shall be deposited with the Borough Chief Financial Officer with a copy of the applicant's transmittal letter forwarded to the Borough Council, the Borough Engineer and the Board. Any and all monies received by the Chief Financial Officer shall be deposited in an escrow account for the purpose of undertaking the improvements specified. Where such improvements are not undertaken, or initiated for a period of ten (10) years from the posting of the funds, the funds may be retained by the Borough and may be used for general municipal purposes, but in such event, neither the applicant nor any of his heirs, executors, administrators, or grantors shall be liable to the Borough for any assessment for the purpose of installing any of the improvements for which said cash contribution was made.

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

1. Street widening, alignment, corrections, channelization of intersections, construction of barriers, new or improved traffic signalization, signs, curbs, sidewalks, trees, utility improvements not covered elsewhere and the construction of new streets and other similar street or traffic improvements: The applicant's proportionate share shall be in the ratio of the estimated peak hour traffic capacity of the present facility, and the estimated peak hour traffic generated by the proposal development. The ratio thus calculated shall be increased by ten percent (10%) for contingencies.
2. Water distribution facilities including the installation of new water mains, the extension of existing water mains, the relocation of such facilities and the installation of other appurtenances associated therewith: The applicant's proportionate cost shall be in the ratio of the estimated daily use of water from the property or properties in gallons to the sum of the deficiency in gallons per day for the existing system or subsystem and the estimated daily use of water for the proposed development. The ratio thus calculated shall be increased by ten percent (10%) for contingencies.
3. Sanitary sewage distribution facilities, including the installation, relocation or replacement of collector and interceptor sewers and the installation, relocation or replacement of other appurtenances associated therewith: The applicant's proportionate cost shall be in the ratio of the estimated daily flow in gallons to the sum of the present deficient capacity for the existing system or subsystem and the estimated daily flow from the proposed project or development. In the case where the peak flow for the proposed development may occur during the peak flow period for the existing system, the ratio shall be the estimated peak flow rate from the proposed development in gallons per minutes to the sum of the present peak flow deficiency in the existing system or subsystem and the estimated peak flow rate from the proposed development. The greater of the two (2) ratios thus calculated shall be increased by ten percent (10%) for the contingencies and shall be the ratio used to determine the cost to the applicant.
4. Stormwater and drainage improvements, including installation, relocation or replacement of transmission lines, culverts, catch basins and the installation, relocation or replacement of other appurtenances associated therewith: The applicant's proportionate cost shall be in the ratio of the estimated peak surfaces runoff as proposed to be delivered into the existing system measured in cubic feet per second deficient for the existing system and the estimated peak flow as proposed to be delivered. The ratio thus calculated shall be increased by ten percent (10%) for contingencies. The applicant's engineer shall compute the drainage basin area and the area of the development and the percent of the total drainage basin area occupied by the development. Where no drainage system exists, which will receive the flow of the surface water from the applicant's development, the applicant shall furnish all drainage rights-of-way deemed to be necessary by the Board.
5. General considerations. In calculating the proportionate or pro rata amount of the cost of any required off-tract facilities which shall be borne by the applicant, the Board shall also determine the pro rata amount of cost to be borne by other owners of lands which will be benefited by the proposed improvements.

§ 540-42. As-built plans.

- A. Before the Borough Construction Official Borough Engineer may issue a construction permit, the Borough Engineer shall certify that he or she has received and approved the detailed construction plans at a scale of not less than one-inch equals 50 feet, profiles, typical sections, construction details and cross sections at maximum intervals of 50 feet of all improvements to be installed or constructed. No improvements shall be accepted by the Borough Council until the Borough Engineer has received and approved drawings, showing the as-built plans, details, grades and profiles of all improvements as finally constructed. In addition to print copies of as-built plans, electronic copies in a format acceptable to the Borough Engineer shall also be required as part of the submittal of as-built plans.

- B. Prior to the release of the performance guarantee, as-built plans on a reproducible media of all public improvements at a scale of not less than one-inch equals 50 feet in plan and profile view shall be submitted with a certification as to the actual construction, for approval of the Borough Engineer.
- C. As individual, improved lots within a subdivision are sold, the subdivider shall, prior to the time of closing, provide the purchaser with a plot plan prepared by a licensed land surveyor of such lot, showing the location of buildings and all improvements and the final contour grading lines. One copy of the as-built plan, signed and dated by the purchaser, shall be submitted to the Borough Engineer within ten (10) days prior to closing.

ARTICLE VI

Development Review Procedures

§ 540-43. General procedures for site plan and subdivision review.

- A. Purpose. Such regulations are deemed necessary to achieve the following purposes:
 1. Promote orderly development. To protect the character and to maintain the stability of all areas within the community and to promote the orderly and beneficial development of such areas.
 2. Promulgate rules and regulations. To provide rules, regulations and procedures, where applicable and to the extent the same have not been otherwise promulgated by ordinance in the Borough of Hawthorne, which will guide the appropriate development of lands within the Borough in a manner which will promote the public health, safety, morals and general welfare.
 3. To protect against hazards and danger. To secure safety from fire, flood, panic and other natural and manmade disasters.
 4. Design standards. To encourage the design and location of streets which will promote the free flow of traffic while discouraging the location of such facilities and routes which will result in congestion.
 5. Creative development techniques. To promote a desirable physical environment through creative development techniques, design and arrangement.
 6. Open spaces. To promote the conservation of open space and to protect the natural resources and to prevent overcrowding through improper land use.
- B. Exceptions to design and performance standards. The approving authority, when acting upon applications, shall have the power to grant such exceptions from the subdivision and site plan requirements of this chapter as may be reasonable and within the general purpose and intent of the provisions for subdivisions, plat, site plan review and approval if the literal enforcement of one (1) or more provisions of this chapter is impracticable or will exact undue hardship because of peculiar conditions pertaining to land in question.
- C. Submission of concept plan for informal review.
 1. An informal review of a concept plan is optional. At the request of the developer, the Planning Board shall grant an informal review of a concept plan for a development for which the developer intends to prepare and submit an application for development. The purpose will be to review concepts to assist the applicant in the preparation of subsequent plans. Other than classification, no decisions will be made, no hearings held and no formal action taken. Neither the developer nor the approving authority shall be bound by this informal review.

2. Filing procedure and information for concept review.
 - (a) The developer shall file with the Administrative Officer, at least two (2) weeks prior to the meeting of the approving authority, sixteen (16) copies of the concept plan and the completed application form.
 - (b) The concept plan is considered a sketch or general plan neither fully engineered nor surveyed. Information used to prepare the concept plan can be available from secondary source information such as the Soil Conservation Survey Map or U.S. Geodetic Survey maps, but should be sufficiently detailed to allow the Planning Board to make suggestions on general site design and layout for circulation, stormwater management, location of open space and buffers and building arrangements and to determine how the land use code affects the proposal.

§ **540-44. General provisions.**

A. Filing and completeness.

1. Applications for development within the jurisdiction of the Planning Board and Zoning Board of Adjustment pursuant to the provisions of N.J.S.A. 40:55D-1 et seq., shall be filed with the Administrative Officer. The applicant shall file, at least ten (10) days prior to the scheduled meeting, the following items: sixteen (16) copies of the application, all plot plans, maps and other papers required by virtue of any provision of this chapter, as well as the applicable fees, and certification by the Tax Collector that all taxes are paid to date. All submission details are set forth in the checklists adopted as part of this chapter (See Schedule A). The applicant may produce other documents, records, or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents. Revised plans shall also be on file at least ten (10) days prior to the date of a continued hearing.
2. A corporation or partnership applying for permission to subdivide a parcel of land, or for a variance to construct multiple dwellings, or for approval of a site to be used for commercial purposes, shall list the names and addresses of all stockholders or individual partners owning at least ten percent (10%) of its stock of any class or at least ten percent (10%) of the interest in the partnership. If a corporation or partnership owns ten percent (10%) or more of the stock of a corporation, or a ten percent (10%) or greater interest in a partnership, subject to the above disclosure, that corporation or partnership shall list the names and addresses of its stockholders holding ten percent (10%) or more of its stock or a ten percent (10%) or greater interest in the partnership, as the case may be, and this requirement shall be followed by every corporate stockholder, or partner in a partnership, until the names and addresses of the corporate stockholders and individual partners exceeding the ten percent (10%) ownership criterion established in this subsection have been listed. Neither the Planning Board, Zoning Board of Adjustment or the governing body shall approve the application of any corporation or partnership which does not comply with this requirement of N.J.S.A. 40:55D-48.1. The penalty for concealment by a corporation or a partnership shall be as outlined in N.J.S.A. 40:55D-48.1.
3. The Borough Administrative Officer, in consultation with the Borough Engineer, shall review the submission for its completeness and take action on accepting or rejecting the submission as a complete application. In the event the Administrative Officer does not certify the application to be complete within forty-five (45) days of the date of its submission, the application shall be deemed complete upon the expiration of the forty-five (45) day period for purposes of commencing the applicable time period unless: (a) the application lacks information indicated on the checklists adopted as part of this chapter and (b) the Administrative Officer has notified the applicant, in writing, of the deficiencies in the application within forty-five (45) days of submission of the application.

4. The applicant may request in writing that one (1) or more of the submission requirements be waived, in which event the Administrative Officer shall schedule the matter for consideration of the requested waivers before the appropriate board. The application shall be deemed incomplete until that item has been satisfied.
5. If an application, as filed, includes requests for waivers of any items required as conditions for completeness, the approving authority shall grant or deny the request at the first scheduled meeting, either regular or conference, following receipt of the application, provided that the application is filed no less than fourteen (14) days prior to said meeting. If any such item is not waived by the approving authority, the application shall be deemed incomplete until that item has been satisfied.
6. If an application is dormant for a period of ninety (90) days after being declared incomplete due to lack of action on the part of the applicant, said application shall automatically be deemed null and void and shall be so marked or labeled.
7. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that he/she is entitled to approval of the application. The approving authority may subsequently require correction of any information found to be in error and submission of additional information not specified in the ordinance 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 approving authority.

B. Action by approving authority.

1. Public hearing. Upon determination that an application is complete, a public hearing date shall be set by the approving authority and notice given.
2. Reports.
 - (a) Upon determination that an application is complete, the Administrative Officer shall forward one (1) copy of the plans and supporting data to the following boards and experts, as directed by the approving authority, for review and action:
 - (1) The Borough Engineer;
 - (2) The Board of Health;
 - (3) The Environmental Commission;
 - (4) The Planning Consultant;
 - (5) The Chief of Police;
 - (6) The Fire Prevention Bureau;
 - (7) The Construction Code Officer;
 - (b) Upon receipt of all required reports, the applicant shall file with the approving authority a written statement responding to each report and stating how each comment of the report will be addressed or otherwise resolved. The written statement shall be filed with the Board prior to the required hearing on the application. If any required report has not been obtained by the applicant, the applicant shall notify the Board of this fact, by certified mail, in writing, at least ten (10) days prior to the hearing, giving the reason(s) why the report has

not been received. After an agency, has not responded within thirty (30) days from date of certified mailing and the applicant has submitted the copies of letters/certified receipt indicating request for report, the applicant will be relieved from obtaining that agency's input. A copy of each report received by the applicant shall accompany the written statement. The format and content of the statement shall be as follows:

- (1) The name of agency issuing the report.
 - (2) The date of the report.
 - (3) The date of the application drawing(s) or revision date of the application drawing(s) for which the report is issued.
 - (4) The applicant's response to each comment in the report which requires action on the part of the applicant. The response shall state clearly how each matter has been or will be addressed, corrected or otherwise resolved.
- (c) The approving authority shall take the recommendations into account, but shall have the authority to proceed in the absence of such recommendation or to disregard or modify such recommendations.
3. The approving authority shall grant or deny preliminary subdivision approval within the following time periods unless some further time has been consented to by the developer. Otherwise, the approving authority shall be deemed to have granted preliminary approval of the subdivision. Failure of the approving 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 approving board to act shall be issued on request of the applicant.
- (a) Minor subdivision: within forty-five (45) days of the date of a complete submission.
 - (b) Preliminary subdivision of ten (10) or fewer lots: within forty-five (45) days of the date of a complete submission.
 - (c) Preliminary subdivision with more than ten (10) lots: within ninety-five (95) days of the date of a complete submission.
 - (d) Preliminary subdivision requiring variances: within one hundred twenty (120) days of the date of a complete submission.
 - (e) Final subdivision: within forty-five (45) days of the date of a complete submission.
4. The approving authority shall grant or deny preliminary site plan approval within the following time periods unless some further time has been consented to by the developer. Otherwise, the approving authority shall be deemed to have granted preliminary approval of the site plan. Failure of the approving 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 approving board to act shall be issued on request of the applicant.
- (a) Minor site plan: within forty-five (45) days of the date of a complete submission.
 - (b) Preliminary site plan which involves ten (10) dwelling units or less: within forty-five (45) days of the date of a complete submission.
 - (c) Preliminary site plan which involves more than ten (10) acres or more than ten (10) dwelling units: within ninety-five (95) days of the date of a complete submission.

- (d) Preliminary site plan requiring variances: within one hundred twenty (120) days of the date of a complete submission.
 - (e) Final site plan: within forty-five (45) days of the date of a complete submission.
5. The approving authority may approve, disapprove or approve with conditions the application. The decision shall be in writing and shall be sent to the applicant and the newspaper as required by § 540-30.B. If the approving authority grants preliminary approval, its Chairperson and Secretary, or the Vice Chairperson or Assistant Secretary in their absence, respectively, and the Borough Engineer shall sign each page of the plat indicating the approval. If the plat is conditionally approved, it shall not be signed until all conditions are corrected on the plat. If the corrections are not completed within ninety (90) days of the conditional approval, the conditional approval shall lapse.
 6. Whenever review or approval of an application by the County Planning Board is required by the County Land Development Standards, the Planning Board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required time period.
 7. If the approving authority required any substantial amendment in the layout of improvements in either a site plan or subdivision, and that plan had been the subject of a hearing, an amended application shall be submitted and proceeded upon as in the case of the original application for development and shall be subject to filing of additional fees as specified in § 540-38. The approving authority shall, if the proposed development complies with this chapter, grant preliminary approval.

C. Effect of approval.

1. Preliminary approval shall confer upon the applicant the following rights for a three (3) year period from the date of the preliminary approval:
 - (a) That the general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions; off-tract improvements; and in the case of a site plan, any requirements for preservation of existing natural resources, for safe and efficient vehicular and pedestrian circulation, parking and loading, for screening, landscaping and location of structures and for exterior lighting, except that nothing herein shall be construed to prevent the Borough from modifying, by ordinance, such general terms and conditions of preliminary approval as relate to public health and safety.
 - (b) That the applicant may submit for final approval on or before the expiration date of preliminary approval the whole or a section or sections of the preliminary plat or site plan, as the case may be.
 - (c) That the applicant may apply for, and the approving authority may grant, extensions on such preliminary approval for additional periods of at least one (1) year but not to exceed a total extension of two (2) years, provided that if the design standards have been revised by ordinance, such revised standards may govern.
2. In the case of a development for an area of fifty (50) acres or more, the approving authority may grant the rights referred to in Subsection 1.a., b. and c. above for such period of time longer than three (3) years as shall be determined by the approving authority to be reasonable taking into consideration the number of dwelling units and nonresidential floor area permissible under preliminary approval, the potential number of dwelling units and nonresidential floor area of the section(s) 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.

3. Any variance from the terms of this chapter hereafter granted by the Board of Adjustment permitting the erection or alteration of any structures or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have actually commenced on each and every structure permitted by said variance, or unless such permitted use has actually been commenced, within one (1) year from the date of entry of the judgment or determination of the Board of Adjustment; except, however, in the case of a use variance which also involves a subdivision or site plan, approval of the variance shall extend for the full period of preliminary approval, i.e. three (3) years; and except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the Board of Adjustment to the governing body, or to a court of competent jurisdiction, until the termination in any manner of such appeal or proceeding.

- D. Issuance of building permits. No building permit shall be issued until final approval has been granted by the Planning Board and, in the case of a subdivision, until the final plat has been properly filed with the Passaic County Clerk within the time or extended time required by N.J.S.A. 40:55D-54. Proof of filing shall be submitted to the Planning Board Secretary prior to issuance of a building permit. The requirement of final approval by the Planning Board prior to the issuance of a building permit for the construction of a maximum one (1) home (or one building of attached residential units, as the case may be) which shall be the “model” for the development, may be approved. No certificate of occupancy will be issued for these homes until all improvements are constructed to the satisfaction of the Borough Engineer.

§ 540-45. Procedures for minor subdivision and site plan approval.

- A. Procedures for minor subdivision approval.

1. A minor subdivision shall be as defined in Article VII of this chapter.
2. Submission details are set forth in the checklists adopted as part of this chapter (See Schedule A).
3. Upon receipt of a completed application, the Board shall, within the time periods prescribed pursuant to § 540-44.B.3., take action on the application as provided by law.
4. The Administrative Officer may submit a minor subdivision application to the Subdivision and Site Plan Council for report and recommendation to the full Planning Board.
5. Minor subdivision approval shall be deemed to be final approval of the subdivision by the Board, provided that the Board may condition such approval on terms ensuring the provision of improvements pursuant to N.J.S.A. 40:55D-38, 39, 40 and 53. If improvements are required to be constructed as a condition of minor subdivision approval, the applicant shall complete all such improvements within one (1) year from the date of approval of said minor subdivision. The applicant shall also post a performance guarantee in accordance with all requirements applicable thereto for a major subdivision.
6. After one (1) lot is created by minor subdivision, any subsequent application for subdivision of said resulting lot or parcel shall be accepted only as a major subdivision.
7. Provided that the approved final plat of a minor subdivision has been filed with the county recording officer, the zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor subdivision approval was granted shall not be changed for a period of two (2) years after the date of minor subdivision approval.
8. Approval of a minor subdivision shall expire one hundred ninety (190) days from the date of Planning Board approval unless within such period a plat in conformity with such approval and the

provisions of the Map Filing Law, or a deed clearly describing the approved minor subdivision, is filed by the developer with the county recording officer, the Borough Engineer and the Borough Tax Assessor. Any such plat or deed must be signed by the Chairperson and Secretary of the Planning Board before it will be accepted for filing by the county recording officer.

B. Procedures for minor site plan approval.

1. A minor site plan shall be as defined in Article VII of this chapter.
2. Submission details are set forth in the checklists adopted as part of this chapter (See Schedule A).
3. Upon receipt of a completed application, the Board shall, within the time periods prescribed pursuant to § 540-44.B.4, take action on the application as provided by law
4. Minor site plan approval shall be deemed to be final approval of the site plan by the Board, provided that the Board may condition such approval on terms ensuring the provision of improvements pursuant to N.J.S.A. 40:55D-38, 39 and 53.

§ **540-46. Procedures for preliminary subdivision and site plan approval.**

A. Procedures for preliminary major subdivision approval.

1. Major subdivision is any subdivision of land that is not classified as a minor subdivision.
2. Submission details are set forth in the checklists adopted as part of this chapter (See Schedule A).
3. Upon receipt of a completed application, the Board shall, within the time periods prescribed pursuant to § 540-44. B.4., take action on the application as provided by law.
4. For all applications for preliminary approval of major subdivisions, the approving board shall hold a public hearing with public notice given pursuant to § 540-28. If, upon public hearing, preliminary approval is granted, the Board shall adopt a resolution with respect thereto, enumerating the plat thereby approved and establishing the terms and conditions of approval and specifying the conditions which must be satisfied prior to final approval. A copy of the resolution shall be attached to the preliminary plat, which shall be signed by the Chairperson and Secretary of the Board.
5. As a condition of approval, the approving authority may require the installation and maintenance of on-tract improvements, and the regulations may require a developer to pay his/her pro-rata share of the cost of off-tract improvements in accordance with N.J.S.A. 40:55D-42.
6. Preliminary approval of a major subdivision pursuant to N.J.S.A. 40:55D-48 shall have the effect and shall confer upon the applicant such rights as described in § 540-44.B.

B. Procedures for preliminary major site plan approval.

1. Major site plan is any site plan that is not classified as a minor site plan.
2. Submission details are set forth in the checklists adopted as part of this chapter (See Schedule A).
3. Upon receipt of a completed application, the Board shall, within the time periods prescribed pursuant to § 540-44.B.4., take action on the application as provided by law.
4. For all applications for preliminary approval of major site plans, the approving board shall hold a public hearing with public notice given pursuant to § 540-28. If, upon public hearing, preliminary approval is granted, the Board shall adopt a resolution with respect thereto, enumerating the plans

thereby approved and establishing the terms and conditions of approval and specifying the conditions which must be satisfied prior to final approval. A copy of the resolution shall be attached to the preliminary plan, which shall be signed by the Chairman and Secretary of the Board.

5. As a condition of approval, the approving authority may require the installation and maintenance of on-tract improvements, and the regulations may require a developer to pay his/her pro-rata share of the cost of off-tract improvements in accordance with N.J.S.A. 40:55D-42.
6. Preliminary approval of a major site plan pursuant to N.J.S.A. 40:55D-46 shall have the effect and shall confer upon the applicant such rights as described in § 540-44.C.

§ 540-47. Submission of final subdivision plat.

A. Filing procedure.

1. Prior to the expiration of preliminary plat approval, the developer shall file with the Administrative Officer, at least ten (10) days prior to the meeting of the approving authority; the original tracing cloth or Mylar copies; ten (10) black-on-white paper prints of the plat; four (4) completed copies of the application form and final plat checklist; the performance guarantee approved by the governing body, including off-tract improvements, if any; any maintenance guaranties; the applicable fee; certification by the Tax Collector that all taxes are paid to date; certification by the Soil Conservation District pursuant to the Soil Erosion and Sediment Control Act, Chapter 251 of the Laws of 1975; and if common open space lot or lots are included in the application, a separate map showing the individual lot or lots that are to be designated as common open space, which map shall have shown thereon the data listed on the checklists adopted as part of this chapter (See Schedule A).
2. Where utility services are to be extended to the development, the final plat shall be accompanied by letters directed to the Chairperson of the approving authority and signed by a responsible officer of the water company, sewer authority and utility which provides gas, telephone and electricity that has jurisdiction in the area. Such letters shall approve each proposed utility installation design and state who will construct the facility. 3. The final plat shall be accompanied by a statement by the Borough Engineer that he/she is in receipt of a map showing all utilities and other improvements (both in the development and off-tract improvements) in exact location and elevation; that he/she has examined the street, drainage erosion, stormwater control and excavation plans and found that the interests of the Borough and of nearby properties are fully protected and identifying those portions of any improvements already installed; and that the developer has either:
 - (a) Installed all improvements in accordance with the requirements of this chapter and the preliminary plat approval, with a maintenance guarantee accompanying the final plat; or
 - (b) Posted a performance guarantee that has been approved by the governing body.

B. Action by approving authority of final subdivision plat.

1. The approving authority shall review the submission for its completeness and take action on accepting or rejecting the submission as a complete application. If rejected, the applicant shall be notified within forty-five (45) days of submission. If accepted as a complete application, the approving authority shall grant final approval if the detailed drawings, specifications and estimates conform to the standards established by this chapter, the conditions of previous reviews, the changes and/or conditions of previous reviews, the changes and/or conditions required on the informal plat in cases where there has been no preliminary plat, and the standards prescribed by the Map Filing Law, N.J.S.A. 46:23-9.9 et seq. In the case of a planned development, the approving authority may permit minimal deviations from the conditions of preliminary plat approval necessitated by a change of conditions beyond the control of the developer since the date of preliminary approval. Minimal

deviations shall not require the developer to submit another application for preliminary approval.

2. Final approval shall be granted or denied within forty-five (45) days after submission of a complete application to the Administrative Officer or within such further time as may be consented to by the applicant, as set forth in § 540-44.B.3. An approved final plat shall be signed by the Chairperson and Secretary of the approving authority, or the Vice Chairperson or Assistant Secretary in their absence, respectively.
3. Final approval of a major subdivision shall expire ninety-five (95) days from the date of signing of the plat unless within such a period the plat shall have been duly filed by the developer with the county recording officer. The approving authority may for good cause shown extend the period for recording for an additional period not to exceed one hundred ninety (190) days from the date of the signing of the plat. No subdivision plat shall be accepted for filing by the county recording officer until it has been approved by the approving authority as indicated on the instrument by the signature of the Chairperson and Secretary of the approving authority, or the Vice Chairperson or Assistant Secretary in their absence, respectively, or a certificate has been issued as to the failure of the approving authority to act within the required time. The signatures of the Chairperson and Secretary shall not be affixed until the developer has posted the required guaranties. If the county recording officer records any plat without such approval, such recording shall be deemed null and void, and, upon request of the municipality, the plat shall be expunged from the official records. It shall be the duty of the county recording officer to notify the Planning Board, in writing, within seven (7) days of the filing of any plat, identifying such instrument by its title, date of filing and official number.
4. Provided that the approved final subdivision plat has been filed with the county recording officer, the zoning requirements applicable to the preliminary approval first granted to the major subdivision and all other rights conferred upon the developer pursuant to the Municipal Land Use Law, whether conditionally or otherwise, shall not be changed for a period of two (2) years after the date of final approval. If the developer has followed the standards prescribed for final approval, the approving authority may extend such period of protection for extensions of one (1) year, but not to exceed three (3) extensions. Upon granting of final approval, the rights conferred upon the applicant by the granting of preliminary approval shall be terminated upon final approval.
5. Upon final approval by the Planning Board and after all required signatures are placed on the original tracing, the Administrative Officer shall request the Borough Engineer to have one (1) cloth print and (1) mylar reproducible and ten (10) copies each made of such final plat and file a copy thereof with each of the following: the Board Secretary, Administrative Officer, Board Engineer, Borough Clerk, Construction Code Officer, Tax Assessor, Board of Health, Shade Tree Commission, and any other agency or person directed by the approving authority.

§ **540-48. Submission of final site plan.**

A. Filing procedure.

1. The site plan and an application for final approval shall be submitted to the proper Administrative Officer with the required fee. If there have been no changes in the approved preliminary site plan, the same plan may be used in connection with the application for final approval and no further final plan shall be required for approval. Five (5) white prints (blue or black-on-white) of the site plan shall accompany the application. Four (4) completed copies of the application form and final plat checklist must be submitted along with the prints; the performance guarantee approved by the governing body, including off-tract improvements, if any; any maintenance guaranties; the applicable fee; certification by the Tax Collector that all taxes are paid to date; certification by the Soil Conservation District pursuant to the Soil Erosion and Sediment Control Act, Chapter 251 of the Laws of 1975.
2. Where utility services are to be extended to the development, the final site plan shall be accompanied

by letters directed to the Chairperson of the approving authority and signed by a responsible officer of the water company, sewer authority and utility which provides gas, telephone and electricity that has jurisdiction in the area. Such letters shall approve each proposed utility installation design and state who will construct the facility.

3. The final site plan shall be accompanied by a statement by the Borough Engineer that he/she is in receipt of a map showing all utilities and other improvements (both in the development and off-tract improvements) in exact location and elevation; that he/she has examined the street, drainage erosion, stormwater control and excavation plans and found that the interests of the Borough and of nearby properties are fully protected and identifying those portions of any improvements already installed; and that the developer has either:
 - a) Installed all improvements in accordance with the requirements of this chapter and the preliminary plat approval, with a maintenance guarantee accompanying the final plat; or
 - b) Posted a performance guarantee that has been approved by the governing body.

B. Action by approving authority on final site plan.

1. The approving authority shall review the submission for its completeness and take action on accepting or rejecting the submission as a complete application. If rejected, the applicant shall be notified within forty-five (45) days of submission. If accepted as a complete application, the approving authority shall grant final approval if the detailed drawings, specifications and estimates conform to the standards established by this chapter, the conditions of previous reviews, the changes and/or conditions of previous reviews, the changes and/or conditions required on the informal plat in cases where there has been no preliminary plat, and the standards prescribed by the Map Filing Law, N.J.S.A. 46:23-9.9 et seq. In the case of a planned development, the approving authority may permit minimal deviations from the conditions of preliminary plat approval necessitated by a change of conditions beyond the control of the developer since the date of preliminary approval. Minimal deviations shall not require the developer to submit another application for preliminary approval.
2. Final approval shall be granted or denied within forty-five (45) days after submission of a complete application to the Administrative Officer or within such further time as may be consented to by the applicant, as set forth in § 540-44.B.3. An approved final plat shall be signed by the Chairperson and Secretary of the approving authority, or the Vice Chairperson or Assistant Secretary in their absence, respectively.
3. The zoning requirements applicable to the preliminary approval first granted to a site plan and all other rights conferred upon the developer pursuant to the Municipal Land Use Law, whether conditionally or otherwise, shall not be changed for a period of two (2) years after the date of final approval. If the developer has followed the standards prescribed for final approval, the approving authority may extend such period of protection for extensions of one (1) year, but not to exceed three (3) extensions. Upon granting of final approval, the rights conferred upon the applicant by the granting of preliminary approval shall be terminated upon final approval.
4. Upon final approval by the approving board, a copy of the plat shall be filed with each of the following: the Board Secretary, Administrative Officer, Board Engineer, Borough Clerk, Construction Code Officer, Tax Assessor, and any other agency or person directed by the approving authority.

ARTICLE VII

Definitions

§ 540-49. Construction.

In the construction of this chapter, the present tense shall include the future, the singular number shall include the plural, and the plural the singular. The word "shall" is always mandatory. The word "may" is permissive. The words "zone" and "district" are synonymous. The word "building" shall include the word "structure." The word "used" shall include the words "arranged, designed, constructed, altered, converted, rented, leased or intended to be used." Any word or term not interpreted or defined by this section is to be given its standard or common meaning. Whenever a term is used in this chapter which is defined in N.J.S.A. 40:55D-1, et seq., such term shall have the meaning in said statute.

§ 540-50. Terms defined.

For purposes of this chapter, the following phrases and words shall have the meanings indicated.

ACCESSORY BUILDING OR STRUCTURE - A building or structure occupied or devoted to an accessory use on the same lot with and subordinate to a principal building or structure. More particularly, but not by way of limitation, an accessory building or structure in a residential zone shall be construed to include detached private garages, private greenhouses, private sheds, gazebos, other private roofed structures; private swimming pools, and private sport courts. Accessory structures shall not be construed to include paving, at-grade patios or play equipment such as swing sets or playhouses.

ACCESSORY USE – A use normally incident and subordinate to the principal use upon the premises or lot.

ADMINISTRATIVE OFFICER - The Land Use Administrator, unless otherwise stated or intended by this chapter.

ADULT COMMUNITY HOUSING – See Age Restricted Housing

ADULT DAY CARE CENTER – See “elder care center.”

ADVERSE DRAINAGE CONDITIONS - The absence of drainage facilities, drainage easements or drainage rights-of-way leading to, along or through a street, road, drainage structure or property, either within or exterior to a proposed subdivision or site plan of such location, size, design, construction or condition which would provide for storm drainage, or which would prevent flooding, erosion, silting or other damaging effect to a street, road, drainage structure, or property to remove the threat of such damage, as determined by or in the opinion of a licensed professional engineer or other qualified professional.

ADVERSE EFFECT – Design features including existing features on a property, creating, aggravating or leading to impractical, unsafe, unsatisfactory or noncomplying conditions, such as: a layout inconsistent with the zoning regulations; insufficient street location resulting in an unsafe or inefficient circulation system; inadequate utilities, such as water, drainage, shade trees and sewerage; unsuitable size, shape and location of any area reserved for public use or land for open space; infringement upon land designated as subject to flooding; and the creation of conditions leading to soil erosion by wind or water from excavation or grading; all as set forth in N.J.S.A. 40:55D-38 and measured against the design and performance standards of this chapter.

ADVERTISING SIGN – A sign which provides information including but not limited to the name and address of the business or the commodity, service, entertainment or other activity being conducted, sold or offered, or utilized as a trademark.

AFFORDABLE HOUSING – Housing which is affordable to persons of low- and moderate-income based upon standards of income and affordability established by the regulations of the New Jersey State Council on Affordable Housing (COAH), or any agency that supersedes COAH, as amended from time to time.

A-FRAME SIGN – A portable sign that consists of two (2) hinged sign boards with information on each side designed to be placed on the ground or hung from the shoulders of an individual (synonymous with “sandwich board sign”).

AGE-RESTRICTED HOUSING - A multi-family residential development wherein the units are restricted by deed or other instrument to occupancy by a person or persons in any one (1) of the following categories: up to two (2) individuals, both of whom are fifty-five (55) years of age or older; a couple in a marriage, civil union or domestic partnership, either one (1) of whom is fifty-five (55) years of age or older; a couple having a permanent and stable relationship living together as a single housekeeping unit, either one (1) of whom is fifty-five (55) years of age or older; or a single person over age twenty (20) but under age fifty-five (55) who is living with any of the above when the presence of said person is essential to the physical care or economic support of either of the above.

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 part thereof or removal of a building from one location to another or a change in use.

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 atmosphere, or made up of a series of sections that turn.

ANTENNA – Any interior or exterior transmitting or receiving device mounted on a tower, building or structure, and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies, wireless telecommunications signals or other communication signals.

ANTENNA SUPPORT STRUCTURE – A structure, other than a telecommunications tower, which is attached to a building and on which one (1) or more antennas are located.

APARTMENT – An independent self-contained dwelling unit containing one (1) or more rooms with private bath and kitchen facilities located in a multi-family dwelling building. (See Also: “dwelling, multi-family.”)

APPLICANT – A developer or property owner submitting an application for development.

APPLICATION FOR DEVELOPMENT - The application form and all accompanying documents required by this chapter for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit pursuant to this chapter.

APPROVING AUTHORITY - The Planning Board or Board of Adjustment unless a different agency is designated in this chapter pursuant to the Municipal Land Use Law. The term “board of adjustment” may be substituted when the ordinance states “planning board,” in those instances where it is permitted by the Municipal Land Use Law.

ASSISTED LIVING FACILITY - A facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed, to four (4) or more adult persons unrelated to the proprietor. Apartment units offer, at a minimum, one (1) unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance.

ATTIC - The open, uninhabitable space between the ceiling beams of the top habitable story and the roof rafters in any building.

AUTOMATIC CAR WASH - A public garage facility involving a building through which automobiles pass for the automatic or mechanical application of cleaner, wax, rinse water and drying. (See Also: “garage, public.”)

AUTOMOBILE REPAIR - See "garage, public."

AUTOMOBILE SALES - The use of any building, land area, or other premises for the display and sale of new or used automobiles generally but may include light trucks or vans, trailers, or recreational vehicles and including any vehicle preparation or repair work conducted as an accessory use.

AUTOMOBILE SERVICE STATION - See "motor vehicle service station."

AWNING – A roof-like cover that may be temporary or permanent in nature and projects from the wall of a building for the purposes of shielding a window or doorway or providing decorative or architectural detail. Unless otherwise specified in this chapter, permanent awnings that cannot be retracted shall be subject to the setback requirements of the district in which the building is located.

AWNING SIGN – A sign that is painted on or attached to an awning.

BALCONY – An unroofed, cantilevered structure, the floor level of which is elevated above ground level more than four (4) feet and either supported by, attached to or accessible from the principal building or structure, and which is a part of the principal building to which it is attached.

BANNER – Any lightweight plastic, fabric or other material, whether or not containing a message of any kind, suspended from a rope, wire or string, or otherwise affixed to the structure or erected in any manner on the property.

BAR; TAVERN - An establishment used primarily for the serving of liquor by the drink to the general public and where food or packaged liquors may be served or sold only as accessory to the primary use.

BASE FLOOD – See the State of New Jersey Flood Hazard Area Control Act Rules (NJAC 7:13).

BASEMENT - That portion of a building which is partly below and partly above finished grade and having more than one-half (1/2) its height above finished grade. (See Also: "grade, finished," "story" and "cellar.")

BEST MANAGEMENT PRACTICES (BMP) - Performance or design standards established to minimize the risk of contaminating groundwater or surface waters while managing the use, manufacture, handling or storage of hazardous substances or hazardous wastes.

BILLBOARD – An off-premises sign displayed outdoors for the purpose of advertising, identifying, displaying, directing or attracting attention to an object, person, institution, organization, business, product, service, event or location, or to express a point of view. Also known as an "off-premises" or "outdoor advertising" sign. For the purposes of this chapter, the term "billboard" shall include the sign face and any element bounding the sign.

BUFFER - A strip of land containing natural materials, woodlands, earth mounds, and/or other planted vegetation for the purposes of making a physical or visual barrier. No building, structure or parking shall be permitted in this area.

BUILDING - A combination of materials to form a construction adapted to permanent, temporary or continuous occupancy by any person, animal or thing, and having a roof.

BUILDING COVERAGE - The percentage of a lot covered by all principal and accessory buildings, exclusive of open decks, patios and porches attached thereto. Cantilevers and overhangs shall not be included in the calculation of building coverage if they do not extend more than two (2) feet from a building and are at least four (4) feet above the grade directly adjacent to the projection. Bay and bow windows shall not be included in the calculation of building coverage if they are constructed no lower than two (2) feet from the level of the finished floor of a residential structure and are no larger than sixteen (16) square feet.

BUILDING ENVELOPE - The perimeter area within a lot formed by the minimum required front, rear and side yards. (See Figures 1 through 4 located in the Appendix of this chapter.)

BUILDING HEIGHT - See "height of building."

BUILDING LINE – The minimum required front yard setback line.

BUILDING PERMIT – A permit which is granted by the Construction Code Officer for the construction, erection, alteration, extension or demolition of a building or structure.

BUILDING, PRINCIPAL - See "principal building."

BULK REGULATIONS - Standards and controls that establish the maximum size of buildings and structures on a lot and the buildable area within which the building can be located, including, but not necessarily limited to, coverage, setbacks, height, floor area ratio, and yard requirements.

BUSINESS, HOME-BASED – See “home occupation.”

BUSINESS OFFICE – A place of business where professional or clerical duties are performed and which does not offer a product or merchandise for sale to the public on the premises. (See Also: “professional office.”)

BUSINESS SIGN – A sign which directs attention to a business, profession or entertainment conducted upon the premises on which the sign is located, or to a commodity or service sold or offered for sale on the premises on which the sign is located.

CANOPY or MARQUEE – A structure, either freestanding or attached to a building wall, having a horizontal or nearly horizontal top and bottom surfaces, the bottom surface of which is located at least ten (10) feet above the ground below and which is intended to serve as a covering over the ground below and the objects thereon.

CAPITAL IMPROVEMENT - A governmental acquisition of real property or major construction project.

CARPORT – A roofed structure providing space for the parking of motor vehicles and enclosed on not more than three (3) sides.

CATCH BASIN - An inlet designed to intercept and redirect surface waters.

CELLAR - That portion of a building which is partly or completely below finished grade and having more than 1/2 its height below finished grade. (See Also: "grade, finished," "story" and "basement.")

CERTIFICATE OF OCCUPANCY (CO) – A certificate which is issued by the Construction Code Officer signifying completion of a building, structure or other improvement in accordance with applicable laws and ordinances and permitting the occupancy or use of the building, structure or improvement for the stated purposes.

CHANGE IN USE - The use of the building or land which is in any manner different from the previous use by way of function, operation, extent, products sold or manufactured or 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 occupancy or tenancy in the nonresidential zones.

CHANGEABLE COPY SIGN – A sign or portion thereof on which the copy or symbols change either automatically through electrical or electronic means (for example, time and temperature units), or manually through placement of letters or symbols on a panel mounted in or on a track system. (See Also: “electronic message board.”)

CHILD-CARE CENTER - Any facility, by whatever name known, which is maintained for the care, development and supervision of six (6) or more children under thirteen (13) years of age who attend the facility for less than twenty-four (24) hours a day, and which is licensed as a child-care center by the Department of Human Services. This term shall not include any of those facilities or uses which are not included within the definition of "child-care centers" in the Manual of Requirements for Child Care Centers, State of New Jersey, Department of Human Services.

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

CO-LOCATION – The use of a common Personal Wireless Telecommunications Facility (PWTF) or a common site by two (2) or more wireless license holders or by one (1) wireless license holder for more than one (1) type of

telecommunications technology and/or placement of a PWTF on a structure owned or operated by a utility or other public entity.

COMMERCIAL VEHICLE - Every type of vehicle used for commercial purposes, including but not limited to vehicles used to transport persons or property for compensation or used in the furtherance of and/or performance of a specific job or work function. This definition shall include any vehicle bearing advertisements or printed commercially related matter thereon. This term shall not include vehicles used for private or personal transportation.

COMMON FACILITIES – Facilities for the common use of two (2) or more dwelling units, including but not limited to roads, sidewalks, swimming pools, playgrounds, trees, greens, fairways and parking areas.

COMMON OPEN SPACE – An open space area within or related to a site designated as a development, and designed and intended for the use or enjoyment of residents and owners 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 of the development.

COMMON OWNERSHIP - Ownership of two (2) or more contiguous parcels of real property by one (1) person or by two (2) or more persons owning such property jointly, either as tenants by the entirety or as tenants in common.

COMMUNICATION ANTENNA - Any system of wires, rods, discs, panels, flat panels, dishes, whips, or other similar devices used for the transmission or reception of wireless signals. An antenna may include an omnidirectional antenna (rod), directional antenna (panel), parabolic antenna (disc) or any other wireless antenna. A communications antenna shall not include mobile cellular communications antennas or mobile cellular communications towers as otherwise regulated under this Chapter.

COMPACTION – The increase in soil bulk density.

CONCEPT PLAN – The optional, initial development plan for subdivisions and/or site plans of sufficient accuracy and detail to be used for the purpose of informal review, evaluation and non-binding comment by the Planning Board and meeting the requirements of this ordinance.

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 Planning Board.

CONDOMINIUM – One (1) or more buildings or structures and the land on which situated containing multiple residential dwelling units or multiple non-residential uses characterized by a form of ownership of real property under a master deed providing for ownership by one (1) or more owners of units of improvements together with an undivided interest in common elements appurtenant to each.

CONSTRUCTION EQUIPMENT - Any equipment used in construction work, building or excavating, usually of substantial size, which is operated in conjunction with a commercial or industrial business, similar to but not normally registered as a vehicle (synonymous with "machinery").

CONSTRUCTION SIGN – A temporary on-premises sign identifying the on-going construction activity during the time related to building or site improvements that is limited to the on-going construction activity and identifying the contractor and/or any subcontractor engaged to perform construction activity on the site and/or the builder, the architect, the engineer, and the planner involved with the project

CONSTRUCTION VEHICLE - Every type of vehicle used in conjunction with construction work, building or excavating, including transportation or material, which is operated in conjunction with a commercial or industrial business.

CONTAMINATION - The presence of any harmful or deleterious substances exceeding current federal and state maximum contaminant levels. The NJDEP residential cleanup standards shall apply to residential uses, and the nonresidential standards shall apply to nonresidential uses.

CONVENIENCE STORE – A retail establishment offering for sale a limited number of groceries and household items intended for the convenience of the surrounding neighborhood.

CONVENTIONAL - Development other than planned development.

COOPERATIVE – One (1) or more buildings or structures and the land on which situated containing multiple residential dwelling units or multiple non-residential uses characterized by a form of multiple ownership real estate in which property units are owned by a nonprofit corporation or business trust, which grants occupancy rights to individual tenants. Property owners buy shares in the corporation representing their ownership of a property unit, and pay the corporation a share of real estate taxes, building maintenance, and other overhead expenses. Property transfers from the previous owner to a new owner are subject to approval by a tenant board.

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

CORNER LOT - See "lot, corner."

COUNTY REVIEW AGENCY - An agency designated by the Passaic County Board of Chosen Freeholders to review municipal development plans impacting county facilities such as county roadways and stormwater management systems.

COVERAGE GAP – The need for additional wireless telecommunications capacity or service for State law purposes because of inadequate present capacity or service, dead spots, static and inability to place a call.

CUL-DE-SAC - The turnaround at the end of a dead-end street.

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 or excavated surface.

DAY SPA – see SPA

DEAD-END STREET - A street or portion of a street which is accessible by a single means of ingress or egress.

DEAD SPOT – Small areas within a wireless telecommunications service area where the field of strength is lower than the minimum level for reliable service or inadequate capacity exists as determined by expert testimony in accordance with industry standards.

DECK – An unroofed platform, either freestanding or attached to a building, that is supported by pillars or posts.

DEDICATION - An appropriation of the giving of property to public use or to be used by a community agency or community association which precludes the owner, or others holding rights through the owner, from asserting any right of ownership inconsistent with the use for which the property is dedicated.

DEDICATION FOR STREET PURPOSES - A dedication of land for construction, reconstruction, widening, repairing, maintaining, or improving a street, public or private, and for the construction, reconstruction or alteration of facilities related to the safety, convenience or carrying capacity of said street, including but not limited to curbing, pedestrian walkways, drainage facilities, traffic control devices, and utilities in or along road rights-of-way.

DEED - A legal document conveying ownership of real property.

DEED RESTRICTION - See "restrictive covenant."

DELICATESSEN – A stand-alone establishment where food is sold for consumption off-premises and no counters or tables for on-premises consumption of food are provided not contained within a larger grocery store or supermarket.

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

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

DETENTION BASIN - An embankment and associated space for impoundment of water or, alternatively, the space for impoundment partially or entirely created by excavation rather than by embankment, in either case designated to temporarily retain stormwater runoff.

DETENTION FACILITY - A detention basin or alternative structure designed to temporarily retain stormwater runoff.

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 (2) or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure; any mining, excavation or landfill; and any use or change in the use of any building or other structure, or land or extension of use of land, by any person, for which permission is required pursuant to this chapter or under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

DEVELOPMENT REGULATION – A zoning ordinance, subdivision ordinance, site plan ordinance, official map or other municipal regulation of the use and development of land or amendment thereto adopted and filed pursuant to the Municipal Land Use Law.

DIRECTIONAL SIGN – Signs containing directional information whose purpose it is to regulate and control the flow of vehicular and pedestrian traffic, as well as signs containing directional information about public places owned or operated by federal, state, county or local governments or their agencies; publicly owned natural phenomena; historic, cultural, scientific, educational and religious sites; areas of natural beauty or naturally suited to outdoor recreation; and business establishments in a facility with multiple occupancies.

DIRECTORY SIGN – A single sign which may provide information in a list, roster or directory format of building tenants on the site.

DISCHARGE - Any intentional or unintentional action or omission, unless pursuant to and in compliance with the conditions of a valid and effective federal or State of New Jersey permit resulting in the releasing, spilling, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or lands of the State of New Jersey or into the waters or natural resources within the jurisdiction of the State of New Jersey. (See Also: Chapter 323, Stormwater Control, Article I, Illicit Connection to Stormwater System, § 323-2).

DISTRIBUTIVE ANTENNA SYSTEMS (“DAS”) – A network of one or more antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS shall also include the equipment location, sometimes called a “hub” or “hotel” where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services. The term shall be construed to include supporting cables, wires, braces, masts or other appurtenances.

DOUBLE-FACED SIGN – A single sign with items of information on both sides of the sign and mounted as a single-structure.

DORMER – A window vertical in a roof or the roofed structure containing such window which does not increase floor area dimensions of the structure.

DRAINAGE - The removal of surface water or groundwater from land by drains, grading or other means; includes

control of runoff to minimize erosion and sedimentation during and after construction or development, and the means necessary for water supply preservation or prevention of alleviation of flooding.

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

DRAINAGE RIGHT-OF-WAY - The lands required for the installation or maintenance of stormwater sewers, brook enclosures, brook channel improvements 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 N.J.S.A. 58:1A-1 et seq. and including lands intended as flood control basins.

DRIVEWAY, RESIDENTIAL – An improved or delineated area on a lot leading from a street to a garage or entrance to or exit from a building or structure or a parking area intended and designed for use by motor vehicles having a width not in excess of 18 feet.

DRIVEWAY, NONRESIDENTIAL – An improved or delineated area on a lot leading from a street to a parking or loading area in connection with a nonresidential use constructed in conformity with Article IX, Design Standards.

DUMPSTER – A container used for the temporary storage of rubbish or recyclable materials pending collection.

DWELLING – Any permanent building or portion thereof designed or used exclusively as the residence of one (1) or more persons, including but not limited to the following types of dwellings:

A. **DWELLING, ONE (1) FAMILY** - A detached building designed for or intended to contain only one (1) dwelling unit and having no party wall or walls in common with an adjacent building.

B. **DWELLING, TWO (2) FAMILY** - A building designed for or intended to contain only two (2) dwelling units arranged in a duplex (i.e., one (1) above the other) or as semidetached units (i.e., side by side with a common wall between the two (2) adjacent dwelling units). Each dwelling unit shall have a separate entrance.

C. **DWELLING, MULTI-FAMILY** - A building designed for or intended to contain three (3) or more dwelling units located above, below or to the side of each other, and which may share common facilities, such as entryways, hallways and utility systems. This term may include apartments, condominiums and cooperatives.

D. **DWELLING, TOWNHOUSE** - A one (1) family dwelling in a row of units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one (1) or more common fire-resistant walls. This term may include a building or structure in fee simple, condominium, cooperative or leasehold ownership.

DWELLING UNIT - One (1) or more rooms occupied or intended for occupancy as separate living quarters by one (1) family or household, provided that access is directly from the outside or through a common hall and that separate cooking, sleeping and sanitary facilities are provided within the dwelling for the exclusive use of the occupants.

EASEMENT - A grant of one (1) or more of the property rights by the property owner to and/or for use by the public, a corporation, or another person or entity.

ELDER-CARE CENTER - A facility or a distinct part of a facility which is licensed by the New Jersey Department of Health and Senior Services to provide preventive, diagnostic, therapeutic, and rehabilitative services under medical and nursing supervision to meet the needs of functionally impaired adult participants who are not related to the members of the governing authority by marriage, blood, or adoption. Elder-care centers provide services to participants for a period of time, which does not exceed twelve (12) hours during any calendar day.

ELECTRONIC MESSAGE BOARD – A sign whose alphabetic, graphic or symbolic information content can be changed or altered on a fixed display surface composed of electrically illuminated or mechanically driven changeable segments either by means of preprogramming or by computer-driven electronic impulses.

ENVIRONMENTALLY CRITICAL AREAS – An area or feature which is of significant environmental value, including, but not limited to, stream corridors; natural heritage priority sites; habitat of endangered or threatened species; large areas of contiguous open space or upland forest; steep slopes; and 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.

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

ESSENTIAL SERVICES - The erection, construction, alteration or maintenance by public utilities, municipal or other governmental agencies of underground, surface or overhead gas, electrical, steam or water transmission or distribution systems, including electrical substations, telephone dial centers, poles, towers, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, light stanchions, telephone lines, hydrants and other similar equipment and accessories, in connection therewith, reasonably necessary for the furnishing of adequate service by public utilities, municipal or other governmental agencies for the public health, safety or general welfare. Essential services shall include firehouses, first aid and emergency aid squad whether provided by a municipal or nonprofit agency, pumping stations, sewerage treatment facilities, standpipes and water storage tanks.

EXCEPTION TO APPLICATION - A deviation from or the waiver of an on-tract improvement requirement or a design standard as specified in Article IX in connection with an application for development and granted by the Planning Board pursuant to N.J.S.A. 40:55D-51.

FABRICATION AND ASSEMBLY - The manufacturing from standardized parts of a distinct object differing from the individual component.

FAÇADE – The exterior vertical surface of a building including ornamentation, windows, doors and overhangs. The term “principal façade” shall refer to the façade which faces upon the street right-of-way.

FAMILY - Two (2) or more persons, having a permanent and stable relationship, occupying a dwelling unit as a bona fide single nonprofit housekeeping unit.

FAMILY CHILD-CARE HOME – A private residence in which child care services are provided to no less than three (3) and no more than five (5) children at any one time for no less than fifteen (15) hours per week, and which is registered as a family child-care home pursuant to the Family Day Care Provider Registration Act.

FCC – The Federal Communications Commission.

FENCE - An artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

FEE SIMPLE – A form of ownership of real estate where the owner or owners are entitled to the entire property with unconditional power of disposition during and which passes to heirs upon death, or to another designee pursuant to a will.

FINAL APPROVAL - The official action of the Planning Board taken on a preliminary 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 have been properly posted for their completion, or approval conditioned upon the posting of such guaranties.

FINAL PLAT - The final map of all or a portion of the subdivision which is submitted for a final approval in accordance with this chapter and which, if approved, shall be filed with the proper county recording officer and which complies with the Map Filing Law (N.J.S.A 46:23-9.9 et seq.).

FINAL SITE PLAN – The final site plan containing all changes required in the preliminary site plan approval.

FLAG LOT - A lot whose buildable area is separated from the street on which it fronts by a narrow stem and has its buildable portion located at the rear of the lot at the end of the stem.

FLAG SIGN – A sign that is made of cloth, canvas, fabric or like material, mounted on a freestanding pole or other support, designed or intended to advertise, identify or attract attention to a business, organization, service or event on the premises upon which the flag is located.

FLOOD FRINGE - See the State of New Jersey Flood Hazard Area Control Act Rules (NJAC 7:13).

FLOOR AREA, GROSS (GFA) - The total area of a building computed by measuring the horizontal dimensions of the outside walls of all enclosed portions of the building, including all interior balconies and mezzanines, but excluding attics, basements and cellars unless used or intended to be used for human habitation or service to the public.

FLOOR AREA, HABITABLE – The area of that portion of a building or structure designed, intended, heated and furnished for year-round human occupancy, measured on each floor from the inside surface of the exterior walls. This term shall not include areas which are unheated, inaccessible, and/or where the floor to ceiling height is five (5) feet or less.

FLOOR AREA, LEASABLE (GLA) – The total floor area for which the tenant pays rent and which is designed for the tenant’s occupancy and exclusive use. Gross leasable area does not include mechanical rooms, internal stairs and storage areas on floors below grade and above the first floor. Gross leasable area does not include exterior sales and storage areas.

FLOOR AREA RATIO (FAR) - The sum of the area of all floors of buildings or structures compared to the total area of the site. (See Also: "floor area, gross.")

FLORA - the plants characteristic of a region, period, or special environment and in particular as it relates to the Borough of Hawthorne and Passaic County.

FREESTANDING SIGN – A sign supported by structures or supports that are placed on or anchored in the ground and which are independent of any building or other structure. Unless otherwise limited or restricted, the term “freestanding sign” shall include monument signs, as defined herein.

FRESHWATER WETLAND - See "wetland, freshwater."

GARAGE, PARKING – A structure containing parking spaces for vehicles, where there is more than one (1) floor or level on which parking spaces are provided (synonymous with “parking deck”).

GARAGE, PRIVATE - A detached accessory building or portion of the principal building used for the storage of motor vehicles of the occupants of the principal building. A carport, or any similar structure not completely enclosed, shall not be considered to be a "garage".

GARAGE, PUBLIC - Any building, premises or land in which or upon which a business, service or industry involving the maintenance, washing, servicing or repair and storage in connection therewith is conducted or rendered, and including automatic car washes and motor vehicle service stations as defined herein.

GARDEN CENTER - A commercial establishment selling plants and garden products, seeds, fertilizer, tools and other related items primarily at retail to the public.

GASOLINE SERVICE STATION – See “motor vehicle service station.”

GAZEBO – A freestanding accessory structure with a roof but no walls.

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 or visibility.

GOVERNING BODY – The governing body of the Borough of Hawthorne.

GRADE – The elevation of the surface of the earth or, where applicable, the average elevation of land around a building or structure as measured at the foundation. Also, the inclination of a sloping surface, usually expressed in percentage terms.

GRADE, FINISHED - A reference plane representing the average of finished ground level adjoining the building at all exterior walls.

GRADING - Any stripping, culling, filling, stockpiling or any combination thereof, including the land in its cut or filled condition.

GROCERY STORE – A retail establishment which primarily sells food products for home preparation and consumption, which may also include other home care and personal care products, and carry a broader range of merchandise than convenience stores.

GROSS DENSITY - Synonymous with "density."

GROSS FLOOR AREA (GFA) – See “floor area, gross (GFA).”

GROSS LEASABLE AREA (GLA) – See “floor area, leasable (GLA).”

GROUNDWATER - Water contained in interconnected pores of a saturated zone in the ground, also known as "well water." A saturated zone is a volume of ground in which the voids in the rock or soil are filled with water at a pressure greater than atmospheric.

HABITABLE ROOM - Enclosed floor space intended for living, sleeping, eating and cooking, but not including bathrooms, closets, halls, storage space or utility areas as defined by the International Building Code.

HANGING SIGN – A sign designed to hang from a building canopy, awning, awning sign or a frame or other mechanical device attached to a building wall and oriented at a ninety (90) degree angle from the plane of the building façade.

HAZARDOUS SUBSTANCE - Any substance designated under 40 CFR pursuant to Section 311 of the Federal Water Pollution Control Act Amendments of 1972 [Clean Water Act (Public Law 92-500; 33 U.S.C. § 1251 et seq.)], the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or Section 4 of the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-4). Substances listed include petroleum, petroleum products, pesticides, solvents and other substances.

HAZARDOUS WASTE - Any solid waste that is defined or identified as a hazardous waste pursuant to CFR Part 261, the Solid Waste Management Act, N.J.S.A. 13:1E et seq. or N.J.A.C. 7:26-8.

HEALTH OR FITNESS CENTER - An establishment or part thereof providing facilities for physical exercise, whether individual activity or group session, including but not necessarily limited to gymnasiums, aerobic centers, exercise salons, dance studios, and any combination thereof.

HEIGHT OF BUILDING OR STRUCTURE - The vertical distance measured from the average finished grade level, from the building or structure foundation, at twenty (20) foot intervals around the building or structure (and at all points opposite corners of the building or structure where the ten (10) foot lines intersect), to the highest roof beams on a flat or shed roof, to the deck level on a mansard roof, and to the average distance between the eaves and ridge level for gable, hip and gambrel roofs. If the building or structure wall is less than forty (40) feet in length, the measurement shall be taken at the midpoint of the wall. Where a retaining wall bisects the ten (10) foot dimension, an additional measurement shall be taken using the average height between the top and bottom of the retaining wall.

HEIGHT OF TOWER – When referring to a tower or accessory structure thereto, the distance measured from the lowest finished grade of the base of the tower to the highest point on the tower or other structure, including the base pad and any antenna.

HISTORIC SITE - Any real property, man-made structure, natural object or configuration or any portion or group of the foregoing which has been designated in the Historic Preservation Plan Element of the Master Plan as being of historical, archaeological, cultural, scenic or architectural significance.

HOME OCCUPATION – Any use or occupation for gain conducted entirely within a dwelling unit by members of the household residing in the dwelling unit and up to one (1) employee not residing in the dwelling unit. For purposes of this chapter, the term “home occupation” shall include the term “family child-care home.”

HOUSEHOLD – One (1) or more persons inhabiting a single dwelling unit as their permanent residence, regardless of relationship. A household may or may not be synonymous with “family.” Residents of group quarters, such as college dormitories, military barracks, prisons, jails and nursing homes, shall not be considered households.

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 COVERAGE - The percentage of a lot covered by all impervious surfaces, including buildings, structures, pavement, and other land improvements including swimming pools that are highly resistant to infiltration by water.

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

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

INFILTRATION BASIN - A detention facility designed to infiltrate retained water to the subsurface and which is not an injection well.

INSTITUTIONAL SIGN – A sign which directs attention to a public, quasi-public or similar use including but not limited to a religious building, library, public or private school, hospital or government-owned or operated building, structure or land.

KENNEL - A business devoted to the boarding, care or breeding of dogs and cats.

LAKE - A natural or man-made body of water over two (2) acres in size from which a stream may flow and which occurs in an isolated depression that is not part of a surface river or stream.

LAND – Any parcel of land or portion thereof, including improvements and fixtures on, above or below the surface.

LAND DISTURBANCE - Any activity involving the clearing, cutting, excavating, filling, grading and any other activity which causes land to be exposed to the danger of erosion.

LANDSCAPE PLAN – Plan prepared by a landscape professional that details shrubbery, lawn area, ground cover, rock formations, contours, flora and the planting of coniferous and/or deciduous trees native.

LATTICE TOWER – A freestanding steel framework tower.

LOADING SPACE - An off-street space or berth on the same lot with a building or group of buildings it is designed to serve for the temporary parking of a commercial vehicle while loading or unloading.

LOGO – A business trademark identified as an insignia, symbol or emblem.

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 area of a lot expressed in square feet or acres. Any portion of a lot included in a street right-of-way

shall not be included in calculating lot area. In addition, any portion of a lot or lots dedicated to the Borough for future roadway use, or by easement, shall not be included in the calculation of the lot area.

LOT, CORNER - A lot at the junction of and having frontage on two (2) or more intersecting streets or abutting a single road at the point where the road tangents deflect by more than 45°.

LOT DEPTH – A horizontal distance between the front and rear lot lines, measured perpendicular or radial to the front lot line at the midpoint of the lot frontage to the furthest distance thereof or taken as the average of three (3) measurements along the lot frontage, one (1) taken at each corner and one (1) taken at the midpoint, for irregularly shaped parcels.

LOT FRONTAGE - The horizontal distance between the side lot lines, measured along the front lot line.

LOT, INTERIOR – Any lot other than a corner lot.

LOT LINE – Any line, including the street line, forming a portion of the exterior boundary of a lot.

A. LOT LINE, FRONT – The line which separates the publicly owned or controlled street right-of-way from the private property which abuts upon the street, as distinct from a sidewalk line, curblineline or edge-of-pavement line. On a street or highway shown on the adopted Master Plan of the Borough, the front lot line shall be considered to be the proposed right-of-way line for the street.

B. LOT LINE, REAR – The lot line opposite and most distant from the front lot line.

C. LOT LINE, SIDE – Any lot line other than a front or rear lot line.

LOT, THROUGH – A parcel of land which extends through from one (1) street to another, and which streets do not intersect at the property.

LOT WIDTH - The horizontal distance between side lot lines, measured parallel to the front lot line at the required front yard setback line.

LOW-INCOME HOUSING - Housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income equal to fifty percent (50%) or less of the median gross household income for households of the same size within the housing region in which the housing is located, and is subject to affordability controls.

MACHINERY - Item of mechanical operation used in a specific work purpose in varying degrees of bulk (sometimes synonymous with "equipment").

MAINTENANCE GUARANTEE - Any security which may be accepted by the Borough for the maintenance of any improvements required by this chapter, including but not limited to surety bonds, letters of credit under the circumstances specified in Section 16 of P.L. 1991, c. 256 (N.J.S.A. 40:55D-53.5), and cash.

MAJOR DEVELOPMENT - Any development that provides for the ultimate disturbance of one (1) or more acres of land or a cumulative increase in impervious surface by one-quarter (1/4) acre or more. Disturbance for the purpose of this rule is the placement of impervious surface or exposure and/or movement of soil or bedrock or clearing, cutting, or removing of vegetation. Projects undertaken by any government agency which 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.

MAJOR DISCHARGES - Those discharges for which a NJPDES discharge to groundwater permit is required.

Examples include but are not limited to discharges of sanitary wastewater from housing developments, schools, businesses, factories; discharges of industrial wastewater; illicit connections as defined in § 323-2; and some stormwater discharges. Sanitary landfills and hazardous waste facilities can also be considered potential major dischargers to groundwater. These discharges often use injection wells (including subsurface disposal systems serving facilities with an aggregate design flow in excess of two thousand (2,000) gallons/day); infiltration/percolation lagoons; spray irrigation; overland flow systems; surface impoundments; dredge spoils; and residuals surface impoundments.

MAJOR SITE PLAN – Any site plan not classified as a minor site plan.

MAJOR SUBDIVISION - Any subdivision not classified as a minor subdivision.

MANUFACTURING - Process involving the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials.

MARQUEE - See "canopy or marquee."

MASSAGE - Any systems of activity of structured touch which include, but are not limited to, holding, applying pressure, positioning and mobilizing soft tissue of the body by manual technique and use of visual kinesthetic, auditory and palpating skills to assess the body for purposes of applying therapeutic massage, bodywork or somatic principles. Such application may include, but is not limited to, the use of therapies such as heliotherapy or hydrotherapy, the use of moist hot and cold external applications, external application of herbal or topical preparations not classified as prescription drugs, explaining and describing myofascial movement, self-care and stress management as it relates to massage, bodywork and somatic therapies. Massage, bodywork and somatic therapy practices are designed to affect the energetic system of the body for the purpose of promoting and maintaining the health and well-being of the client. Massage, bodywork and somatic therapies do not include the diagnosis or treatment of illness, disease, impairment or disability.

MASSAGE ESTABLISHMENT - Any establishment where any person, firm, association or corporation engages in, carries on or permits to be engaged in or carried on any of the activities mentioned in the definition of "massage" for compensation of any kind.

MASTER PLAN - A composite of one (1) or more written or graphic proposals for the development of the Borough as set forth in and adopted pursuant to Section 19 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-28), as amended.

MINOR SITE PLAN - The development plan of a single lot which is not otherwise exempt from site plan review, does not involve planned development, any new street or extension of any off-tract improvement which is to be prorated pursuant to § 540-39 and as otherwise regulated pursuant to §540-33 B.2a and b.

MINOR SUBDIVISION - Any subdivision containing not more than two (2) lots fronting on an existing accepted street or on a private street approved by the Planning Board or otherwise approved by the governing body for purposes of issuing building permits, 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 § 540-45.

MODERATE-INCOME HOUSING - Housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income equal to or more than fifty percent (50%) but less than eighty percent (80%) of the median gross household income for households of the same size within the housing region in which the housing is located, and is subject to affordability controls.

MONUMENT SIGN – Any freestanding sign that is attached to a proportionate base or plinth, integrated ground planter box, or structural frame other than a mast or pole(s).

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 motor fuel 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.

MOVING AND STORAGE OPERATION - A building or premises used for the transfer of privately owned furniture, household goods and other materials in transit between a previous location and a final location and which may include facilities for the loading, unloading and temporary storage of such materials and for the temporary parking of trucks used in connection with such use.

MUNICIPAL AGENCY - The Planning Board, the Board of Adjustment of the Borough of Hawthorne, and any agency which is created by or responsible to the Borough when such agency is acting pursuant to this chapter.

MUNICIPALITY - Any city, borough, town, Borough or village. For the purposes of this chapter, the phrase “the municipality” shall refer to the Borough of Hawthorne.

NAMEPLATE SIGN – A sign which states the name and /or profession or address a person or persons residing on the premises or legally occupying the premises where the sign is located.

NONCONFORMING BUILDING OR STRUCTURE - A building or structure the size, dimension or location of which was lawful prior to the adoption, revision or amendment of this chapter, but that fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

NONCONFORMING LOT - A lot of record the area, dimension or location of which was lawful prior to the adoption, revision or amendment of this chapter, but fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

NONCONFORMING USE - A use or activity which was lawful prior to the adoption, revision or amendment of this chapter, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

NUISANCE - Any private action which unreasonably interferes with the comfortable enjoyment of another's property, which may be enjoined or abated and for which the injured or affected property owner may recover damages.

NURSERY SCHOOL - See "child-care center."

NURSING HOME - A facility licensed by the New Jersey Department of Health and Senior Services to provide health care under medical supervision and continuous nursing care for twenty-four (24) or more consecutive hours to two (2) or more patients who do not require the degree of care and treatment which a hospital provides and who, because of their physical or mental condition, require continuous nursing care and services above the level of room and board.

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

OFFICIAL MAP - A map adopted by ordinance pursuant to Article 5 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-32 et seq.).

OFF-PREMISES SIGN – See “billboard.”

OFF-SITE - Located outside the lot lines of the lot in question but within the property (of which the lot is a part), which is the subject of a development application, or the closest half of the street or right-of-way abutting the property (of which the lot is a part).

OFF-TRACT IMPROVEMENT - An improvement which is not located on the property which is the subject of a development application nor on the closest half of the abutting street or right-of-way and includes any of the following:

A. 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.

B. 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 the application. In addition to improvements of the 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.

C. Installation of new improvements and extensions and modifications of existing improvements.

OFF-TRACT PARKING – See “parking, off-tract.”

ON-SITE - Located on the lot in question and excluding any abutting street or right-of-way.

ON-TRACT IMPROVEMENT - Any improvement, the installation of which may be required as part of an application for development and which is to be located on the property which is the subject of a development application or on the closest half of an abutting street or right-of-way.

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; provided that such areas may be improved with only those improvements that are designed to be incidental to the natural openness of the land.

OUTDOOR ADVERTISING SIGN – See “billboard.”

OUTDOOR DINING AREA - A dining area with waiter/waitress service, with seats and/or tables located outdoors of a restaurant on the same premises and which is:

1. Located entirely outside the walls of the subject building;
2. Enclosed on two sides or less by the walls of the building with or without a solid roof cover;
3. Enclosed on three sides by the walls of the building without a solid roof cover.

OUTDOOR STORAGE - The keeping, outside the confines of a building, of goods, supplies, equipment, materials and merchandise of any kind intended for use or sale on the premises.

OWNER - Any individual, firm, association, syndicate, copartnership 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.

PAPER STREET - A street that has never been built, but is shown on an approved plan, subdivision plat, tax maps, or official map.

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. A parking area shall include access drives and aisles and loading areas.

PARKING DECK - See “garage, parking.”

PARKING GARAGE – See “garage, parking.”

PARKING, OFF-TRACT - An arrangement approved pursuant to an application whereby an existing parking area on one (1) lot is used to satisfy the parking obligation on another lot.

PARKING, SHARED – An arrangement approved pursuant to an application whereby parking facilities are shared by occupants of two (2) or more premises.

PARKING SPACE - A space denoted by painted lines for the off-street parking of a motor vehicle exclusive of access drives and aisles.

PATIO – A level, landscaped, and/or surfaced area directly adjacent to a principal building at or within three (3) feet of the finished grade and not covered by a permanent roof.

PENNANT – Any lightweight plastic, fabric or other material, whether or not containing a message of any kind, suspended from a rope, wire or string, usually in a series, designed to move in the wind.

PERFORMANCE GUARANTEE - Any security, which may be accepted by the Borough in lieu of a requirement that certain improvements be made before the approving authority grants final approval of a subdivision plat, site plan or zoning variance, including but not limited to surety bonds, letters of credit under the circumstances specified in Section 16 of P.L. 1991, c. 256 (N.J.S.A. 40:55D-53.5), and cash.

PERFORMANCE STANDARDS - A set of criteria or limits relating to certain characteristics that a particular use or process shall satisfy or not exceed.

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

PERSONAL SERVICE ESTABLISHMENTS – A building or part thereof in which or from which a service is rendered directly to the ultimate consumer, including, but not limited to, dry cleaners, barber and beauty shops, nail salons, shoe repair shops, photographic studios, on-premises repair of small household appliances, and instructional classes for dance, martial art, music, ceramics and similar activities.

PERSONAL WIRELESS TELECOMMUNICATIONS EQUIPMENT FACILITIES (PWTEF) – Accessory facilities serving and subordinate in area, extent and purpose to, and on the same lot as, a telecommunications tower or antenna location. Such facilities include, but are not limited to, transmission equipment, storage sheds, storage buildings, and security fencing.

PERSONAL WIRELESS TELECOMMUNICATIONS FACILITY (PWTF) – Facilities for the provision of wireless communications services, including but not limited to, antennas, antenna support structures, telecommunications towers, and related facilities other than Personal Wireless Telecommunications Equipment Facilities (PWTEFs).

PLACE OF WORSHIP - A building wherein persons regularly assemble for religious worship, which is used for such purposes and those necessary activities as are customarily associated therewith, and for which the use qualifies for tax exemption as a nonprofit religious institution.

PLANTERS – Structural landscaped reservoirs used to collect, filter, and infiltrate stormwater, allowing pollutants to settle and filter out as the water percolates through the vegetation, growing medium, and gravel.

PLAT - The map or maps of a subdivision.

PLAYHOUSE – An accessory building or structure intended solely for recreational use by children. Playhouses shall not have electricity or plumbing and shall be clearly incidental to the residential use on the premises.

POLITICAL SIGN – A temporary sign announcing or supporting political candidates or issues in connection with any national, state or local election.

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

POND - A natural or man-made body of water, excluding man-made irrigation water bodies, ranging in size from one-half (1/2) acre to two (2) acres, from which a stream may flow and which occurs in an isolated depression that is not part of a surface river or stream.

PORCH – A roofed, open area, which may be screened, attached to or part of a building, and with direct access to or from it.

PORTABLE SIGN – Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including but not limited to signs designed to be transported by means of wheels; signs converted to A-frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business for transport.

PREEXISTING TOWERS AND ANTENNAS – Any tower or antenna which has a construction permit or land use approval prior to the effective date of this chapter, including permitted towers or antennas that have not yet been constructed, so long as such construction permit or land use approval is current and not expired, and including any tower or antenna on property owned, leased or otherwise controlled by the Borough of Hawthorne.

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

PRELIMINARY FLOOR PLANS AND ELEVATIONS - Architectural drawings prepared during early and introductory stages of the design of a project, illustrating in schematic form its scope, scale and relationship to its site and immediate environs, and submitted as part of an application for preliminary site plan approval.

PRELIMINARY PLAT OR SITE PLAN - The preliminary map indicating the proposed layout of a subdivision or site plan which is submitted to the Planning Board or Board of Adjustment for consideration and preliminary approval.

PRINCIPAL BUILDING - A structure arranged, adapted or designed for the predominant or primary use of the premises.

PRINCIPAL USE - The primary or predominant use of the premises.

PRIVATE GARAGE - See "garage, private."

PRIVATE SWIMMING POOL - See "swimming pool, private."

PROFESSIONAL OFFICE - The place of business of a physician, dentist, attorney, accountant, engineer, architect, professional planner, insurance agent, real estate agent or other member of a generally recognized profession maintained for the conduct of that profession and offering no product or merchandise for sale to the public on the premises.

PUBLIC GARAGE - See "garage, public."

PUBLIC UTILITY USES - Buildings, structures, and facilities, including generating and switching stations, poles, lines, pipes, pumping stations, repeaters, antennas, transmitters and receivers, valves, and all buildings and structures relating to the furnishing of utility services, such as electric, gas, telephone, water, sewer, and public transit, to the public.

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

REAL ESTATE SIGN – Any sign indicating the availability for sale, for rent or for lease of a lot or building upon which it is erected or displayed.

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

RECREATIONAL VEHICLE - A vehicular-type portable structure without permanent foundation, which can be towed, hauled or driven and is primarily designed as a temporary living accommodation for recreational, camping and travel use and including but not limited to travel trailers, truck campers, camping trailers and self-propelled motor homes.

RESIDENTIAL HEALTH CARE FACILITY - A facility, which is attached to another long-term care facility licensed by the Department of Health and Senior Services, that provides food, shelter, supervised health care and related services, in a homelike setting, to four (4) or more persons eighteen (18) years of age or older who are unrelated to the owner or administrator.

RESTAURANT - A facility in which food is prepared and served for consumption on the premises to patrons seated at tables, booths and counters inside the building by waiters and/or waitresses.

RESTAURANT, FAST-FOOD - Any facility or part thereof the primary, normal and usual function of which is the sale of food and beverages prepared for immediate consumption and packaged or wrapped in paper or other disposable containers for sale over the counter or at a drive-up window to customers for consumption within the building or off and away from the premises.

RESTRICTIVE COVENANT - A restriction on the use of land usually set forth in the deed.

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.

RETAIL STORE - See "store, retail."

RETAINING WALL - See "wall, retaining."

RETENTION BASIN - A pond, pool, or basin used for the permanent storage of water runoff.

RIGHT-OF-WAY - A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, gas pipeline, water main, sanitary or storm sewer main, shade tree, or for another special use. A right-of-way is generally the right of one to pass over the property of another.

ROOF SIGN – A sign constructed or supported upon the roof of any building or structure.

SANDWICH BOARD SIGN – See "a-frame sign."

SATELLITE DISH – Any apparatus with a flat or parabolic surface which is designed for the purpose of receiving television, radio, microwave, satellite, or similar electronic signals.

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

SELF-STORAGE FACILITY - A building or group of buildings containing separate spaces or compartments for dead storage of goods, wares and equipment and leased or rented on an individual basis.

SENIOR CITIZEN – A person at least sixty-two (62) years of age, or the spouse of that person, or the surviving spouse of that person, if the surviving spouse is fifty-five (55) years of age or older.

SENIOR CITIZEN HOUSING - A building or buildings containing one (1) or more dwelling units restricted by deed or other instrument to occupancy of each dwelling unit by a person or persons in any one (1) of the following categories: up to two (2) individuals, both of whom are sixty-two (62) years of age or older or a couple in a marriage,

civil union or domestic partnership, either one of whom is sixty-two (62) years of age or older, or persons who are handicapped/disabled.

SERVICE COMMERCIAL USE – Retail establishments that primarily render services rather than goods.

SETBACK – The shortest straight line distance between a building or structure and the nearest property line.

SHARED PARKING – See “parking, shared.”

SHED – An unheated building, whether on a permanent or temporary foundation, designed and intended for storage of items smaller in size than an automobile, and accessory to the permitted use on the premises, but not for storage of an automobile.

SHOP, RETAIL - See “store, retail.”

SIDEWALK CAFÉ - An outdoor dining area located in a public sidewalk or right-of-way that is associated with a restaurant, on the same parcel.

SIDEWALK - An improved pedestrian surface that is typically located adjacent to a roadway.

SIGHT TRIANGLE - A triangular area outside of the street right-of-way at the quadrants of two (2) intersecting streets (or one (1) street where the road tangents deflect more than forty-five percent (45%)) and streets with driveways for the purpose of maintaining unobstructed visibility along the intersecting street.

SIGN - Any composition of text, symbols, insignia, illustration, graphics and/or combination thereof used to convey a message or to promote or advertise a product or service or the interest of any person, group of persons, company, business or organization when the same is placed, erected, fastened, formed, suspended, attached, painted, printed, floated, incised or cast into where it may be viewed from outside a building or from off the premises on which it is located.

SIGN AREA - The product of the largest horizontal width and the largest vertical height of the lettering, illustration, display or background. If the letter, illustration, display or background is attached directly to the face of a building, the height or width of the sign shall be the height or width of the largest letter, illustration, display or background, whichever is the greater.

SIGN, FREESTANDING - See “freestanding sign.”

SIGN, ILLUMINATED - See “illuminated sign.”

SIGN PROGRAM – A document containing the theme, style and design of the signage located in a multi-tenant building.

SIGN, WALL - See “wall sign.”

SIGN, WINDOW - See “window sign.”

SITE - The lot or lots upon which development is to occur or has occurred.

SITE PLAN - A development plan of one (1) or more lots on which is shown the existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, floodplains, marshes and waterways; 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; and any other information that may be reasonably required in order to make an informed determination pursuant to this chapter.

SOIL - All unconsolidated mineral and organic material of any origin.

SOLAR ENERGY DEVICE - A device that directly converts sunlight into electricity using photovoltaics (PV).

SPA - A commercial establishment providing facilities devoted to especially health, fitness, weight loss, beauty and relaxation which employs professional, licensed therapists whose services shall include a combination of massage and body or facial treatments. Spa treatments may include but necessarily be limited to body massage, body packs and wraps, exfoliation, cellulite and heat treatments, electrolysis, body toning, waxing, aromatherapy, cleansing facials, medical facials, nonsurgical face lifts, electrical toning and electrolysis. Additional services may also include hydrotherapy, steam and sauna facilities, nutrition, weight management, exercise facilities and instruction. Full service hair salons, make-up consultation and application and manicure and pedicure services may be provided as additional services. Cuisine in connection with spa treatments may be offered to clientele but no Spa shall maintain a restaurant that is generally open to the public.

SPECIAL EVENT SIGN – Signs used in connection with special events or activities, including, but not limited to, charitable events and holiday events. A special event sign shall not include real estate signs, garage/yard sale signs or other types of accessory signs.

SPILL PREVENTION CONTROL AND COUNTERMEASURE PLAN (SPCC) - A written document that describes measures to be taken to prevent, contain and clean up oil spills or other regulated wastes prior to discharge to surface or ground waters.

STEALTH TOWER STRUCTURE – Manmade trees, clock towers, bell steeples, silos, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers so as to blend in with the surrounding property characteristics, by using site appropriate color for the site.

STATE DEVELOPMENT AND REDEVELOPMENT PLAN METROPOLITAN PLANNING AREA (PA1) - An area delineated on the State Plan Policy Map and adopted by the State Planning Commission that is intended to be the focus for much of the state's future redevelopment and revitalization efforts.

STATE PLAN POLICY MAP - 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.

STEEP SLOPE – Land Areas where the slope exceeds 15%.

STORE, RETAIL - A building or part thereof in which or from which merchandise is sold at retail directly to the ultimate consumer.

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

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

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

STORMWATER RUNOFF - Water flow on the surface of the ground or in storm sewers, resulting from precipitation.

STORY - That part of a building between any floor and the floor above or, in its absence, the ceiling or roof above. A story in which persons live, sleep, work or congregate, the ceiling of which is more than three feet above the street level taken at the center of the street facade, shall be counted as that fraction of a story which its height above such

street level bears to the height of the story. A story which extends less than three feet above such street level shall not be counted in determining the number of stories unless more than half of the distance between the floor and the ceiling of such story is above the grade of lot at the outside of such building; provided, however, that when a building is located on a lot with irregular terrain with a slope ratio from the highest finished grade at an outside wall of the building to the lowest finished grade at an outside wall of the building of three to one or steeper, the measurement of the first story shall be taken from the average grade of the highest and lowest grades at the outside walls of such building instead of the curb level as described above. Any story under the pitched roof at the top of a building, the floor of which is not more than two feet above the plate, shall be counted as a half story when not more than 60% of said floor area is used for rooms, bath or toilet; otherwise, it shall be counted as that fraction of a story which its floor area in rooms, baths or toilets bears to the entire floor area.

STREAM - Any waterbody, either natural or man-made, of constantly or intermittently flowing water, whether designated as a stream, brook, river or otherwise, and consisting of a bed, banks and watercourses.

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

STREET, DEAD-END - See "dead-end street."

STREET LINE - The edge of the existing or future street right-of-way, whichever is wider, as shown on an adopted Master Plan or Official Map, or as required by this chapter, forming the dividing line between the street and the lot. Where title to land extends into or to the center of a street, the right-of-way line shall nevertheless be deemed to be the street line.

STREET, PAPER - See "paper street."

STREET, PRIVATE - A street that has not been accepted by the municipality or other governmental entity.

STRUCTURE - Any combination of materials forming any construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land. The term "structure" shall include, among other things, buildings, walls, fences, display stands, platforms, pools, flagpoles, tanks and towers of any kind.

SUBDIVIDER - Any individual, firm, association, syndicate, copartnership, corporation, trust or any other legal entity commencing proceedings under this chapter to affect a subdivision of land hereunder for himself/herself or for another.

SUBDIVISION - The division of a lot, tract or parcel of land into two (2) or more lots, tracts, parcels or other divisions of land for sale or development. The term "subdivision" shall also include the term "re-subdivision." 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 Planning Board or Subdivision Borough thereof appointed by the Chairperson to be for agricultural purposes, where all resulting parcels are five (5) 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 of foreclosure.
- D. Consolidation of existing lots by deed or other recorded instrument.
- E. The conveyance of one (1) 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 Borough Clerk 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 of the Borough.

SWALES, - Long, narrow, gently sloping landscaped depression that collect and convey stormwater runoff.

SWIMMING POOL, PRIVATE - A private swimming pool or tank, artificially constructed, installed or maintained upon any premises, as the term swimming pool is defined by the International Building Code, Chapter 31, Section 3109. All private swimming pools shall be subject to the terms and conditions of those respective codes. A private swimming pool or tank, artificially constructed, installed or maintained upon any premises by any person for his own or his family's use or for the use of his guests or invitees, and shall also mean and include a wading pool or tank, artificially constructed or installed, not designed or used for swimming with an area of more than 120 square feet and/or a water depth of more than 18 inches.

TAVERN - See "bar; tavern."

TEMPORARY SIGN – A sign which is intended to advertise community or civic projects, real estate for sale or lease, grand openings, sales, or other special events on a temporary basis.

TEMPORARY STORAGE CONTAINER - A portable containerized property storage facility or unit intended to be temporarily utilized upon the exterior premises for the purpose of storing all types of items either for temporary storage on-site due to construction or facilitate movement of such property to commercial storage facilities

TOWER – Any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antennas for telephone, radio and similar wireless telecommunication purposes, including self-supporting lattice towers or monopole towers. The term shall also include radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and the like. The term includes the structure of the tower along with any support thereto.

TOWNHOUSE DEVELOPMENT - An integrated plan of townhouse dwelling structures and common properties and/or facilities.

TOWNHOUSE DWELLING UNIT - See “dwelling, townhouse.”

TRACT – One (1) or more lots comprising the property which is the subject of a development application. Existing streets shall not be included in calculating the area of the tract.

TRAILER - A wheel-based vehicle designed to be transported by traction and which is intended to be used for purposes of hauling goods, objects or materials of any kind.

USE - The specific purpose for which land or a building, structure or facility is designed, arranged or intended, or for which it is or may be occupied or maintained.

VARIANCE - Permission to depart from the literal requirements of a zoning regulation pursuant to this chapter.

WAIVER – Permission granted by formal action of the approving authority or a Borough of the approving authority to whom such power has been delegated, to depart from the requirements of this chapter with respect to the submission of required documents.

WALL, FREESTANDING – An exterior, solid, upright structure which is self-supported on the ground directly below it on a foundation, and having a length much greater than its thickness, and intended to enclose, protect, divide or screen a space.

WALL, RETAINING – An exterior, solid, structure supporting structure having a higher ground level on one (1) side than the other and designed and intended to create a vertical or near vertical change in grade for the purpose of retaining earth.

WALL SIGN – All flat signs of solid-face construction which are placed against a building or other structure and attached to the exterior front, rear or side wall of any building or other structure so that the display surface is parallel

with the plane of the wall. Signs painted on an exterior or a wall shall be deemed to be “wall signs” subject to this chapter.

WAREHOUSE - A building 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, such as in storage areas when part of a retail establishment or manufacturing plant.

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

WET BASIN - A retention basin designated to retain some water on a permanent basis.

WETLANDS or WETLANDS - An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as "hydrophytic vegetation"; as designated by the Department of Environmental Protection pursuant to the New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9A-1 et seq.

WHOLESALE DISTRIBUTION CENTER OR FACILITY - A business establishment for the sale and distribution of merchandise to retailers or wholesalers rather than to consumers.

WINDOW SIGN – A sign internally or externally affixed on a window or glass door or located inside the window which is designed or intended to be visible from the exterior of the building.

WIRELESS TELECOMMUNICATIONS – Any personal wireless services as defined in the Telecommunications Act of 1996 (the “TCA”), which includes FCC licensed commercial wireless telecommunications services, specialized mobile radio, enhanced specialized mobile radio, paging and similar services that exist or that may be developed in the future.

YARDS –

- A. **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 on the lot.
- B. **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 building on the lot.
- C. **REAR YARD** - An open space, unoccupied except by a use as hereinafter specifically permitted, extending across the full width of a lot and lying between the rear lot line and the nearest point of the principal building on the lot.

ZONING OFFICER - The administrative officer designated to administer the Zoning Ordinance (see Part 4 of this chapter) and issue zoning permits.

ZONING PERMIT - A document signed by the Zoning Officer which is required by this chapter as a condition precedent to the commencement of a use or the erection, construction, reconstruction, alteration, conversion, or installation of a structure or building; and which acknowledges that such use, structure or building complies with the provisions of the Zoning Ordinance (see Part 4 of this chapter) or variance therefrom, or is a nonconforming use.

Part 2: Subdivision and Site Plan Regulations

ARTICLE VIII

Design Standards for Subdivisions

§ **540-51. Compliance required.**

The sub-divider shall observe the requirements and principles of land subdivision in the design of each subdivision or portion thereof, as set forth in this article.

§ **540-52. General statement.**

The subdivision plat shall conform to design standards that will encourage good development patterns within the Borough. Where an Official Map or Master Plan, or both, has or have been adopted, the subdivision shall conform to the proposals and conditions shown thereon. The streets, drainage rights-of-way, school sites, public parks and playgrounds or other areas shown on the officially adopted Master Plan or Official Map shall be considered in approval of all subdivision plats. Where no Master Plan or Official Map exists, streets and drainage rights-of-way shall be shown on the final plat in accordance with N.J.S.A.40:55D-38 and shall be such as to lend themselves to the harmonious development of the Borough and to enhance the public welfare in accordance with the design standards set forth herein.

§ **540-53. Existing permits, approvals and variances.**

Nothing in this chapter shall require any changes in a building permit, site plan or zoning variance which was approved before the enactment of this chapter, provided that construction shall have been started within one (1) year from the effective date of this chapter and the project shall be continuously pursued to completion; otherwise said approvals and permits shall be void.

§ **540-54. Streets and curbs - nonresidential.**

Streets and curbs in nonresidential developments shall be designed and constructed in accordance with all applicable requirements of this chapter, including Schedule A, Street Construction Specifications, included at the end of this chapter.

- A. Arrangement. 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, conform to the topography as far as practical, and allow for continued extension into adjoining undeveloped tracts with a minimum right-of-way of fifty (50) feet. When a development adjoins land capable of being developed further, suitable provisions shall be made for future street access.
- B. Street classifications. The classifications of existing and proposed streets shall be those shown on the Master Plan or Official Map, or as designated by the approving authority where a new street is not included on the Master Plan or Official Map.
- C. Minimum right-of-way width. The right-of-way width shall be measured from lot line to lot line.
- D. Pavement width. The pavement width of public streets shall be measured from curb to curb and shall not be less than thirty (30) feet in any case, except when shown at a greater width on the Master Plan or Official Map.

- E. Grades. Grades of all streets in general shall conform to topography and shall not be less than one percent (1%) nor greater than ten percent (10%) for local and collector streets and five percent (5%) for arterial streets.
- F. Reserve strips. 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 Planning Board.
- G. Substandard street right-of-way and pavement width. Subdivisions that adjoin or include existing streets that do not conform to the widths as shown on the Master Plan or Official Map or the street width requirements of this chapter shall dedicate and improve additional right-of-way or pavement width along either one (1) or both sides of said road. If the subdivision is along one (1) side only, one-half (1/2) of the required extra width shall be dedicated and improved.
- H. Intersections. Street intersections shall be at right angles where possible and intersection of less than sixty (60) degrees (measured at the center line of streets) shall not be permitted.
- I. Crosswalks. Crosswalks shall be required at intersections along established pedestrian routes within one thousand (1,000) feet of schools and other public facilities, and where otherwise deemed necessary by the approving authority. All crosswalks shall comply with the Manual of Uniform Traffic Control Devices (MUTCD), latest edition, and the Americans with Disabilities Act (ADA) guidelines.
- J. Street jogs. Collector and/or arterial streets intersecting another street from opposite sides shall either be directly opposite each other without offset, or shall have at least two hundred fifty (250) feet offset distance between center lines. Street jogs with center-line offsets on local streets of less than one hundred twenty-five (125) feet shall be prohibited.
- K. Tangents. A tangent at least fifty (50) feet long on local streets, one hundred (100) feet long on collector streets and three hundred (300) feet long on arterial streets shall be introduced between reverse curves.
- L. Street line deflection. When connecting street lines deflect from each other at any one (1) point by more than ten degrees (10°) and not more than forty-five degrees (45°), they shall be connected by a curve with a radius of not less than one hundred (100) feet for local streets and three hundred (300) feet for collector and arterial streets.
- M. Changes in grade. All changes in grade shall be connected by vertical curves of sufficient length to provide a smooth transition and proper sight distance, as established in the American Association of State Highway and Transportation Officials (AASHTO) publication "A Policy on Geometric Design of Highways and Streets."
- N. Cul-de-sac streets. Cul-de-sac streets are discouraged, but where unavoidable or determined to be necessary for public safety, shall not be longer than one thousand (1,000) feet nor serve more than ten (10) lots. A turnaround shall be provided at the end of the cul-de-sac with a right-of-way radius of not less than fifty (50) feet and a curblin radius of not less than forty (40) feet. Whenever possible, the turnaround shall be tangent 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 the future extension of the street and reversion of the excess right-of-way to the adjoining properties. The removal of excess improvements shall be the responsibility of any future developer.
- O. Half streets. Half streets shall be prohibited except where essential to the reasonable development of the subdivision in conformity with other requirements of these regulations and where the Planning Board finds it will be practical to require the dedication of the other half when the adjoining property is subdivided, and the other half of the street shall be plotted within such tract.
- P. Private streets. Private streets shall not be approved nor shall public improvements be approved for any private street.

Q. Sight triangles.

1. Sight triangles shall be required at each quadrant of two (2) intersecting streets (or one (1) street where the road tangents deflect more than forty-five percent (45%)) and streets with driveways. Sight triangles shall comply with the requirements of AASHTO.
2. The area within a sight triangle shall be a dedicated easement by deed as a part of the street right-of-way and shall be maintained as a part of the lot adjoining the street or site plan as a sight-triangle easement. A sight-triangle easement dedication shall be expressed on the plat as follows: "Sight-triangle easement subject to grading, planting and construction restrictions as required by the Borough of Hawthorne Land Use Ordinance, § 540-54.Q.4.
3. Portions of a lot set aside for the sight triangle shall be calculated in determining the lot area and may be included in determining the minimum setbacks required by the Zoning Ordinance.
4. Within a sight triangle, no grading, planting or structure shall be erected or maintained more than thirty (30) inches above the curb or edge of the roadway or lower than eight (8) feet above the center-line grade of either intersecting street or driveway, excluding street name signs or any signs as regulated by the Manual of Uniform Traffic Control Devices. Where any street or driveway intersection involves earth or rock banks or vegetation, including trees, the developer shall trim such vegetation and remove the trees as well as establish proper excavation, retaining walls and grading to provide the required site triangle.

R. Railroad crossings. Access to a subdivision by means of a railroad grade crossing is prohibited.

S. Curbs. Curbs shall be constructed along both sides of all streets, in accordance with the standards set forth in Schedule A.

§ **540-55. Streets and curbs - residential.**

Streets and curbs in residential developments shall be designed and constructed in accordance with the provisions set forth in § 540-54 for nonresidential developments, except where such provisions conflict with the Residential Site Improvement Standards at N.J.A.C. 5:21. In the event of a conflict between § 540-54 and the Residential Site Improvement Standards (RSIS), the RSIS shall govern.

§ **540-56. Street signs, traffic signs and street names.**

- A. Design and placement of traffic signs included in all development applications shall follow the requirements specified in "Manual on Uniform Traffic Control Devices for Streets and Highways", published by the United States Department of Transportation and adopted by the New Jersey Department of Transportation.
- B. There shall be at least two (2) street signs furnished at each four (4) way intersection and one (1) street sign at each T-intersection. All signs shall be installed free of visual obstruction and shall show the name of both intersecting streets. Street name signs shall be designed and erected in accordance with Borough standards.
- C. At signalized intersections, street signs shall be located on the overhead arm supporting the traffic signal, or otherwise suitably suspended over the intersection. Roadway clearance shall be a minimum of fifteen (15) feet from the bottom of the sign or supporting equipment to the top of the paved surface.
- D. Street names. No new street shall have a name which will duplicate or so nearly duplicate in spelling or phonetic sound the names of existing streets. The continuation of an existing street shall have the same name. All street names shall be approved by the Borough Council. In general, the following may be used as a guide for names:

1. Place: a connecting link, one block long and between two (2) longer streets.
2. Court: a cul-de-sac.
3. Terrace: a loop street which begins and ends on the same street and is not connected with other streets.
4. Lane, street or way: short streets not serving as connectors.
5. Avenue drive or road: a connector or arterial street.

§ **540-57. Sidewalks.**

Sidewalks shall be required as part of any site development and shall be designed in accordance with the standards set forth in Schedule A, Street Construction Specifications.

§ **540-58. Bikeways.**

- A. Separate bicycle paths and lanes shall be required where deemed appropriate and safe by the Planning Board.
- B. Bicycle lanes, where provided, shall be placed in the outside lane of a roadway, adjacent to the curb or shoulder. When on-street parking is permitted, the bicycle lane shall be located between the parking lane, if provided, and the outer lane of moving vehicles. Lanes shall be delineated with markings, preferably striping. Raised reflectors or curbs shall not be used.
- C. The construction of bikeways shall comply with the specifications set forth in N.J.A.C. 5:21-4.18, as well as the following:
 1. The paved width of the bicycle path shall be in accordance with the following standards:
 - (a) For bicycle lanes that are part of a shared use roadway, the minimum pavement width shall be five (5) feet.
 - (b) For shared use bicycle paths that are not part of a roadway, the minimum pavement width shall be eight (8) feet.
 2. Choice of surface materials, including bituminous mixed, concrete, compacted gravel, soil cement, stabilized earth, and wood planking shall depend on use and users of the path. Gradients of bike paths should generally not exceed five percent (5%).
 3. Bicycle-safe drainage grates shall be used in the construction of all residential streets.

§ **540-59. Storm drainage; stormwater management.**

- A. Culverts, storm sewers and storm drainage collection and detention and/or retention basins. The storm drainage collection system and the detention and/or retention basin system installed shall include storm sewers located within the beds of streets, culverts and inlets and storm sewers running through designated easement areas and drainage pipes attached thereto, as well as dry wells and swales, regrading, excavation, detention, retention and/or recharge basins which are required by this chapter to meet the objectives thereof, all in accordance with the Residential Site Improvement Standards at N.J.A.C. 5:21 for residential developments and Stormwater Management Requirements at Articles XI and XII of this chapter for nonresidential developments. Aspects of major residential developments that are not preempted by the

Residential Site Improvement Standards at N.J.A.C. 5:21 shall conform to the Stormwater Management Requirements at Article XI of this chapter. The Borough Engineer may require of the developer additional, reasonable, drainage improvements in order to correct a drainage problem which develops during the course of construction of single-family dwellings in a subdivision. All such drainage problems shall be rectified to the satisfaction of the Borough prior to the final release of any performance guarantee posted as a condition of final subdivision approval.

B. Major developments under this section shall provide a dedicated contribution to the Borough to finance future maintenance of stormwater management facilities if they are accepted by the Borough.

1. The amount of the contribution shall be calculated based on the following:

(a) The total number of years in which facility maintenance would be provided.

(1) Aboveground facilities: twenty (20) years.

(2) Underground facilities: thirty (30) years (presumably, less maintenance activities).

(3) Manufactured treatment devices: twenty (20) years (until better technology comes along).

(b) The present annual maintenance, administrative, insurance, and support costs as published in the Cost Estimate of the Operations and Maintenance Manual for the stormwater management measures incorporated into the development.

(c) The anticipated annual increase in present costs due to inflation, equipment depreciation and replacement, increases in labor and insurance rates, rising disposal costs, and other factors, not to be less than four percent (4%) (or whatever the current inflation rate is) compounded per fiscal year.

(d) The anticipated annual interest earned by the dedicated contribution, as determined by the federal interest rate in effect at the time of project approval.

(e) The percentage, if any, of cost sharing between the developer and the municipality or county.

2. The amount of the dedicated contribution, based on the requirements of § 540-59.B, shall be calculated using unit prices established by the New Jersey Department of Environmental Protection Stormwater Management Facility Maintenance Manual, or other publication, and shall be subject to approval of the Planning Board Engineer or Borough Engineer.

§ 540-60. Monuments.

Monuments shall be of the size and shape required by L. 1960, c. 141, the Map Filing Law (N.J.S.A. 46:23-9.9 et seq.), shall be placed in accordance with said statute and shall be indicated on the final plat.

§ 540-61. Blocks.

A. Block length and width or acreage within bounding roads shall be of such size and shape as to accommodate the size of lots required in the area by the zoning regulations. Consideration of topography and street layout shall provide for convenient access, circulation control and safety of street traffic.

- B. In blocks of six hundred (600) or more feet in length, pedestrian footpaths or access may be required in locations deemed necessary by the approving authority, as permitted in N.J.A.C. 5:21-4.5(f). Such walkway shall be at least ten (10) feet wide in right-of-way with a five (5) foot wide improved pavement surface. Said walkway may also include other improvements, including street lighting.

§ 540-62. Lots.

- A. Dimensions. Lot dimensions and area shall be not less than the requirements of the Zoning Ordinance (see Part 4 of this chapter).
- B. Side lines. Insofar as is practical, side lot lines shall be at right angles to straight streets and radial to curved streets.
- C. Frontage. Each lot must front upon an approved and improved street with a right-of-way width in accordance with the Passaic County Land Development Standards or RSIS, as applicable.
- D. Setbacks. Where extra width has been dedicated or is proposed in the Master Plan for widening of existing streets, lots shall begin at such extra width line, and all setbacks shall be measured from such line.
- E. Suitability. Where there is a question as to the suitability of a lot or lots for their intended use due to factors such as rock formations, drainage conditions, watercourses, historic sites, flood conditions or similar circumstances, the Planning Board may, after adequate investigation, withhold approval of such lots. All lots shall be so arranged that, to the greatest extent possible, each lot can reasonably be developed without intruding into areas of physical and environmental constraint, especially areas of steep slope and wetland areas.
- F. Corner lots. The intersection of the two property lines adjoining the street shall be rounded to a radius of twenty-five (25) feet.
- G. Further subdivision. Where a tract is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged so as to allow the opening of future streets and logical further subdivision.
- H. Driveways.
 - 1. A driveway, designed in accordance with the standards set forth in Schedule A, not less than twelve (12) feet in width and having a grade not exceeding ten percent (10%) shall be installed on each residential lot between the curb and dwelling. If the setback of the dwelling from the street right-of-way exceeds one hundred (100) feet, the Borough Engineer may, upon written request of the owner, reduce the requirement of pavement to the first twenty-five (25) feet of driveway length measured from the street; provided, however, that the Engineer shall establish appropriate conditions for grading, drainage, erosion control and surface improvement as circumstances relating to the driveway may demand in order to guarantee safe and convenient access and to protect the public interest. In addition, each driveway shall have a turnaround area provided in close proximity to the garage and not less than one hundred fifty (150) square feet, except, however, in areas of extreme grades or other topographical features which limit their intended use, in which case other locations may be substituted with the approval of the Borough Engineer. Side-entry garages are encouraged to the greatest extent possible. No driveway shall be located within fifty (50) feet of an intersection.
 - 2. The connection of any driveway to a street shall be by a vertical curve of sufficient radius to provide a smooth transition. The angle of intersection of a driveway with a street shall not be less than sixty degrees (60°). The initial twenty (20) feet and the twenty (20) feet in front of a garage of any driveway shall not have a slope exceeding two percent (2%).
 - 3. For sag curves, the grade difference between a driveway and the adjoining roadway should not exceed twelve percent (12%) within any ten (10) feet of distance. For crest curves, the maximum

grade difference should not exceed eight percent (8%) within any ten (10) feet.

4. Driveways and parking areas on residential lots shall be located at least five (5) feet from side and rear property lines
5. Circular driveways are permitted provided there is a minimum lot width of 75 feet and five (5) foot setback from the side property lines is maintained.

§ 540-63. Underground utilities.

A. All new electric and telephone wires shall be installed underground. In addition, underground community antenna television service lines shall be installed if the Borough has executed a franchise agreement with a community antenna television company. All such utility installations shall be made in accordance with the following provisions:

1. The applicant shall arrange with the serving utility for the underground installation of the utility's distribution supply lines, transformers, service connections and related equipment and shall submit to the Planning Board, prior to the granting of final approval, a written instrument from each serving utility which shall evidence full compliance with the provisions of this subsection; provided, however, that lots in such subdivisions which abut existing streets where overhead electric or telephone distribution supply lines have theretofore been installed on any portion of the streets involved may be supplied with electric and telephone service from such overhead lines or extensions thereof, but the transformers, service connections and related equipment from the utilities' overhead shall be installed underground. The requirements of this subsection are in addition to and supplement the regulations of the Board of Public Utility Commissioners, and wherever the provisions of this subsection require a greater amount of equipment to be placed underground or impose restrictions more extensive than the regulations of the Board of Public Utility Commissioners, the requirements of this subsection shall govern.
2. Wherever the utility is not installed in the public right-of-way, an appropriate utility easement not less than twenty (20) feet in width shall be provided.
3. All such underground installations for utilities and their service lines shall be subject to inspection and approval by the Borough Engineer, who shall be notified of such underground installations at least twenty-four (24) hours prior to any excavation therefor. No underground installation shall be covered until inspected and approved by the Borough Engineer and those agencies having jurisdiction over the particular installation. Notification and request for inspection shall take place immediately upon completion of the utility. Bank-run sand and gravel shall be used as backfill material and shall be thoroughly mechanically tamped.

§ 540-64. Water supply.

A. Each lot within the subdivision area shall be provided with public water by the required extension of water mains and connections thereto. The cost thereof shall be borne by the sub-divider inclusive of any connection fee required for such interconnection. All such installations of water mains and connections shall be subject to the inspection and approval of the Department of Public Works.

B. Fire-fighting facilities. Whenever a central water system services a development, fire hydrants shall be installed along all streets. Fire hydrants shall be of the type approved by the Department of Public Works, shall be placed and installed in accordance with its standards and shall also be subject to inspection by and approval of the Bureau of Fire Prevention.

C. In addition to the provisions above, all water supply systems in residential developments shall be installed in accordance with the Residential Site Improvement Standards at N.J.A.C. 5:21-5. In the event of a conflict

between this section and the Residential Site Improvement Standards (RSIS), the RSIS shall govern.

§ **540-65. Sanitary sewers.**

- A. Each lot within the subdivision area shall be provided with sewage disposal facilities by the required extension of sewer mains and connections thereto. The cost thereof shall be borne by the sub-divider inclusive of any connection fee required for such interconnection. All such installations of sewer mains and connections thereto shall be subject to the inspection and approval of the Department of Public Works.
- B. In addition to the provisions above, all sanitary sewer systems in residential developments shall be installed in accordance with the Residential Site Improvement Standards at N.J.A.C. 5:21-5. In the event of a conflict between this section and the Residential Site Improvement Standards (RSIS), the RSIS shall govern.

§ **540-66. Topsoil and seeding.**

- A. Topsoil specifications. No topsoil shall be removed from any site or used as spoil. Topsoil moved during the course of construction shall be redistributed so as to provide at least four (4) compacted inches of spread cover to all seeding and planting areas of the subdivision and shall be stabilized by seeding or planting. In the event that the quantity of topsoil at the site is insufficient to provide four (4) inches of cover for all seeding and planting areas, the developer shall provide and distribute a sufficient quantity of topsoil to provide such a cover. Topsoil so provided shall meet the following specifications:

Physical Limits			
	Type	Diameter	Quantity (percent by weight)
	Gravel	Larger than 1 inch	None
	Gravel	1/4 inch to 1 inch	Less than 3
	Gravel	2 mm to 1/4 inch	Less than 10
	Sand	0.05 mm to 2 mm	40 to 60
	Silt	0.002 mm to 0.05 mm	25 to 50
	Clay	Less than 0.002 mm	Less than 20

Chemical Limits of Organic Matter (wet digestion method)		
	Type	Quantity (percent)
	Sandy loam	1.5 to 20
	Loam or silt loam	3.0 to 20
	Soil reaction (pH)	4.5 to 7.0
	Salt concentration (1:2 soil/water ratio)	Less than 50

B. Fertilizer, seed and mulch specifications.

1. The fertilizing, seeding and mulching shall meet the following specifications:
 - (a) Ground limestone: two (2) tons per acre.
 - (b) 10-20-10 fertilizer: six hundred (600) pounds per acre.
 - (c) Salt, hay or straw mulch: one and one-half (1 ½) to two (2) tons per acre.
 - (d) Temporary seeding: one (1) pound of ryegrass per one thousand (1,000) square feet.
 - (e) Permanent seeding: one-half (1/2) pound of perennial ryegrass, three-fourths (3/4) pound of creeping red fescue and three-eighths (3/8) pound of Kentucky bluegrass per one thousand (1,000) square feet.
2. These mixtures may be either broadcast seeded or hydroseeded. If hydroseeded, the fertilizer, seed, mulch and mulch binder are applied at the same rate in a slurry mix. This section of the Land Use Regulations will not be considered complied with until the seed attains growth sufficient to ensure a stable, nonerodable ground condition.

§ **540-67. Grading plan.**

A. Conceptual grading plans shall be required for all subdivisions and a final grading plan shall be required for all individual lots. All grading plans shall include the following information:

1. Existing and proposed grades represented by contours at two (2) foot intervals when grades are below twenty percent (20%), at five (5) foot intervals when grades are above twenty percent (20%) and by spot elevations when flatness of the plot makes the use of contours impractical. Existing contours shall be shown for a distance of fifty (50) feet beyond the plot limits.
2. Existing and proposed elevations at all plot corners, building corners, centers of swales, driveways, and at the locations of all changes in direction of stormwater flow.
3. Swales and other means for the disposition of all stormwater runoff originating within the plot and of stormwater originating outside the plot and which will flow into the plot.
4. Footprint of typical dwelling, including location of the garage, and the proposed elevation of the basement, first and garage floors.
5. All proposed walks, driveways, sidewalks and curbs, with widths where applicable.
6. Limits of clearing including all trees four (4) inches or more in diameter, as measured four (4) feet above ground level, outside of a wooded area, proposed to be removed.

B. Design standards for grading plans.

1. No soil shall be excavated, removed, deposited or disturbed except as a result of and in accordance with a grading plan approved under the terms of this chapter.
2. Proposed disturbance of soil shall be for purposes consistent with the intent of this chapter, and it shall be executed in a manner that will not cause excessive erosion of other unstable conditions. In this regard, no land along a property line shall be excavated or filled in a manner which will disturb

the root system of trees and other vegetation on adjoining property or cause erosion of soil on or into adjoining property.

3. Provision shall be made for the proper disposition of surface water runoff so that it will not create unstable conditions. Appropriate storm drainage facilities shall be provided for downstream properties.
 4. There shall be no diversion of additional stormwater onto property of others nor shall any construction or grading on the lot result in an increase in existing stormwater flow onto property of others.
 5. Provision shall be made for any structures or protective measures that proposed slopes may require for the protection of the public safety, including but not limited to retaining walls, headwalls and fences.
 6. Any proposed building or structure or attendant protective measures shall not impede the flow of surface waters through any watercourse or cause an increase in flood heights or velocities.
 7. Any proposed vehicular facilities, including roads, drives or parking areas, shall be so designed that any land disturbances shall not cause excessive erosion.
 8. Any fill placed on the lot shall be properly stabilized and, when found necessary depending upon existing slopes and soil types, supported by retaining walls or other appropriate structures as approved by the Borough Engineer. In filling operations to bring a subdivision to approved grade or during the development of a subdivision for any reason, no tree trunks, stumps, branches or junk or refuse of any kind which will decay, decompose, degenerate, deteriorate, rot or rust shall be used. All such prohibited material shall be removed from any subdivision prior to filling to grade.
 9. All cuts shall be supported by retaining walls or other appropriate retaining structures when, depending upon the nature of the soil characteristics, such structures are found necessary in order to prevent erosion.
 10. There shall be no alteration of site elevations in excess of one (1) foot within five (5) feet of an adjoining property.
 11. Changes in grade shall not exceed a slope of three to one (3:1) unless supported by retaining walls.
 12. No terrain grades steeper than ten percent (10%) measured perpendicular to the foundation nor steeper than twenty-five percent (25%) measured parallel to the foundation shall be permitted within twenty-five (25) feet of the front and rear of the proposed principal building and within ten (10) feet of each side of said principal building.
 13. The Borough Engineer may modify any of the above requirements if, in his/her professional judgment, a lesser standard will provide adequate protection to the health, safety and general welfare of the Borough and of adjoining property, including waivers for minor grading.
- C. Gravel driveways shall be considered impervious, provided that credit shall be given for the impervious calculation, up to 25 percent of the area devoted to gravel, for that portion of a driveway that is comprised of gravel.

§ 540-68. Shade trees.

- A. Shade trees shall be provided and installed by developers, along Borough roads, as required by this chapter.
- B. Shade trees shall be placed within a shade tree easement to benefit the Borough, which shall be located ten

(10) feet from the face of the curb.

- C. The planting distance between trees shall be a maximum of fifty (50) feet, except that ornamental trees may be planted a maximum distance of thirty (30) feet apart. No shade trees shall be placed in the sight triangle easement required per § 540-58.Q., nor within twenty-five (25) feet of the intersection of two (2) street rights-of-way.
- D. The minimum caliper of shade trees shall be two and one-half (2 ½) inches, measured at one (1) foot above the ground.
- E. The minimum height of shade trees shall be twelve (12) feet, except ornamental trees, which shall be a height of not less than eight (8) feet.
- F. All trees shall be balled and burlapped (B & B); shall be of nursery stock; shall be of symmetrical growth; shall be free of disease, insects, and mechanical injury; shall be straight of stem with a well-balanced top; shall be of vigorous growth; and shall have a well-developed root system. The trunks of the shade trees (except ornamental trees) are to be free of branches to a height of at least seven (7) feet from the ground and the first branch shall be not over nine (9) feet from the ground.
- G. The planting hole shall be one (1) foot in diameter greater than the root ball and a six (6) inch trench around the outer edge of the bottom of the planting pit with the soil directly under the new tree to be undisturbed ground to avoid settlement over time. The planted depth of the top of the shade tree shall be placed flush with the adjacent ground and only a 2-inch layer of mulch (no soil), is permitted on the top of the root ball of the shade tree.
- H. The soil for backfilling the hole shall be a mixture of three (3) parts loamy soil, two (2) parts coarse sand and one (1) part humus. This planting mixture shall be adjusted as required pending an analysis of the parent soil on the property. Drainage material should be installed as needed should high groundwater levels be encountered.
- I. After backfilling, the surface of the planting hole shall be mulched with wood chips, hay, straw or other suitable material.
- J. After planting, tree trunks shall be wrapped with approved tree wrap manufactured for this purpose from the ground level to the lowest branches. The wrapping is to be removed after two (2) years.
- K. Each tree shall be staked with three (3) stakes. Stakes shall be locust, oak, cedar or other material that will last two (2) years. Stakes shall be two (2) inches by two (2) inches and six (6) to eight (8) feet long.
- L. Fastening and support shall be by means of tape one and one-half (1 ½) inches to two (2) inches wide or material that will not harm the tree.
- M. Species of shade trees shall be as required by the Shade Tree Commission.

§ 540-69. Street lighting.

A lighting plan prepared by a qualified individual shall be provided with major subdivision applications. Street lights shall be installed at all intersections and cul-de-sacs and at three hundred (300) foot intervals along all streets. All street lighting shall be subject to a plan approved by the Borough Planning Board or Board of Adjustment depending upon jurisdiction and P.S.E.G. The lights shall be installed solely for the purpose of illuminating the roadways and shall be of such a nature as to minimize the illumination on adjacent properties. The developer shall provide for the installation of underground service.

§ 540-70. Easements, riparian zones and natural features.

- A. Easements. Easements along rear property lines or elsewhere for utility installations may be required if deemed necessary by the Borough Engineer. Such easements shall be at least twenty (20) feet wide and located in consultation with the Borough Engineer.
- B. Riparian zones. Where a subdivision is traversed by a watercourse, drainageway, channel, stream or other surface water body, said subdivision shall comply with the riparian zone requirements set forth in the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, and Article XXIX of this chapter.
- C. Natural features.
 - 1. Natural features, such as trees, brooks, hilltops, wetlands and wetland transition areas, steep slopes and views shall be preserved, to the greatest extent possible, in designing any subdivision containing such features.
 - 2. Subdivisions containing steep slopes and/or wetlands shall be designed in accordance with Article XI of this chapter.
 - 3. The Planning Board may require that natural features be protected by means of deed restrictions, conservation easements or other appropriate instruments. Conservation easements shall be clearly marked as detailed in Figure 7 located in the Appendix of this chapter.

§ 540-71. Other items.

The Board may impose other conditions where specific problems peculiar to any particular development exist which are likely to be detrimental to the public safety and general welfare of the Borough.

ARTICLE IX

Design Standards for Site Plans

§ 540-72. Compliance required.

The developer shall observe the requirements and principles of site design of each development or portion thereof, as set forth in this article.

§ 540-73. General statement.

The site plan shall conform to design standards that will encourage good development patterns within the Borough and shall follow the principals of design relating to subdivisions, where applicable. Where an Official Map or Master Plan, or both, has or have been adopted, the site plan shall conform to the proposals and conditions shown thereon. The streets, drainage rights-of-way, school sites, public parks and playgrounds or other areas shown on the officially adopted Master Plan or Official Map shall be considered in approval of all site plans. Adequate provision shall be made for the control and disposal of stormwater, as required by this chapter.

§ 540-74. Existing permits, approvals and variances.

Nothing in this chapter shall require any changes in a building permit, site plan or zoning variance which was approved before the enactment of this chapter, provided that construction shall have been started within one (1) year from the effective date of this chapter and the project shall be continuously pursued to completion; otherwise said approvals

and permits shall be void provided that extensions may be requested of appropriate approving authority.

§ **540-75. General standards.**

The following standards shall be utilized by the Planning Board and Board of Adjustment in reviewing all site plans. These standards are intended to provide a frame of reference for the applicant in the development of site and building plans, as well as a method of review for the reviewing authority. These standards shall not be regarded as inflexible requirements, nor are they intended to discourage creativity, invention and innovation. The specification of one (1) or more particular architectural styles is not included in these standards. The standards are as follows:

- A. Preservation of landscape. The landscape shall be preserved in its natural state, insofar as practicable and where desirable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas. Landscape treatment that is appropriate to the area and the terrain and which will enhance the overall appearance of the site shall be employed.
- B. Relation of proposed buildings to environment. Proposed structures shall be related harmoniously to the terrain and to existing buildings in the vicinity that have a visual relationship to the proposed buildings. Such relationship shall be achieved by:
 - 1. Architectural design which is harmonious with the character of existing development.
 - 2. The use of exterior colors, facades or roofing materials or the combination of colors and materials that are harmonious.
 - 3. The relationship of design features, such as height and mass, building proportions, roof lines, building projections and ornamental features, that will create a coordinated and harmonious appearance.
- C. Design of building walls. All four (4) sides of a building should contribute to the architectural unity of the building. The use of large, unbroken masses is discouraged. All walls are to be constructed of durable material requiring low maintenance. Desirable materials such as brick, stone, glass, precast concrete and wood, when properly treated, are encouraged. Metal siding should not be used to such an extent that it will be a dominant architectural feature. In addition, metal siding with exposed fastenings shall not be allowed.
- D. Open space, circulation and parking. Open spaces, access driveways and the location and design of parking areas shall be in scale with the project as a whole. Special attention shall be given to location and number of access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the design of proposed buildings and structures and the neighboring properties.
- E. Special features. Exposed storage areas; exposed machinery installations, including roof installations; service areas, truck loading areas; utility buildings and structures; and similar accessory areas and structures shall be so located and screened with plantings or by other methods to prevent their being incongruous with the existing or contemplated environment and the surrounding properties.
- F. Utility service. Electric and telephone lines shall be underground. Any utility installations remaining above ground shall be located so as to have a harmonious relation to neighboring properties and the site. The proposed method of sanitary sewage disposal from all buildings shall be indicated.
- G. Advertising features. The size, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties nor create confusion or hazards with traffic or any other signs. Included are off-site directional signs. There shall be no building or feature in-the-round which is representational, e.g., brown derbies, ice cream cones, polar bears, etc. There shall be no ragged outlines of

buildings clearly used as eyecatchers in lieu of internal function.

§ **540-76. Parking and loading.**

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.

- A. **Pavement.** All parking and loading areas shall be paved in accordance with the specifications in Schedule A, included at the end of this chapter, for nonresidential developments or Residential Site Improvement Standards at N.J.A.C. 5:21 for residential developments.
- B. **Curbing.** Curbing shall be installed in the street right-of-way where required in § 540-54.S. for nonresidential developments or Residential Site Improvement Standards at N.J.A.C. 5:21 for residential developments. Parking areas and driveways shall be enclosed by concrete or granite block curbing, six (6) inches above the paved surface and located in accordance with Subsection E below. Where a parking area services a stormwater management facility, flush curbing enclosing such parking area shall be permitted.
- C. **Drainage.** All parking and loading areas shall be graded and equipped with storm drainage collection and detention facilities as required in Article XI of this chapter.
- D. **Parking service aisles.**
 - 1. All parking areas shall be designed with service aisles to meet the following standards:

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

- 2. In addition, there shall be a minimum distance between parallel parking spaces of six (6) feet when found necessary to provide for convenient access.
- 3. Only one (1) way traffic shall be permitted in aisles of less than twenty-four (24) feet in width.
- E. **Location.** All traffic aisles, off-street parking and loading areas, except for parking which is accessory to one (1) family dwellings, shall, unless otherwise provided by this chapter, meet the location requirements prescribed in the following schedule:

Minimum Distances for Location of Traffic Aisles, Parking and Loading Areas					
	Zone	From Buildings (feet)	From Streets (feet)	From Property Lines (feet)	From Residence Zones (feet)

- F. Marking and size. All parking and loading spaces shall be appropriately marked with painted lines and shall be of the sizes specified below:
1. Each parking space shall contain at least one hundred sixty-two (162) square feet with a minimum width of nine (9) feet measured perpendicular to the axis of the length and a minimum length of eighteen (18) feet except that supermarkets with food stores or uses that utilize shopping carts shall require a minimum stall space of two hundred (200) square feet with a minimum width of ten (10) feet by twenty (20) feet.
 2. Each loading space shall be at least twelve (12) feet in width, thirty (30) feet in length or longer to accommodate the size of vehicles anticipated and have a fourteen (14) foot clearance above grade. Such space shall be located in the side or rear yard only, but in no case in a side yard adjoining a street. Each loading space shall be unencumbered by traffic aisles, parking spaces or other uses.
- G. Handicapped parking. Provision shall be made for handicapped parking spaces, along with barrier-free access to buildings, in accordance with the Americans with Disabilities Act (ADA) guidelines. In addition, the entire surface of each handicapped parking spaces shall be painted blue in a shade common to such facilities. Parking spaces designated for the handicapped shall be located so that access does not require wheeling or walking behind parked cars.
- H. Circulation within parking area.
1. All parking and loading spaces shall be designed free and clear of any obstruction to individual parking stalls.
 2. Parking and loading spaces shall be located in such a fashion as to permit all vehicles to exit in a safe and orderly manner. Under no condition shall vehicles be permitted to back out of a parking lot driveway or otherwise block the free movement of traffic within the parking area or specific points of safety control, such as fire hydrants, doorways, elevators or other similar locations.
 3. Pedestrian circulation within a parking area shall be, to as great an extent as possible, separated from vehicular traffic. Safety zones, crossing points and sidewalk areas, where warranted, shall be provided.
 4. Parked vehicles shall not overhang or extend over any sidewalk area unless an additional sidewalk width of two (2) feet is provided to accommodate such overhang.

§ **540-77. Grading plan.**

All lot grading and seeding shall be in conformance with a grading plan the content and design of which shall be consistent with the provisions of § 540-67.

§ **540-78. Sidewalks.**

Sidewalks shall be installed in locations where required in § 540-57. Sidewalks, where required, shall be designed in accordance with the standards set forth in Schedule A, Street Construction Specifications, included at the end of this chapter.

§ **540-79. Bikeways.**

Bikeways shall be installed in locations where required in § 540-58.A. Bikeways, where required, shall be designed in accordance with the standards set forth in § 540-58.B. and C.

§ **540-80. Sight triangles.**

Any development requiring site plan approval shall provide sight triangles at each driveway, in accordance with the standards set forth in § 540-54.Q.

§ **540-81. Shade trees, landscaping and screening.**

- A. A landscape plan prepared by a licensed landscape architect, licensed by the New Jersey Board of Landscape Architects, or other qualified individual, shall be submitted with each site plan application, exclusive of single-family dwellings. All portions of the property not utilized by buildings or paved surfaces shall be landscaped utilizing combinations such as landscaped fencing, shrubbery, lawn area, ground cover, rock formations, contours, existing foliage and the planting of coniferous and/or deciduous trees native to the area in order to maintain or reestablish the vegetation in the area and lessen the visual impact of the structures and paved areas.
- B. Parking and loading areas shall be landscaped and screened as follows:
1. Parking areas with twenty (20) or more parking spaces shall be screened from the street and adjoining properties with landscaping, fencing or a wall, and interior parking lot landscaping shall be required. Landscaped areas should be located in protected areas such as along walkways, in center islands, or at the end of parking bays and shall be distributed throughout the parking area to mitigate the view of the parked vehicles without interfering with adequate sight distance for vehicles or pedestrians. The landscaping shall consist of hardy, low maintenance varieties of trees, and shrub plantings no higher than three (3) feet.
 2. Parking areas with less than twenty (20) spaces shall be screened from the street and adjoining properties with landscaping, fencing or a wall but no interior parking lot landscaping is required.
 3. One (1) shade tree, with a minimum diameter of two and one-half (2½) inches measured three (3) feet above the ground, shall be provided for every ten (10) parking spaces. Trees shall be staggered and/or spaced so as not to interfere with driver vision and shall have branches no lower than six (6) feet.
 4. Loading areas shall be screened with landscaping, fencing, berms, walls or any combination thereof and shall not be less than six (6) feet in height. The screening shall be sufficient to obscure the view of parked vehicles, loading platforms and loading activities.
 5. All screening required in conjunction with parking and loading areas shall consist of landscaping, fencing or a wall, or any combination thereof, as required by the Planning Board. Parking and loading areas which adjoin or face premises situated in any residential zone shall be screened by a fence or wall not less than four (4) feet nor more than six (6) feet in height, which fence or wall shall be maintained in good condition; provided, however, that a screening or hedge or other natural landscaping may be substituted for the required fence or wall if approved by the Planning Board. Where parking is located in a front yard, the Planning Board may require construction of landscaped berms up to a height of five (5) feet, with slopes at a ratio of not less than three to one (3:1).
- C. Shade trees shall be installed in the street right-of-way in accordance with § 540-68.

§ **540-82. Lighting.**

A lighting plan prepared by a qualified individual shall be provided with site plan applications. All exterior lighting shall meet the following criteria:

- A. Adequate lighting shall be provided for surface parking areas in operation between one-half (1/2) hour before

sunset and one-half (1/2) hour after sunrise. In addition, the premises shall have adequate lighting for security purposes during the foregoing period when the facility is not in operation. The interior of parking garages shall be adequately lighted both day and night.

- B. All lights shall be focused downward so that the direct source of light is not visible from adjoining streets or properties.
- C. No light source shall exceed a height of sixteen (16) feet in residential areas or nonresidential lots abutting a residential zone. In all other instances, no light source shall exceed a height of twenty (20) feet.
- D. All lights shall be shielded to restrict the maximum apex angle of the cone of illumination to one hundred fifty degrees (150°).
- E. Illumination requirements:
 - 1. Lot line lighting. The light intensity shall not exceed five-tenths (0.5) footcandle along any property line or three-tenths (0.3) footcandle at a residential property line.
 - 2. Surface parking facilities.
 - (a) The light intensity provided at ground level shall be a minimum of three-tenths (0.3) footcandle in parking and walkway areas and shall average a minimum of five-tenths (0.5) footcandle over the entire area, and/or as applicable pursuant to the Illuminating Engineering Society of North America (IESNA).
 - (b) Provision shall be made for reduction in the intensity of illumination to the minimum needed for security purposes when the facility is not in operation.
 - 3. Parking garages.
 - (a) Any parking provided on the roof of a parking garage shall require the same lighting as required for surface parking facilities, as set forth in Subsection E.2. above.
 - (b) The interior of parking garages shall be designed to the levels set forth in the following table, and/or as applicable pursuant to IESNA:

Areas	Daytime Footcandles (average on pavement)*	Nighttime Footcandles (average on pavement)	(c)
General parking and pedestrian areas	5.0	5.0	
Ramps and corners	10.0	5.0	
Entrance areas	50.0	5.0	

* Sum of electric lighting and daylight.

The minimum average foot candles in walkway areas shall be five-tenths (0.5) footcandle.

- (d) There shall be a maximum to minimum uniformity ratio of ten to one (10:1) over the entire area.

- F. The style of any light or light standard shall be consistent with the architectural style of the principal building.
- G. Streetscape Lighting requirements shall comply with §540-91.E.
- H. Freestanding lights shall be protected to avoid being damaged by vehicles.
- I. Spotlights and floodlights shall be discouraged, but where necessary shall be so located and directed so as not to project light beyond the surface being lighted or to create a nuisance or hazard.
- J. Shade trees shall be planted a minimum of ten (10) feet from any freestanding light fixture.
- K. Pathways and sidewalks shall be lighted with low or bollard-type standards.
- L. Strings of lights, except holiday lights, and flashing, moving or rotating lights are prohibited.
- M. All lighting shall be in compliance with the Americans with Disabilities Act (ADA) guidelines.
- N. All lighting shall incorporate energy efficient fixtures and be “Dark Sky” compliant.

§ 540-83. Trash, garbage and recyclable materials.

Provision shall be made for the orderly deposit, storage and collection of trash, garbage and recyclable materials in accordance with the requirements below:

- A. Trash, garbage and recyclable materials stored outside a building shall be stored in suitable containers and in fenced or walled enclosures. Said enclosures may adjoin the rear wall of a building, may adjoin 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 the setbacks for parking areas are met. Said enclosures shall be screened from view from any adjoining street or property when deemed necessary by the Planning Board or Zoning Board of Adjustment.
- B. The area for storage of trash, garbage and recyclable materials shall be well lit, and shall be safely and easily accessible by collection personnel and vehicles. Collection vehicles shall be able to access the recycling area without interference from parked cars or other obstacles.
- C. Any trash, garbage and recyclable materials shall be so contained as to be protected from the elements and to eliminate the 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.
- D. In multifamily residential developments containing twenty-five (25) or more units and in nonresidential developments utilizing one thousand (1,000) square feet or more of land area, a recycling plan shall be submitted, which includes the location and description of provisions for the recycling of recyclable materials in accordance with the municipal recycling ordinance. The plan shall be accompanied by a description of the following:
 - 1. The size, shape, materials of construction of the recycling area.
 - 2. Name and address of the collector of recycled materials.
 - 3. If recycled materials will be transferred to the Borough's recycling center or taken to some other location.
 - 4. Frequency of collection.

§ **540-84. Underground utilities.**

Underground utilities shall be installed in accordance with § 540-63.

§ **540-85. Water supply and sanitary sewers.**

Water supply systems shall be installed in accordance with § 540-64. Sanitary sewer systems shall be installed in accordance with § 540-65.

§ **540-86. Multi-family residential developments.**

In the case of a site plan for a multi-family residential development, such as a townhouse, apartment or condominium complex, review of the site plan shall consider the following criteria.

- A. Departures by the proposed development from zoning regulations otherwise applicable to the subject property shall conform to the zoning regulations in Part 4 of this chapter.
- 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 shall be adequate.
- C. The proposed development shall not have an unreasonably adverse impact upon the area in which it is proposed to be established.
- D. All common open spaces shall be attractively landscaped with grass lawns, trees and shrubs. Provision shall be made for the preservation of existing trees and natural features.
- E. The proposals for maintenance and conservation of the common open space shall be reliable, and the amount, location and purpose of the common open space shall be adequate.
- F. Off-street parking requirements. There shall be provided conveniently located off-street parking facilities for all buildings and uses. All off-street parking areas shall be designed and constructed in accordance with specifications required by the Planning Board and with applicable local regulations.
- G. Circulation standards. All off-street parking areas and internal roadways shall be designed and constructed in accordance with the provisions of the Residential Site Improvement Standards at N.J.A.C. 5:21 and the Americans with Disabilities Act (ADA) guidelines.
- H. Parking areas and internal roadways shall be located at least 15 feet from a building, unless a driveway leading to a garage, at least 25 feet from a property line and at least 50 feet from a street. To the extent any requirement set forth in this subsection conflicts with § 540-76 this subsection shall supersede.
- I. The arrangement and location of garages, parking areas and internal roadways shall be subject to approval of the Planning Board and shall be designed to ensure maximum safety, proper circulation and maximum convenience for residents and their guests.
- J. Hard-surfaced sidewalks shall be provided in such locations as will ensure convenient pedestrian traffic as required by the Planning Board.
- K. Screening and fencing shall be provided to shield parking areas and other common facilities from view of adjoining property.

- L. Adequate artificial lighting shall be provided in parking areas and along sidewalks, walkways and internal roadways. The source of lighting shall be directed downward, away from buildings and adjoining streets and property lines. Lighting fixtures shall be so arranged that the direct source of light is not visible from any adjacent residential area. All lighting shall meet the requirements of § 540-82.
- M. Adequate provision shall be made for the installation of storm drainage facilities, public water supply and connection to a public sanitary sewer.
- N. All telephone and electric service on the property shall be by underground conduit.
- O. Adequate provision shall be made for the storage and removal of snow on-site.

§ 540-87. Stormwater management.

Stormwater management systems and the maintenance thereof shall be in conformance with the requirements of Article XI of this chapter.

§ 540-88. Topsoil redistribution.

Topsoil available at the site and moved during the course of construction shall be redistributed to all areas uncovered in the course of construction so as to provide at least four (4) compacted inches of spread cover and shall be stabilized by seeding or planting. Whenever sufficient topsoil is not available at the site, additional topsoil shall be obtained and distributed in such a manner as to provide four (4) inches of cover to prevent soil erosion on the areas uncovered during the course of construction or excavation. Topsoil so provided shall meet the specifications set forth in § 540-66. No topsoil shall be removed from the site of the development or used as spoil.

§ 540-89. Riparian zones and natural features.

- A. Riparian zones. Where a lot is traversed by a watercourse, drainageway, channel, stream or other surface water body, said lot shall comply with the riparian zone requirements set forth in the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.
- B. Natural features, such as trees, brooks, hilltops, wetlands and wetland transition areas, steep slopes and views shall be preserved, to the greatest extent possible. On individual lots, care shall be taken to preserve selected trees to enhance soil stability and the landscape treatment of the area.
- C. Site plan applications containing steep slopes and/or wetlands shall be designed in accordance with Article XI of this chapter.
- D. The Planning Board may require that natural features be protected by means of deed restrictions, conservation easements or other appropriate instruments. Conservation easements shall be clearly marked as detailed in Figure 7 located in the Appendix of this chapter.

§ 540-90. Site maintenance.

All buildings, paved areas and landscaping shall be adequately maintained at all times. Dead trees or shrubs shall be replaced by the owner. Failure of the owner to comply with these provisions within six (6) months of notification by the Zoning Officer shall be considered a violation of this chapter.

§ 540-91. Streetscape design standards.

In order to create a unified streetscape theme along the major thoroughfares of the Borough, any private development

or redevelopment proposed along the roadway limits of the Borough as well as any improvements undertaken by any governmental or public agency, shall conform to the design standards contained herein; provided, however, that any of the following design standards may be waived if determined appropriate by the approving authority.

A. Applicability.

1. The following roadways shall be subject to the streetscape design standards:
 - (a) Goffle Road
 - (b) Lafayette Avenue
 - (c) Wagaraw Road
 - (d) Diamond Bridge Avenue
 - (e) Grand Avenue
 - (f) Royal Avenue
 - (g) Lincoln Avenue
2. While these roadways contain predominantly business, commercial and industrial zones, they are interspersed with existing built-up residential areas. The installation of streetscape items along existing residential properties shall be at the discretion of the Borough to fund and construct.

B. Granite block curbing.

1. All projects shall have granite block curbing installed along the street frontage, as well as internally.
2. Those projects that front on roadways under State or County jurisdiction shall have the option of matching the existing or adjacent curb types, if other than granite block.

C. Street/shade trees.

1. Shade trees shall be installed in the street right-of-way in accordance with § 540-68.
2. In order to create biodiversity and reduce problems associated with monoculture planting, more than one (1) variety of tree should be planted along the thoroughfares. Trees should be planted in groupings of similar varieties.
3. Trees of similar form, height and character along the designated thoroughfares should be used to promote uniformity and allow for a visual transition between species.
4. The following plant material is recommended along the and within parking lots, although substitutions are permissible subject to Board approval.

	Botanical Name	Common Name
	Acer rubrum (variety)	Red maple varieties
	Gleditsia triacanthos 'Inermis' (variety)	Thornless honey locust
	Sophora japonica 'Regent'	Regent scholar tree

	Botanical Name	Common Name
	Zelkova serrata	Village green zelkova
	Platanatus x acerifolia	Bloodgood London planetree
	Tilia cordata 'Greenspire', 'Corinthian', 'Glenleven'	Littleleaf linden varieties
	Tilia tomentosa	Green Mountain silver linden
	Ginkgo biloba	Ginkgo
	Celtis occidentalis	Magnifica hackberry
	Ornamental Trees	
	Acer ginnala 'Flame'	Amur maple
	Acer griseum	Paperbark maple
	Amelanchier x grandiflora 'Autumn Brilliance'	Serviceberry
	Cercis canadensis	Eastern redbud
	Cornus kousa	Kousa dogwood
	Prunus 'Newport'	Newport plum
	Prunus serrulata 'Amanogawa'	Amanogawa cherry
	Prunus x yedoensis	Yoshino cherry
	Pyrus calleryana 'Aristocrat', 'Chanticleer', 'Whitehouse'	Pear varieties

5. The following plant material is recommended along all other thoroughfares, although substitutions are permissible subject to Board approval.

	Botanical Name	Common Name
	Acer saccharum	Green Mountain sugar maple
	Acer rubrum	Red sunset red maple
	Fraxinus lanceolata	Patmore ash

	Botanical Name	Common Name
	Carpinus betulus	European hornbeam
	Gleditsia triacanthos 'Inermis' (variety)	Thornless honeylocust
	Koelreuteria paniculata	Golden rain tree
	Platanus x acerifolia	London planetree
	Quercus (White, Willow, Red variety)	Oak varieties
	Sophora japonica 'Regent'	Regent scholartree
	Tilia cordata 'Greenspire', 'Corinthian', 'Glenleven'	Littleleaf linden varieties
	Zelkova serrata 'Green Vase,' 'Village Green'	Green vase Japanese zelkova
	Ornamental Trees	
	Acer ginnala 'Flame'	Amur maple
	Acer griseum	Paperbark maple
	Amelanchier x grandiflora 'Autumn Brilliance'	Serviceberry
	Cercis canadensis	Eastern redbud
	Cornus kousa	Kousa dogwood
	Malus 'variety'	Crabapple varieties
	Prunus 'Newport'	Newport plum
	Prunus serrulata 'Amanogawa'	Amanogawa cherry
	Prunus x yedoensis	Yoshino cherry
	Pyrus calleryana 'Aristocrat', 'Chanticleer', 'Whitehouse'	Pear varieties

6. In addition to the tree species identified above, the listing of “Cool Cities Trees” as referenced in Table 8 on page 44 of the Borough’s Environmental Resource Inventory shall also be considered acceptable subject to the approval of the appropriate reviewing Board.

D. Landscaping and berm features.

1. When parking is proposed in a front yard along the designated thoroughfares, a landscaped berm up to five (5) feet in height or appropriate landscaping screening shall be required consistent with § 540-81.B, provided that there are no prohibitive site-related features (topography, utility easements, wetlands, etc.) or sight distance limitations which would prohibit the installation of landscaped

berms.

2. Landscaping plans shall include a comprehensive planting scheme along the frontage of all properties. Landscaping may consist of a combination of inanimate (walls, fences, boulders, paving materials) and vegetative features. The design should provide for visual attractiveness in all seasons. Specific priority should be given to accenting project entrances and unique existing features. The use of native flora should be utilized to the greatest extent practical to provide for a self-sustaining landscape that mimics the natural environment.

E. Decorative lighting fixture installation.

1. Decorative lighting fixtures shall be provided along the frontage of any property that has frontage along the designated thoroughfares, within any parking areas in the front yard, in any public or dedicated passive recreation areas, and as streetlights within any new subdivisions connected to any of the designated thoroughfares.
2. All decorative light fixtures shall be equipped with metal halide bulbs. High pressure sodium (HPS) or other bulb types are not acceptable. One hundred fifty (150) watt bulbs shall be provided for illumination of sidewalks, whereas two hundred fifty (250) watt bulbs shall be provided for illumination of parking areas.
3. All pole-mounted decorative lighting fixtures shall meet the height requirements set forth at § 540-82.C. In order to avoid conflicts with existing overhead wires, a minimum separation of four (4) feet shall be provided between the fixture head and the overhead wires.
4. When parking areas are located more than six (6) feet from a sidewalk, single head fixtures shall be placed along the frontage of the property, with the head facing towards the roadway. The pole base shall be located such that the fixture head hangs over the sidewalk below. Single head fixtures may also be utilized along the perimeter of any parking areas located in the front yard.
5. When parking areas are located within six (6) feet of a sidewalk, dual head fixtures shall be placed along the frontage of the property. The dual head fixture shall be located equidistant from the sidewalk and the edge of the parking lot, with the higher wattage bulb facing the parking area. Dual head fixtures shall also be utilized within the interior of any parking areas located in the front yard. Such fixtures shall be contained within a curbed, planted island minimally eight (8) feet in width by eight (8) feet in length.
6. “Shoe box” type fixtures shall be permitted within parking areas in the side or rear yard.
7. Decorative fixtures installed along the frontages of residential properties shall have internal screens to deflect glare into dwellings. In those instances where residential properties adjoin a non-residential parking area that utilizes decorative lighting fixtures, house shields shall be installed in the perimeter fixtures to address glare.
8. Decorative streetlights within designated corridors shall be installed at seventy-five (75) foot intervals for at least three hundred (300) feet in all directions.
9. Building-mounted light fixtures along the façade of any commercial, industrial, multi-family or governmental building fronting on a designated thoroughfare shall be of similar design to the decorative streetlights. The scale of the structure shall dictate the diameter of the “shade” portion of the wall-mounted fixtures as either eighteen (18) inch for small to medium size buildings or twenty-four (24) inch for large buildings.

F. Decorative street and traffic signage.

1. Decorative street signs shall be provided along the designated thoroughfares. Such street signs shall be side-mounted, cast aluminum signs. Lettering shall be reflectorized. For those roadways with posted speed limits of forty (40) miles per hour or less, lettering height shall be a minimum of four (4) inches. For those roadways with posted speed limits above forty (40) miles per hour, the minimum lettering height shall be six (6) inches. Supplemental lettering to indicate the type of street (Avenue, Court, Place, etc.) may be in smaller lettering, but in no instance shall they be less than three (3) inches in height.
2. All new traffic signs (regulatory and warning signs) along the designated thoroughfares shall be set in cast aluminum sign frames sized to fit the signage standards of the Manual of Uniform Traffic Control Devices (MUTCD).
3. All street and traffic signage shall be mounted on cast aluminum poles of similar color and design as the decorative lighting poles discussed in Subsection E. above. The mounting heights of the street and traffic signage shall conform to the applicable Manual of Uniform Traffic Control Devices (MUTCD) standards. All street and traffic sign poles shall be of breakaway construction.
4. Street and traffic signage mounting locations shall conform to the applicable Manual of Uniform Traffic Control Devices (MUTCD) standards. Every effort should be made to integrate the locations of the street and traffic signs with the decorative lighting fixtures in order to reduce the number of decorative poles and bases required for any given location or project and provide for an uncluttered streetscape.

G. Pedestrian amenities.

1. Pedestrian amenities, such as benches, trash and recycling receptacles, shall be incorporated as part of the streetscape.
2. Benches shall be designed to be compatible in style and design with all other elements of the site. They shall be located so as to be sheltered from the wind, take advantage of site views, and be near centers of activity, such as transit zones, primary pedestrian accesses and entries, public open space areas and parks, and commercial or multi-family developments.
3. Trash and recycling receptacles shall also be designed to be compatible in style and design with all other elements of the site. They should generally be located at transit zones, near benches and seating, and within public parks and plazas, but should not obstruct smooth circulation flow in pedestrian zones. It is preferable to situate trash and recycling receptacles close to footpath lights or any other light source to make them visible to the user at night.

§ **540-92. Other items.**

- A. All other applicable provisions of this chapter shall be met.
- B. The applicant shall have obtained necessary approvals of any state, county or municipal agencies.
- C. The Board may impose other conditions where specific problems peculiar to any particular development exist which are likely to be detrimental to the public safety and general welfare of the Borough.

ARTICLE X

Environmentally Sensitive Areas

§ 540-93. Regulation of wetlands.

The New Jersey Department of Environmental Protection (NJDEP) has exclusive control over regulated activities within freshwater wetlands as defined in the New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. The purpose of these regulations is to coordinate municipal development review procedures with the wetlands regulations of NJDEP.

- A. Documentation. All freshwater wetlands, and all wetland transition areas required pursuant to N.J.A.C. 7:7A-1 et seq., or any successor regulations, shall be clearly shown on all subdivisions, site plans, lot grading plans, and/or other development plans submitted to the Borough for any development approval. Whenever it has been confirmed that no wetlands or wetland transition areas are present on a site, a note to that effect shall be shown on the plans for development.
- B. NJDEP file identification number. Whenever on-site freshwater wetlands and/or wetland transition areas have been verified by NJDEP through the issuance of a Letter of Interpretation (LOI), all subdivision, site plans, lot grading plans, and/or other plans submitted to the Borough for any development approval shall include therein the wetlands line file identification number assigned by NJDEP in connection with the issuance of an LOI for the property.
- C. Disturbance fencing. To prevent encroachment into freshwater wetlands and wetland transition areas, the developer of any approved subdivision, site plan, lot grading plan or other development plan shall install disturbance fencing in accordance with the requirements of the NJDEP and the Passaic County Soil Conservation District before the commencement of any land disturbance or construction adjacent to any freshwater wetlands and/or wetland transition area.
- D. Silt fencing. Prior to the commencement of any land disturbance or construction, the developer of any approved subdivision, site plan, lot grading plan, or other development plan shall install silt fencing and/or hay bales downstream of any disturbance area adjacent to freshwater wetlands and/or wetland transition areas in accordance with the requirements of the NJDEP and the Passaic County Soil Conservation District.
- E. Proof of recording of deed restriction. Prior to the signing of any approved minor subdivision plat or deed description, final major subdivision plat, or final site plan drawings, the applicant shall submit to the Secretary of the reviewing board proof that any deed restrictions required by the NJDEP in connection with transition area averaging or other transition area modifications associated with the approved subdivision or site plan have been duly recorded in the land records of the Clerk of Passaic County.
- F. Recording notice of wetland limits. As a condition of approval of any application for development of any lot containing freshwater wetlands and/or wetland transition areas, the applicant shall be required to record in the land records of the Clerk of Passaic County a mapped description of the limits of such freshwater wetlands and/or wetland transition areas, together with a bold print notice that no land disturbance or other activities may be undertaken therein without the obtaining of all necessary prior approvals from the NJDEP.
- G. Waiver for improvements to existing single-family dwellings. Whenever any variance or grading permit is sought for any addition to or modification of any existing single-family dwelling and/or the lot on which it is located, the Board of Adjustment, when acting on a variance, and the Borough Engineer, when acting on a grading permit, may waive the requirements of Subsections A, B, and/or F of this section (to the extent they are applicable) when it is reasonably clear to the reviewing authority that there exist no on-site wetlands and/or wetland transition areas, or that any on-site wetlands and/or wetland transition areas are remote from the areas of proposed development and/or disturbance. Nothing herein shall authorize or permit any unlawful disturbance of or activities within freshwater wetlands and/or wetland transition areas.

§ **540-94. Regulation of slopes.**

A. Purpose. It is the purpose of this section to protect the health, safety and welfare of people and property within the Borough of Hawthorne from improper construction, building and development on steep slope areas in the Borough of Hawthorne, and more particularly, but without limitation, to reduce the peculiar hazards which exist in steep slope areas by reason of erosion, siltation, flooding, soil slippage, surface water runoff, pollution of potable water supplies from nonpoint sources, destruction of unique and scenic vistas, and it is a further purpose of this section to encourage appropriate planning, design and development sites within steep slope areas which preserve and maximize the best use of the natural terrain and maintain ridgelines and skylines intact.

B. Exemptions.

1. A Construction Permit is required for any work or disturbance affecting a slope area, except when the area of the proposed work or disturbance:

(a) Contains no slopes greater than ten percent (10%), nor any slope greater than fifteen percent (15%) within one hundred (100) feet, and the work or disturbance meets each of the following maximum standards:

- (1) Soil movement of five (5) cubic yards or less;
- (2) Change in impervious ground cover of two hundred (200) square feet or less;
- (3) Removal of five (5) trees or less, having a circumference of up to twenty (20) inches each, as measured four (4) feet above ground level; and
- (4) Removal or disturbance of trees or shrubs covering two hundred (200) square feet or less.

(b) Contains no slopes greater than fifteen percent (15%), nor any slope greater than twenty percent (20%) within one hundred (100) feet, and the work or disturbance meets each of the following maximum standards:

- (1) Soil movement of three (3) cubic yards or less;
- (2) Change in impervious ground cover of one hundred (100) square feet or less;
- (3) Removal of three (3) trees or less, having a circumference of up to twenty (20) inches each, as measured four (4) feet above ground level; and
- (4) Removal or disturbance of trees or shrubs covering one hundred (100) square feet or less.

(c) Contains slopes greater than fifteen percent (15%) and the work or disturbance meets each of the following maximum standards:

- (1) Soil movement of one (1) cubic yard or less;
- (2) Change in impervious ground cover of twenty-five (25) square feet or less;
- (3) Removal of one (1) tree or less, having a circumference of up to twenty (20) inches, as measured four (4) feet above ground level; and

- (4) Removal or disturbance of trees or shrubs covering twenty-five (25) square feet or less.
 - (d) All items described in Subsections B.1.a., b. and c. above represent a cumulative total per lot.
 - 2. Additions to a single-family residence shall be exempt from the impervious coverage and lot disturbance provisions of this section if each of the following conditions exist:
 - (a) That the size of any one (1) story addition, deck, patio or excavation is less than two hundred (200) square feet. Soil logs and testing for future sub-surface disposal systems shall not be exempted.
 - (b) That no slope greater than ten percent (10%) exists within twenty (20) feet of the area to be disturbed.
 - (c) The applicant provides plans or a written statement describing soil erosion and stabilization measures which will be used as part of construction.
 - 3. Where required, the applicant shall obtain approval from the Passaic County Soil Conservation District for disturbed areas exceeding 5,000 square feet.
- C. Application for permit. Unless otherwise exempt under this Article, a Construction Permit shall be made to the Borough's Construction Official. The application shall include at least the following:
- 1. Property description by Tax Map block and lot, and by street address if available.
 - 2. Sketch of location of proposed work or disturbance. An informal sketch is acceptable.
 - 3. Statement of proposed work or disturbance.
 - 4. Where site plan or subdivision approval is required, the following exhibits shall also be submitted:
 - (a) Topographic map showing existing contours at two (2) foot intervals.
 - (b) Areas clearly identified showing the following, as measured between ten (10) foot contour lines: Area 1, thirty percent (30%) slopes or greater; Area 2, twenty percent (20%) slopes but less than thirty percent (30%) slopes; Area 3, fifteen percent (15%) slopes but less than twenty percent (20%) slopes; Area 4, less than fifteen percent (15%) slopes.
 - (c) Calculation, in square footage and acres, of amount of area in the various slope categories listed above.
 - (d) The time period of exposure of erodible soils during construction.
 - (e) The area and density of woodlands and forest, within the construction site and on contiguous lands for a distance of two hundred (200) feet, or such other distance as deemed appropriate by the Borough Engineer. All trees having a diameter of six (6) inches or as measured four (4) feet above ground level, on slopes fifteen percent (15%) or greater, be indicated on the application plans as well as physically marked on the construction site.
 - (f) The extent of impervious surface to be constructed.
 - (g) Location of construction access roads.

greater,
shall

- cross
- (h) Calculation of amount of site grading, to include a cut-and-fill balance sheet, including sections, and indicating, where applicable, the volume of and source of off-site fill.
 - (i) Extent of on-site erosion sediment control measures, during and after construction and until any affected area is stabilized.
 - (j) Any other information as is reasonably necessary to make an informed decision, as determined by the Borough Engineer.

D. Application review and standards of approval.

1. The Borough Engineer shall review the construction permit to determine whether the proposed work or disturbance may have a detrimental impact upon any slope area. Such review shall include at least an on-site inspection. The Engineer's inspection shall be made as soon as possible considering the extent of the work necessary to evaluate the application.
2. The Borough Engineer shall approve only those applications where the proposed work or disturbance will:
 - (a) Have no reasonably avoidable detrimental impacts.
 - (b) Control velocity and rate of water runoff so that such velocity and rate are no greater after construction and development than before, and are within tolerances deemed safe by the Borough Engineer, and the project or site plan complies with all other provisions of the Borough Code.
 - (c) Minimize stream turbidity and changes in flow.
 - (d) Protect environmentally constrained areas.
 - (e) Stabilize exposed soils both during and after construction and development.
 - (f) Prevent soil slippage.
 - (g) Minimize number and extent of cuts to prevent groundwater discharge areas to underlying soils.
 - (h) Preserve the maximum number of trees and other vegetation on the site and avoid disturbance of the critical hillside, slope and forest areas.
3. The Borough Engineer may impose such conditions upon any approval as said Engineer deems necessary to achieve the purposes of this article. All permanent improvements necessary to achieve the purposes of this article shall be bonded in the same manner as set forth elsewhere in this article, except that a maintenance bond shall continue for two (2) years after complete stabilization.
4. Any approval may be subject to the condition that, for safety reasons, the applicant provide and adhere to a detailed construction and inspection schedule, copies of which shall be supplied to the Borough Construction Official for the purpose of monitoring the progress of the work and compliance with the construction schedule. Said approval may be further conditioned upon submission of periodic certifications by the applicant as to compliance with the construction schedule, and, in the event of noncompliance, written assurance as to the nature and time when steps will be taken to achieve compliance with the construction schedule.
5. If the applicant does not comply with the construction schedule or any other requirements or conditions attached to the approval of the application, and the Borough Engineer or the Borough

Construction Official certifies such lack of compliance, the Borough Construction Official shall thereupon revoke approval of the application, after notice to the applicant, and no further work may be performed on such site with the exception for temporary measures necessary to stabilize the soil and to protect the site from stormwater damage or other hazards created by construction activity on the site.

E. Impervious coverage and disturbance. In areas of slopes greater than fifteen percent (15%), the applicable provisions of Part 4 of this article relating to maximum percentage of impervious coverage shall be modified, and the following limitations of maximum impervious coverage, location of impervious surfaces, and maximum lot disturbance shall be applicable.

1. Maximum impervious coverage. The maximum impervious coverage area for each building lot shall be determined by multiplying the total land area in various slope categories by the following factors, totaling the results and multiplying the result by the maximum lot coverage percentage allowed for the appropriate zone. Slope calculations shall be based on elevation intervals of ten (10) feet.

Slopes	Factor
30% or greater	0.25
20% but less than 30%	0.50
15% but less than 20%	0.75
Less than 15%	1.00

2. Where the modified maximum impervious coverage area is less than the minimum gross floor area required for the proposed building, the minimum gross floor area required shall be the modified maximum impervious coverage area.

3. Location of impervious surfaces. The maximum impervious coverage for a building lot, determined in Subsection E.1. above, may only be permitted within slope areas as calculated by multiplying the total land area in various slope categories by the following percentages and totaling the results.

Slopes	Percentage
30% or greater	10%
20% but less than 30%	15%
15% but less than 20%	25%
Less than 15%	35%

4. The maximum lot disturbance shall be no greater than one hundred thirty percent (130%) of the maximum impervious coverage permitted for the lot.

5. Setbacks of all structures necessary for slope area stabilization shall be sufficient to allow for any future maintenance that may be necessary.

F. Review and inspection fees.

1. An application filing fee plus a review fee, as set forth in Chapter 220 Fee Schedule of the Borough Code of Ordinances, shall be deposited with the Borough. If additional review fees are required, the applicant shall deposit with the Borough an amount equal to the new estimated review fee.

2. Inspections shall be required before and during stabilization and upon completion of the work or disturbance, during and for two (2) years after complete stabilization, or for any other reasonable time, as determined by the Borough Engineer, to insure the purposes of this article

are met. No permit will be issued until a deposit is placed with the Borough equal to the estimated inspection fee, as set forth in Chapter 220 Fee Schedule of the Borough Code of Ordinances. If additional inspection fees are required, applicant shall deposit with the Borough an amount equal to the new estimated inspection fee before any work can continue. The inspection fee deposit account shall remain for two (2) years after complete stabilization.

3. Any deposit accounts shall be maintained at levels sufficient at all times to cover all estimated fees or work may be halted.
- G. Borough liability. The granting of any permit or approval in any slope area shall not constitute a representation, guarantee or warranty of any kind by the Borough or by any official or employee thereof of the practicability or safety of any structure, use or other plan proposed, and shall create no liability upon, or a cause of action against such public body, official or employee for any damage that may result pursuant thereto.
- H Penalties. In addition to penalties already provided in § 540-37, the court may order any person convicted of violating this article to pay the Borough all costs for, and associated with, necessary stabilization or corrective measures, as determined by the Borough Engineer.
- I. Noncompliance with the regulations specified herein shall require a variance and application before the appropriate Board as regulated by this Chapter.
- J. Appeal. The Zoning Board of Adjustment shall have the power to hear and decide appeals where it is alleged by the applicant that there is error in any order, requirement, decision (including review and inspection fees under Subsection F. above) or refusal made by the Borough Engineer based on or made in the enforcement of this article. All such appeals under this section from the decisions of the Borough Engineer shall be taken within twenty (20) days by filing a notice of appeal with the Borough Engineer specifying the grounds of such appeal. The Borough Engineer shall immediately transmit to the Board all papers constituting the record upon which the action appealed from was taken. All such appeals shall be heard by the Board upon notice given by the applicant. The Board may permit, or require, the record on appeal to be supplemented with such documents or other evidence or information as are reasonably necessary to make an informed decision as to whether the requirements of the steep slope regulations have been met.

§ 540-95. Regulations of floodplain districts.

Application for a building permit for any proposed development on land lying within Zone A, Special Flood Hazard Area, as shown on the current Department of Housing and Urban Development, Federal Insurance Administration Flood Hazard Boundary Maps for the Borough of Hawthorne, shall be first reviewed by the Planning Board under the provisions of Chapter 247, and all standards, procedures and requirements therein set forth shall be complied with to the extent applicable to construction or other improvements in a floodplain area having special flood hazards.

Part 3: Stormwater Management Requirements

ARTICLE XI

Stormwater Management Requirements for Major Development

§ **540-96. Scope and purpose.**

- A. Policy statement. 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. It is the purpose of this article to establish minimum stormwater management requirements and controls for major development, as defined in Article VII of this article.
- C. Applicability.
1. This article shall be applicable to all site plans and subdivisions for the following major developments that require preliminary or final site plan or subdivision review:
 - (a) Nonresidential major developments.
 - (b) Aspects of residential major developments that are not preempted by the Residential Site Improvement Standards at N.J.A.C. 5:21.
 2. This article shall also be applicable to all major developments undertaken by the Borough of Hawthorne.
 3. This ordinance shall be applicable in part to single-family and multi-family construction or improvements in accordance with section.
- D. Compatibility with other permit and ordinance requirements. Development approvals issued for subdivisions and site plans pursuant to this article are to be considered an integral part of development approvals under the subdivision and site plan review process and do not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated by any other applicable code, rule, act, or ordinance. In their interpretation and application, the provisions of this article shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. This ordinance is not intended to interfere with, abrogate, or annul any other ordinances, rules or regulations, statutes, or other provision of law, except that, where any provision of this article 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.

§ **540-97. Definitions.**

For the purpose of this ordinance, 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).

“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 ordinances.

“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 specification.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlarge- 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.*

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. 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.

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

“Infiltration” is the process by which water seeps into the soil from precipitation.

“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.

“Major development” 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 December 2, 2020; 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.”

“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, Borough, or village.

“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 Section IV.F. of this ordinance 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.

“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.

“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 major 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.

§ **540-98. Design and performance standards for stormwater management measures.**

A. 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.

B. The standards in this ordinance 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.

§ **540-99. 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 § 540-105.
- B. Stormwater management measures shall avoid adverse impacts of concentrated flow on habitat for threatened and endangered species as documented in the Department's Landscape Project or Natural Heritage Database established under N.J.S.A. 13:1B-15.147 through 15.150, particularly *Helonias bullata* (swamp pink) and/or *Clemmys muhlnebergi* (bog turtle).
- C. The following linear development projects are exempt from the groundwater recharge, stormwater runoff quantity, and stormwater runoff quality requirements of Subsections F and G:

- (1) The construction of an underground utility line, provided that the disturbed areas are revegetated upon completion;
- (2) The construction of an aboveground utility line, provided that the existing conditions are maintained to the maximum extent practicable; and
- (3) The construction of a public pedestrian access, such as a sidewalk or trail with a maximum width of fourteen (14) feet, provided that the access is made of permeable material.

D. A waiver from strict compliance from the groundwater recharge, stormwater runoff quantity, and stormwater runoff quality requirements of Subsections F and G may be obtained for the enlargement of an existing public roadway or railroad; or the construction or enlargement of a public pedestrian access, provided that the following conditions are met:

- (1) The applicant demonstrates that there is a public need for the project that cannot be accomplished by any other means;
- (2) The applicant demonstrates through an alternatives analysis, that through the use of nonstructural and structural stormwater management strategies and measures, the option selected complies with the requirements of Subsections F and G to the maximum extent practicable;
- (3) The applicant demonstrates that, in order to meet the requirements of Subsections F and G, existing structures currently in use, such as homes and 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 Subsection D.3. above within the upstream drainage area of the receiving stream, that would provide additional opportunities to mitigate the requirements of Subsections F and G that were not achievable on site.

E. 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 Section IV.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 Registers 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.

F. Where the BMP tables in the NJ Stormwater Management Rule are different due to updates or amendments with the tables in this ordinance the BMP Tables in the Stormwater Management rule at N.J.A.C. 7:8-5.2(f) shall take precedence.

Table 1 Green Infrastructure BMPs for Groundwater Recharge, Stormwater Runoff Quality, and/or Stormwater Runoff Quantity				
Best Management Practice	Stormwater Runoff Quality TSS Removal Rate (percent)	Stormwater Runoff Quantity	Groundwater Recharge	Minimum Separation from Seasonal High Water Table (feet)
Cistern	0	Yes	No	--
Dry Well ^(a)	0	No	Yes	2
Grass Swale	50 or less	No	No	2(e) 1(f)
Green Roof	0	Yes	No	--
Manufactured Treatment Device ^(a) (g)	50 or 80	No	No	Dependent upon the device
Pervious Paving System ^(a)	80	Yes	Yes ^(b) No ^(c)	2 ^(b) 1 ^(c)
Small-Scale Bioretention Basin ^(a)	80 or 90	Yes	Yes ^(b) No ^(c)	2 ^(b) 1 ^(c)
Small-Scale Infiltration Basin ^(a)	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 ^(g) are found on Page D-15)

Table 2 Green Infrastructure BMPs for Stormwater Runoff Quantity (or for Groundwater Recharge and/or Stormwater Runoff Quality with a Waiver or Variance from N.J.A.C. 7:8-5.3)				
Best Management Practice	Stormwater Runoff Quality TSS Removal Rate (percent)	Stormwater Runoff Quantity	Groundwater Recharge	Minimum Separation from Seasonal High Water Table (feet)
Bioretention System	80 or 90	Yes	Yes(b) No(c)	2(b) 1(c)
Infiltration Basin	80	Yes	Yes	2
Sand Filter ^(b)	80	Yes	Yes	2
Standard Constructed Wetland	90	Yes	No	N/A
Wet Pond ^(d)	50-90	Yes	No	N/A

(Notes corresponding to annotations ^(b) through ^(d) are found on Page D-15)

Table 3 BMPs for Groundwater Recharge, Stormwater Runoff Quality, and/or Stormwater Runoff Quantity only with a Waiver or Variance from N.J.A.C. 7:8-5.3				
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	50 or 80	No	No	Dependent upon device
Sand Filter	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 Section VI.B. Alternative stormwater management measures may be used to satisfy the requirements at Section IV.O only if the measures meet the definition of green infrastructure at Section II. Alternative stormwater management measures that function in a similar manner to a BMP listed at Section O.2 are subject to the contributory drainage area limitation specified at Section 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 Section 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 Section IV.D is granted from Section IV.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 Section VIII.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 Section VIII; 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 Section II may be used only under the circumstances described at Section IV.O.4.
- K. Any application for a new agricultural development that meets the definition of major development at Section II shall be submitted to the Soil Conservation District for review and approval in accordance with the requirements at Sections IV.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 Section IV.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 Passaic County Clerk. A form of deed notice shall be submitted to the reviewing agency having jurisdiction in the Borough of Hawthorne and 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 run quantity standards at Section IV.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 he 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 Section IV of this ordinance 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 with the Office of the Clerk of the County of Passaic 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 Section IV.P and Q, the design engineer shall utilize green infrastructure BMPs identified in Table 1 at Section IV.F. and/or an alternative stormwater management measure approved in accordance with Section IV.G. The following green infrastructure BMPs are subject to the following maximum contributory drainage area limitations:

Best Management Practice	Maximum Contributory Drainage Area
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 Section IV.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 Section IV.G.
4. If a variance in accordance with N.J.A.C. 7:8-4.6 or a waiver from strict compliance in accordance with Section IV.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 Section IV.G may be used to meet the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards at Section IV.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 Section IV.P, Q and R, unless the project is granted a waiver from strict compliance in accordance with Section IV.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 Section V, 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.
3. This groundwater recharge requirement does not apply to projects within the “urban redevelopment area,” or to projects subject to 4 below.
4. 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.

P. Stormwater Runoff Quality Standards.

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 post- construction load of total suspended solids (TSS) in stormwater runoff generated from the water quality design storm as follows:
 - (a) Eighty 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

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 Section IV.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 post- construction load of total suspended solids by 95 percent of the anticipated load from the developed site, expressed as an annual average.
10. This 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.

Q. 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 Section V, 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 70, 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 2.i, ii and iii 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.

§ **540-100. 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

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:

<http://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 Section V.A.1.i and the Rational and Modified Rational Methods at Section V.A.1.ii. A runoff coefficient or a groundwater recharge land cover for an existing condition may be used on all or a portion of the site if the design engineer verifies that the hydrologic condition has existed on the site or portion of the site for at least five years without interruption prior to the time of application. If more than one land cover have existed on the site during the five years immediately prior to the time of application, the land cover with the lowest runoff potential shall be used for the computations. In addition, there is the presumption that the site is in good hydrologic condition (if the land use type is pasture, lawn, or park), with good cover (if the land use type is woods), or with good hydrologic condition and conservation treatment (if the land use type is cultivation).
3. In computing 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.

§ **540-101. 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.

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.

- 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.

§ **540-102. Solids and Floatable Materials Control Standards.**

- A. Site design features identified under Section IV.F above, or alternative designs in accordance with Section IV.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 Section VII.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 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.

§ **540-103. 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 Section VIII.C.1, VIII.C.2, and VIII.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 VIII.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 VIII.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

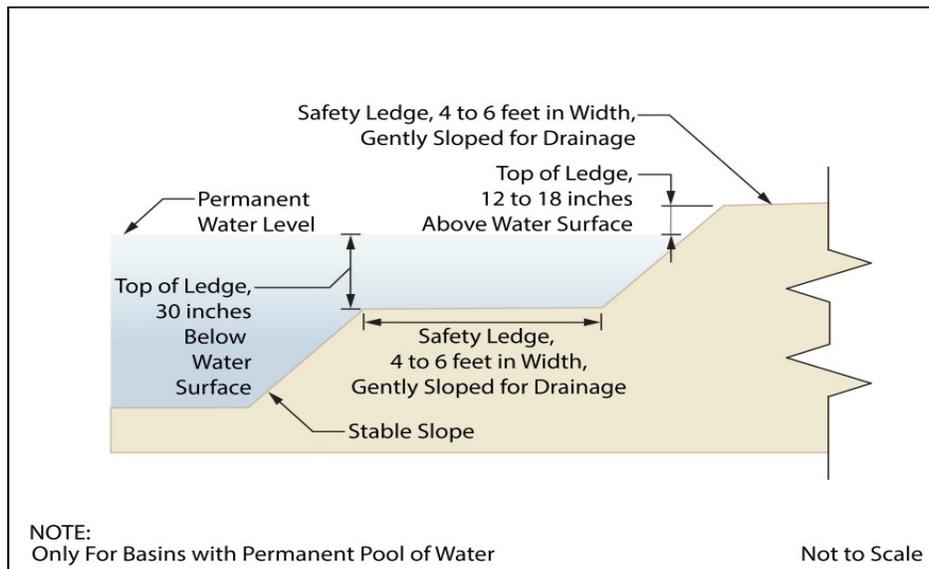
not be steeper than three horizontal to one vertical.

D. Variance or Exemption from Safety Standard

A variance or 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



§ **540-104. 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 ordinance, the applicant shall submit all of the required components of the Checklist for the Site Development Stormwater Plan at Section IX.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 ordinance.

B. Checklist Submission

The applicant shall submit 10 copies of the materials listed in the checklist for site development stormwater plans in accordance with Section IX.C of this ordinance.

C. 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 ordinance.

D. 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 Sections III through V 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 pre-development and post-development conditions for the design storms specified in Section IV of this ordinance.

(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 Section 540-105.

8. Waiver from Submission Requirements

The municipal official or board reviewing an application under this ordinance may, in consultation with the municipality's review engineer, waive submission of any of the requirements in Section IX.C.1 through IX.C.6 of this ordinance 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.

§ **540-105. Maintenance and Repair.**

A. Applicability

Projects subject to review as in Section I.C of this ordinance shall comply with the requirements of Section 105.B and 105.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 Section 540-105.B.3 above is not a public agency, the maintenance plan and any future revisions based on Section 540-105.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 Section 540-105.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 Section 540-105.B.6 and B.7 above.

8. The requirements of Section 540-105.B.3 and B.4 do not apply to stormwater management facilities that are dedicated to and accepted by the municipality or another governmental agency, subject to all applicable municipal stormwater general permit conditions, as issued by the Department. In such event, a two-year maintenance bond, as required by NJSA 40:55D-53 shall be required, in accordance with Section C, below.

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.

§ **540-106 Stormwater Management Requirements for Minor Subdivisions and Individual Single and Multi-Family Properties**

A. Purpose.

It is the purpose of this Section to establish minimum stormwater management requirements and controls for development not regulated by Sections 540-96 through 540-105 above.

B. Applicability.

This Section shall apply to:

1. All development pertaining to residential minor subdivisions approved by the Planning Board or Zoning Board of Adjustment.
2. All applications for building permits for enlargement or addition to an existing single- family or multi-family home.
3. Any application whereby additional impervious surfaces are being added, or the grade of the property is being altered or modified, or which involves soil movement including, but not limited to, porches, decks, driveways, retaining walls, swimming pools, etc., except as exempted in subsection C, below.

C. Exemptions.

Applications whereby proposed impervious surfaces are being added, as referenced in Subsection B3 above, shall be exempted from the requirements of this article, provided that the application conforms to all of the following criteria:

1. The new impervious surface does not exceed one hundred fifty (150) square feet in area.
2. The new impervious surface to be added is not located within the side or rear yard of the principal structure.
3. The downgradient ground surface from the new impervious surface to the nearest property line is stabilized by lawn of good quality or exists as an undisturbed wooded area.
4. The downgradient ground surface from the new impervious surface to the nearest property line has an existing grade so as to provide sheet flow for surface runoff, rather than channelized flow towards the property line.
5. The new impervious surfaces shall not cause adverse drainage impact to

the neighboring property.

D. General Standards.

1. All applications for building permits or grading plan approval for properties subject to this section shall contain a plan or certification providing for zero (0) percent increase in stormwater run-off for the completed project.
2. Stormwater run-off quantities shall be calculated based upon the criteria contained in the Residential Site Improvement Standards (RSIS) at NJAC 5:21.
3. Zero (0) percent increase in run-off shall be accomplished by implementing stormwater management techniques as contained in RSIS at NJAC 5:21 or the New Jersey Department of Environmental Protection Best Management Practices Manual available at www.njstormwater.org.

§ **540-107. Penalties.**

Any person(s) who erects, constructs, alters, repairs, converts, maintains, or uses any building, structure or land in violation of this ordinance, or any person who shall fail to maintain a system in accordance with Section 540-105, shall be subject to the following penalties: a fine, in sum not to exceed \$2,000 for a first offense and not to exceed \$2,000 per day for any subsequent offense.

Part 4: Zoning Regulations

ARTICLE XIII

Zoning Districts Designated

§ **540-108. Applicability of provisions.**

- A. No land or premises shall be used and no building or structure shall be erected, raised, moved, extended, enlarged, altered or used for any purpose other than a purpose permitted 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.
- B. Each of the sections and provisions of Part 4 shall apply to all zone districts unless otherwise stated.

§ **540-109. Zoning districts.**

For the purposes of this chapter, the Borough of Hawthorne is hereby subdivided into zone districts as follow

R-1A	Residential, One-Family
R-1	Residential, One-Family
R-2	Residential, One- and Two-Family
R-3	Apartment — Medium Density
R-4	Garden Apartment
R-5	Planned Unit Development
R-6	Affordable Housing
R-7	Assisted Living/Affordable Housing
R-8	Supportive Housing/Affordable Housing
R-9	Affordable Housing — Multifamily Attached Housing
R-10	Detached Single-Family Housing/Affordable Housing
R-11	Mixed Use Affordable Housing
R-12-R	Multifamily Affordable Housing Redevelopment
B-1	Neighborhood Commercial

B-2	Central Business District Zone
B-3	Retail/Commercial Zone
B-3A	Retail/Commercial Zone
O-1	Research and Restricted Offices Zone
I-1	Industrial Zone
P	Parks – Open Space
AHO	Affordable Housing Overlay Zone

§ **540-110. Zoning map.**

The location and boundaries of said districts are hereby established on the map entitled, "Zoning Map, Borough of Hawthorne, New Jersey," prepared by Burgis Associates, dated November 16, 2015, revised through October 10, 2022 which is included at the end of this chapter and is hereby declared to be part hereof.

§ **540-111. District boundaries.**

- A. The zone boundary lines are intended generally to follow lot or property lines as they exist on the Tax Assessment Map at the time of the passage of this chapter, unless such zone boundary lines are fixed by dimensions or notations shown on the Zoning Map or are specifically described in Appendix B and C attached to and made a part of this chapter. Where there is or may be an apparent conflict between the Zoning Map, notations thereon and Appendix B and C, the provisions of Appendix B and C shall govern, and in the event that no provision for such boundary line is made in Appendix B and C, then the notations on said Zoning Map shall govern. Where the disputed boundary line is not described in either Appendix B and C or in a notation on the Zoning Map, the Zoning Map, interpreted as herein provided, shall govern.
- B. Unless otherwise specifically provided, where any lot is divided by a zone boundary with more than 50% but less than 75% of said lot falling within the zone shown on the front portion of said lot, then, for purposes of said lot, the zone boundary shall be considered an imaginary line extending from the lot lines of adjacent lots in the same zone.
- C. In any case of uncertainty or disagreement as to the true location of any zone boundary line, the determination thereof shall lie with the Zoning Board, which shall hear and decide all questions of interpretation of the Zoning Map in the same manner and under the same procedures, including notice and public hearing, as applicable in cases of other hearings within the jurisdiction of the Zoning Board.

ARTICLE XIV

General Provisions

§ **540-112. Schedule of area and bulk requirements.**

The Schedule of Bulk and Coverage Controls, attached to this chapter, is hereby made a part hereof. The standards and requirements set forth therein shall be considered as the minimum standards and requirements governing the use of land in the Borough, and, should there be a similar regulation or restriction which is more restrictive in this chapter or any other ordinance of the Borough or statute affecting any application hereunder, then the more restrictive provision shall apply.

§ **540-113. Existing platted lots.**

Any lot or plot as recorded at the time of passage of this chapter that fails to comply with the minimum requirements of this article may be used for any use not otherwise prohibited in such district in which it lies, provided that all of the following requirements are complied with:

- A. Said lot is in single ownership, as defined in this chapter.
- B. All yard requirements are complied with.

§ **540-114. Prohibited uses.**

Where a use is not specifically permitted in a zone district, it is prohibited. Businesses engaged in the sale of medical or recreational marijuana or paraphernalia that facilitates the use of marijuana shall be prohibited in all Zoning Districts.

§ **540-115. Number of principal dwellings on a lot restricted.**

In residential zones, there shall be not more than one principal dwelling structure and two accessory structures, including a private garage, on each lot within said zones, except in those residential zones where multiple dwellings are expressly permitted.

§ **540-116. Projections into required yards.**

Chimneys or flues may be erected within a rear yard or side yard, provided that they do not project more than eighteen (18) inches into the required yard space. No HVAC or above ground oil tanks shall be permitted within the required front yard. Permanent outdoor BBQ or outdoor kitchen facilities are permitted within the rear yard only subject to the required setback of the zone.

§ **540-117. Court yard and open space serving same lot.**

No court, yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered as providing a court area, yard or open space for any other building, and no court, yard or other open space on one lot shall be considered as providing a court, yard or open space for a building on any other lot.

§ **540-118. Building restriction.**

No building to be used as a dwelling shall be constructed or altered in the rear of a building situated on the same lot. No building shall be constructed in front of or moved to the front of a dwelling situated on the same lot.

§ **540-119. Use of residential space restricted to residential dwelling.**

No person shall regularly sleep or reside in any building or portion thereof unless the same shall be a dwelling as defined by §540-50 and located within a zone district in which dwellings are a permitted use.

§ **540-120. Use of vehicles for storage prohibited.**

The use of any truck, truck body, tractor, van, bus or vehicle, whether motorized or not, for the principal purpose of storing materials, inventory, waste, rubbish or other matter as a container and not as a vehicle for transport is prohibited in any zone district through the Borough.

§ **540-121. Permit required.**

No building, structure, retaining wall or part thereof shall be erected, razed, moved, extended, enlarged, altered or demolished or the existing grade of any lot or parcel changed until a permit for the same has been granted by the Construction Official.

§ **540-122. As built plans required.**

- A. Every owner of every lot upon which a building is to be erected in accordance with this chapter, or for which a building permit has been issued by an appropriate authority so as to permit the construction of a building as defined herein, shall, within seven days after the completion of the foundation of the building, file with the Borough Engineer for review, approval and verification of conformity with the approved plan a foundation survey marked as "as-built foundation plan" and certified by a licensed land surveyor, to show the actual foundation location and elevation. Driveway location and elevation, seepage pit locations, and final site grades over the entire site shall be submitted to the Borough Engineer five working days prior to a request for the issuance of a final certificate of occupancy.
- B. No certificate of occupancy shall issue unless the Borough Engineer has approved the as-built plans for the entire site as defined above. For purposes of this section, the following shall be exempt from the requirements hereof:
1. All additions to existing structures not including as part thereof the expansion or extension of any foundation wall.
 2. Any addition to an existing single-family home where the new foundation wall or the extension of any existing foundation wall does not result in the extension of such foundation wall beyond the limit of any existing foundation wall in terms of front yard, side yard or rear yard setback; provided, however, that the footprint of the existing home does not increase by more than 25%.
 3. Any addition to an existing single-family home where the new foundation wall or extension of any existing foundation wall will result in an increased square footage at ground level of not more than 200 square feet greater than the existing square footage of the building.
 4. Notwithstanding the foregoing, the building official may, in his or her discretion, require the submission of a foundation survey where the building official determines that the same is appropriate under the circumstances. The determination of the building official in this regard is final and shall not be subject to review.

§ **540-123. Business hours of operation in residential zones.**

No business operation established in any residential zone shall have hours of operation with opening of the business earlier than 7:00 a.m. and closing of the business later than 10:00 p.m., except on Sundays, when no business may have hours of operation with opening before 12:00 noon. No deliveries to such business shall likewise commence prior to 7:00 a.m. and all deliveries must be completed before 10:00 p.m., Monday through Saturday, or before 12:00 noon on Sundays, except as otherwise approved by any reviewing board. Nothing herein shall preclude the reviewing board hearing any application from establishing more restrictive hours, based upon the nature of the proposed business operation and other facts and circumstances considered by the board. The foregoing restriction shall not apply to any business already established and in operation on the date this subsection is adopted where approved hours of operation differ from the requirements of this subsection. No business already established and in operation as of the date of this subsection shall increase or expand hours of operation beyond existing hours of operation or the hours permitted by this subsection, whichever is the greater.

§ **540-124. Fees for special consultants and special meetings.**

- A. Planning Board review. Whenever, by reason of the nature of the application, the Planning Board finds it necessary to obtain the special technical advice or testimony of specialists or consultants in connection with an application, such specialists or consultants shall be compensated by the applicant as reasonably required by the Board, and the applicant will be required to establish an escrow fund for such purposes with a deposit payable to the Zoning Administrator. All reports, advice or testimony of such specialists or consultants shall be given at the hearing, and the applicant shall have full access to the same and the right of cross-examination of any such consultants.
- B. Board of Adjustment review. Whenever, by reason of the nature of the application, the Board of Adjustment finds it necessary to obtain the special technical advice or testimony of specialists or consultants in connection with an application, such specialists or consultants shall be compensated by the applicant as reasonably required by the Board, and the applicant may be required to establish an escrow fund for such purpose. All reports, advice or testimony of such specialists or consultants shall be given at the hearing, and the applicant shall have full access to the same and the right of cross-examination of any such consultants.
- C. Special Meeting Fee. Upon written request by an applicant, the Planning Board or Board of Adjustment may consider but is not obligated to schedule a special meeting. Should the request for special meeting be granted, there shall be a minimum Special Meeting Fee charged of \$1,000.00 to off-set administrative costs incurred by the municipality.

§ **540-125. Requirements to be met on lot and within zone district; exceptions.**

- A. Unless otherwise provided herein, all yard, open spaces, vehicular access and off-street parking must be contained on the lot and within the zone district in which the use is located.
- B. Shared parking.
 - 1. Adjacent lots in all commercial, industrial, or office zones may, in conjunction with securing site plan approval, enter into shared parking arrangements. Such shared parking shall be considered a permitted, accessory use in all commercial, industrial, or office zones. The integration, traffic flow plan for such shared parking shall be reviewed and approved by the relevant land use board and shall be memorialized in a permanent easement, which instrument shall be recorded with the relevant state or county recording agency.
 - 2. The relevant land use board shall apply the standards set forth herein for site plans and shall ensure that the shared parking arrangement makes adequate provision for ingress, egress, emergency access and circulation of traffic, as well as for adequate and safe pedestrian access and use. All uses on

each site shall be considered when assessing the adequacy of such proposed parking arrangements. Any change in any such use shall require either site plan approval, or a waiver thereof.

3. When two (2) such adjacent lots employ such a shared parking arrangement, the yard, buffer and setback provisions of the zoning and land development provisions of this chapter otherwise applicable to such parking arrangements shall not apply to the common boundary.
- C. Off tract parking. It shall be a permitted, accessory use for any existing parking area, or any area proposed for construction or expansion, in any commercial, industrial, or office zone, to be used to satisfy the parking obligation on another lot, subject to the following provisions and subject to site plan approval secured from the appropriate land use board for both affected lots.
1. The Board shall determine the number of spaces available for use on the proposed off-tract parking site;
 2. The Board shall review the application, consistent with the standards imposed by the land development and zoning provisions of this chapter unless same are waived by the Board in accordance with the law;
 3. The Board shall impose reasonable conditions upon the use of such spaces, including but not limited to the imposition of valet parking arrangements;
 4. The Board shall review the easement agreement entered into between the property owners, which agreement shall contain such conditions as the Board may deem appropriate, including limitations on the use of the servient lot during such periods when the shared parking agreement will be in effect, which agreement shall be perpetual, and which agreement shall, as a condition of approval, be recorded with the appropriate state or county recording agency;
 5. Any violation of the terms and conditions of site plan approval, or of the easement agreement entered into in conjunction therewith, shall be punished/enforced through such methods as the Borough shall deem appropriate, and shall be considered a violation of a municipal ordinance susceptible to prosecution in the Municipal Court.

§ 540-126. Reducing area or dimensions prohibited.

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 article. If already less than the minimum required under this Part 4, said area or dimension shall not be further reduced.

§ 540-127. Accessory structures.

Structures which are accessory to a principal building or use shall be subject to the regulations of this section. Unless otherwise provided, these regulations shall apply to both accessory buildings and to accessory structures other than accessory buildings. These regulations shall not apply to signs, swimming pools, communications antennas, fences and walls, outdoor storage, parking garages, home occupations, solar energy devices, or green roofs, which are regulated elsewhere in this chapter, unless otherwise indicated.

- A. Accessory structures in residential districts.
1. No accessory structure shall exceed a height of fifteen (15) feet.
 2. An accessory structure shall be located at least ten (10) feet from a principal building situated on the same lot and shall be at least six (6) feet from any other accessory structure.

3. No accessory structure shall be located in a front yard, except that attached open porches and steps may be located in the front yard, subject to the following:
 - (a) Attached open porches shall meet the setback requirements set forth in Subsection A.7. below.
 - (b) Attached steps may be permitted to extend up to four (4) feet beyond the foundation into the required yard, provided that such steps are neither enclosed nor roofed, and further provided that the width of the steps shall not exceed eight (8) feet.
 - (c) Nothing in this provision shall be read to restrict the right to provide ramps and other reasonable means of access for the handicapped consistent with the Federal Fair Housing Act, 42 U.S.C.A. § 3601 et seq.
4. Accessory structures on corner lots and through lots may not be erected nearer to any street than the required front yard setback for the zone district in which said lot is located.
5. Accessory structures located in a side or rear yard shall be setback a minimum distance of four (4) feet from side and rear lot lines.
6. No accessory structure or combination of accessory structures shall cover more than twenty five percent (25%) of the required rear yard area.
7. Accessory structures which are attached to the principal building, including decks, porches, elevated patios, gazebos and like constructions, shall be subject to the minimum yard requirements for the principal building.
8. Decks, porches, elevated patios and like structures which are attached to the principal building shall be excluded from the calculation of building coverage, provided that such structures are neither roofed nor enclosed.
9. Fifty percent (50%) of the gross area of decks, porches, elevated patios, gazebos and like constructions which are attached to the principal building shall be excluded from the calculation of impervious coverage, provided that such structures are neither roofed nor enclosed, and further provided that such exclusions shall not be applied where there is a concrete or other impervious base underlying said structures.
10. Twenty percent (20%) of the gross area of concrete pavers or stone pavers used for driveways, walkways or at-grade patios which serve single-family residential dwellings shall be excluded from the calculation of impervious coverage, provided that such exclusions shall not be applied where there is a concrete or other impervious base underlying said pavers.
 - (a) When individual plot plans are submitted and the applicant elects to apply the paver reduction factor, the applicant shall be required to provide a table depicting the various impervious coverage components, including but not limited to building, accessory structures, driveways, walkways, patios, pools, etc., and any applicable reduction factors for each of the proposed impervious coverage components shall be identified as to their square footage and percentage of requested reduction.
 - (b) When individual plot plans are submitted and the applicant elects to apply the paver reduction factor, additional stormwater management measures may be required to be reviewed and approved by the reviewing engineer.

B. Accessory structures in nonresidential districts.

1. Accessory structures shall not exceed twenty (20) feet in height.

2. An accessory structure shall not be located closer than twenty-five (25) feet to another structure.
3. Accessory structures shall meet the minimum yard requirements for principal buildings.
4. Accessory uses, and structures shall only be permitted to be located on a lot that contains a principal building.

§ **540-128. Yard requirements; corner lots and through lots; buildable area.**

A. Yard requirements. Every lot must provide front, rear and side yards as required by its zone district. All front yards must face upon a dedicated public street or a private street approved by the Planning Board. The provisions of this section shall not apply in residential districts if an established building line has been formed as follows:

1. If buildings have been erected within seventy-five (75) feet and on both sides of a lot with front yards different from that required by this chapter, the minimum front yard for a new building or addition on said lot shall be the average of the front yards on the adjoining lots and the minimum front yard required by this chapter; provided, however, that no front yard shall be decreased by more than twenty percent (20%) of the front yard requirement, and no front yard need be increased by more than twenty percent (20%) of the front yard requirement of the zone in which the lot is located.
2. If a building has been erected within seventy-five (75) feet and on only one (1) side of a lot with a front yard different from that required by this chapter, the minimum front yard for a new building on said lot shall be the average of the front yard on the adjoining lot and the minimum front yard required by this chapter; provided, however, that no front yard shall be decreased by more than twenty percent (20%) of the front yard requirement, and no front yard need be increased by more than twenty percent (20%) of the front yard requirement of the zone in which the lot is located.

B. Corner lots. Where a lot is bounded by more than one (1) street, the minimum front yard setback requirement from each abutting street shall be met. The actual front yard of a corner lot shall be defined as the widest side serving the front of the property, provided that the minimum required front yard setback is observed from each abutting street. In addition, the following requirements shall apply to yards on corner lots:

1. Once determined, the front yard shall be so designated clearly on all filed maps, deed filing to record minor subdivisions, construction permit drawings and applications, and the Assessor's property records.
2. Said designation shall not be changed in any future development application.
3. The yard opposite and most distant from the front yard so designated shall be deemed to be the rear yard in any future application for development.
4. Any yard(s) other than front or rear yards shall be deemed to be a side yard.
5. Eaves up to two (2) feet, rainwater leaders, window wells and other such fixtures, bay windows up to two (2) feet deep and ten (10) feet wide and open steps with a maximum dimension of four (4) feet shall be permitted on the side wall of the house that faces the side street. Stoops, steps, terraces, chimneys and/or balconies, located on the side wall of the house, extending not more than thirty-six (36) inches into the required front yard along the side street shall not be construed as part of the building unless said projections are roofed.

C. Through lots. The following requirements shall apply to all through lots, as defined herein:

1. The minimum front yard setback requirements shall apply to both streets on which a through lot fronts. The determination of a building's orientation to the street shall take into consideration the surrounding development pattern and the orientation that would best complement the existing neighborhood character and fabric. Where neither street has a uniform development pattern, the determination of the building's orientation shall be at the discretion of the developer.
 2. The placement of accessory structures shall be limited to the rear of the building, as established under Subsection C.1. above.
 3. In the case of residential through lots, the area to the rear of the dwelling, as established under Subsection C.1. above, shall be buffered from the abutting street by a landscaped buffer not less than twenty (20) feet in width. For lots backing up on arterial streets or highways, the landscaped buffer shall not be less than twenty (20) feet in width. Said buffer area shall be used for no purpose other than landscaping, underground utilities or for any required sidewalk.
- D. Extensions into yards. Unless otherwise permitted per §540-116, no part of any building shall extend beyond the foundation into any required yard, except the following, which shall not extend more than eighteen (18) inches beyond the foundation into any required yard:
1. Roof overhangs.
 2. Bay or bow windows.
 3. Chimneys.

§ 540-129. Exceptions to height requirements.

The height provisions of Part 4 shall not apply to the erection of church spires, belfries, towers designed exclusively for ornamental purposes, chimneys, flues or similar appurtenances not exceeding the height limit by more than ten (10) feet. The height provisions of Part 4 shall, moreover, not apply to bulkheads, elevator enclosures, water tanks or similar accessory structures occupying an aggregate of ten percent (10%) or less of the area of the roof on which they are located, and further provided that such structures do not exceed the height limit by more than ten (10) feet. Nothing in Part 4 shall prevent the erection above the height limitation of a parapet wall or cornice extending above such height limit not more than four (4) feet.

§ 540-130. Traffic visibility on corner lots.

No fence, structure, planting, or other sight obstruction over thirty (30) inches in height or exceeding the sight line elevation shall be erected or maintained on a corner lot within the sight triangle required per §540-54.Q.

§ 540-131. Temporary permits for temporary structures.

Transportable or wheel-based structures or other temporary structures used for sales, office, storage, or other purpose incidental to and in connection with a permitted construction project may be placed on a construction site subject to the issuance of a construction permit by the Borough Construction Official. The location, placement and relevant site conditions, including parking, landscaping, screening, fencing, lighting and the like, shall be shown on or submitted as part of the preliminary subdivision or site plan. In reviewing a proposal for any such structure, the location and amount of parking, vehicular and pedestrian traffic circulation, dust and erosion control, drainage, screening, landscaping, lighting and other relevant matters shall be considered. Any such structure shall be removed from the site prior to the issuance of the last certificate of occupancy for the permitted construction project or building. Temporary storage containers, as defined in Article VII, §540-50, shall be permitted only as provided and regulated by §540-140.

§ **540-132. Recreational and Commercial vehicles and equipment.**

The outdoor storage or parking in the open in residential districts of recreational or commercial vehicles, boats and trailers of any kind 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 vehicle or equipment shall preempt any required off-street parking space nor interfere with access to that space.
- 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 as determined by the Zoning Officer.
- F. No recreational vehicle or camper shall exceed a length of 35 feet or exceed a height of 13 feet.
- G. No boat or trailer shall have overall dimensions exceeding 25 feet in length, 8 feet in width and 8 feet in height.
- H. A commercial vehicle shall not exceed a gross vehicle weight of 10,000 lbs., classified as a Class 2 Light-Duty Vehicle by the U.S. Department of Transportation Federal Highway Administration (FHWA).
- I. No vehicle or equipment regulated herein shall be used as a dwelling, place of abode or sleeping place.
- J. In no event shall unhitched trailers used for storage be permitted in residential districts.

§ **540-133. Public utilities.**

Nothing in Part 4 shall be interpreted as prohibiting public utility distribution facilities, such as water distribution lines, sanitary sewer 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.

§ **540-134. Performance standards for nonresidential uses.**

- A. Before the issuance of any building permit or certificate of occupancy for a nonresidential use, all of the following regulations must be complied with:
 - 1. Noise. All activities shall comply with Chapter 333 of the Borough's Code regulating noise.
 - 2. Fire and explosion hazards. All activities shall be carried on only in structures which conform to the standards of the New Jersey Uniform Fire Code. All operations shall be carried on and combustible raw materials, fuels, liquids and finished products shall be stored in accordance with the standards of said National Fire Protection Association or Factory Insurance Association.
 - 3. Odors. There shall be no emission of odorous gases or other odorous matter in such quantity as to be readily detectable without instruments.

4. Smoke, dust, gases and other forms of air pollution. There shall be no emission of smoke, dust, gases or other forms of air pollution which would in any way violate the New Jersey Air Pollution Control Laws or the New Jersey Air Pollution Control Code (see N.J.S.A. 26:2C-1 et seq. and N.J.A.C. 7:27-1.1 et seq.).
5. Liquid and solid wastes. There shall be no discharge at any point of treated or untreated sewage or industrial waste into any stream, lake, reservoir or into the ground of any material which may contaminate the water supply or endanger human health and welfare. No industrial waste shall be discharged into any system, nor shall any wastes be discharged into the public sewer system, which are dangerous to the public health and safety. All methods of sewage and industrial waste treatment and disposal shall be approved, as applicable, by the New Jersey Department of Environmental Protection, the Borough Board of Health and the Water and Sewer Department. All methods of treatment and disposal shall comply with the requirements of these agencies.
6. Radioactivity. No activities shall be permitted which cause radioactivity in violation of 10 CFR 1.20 entitled "Standards for Protection Against Radiation," dated June 16, 1957, or any subsequent revision or amendment thereto.
7. Vibration. There shall be no vibration which is discernible to the human sense of feeling beyond the immediate side on which such use is conducted.
8. Glare and heat. No operation will be conducted which will produce heat or direct or sky-reflected glare beyond the property line of the lot on which the use is located. Industrial and exterior lighting shall be used in such a manner that it produces no glare on public highways and neighboring property.
9. Utilities. All telephone and electric service on the property shall be by underground conduit.

B. Procedure for building permits and certificates of occupancy.

1. If there is any reasonable doubt as to the likelihood of the intended use conforming to the performance standards, the Zoning Officer or Approving Authority (Planning Board or Board of Adjustment) in the event of an application for development application, shall request a deposit of one thousand dollars (\$1,000) to be submitted with the application, which will be used to defray the cost of the special reports required to process it. The Zoning Officer or Approving Authority shall refer the application for investigation and report to one (1) or more expert consultants selected by them as qualified to advise on conformance with the required performance standards. Such consultant or consultants shall make their report within forty-five (45) days after his or their receipt of such application. A copy of such report shall be promptly furnished to the applicant. At the next regular meeting of the Approving Authority or within thirty (30) days of receipt of the consultant's report by the Zoning Officer, whichever comes sooner, the Zoning Officer or Approving Authority shall render a decision in the form of a written report regarding said application. Any permit authorized and issued shall be conditioned on, among other things, the applicant's completed buildings and installations in operation conforming to the applicable performance standards and the applicant's paying fees in excess of one thousand dollars (\$1,000), if needed, to cover expert's above-mentioned reports. All moneys not used to pay for the services of the expert consultant or consultants deemed reasonable and necessary by the Zoning Officer or Approving Board for advice shall be returned to the applicant at the time the Zoning Officer or Board renders the written decision.
2. The Zoning Officer shall investigate any alleged violation of the performance standards, and, if there are reasonable grounds to believe that a violation exists, he/she shall notify the governing body. The governing body shall investigate the alleged violation and for such investigation may employ qualified experts.

§ **540-135. Cannabis Sale, Cultivation, Distribution Prohibition.**

Businesses that engage in the sale, cultivation or distribution of medical or recreational cannabis or paraphernalia that facilitates the use of cannabis shall be prohibited in all Zoning Districts in accordance with Chapter 160 of the Borough of Hawthorne Code.

§ **540-136. Short-Term Rental Regulation.**

A. Definitions.

The following terms shall have the meanings indicated below:

ADVERTISE or ADVERTISING

Any form of solicitation, promotion, and communication for marketing, used to solicit, encourage, persuade or manipulate viewers, readers or listeners into contracting for goods and/or services in violation of this Ordinance, as same may be viewed through various media including but not limited to, newspapers, magazines, flyers, handbills, pamphlets, commercials, radio, direct mail, internet websites, or text or other electronic messages for the purpose of establishing occupancies or uses of rental property, for consideration, which are prohibited by this Ordinance.

CONSIDERATION

Soliciting, charging, demanding, receiving or accepting any legally recognized form of consideration including a promise or benefit, a quid-pro-quo, cash rent, fees, other form of payment, remuneration or thing of value.

DWELLING UNIT

Any structure, or portion thereof, whether furnished or unfurnished, which is occupied in whole or in part, or intended, arranged or designed to be occupied, for sleeping, dwelling, cooking, gathering and/or entertaining, as a residential occupancy, by one or more persons. This definition includes an apartment, condominium, building, co-operative, converted space, or portions thereof, that is offered to use, made available for use, or is used for accommodations, lodging, cooking, sleeping, gathering and/or entertaining of occupants and/or guest(s), for consideration, for a period of thirty (30) days or less.

HOUSEKEEPING UNIT

Constitutes a family-type unit, involving one or more persons, living together that exhibit the kind of stability, permanency and functional lifestyle equivalent to that of a traditional family unit, as further described in the applicable reported and unreported decisions of the New Jersey Superior Court.

OCCUPANT

Any individual using, inhabiting, living, gathering, entertaining, being entertained as a guest, or sleeping in a Dwelling Unit, or portion thereof, or having other permission or possessor right(s) within a Dwelling Unit.

OWNER

Any person(s) or entity(ies), association, limited liability company, corporation, or partnership, or any combination, who legally use, possess, own, lease, sub-lease or license (including an operator, principal, shareholder, director, agent, or employee, individual or collectively) that has charge, care, control, or participates in the expenses and/or profit of a Dwelling Unit pursuant to a written or unwritten agreement, rental, lease, license, use, occupancy agreement or any other agreement.

PERSON

An individual, firm, corporation, association, partnership, limited liability company, association, entity, and any person(s) and/or entity(ies) acting in concert or any combination therewith.

RESIDENTIAL OCCUPANCY

The use of a Dwelling Unit by an Occupant(s).

B. Permitted uses.

1. The residential occupancy of an otherwise lawfully occupied Dwelling Unit for a period of thirty (30) days or less by any person who is a member of the Housekeeping Unit of the Owner, without consideration, such as house guests, is permitted.
2. The residential occupancy of an otherwise lawfully occupied Dwelling Unit for a period of thirty (30) days or less where the Dwelling Unit has received zoning approval as a hotel, motel or boarding house, and the Dwelling Unit is otherwise licensed and/or permitted as required by applicable laws and regulations.

C. Short Term Rentals Prohibited.

Notwithstanding any other contrary provisions as contained in this Ordinance, the renting or leasing of a Dwelling Unit for residential occupancy for a period of thirty (30) days or less is prohibited in all zones within the Borough.

D. Advertising Prohibited.

It shall be unlawful to advertise, solicit or promote by any means actions in violation of this Ordinance.

§ **540-137. Green Infrastructure.**

1. All development shall be in accordance with the regulations set forth in the Article XI Stormwater Management section. Site design is encouraged to incorporate green design elements to achieve the following goals: reduce stormwater volume, minimize impervious coverage, decrease and delay peak discharge, reduce pollution and recharge groundwater.
2. Various design elements may be incorporated into site design with the following specifically low impact development techniques encouraged: rain gardens, bio infiltration planters, infiltration basins, vegetated swales and pervious paving.

§ **540-138. Electric Vehicle Parking Requirements.**

1. 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:
 - (a) Provide adequate and convenient EVSE and Make-Ready parking spaces to serve the needs of the traveling public.
 - (b) Provide opportunities for residents to have safe and efficient personal EVSE located at or near their place of residence.
 - (c) Provide the opportunity for non-residential uses to supply EVSE to their customers and employees.
 - (d) 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.
2. 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:

- (a) Level 1 operates on a fifteen (15) to twenty (20) amp breaker on a one hundred twenty (120) volt AC circuit.
- (b) 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.
- (c) 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.).

3. Approvals and Permits

- (a) 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.

- (b) 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 (a) above.
 - (c) All EVSE and Make-Ready parking spaces shall be subject to applicable local and/or Department of Community Affairs permit and inspection requirements.
 - (d) The Zoning Officer 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 Hawthorne's land use regulations.
 - (e) 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:
 - (1) 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;
 - (2) 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
 - (3) 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.
 - (d) An application pursuant to Section e. above shall be deemed complete if:
 - (1) the application, including the permit fee and all necessary documentation, is determined to be complete;
 - (2) a notice of incompleteness is not provided within 20 days after the filing of the application, or
 - (3) a one-time written correction notice is not issued by the Zoning Officer 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.
 - (e) 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.
 - (f) 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.
4. 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.

5. As a condition of preliminary site plan approval, each application involving a parking lot or garage not covered in . 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.

6. Minimum Parking Requirements

- (a) All parking spaces with EVSE and Make-Ready equipment shall be included in the calculation of minimum required parking spaces.

(b) 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.

(c) All parking space calculations for EVSE and Make-Ready equipment shall be rounded up to the next full parking space.

(d) Additional installation of EVSE and Make-Ready parking spaces above what is required in Section 5. above may be encouraged, but shall not be required in development projects.

7. Reasonable Standards for All New EVSE and Make-Ready Parking Spaces

(a) 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.

(b) Installation:

(1) 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.

(2) 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.

(3) 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.

(4) 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.

8. 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 Hawthorne 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.

9. Private Parking. The use of EVSE shall be monitored by the property owner or designee.

10. 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 §540-82, Lighting.

(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, the Borough 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.

11. 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.

ARTICLE XV

Regulations Governing Certain Accessory Structures and Uses

§ 540-139. Private swimming pools.

The following regulations shall apply to private swimming pools wherever permitted by this Chapter:

- A. Swimming pools including required setbacks from property lines shall conform to the requirements of Chapter 456-6 of the Borough code.
- B. The water surface area of a private swimming pool shall be excluded when calculating coverage by accessory buildings but included when determining compliance with maximum permitted impervious coverage on a lot. For purposes of calculating pool impervious coverage, 90% of the surface area of the pool shall be considered impervious.
- C. Any lighting in connection with an outdoor swimming pool shall be shielded so that the direct source of light is not visible from any adjoining property or street. No light source shall exceed a height of ten (10) feet, and the intensity of light shall not exceed three-tenths (0.3) footcandle at a property line.

§ 540-140. Fences and walls.

Fences and walls shall be a permitted accessory use in all zone districts, subject to the following provisions:

- A. No fence or wall shall be constructed or installed so as to constitute a hazard to traffic or safety.
- B. No fence or wall shall encroach upon or be constructed or installed within a local public road or right-of-way, unless approved as part of the site plan or subdivision application for development.
- C. No fence or wall shall be erected of barbed wire, topped with metal spikes or electrified nor shall any fence or wall be constructed of any material or in any manner that may be dangerous to persons or to animals.
- D. Entrance and/or driveway gates shall not open towards the street. The total footprint of the entranceway pillars and flanking walls shall not exceed one hundred (100) square feet, and the average height of the flanking walls shall not exceed five (5) feet.
- E. On a corner lot, all walls and fences shall comply with § 540-54.Q.
- F. The finished side for all permitted fences shall be situated on a lot in such a manner that the finished or nonstructural side shall face abutting properties or, if facing on a street or property line, shall have the front surface exposed to said street or property line.
- G. Stormwater flow. Fences and walls shall be erected to avoid damming or diverting the natural flow of water or shall be integrated into a grading plan that provides for the adequate movement of stormwater.
- H. All fences and walls must be installed within the property boundary lines.
- I. The height of any fence shall be measured from the natural grade of the property upon which the same is erected.
- J. Fencing and walls shall be permitted as an accessory use in all zoning districts in accordance with the following regulations:

1. Residential districts.
 - (a) On any lot in any district, no fence or wall, except retaining walls, shall be erected or altered so that said wall or fence shall be over four (4) feet in height in front yard areas and six (6) feet in height in other than front yards.
 - (b) A dog run may have fencing a maximum of seven (7) feet in height, provided that such use is located in rear yard areas only and is set back from any lot line at least fifteen (15) feet. Chain link fence may be used, irrespective of any regulations to the contrary.
 - (c) No fence or wall shall exceed four (4) feet in height in a rear yard of a through lot.
2. Nonresidential districts.
 - (a) In the B-1, B-2, B-3, B-3A, O-1 districts, no wall or fence shall exceed a height of six (6) feet above ground level and shall be permitted in side and rear yards only.
 - (b) In the I-1 District, no wall or fence shall exceed a height of eight (8) feet above ground level and shall be permitted in side and rear yards only.

K. Retaining walls.

1. The maximum height of any retaining wall, regardless of zoning district or yard location, shall be six (6) feet.
2. For purposes of applying height limits, multiple, staggered or tiered walls shall be considered single walls unless there is a minimum horizontal distance of ten (10) feet between the top of any section or tier and the base of any one section or tier; the horizontal distance between the top of any section or tier shall be equal to or greater than the height of the taller section or tier. These provisions shall apply to multiple staggered or tiered walls, which span property lines.
3. Retaining walls shall be constructed with the following materials only:
 - (a) Stone, brick, concrete or cinder block faced with stone, brick or similar masonry material.
 - (b) Concrete shadow and open block, concrete and cinder block coated with concrete or stucco material and painted concrete block.
 - (c) Railroad tie or similar timber material.
4. Prior to final approval of any retaining walls exceeding four (4) feet in height, a certification shall be provided by a New Jersey licensed professional engineer attesting that the retaining wall was constructed in conformance with the structural design

L. Freestanding wall construction. Freestanding walls shall be constructed with the following materials only:

1. Stone, brick, concrete or cinder block faced with stone, brick or similar masonry material.
2. Concrete shadow and open block, concrete and cinder block coated with concrete or stucco material and painted concrete block.

M. Fence construction.

1. Fences shall be constructed of the following materials only: picket, split rail, stockade, basket weave, louver, similar wood fence, and chain link provided it consists of vinyl coated dark green or dark brown or black material and which will only be permitted in side and rear yards and specifically prohibited along any street frontage.
 2. All fences shall be properly supported by securely anchored posts.
- O. All walls and fences shall be maintained in safe, sound and upright condition.
- P. Permits for walls and fences. Prior to the erection or alteration of any wall or fence, a permit for same shall be obtained from the Zoning Office in accordance with all applicable procedures and requirements of the Department.
- Q. HVAC and Rooftop Appurtenances. All rooftop HVAC and Rooftop Appurtenances shall be screened or designed so as to not be visible from the adjoining properties or public right of way.

§ 540-141. Solar energy devices.

Solar energy devices shall be a permitted accessory use in all zone districts, subject to the following provisions:

- A. The primary purpose of the proposed solar energy device(s) shall be to produce electricity for consumption by the principal use of the property whereon said solar energy device(s) is to be located, or for the re-sale or transfer to the connected electricity power supply grid.
- B. Solar energy devices may be freestanding or attached to principal or accessory uses, buildings or structures.
- C. If freestanding, the solar energy device(s) and associated equipment shall not exceed twelve (12) feet in height and shall be located not less than twelve (12) feet from any side or rear property line, nor less than six (6) feet from any other principal or accessory structure. Freestanding device(s) are prohibited in front yard areas.
- D. If attached, the solar energy device(s) and associated equipment shall not be more than twelve (12) inches higher than the finished roof to which it is mounted. In no instance shall any part of the device extend beyond the edge of the roof.
- E. All solar energy devices shall be exempt for purposes of calculating impervious coverage on a lot.

§ 540-142. Outdoor storage.

Outdoor storage in all zone districts shall be subject to the following provisions:

- A. In the I Zones, no article or material shall be kept, stored or displayed outside the confines of a building unless as approved by the Planning Board. No storage shall be located in a front yard nor in a side yard adjoining a street. Said storage shall meet the setback requirements from property lines for accessory buildings. In addition, there shall be no outdoor storage or parking of trucks or trailers, except as follows:
 1. The parking of delivery and service vehicles as provided in this Chapter.
 2. The parking of trucks and trailers in connection with permitted trucking terminals and moving and storage operations, which parking shall be subject to the location requirements applicable to off-street loading.

3. The parking of trucks and trailers at loading docks during the course of loading and unloading and temporarily preceding and following the loading or unloading operations. There shall be no outdoor storage or parking of construction equipment, except during the course of construction on the premises.

B. In all Residential Zones, outdoor storage is prohibited except as provided herein.

1. No trailer, semi-trailer, truck, van or other commercial vehicle bearing signs or advertisements or boat, boat trailer, camper or recreational vehicle or disabled, dismantled or unregistered vehicle or any vehicle not capable of automotive propulsion under its own power or any container, box, object or thing of a size in excess of 50 cubic feet shall be parked, stored or located in the front yard of any lot for a period in excess of 24 hours.
2. In residential zones, temporary storage containers shall be permitted subject to §540-143.
3. Car ports in residential zones may be permitted subject to a zoning permit approved by the Zoning Official provided the car port does not violate the applicable setback for the zone provided further that no car port shall be constructed within a required front yard.

§ 540-143. Home occupations.

Home occupations, as defined in Article VII, shall be subject to the following regulations wherever permitted by this Chapter.

- A. Principal use. Home occupations shall only be permitted as accessory to a permitted single-family detached unit. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants.
- B. Particular home occupations permitted. Except as provided in Subsection C below, customary home occupations shall include all occupations which meet the purposes, standards and requirements of this section and, in particular, include, but are not necessarily limited to, the following list of examples:
 1. Providing instruction to not more than two (2) individuals at a time.
 2. Family child-care homes, as defined in Article VII.
 3. Home offices for accountants, architects, attorneys, brokers, dentists, engineers, insurance agents, medical doctors, professional planners, realtors, and members of similar professions.
 4. Home offices for ministers, priests, rabbis, and other members of the clergy.
 5. Home offices for sales and manufacturer's representatives when no retail or wholesale sales are made or transacted on the premises.
 6. Home studios of an artist, photographer, craftsman, writer, composer, or similar person except that home based hair and nail salons are not to be considered studios as expressed herein and further, are expressly prohibited as a home occupation.
- C. Employees. Other than members of the family residing in the dwelling unit, there shall be no more than one (1) person employed or engaged in a home occupation (who need not be a resident therein).
- D. Maximum portion of dwelling unit that may be used. Not more than twenty-five percent (50%) of the habitable first floor area of the dwelling unit or five hundred (500) square feet, whichever is less, shall be used in the conduct of the home occupation.

- E. Use of accessory building prohibited. No home occupation shall be conducted in any accessory building and there shall be no storage of materials, equipment, or goods of any kind associated with the home occupation permitted in any accessory building.
- F. Outside appearance. Dwelling units which contain a home occupation shall retain the appearance of a residence. There shall be no change in the outside appearance of the building or property, or other visible evidence of the conduct of such home occupation. The public display of goods visible from the street or abutting properties and any visible advertising on the premises, including signs, shall be prohibited.
- G. Sales to the public prohibited. There shall be no sale to the general public of goods displayed on the premises.
- H. Maximum traffic generation. No traffic shall be generated by any home occupation which is greater in volume than would normally be expected for solely residential use.
 - 1. The following shall be deemed to be *prima facie* evidence of a greater volume of traffic than would normally be expected for a solely residential use:
 - (a) More than seven (7) stops per week by delivery service, such as, but not limited to, United Parcel Service, Federal Express, Express Mail, etc., for either pick-up or delivery of goods; and/or
 - (b) More than twenty (20) vehicle trips per day of any kind.
 - 2. For purposes of administering this provision, a "trip" shall be a vehicle departure or vehicle arrival; therefore, an arrival and departure by the same vehicle shall be considered two (2) trips.
- I. Parking. Not more than two (2) motor vehicles of any non-resident employee, patron, client, or any other non-resident person associated with a home occupation may be parked at the same time on a lot or parcel where a home occupation is conducted. For the purposes of meeting parking demand, the dwelling's driveway shall be utilized to meet need.
- J. Commercial vehicle parking. No more than one (1) commercial vehicle can be used in connection with the home occupation, which shall be permitted to be parked on the premises subject to the following requirements:
 - 1. Commercial and other non-passenger vehicles shall not exceed a gross vehicle weight rating of 10,000 lbs.
 - 2. All commercial vehicles permitted by these provisions to be parked, stored or garaged on any property located in any residential zone shall be owned by and registered to the premise's occupant.
 - 3. The outdoor parking area for commercial or other nonpassenger vehicle shall be improved with asphalt surface (alternatively known as "bituminous concrete"), paving stone, brick paver, concrete or similar surface.
 - 4. On premise repair or servicing of commercial vehicles is prohibited.
- K. Storage. Except for the parking of commercial vehicles, as permitted in Subsection J. above, outdoor storage related to a home occupation shall be prohibited.
- L. Equipment and process limitation. No equipment or process shall be used in any home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses at the property line of the premises. No equipment or process shall be used in any home occupation which causes electrical, visual or audible interference in any radio or television receiver located off the premises or

causes fluctuations in line voltage off the premises.

- M Nuisance. There shall be no noise, dust, smoke, fumes, odor, glare, flashes, vibrations, heat, electronic radiation, objectionable effluent, unusual risk of fire, explosion or activity otherwise prohibited by law or ordinance in connection with a home occupation.
- N. Signage. Signage shall be permitted in accordance with Article XIX, Signs.
- O. In the instance of a home occupation for a tradesman such as an electrician, plumber, carpenter etc., there shall be no mustering or gathering of employees at the residence which shall be maintained solely as an office for the resident.

§ 540-144. Temporary Storage - Nonresidential

Storage in temporary trailers at the site of existing commercial or industrial facilities in connection with the renovation or reconstruction of such existing commercial or industrial facilities may be permitted, provided that the Construction Official authorizes the use of such temporary trailers and issues a permit pursuant to the following conditions and provisions:

- A. The trailers shall be located on the site of the existing facility to be renovated or reconstructed. No trailer shall be located closer than 25 feet to any existing building or other structure on the site. Each trailer shall be located at least 25 feet from any adjacent trailer, property line or row. Trailers shall not be stacked more than 2 units high.
- B. No more than 30 trailers shall be permitted.
- C. The storage shall consist only of merchandise, material, equipment and items that existed in the facility immediately prior to reconstruction or renovation and shall not consist of any inventory, merchandise, material or equipment brought to the site subsequent to the commencement of renovation or reconstruction. No retail sales of the stored material shall be permitted from the storage trailers.
- D. Such storage shall be permitted only for the period of reconstruction or renovation. All temporary storage shall cease upon the issuance of a temporary certificate of occupancy. All storage trailers must be removed from site and within 30 days of issuance of either the temporary certificate of occupancy or certificate of occupancy and the site restored to pre-construction condition.

§ 540-145. Temporary Storage - Residential

Storage in storage containers located on residential properties, when used in conjunction with the renovation or reconstruction of a single-family dwelling and being performed in accordance with an active construction permit, shall be permitted, provided that the Construction Official authorizes the use of such temporary storage container and subject to the issuance of a zoning permit by the Borough Zoning Officer.

- A. The storage container shall be located on the site of the existing dwelling to be renovated or reconstructed. No storage container shall be located within 5 feet of any property line unless it is located completely within a paved driveway.
- B. No more than one storage container shall be permitted on the residential property at any one time. The storage container shall not be larger than 20 feet by eight feet. The storage container shall not be mounted on wheels.
- C. Such storage shall be permitted only for the period of reconstruction or renovation. All temporary storage shall cease upon the issuance of a temporary certificate of occupancy. All storage trailers must be removed from site and within 30 days of issuance of either the temporary certificate of occupancy or certificate of occupancy and the site restored to pre-construction condition.

§ **540-146. Temporary Storage – Modular Homes**

- A of It shall be unlawful for the owner or occupant of any property in the Borough to use, permit or suffer the use of property owned by that person for the temporary storage of modular homes without first having obtained a zoning permit from the Borough Zoning Officer.
- B. The temporary storage of modular homes which has been authorized by a permit issued by the Zoning Officer shall meet the following conditions and provisions:
1. The permission of the property owner in writing for the temporary storage of the modular home(s) shall be obtained and submitted to the Zoning Officer prior to the issuance of a permit.
 2. The Police Department shall be notified by the individual and/or entity responsible for delivering the modular home(s) into the Borough as to the date when the modular home(s) is to be delivered to the storage site and the date when the modular home(s) is to be moved to the building lot. The requirement of notification to the Police Department shall apply to each individual modular home that is temporarily stored at a site within the Borough.
 3. The modular home(s) shall be situated in such a way so as not to interfere with the general flow of traffic in the parking lot or other area where the modular home(s) is temporarily stored.
 4. The temporary storage of a modular home(s) shall be permitted for a period not exceeding 48 hours from the time the Police Department is informed that the modular home(s) is placed in temporary storage. The Zoning Officer shall have the authority to permit the temporary storage of a modular home(s) for a period in excess of 48 hours, provided that the individual and/or entity responsible for delivering the modular home(s) into the Borough proves to the satisfaction of the Zoning Officer and the Police Department that a situation exists that requires that the modular home(s) be temporarily stored for a period in excess of 48 hours. No extension granted by the Zoning Officer shall exceed a period of seven calendar days.

ARTICLE XVI

Zones and Zone Regulations

§ **540-147. R-1A RESIDENTIAL ZONE.**

The following regulations shall apply in the R-1A Zone:

- A. Permitted Uses. No building, structure or premises shall be used and no building shall be erected or altered except for the following uses:
1. Single-family detached.
 2. Parks and playgrounds.
 3. A use by the Borough of any property owned or leased by it, including any use of property owned or leased by the Borough by any lessee of the Borough; provided, however, that such use by a lessee shall be, in whole or in part, in furtherance of a municipal purpose.
 4. Accessory uses customarily incident to the above principal uses, provided that they shall not include any activity commonly conducted for gain unless specifically permitted in this section.

5. Private garages as an accessory use. Structures used for garaging, as an accessory use, of not more than four motor vehicles may be erected or used on a single lot.
 6. Private swimming pools, as permitted and regulated by Chapter 456.
 7. Signs, as regulated by this chapter.
 8. Home occupations as regulated by §540-139.
- B. Conditional Uses. Permitted conditional uses shall be as follows:
1. Houses of Worship.
 2. Public and private nonprofit schools
 3. Public utility buildings and power generating stations.
- C. Minimum Lot Area, Yard and Setback Requirements shall be subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls.

§ 540-148. R-1 RESIDENTIAL ZONE.

The following regulations shall apply in the R-1 Zone:

- A. Permitted Uses. No building, structure or premises shall be used and no building shall be erected or altered except for the following uses:
1. Single-family detached.
 2. Parks and playgrounds.
 3. A use by the Borough of any property owned or leased by it, including any use of property owned or leased by the Borough by any lessee of the Borough; provided, however, that such use by a lessee shall be, in whole or in part, in furtherance of a municipal purpose.
 4. Accessory uses customarily incident to the above principal uses, provided that they shall not include any activity commonly conducted for gain unless specifically permitted in this section.
 5. Private garages as an accessory use. Structures used for garaging, as an accessory use, of not more than four motor vehicles may be erected or used on a single lot.
 6. Private swimming pools, as permitted and regulated by Chapter 456.
 7. Signs, as regulated by this chapter.
 8. Home occupations as regulated by §540-141.
- B. Conditional Uses. Permitted conditional uses shall be as follows:
1. Houses of Worship.

2. Public and private nonprofit schools.
 3. Public utility buildings and power generating stations.
- C. Minimum Lot Area, Yard and Setback Requirements shall be subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls.

§ **540-149. R-2 RESIDENTIAL ZONE.**

The following regulations shall apply in the R-2 Zone:

- A. Permitted Uses. No building, structure or premises shall be used and no building shall be erected or altered except for the following uses:
1. Single-family detached.
 2. Two-family detached.
 3. Single-family semi-attached.
 4. Two-family semi-attached.
 5. Parks and playgrounds.
 6. A use by the Borough of any property owned or leased by it, including any use of property owned or leased by the Borough by any lessee of the Borough; provided, however, that such use by a lessee shall be, in whole or in part, in furtherance of a municipal purpose.
 7. Accessory uses customarily incident to the above principal uses, provided that they shall not include any activity commonly conducted for gain unless specifically permitted in this section.
 8. Private garages as an accessory use. Structures used for garaging, as an accessory use, of not more than four motor vehicles may be erected or used on a single lot.
 9. Private swimming pools, as permitted and regulated by Chapter 456.
 10. Signs, as regulated by this chapter.
 11. Home occupations as regulated by §540-141.
- B. Conditional Uses. Permitted conditional uses shall be as follows:
1. Houses of Worship.
 2. Public and private nonprofit schools
 3. Public utility buildings and power generating stations.
- C. Minimum Lot Area, Yard and Setback Requirements shall be subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls.

§ **540-150. R-3 APARTMENT – MEDIUM DENSITY ZONES.**

The following regulations shall apply in the R-3 Zone:

- A. Permitted Uses. No building, structure or premises shall be used and no building shall be erected or altered except for the following uses
 - 1. Uses permitted in R-1A, R-1 and R-2 Residential Zone Districts, provided that bulk, area, coverage, setback and all other restrictions and regulations applicable to uses in R-2 Zones shall govern.
 - 2. Medium-density multifamily apartment uses, subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls for the R-3 Zone.
- B. Permitted Maximum Density. The maximum density permitted shall not exceed 24 dwelling units per net acre, excluding streets and interior driveways.
- C. Screening and Buffers. Along any and all side and rear lot lines, a visual screen not less than four feet in height consisting of evergreens or evergreen-type hedges, shrubs or bushes or other suitable natural planting of trees shall be located and maintained in good condition within 10 feet of the property line and shall be so spaced as to eliminate any glare from or into adjoining properties.
- D. Required facilities. Arrangements shall be made for the following:
 - 1. To provide each dwelling unit with an adequate receptacle for the storage of garbage and to further provide, in a suitable and adequately protected area, adequate space for the storage of excess garbage.
 - 2. To provide in some portion of the structure, outside of the dwelling unit or garbage unit, at least 500 cubic feet of secure and adequate bulk storage area for the designated use of each dwelling unit.
 - 3. To provide adequate lighting for all parking areas, interior walks and hallways, all in such manner that the direct source of light is not reflected into any residential area.

§ **540-151. R-4 GARDEN APARTMENT ZONES.**

The following regulations shall apply in the R-4 Zone:

- A. Permitted Uses. No building, structure or premises shall be used and no building shall be erected or altered except for the following uses
 - 1. Uses permitted in R-1 and R-2 Residential Zone Districts, subject to the bulk, area, coverage, setback and all other restrictions and regulations applicable to uses in R-2 Zones shall govern.
 - 2. Garden apartment uses, subject to all restrictions and limitations hereinafter set forth and as regulated in the Schedule of Bulk and Coverage Controls for such use within the R-4 zone.
- B. Setup of units. Units shall be arranged as follows:
 - 1. No more than 20 dwelling units shall be contained in any one continuous structure except where garden apartments consist only of one-bedroom units, in which case the total number of dwelling units in a continuous structure may be 22.
 - 3. There shall be no more than 12 dwelling units in any unbroken building line. A setback of not less

than four feet shall be deemed a satisfactory break in the building line. However, in no event shall any structure exceed 200 feet in length measured against the face of any broken or unbroken building line.

- C. Front yards. Front yards shall be provided as follows:
 - 1. Minimum depth. No apartment building, its walls, covered porches or accessory structure shall be erected nearer than 50 feet to the street line of any through street or nearer than 25 feet to the street line of any interior street or interior driveway, except that garages may front directly on interior streets.
 - 2. Maximum depth. No requirements.
- D. Building area. No more than 15% of the net lot area, excluding streets and interior driveways, shall be occupied by structures, which building area may not be enlarged by abandonment of streets.
- E. Opens Space. At least 10% of the site area, excluding public streets and interior driveways, shall be set aside and equipped for recreation areas. Paved parking areas and access drive areas shall not be considered to constitute recreation spaces. Recreation spaces shall be such as to provide for common open spaces and facilities suitable to serve the residents of the garden apartment development and may include playgrounds, areas for active recreation, gardens and sitting areas. No such recreation space shall be located in any front or side yard areas required under the regulations established by this chapter.
- F. Side and rear yards. Side and rear yards shall be subject to the following:
 - 1. Each garden apartment dwelling shall have a side yard on each side of each structure. The side yards of principal structures shall be 50 feet each in width, and the side yards for accessory structures shall be 10 feet each in width.
 - 2. Each garden apartment dwelling shall have a rear yard on the rear of each structure, which said rear yard shall, in every instance, be a minimum of 50 feet in depth, exclusive of parking areas.
- G. Proximity of units. In no event shall any garden apartment dwelling be located within 50 feet of any part of any other garden apartment dwelling.
- H. Inner Courts. There shall be a minimum open area of 50 feet between the front of any garden apartment building and the rear of any other garden apartment buildings and a minimum distance of 50 feet from the side of any garden apartment building and the front, side or rear of any other garden apartment building. Courts bounded on three sides by the walls of the same building shall not be less than 30 feet in width along any building line.
- I. Density. The maximum density permitted shall not exceed 14 dwelling units per acre.
- J. Off-street Parking. Off-street parking spaces shall be provided for each dwelling unit in accordance with RSIS, of which at least 20% shall be in garages. No off-street parking shall be located in any area required hereunder nor shall any off-street parking be permitted within 25 feet of any apartment building structure. Each parking space shall be not less than 180 square feet in area and 9 feet in width along the least dimension of clear area with suitable access provided to the same. Where detached garages are provided, no such detached garages shall exceed a capacity of 15 automobiles.
- K. Screening and buffers. Along any and all side and rear lot lines, a visual screen consistent with the requirements of this Chapter, consisting of evergreens or evergreen-type hedges, shrubs or bushes or other suitable natural plantings of trees, shall be located and maintained in good condition within 10 feet of the property line and shall be so spaced as to eliminate any glare from or into adjoining properties.
- L. Basement and cellar apartments. No cellar or basement apartments shall be permitted. A "basement or cellar

apartment" shall mean any apartment, the ceiling of which extends less than five feet above the curb level. Any apartment the ceiling of which extends five feet or more above the curb level shall be counted as a story within the maximum height regulations of this chapter.

- M. Required facilities. Arrangements shall be made for the following:
1. To provide each dwelling unit with an adequate receptacle for the storage of garbage and to further provide, in a suitable and adequately protected area, adequate space for the storage of excess garbage.
 2. To provide in some portion of the structure, outside of the dwelling unit or garbage unit, at least 500 cubic feet of secure and adequate bulk storage area for the designated use of each dwelling unit.
 3. To provide adequate lighting for all parking areas, interior walks and hallways, all in such manner that the direct source of light is not reflected into any residential areas.
 4. To provide a resident superintendent.

§ 540-152. R-5 PLANNED UNIT DEVELOPMENT ZONE.

The following regulations shall apply in the R-5 Zone:

A. Use Regulations. To the extent permitted in this article, a planned unit residential development, as regulated herein, shall be permitted in only those areas of the Borough of Hawthorne which are zoned R-5, provided that the area of land controlled by a landowner making application therefor in said zone so to be developed as a single entity is not less than five contiguous gross acres. All land within such R-5 Zone Districts may, exclusive of any provisions contained in this article, be utilized for R-1A uses, subject to all requirements of the R-1A Zone, and any land so utilized need not be considered a part or section of a planned unit residential development requiring review and approval as provided in this article.

B. Permitted Uses. The following uses shall be permitted in the PUD Zone:

1. Dwelling units in detached, semidetached, attached, groups of attached or clustered structures, or any combination thereof.
2. Recreation areas and facilities.

C. Schedule of requirements.

1. Single-family detached, semi-attached, groups of semi-attached or clustered dwelling units:
 - (a) Minimum lot width: 100 feet.
 - (b) Minimum lot frontage: 100 feet.
 - (c) Minimum lot depth: 100 feet.
 - (d) Minimum lot area: 10,000 square feet.
 - (e) Minimum front setback: 40 feet.
 - (f) Minimum rear setback: 30 feet.
 - (g) Minimum side setback: 10 feet; combined: 25 feet.
 - (h) Minimum distance between buildings:
 - (1) Rear: 60 feet.
 - (2) Side: 25 feet.

- (i) Maximum building height: 2 1/2 stories, not to exceed 35 feet.
- (j) Maximum density: 2.5 dwelling units per acre.
- (k) Minimum percentage of total area devoted to single-family dwelling units: 40%.
- (l) Single-family, semi-attached units shall be permitted in groups or clusters of not more than four residences, provided that the attachment is a separate nonessential wall, fence, screen or partition and provided further that the minimum distance between such units shall be eight feet. Distance between groups or clusters of semi-attached dwelling units shall be a minimum of 50 feet.
- (m) No building, existing or proposed, shall be set back less than 20 feet from a dead-end or cul de-sac street nor less than 50 feet from a through street.

2. Townhouses:

- (a) Minimum front setback: 60 feet from an interior street, 100 feet from a major street.
- (b) Minimum rear setback: 50 feet.
- (c) Minimum side setback: 50 feet.
- (d) Maximum density: 10 townhouse dwelling units per acre.
- (e) Maximum percentage of total area devoted to townhouses: 25%. A structure shall be deemed to be a townhouse where it is a self-contained single-family residence having a separate utility system and exterior entrances or exits and shall share a common roof or party wall with a similar type unit.
- (f) Maximum building height: 2 1/2 stories, not to exceed 35 feet.
- (g) No townhouse unit shall have more than two bedrooms.
- (h) Occupancy shall be only residential, but noncommercial facilities shall be permitted for recreation or social activities which are solely for the residents of the project and are not operated for profit.
- (i) Concrete curbing and sidewalks shall be constructed along existing and proposed street frontages; curbing only on access streets or driveways or parking areas.
- (j) No building, existing or proposed, shall be located closer than 25 feet from any curblin on site for driveway or parking areas.
- (k) Garbage and refuse pickup stations at townhouses shall be situated and constructed so as to prevent unsanitary and unsightly conditions. All garbage and refuse facilities shall be appropriately screened or fenced from view.
- (l) A screening strip shall be provided along the entire perimeter of the property on which townhouse units or two-family units are erected of at least 20 feet in width, measured inward from the property line and suitably landscaped with grass and/or ground cover, shrubs and trees. No parking shall be allowed in this area.
- (m) No commercial, business or professional use shall be permitted in any residential building
- (n) No building shall be located closer than 100 feet to any building on the same site or lot which is in a linear continuation, parallel to or within 30° of being parallel to said building. This

distance can be reduced to not less than 50 feet for buildings situated other than above. No building shall be located closer than 100 feet from any building on an adjoining lot or site.

- (o) There shall be no continuous structure of townhouses or attached dwellings containing more than eight dwelling units, 50% of which shall contain no more than six dwelling units.
- (p) The facades of all dwelling units shall be varied by changed front yard setbacks and variation of materials or design so that no adjacent buildings will have the same front yard setback and no two of any three buildings the same or essentially the same architectural treatment of facades and rooflines.
- (q) Buildings or groups of buildings shall be placed on the site such that they are located in a non-uniform pattern (grid pattern to be omitted). Distances between buildings are to be varied.
- (r) Each unit shall have two exterior walls. No common hallways will be permitted except foyers at exterior entrances for two-family buildings, provided that no safety hazard is created by doors with common or conflicting opening areas. Window openings on the exterior walls shall comply with the existing Building Code of the Borough.
- (s) No dwelling unit shall be constructed with any portion of the height below ground or finished grade.
- (t) Each dwelling unit shall be considered a one-family living unit. Combining separate households into a unit, regardless of relationship, shall be prohibited.
- (u) Landscaping.
 - (1) The site shall be finished landscaping with the following minimum planting units, either existing or new:
 - (a) Twelve deciduous trees per acre.
 - (b) Twenty-four evergreen trees per acre.
 - (2) The existing and proposed finished landscaping to comply with this requirement shall be shown on the final site plans or separate landscaped plans.
 - (3) Whenever screening is necessary for the planned unit, the requirement thereof shall not be included as part of the landscaping requirement hereinbefore set forth.
- (v) Outdoor lighting fixtures shall be provided for walks, steps, parking areas and driveways to assure safe and convenient nighttime use.
- (w) Existing trees, shrubs, evergreens, and ground cover shall be retained.

D. Facilities to comply. All public facilities, such as streets, highways, sidewalks, streetlights, parks, playgrounds, stormwater drainage, water supply and distribution and sanitary sewers, shall be in accordance with the standards and requirements of the ordinances of the Borough of Hawthorne.

E. Intent of requirements. It is the intention of this section to incorporate by reference as part of the standards for any planned unit residential development all requirements applicable to other subdivisions in this municipality, and the final approval of any such plan hereunder shall be deemed to incorporate the

requirement of compliance with such ordinances of the municipality pertaining to any other subdivision during the development of said plan.

F. Flexibility of requirements. In cases of planned unit residential development proposed to be developed over a period of years, deviations may be authorized from the density or intensity of use established for the entire planned community development. To encourage flexibility of bounding density design and type intended by the planned community enabling legislation, the Planning Board may recommend a greater concentration of density or intensity of land use within some section or sections of development, whether it be earlier or later in the development, than upon others. The approval and recommendation of the Planning Board of greater concentration of density or intensity of land use for any section to be developed must be offset by a smaller concentration in any completed prior stage, or there must be an appropriate reservation of common open space on the remaining land by a grant or easement or covenant in favor of the owner's organization. Such reservation shall, as far as practicable, defer the precise location of such common open space until an application for final approval is filed.

G. Common open space. Common open space shall comply with the following:

1. The amount, location or locations, types, configurations, topography and maintenance of common open space in any proposed planned unit residential development shall be reviewed by the Planning Board. It shall make detailed findings concerning the adequacy or inadequacy of the aforementioned items in conformance with the provisions of the enabling legislation.
2. There shall be devoted within the planned unit residential development a minimum of 25% of the total area to open spaces, excluding roadways, rights-of-way and open easements, at least 10% of which shall be allocated to recreation areas. Recreation areas shall provide for playground areas, outdoor grills and benches or sitting areas or such other items subject to approval of the Planning Board.
3. In order to secure proper improvement and maintenance of all common open space in any proposed planned unit residential development, the developer shall provide for and establish an organization for the ownership and maintenance of any common open space, to which organization said open space shall be deeded absolutely. Such organization shall not be dissolved, nor shall it dispose of any common space, by sale or otherwise (except to an organization conceived and established to own and maintain the common open spaces), without first offering to dedicate the same to the Borough or a governmental agency designated by the Borough. The Planning Board shall make findings concerning the operation of the organization for the ownership and maintenance of any common open space. It shall require the following assurances, in form and substance approved by the Planning Board:
 - (a) Time when organization is to be created; form of bylaws; deed covenants for protection of all parties concerned.
 - (b) Mandatory or automatic nature of membership in the organization by the resident or successor.
 - (c) Permanence of open space safeguards.
 - (d) Liability of the organization for insurance, taxes and maintenance of all facilities.
 - (e) Provision for pro rata sharing of costs and assessments.
 - (f) Capacity of the organization to administer common facilities and preserve the benefits of common open space.
4. In the event that the organization to own and maintain common open space or any successor organization shall, at any time after establishment of the planned unit residential development,

fail to maintain the common open space, streets, walks, drainage and other site improvements in reasonable order and condition in accordance with the plan, the Borough may serve written notice upon such organization or upon the residents and owners of the planned unit residential development setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within 30 days thereof and shall state the date and place of a hearing thereon which shall be held within 14 days of the notice. At such hearing the Borough may modify the terms of the original notice as to the deficiencies and may give an extension of time which they shall be cured. If the deficiencies set forth in the original notice or in the modification thereof shall be cured within said 30 days or any extension thereof, the Borough, in order to preserve the taxable value of the properties within the planned unit residential development and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one year. Said entry and maintenance shall not vest in the public rights to use the common open space except when the same is voluntarily dedicated to the public by the residents and owners. Before the expiration of said year, the Borough shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing, upon notice to such organization or to the residents and owners of the planned unit residential development, to be held by the Borough, at which hearing such organization or the residents and owners of the planned unit residential development shall show cause why such maintenance by the Borough shall not, at the election of the Borough, continue for a succeeding year. If the Borough shall determine that such organization is ready and able to maintain such common open space in reasonable condition, the Borough shall cease to maintain said common open space at the end of said year. If the municipality shall determine such organization is not ready and able to maintain said common open space in a reasonable condition, the Borough may, in its discretion, continue to maintain said common open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter. The decision of the Borough in any such case shall constitute a final administrative decision, subject to judicial review.

H. The cost of such maintenance by the Borough shall be assessed ratably against the properties within the planned unit residential development that have a right of enjoyment of the common open space and shall become a tax lien on said properties. The Borough, at the time of entering upon said common open space for the purpose of maintenance, shall file a notice of such lien in the office of the County Clerk upon the properties affected by such lien within the planned unit residential development.

I. Additional standards and requirements.

1. The average density shall not exceed in any event three dwelling units per acre throughout any planned unit residential development.
2. The ratio of approved single-family dwelling units vs. multifamily units shall not exceed 15 multi-family units to one single unit.
3. The recreation areas shall be developed prior to the completion of 10% of the dwelling units, or a surety bond posted to cover the cost for completing same.
4. There shall be off-street parking facilities which shall provide parking areas for each use and which shall be in accord with parking requirements specified in other sections of this chapter or amendments thereto, unless otherwise amended herein.
5. Sidewalks and curbs shall be installed on all streets, except only curbs shall be required on access streets, driveways or parking areas in townhouse areas of the development. The Planning Board shall have the right to require certain streets in the development to be dedicated to the public where traffic conditions exist and proposed streets outside the development make necessary such dedication.

6. The distance between streets running in the same general direction shall be no less than 200 feet apart.
7. All projects shall provide and connect public water supplies and public sanitary collection systems to the nearest existing Borough facility.
8. A drainage assessment shall be made to defray the future off-site drainage cost which may be caused by the proposed project in the drainage basin in which the project lies as determined by the Borough Engineer.
9. Performance guaranties shall be required to ensure construction of curbing, streets, sidewalks, accessways, monuments, shade trees, screening, drainage, streetlighting, sanitary sewers, water and other public improvements. To cover all costs in processing, supervising, reviewing and inspecting the planned unit, the applicant shall pay to the Borough, at the time of final approval, a fee equal to 5% of the estimated cost of construction of said improvements as determined by the Borough Engineer. In no case shall the fee be less than as set forth in Chapter 220, Fees. This fee is in addition to the application fee as set forth in Chapter 220, Fees.
10. If the site adjoins or includes existing, in part or in whole, or proposed dedicated streets which are not improved, the developer shall construct same to the extent of such joiner or inclusion in accordance with Borough requirements in effect at time of application. Where the developer does not have complete control over both sides of said right-of-way, he shall be assessed his proportionate share of said improvement costs in order to defray the Borough's cost of construction.
11. Application can be made by the same applicant to affix additional lands immediately adjacent to an approved site plan subject to the approval of the Planning Board, and said addition shall conform in all respects to the requirements of this article and achieve the maximum of coordination with uses, streets, patterns, topography and site development and appearance of the project and otherwise is made part of the original plan of the development.
12. In the event that right-of-way lines are not established, minimum building setbacks and distances shall be from the curb lines.
13. Architectural renderings showing color and materials shall be required for all structures to be erected on the site, and construction plans showing floor layout and wall cross sections shall also be submitted.
14. Each site or area for single-family residences, townhouses or attached housing shall be clearly delineated on the site plan or separate plan submitted for approval showing these limits and the individual area of each site for such use.
15. Off-street parking for two vehicles for each dwelling unit shall be required and shall be placed or screened from direct vision from existing or proposed streets.
16. Street patterns within and around proposed dwelling unit sites shall conform to the proposed plans of the Borough as to right-of-way locations and pavement widths, considering traffic demands.
17. The distance between curbs shall not be less than 30 feet on all through accessways or streets. The minimum radius of the outside curb line of any cul-de-sac shall be 50 feet.
- J. Criteria for evaluation of design and location. The standards and criteria by which design, location, use and buildings shall be evaluated are as follows:

1. Location of land for housing:

- (a) Demand for the type of housing in the proposed location.
 - (b) Probable impact on municipal services, utilities and facilities.
 - (c) Effect on and from land use, form and character of adjacent development.
 - (d) Effect on the site resulting from the transportation network, transit facilities and traffic densities.
 - (e) Relationship of the site to an existing or probable source of danger.
2. Physical characteristics of the site:
- (a) The final topography of the site and its drainage must be suitable for the proposed development.
 - (b) Natural features such as lakes, streams, topsoil, trees and shrubs shall be preserved and incorporated into the final landscaping of the development whenever possible and desirable.
 - (c) The effects of prevailing winds, seasonable temperatures and hours of sunlight on the physical layout and form of the proposed land use and building shall be taken into account.
3. Visual considerations:
- (a) The design of residential and nonresidential uses and buildings, community facilities, parks and landscape and the design of street furniture and the nature, size, shape, lighting and style of all outdoor signs must be found to be in harmony with the purposes of this chapter.
 - (b) Skillful treatment of vegetation in the development of sites shall be encouraged.
 - (c) Favorable aesthetic and community appearance factors will be encouraged by the Planning Board.
 - (d) The visual relationships between buildings shall be examined by the Planning Board.
 - (e) The space between buildings as it relates to the visual character of an area shall be examined by the Planning Board.
 - (f) Care shall be taken in the siting of buildings so that advantage may be taken of desirable views.
4. Siting of housing:
- (a) All housing shall be designed with regard to the topography and natural features of the site and the focal points of the project.
 - (b) To create identity and interest in the layout of housing fronting streets, variations in setbacks shall be encouraged.
 - (c) All housing shall be sited so as to preserve privacy and to ensure natural light.
 - (d) Orientation for sun and wind shall be considered.

- (e) Routes for vehicular and pedestrian access and parking areas shall be convenient without creating nuisances or detracting from privacy.
4. Grading and drainage:
- (a) Seeding, sodding and other planting shall be applied to stabilize topsoil and enhance the appearance of open areas.
 - (b) Where adequate surface drainage is not possible by grading alone, a supplementary drainage system approved by the Borough Engineer will be required.
 - (c) Where streams are improved or altered or lakes and ponds created, adequate provisions will be made to protect the slopes along the water to prevent erosion. Approval of such method of slope protection is required before granting site plan approval.
5. Supplementary project facilities:
- (a) Swimming pools, skating rinks and all recreational areas shall be located so as to avoid nuisance to adjacent dwelling units. All recreational or other areas must be properly fenced or screened as appropriate to the use and enjoyment of residential development.
 - (b) Refuse stations, where required, must be designed and located to be convenient for garbage removal and inoffensive to the occupants of adjacent dwelling units.
 - (c) Adequate lighting must be provided to the outdoor areas used by occupants after dark. Appropriate lighting fixtures must be provided for walkways and to identify steps, ramps, directional changes and signs. Lighting shall be located to avoid shining directly into habitable room windows in the project or into private outdoor open space which is associated with dwelling units.
6. Site preparation:
- (a) Desirable trees shall be preserved wherever possible. The location of trees must be considered when planning the location of buildings, underground services, walks, paved areas, playgrounds, parking areas and finished grade levels.
 - (b) The Planning Board will inquire into the means whereby trees and other natural features will be protected during construction.
7. Street and land use. Streets must be designed with regard to topography, natural features, function, clarity of movement and economy of street length. In the design of any street system, the following criteria must be followed:
- (a) The street system must be integrated with the existing network of streets so that there are at least two points of access. Where an area is to be developed in phases, each phase must provide two points of access.
 - (b) The layout must be designed to take advantage of the existing contours in order to provide satisfactory road gradients and suitable building lots and facilitate the provision of piped services.
 - (c) Where possible, natural features such as watercourses and trees should be preserved so that they may be incorporated into the layout to enhance the overall design of the planned unit development.

- (d) The overall clarity of vehicular movement within the planned community must be evident, and the function of all streets must be easily identified.
 - (e) Lots fronting on more than one street are prohibited.
 - (f) Street widths must reflect the function of the road. Due consideration must be given to special street width construction. The Planning Board shall decide street width, construction, paving and other pertinent street consideration above the minimum requirements.
- K. Timing of development. In the timing of the development, which shall be controlled through the issuance of building permits, the Planning Board shall determine the schedule of the various stages of the planned unit residential development and make it a condition of tentative and final approval of said plan. Performance of stages of development may be guaranteed by the Planning Board requiring the posting of a bond or bonds to cover the cost of construction of public facilities, roads or recreation areas, which are to be developed later than the immediate stage, at the time of the final approval of such immediate stage.
- L. Enforcement and modifications of plan. The enforcement and modification of the provisions of the plan as finally approved, whether recorded by plat, covenant, easement or otherwise, shall be subject to the following provisions:
1. Enforcement.
 - (a) Enforcement by Borough. The provisions of the plan relating to the use of land and the use, bulk and location of buildings and structures, the quality and location of common open space and the intensity of use or the density of residential units shall run in favor of the Borough and shall be enforceable in law or in equity by the Borough without limitations on any powers or regulation otherwise granted the municipality by law.
 - (b) Enforcement by residents and owners. All provisions of the plan shall run in favor of the residents and owners of the planned community, but only to the extent expressly provided in the plan and in accordance with the terms of the plan, and to that extent, said provisions, whether recorded by plat, covenant, easement or otherwise, may be enforced at law or equity by said residents and owners, acting individually, jointly or through an organization designated in the plan to act on their behalf; provided, however, that no provisions of the plan shall be implied to exist in favor of residents and owners of the planned unit residential development except as to those portions of the plan which have been finally approved and have been recorded.
 2. Modification.
 - (a) Modification of plan by Borough. All those provisions of the plan authorized to be enforced by the Borough this section may be modified, removed or released by the Borough (except grants or easements relating to the service or equipment of a public utility unless expressly consented to by the public utility), subject to the following conditions:
 - (b) No such modifications, removal or release of the provisions of the plan by the Borough shall affect the rights of the residents and owners of the planned unit residential development to maintain and enforce those provisions, at law or equity, as provided in this chapter.

- (c) No modification, removal or release of the provisions of the plan by the Borough shall be permitted except upon finding by the Planning Board following a public hearing that the same is consistent with the efficient development and preservation of the entire planned unit residential development, does not adversely affect either the enjoyment of land abutting upon or across a street from the planned unit residential development or the public interest and is not granted solely to confer a special benefit upon any person.
- (d) Residents and owners of the planned unit residential development may, to the extent and in the manner expressly authorized by the provisions of the plan, modify, remove or release their rights to enforce the provisions of the plan but no such action shall affect the right of the Borough to enforce the provisions of the plan in accordance with the provisions of this Chapter.

§ 540-153. R-6 AFFORDABLE HOUSING ZONE.

This section shall hereafter be known and cited for purposes of reference, amendment or otherwise as the “R-6 Affordable Housing Zone” of the Zoning Ordinance of the Borough of Hawthorne.” The following regulations shall apply in the R-6 Zone:

- A. Purpose: The purpose of the R-6 Zone is as follows:
 - 1. The R-6 Zone is intended to fulfill the mandate of Mount Laurel II and comply with the rules and regulations of the New Jersey Council on Affordable Housing (COAH).
 - 2. The R-6 Zone is intended solely to meet the terms of the settlement agreement between the Borough of Hawthorne and Lafayette Realty Company and Delford Gardens, Inc., the terms of the same being incorporated herein by reference.
- B. Permitted principal uses. A building may be erected or used, and the lot may be used or occupied for the following purpose: multifamily residential housing, in buildings with three or more dwelling units, in which units may be located one over another and on more than one floor, including but not limited to rental apartments.
- C. Permitted accessory uses.
 - 1. Recreation areas for passive and active recreation solely for the residents of the development, including, but not limited to, a swimming pool and clubhouse.
 - 2. A single project identification sign, with an aggregate area of not more than 30 square feet, is permitted. In addition to the permanent development identification sign referenced above, the developer is permitted temporary construction and sales signs as necessary to safely guide visitors and properly separate construction traffic from customer traffic having total area of not greater than 50 feet. No temporary sign shall be illuminated, and all such temporary signs shall be installed and located in accordance with good traffic engineering practices. All temporary signs shall be removed from the property prior to the issuance of certificates of occupancy for that particular section or phase of the development.
 - 3. An office for a resident or nonresident project manager; provided, however, that not more than 750 square feet of floor area on the ground floor may be utilized for this purpose. Further, a temporary construction/sales trailer is permitted on site during construction.
 - 4. Additional customary accessory structures and uses are permitted if they serve and are incidental to

the primary permitted use and include off-street parking facilities, stormwater detention/retention facilities, one-story maintenance buildings, mail kiosks and fences and walls.

- C. Maximum number of dwelling units. The total number of dwelling units in the R-6 Zone shall not exceed 108.
- D. Maximum tract density. A maximum of 12 dwelling units per acre shall be permitted, provided that under circumstances shall the tract contain more than 108 dwelling units.
- E. Bulk, coverage and other requirements. The following requirements shall apply:
1. Minimum Lot Area, Yard and Setback Requirements shall be subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls.
 2. Minimum building setbacks: 30 feet from all other property lines except that a patio or deck, having a height of not more than three feet, extending not more than 12 feet from the building and having a total area of not more than 120 square feet, shall be permitted in the rear yard of any residential unit. In addition, a balcony, extending not more than four feet from the building and having a total area of not more than 40 square feet, shall be permitted in the rear yard of any residential unit.
 3. Minimum distance between buildings:
 - (a) Side to side: 30 feet.
 - (b) Rear to rear: 40 feet.
 - (c) Front to front: 50 feet.
- F. Minimum parking requirements.
1. Per New Jersey Residential Site Improvement Standards (RSIS) (N.J.A.C. 5:21-1.1 et seq.), every dwelling unit shall be provided with one garage space. Driveways in front of a garage may be included in the satisfaction of the parking requirements, provided that the driveway located in front of the garage is used by the garage occupant, and further provided that minimum driveway length of the space in front of the garage is 18 feet.
 2. No parking area or access roadway, except for driveways and aprons providing garage access, shall be located closer than six feet to any principal building.
 3. No parking areas shall be located closer to the property line of any residential lot outside the boundaries of the R-6 Zone than the required setback for principal buildings. No parking areas shall be located closer than five feet to an adjacent industrial zone.
 4. Each parking space shall be at least nine feet in width and 18 feet in length.
- G. Regulations as to principal buildings:
1. Maximum height: 45 feet.
 2. There shall be no more than eight dwelling units in a continuous building line and not more than 16 dwelling units in any building.
 3. Maximum length: 200 feet.

4. Each dwelling unit shall have at least two exterior walls.

H. Perimeter buffer.

1. Screening shall be provided along the entire perimeter of the site. A minimum thirty-foot planted perimeter buffer width shall be provided around the site perimeter. Notwithstanding the same, in areas where screening is inappropriate due to road access, site distance requirements or the location of utilities, this standard shall be relaxed or eliminated. In addition, the perimeter buffer along the southwest border of the property, where the same adjoins houses having frontage on Braen Avenue shall be a minimum of 50 feet wide. On the northwest perimeter of the site, where the same adjoins property fronting on Lafayette Avenue, the minimum planted perimeter buffer shall be 15 feet wide. In areas where a fifteen-foot wide planted buffer is proposed, the developer shall be required to install, where feasible and to the extent permitted by the adjoining landowner, a planted buffer of up to 15 feet wide on the lands of the adjoining property owner. This perimeter buffer shall be as depicted upon the preliminary plan for development submitted in connection with the settlement agreement cross-referenced herein.
2. The screening shall consist of suitable plant materials and, if determined appropriate, a decorative solid fence. The screening shall be designated so as to form a year-round visual barrier between the site and adjacent properties. Existing trees and shrubs shall be retained in portions of the site not affected by construction. The Planning Board shall consider the adequacy of screening to ensure compliance with this subsection.

I. Low- and moderate-income housing obligation. A monetary contribution of a maximum of \$625,000 at a unit cost of \$5,787 per unit shall be required, as provided for in the Borough of Hawthorne Housing Element and Fair Share Plan, in fulfillment of the low- and moderate-income housing obligation associated with this site. See the Borough of Hawthorne Housing Element and Fair Share Plan for details.

J. Regulations for condominiums. The following regulations apply to development in the R-6 Zone if the development is proposed as a condominium with common open space:

1. In order to secure the proper improvement and maintenance of all common open space in the condominium, the developer shall provide for and establish an organization for the ownership and maintenance of any common open space, to which organization said open space shall be deeded absolutely. Such organization shall not be dissolved nor shall it dispose of any common space, by sale or otherwise, except to an organization conceived and established to own and maintain common open space, without first offering to dedicate the same to the Borough or governmental agency designated by the Borough. The Planning Board shall make findings concerning the operation of the organization to be established for the ownership and maintenance of any common open space. It shall require the following assurances, in form and substance approved by the Planning Board:
 - (a) Time when organization is to be created; form of bylaws; deed covenants for protection of all parties concerned.
 - (b) Mandatory or automatic nature of membership in the organization by resident or successor, and permanence of open space safeguards.
 - (c) Liability of organization for insurance, taxes, and maintenance of all facilities.
 - (d) Provision for pro rata sharing of costs and assessments.

- (e) Capacity of the organization to administer common facilities and preserve the benefits of common open space.

2. Failure to maintain; Borough to perform maintenance; costs.

- (a) In the event that the organization to own and maintain common open space, or any successor organization, shall at any time after establishment of the condominium fail to maintain the common open space, streets, walks, drainage, and other site improvements in reasonable order and condition in accordance with the approved site plan, the Borough may serve written notice upon such organization or upon the owners of all dwelling units in the development setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within 30 days thereof and shall state the date and place of a hearing thereon which shall be held within 14 days of notice. At such hearing the Borough may modify the terms of the original notice as to the deficiencies and may give an extension of time within which shall be cured. If the deficiencies set forth in the original notice or in the modification thereof shall not be cured within said 30 days or any extension thereof, the Borough, in order to preserve the taxable value of the properties within the condominium and to prevent the common open space from becoming a public nuisance, may enter upon said common open space, and maintain the same for a period of one year. Said entry and maintenance shall not vest in the public any rights to use the common open space except when the same is voluntarily dedicated by the owners and accepted by the public. Before the expiration of said year, the Borough shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization or to the owners of the development, to be held by the Borough, at which hearing such organization or the owners of the development shall show cause why such maintenance by the Borough shall not, at the election of the Borough, continue for a succeeding year. If the Borough shall determine that such organization is ready and able to maintain such common open space in reasonable condition, the Borough shall cease to maintain said common open space at the end of said year. If the municipality shall determine such organization is not ready and able to maintain said common open space in a reasonable condition, the Borough may, in its discretion, continue to maintain said common open space during the next succeeding year and subject to a similar hearing and determination in each year thereafter. The decision of the Borough in any such case shall constitute a final administrative decision subject to judicial review.
- (b) The cost of such maintenance by the Borough shall be assessed proportionally with the real estate assessment against the owners within the condominium that have a right of enjoyment of the common open space and shall become a tax lien on said properties. The Borough, at the time of entering upon said common open space for the purpose of maintenance, shall file a notice of such lien in the office of the County Clerk upon the properties affected by such lien within the development.

- K. Water and sewer requirements. All projects shall provide and connect to public water supply and public sanitary collection systems.
- L. Surface drainage. The project engineer shall design all components of the surface drainage system in accordance with the requirements of RSIS.
- M. Soil erosion control. Seeding, sodding, and other planting shall be applied to stabilize topsoil and enhance appearance of open areas. Vegetation shall be reestablished on all disturbed areas in accordance with and under the authority of the Hudson-Essex-Passaic Soil Conservation District Standards.

- N. Protection of slopes required. Where streams are improved or altered or detention ponds created, adequate provisions will be made to protect the slopes along the water to prevent erosion in accordance with Hudson-Essex-Passaic Soil Conservation District standards.
- O. Refuse stations. Refuse stations, where required, shall be designed and located so as to be convenient for garbage removal. All refuse pickup stations must be screened from view.
- P. Outdoor lighting requirements. Adequate lighting must be provided in all outdoor areas which are designed for use by occupants after dark. Site lighting is to be provided along roadway and parking areas, providing an average maintained light level of 0.5 footcandle, with poles not exceeding 20 feet in height, utilizing metal halide luminaries. The maximum light level at the property lines is not to exceed 0.25 footcandle. Lighting shall be located and or shielded to avoid shining directly into habitable room windows in the project or into private outdoor open space which is associated with dwelling units.
- Q. Tree removal. In areas not subject to regrading existing trees shall not be disturbed except as determined by the Borough Engineer to be necessary for the completion of the project.
- R. Staged development. If development occurs in stages or sections, each stage or section shall be self-sustaining with regard to access, parking, utilities, open space and similar physical features and capable of substantial occupancy, operation and maintenance upon completion of construction and development.
- S. Retaining walls. A single retaining wall may be located in the perimeter buffer area having a height not in excess of 10 feet and a length not in excess of 50 feet. Retaining walls located in the interior of the project and not in the buffer area shall not exceed 15 feet in height. Where retaining walls exceed 10 feet, appropriate fencing and hostile vegetation shall be provided.

§ 540-154. R-7 ASSISTED LIVING/AFFORDABLE HOUSING ZONE.

This section shall hereafter be known and cited for purposes of reference, amendment or otherwise as the "Assisted Living/Affordable Housing Zone" of the Zoning Ordinance of the Borough of Hawthorne." The following regulations shall apply in the R-7 Zone:

- A. Permitted uses. The following uses shall be permitted in the R-7 Zone:
 - 1. Continuing care and assisted living units are permitted as principal permitted uses in the R-7 Zone.
 - 2. Accessory uses customarily incidental to the above-permitted uses.
 - 3. Signs, as permitted and regulated by this chapter.
- B. Area and setback requirements. The following requirements shall apply:
 - 1. Minimum Lot Area, Yard and Setback Requirements shall be subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls.
 - 2. Minimum setback to internal roadway: 20 feet.
- C. Maximum density. The maximum permitted density shall not exceed 22.5 units per acre.
- D. Supplemental requirements.
 - 1. Landscaping: All landscape plans shall provide for a minimum of 12 deciduous trees per acre and 24 evergreen trees per acre.

2. Minimum landscape element: 55% of the site.
 3. Minimum treed buffer width to R Zone: 20 feet.
 4. A minimum of 55 parking space per unit shall be provided.
 5. All projects shall provide and connect public water and sanitary collection systems to the nearest existing Borough facility of adequate capacity.
 6. Where adequate surface drainage is not possible by grading alone, a supplementary system approved by the Borough Engineer will be required.
 7. Seeding, sodding and other planting shall be applied to stabilize topsoil and enhance the appearance of open areas. Vegetation shall be reestablished on all disturbed areas.
- E. Lower-income housing obligation. A total of eight units within any continuing care or assisted living development shall be set aside for persons of low income, as provided for in the Borough of Hawthorne Housing Plan, provided that in no event shall more than 20% of the total number of units on site be required to be set aside for that purpose.
- F. Affordable housing regulations for assisted living residences.
1. Definitions. As used in this section, the following terms shall have the following meanings. Unless provided for specifically in this § 540-150, the definitions contained in Article VII, § 540-50 shall apply.
 - (a) AFFORDABLE. For a rental unit in an assisted living residence, that the initial rent for a unit is calculated so as not to exceed 30% of the eligible household income of the appropriate household size, including an allowance for utilities.
 - (b) AFFORDABLE UNITS. Designated units or numbers of units in an assisted living residence that are restricted to and rented for a monthly fee that is affordable to low-and moderate-income households, in accordance with the standards of this section.
 - (c) ASSISTED LIVING RESIDENCE. A housing development which is a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance.
 - (d) LOWER-INCOME PERSONS and LOW- AND MODERATE-INCOME HOUSEHOLDS(SYNONYMOUS). Households with an income less than 80% of the median income.
 - (e) LOW-INCOME HOUSEHOLD. A household with a total gross annual household income equal to 50% or less of the median income.
 - (f) MEDIAN INCOME. The median income by household size for Passaic County as adopted annually by the New Jersey Council on Affordable Housing (COAH).
 - (g) MODERATE-INCOME HOUSEHOLD. A household with a total gross annual household income in excess of 50% but less than 80% of the median income.
 2. Low-income units required. At least 50% of the designated affordable units in each bedroom type in the assisted living residence shall be affordable to low-income households.

3. Unit of credit for affordable units. The unit of credit for affordable units in an assisted living residence shall be the apartment, except for an apartment with two distinct bedrooms that house two unrelated low- or moderate-income adults.
4. Unit type distribution. The distribution of affordable units in the assisted living residence by unit type (efficiency or studio units, one-bedroom units, and shared two-bedroom units) shall, as best as practicable in the judgment of the entity administering the affordability controls, be at a minimum equal the distribution of market-rate units of the same unit type in the assisted living residence, excluding those units reserved for persons with Alzheimer's.
5. Household size for calculating rent. Efficiency or studio units shall be affordable to one-person households and a one-bedroom unit shall be affordable to one-and-five-tenths person household, or such other standard as COAH may prescribe by rule; the current standards are codified at N.J.A.C. 5:80-26.4.
6. Income verification and certification. The income of low- and moderate-income households shall be verified and certified in accordance with the standards and procedures established by COAH; the current standards and procedures are codified at N.J.A.C. 5:80-26.16.
7. Monthly fee. The monthly fee for a unit in an assisted living residence includes charges for rent, meals, and basic services and shall be calculated in accordance with the underwriting guidelines of the New Jersey Housing and Mortgage Finance Agency (NJHMFA).
8. Maximum rent. The rent portion of the monthly fee for designated affordable units in an assisted living residence shall be established such that the rent of the designated low-income units is affordable at 50% of median income and the rent of the designated moderate-income units is affordable at 80% of median income.
9. Maximum monthly fee. Monthly fees for designated affordable units may not exceed 80% of the applicable low or moderate gross household income.
10. Eligible residents. An assisted living residence may have two categories of low- and moderate-income residents: private pay residents and Medicaid waiver residents.
11. Increases of monthly fee. If annual increases of the monthly fee are permitted by NJHMFA, the increases shall be based on the entire fee package for rent, food and services.
12. Affirmative marketing. The developer-operator of an assisted living residence shall prepare, submit to the Borough for approval, and, once approved, implement, and, when necessary, update and implement, a regional affirmative marketing plan in accordance with COAH rules, currently codified at N.J.A.C. 5:93-16.
13. Affordability controls. Long-term affordability controls, in the form of a deed restriction in a form as prescribed by COAH and/or NJHMFA (currently codified at N.J.A.C. 5:80-26.1 et seq., Appendix B), and in a form approved by the Borough Attorney, shall ensure that the designated affordable units in an assisted living residence remain affordable to low- and moderate-income households for a minimum of 30 years. The deed restriction may allow the designation of a specific number of units in the assisted living residence that shall remain affordable for the term of the affordability controls, rather than specifically designating units as affordable units.
14. Administration of affordability controls. The developer-operator of an assisted living residence shall contract with NJHMFA, or some other experienced entity subject to the prior approval of the Borough, to administer the affordability controls by establishing initial monthly fees and allowable increases in monthly fees for the affordable units, certifying the income eligibility of prospective residents of the assisted living residence, monitoring the income eligibility of residents of the affordable units, and maintaining the distribution of unit types in accordance with this section.

§ **540-155. R-8 SUPPORTIVE HOUSING/AFFORDABLE HOUSING ZONE.**

This section shall hereafter be known and cited for purposes of reference, amendment or otherwise as the "Supportive Housing/Affordable Housing" of the Zoning Ordinance of the Borough of Hawthorne." The following regulations shall apply in the R-8 Zone:

- A. Purpose. The purpose of the R-8 Zone is as follows:
 - 1. The R-8 Zone is intended to fulfill the mandate of the Mount Laurel II and comply with the rules and regulations of the New Jersey Council on Affordable Housing (COAH).
 - 2. The R-8 Zone is intended solely to meet the terms of the settlement agreement between the Borough of Hawthorne and Lafayette Realty Company and Delford Gardens, Inc., and in furtherance of Hawthorne's obligation to permit the development of low- and moderate-income housing.
- B. Whenever any section of this article conflicts with any provision of any other ordinance, the provisions of this article shall apply.
- C. Use regulations. The following uses shall be permitted within the R-8 Zone:
 - 1. Permitted principal use. Alternative living arrangement home.
 - 2. Permitted accessory uses.
 - (a) Recreation areas for passive and active recreation solely for the residents of the development.
 - (b) A single project identification sign, with an aggregate area of not more than 20 square feet is permitted.
 - (c) Additional customary accessory structures and uses are permitted if they serve, and are incidental to, the primary permitted use, including such accessory uses as off-street parking facilities, stormwater detention/retention facilities, and fences and walls as regulated elsewhere in this chapter. Additionally, one caretaker's unit shall be permitted.
- D. Area and setback requirements. Minimum Lot Area, Yard and Setback Requirements shall be subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls.
- E. Maximum density. Maximum density shall not exceed 22 du/ac.
- F. Minimum affordable units. The minimum number of affordable units shall not be less than 12 units.
- G. Regulations as to access. Access shall be no more than required in order to meet the public health, safety and welfare of the residents and guests.
- H. Steep slope regulations. The Borough's steep slope regulations are not applicable to the R-8 Zone.

§ **540-156. R-9 AFFORDABLE HOUSING ZONE MULTIFAMILY ATTACHED.**

This section shall hereafter be known and cited for purposes of reference, amendment or otherwise as the "Affordable Housing Multifamily Zone" of the Zoning Ordinance of the Borough of Hawthorne." The following regulations shall apply to the R-9 Zone:

- A. Use regulations. The following uses shall be permitted within the R-9 Zone:
1. Permitted principal use: Multifamily attached housing.
 2. Permitted accessory uses:
 - (a) Off-street parking facilities.
 - (b) A single project identification sign.
 - (c) Retaining walls and fences.
 - (d) Additional customary accessory structures and uses are permitted if they serve, and are incidental to, the principal permitted use.
- B. Compliance with affordable housing regulations.
1. Any affordable unit constructed in the Borough of Hawthorne shall comply with the regulations set forth by the Council on Affordable Housing (COAH) and the Uniform Housing Affordability Controls concerning bedroom distribution, low-moderate income split, affordability controls, income-qualification and affirmative marketing, and all other applicable provisions. All deed-restricted affordable housing units shall be affirmatively marketed in accordance with current applicable COAH rules and regulations and at all times be occupied by a certified low- or moderate-income household.
 2. Developments in this zone shall provide an affordable housing set aside of no less than 20% of the total number of units comprising the development. As permitted by COAH regulations, the developer may elect to provide a cash payment in lieu of on-site construction and occupancy to the municipality for 50% of the affordable housing obligation. In no case, however, shall less than 50% of the affordable housing obligation be satisfied on site. Half of all affordable units shall be available to low-income households while the remaining half may be available to moderate-income households as defined by COAH.
- C. Area and setback requirements. Minimum Lot Area, Yard and Setback Requirements shall be subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls.
- D. Maximum density. Maximum density shall not exceed 28 du/ac.
- E. Minimum number of affordable units. The Minimum number of affordable units shall be no less than 20% of total units.
- F. Conflict. Where the above requirements are in direct conflict with any other section of this article, the above requirements shall prevail.
- G. Supplemental requirements.
1. All portions of the property not occupied by buildings, driveways, parking lots, walkways and dumpster or recycling bins shall be landscaped. The landscape plan shall be prepared by a licensed professional landscape architect or other appropriate licensed professional recognized by the State of New Jersey and shall include at a minimum the following design elements:
 2. A landscaped buffer area shall be provided along any lot line that abuts residentially zoned property. The buffer shall be a minimum of five feet in width, and shall provide a visual screen consisting of evergreens or evergreen-type hedges, shrubs or bushes or other suitable natural planting of trees and

shall be so spaced as to provide adequate screening of view, noise and other activity in the R-9 Zone District.

3. Shade trees shall be planted 40 feet on center in the street right-of-way. Said spacing of trees, if necessary to insure adequate sight distance for motorists entering onto the public roadway, can be adjusted, provided that the required number of trees is not diminished.
4. Street trees and other plant material shall be provided at the ends of parking bays. Landscaped islands shall be at least four feet in width.
5. Foundation plantings, including ornamental trees and shrubs, shall be planted along the perimeter of the building.
6. Underground irrigation systems shall be installed as part of the necessary site infrastructure.
7. Exterior lighting shall be designed to provide uniform light coverage and minimize glare and light trespass outside the boundaries of the subject property. Maximum height of pole-mounted light fixtures shall not exceed 16 feet measured to the surrounding grade.
8. Notwithstanding building height limitations described earlier in this article, that portion of a building exclusively containing a stair tower and/or elevator shaft shall be permitted to exceed the building height limitation by no more than 12 feet. Building system infrastructure, including HVAC, shall not exceed 15 feet in height and cover no more than 15% of the roof surface.
9. Refuse and recyclable storage area.
 - (a) A refuse and recyclable storage area is a permitted accessory structure in this zone. Said area shall be enclosed by a decorative concrete block wall not to exceed six feet in height. Said refuse and recycling storage area can be located within otherwise required front or side yards so long as it does not impede safe sight distance for drivers entering onto or exiting from either the subject property or adjacent properties.
 - (b) The dimensions of the recycling area shall be sufficient to accommodate recycling bins or containers which are of adequate size and number and which are consistent with anticipated usage and with current methods of collection in the area in which the project is located. The dimensions of the recycling area and the bins or containers shall be determined in consultation with the Municipal Recycling Coordinator and shall be consistent with the district recycling plan adopted pursuant to Section 3 of P.L. 1987, c 102 (N.J.S.A. 13:1E-99.13).
10. Fences shall be designed to comply with the requirements of § 540-138.
11. Retaining walls are permitted in all yards. Said walls shall be designed by a New Jersey licensed professional engineer. Notwithstanding any provision of this chapter to the contrary, retaining walls shall be no taller than required to permit the site to function effectively, but in no event shall be permitted to be greater than eight feet in height. Walls over four feet in height shall have a protective fence or other suitable barrier at the top to insure public safety. Walls must be set back a minimum of five feet from property lines.
12. Identification signage shall be a maximum height of five feet and an aggregate area of no more than 20 square feet. Signage may be wall-mounted or monument-type, with a minimum setback of 15 feet from the curbline. Signs shall be non-illuminated.

§ **540-157. R-10 DETACHED SINGLE-FAMILY AFFORDABLE HOUSING ZONE.**

This section shall hereafter be known and cited for purposes of reference, amendment or otherwise as the “R-10 Detached Single-Family Affordable Housing Zone” of the Zoning Ordinance of the Borough of Hawthorne.” The following regulations shall apply to the R-10 Zone:

- A. Use regulations. The following uses shall be permitted in the R-10 Zone:
 - 1. Permitted principal use. All principal permitted uses that are allowed in the R-1 Zone.
 - 2. Permitted accessory uses. All accessory uses that are permitted in the R-1 Zone.
- B. Bulk requirements. Minimum Lot Area, Yard and Setback Requirements shall be subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls.
- C. Maximum density. Maximum permitted density shall not exceed 10.89 du/ac.
- D. Front yard restriction. In the front yard, no driveway, carport or paved area shall be permitted except for one driveway having a width not in excess of 18 feet and one front walkway having a width not in excess of four feet.

§ **540-158. R-11 MIXED USE AFFORDABLE HOUSING ZONE.**

- A. Purpose.

The purpose of this district is to encourage the production of low and moderate-income housing with mixed commercial development in conformance with the latest procedural and substantive rules for affordable housing as determined by the Courts or other applicable authority, by permitting inclusionary multi-family development subject to the MUA regulations enumerated herein. This ordinance is created in fulfillment of a Settlement Agreement by and between the Borough of Hawthorne, New Jersey, 204 Wagaraw Road, LLC and the Fair Share Housing Center in connection with the Borough of Hawthorne’s declaratory judgment action captioned “In the Matter of the Application of the Borough of Hawthorne” bearing docket number PAS-L-2412-15 pursuant to *In re the Adoption of N.J.A.C. 5:96 and 5:97 by the Council on Affordable Housing*, 221 N.J. 1 (2015).

- B. Principal permitted uses.
 - 1. Multiple uses and buildings on one lot is permitted.
 - 2. Only those uses listed below shall be permitted.
 - (a) Multifamily residential development
 - (b) Retail, including such uses as antique shops, appliance store, apparel store, bakery shops, barber shops, beauty salon, book and stationery store, butcher, candy and confectionary store, computer and electronics store, delicatessen, drug store (pharmacy), dry cleaning and tailoring, florist shop, food and grocery, furniture store, hardware store, hobby and craft store, liquor store, painting and wallpaper store, as well as other uses similar to those listed above.
 - (c) Health Club and Gym facilities
 - (d) Personal Service establishments such as travel agencies, financial and tax advisors, and insurance agencies.
 - (e) Day spas as defined by code.

- (f) Restaurants, excluding restaurants with drive through facilities
- (g) Self Storage facilities subject to the requirements of §540-198.

C. Permitted accessory uses.

- 1. Any use which is ordinarily subordinate and customarily incidental to the principal permitted uses allowed in the MUA zone.
- 2. Surface parking limited to the rear of the buildings.
- 3. Signs as permitted by ordinance.
- 4. Fences and walls as permitted by ordinance.

D. Development Requirements.

- 1. Development within the zone shall substantially conform to the concept plan prepared by Langan Engineering entitled “Hawthorne at the Station Concept Site Plan” dated August 16, 2019 as incorporated into the settlement agreement between the Borough of Hawthorne and 204 Wagaraw Road, LLC and the Fair Share Housing Center in connection with the Borough of Hawthorne’s declaratory judgment action captioned “In the Matter of the Application of the Borough of Hawthorne” bearing docket number PAS-L-2412-15 pursuant to *In re the Adoption of N.J.A.C. 5:96 and 5:97 by the Council on Affordable Housing, 221 N.J. 1 (2015)*.
- 2. Development of the zone shall satisfy the following minimum requirements:
 - (a) The total number of residential units shall not exceed 117 units.
 - (b) The total square footage of commercial retail development shall not be less than 14,000 square feet.
 - (c) A commercial self storage facility with a minimum building footprint of no less than 30,800 square feet shall be constructed as an integral feature of the zone’s development and shall be constructed along the northwesterly side property line separating the MUA zone from the adjoining Industrial zone.

E. Area and Bulk Requirements.

- 1. Lot area, external yard and bulk requirements.
- 2. Minimum lot area (acres): 8.5 acres
- 3. Minimum distance between buildings (feet): 25
- 4. Minimum setbacks from external lot lines (feet):
 - (a) Front yard: 25
 - (b) Side yard: 30
 - (c) Rear yard: 50
 - (d) Maximum number stories and building height:
 - (1) Residential 4 stories/45 feet
 - (2) Commercial 1 story/25 feet

(3) Self Storage Facility 4 stories/50 feet but in no event shall a self-storage building be constructed at a height lower than any multifamily development constructed within the zone.

- 5. Maximum building lot coverage: 25 percent
- 6. Maximum impervious lot coverage: 55 percent
- 7. Maximum building length (feet): 220 feet

E. Height exception. Architectural features designed to comply with § 540-199 A(3) are exempt from the maximum height requirement provided that such decorative feature does not exceed 5 feet.

F. Parking requirements.

- 1. Parking requirements for the MUA Zone shall be based upon the unique characteristics of the MUA Zone which includes the close proximity of the zone to the Hawthorne Rail Station and the shared parking arrangement that typically results from mixed use development as permitted within the zone.
- 2. Residential parking standard shall be 1.45 spaces per unit.
- 3. Retail, office and commercial service parking standard shall be 1 space per 250 square feet of floor area.
- 4. Total parking may be reduced by a finding by the Board that the combined total number of parking spaces satisfies on-site parking demand based upon the mix of land uses proposed for development, proximity of the MUA Zone to the Hawthorne Rail Station and the shared nature of parking as such except that the total number of parking spaces in no case shall be less than 244 parking stalls.

G. Self Storage Requirements.

- 1. Self storage facilities shall meet the following requirements:
 - (a) Self-service storage facilities are permitted only within multistory structures designed to emulate attractive office buildings.
 - (b) The only activities permitted in individual storage units shall be the rental of the unit and the pickup and deposit of goods and/or property in dead storage. Storage units shall not be used for activities such as:
 - (1) Residences, offices, workshops, studios, or hobby or rehearsal areas.
 - (2) Manufacturing, fabrication, or processing of goods, service or repair of vehicles, engines, appliances or other electrical equipment, or any other individual activity.
 - (3) Conducting retail sales of any kind, including garage or estate sales or auctions, or to conduct any other commercial activity; provided that the operator of the self-service storage may conduct a sale or otherwise liquidate the contents of any storage unit to satisfy and settle an account of unpaid rent or other charges, through public or private sale, in a manner provided by law.
 - (c) Storage of flammable, perishable or hazardous materials or the keeping of animals.
 - (d) The rental of trucks, trailers or moving equipment and the installation of trailer hitches are prohibited.

- (e) Sale of boxes or packing materials is permitted but only if accessory to the self-service storage facility.
- (f) Self-service storage facilities shall not operate or allow tenant access between the hours of 12:00 midnight and 6:00 a.m.
- (g) All goods and property stored in a self-service storage facility shall be stored in an enclosed building. No outdoor storage of any kind, including but not limited to storage of boats, RVs, vehicles, trailers or similar vehicles, etc., or storage in outdoor storage pods or shipping containers is permitted.
- (h) All storage units above ground level and storage units visible from residential areas shall gain access from the interior of the building(s) or site; no unit doors, loading bays, or docks may face or be seen from any adjacent residential areas.
- (i) Electrical service to storage units shall be for lighting and climate control only. No electrical outlets are permitted inside individual storage units. Lighting fixtures and switches shall be of a secure design that will not allow tapping the fixtures for other purposes.

2. Required Parking

Parking shall be provided for 1 space per 5,000 square feet of floor area.

H. Site Design Requirements.

1. Architectural Design Standards.

(a) Façade Design.

- (1) Horizontal articulation between floors. Each facade should be designed to have a delineated floor line between street level and upper floors. This delineation can be in the form of a masonry belt course, a concrete lintel or a cornice line delineated by wood detailing.
- (2) Vertical articulation. Each building facade facing a public right-of-way must have elements of vertical articulation comprised of columns, piers, recessed windows or entry designs, overhangs, ornamental projection of the molding, different exterior materials or wall colors, or recessed portions of the main surface of the wall itself. The vertical articulations shall be designed in accordance with the following:
 - i. Each vertical articulation shall be no greater than thirty (30) feet apart.
 - ii. Each vertical articulation shall be a minimum of one (1) foot deep.
 - iii. Each vertical projection noted above may extend into the required front yard a maximum of eighteen (18) inches in depth.
 - iv. Building walls with expansive blank walls are prohibited on any building façade regardless of its orientation.

2. Materials. Exterior building materials shall be classified as either primary, secondary or accent materials. The facade shall be designed in accordance with the following:

- (a) The primary material shall cover at least sixty percent (60%) of the facade of the building.

- (b) Secondary materials shall cover not more than forty percent (40%) of the facade.
3. Rooflines. Rooflines are not to be flat but pitched. Roofline offsets, dormers or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.
 4. All ground level retail and service uses that face a public street shall have clear glass on at least 60% of their facades between two and eight feet above grade.
 5. Fenestration shall be architecturally compatible with the style, materials, colors and details of the building. Windows shall be vertically proportioned.
 6. All buildings should relate harmoniously to the site's natural features and existing buildings, as well as other structures in the vicinity that have a visual relationship and orientation to the proposed buildings. Such features should be incorporated into the design of building form and mass, and assist in the determination of building orientation in order to preserve visual access to natural and man-made community focal points.
 7. Buildings should be broken into segments having vertical orientation. A visual or physical break shall be required where buildings have a front wall that exceeds 125 feet in length, and in such case a visual or physical break shall be provided minimally every 50 linear feet.
 8. Buildings with expansive blank walls are prohibited. Appropriate facade treatments should be imposed to ensure that such buildings and facades are integrated with the rest of the development and the entirety of the building.
 9. New buildings are encouraged to incorporate such building elements as entrances, corners, graphic panels, display windows, etc., as a means to provide a visually attractive environment.
 10. Cornices, awnings, canopies, flagpoles, signage, and other ornamental features should be encouraged as a means to enhance the visual environment. Such features may be permitted to project over pedestrian sidewalks, with a minimum vertical clearance of 8.5 feet, to within two feet of a curb.
 11. A "human scale" of development should be achieved at grade and along street frontages through the use of such elements as windows, doors, columns, awnings and canopies.
 12. Multi-tenant buildings shall provide varied storefronts and such elements as noted above for all ground-floor tenants. Upper floors shall be coordinated with ground floors through common materials and colors.
 13. Design emphasis should be placed on primary building entrances. They should be vertical in character, particularly when there is the need to provide contrast with a long linear building footprint, and such details as piers, columns, and framing should be utilized to reinforce verticality.
 14. Sound attenuation features shall be incorporated into the residential building design.
 15. Refuse and recycling shall be located interior to a building or alternatively, be placed to the rear of the buildings fronting on Wagaraw Road. If located outside, the refuse area shall be appropriately screened by fencing not to exceed 6 feet.
 16. Rooftop utilities including HVAC units shall be shielded from public view with appropriate screening that complements the character of the building's architecture.

I. Landscaping.

1. Landscaping shall be provided to promote a desirable visual environment, to accentuate building design, define entranceways, screen parking areas, mitigate adverse visual impacts and provide

windbreaks for winter winds and summer cooling for buildings, and enhance buffer areas. The impact of any proposed landscaping plan at various time intervals shall be considered. 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 (wet-site, drought, sun and shade tolerance), soil conditions, growth rate, longevity; root pattern, maintenance requirements, etc., shall be considered. Consideration shall be given to accenting site entrances and unique areas with special landscaping treatment. Flowerbed displays are encouraged.

2. The Borough Shade Tree Commission shall approve all trees in the right-of-way to ensure proper maintenance can be achieved. Spacing between trees shall be a maximum of 35 feet unless another vertical element, such as a decorative light fixture or blade sign, is used between the trees, in which case a maximum of 60 feet shall be permitted.
3. Trees along Wagaraw Road shall be in a formal arrangement, while informal planting may be provided along access roads. Street trees along Wagaraw Road shall meet the standards set forth in Subsection A(1) and (2) above.
4. Street trees and other plant material shall be provided at the ends of parking bays. Landscaped island should be at least six feet in width.
5. Parking rows longer than 20 parking spaces shall have a six-foot-wide landscape island to break the pavement after the 20th space. The landscaped area shall be six feet wide by 18 feet long to allow for sufficient landscaping.
6. There shall be a minimum ten-foot-wide planted strip along the site frontage on Wagaraw Road, exclusive of the area necessary for vehicular access and egress to and from the property.
7. Landscaped islands should be at least six feet in width to accommodate plantings.
8. Landscaping within sight triangles shall not exceed a mature height of 30 inches.
9. Shade trees shall be pruned up to an 8-foot branching height above grade.
10. All areas that are not improved with buildings, structures and other manmade improvements shall be landscaped with trees, shrubs, ground cover, street furniture, sculpture or other design amenities.
11. Shade trees shall be a 2.5 to 3-inch caliper with a canopy height of at least the minimum American Nursery and Landscape Association Standards for this caliper.
12. Ornamental Trees shall be installed at a minimum size of 6 feet in height.
13. Shrubs shall be planted at a minimum size of 18 to 24 inches.
14. All plant material shall meet the minimum latest American Nursery and Landscape Association Standards.
15. Buffer Areas. Buffers shall comply with the following standards:
 - (a) Buffer planting shall provide year-round visual screen in order to minimize adverse impacts from a site on an adjacent property or from adjacent areas. It may consist of evergreen and deciduous trees and shrubs, berms, boulders, mounds, or combinations thereof to achieve the stated objectives as approved by the Planning Board. While fencing may be installed to delineate the property line, the use of fencing or walls shall not be relied upon as the primary source of screening.

- (b) Where required, buffers shall be measured from property lines and street rights-of-way. Compliance shall be determined by the Planning Board, and any approvals required pursuant to this Section shall be obtained at the time of site plan and subdivision review. Buffer areas may overlap required setbacks.
- (c) The landscaping shall be designed to provide a visual screen along the majority of the buffer area. Planting shall be installed at a variety of sizes which conform to the following minimum sizes:
 - (1) Shade Trees 2 ½-3-inch caliper
 - (2) Evergreen Trees 7-8 feet
 - (3) Shrubs 18-24 inches
- (d) No buildings, structures, accessory structures, parking, driveways, or storage of materials shall be permitted within the required buffer.
- (e) Existing vegetation within the required transition buffer shall be preserved, as determined appropriate. It shall be supplemented with shade tolerant naturalistic massed plantings where necessary to provide screening of adjoining land uses.
- (f) Irrigation shall be provided for all buffer plantings and sodded lawn areas in a manner appropriate for the specific plant species. A growth guarantee of two growing seasons shall be provided and all dead or dying plants shall be replaced by the applicant, as required, to maintain the integrity of the site plan.

16. Landscape Plantings. A minimum of 30 percent of the plantings proposed shall be indigenous to the region.

17. Landscape Plan Content. A landscape plan shall be submitted with each major site plan or major subdivision application. In addition to the major site plan or subdivision submission requirements, the landscape plan shall include and identify the following information:

- (a) Existing and proposed underground and above ground utilities such as site lighting, transformers, hydrants, manholes, valve boxes, etc. existing wooded areas, rock outcroppings and existing and proposed water bodies.
- (b) Location of individual existing trees noted for preservation within the area of development and 30 feet beyond the limit of the disturbance. Trees 4 inches in diameter (measured 4 1/2 feet above the existing ground level) shall be located and identified by name and diameter unless the wooded area is shown with a specific limit line. In this case, specimen trees shall be located within thirty feet of the line. Indicate all existing vegetation to be saved or removed.
- (c) Existing and proposed topography and location of all landscaped berms.
- (d) Location, species and sizes of all proposed shade trees, ornamental trees, evergreen trees and shrubs and areas for lawns or any other ground cover. Different graphic symbols shall be used to show the location and spacing of shade trees, ornamental trees, evergreen trees, shrubs and ground cover. The size of the symbol must be representative of the size of the plant shown to scale.
- (e) A plant schedule indicating botanical name, common name, size at time of planting (caliper, height and spread), quantity, root condition and any special remarks (spacing, substitutions, etc.) for all plant material proposed. Plants within the plant schedule shall be keyed to the landscape plan utilizing the first letter of the botanical plant name.

(f) Planting and construction details and specifications.

J. Lighting.

1. All lighting fixtures and foot-candle standards for parking areas and recreation facilities should be consistent with the standards outlined by the Illuminating Engineering Society of North America (IESNA) and regulations of the Borough of Hawthorne.
2. The intensity, shielding, direction and reflecting of lighting shall be subject to site plan approval by the approving authority.
3. All parking areas, walkways, building entrances, and driveways required for uses in this zone shall be adequately illuminated during the hours of operation that occur after sunset. Any adjacent residential zone or use shall be shielded from the glare of illumination from site lighting and automobile headlights.
4. The use of creative lighting schemes to highlight building facades and related areas of a site shall be encouraged. The use of traditional style lanterns and similar fixtures shall also be encouraged. Exterior neon lights and lighting generating glare and unnecessary night-glow impacts shall be prohibited.
5. Whenever possible, light poles should be integrated into landscaped islands.
6. Streetscape lighting.
7. All lighting shall conform with the Illuminating Engineering Society Handbook, most recent edition, and the American National Practice for Roadway Lighting (RP-8), approved by the American Standards Institute, most recent edition.
 - (a) Light fixtures shall be a traditional style, similar to Hagerstown Fixture (Model #S5823) with Classic I Pole (Model #SP5844), black finish, with electric outlet box, manufactured by Hadco Architectural Outdoor Lighting or approved equal.
 - (b) The luminaire light distribution shall be designated as a 'cutoff' type.
 - (c) Mounting height shall be 14 feet above grade unless otherwise directed by the approving authority.
 - (d) The source of light shall be LED or other energy efficient lighting, as approved by the approving authority.
 - (e) All luminaires shall be shielded to eliminate glare, especially on any other property and public streets. Lamps shall be recessed in the luminaire.
 - (f) The maximum illumination at any point on adjacent properties shall not exceed 0.2 footcandle.
 - (g) Spacing between lights shall not exceed 75 feet.
 - (h) All wires and cable will be installed underground by the applicant.
 - (1) A separate detailed lighting plan with luminaire manufacturer details and illumination diagrams and specifications shall be submitted to the approving authority for review and approval.
 - (2) The approving authority may modify the above requirements where there is sufficient evidence that the requirements herein are not applicable, unnecessary, or reasonable for their particular project.

K. Streetscape Design.

1. The use of street furniture (benches, tables, trash receptacles, etc.) shall be encouraged throughout the development, provided the materials used are consistent with the overall concept of the building design.
2. Sidewalks should have a width of at least five feet along main pedestrian streets where active pedestrian corridors are located and active pedestrian movements are encouraged, and located along building frontages so as to tie the various buildings together. Wider sidewalks may be designed for special places such as plazas or courts.
3. Sidewalks shall be stamped concrete with a running bond brick stamp. A stamped sample must be provided with the filed application.
4. Color shall be "quarry red" as provided by the CHROMIX admixture for color conditioned concrete supplied by Eastern Concrete Materials, Inc., or approved equal. A color sample must be provided to confirm color.
5. The approving authority may modify the above requirements where there is sufficient evidence that the requirements herein are not applicable, unnecessary, or reasonable for their particular project.
6. Streetscape design: benches.
 - (a) Benches to be provided are to be manufactured by Keystone Ridge Design, Model No. L26STL (six-foot bench, lamplighter series), black in color, or approved equal.
 - (b) Spacing and number shall be approved by the approving authority.
 - (c) The approving authority may modify the above requirements where there is sufficient evidence that the requirements herein are not applicable, unnecessary, or reasonable for their particular project.

L. Signage.

1. Signage shall be permitted pursuant to Article XVIII of this ordinance.
2. A monument sign identifying the address and development shall be permitted provided that one such sign shall be permitted subject to the following requirements:
 - (a) The total sign area shall not exceed a maximum of 32 square feet.
 - (b) The height of the sign shall not exceed 6 feet.
 - (c) The sign may be illuminated externally or internally but shall not be an animated, scrolling or flashing sign which is otherwise prohibited by ordinance.
 - (d) The base of such monument sign shall be appropriately landscaped with plantings.

M. Water and Sewer Requirements.

All projects shall provide and connect to public water supply and public sanitary collections systems.

N. Sound Barrier.

1. A sound barrier shall be constructed along the westerly property line between the MUA and Industrial Zones.

2. The sound barrier shall be designed to attenuate noise between the adjacent Industrial and MUA Zones.
3. The location, dimensioning and height of the wall shall be determined by the Planning Board based upon an acoustical evaluation by a qualified sound engineer professional. The height restrictions of the zone shall not apply to the sound wall as approved by the Planning Board provided that the Planning Board is satisfied that the design and height of the sound barrier are the minimum required to attenuate noise impacts that may adversely affect the MUA Zone.

O. Application Requirements.

1. An applicant for development in the MUA Zone shall submit a site plan indicating the manner in which the site is to be developed. Said plan shall include all the data required by ordinance for site plan review unless otherwise waived by the Board.
2. The application shall contain, in addition to the site plan application checklist provisions, a report detailing the following:
 - (a) The total number of dwelling units by bedroom count. The total number of units shall be indicated and intensity of use of the entire tract shall be noted.
 - (b) The total square footage of all nonresidential development shall be indicated by use.

P. Application Process.

1. Notwithstanding the provisions of § 540- above, it is the intent of this ordinance for the Planning Board to expedite its review of any application submitted for this zone within the time frames established under N.J.S.A. 40:55D-1 et. seq. It is further the intent of this ordinance to not require off-site or off-tract improvements for development, unless the need for such improvements arise from the development within the zone as for example, sewer and water improvements due to increased utility demand and roadway improvements that will be required at the intersection of Wagaraw Road and Lafayette Avenue nor shall the approving authority require items deemed as generating” as defined by N.J.A.C 5:93-10.1 et. seq. except as otherwise required under the agreement between the Borough of Hawthorne and 204 Wagaraw LLC.
2. Development within the MUA Zone shall be coordinated such that all phases of development shall proceed together or within a reasonable time frame as determined by a phasing schedule as approved by the Planning Board or by developer’s agreement with the Borough.

Q. Low and Moderate-Income (Mount Laurel) Housing Requirements.

The following requirements as to the density and distribution of low-and moderate-income dwelling units shall apply.

1. Low- and moderate-income (Mount Laurel) housing requirements:
2. Market-rate and minimum low- and moderate-income housing set aside: The total number of housing units shall not exceed 117 units and the total number of affordable housing units shall not be less than 17.
3. All low- and moderate-income housing units shall be in conformance with the latest applicable rules for affordable housing as determined by the Council on Affordable Housing, the Courts or other applicable authority, as determined appropriate, including such issues as phasing of building low- and moderate-income units in concert with market rate units.

4. Bedroom distribution of low- and moderate-income housing units. Subject to the most current applicable COAH or other rules, the bedroom distribution of low- and moderate-income units for affordable units constructed in the MUA Zone shall be as follows:
 - (a) No more than 20 percent of the low- and moderate-income units shall be one bedroom units.
 - (b) At least 20 percent of the low- and moderate-income units shall be three bedroom units.
 - (c) At least 30 percent of the low- and moderate-income units shall be two bedroom units.
5. Low- and moderate- income unit split. The distribution of inclusionary affordable units to be provided as part of this development shall be in accordance with those requirements as set forth by COAH rules or otherwise deemed appropriate by the Court.
6. Procedures regarding affirmative marketing of low- and moderate-income units and other requirements of inclusionary development units are subject to and determined by COAH rules or other rules determined appropriate by the Court

§ 540-159. R-12-R AFFORDABLE HOUSING REDEVELOPMENT ZONE.

A. Purpose.

The purpose of this district is to encourage the production of low and moderate-income multifamily housing in conformance with the latest procedural and substantive rules for affordable housing as determined by the Courts or other applicable authority, by permitting inclusionary multi-family development subject to the R-12-R regulations enumerated herein. This ordinance is created in fulfillment of a Settlement Agreement by and between the Borough of Hawthorne, New Jersey, 3 Ronson, LLC and the Fair Share Housing Center in connection with the Borough of Hawthorne’s declaratory judgment action captioned “In the Matter of the Application of the Borough of Hawthorne” bearing docket number PAS-L-2412-15 pursuant to *In re the Adoption of N.J.A.C. 5:96 and 5:97 by the Council on Affordable Housing*, 221 N.J. 1 (2015).

B. Principal permitted uses.

1. Permitted principal uses shall be limited to residential multifamily development as regulated by this Article.
2. Permitted Accessory Uses.
 - (a) Any use which is ordinarily subordinate and customarily incidental to the principal permitted uses R-12-R zone.
 - (b) Surface parking.
 - (c) Signs as permitted by ordinance.
 - (d) Retaining walls as regulated by § 540-157.E.
 - (e) Fences as permitted by ordinance.

C. Development Requirements

1. The total number of residential units permitted in the R-12-R Zone shall not exceed 116 units plus 1 caretaker unit and the total number of required affordable housing units shall not be less than 17.
2. Area and Bulk Requirements

- (a) Lot area, external yard and bulk requirements.
- (b) Minimum lot area (acres): 6.0
- (c) Minimum distance between buildings (feet): 60
- (d) Minimum setbacks from external lot lines (feet):
- (e) Front yard (feet): 85
- (f) Side yard (feet):
 - (1) Buildings with direct frontage on Goffle Road. 30
 - (2) Buildings setback within 350 feet to Goffle Road 75
 - (3) Buildings setback within 480 feet to Goffle Road 60
- (g) Rear yard (feet): 60
- (h) Maximum number stories and building height (stories/feet): 4 /45*
- (i) Maximum impervious lot coverage (percent): 50 percent
- (j) Maximum building length (feet): 260

*height shall be measured from the finished floor of the first residential level above parking but in no event shall any portion of a building exceed the height of 55 feet as measured from the average finished grade of the building as determined by measurements taken at the midpoint of the length of each building wall at the foundation to the ridge line of the building.

D. Parking and Circulation requirements

- 1. Residential Site Improvement Standards (RSIS) shall apply.
- 2. Fire Access Lanes.

A secondary emergency access road serving any development within the R-12-R Zone shall be provided subject to the review and approval of the Planning Board.

- 3. A dedicated and unobstructed 15-foot wide fire lane shall be provided for any building with direct frontage on Goffle Road.

E. Retaining Walls

- 1. Retaining walls may be located within a perimeter buffer or elsewhere on-site as needed subject to the following:
 - (a) Retaining walls shall be tiered wherever possible.
 - (b) Retaining walls shall have a landscaped shrub base when wall height exceeds 5'.
 - (c) Retaining walls adjacent to existing residential properties where the exposed face of wall faces such properties (i.e. the proposed improvements are above the adjacent residential property) shall be setback from the property line minimally the same height of the

proposed retaining wall but in no event shall an outward facing retaining wall exceed a maximum height of 8 feet.

2. Retaining walls adjacent to existing residential properties AND greater than 200' setback from Goffle Rd. where the exposed face of wall faces away from such properties (i.e. the proposed improvements are below the adjacent residential property) shall not exceed 25' feet in height. Such walls serve to lessen visual height impact on adjacent single-family homes.
3. Walls setback less than 100' from Goffle Rd. shall not exceed 10' in height.
4. Retaining wall color shall be of earth-tone and complimentary to proposed structure finishes.
5. Retaining walls shall have a protective, black vinyl coated chain link fence on top for safety when wall height is more than 3'.
6. Retaining walls are permitted within all required setbacks and buffers.

F. Required Buffers

1. A planted landscaped perimeter buffer shall be provided subject to the following standards in addition to § 540-157.F.2 as follows:
 - (a) No less than a 50-foot planted buffer shall be maintained along the front yard.
 - (b) No less than a 15-foot planted buffer shall be maintained along the northerly side and rear yards.
 - (c) No less than a 30-foot planted buffer shall be maintained along the southerly side yard for a distance of no less than 300 feet as measured from the intersection of the rear lot line with the southerly lot line extending east.
 - (d) No accessory structures, parking, or storage of materials shall be permitted within the required buffer. Circulation drives, pedestrian walkways and stormwater swales are permitted within all required buffers except that not more than 10% of the required buffer shall be affected. All underground utilities are permitted within required buffer areas.
2. Buffer Areas. Buffers shall comply with the following standards:
 - (a) Buffer planting shall provide year-round visual screen in order to minimize adverse impacts from a site on an adjacent property or from adjacent areas. It may consist of evergreen and deciduous trees and shrubs, berms, boulders, mounds, or combinations thereof to achieve the stated objectives as approved by the appropriate land use board.
 - (b) While fencing may be installed to delineate the property line, the use of fencing or walls shall not be relied upon as the primary source of screening.
 - (c) Where required, buffers shall be measured from property lines and street rights-of-way. Compliance shall be determined by the Planning Board, and any approvals required pursuant to this Section shall be obtained at the time of site plan and subdivision review. Buffer areas may overlap required setbacks.
 - (d) The landscaping shall be designed to provide a visual screen along the majority of the buffer area. Planting shall be installed at a variety of sizes which conform to the following minimum sizes:
 - (1) Shade Trees 2 ½-3-inch caliper
 - (2) Evergreen Trees 7-8 feet

(3) Shrubs 18-24 inches

3. Existing vegetation within the required transition buffer shall be preserved to the extent feasible and as determined appropriate by the Planning Board. It shall be supplemented with shade tolerant naturalistic massed plantings where necessary to provide screening of adjoining land uses.

G. Soil Movement

Any development within the R-12-R Zone shall comply with § 540-66 of the Borough code regulating the movement of soil.

H. Steep Slope Regulations

The Borough's steep slope regulations § 540-94 are not applicable to the R-12-R Zone.

I. Design Standards

1. Development within the R-12-R Zone shall be subject to the following design standards. Relief from any required site design standard under § 540-157.I, shall be considered a design standard exception pursuant to N.J.S.A. 40:55D-51 (b) and not a variance.

2. Architectural Design Standards

- (a) Rooflines. Rooflines are not to be flat but pitched. Roofline offsets, dormers or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.

- (b) Fenestration shall be architecturally compatible with the style, materials, colors and details of the building. Windows shall be vertically proportioned.

- (c) All buildings should relate harmoniously to the site's natural features and existing buildings, as well as other structures in the vicinity that have a visual relationship and orientation to the proposed buildings. Such features should be incorporated into the design of building form and mass, and assist in the determination of building orientation in order to preserve visual access to natural and man-made community focal points.

- (d) Buildings with expansive blank walls are prohibited. Appropriate facade treatments should be imposed to ensure that such buildings and facades are integrated with the rest of the development and the entirety of the building.

- (e) Refuse and recycling shall be located interior to a building or alternatively, be placed such that they are conveniently located for residents. If located outside, the refuse area shall be appropriately screened by fencing not to exceed 6 feet

3. Landscaping

- (a) Landscaping shall be provided to promote a desirable visual environment, to accentuate building design, define entranceways, screen parking areas, mitigate adverse visual impacts and provide windbreaks for winter winds and summer cooling for buildings, and enhance buffer areas. The impact of any proposed landscaping plan at various time intervals shall be considered. 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 (wet-site, drought, sun and shade tolerance), soil conditions, growth rate, longevity; root pattern, maintenance requirements, etc., shall be considered. Consideration shall be given to accenting site entrances and

unique areas with special landscaping treatment. Flowerbed displays are encouraged.

- (b) Parking rows longer than 20 parking spaces should provide for a landscape island to break the pavement where practical and feasible.
- (c) Landscaped islands should be at least six feet in width to accommodate plantings.
- (d) Landscaping within sight triangles shall not exceed a mature height of 30 inches.
- (e) Shade trees shall be pruned up to an 8-foot branching height above grade.
- (f) All areas that are not improved with buildings, structures and other man-made improvements shall be landscaped with trees, shrubs, and ground cover.
- (g) Shade trees should be a 2.5 to 3-inch caliper with a canopy height of at least the minimum American Nursery and Landscape Association Standards for this caliper.
- (h) Ornamental Trees shall be installed at a minimum size of 6 feet in height.
- (i) Shrubs shall be planted at a minimum size of 18 to 24 inches.
- (j) All plant material shall meet the minimum latest American Nursery and Landscape Association Standards.
- (k) Irrigation shall be provided for all buffer plantings and sodded lawn areas in a manner appropriate for the specific plant species. A growth guarantee of two growing seasons shall be provided and all dead or dying plants shall be replaced by the applicant, as required, to maintain the integrity of the site plan.
- (l) Landscape Plantings. A minimum of 30 percent of the plantings proposed shall be indigenous to the region.
- (m) Landscape Plan Content. A landscape plan shall be submitted with each major site plan or major subdivision application. In addition to the major site plan or subdivision submission requirements, the landscape plan shall include and identify the following information:
 - (n) Existing and proposed underground and above ground utilities such as site lighting, transformers, hydrants, manholes, valve boxes, etc. existing wooded areas, rock outcroppings and existing and proposed water bodies.
 - (1) Location of individual existing trees noted for preservation within the area of development and 30 feet beyond the limit of the disturbance. Trees 4 inches in diameter (measured 4 1/2 feet above the existing ground level) shall be located and identified by name and diameter unless the wooded area is shown with a specific limit line. In this case, specimen trees shall be located within thirty feet of the line. Indicate all existing vegetation to be saved or removed.
 - (2) Existing and proposed topography and location of all landscaped berms.
 - (3) Location, species and sizes of all proposed shade trees, ornamental trees, evergreen trees and shrubs and areas for lawns or any other ground cover. Different symbols shall be used to show the location and spacing of shade trees, ornamental trees, evergreen trees, shrubs and ground cover. The size of the symbol must be representative of the size of the plant shown to scale.
 - (4) A plant schedule indicating botanical name, common name, size at time of planting (caliper, height and spread), quantity, root condition and any special

remarks (spacing, substitutions, etc.) for all plant material proposed. Plants within the plant schedule shall be keyed to the landscape plan utilizing the first letter of the botanical plant name.

(5) Planting and construction details and specifications.

4. Lighting

- (a) All lighting fixtures and foot-candle standards for parking areas and recreation facilities should be consistent with the standards outlined by the Illuminating Engineering Society of North America (IESNA) and regulations of the Borough of Hawthorne.
- (b) The intensity, shielding, direction and reflecting of lighting shall be subject to site plan approval by the approving authority.
- (c) All parking areas, walkways, building entrances, and driveways required for uses in this zone shall be adequately illuminated during the hours of operation that occur after sunset. Any adjacent residential zone or use shall be shielded from the glare of illumination from site lighting and automobile headlights.
- (d) The use of creative lighting schemes to highlight building facades and related areas of a site shall be encouraged. The use of traditional style lanterns and similar fixtures shall also be encouraged. Exterior neon lights and lighting generating glare and unnecessary night-glow impacts shall be prohibited.
- (e) Whenever possible, light poles should be integrated into landscaped islands.

J. Application Requirements.

1. Application Requirements.

- (a) An applicant for development in the R-12-R Zone shall submit a site plan indicating the manner in which the site is to be developed. Said plan shall include all the data required by ordinance for site plan review unless otherwise waived by the Board.
- (b) The application shall contain, in addition to the site plan application checklist provisions, a report detailing the total number of dwelling units by bedroom count. The total number of units shall be indicated and intensity of use of the entire tract shall be noted.

2. Application Process. It is the intent of this ordinance for the Planning Board to expedite its review of any application submitted for this zone within the time frames established under N.J.S.A. 40:55D-1 et. seq. It is further the intent of this ordinance to not require off-site or off-tract improvements for development, unless the need for such improvements arise from the development within the zone nor shall the approving authority require items deemed as “cost-generating” as defined by N.J.A.C 5:93-10.1 et. seq.

K. Low and Moderate-Income (Mount Laurel) Housing Requirements

- 1. Market-rate and minimum low- and moderate-income housing set aside: The total number of housing units shall not exceed 116 units plus 1 caretaker unit and the total number of affordable housing units shall not be less than 17.
- 2. All low- and moderate-income housing units shall be in conformance with the latest applicable rules for affordable housing as determined by the Council on Affordable Housing, the Courts or other applicable authority, as determined appropriate, including such issues as phasing of building low- and moderate-income units in concert with market rate units.

3. Bedroom distribution of low- and moderate-income housing units. Subject to the most current applicable COAH or other rules, the bedroom distribution of low- and moderate-income units for affordable units constructed in the R-12-R Zone shall be as follows:
 - (a) No more than 20 percent of the low- and moderate-income units shall be one bedroom units.
 - (b) At least 20 percent of the low- and moderate-income units shall be three bedroom units.
 - (c) At least 30 percent of the low- and moderate-income units shall be two bedroom units.
 - (d) Low- and moderate- income unit split. The distribution of inclusionary affordable units to be provided as part of this development shall be in accordance with those requirements as set forth by COAH rules or otherwise deemed appropriate by the Court.
 - (e) Procedures regarding affirmative marketing of low- and moderate-income units and other requirements of inclusionary development units are subject to and determined by COAH rules or other rules determined appropriate by the Court.

§ 540-160. AHO AFFORDABLE HOUSING OVERLAY ZONE

- A. Purpose: The purpose of the AHO Zone is as follows:

The AHO Zone is intended to satisfy the terms of the settlement agreement between the Borough of Hawthorne and Fair Share Housing Council in fulfillment of the Borough's affordable housing obligation pursuant to the New Jersey Fair Housing Act and New Jersey State Supreme Court Mount Laurel decisions.

- B. Permitted principal uses.

1. Multifamily residential development.

- C. Permitted accessory uses.

1. Recreation areas for passive and active recreation solely for the residents of the development, including, but not limited to, a swimming pool and clubhouse.
2. A single project identification sign, with an aggregate area of not more than 30 square feet, is permitted. In addition to the permanent development identification sign referenced above, the developer is permitted temporary construction and sales signs as necessary to safely guide visitors and properly separate construction traffic from customer traffic having total area of not greater than 50 feet. No temporary sign shall be illuminated, and all such temporary signs shall be installed and located in accordance with good traffic engineering practices. All temporary signs shall be removed from the property prior to the issuance of certificates of occupancy for that particular section or phase of the development.
3. An office for a resident or nonresident project manager; provided, however, that not more than 750 square feet of floor area on the ground floor may be utilized for this purpose. Further, a temporary construction/sales trailer is permitted on site during construction.
4. Additional customary accessory structures and uses are permitted if they serve and are incidental to the primary permitted use and include off-street parking facilities, stormwater detention/retention facilities, one-story maintenance buildings, mail kiosks and fences and walls.

- D. Maximum tract density. A maximum of 24 dwelling units per acre shall be permitted.
- E. Bulk, coverage and other requirements. The following requirements shall apply:
 - 1. Minimum Lot Area, Yard and Setback Requirements shall be subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls for the R-3 zone shall apply.
 - 2. Parking consistent with RSIS requirements consistent with N.J.A.C. §5:21-4.14, Table 4.4, shall be required except alternative parking standards to those shown in Table 4.4 shall be accepted if the applicant demonstrates these standards better reflect local conditions. Factors affecting minimum number of parking spaces include household characteristics, availability of mass transit, urban versus suburban location, and available off-site parking resources.
 - 3. Development shall be subject to the zone regulations of the R-3 Zone.
- F. Residential development shall be subject to an affordable housing set aside of 15% of the total number of units for rental housing and 20% of all residential units if units are developed for sale and shall be further subject to all requirements as provided for under Article XXIV entitled "Affordable Housing."

§ **540-161. B-1 NEIGHBORHOOD COMMERCIAL ZONE.**

The following regulations shall apply in the B-1 Zone:

- A. Permitted uses. In districts zoned B-1 Neighborhood Commercial, no building shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for local retail or personal service business establishments such as or similar to:
 - 1. Barbershops and beauty parlors.
 - 2. Groceries and foodstuffs.
 - 3. Drugs and pharmaceuticals.
 - 4. Confectionery, newspaper, stationery, and tobacco.
 - 5. Hardware and paints.
 - 6. Laundry and dry-cleaning collection, but not processing.
 - 7. Radio, television and small appliance sales.
 - 8. Bakeries.
 - 9. Bank and financial institution branch offices.
 - 10. Professional and business offices.
 - 11. Restaurants including restaurants with outdoor dining subject to §540-163.
 - 12. R-2 residential uses, subject to restrictions applicable to such zone.

- B. Prohibited uses. In addition to all uses prohibited in business zone districts or prohibited throughout the Borough of Hawthorne, and all uses patently not permitted by, or the same or similar to uses permitted by § 540-154.A., any use involving the sale, servicing, repairing of automobiles, trucks or other motor vehicles shall not be considered a permitted use in a B-1 Zone District.
- C. The permitted hours of operation for food stores and pharmacies are 6:00 a.m. to 12:00 midnight. For restaurants, the permitted hours are 6:00 a.m. to Midnight, or as permitted by the liquor license for the premises. All other uses are permitted to operate 6:00 a.m. to 11:00 p.m. Nothing herein shall preclude the reviewing board hearing any application from establishing more restrictive hours of operations, based upon the nature of the proposed business operations and other facts and circumstances considered by the board.
- D. Bulk requirements. Minimum Lot Area, Yard and Setback Requirements shall be subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls.
- E. Maximum floor area. No building or part of any building used, designed or intended to be used as and for a use permitted under this section shall contain or utilize more than 5,000 square feet of floor area for retail sales, display or service and not more than 7,500 square feet of total area, including any purpose connected with the principal use and any uses accessory thereto.
- F. Concurrent R-2 Zone uses. R-2 Residential uses may be permitted in the same building as a B-1 use, provided that the entire first floor of the building is devoted to such B-1 use and the entire second floor is devoted to residential use, with a separate entranceway for access to such second floor. In such instances, the requirements of the R-2 Zone Districts will apply, except that buildings need not be set back more than 40 feet from the center line of the street on which the lot may front, no side yards shall be required, and the building area and rear yard requirements may begin at the second-story sill level, or 20 feet above the curb.

§ 540-162. B-2 CENTRAL BUSINESS DISTRICT ZONE.

The following regulations shall apply in the B-2 Zone:

- A. Permitted uses. The following uses shall be permitted in the B-2 Zone:
 - 1. In districts zoned B-2 Central Business, no building shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for general retail, personal service, amusement and recreation or cultural facilities and establishments consistent with the B-1 Zone and not otherwise prohibited by any section of this chapter and wherein the principal activity shall be the sale on the premises to the ultimate consumer of goods, commodities, services or the furnishing of facilities.
 - 2. Residential development above storefronts subject to the requirements of §540-159.F.
 - 3. No use permitted in a B-1 Zone District shall be excluded from a B-2 Zone District, including R-2 uses in the same manner permitted within the B-1 Zone District.
- B. Prohibited Uses. In addition to all uses prohibited in business zone districts or prohibited throughout the Borough of Hawthorne, and all uses patently not permitted by, or the same or similar to uses permitted by § 540-160, any use involving the sale, servicing, repairing of automobiles, trucks or other motor vehicles and drive-thru eating establishments shall not be considered a permitted use in a B-2 Zone District.
- C. The permitted hours of operation for food stores and pharmacies are 6:00 a.m. to 12:00 midnight. For restaurants, the permitted hours are 6:00 a.m. to Midnight, or as permitted by the liquor license for the premises. All other uses are permitted to operate 6:00 a.m. to 11:00 p.m. Nothing herein shall preclude the

reviewing board hearing any application from establishing more restrictive hours of operations, based upon the nature of the proposed business operations and other facts and circumstances considered by the board.

D. Notwithstanding anything to the contrary in this Chapter, there shall be no requirement for any business operating in the B-2 Central Business Zoning District to provide for off-street parking for any permitted use hereunder except for residential development as required pursuant to Article XVIII, entitled "Parking." Any reviewing Board may nevertheless review, and plan submitted for off-street parking in terms of safety and circulation and impose restrictions or conditions in accordance with such review.

E. Residential units above commercial uses.

1. Residential development above a commercial use is permitted provided that the entire first floor of the building is devoted to such B-1 use and the entire upper stories are devoted to residential use, with a separate entranceway for access to such second floor.
2. The maximum permitted residential density shall not exceed twelve (12) dwelling units per acre.
3. Residential development shall be subject to an affordable housing set aside of 20% of all residential units developed and shall be further subject to all requirements as provided for under Article XXIV entitled "Affordable Housing."
4. Development shall be subject to the zone regulations of the B-2 Zone.
5. Parking consistent with RSIS requirements consistent with N.J.A.C. §5:21-4.14, Table 4.4, shall be required except alternative parking standards to those shown in Table 4.4 shall be accepted if the applicant demonstrates these standards better reflect local conditions. Factors affecting minimum number of parking spaces include household characteristics, availability of mass transit, urban versus suburban location, and available off-site parking resources.

F. Supplemental regulations.

1. Any business use permitted by this article shall only be conducted within the confines of a building, with the exception of nurseries, florists, outdoor dining subject to the standards of § 540-163.
2. No business shall carry merchandise other than that intended to be sold at retail in the premises or used in the rendering of a service permitted to be conducted on the premises.
3. More than one building may be permitted on one lot, provided that yard and area requirements are met for each building, except where a building is used exclusively for residential purposes; then such building, together with accessory buildings as permitted by this chapter, shall be the sole use permitted on said lot.
4. Notwithstanding anything to the contrary in this chapter, there shall be no requirement for any business operating in the B-2 Central Business Zoning District to provide for off-street parking for any permitted use hereunder. Any reviewing board may nevertheless review any plan submitted for off-street parking in terms of safety and circulation and impose restrictions or conditions in accordance with such review
5. Bulk requirements. Minimum Lot Area, Yard and Setback Requirements shall be subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls.

§ **540-163. B-3 RETAIL BUSINESS ZONE.**

A. Properties Designated. There is hereby created a B-3 Retail Business Zone, as depicted on the zoning map, and generally described as applying to all properties in the following locations:

1. All properties on the west side of Goffle Road from Lafayette Avenue to the Wyckoff border and certain specifically identified properties on Braen Avenue from Goffle Road to Valley Street.
2. In addition, the permitted uses and zoning restrictions, requirements and standards of the B-3 Zone shall apply as Overlay Zoning, in addition to and not instead of existing zoning, as depicted on the zoning map in the following generally described areas:
 - (a) All properties on the south side of Wagaraw Road from the NYS&W Railroad to Goffle Road, including all properties on Thomas R.O.W. South, and continuing west on Goffle Road approximately 100 feet west of the intersection of Wagaraw and Goffle Roads.
 - (b) All properties on the west side of Goffle Road from North 8th Street north to approximately 283 feet south of McFarlan Avenue.
 - (c) All properties on Thomas R.O.W. North.
 - (d) All properties on the north side of Wagaraw Road from Thomas R.O.W. North to Goffle Road, and on the east side of Goffle Road from Wagaraw north to McFarlan Avenue.

B. B-3 Permitted Uses. Permitted uses in the B-3 Business Zone are as follows:

1. Retail, including such uses as antique shops, appliance store, apparel store, bakery shops, barber shops, beauty salon, book and stationery store, butcher, candy and confectionary store, computer and electronics store, delicatessen, drug store (pharmacy), dry cleaning and tailoring, florist shop, food and grocery, furniture store, hardware store, hobby and craft store, liquor store, painting and wallpaper store, as well as other uses similar to those listed above.
2. New car dealerships and related services as well as used car sales but only in conjunction with a new car dealership.
3. Health club.
4. Personal service.
5. Restaurant, with outdoor dining subject to §540-163 but excluding drive-through.
6. Office, including medical.
7. Banks and financial institutions.
8. Garden centers and nurseries.
9. Printing and reprographics.
10. Assembly with associated storage.
11. Automobile repair, service and parts.
12. Contractors supply including plumbing, electrical, carpentry and related trade supply.

13. Contractor offices including related accessory storage; provided, however, that all such storage is indoor storage.
- C. The permitted hours of operation for food stores and pharmacies are 6:00 a.m. to 12:00 midnight. For restaurants, the permitted hours are 6:00 a.m. to 1:00 a.m. or as permitted by the liquor license for the premises. All other uses are permitted to operate 6:00 a.m. to 11:00 p.m.
- D. Existing warehouse uses, including public storage, may be continued as a pre-existing nonconforming use.
- E. For permitted uses listed above, other than automobile dealerships and related service, the maximum floor area shall be 30,000 square feet. For automobile dealerships and related service, the maximum floor area shall be 60,000 square feet. Floor areas in excess of the standards of this section shall not be permitted.
- F. B-3 bulk requirements. Minimum Lot Area, Yard and Setback Requirements shall be subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls.
- G. Minimum Floor Area. The minimum floor area for any use listed above, including any unit within a retail shopping area, shall not be less than 2,000 square feet.
- H. Minimum buffer adjoining residential zone or residential property. In the B-3, including any area zoned to permit concurrent B-3 uses, there shall be a minimum twenty-five-foot-wide landscaped buffer adjoining any residential zone or residential property.

§ 540-164. B-3A RETAIL BUSINESS ZONE.

- A. Properties Designated. There is hereby created a B-3A Retail Business Zone District, as described in the accompanying zoning map, and generally described as applying to all properties in the following locations:
- 1, All properties on the east side of Goffle Road from Lafayette Avenue to the Ridgewood border, and also including property on both sides of Rock Road between Goffle Road and the NYS&W Railroad.
 2. In addition, the permitted uses and zoning restrictions, requirements and standards of the B-3A Zone shall apply as Overlay Zoning, in addition to and not instead of existing zoning, as depicted on the zoning map in the following generally described areas:
 - (a) All properties on the east side of Goffle Road east from the Prospect Park border to approximately 100 feet west of the intersection with Wagaraw Road.
 - (b) All properties on the west side of Goffle Road between Westervelt Avenue and Mohawk Avenue.
 - (c) All properties in the block bounded by Mohawk Avenue, Goffle Road and North 8th Street.
 - (d) Three properties on the west side of North Eighth Street at the intersection with Goffle Road.
- B. Permitted uses in the B-3A Zone. The permitted uses in the B-3A Zone including those areas depicted as within the overlay zoning district noted above are the same as the B-3 Zone, except that no automobile sales are permitted in the B-3A Zone. All restrictions on maximum and minimum floor area and hours of operation applicable in the B-3 Zone shall apply in the B-3A Zoning District and where such is permitted as overlay zoning.
- C. B-3A bulk requirements. Minimum Lot Area, Yard and Setback Requirements shall be subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls.

- D. Minimum buffer adjoining residential zone or residential property. In the B-3A zone, including any area zoned to permit concurrent B-3A uses, there shall be a minimum twenty-five-foot-wide landscaped buffer adjoining any residential zone or residential property.
- E. Parking requirements. Parking requirements shall be as follows:
1. No parking space shall be permitted where vehicles are required to back in or out directly to Goffle Road or Wagaraw Road. All on-site parking areas shall be accessed via internal circulation aisles.
 2. All developments shall provide internal driveway linkages permitting vehicles to travel to and from adjoining parking lots, thereby enabling vehicles to travel from one lot to the next without having to go onto Goffle Road or Wagaraw Road, where practical. Parking lots shall accordingly be designed to accommodate this linkage and provide the appropriate safe and efficient design features consistent with this requirement.
 3. Parking is allowed in the front yard provided there is a minimum ten-foot-wide planted strip, with appropriate landscape elements, separating the parking area from Goffle Road and Wagaraw Road.
- F. Applicable design standards to both the B-3 and B-3A Zone.

The following standards are applicable to development in the B-3 and B-4 Districts including any area zoned to permit concurrent B-3 and B-3A uses. Where design standards conflict with other provisions of Chapter 540, the regulations contained within this section shall apply.

1. Building form and mass.
 - (a) All buildings should relate harmoniously to the site's natural features and existing buildings, as well as other structures in the vicinity that have a visual relationship and orientation to the proposed buildings. Such features should be incorporated into the design of building form and mass, and assist in the determination of building orientation in order to preserve visual access to natural and man-made community focal points.
 - (b) Buildings should be broken into segments having vertical orientation. A visual or physical break shall be required where buildings have a front wall that exceeds 125 feet in length, and in such case a visual or physical break shall be provided minimally every 50 linear feet.
 - (c) Buildings with expansive blank walls are prohibited. Appropriate facade treatments should be imposed to ensure that such buildings and facades are integrated with the rest of the development entirety of the building.
 - (d) New buildings are encouraged to incorporate such building elements as entrances, corners, graphic panels, display windows, etc., as a means to provide a visually attractive environment.
 - (e) Cornices, awnings, canopies, flagpoles, signage, and other ornamental features should be encouraged as a means to enhance the visual environment. Such features may be permitted to project over pedestrian sidewalks, with a minimum vertical clearance of 8.5 feet, to within two feet of a curb.
2. Facade treatment.

- (a) A "human scale" of development should be achieved at grade and along street frontages through such elements as windows, doors, columns, awnings and canopies.
 - (b) Multi-tenant buildings shall provide varied storefronts and such elements as noted above for all ground-floor tenants. Upper floors shall be coordinated with ground floors through common materials and colors.
 - (c) Design emphasis should be placed on primary building entrances. They should be vertical in character, particularly when there is the need to provide contrast with a long linear building footprint, and such details as piers, columns, and framing should be utilized to reinforce verticality.
3. Material and texture.
- (a) A variety of materials may be appropriate. Masonry, which works well at the base of a building, can vary in size, color and texture and enables the provision of a decorative pattern or band. Above 12 feet, it can be substituted with other suitable materials.
 - (b) The use of fabric or metal canopies is to be encouraged, especially over storefronts, at entrances, or over display windows.
 - (c) Integration of large-scale graphics into the facade, where appropriate, is encouraged. Logos and trademarks shall be considered signage for the purposes of this article.
4. Lighting.
- (a) The use of creative lighting schemes to highlight building facades and related areas of a site shall be encouraged. The use of traditional style lanterns and similar fixtures shall also be encouraged. Exterior neon lights and lighting generating glare and unnecessary night-glow impacts shall be prohibited.
 - (b) Whenever possible, light poles should be integrated into landscaped islands.
 - (c) Streetscape lighting.
 - (1) All lighting shall conform with the Illuminating Engineering Society Handbook, most recent edition, and the American National Practice for Roadway Lighting (RP-8), approved by the American Standards Institute, most recent edition.
 - (2) Light fixtures shall be a traditional style, similar to Hagerstown Fixture (Model #S5823) with Classic I Pole (Model #SP5844), black finish, with electric outlet box, manufactured by Hadco Architectural Outdoor Lighting or approved equal.
 - (3) The luminaire light distribution shall be designated as a 'cutoff' type.
 - (4) Mounting height shall be 14 feet above grade unless otherwise directed by the approving authority.
 - (5) The source of light shall be LED or other energy efficient lighting, as approved by the approving authority.
 - (6) All luminaries shall be shielded to eliminate glare, especially on any other property and public streets. Lamps shall be recessed in the luminaire.
 - (7) The maximum illumination at any point on adjacent properties shall not exceed 0.2 footcandle.

- (8) Spacing between lights shall not exceed 75 feet.
- (9) All wires and cable will be installed underground by the applicant.
- (10) A separate detailed lighting plan with luminaire manufacturer details and illumination diagrams and specifications shall be submitted to the approving authority for review and approval.
- (11) The approving authority may modify the above requirements where there is sufficient evidence that the requirements herein are not applicable, unnecessary, or reasonable for their particular project.

5. Streetscape Design: Sidewalks.

- (a) The use of street furniture (benches, tables, trash receptacles, etc.) shall be encouraged throughout the development, provided the materials used are consistent with the overall concept of the building design.
- (b) Sidewalks should have a width of at least five feet along main pedestrian streets where active pedestrian corridors are located and active pedestrian movements are encouraged, and located along building frontages so as to tie the various buildings together. Wider sidewalks may be designed for special places such as plazas or courts.
- (c) Sidewalks shall be stamped concrete with a running bond brick stamp. A stamped sample must be provided with the filed application.
- (d) Color shall be "quarry red" as provided by the CHROMIX admixture for color conditioned concrete supplied by Eastern Concrete Materials, Inc., or approved equal. A color sample must be provided to confirm color.
 - (1) The approving authority may modify the above requirements where there is sufficient evidence that the requirements herein are not applicable, unnecessary, or reasonable for their particular project.
 - (2) Streetscape design: benches.
- (e) Benches to be provided are to be manufactured by Keystone Ridge Design, Model No. L26STL (six-foot bench, lamplighter series), black in color, or approved equal.
- (f) Spacing and number shall be approved by the approving authority.
- (g) The approving authority may modify the above requirements where there is sufficient evidence that the requirements herein are not applicable, unnecessary, or reasonable for their particular project.

6. Landscaping.

- (a) A hierarchy of landscape features should be established for the site. Where a new road is proposed, it shall include street trees on each side of the roadway, and such trees should be different than the trees used in parking areas. The Borough Shade Tree Commission shall approve all trees in the right-of-way to ensure proper maintenance can be achieved. Spacing between trees shall be a maximum of 35 feet unless another vertical element, such as a decorative light fixture or blade sign, is used between the trees, in which case a maximum of 60 feet shall be permitted.

- (b) Trees along Goffle Road and Wagaraw Road shall be in a formal arrangement, while informal planting may be provided along access roads. Street trees along Goffle Road and Wagaraw Road shall meet the standards set forth in Subsection F.6 a. above.
- (c) Street trees and other plant material shall be provided at the ends of parking bays. Landscaped island should be at least six feet in width.
- (d) Trees shall be minimally two-inch caliper.
- (e) Parking rows longer than 20 parking spaces shall have a six-foot-wide landscape island to break the pavement after the 20th space. The landscaped area shall be six feet wide by 18 feet long to allow for sufficient landscaping.
- (f) There shall be a minimum ten-foot-wide planted strip along site frontages on Goffle Road and Wagaraw Road, exclusive of the area necessary for vehicular access and egress to and from the property.

§ **540-165. Outdoor dining regulations for the B-1, B-2, B-3 and B-3A Zone.**

A. Permit required.

- 1. No person shall operate an outdoor dining area/sidewalk cafe as permitted by this section in the Borough of Hawthorne without first obtaining an outdoor dining/sidewalk cafe permit and satisfying all of the requirements of this chapter.
- 2. Permits shall allow outdoor dining areas and sidewalk cafes to operate between April 1 and November 30 and shall be renewed annually. Applications for outdoor dining shall be submitted by no later than March 1st for review and approval by the Borough Zoning Officer.
- 3. When not operational, all furniture and umbrellas shall be removed and stored within the confines of a building for the season.

B. Each applicant shall submit and file an application with the Borough Zoning Officer, together with three copies of a development plan (as described below), and a specified fee. The application shall set forth:

- 1. The name, address and telephone number of the applicant and property owner, and written authorization of the owner of the property in question, and the street address and block and lot number of the property in question;
- 2. A sketch containing a scale drawing clearly illustrating the number, type of materials, location of the tables, chairs, umbrellas, planters, awnings, lighting, electrical outlets (if any) or other furnishings to be located in the outdoor dining area/sidewalk cafe.

The scale drawing shall also illustrate the following:

- (a) The location of any doors leading from the restaurant to the outdoor dining area/sidewalk cafe. No such door may be obstructed in any manner;
- (b) The dimension and location of the unobstructed space permitting passage of pedestrian traffic around or through the outdoor dining area/sidewalk cafe, clearance between tables and location of food preparation and service areas;

- (c) An illustration of the enclosure or protective barrier separating the outdoor dining area/sidewalk cafe from pedestrian or vehicular movement;
 - (d) The location of all fire hydrants, utility poles or other fixtures permanently located in the outdoor dining area/sidewalk cafe, or on the sidewalk or other areas within 50 feet of the outdoor dining area/sidewalk cafe;
 - (e) The type and location of any proposed outdoor lighting.
3. A statement of the seating capacity of the existing restaurant and the proposed seating capacity of the outdoor dining area;
 4. A statement indicating the number of parking spaces serving the existing restaurant.

C. Application review procedure.

1. The Zoning Officer will review the application for completeness and compliance with the terms of this article. If the application is complete, the Zoning Officer will act upon the same within 10 business days of the submittal of the application or within 10 business days after the application is declared complete. If the application is not complete, the Zoning Officer will notify the applicant in writing, within 10 business days of the submittal of the specific deficiencies of the application. The Zoning Officer may refer the application to the construction official, Chiefs of the Bureaus of Police and Fire, the Health Officer, the municipal engineer and planner for their review and recommendation, whereupon the time for all of the aforementioned actions shall be increased to 15 business days.
2. If the application complies with this article, the Zoning Officer shall issue a permit, which shall be valid for one year from the date of issuance.
3. Acceptance of the permit by the applicant shall represent consent to allow the Departments of Health, Fire, Police, and Building of the Borough to inspect the outdoor dining area/sidewalk cafe for continued compliance with the terms, conditions and regulations of this article.

D. Regulations.

1. No permit shall be issued hereunder unless the applicant shall demonstrate adequate pedestrian movement at all times. A minimum four-foot-wide area of unobstructed paved surface will be available for pedestrian movement, including the unimpeded passage of handicapped individuals, around or through the outdoor dining area or sidewalk cafe.
2. No tables, chairs or other equipment shall be attached, chained or in any manner affixed to any tree, post, sign, curb or sidewalk, or property of the Borough. All tables and chairs must be constructed of sufficient weight to not be affected by windy conditions.
3. Outdoor music is permitted subject to the Borough's noise ordinance. No live band/or performance is permitted after 10:00 p.m. No recorded or DJ music is permitted after 11:00 p.m.
4. No outdoor dining shall be open for business prior to 7:00 a.m. nor remain open for business after business hours and closing of the restaurant, but in no case later than 11:00 p.m. or, extent of hours permitted under a valid liquor license, whichever is later.
5. The Borough shall not require additional parking for outdoor dining area/sidewalk cafe seating provided that the number of seats in the outdoor dining area or sidewalk cafe does not exceed 50% of the total number of seats in the eating and drinking establishment. Outdoor seating in excess of 50% of the total number of seats in the eating and drinking establishment may be permitted however, the excess outdoor seating shall be balanced by a 1:1 reduction in the number of indoor dining seats.

Outdoor dining in excess of the 50% limit where there is no 1:1 reduction of indoor seating proposed shall be considered an expansion of the eating and drinking establishment requiring site plan approval from the Planning Board.

6. Each establishment is responsible for keeping the area of the outdoor dining/sidewalk cafe and adjacent walks and streets free and clear of any debris or litter occasioned by the facility. Areas must be cleaned as needed, as well as at the time the business is closed and at the beginning of each business day.
7. The perimeter of the area may be defined and delineated by an enclosure such as live potted plants, or temporary railings on the sidewalk, when space is adequate, to define the area and limit the ability of litter to blow off premises. The enclosure shall define the outdoor dining area/sidewalk cafe and separate it from the adjacent sidewalk. The portable barrier shall not exceed five feet in height.
8. Awnings and outdoor umbrellas may not be less than seven feet above the adjacent sidewalk and cannot extend more than one foot beyond the enclosure, as provided above.
9. Any open flame lighting fixture shall be permitted only upon the approval of the Fire Official.
10. No vending machines of any kind are permitted on the exterior of any building operating an outdoor dining area/sidewalk cafe.
11. Tables, chairs and umbrellas shall be uniform and complementary in color, materials and style. No picnic-style tables are permitted.

§ 540-166. O-1 RESEARCH AND RESTRICTED OFFICE ZONE.

The following regulations shall apply in the O-1 Zone:

- A. Permitted uses. In districts zoned O-1 Research and Restricted Offices, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one or more of the following uses:
 1. Laboratories for scientific research.
 2. Office facilities utilized by the same person, firm or user of the use described in Subsection A above, when located in the same building or complex of buildings on the same lot, tract or parcel.
- B. Bulk requirements. Minimum Lot Area, Yard and Setback Requirements shall be subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls.
- C. Supplemental regulations.
 1. No use or structure shall be permitted under this article which results in noise, dust, smoke, fumes, gas, offensive or noxious odors or other atmospheric effluent being disseminated outside the building.
 2. No manufactured or commercial explosives shall be kept, maintained or stored on said premises, except in small quantities for laboratory research, and then only in compliance with all applicable federal, state and local safety statutes.
 3. No animal shall be kept or maintained for laboratory research unless a written permit is first obtained from the Municipal Council upon the recommendation of the Board of Health.

§ **540-167. I-1 INDUSTRIAL ZONE.**

The following regulations shall apply in the I-1 Zone:

A. Permitted use. The following uses shall be permitted in the I-1 Zone:

1. Establishments which are engaged in research and development, manufacturing, processing, fabricating, indoor warehousing and storage, provided that no land or building shall be used or occupied for a use which will in any manner create any dangerous, injurious, noxious or otherwise objectionable fire, explosive, radioactive or other hazard; noise or vibration; smoke, dust, odor or other form of air pollution; heat, cold, dampness; movement of air; electrical or other disturbance; glare; liquid or solid wastes, any of which shall violate the performance standards as set forth in § 540-134.
2. Uses permitted in the B-1 and O-1 Zone Districts shall be permitted in I-1 Industrial Zones; provided, however, that no residential use, even as allowed by B-1 Zone District regulations, will be permitted. Outdoor storage of materials shall not be permitted as a principal or primary use and shall only be permitted as incidental to a permitted principal or primary use. Outdoor storage of materials may not take place, even where incidental to a primary use, as a matter of right, and shall be strictly subject to review, approval, and such conditions as may be imposed by the reviewing board hearing any application seeking approval of the same.

B. Prohibited uses. The following uses are hereby prohibited in the I-1 Zone:

1. In an I-1 Industrial Zone District and except as specifically permitted under § 540-165.A, no land or building shall be used or occupied and no building shall be erected, altered or enlarged which is arranged, intended or designed to be used or occupied for any of the following specified trades, businesses or uses:
 - (a) Acetylene gas manufacture.
 - (b) Ammonia, chlorine or bleaching powder manufacture.
 - (c) Animal black, lampblack or bone black manufacture.
 - (d) Asphalt manufacture or refining.
 - (e) Automobile junkyard.
 - (f) Blast furnace.
 - (g) Boiler works.
 - (h) Brick, pottery, tile or terracotta manufacture.
 - (i) Coke ovens.
 - (j) Creosote treatment or manufacture.
 - (k) Crematory.
 - (l) Disinfectant, insecticide or poison manufacture.

- (m) Distillation of coal, petroleum, refuse, grain, wood or bones, except in the manufacture of gas.
- (n) Dye manufacture.
- (o) Emery cloth and sandpaper manufacture.
- (p) Explosives manufacture or storage, except small arms ammunition.
- (q) Cork manufacture.
- (r) Fertilizer manufacture.
- (s) Forge plant.
- (t) Gas storage, in excess of 20,000 cubic feet.
- (u) Glue, size or gelatin manufacture, where the processes include the refining and recovering of products from fish, animal refuse or offal.
- (v) Grease, lard, fat or tallow rendering or refining.
- (w) Grain drying or food manufacture from refuse, mash or grain.
- (x) Incineration, reduction, storage or dumping of slaughterhouse refuse, rancid fats, garbage, dead animals or offal, except by the municipality or its agents.
- (y) Iron, steel, brass or copper industry.
- (z) Lime, cement or plaster of paris manufacture.
- (aa) Oilcloth or linoleum manufacture.
- (bb) Paint, oil varnish, turpentine, shellac or enamel manufacture.
- (cc) Petroleum refining.
- (dd) Petroleum storage in excess of 10,000 gallons.
- (ee) Power forging, riveting, hammering, punching, clipping, drawing, rolling or tumbling of iron, steel, brass or copper, except as a necessary incident of manufacture of which those processes form a minor part and which are carried on without objectionable noise outside the plant.
- (ff) Printing ink manufacture.
- (gg) Pyroxylin plastic manufacture or the manufacture of articles therefrom.
- (hh) Raw hides or skins: storage, cleaning, curing or tanning.
- (ii) Rubber or gutta-percha manufacture or treatment.
- (jj) Shoe blackening or stove polish manufacture.
- (kk) Slaughtering of animals.

- (ll) Smelting of iron, copper, tin, zinc or lead from ores.
- (mm) Soap manufacture.
- (nn) Starch, glucose or dextrine manufacture.
- (oo) Steel furnaces, blooming or rolling mill.
- (pp) Stockyards.
- (qq) Structural steel or glue works.
- (rr) Sugar refining.
- (ss) Sulphurous, sulphuric, nitric, picric, carbolic or hydrochloric acid manufacture.
- (tt) Tar distillation or manufacture.
- (uu) Tar roofing or waterproofing manufacture.
- (vv) Tobacco (chewing) manufacture or treatment.
- (ww) Vinegar manufacture.
- (xx) Wood pulling or scouring.
- (yy) Yeast plant.
- (zz) Any other trade or use that is noxious or offensive by reason of the emission of odor, dust, smoke, gas or noise, provided that the manufacture of paint and lacquer which is not noxious or offensive by reason of the emission of odor, dust, smoke, gas or noise shall not be limited or restricted in that portion of the industrial zones known as Block 17, Lot 11, on the Official Tax Map of the Borough of Hawthorne.
- (aaa) Terminal or terminal facilities or transfer station or loading or unloading or stopping point for any interstate or intrastate motor vehicle common carrier or any other common carrier, or any facility for the handling of any goods, wares or merchandise by any carrier or for the purpose generally of parking, storing, maintaining or repairing vehicles used in the transportation of goods, wares or merchandise for hire, including any warehouse in connection therewith.
- (bbb) Any kind of self-service gasoline station, or any place where gasoline is dispensed to the public through means of self-service.

- C. Minimum Lot Area, Yard and Setback Requirements shall be subject to all restrictions and limitations hereinafter set forth and contained in the Schedule of Bulk and Coverage Controls.
- D. Compliance with Performance Standards. Any use conducted within the zone shall comply with the requirements under § 540-134.

§ 540-168. PUBLIC OPEN SPACE ZONE.

The following regulations shall apply in the Public Open Space Zone:

- A. Permitted use. Uses permitted in the Public Open Space Zone shall include passive and active municipal and county recreational uses.
- B. Prohibited uses. Any use other than passive and active municipal or county recreational uses.
- C. Minimum Lot Area, Yard and Setback Requirements. There shall be no minimum lot area, yard or setback requirements required for this zone.

ARTICLE XVII

Regulations Governing Certain Conditional Uses

§ 540-169. Conditional uses.

It shall be required that any conditional use located in a residential zone must comply with the conditional use regulations set forth below in this article.

§ 540-170. Public and private schools.

For public and private schools, which shall satisfy state academic and curriculum standards for primary and secondary levels of education, the following conditions shall be met wherever permitted:

- A. No building shall exceed the height limit of its zone district except as provided in § 540-129.
- B. There shall be a minimum lot area of five (5) acres.
- C. All buildings shall be located at least one hundred (100) feet from a street or residential district property line, at least twenty-five (25) feet from a side property line and one hundred (100) feet from a rear property line.
- D. Any property so used shall front on an arterial or collector street as identified in the Borough Master Plan.
- E. All parking areas and driveways shall be located in side and rear yards only and at least twenty-five (25) feet from any side and rear property line and at least ten (10) feet from a building.
- F. There shall be a minimum distance between buildings of twenty-five (25) feet.
- G. Fencing or screening shall be provided as required by the Planning Board.
- H. Building design shall be consistent with the character of the neighborhood in which the school is to be located.

§ 540-171. Houses of Worship.

Places of worship shall comply with the following regulations in all zones wherever permitted. Private school facilities associated with a place of worship in a residential zone shall be subject to the same requirements as set forth below:

- A. Places of worship may include an attendant parish house, convents, community center buildings and similar facilities. Private school facilities associated with a place of worship shall be subject to the conditional use requirements set forth herein.

- B. The minimum lot area for a place of worship and all related on-site facilities and buildings shall be not less than two (2) acres.
- C. Maximum building and impervious coverages shall be as allowed for the zone in question.
- D. The minimum distance between buildings shall be less than twenty-five (25) feet.
- E. The minimum driveway and parking area setbacks shall be not less than twenty-five (25) feet from any property or street line nor less than ten (10) feet from any building.
- F. No building shall exceed the height limit of the zone district in question except as provided in § 540-129.
- G. Off-street parking shall be provided in accordance with Article XVIII, Off-Street Parking Requirements. Multiple or shared use of off-street parking areas for places of worship may be allowed by the Planning Board as a condition of site plan approval upon appropriate testimony demonstrating that such multiple or shared use of parking will not result in on- or off-site congestion, restriction of access by police, ambulance or fire vehicles or other traffic safety impediments or hazards.
- H. Fencing, landscaping and/or screening shall be provided as required by the Planning Board.

§ 540-172. Public utility buildings and power generating stations.

For public utility buildings and power generating stations, the following conditions shall be met wherever permitted in a zone:

- A. The minimum lot area for the zone district in which the use is located shall be met.
- B. All yard and setback requirements of the zone district shall be met; provided, however, that any such facility shall be located at least one hundred (100) feet of a residential district boundary line.
- C. Adequate off-street parking shall be provided. Parking areas and driveways shall meet parking setback requirements of the zone district.
- D. Fencing or screening shall be provided as required by the Planning Board.
- E. Building design shall be consistent with the character of the neighborhood in which the use is to be located.
- F. No installation shall involve the use of PCBs (polychlorinated biphenol) in transformers or other equipment.

ARTICLE XVIII

Parking and Loading

§ 540-173. Parking specifications.

- A. The minimum number of off-street parking spaces required shall be as shown in the table below:

Land Use	Requirement
Auditorium, stadium, theater or other place of public assemblage	1 space for each five seats provided for its patrons.
Retail stores and shops	1 space per 250 square feet of gross floor area
Banks	1 space per 300 square feet of gross floor area
Business and professional offices	1 space per 250 square feet of gross floor area
Medical, dental and veterinary clinics or offices	1 space 200 square feet of gross floor area
Restaurants	1 space for each 3 seats
Residences in mixed-use buildings	Per RSIS requirements plus non-residential component
Personal service establishments	1 space per 200 square feet of gross floor area
Dance, martial arts, and similar studios	1 space per 200 square feet of gross floor area
Catering/Banquet Facilities	1 space for each 2.5 seats
Child-care centers	1 space per employee at maximum shift plus 1 space for every 10 enrollees
Adult day-care centers	1 space per employee at maximum shift plus 1 space for every 10 enrollees
Industrial or manufacturing establishment	1 parking space for each 400 square feet of gross floor area or for each employee during a maximum shift, whichever is less, but in no event shall there be less than a ratio of two spaces for every three employees.

- B. Where there are multiple uses proposed, the required parking shall be the sum of each individual use.
- C. Parking requirements may be reduced, at the discretion of the approving body, to account for shared parking among uses. A parking study shall be submitted by the applicant demonstrating that there will not exist substantial conflict in the peak hours of parking demand for the uses for which shared parking is proposed.
- D. A total area of 180 square feet, exclusive of driveways, is hereby determined as the minimum space necessary for the parking of a single motor vehicle in determining the total requirements set forth in this article and the minimum aisle width shall be no less than 24 feet for 90-degree parking aisles except that in shopping centers with supermarkets or where cart corrals are contemplated, a minimum stall size of 200 square feet shall be required.
- E. All parking areas provided pursuant to this article shall be continuously maintained throughout the duration of the use. In all cases specifically described in Subsection A of this section, the parking spaces and the entrance, exit and maneuvering space shall be paved with a minimum of four-inch standard macadam-type pavement and shall be properly drained.

- F. Where a use is not enumerated above, the applicant shall provide a parking analysis appropriate for the proposed use to establish the required parking which shall be reviewed and approved by the appropriate board.

§ **540-174. Loading specifications.**

- A. Minimum loading space requirements.

At least one off-street loading space shall be maintained on the premises for every building or use requiring the receipt or distribution of materials or merchandise in vehicles. However, the number of off-street loading spaces shall not exceed the number related to the floor area of the building in accordance with the following schedule:

Floor Area (square feet)	Number of Spaces
10,000 or less	1
10,000 to 20,000	2
20,000 to 50,000	3
50,000 to 100,000	4
Each additional 50,000 or part thereof	1

- B. Loading restricted in parking spaces. Trucks and other delivery and shipping vehicles shall not be parked in loading spaces except during the course of loading and unloading operations; provided, however, that overnight parking of such vehicles is permitted, but only when loading and unloading operations are not conducted during overnight hours.

§ **540-175. Driveway Regulations**

- A. General Requirements

1. No person shall construct or alter a driveway or lane which shall enter onto the public roads of the Borough without first obtaining a driveway permit from the Borough Engineer. The Borough Zoning Officer shall not issue a zoning permit for the construction or alteration of any structure which involves the construction or alteration of a driveway unless he has received an approved driveway application from the Borough Engineer.
2. Ordinary maintenance or paving of existing driveways not involving widening or extending existing driveways shall be exempted from the terms of this chapter.
3. Separate permits or applications for buildings or structures for which site plan application has been made and approved by the appropriate municipal body shall be exempt from the terms and requirements of this chapter.
4. The Borough can require additional escrow, as determined by the Borough Engineer, to ensure all review and inspection costs are funded.

- B. Paving, width and slope shall conform to the minimum standards tabulated below:

Table of Design and Construction Standards

Standard	Single-Family Dwelling	2 or More Single-Family Dwellings⁵	Multiple-Family Single Building	Cluster Apartment Buildings	or	Commercial or Industrial Buildings
Width (feet)	12	15	18	24		30 (two-way) 24 (one-way)
Surface	— ¹	— ²	— ³	— ³		— ⁴
Slope (percent)	6 ⁶	6 ⁶	4 ⁷	4 ⁷		4 ⁸

NOTES:

- 1 Two-inch bituminous concrete surface on four-inch dense-graded aggregate base for the first 25 feet from the edge of the Borough road.
- 2 Two-inch bituminous concrete surface on four-inch dense-graded aggregate base for the first 100 feet from the edge of the Borough road.
- 3 Two-inch bituminous concrete surface on four-inch bituminous stabilized base for the entire length.
- 4 Two-and-one-half-inch bituminous concrete surface on five-inch bituminous stabilized base and six-inch dense-graded aggregate subbase.
- 5 No more than four single-family dwellings may share a common driveway.
- 6 Slope applies to 25 feet from the edge of the road pavement; maximum slope of 15%.
- 7 Slope applies to the first 50 feet from the edge of the road pavement; maximum slope of 12%.
- 8 Slope applies to the first 25 feet from the edge of the road pavement; maximum slope of 12%.

C. Number of driveway openings.

1. Non-residential driveways. The maximum number of driveway openings permitted from a commercial or industrial lot to any one road shall be limited as follows:

Length of Lot Frontage (feet)	Permitted Number of Driveway Openings
150 or less	1
151 more	2

2. The maximum number of driveway openings permitted from an interior lot with a detached single-family residential dwelling is as follows:

Type of Lot	Type of Driveway	Permitted Number of Driveway Openings
Lot, interior	Dual purpose (ingress and egress)	1
Lot, interior	Circular driveway with separate entrance and exits [Where permitted - see § 540-168 C.3 for permitted locations]	2

3. The maximum number of dual purpose driveway openings for a detached single-family residential dwelling that is situated on a corner lot is two, as long as no more than one dual purpose driveway opening is situated on a particular road frontage.
4. Circular driveways are permitted provided there is a minimum lot width of 75 feet and five (5) foot

setback from the side property lines is maintained.

5. No more than one circular driveway is permitted for each lot with a detached single-family residential dwelling.
6. Location. All entrance and exit driveways to a Borough road shall be located to afford maximum safety to traffic on said Borough road and in accordance with the following requirements:
 - (a) Whenever feasible, driveways shall be so designed as to allow motor vehicles to turn around on site in order to make it unnecessary to back any motor vehicle onto the public road.
 - (b) Driveways shall be not less than 25 feet from any street intersection.
 - (c) Driveways shall be not less than 5 feet from the side or rear yard lot line as measured along the street right of way and/or property line. A flared or widen apron within the right of way shall not be less than five feet from the extended property line.
 - (d) A minimum clear distance of 10 feet shall separate any two driveways (on the same premises or on adjacent lots as measured along the street right-of-way.

D. Driveway angles. The angle of driveways shall be as follows:

1. Residential.

- (a) Two-way operation. Driveways shall be at 90° for a distance of at least 10 feet from the center line of the Borough road.
- (b) One-way operation.
 - (1) Right turn only: 45°
 - (2) Right and left turn: as near to 90° as site conditions allow, but not less than 75°

2. Commercial and industrial. These driveways shall be designed for their particular situation, using turning templates to test truck movements to and from both directions of travel. Flat angles and one-way drives shall be utilized whenever feasible. Driveway exits for one-way operation shall be at an angle not less than 30°.

E. Curbs. Where curbs exist, a full section of the curb shall be entirely removed, and a depressed curb shall be constructed. Depressed curbs shall conform to the standards on file with the Borough Engineer. Breaking the existing curb away to the pavement line will not be permitted.

F. Sight triangles. Sight triangles shall be provided as listed below. Sight distances shall be measured from a point 42 inches above the driveway surface and eight feet outside of the edge of the pavement of the Borough road.

Allowable Speed on Borough Road (mph)	Required Sight Distance (feet)
25 or less	155
30	200
35	250

Allowable Speed on Borough Road (mph)	Required Sight Distance (feet)
40	305
45	360
50	425

G. Erosion control.

1. Driveways shall be constructed and maintained in such a manner as to prevent erosion of soil from them and land adjacent to them. All disturbed areas not otherwise paved or landscaped shall be topsoiled, seeded and mulched as soon as practical after construction of the driveway.
2. The owner of any existing driveway which causes problems of soil or aggregate runoff within the right-of-way of any Borough road or on adjoining property shall, upon written notice from the Borough Engineer, correct the conditions causing said problems within 14 days of said notification. Failure to make such corrections shall be in violation of this chapter.

H. Drainage.

1. No driveway shall be designed or constructed to permit surface water to flow onto the pavement of any Borough road, nor shall any existing drainageway, swale, ditch or pipe be blocked or disturbed by the construction of any driveway unless provision for relocation or reconstruction is made in the design. Drainage design shall be subject to the review and approval of the Borough Engineer.
2. Applicable requirements of the Borough Stormwater Control regulations pursuant to Article IX, Stormwater Management, shall apply.
3. All driveways constructed within the public right-of-way shall be constructed in such a manner as not to interfere with the drainage along the existing pavement or gutter. Under no circumstances shall the driveway be allowed to extend beyond the edge of the existing gutter line of a public roadway and create a hump or uneven driving surface on the pavement or shoulder. In certain circumstances, as approved by the Borough Engineer, the driveway may be constructed to have a sufficient rise above shoulder level to prevent excess runoff from the roadway onto adjacent property. The construction of a properly sized dish-type gutter will be permitted, provided that existing gutter flow will not be changed.
4. The installation of a suitable-sized reinforced concrete pipe or equivalent shall 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 shall be subject to the approval of the Borough Engineer. No pipe shall be smaller than 15 inches in diameter.
5. The installation of suitable-sized cross drains shall be required at points along the driveway as deemed necessary by the Borough Engineer in order to prevent the accumulation of large quantities of runoff water and the effects of soil erosion on the public road or adjoining property.

I. Inspection.

1. The construction of all driveways shall be subject to the inspection and approval of the Borough Engineer. No certificate of occupancy shall be issued until the Borough Engineer notifies the Building Code Official that the driveway has been installed in accordance with the approved plan.
2. In the event that the construction season is too far along to permit the placing of the bituminous pavement, a temporary certificate of occupancy may be issued if the applicant has posted a cash bond or letter of credit with the Borough guaranteeing that the driveway will be completed within

12 months from the date of this bond. The amount of the bond shall be established by the Borough Engineer.

ARTICLE XIX

Signs

§ 540-176. Permit required.

It shall be unlawful for any person to erect or relocate any sign, as defined by this chapter, within the Borough of Hawthorne without first obtaining a sign erection permit from the Zoning Administrator. The Zoning Administrator shall issue permits only for such signs as are specifically allowed for the particular premises and zone district in which the premises are located unless otherwise ordered to do so pursuant to a sign exception granted under this chapter.

§ 540-177. Permitted signs in residence zones.

In all residential zones, the following signs shall be permitted:

- A. On premises used for residential purposes, a sign or signs identifying the residence, the resident or residents or the street address or any combination thereof, and no such sign shall have an area of more than two square feet, nor shall the aggregate square footage of such signs, if there are more than one, exceed three square feet in area, except that a garden apartment complex may have signs with an aggregate square footage of 12 square feet.
- B. On premises used for residential purposes which contain an office as permitted by this chapter, in addition to the sign permitted by Subsection A above, a professional announcement sign, the dimensions of which shall not exceed six square feet.
- C. On premises used for a permitted institutional use, a sign referring to the use and to the activities carried on upon said premises, which sign shall not exceed 30 square feet in area, whether affixed to a structure or freestanding.
- D. In any zone district permitting multifamily development, a monument sign shall be permitted subject to the review and approval by the reviewing Board subject to the following standards:
 1. No such sign shall exceed a maximum sign area of 30 square feet nor exceed a maximum height of 8 feet.
 2. The base for any proposed monument sign shall be appropriately landscaped.
 3. Monument signs may be internally or externally illuminated.

§ 540-178. Permitted signs in business zones.

In business zones only, the other following signs shall be permitted:

- A. A sign or signs referring to or advertising the premises upon which it is located or displayed or to the identity of the occupant thereof or to a service rendered thereon or therein or to a product or item available therein or to a permitted trade, business or profession carried on thereon or therein; one such sign may be erected on any entrance wall and one on any wall facing on a street and one on any wall facing an off-street parking area and one on any wall facing a railroad track, and shall be erected parallel to the face of such wall, not extending more than 12 inches therefrom, the bottom of which shall be at least seven feet above the level of the sidewalk and shall be rigidly and securely attached thereto. The area of each sign shall not exceed two square feet for each foot of wall width, the maximum height of such sign shall not exceed two feet, and the maximum width shall not exceed 90% of the width of the storefront or wall of that portion of the premises occupied by the

occupant erecting the sign and upon which it is attached. In determining maximum width, the maximum width of the storefront or main entrance wall of the premises or the width of the wall upon which any such sign shall be erected, whichever is less, shall govern. Where there shall be more than one occupant of any building, the total area of all signs of all occupants, taken in the aggregate, shall not exceed the maximum requirements above set forth for each wall upon which any sign is permitted to be erected.

- B. In the case of premises, the use of which involves no structure or on which the structure is set back at least 30 feet from the front curblin, a freestanding sign of an area not in excess of 30 square feet may be erected for the purposes set forth in Subsection A above provided, however, that the top of such sign shall not be more than 15 feet above the level of the ground.
- C. In addition to any sign or signs permitted under Subsections A and B above, a sign or signs limited to those purposes set forth in Subsection A and to show or evidence membership in a retail or professional organization or credit card or credit association or plan, or to show manufacturer or legally required licenses, attached to or painted on a store window or windows on the exterior or interior of any structure, the total area of such sign or signs not to exceed 20% of the window space.
- D. Temporary signs placed within the sidewalk (sidewalk signs) shall be permitted subject to zoning permit approval by the Zoning Officer and shall comply with the following standards:
 - 1. No sign shall exceed an area of 2 feet by 3 feet.
 - 2. Sidewalk signs shall be displayed during normal business hours only. Overnight display is prohibited.
 - 3. Only one such sign shall be permitted per business.
 - 4. Sidewalk signs shall be placed within the frontage occupied by the business advertised.
 - 5. Any sign permitted within the sidewalk area shall not pose an obstruction to pedestrian traffic.
- E. Nonconforming signs. Any nonconforming permanent sign which can be shown to have lawfully existed on the date of enactment of this chapter may be continued and may be restored unless the sign has been abandoned.
- F. Abandoned signs. Signs shall be removed by the owner at the owner's expense within 90 days following written notification by the zoning officer for any location where the sign no longer relates to an activity conducted on the site. In the event the sign is not removed within this time period, the Borough may remove the sign at the expense of the property owner and for this purpose the Borough shall have a lien in the amount of the removal cost.

§ **540-179. Restrictions and prohibitions.**

Without limiting the generality of the preceding provisions of this article the following signs are prohibited:

- A. Billboard signs.
- B. Any sign which does not advertise a permitted business, use or product sold on the premises, except as may be permitted in paragraph D above or paragraph I below.
- C. Signs using red, green, blue or amber illumination in a beam, beacon or flashing form resembling an emergency light or traffic light.
- D. Signs that resemble traffic safety signs.
- E. Signs, including the letters, numbers, and caricatures thereon, that are animated, full video, scrolling,

rotating, gyrating, blinking, moving, or appear to move in any fashion.

- F. Electronic message centers for all or any portion of the sign except for displaying fuel prices at automobile service stations.
- G. Signs attached to the exterior glass of a building.
- H. Roof signs and signs extending above the wall to which they are attached.
- I. Signs posted on fences, posts, utility poles or trees.
- J. Signs posted on Borough property except where specifically authorized by the Borough.
- K. Signs installed or painted on sidewalks or curbs.
- L. Signs on abutments, retaining walls and embankments.
- M. Signs painted directly on buildings or which obstruct any windows.
- N. Signs on accessory buildings.
- O. Signs which constitute a hazard to the traveling public by obstructing driving vision, regulatory or directional signs or signals.
- P. Pole or pylon signs.
- Q. Automobile, trailer (attached or unattached) or vehicle of any nature bearing signs or advertisements, parked or left stationary for eight (8) or more continuous hours.
- R. Rotating signs, live action signs, and flashing, computer generator signage, variable message or scrolling signage, signs utilizing television monitors, and intermittent illuminated signs are prohibited.
- S. All illuminated signs shall be either indirectly lighted or of the diffused lighting type, unless illuminated by an interior source. No sign shall be lighted by using unshielded incandescent bulbs, lasers, neon or gas discharge tubes, mirrors reflecting a direct light source or similar devices. Buildings, windows or structures may not be outlined by tubing or strings of lights except for seasonal lighting which may remain on a building but shall not be illuminated post season.
- T. No strings or streamers of flags, pennants, spinners or other similar devices strung across, upon, over or along any premises or building, whether as a part of any sign or not, shall be allowed within any zone district, except temporary signs/banners located on commercial properties shall be permitted by zoning permit only after the required application has been submitted to and approved by the Zoning Officer.

Temporary signs/banners shall conform to the following requirements:

1. The sign shall be clearly marked with the name of the person or organization responsible for the sign.
2. The sign may be displayed for a period not to exceed 30 days.
3. The sign shall not be illuminated, affixed by tacking, pasting or otherwise mounting upon utility poles, light stands or trees.
4. The sign shall not exceed the sign area of 15 square feet and no more than two such signs shall be permitted at any time on any property except in the case of multiple tenancies within a business development, upon which each tenant may have only one sign. Each tenant is required to apply

separately.

5. No sign shall be placed within a public right-of-way. Any sign that is placed within the public right-of-way shall be subject to removal by the Borough.
6. Banners shall not exceed a total sign area of 32 square feet.
7. There shall be no more than two such sign permits issued in any calendar year.

§ 540-180. Awnings

Awnings shall be permitted by zoning permit only after the required application has been submitted to and approved by the Zoning Officer. Awnings shall conform to the following requirements:

- A. Awnings shall be designed to project over individual window and door openings and not project as a single continuous feature extending over architectural piers or arches.
- B. The lowest point of any awning shall be a minimum of 8 feet above the sidewalk or ground over which it projects.
- C. Awnings should have a pedestrian scale and be placed so as to provide weather protection and/or business identification to potential patrons of a business.
- D. Awnings should be an enhancement to the building façade and should be proportional with and complimentary to nearby buildings and awnings.
- E. Awnings should be mounted in locations that respect the design of the building and do not obscure ornamental features over storefronts (i.e. rooflines, arches, materials, banding).
- F. Awnings are discouraged in locations which already have a covered walkway (i.e. arcade or promenade) are prohibited.
- G. In multi-tenant shopping centers, awnings should be coordinated to complement the overall architecture of the center.
- H. Text and graphics shall comprise no more than 20 percent of the total exterior surface of the awning face and valance.
- I. The percentage of text and graphics on an awning shall also count toward the overall tenant space's square footage allowance for signs.
- J. Valances shall be no more than 10 inches in height.
- K. Text and graphics on a valance shall be no larger than 8 inches. There shall remain 1 inch of negative space on the top and bottom of a valance.
- L. Awning materials with reflective or shiny finishes are prohibited.
- M. Valance size should be proportional to the size of the awning.
- N. Awning colors should enhance and complement the building and adjacent awnings, rather than overwhelm the building scheme. Colors should not call more attention to the awning than the building.
- O. Awnings are preferred to be a solid color. If stripes are used, subtle or muted colors are preferred. Striped awnings with highly contrasting, bright colors may be construed as visually blaring and inappropriate and are prohibited.

- P. If wrapped awnings (with closed ends) are used, the ends should use solid colors.
- Q. Awnings shall not be duplicative of wall signs in the same line of sight.
- R. Fonts and sizes of text and graphics should be chosen for legibility.

§ **540-181. Applicability.**

The provisions and regulations of this chapter shall not apply to the following signs; provided, however, that said signs shall remain subject to the provisions of § 540-176.

- A. Professional nameplates affixed to the door or adjacent wall of premises so used, not to exceed three inches by 20 inches per professional occupant.
- B. A memorial sign or tablet or a sign indicating the name of a building or the date of its erection when cut into a masonry surface or when constructed of bronze or other noncombustible material.
- C. The following signs, customary and necessary to the operation of filling and service stations:
 1. Lettering on buildings displayed over individual entrance doors consisting of the words "washing," "lubrication," "repairing" or words of similar import, provided that there shall be not more than one such sign over each entrance and that the letters shall not exceed 10 inches in height.
 2. Lettering or other insignia which are a structural part of a gasoline pump, consisting of a brand name, lead warning sign and other signs as required by law.
 3. A credit card sign not exceeding two square feet in area affixed to the building or permanent sign structure of the sign next referred to.
 4. One sign bearing the brand or trade name of the station, of a design specified by the manufacturer, permanently affixed to the building or its own metal substructure, said sign not to exceed 30 square feet in area on each side or 60 square feet in aggregate area if both sides shall have signs thereon, which sign, if on its own metal substructure, shall be rigidly and securely attached to the ground surface so as to create no danger to life or limb and which sign, whether affixed to a building or on its own substructure, shall not exceed 18 feet in height overall; provided, however, that no such sign shall be so affixed or erected until permission in writing therefor shall have been issued by the Building Inspector.
 5. A sign attached to each gas pump with the price of the product, as required by law.
- D. Signs for public convenience and welfare erected by or on behalf of the United States of America, the State of New Jersey, the County of Passaic and the Borough of Hawthorne, traffic controls in private ways and parking lots, legal notices, railroad crossing signs or other signs required by law and such temporary signs for public and charitable purposes as may be approved by the Zoning Officer for a period not to exceed 30 days.
- E. Signs customary and necessary in the offering of real estate for sale or to let by the owner thereof in residential zones, not to exceed four (4) square feet in area.
- F. Signs customary and necessary in the offering of real estate for sale or to let by the owner thereof, and his real estate agent or broker, in nonresidential zones, not to exceed 16 square feet in area.
- G. Signs customarily used to indicate that real estate offered for sale or to let has been sold or leased by the real estate agent or broker concerned, in residential zones, not to exceed four (4) square feet in area and not to be maintained more than two weeks after the initial erection thereof.

- H. Signs customarily used to indicate that real estate offered for sale or to let has been sold or leased by the real estate agent or broker concerned, in nonresidential zones, not to exceed 16 square feet in area and not to be maintained more than two weeks after the initial erection thereof.
- I. Signs customary and necessary in the offering of a newly constructed building for sale or to let by the owner thereof, and his real estate agent or broker, in residential zones, not to exceed three square feet in area; and such signs by such persons in nonresidential zones, not to exceed 16 square feet in area.
- J. Temporary signs customary and necessary in connection with the erection of buildings or other construction work shall be limited to one sign for each construction project and shall include only the identification of the project, the building, architects, engineers and contractors including landscape and tree removal companies . Such sign may be freestanding or attached to the premises but shall not exceed eight square feet in area and shall be removed at the completion of construction.
- K. The interior contents of lawfully permitted signs specifically designed to be changed from time to time, such as church announcement boards, theater marquees, restaurant menus and the like.
- L. Temporary signs for public, political and charitable purposes, including exterior decorating for holiday or patriotic purposes.

§ 540-182. Illuminated signs.

Any sign permitted by the provisions of this chapter or allowed pursuant to a sign exception granted under this chapter may be nonilluminated or nonflashing illuminated. Illuminated signs shall have sources of illumination shielded in such a manner that the same are not visible from the street or adjoining property. An illuminated sign in the interior of a building shall, if visible from any street or adjacent properties, meet all the requirements of this chapter, and the area thereof shall not, either by itself or cumulatively with any other exterior or interior illuminated sign or signs hereby permitted, exceed the total area permitted for exterior signs as regulated in this chapter.

§ 540-183. Application procedure for permit.

Any person desiring and intending to erect or relocate any sign within the Borough of Hawthorne shall first apply for and obtain a sign erection permit from the Zoning Officer, in the manner following:

- A. Application for a sign erection permit shall be made upon forms provided by the Zoning Officer, in triplicate, and shall contain or have attached the following information:
 1. The name, address and telephone number of the applicant.
 2. The location of premises on which or to which the sign is proposed to be erected or attached.
 3. The position of the sign, indicating its relation to the premises and adjoining premises.
 4. Blueprints or ink drawings of the plans and specifications and method of erection and attachment to the premises, or a photograph of the actual sign in lieu thereof, and such information as the Zoning Administrator may reasonably require indicating the work to be performed and to show full compliance with this and all other relevant and applicable laws and ordinances of the Borough of Hawthorne.
 5. The name of the person performing the work.
 6. The written consent of the owner and lessor of the premises.
 7. The electrical permit, if any, required by the Electrical Sub code of the Borough of Hawthorne.

- B. Each application for each sign shall be accompanied by a filing fee as provided in Chapter 220, Fees.
- C. It shall be the duty of the Zoning Administrator, upon the filing of an application for a sign erection permit, to examine such plans and specifications and other data and the premises upon which it is proposed to erect the sign, and if it shall appear that the proposed sign is in compliance with all the requirements of this chapter and all other laws and ordinances of the Borough of Hawthorne, he shall then issue a sign erection permit therefor. If the work authorized under an erection permit has not been completed within six months after date of issuance of the sign erection permit therefor, said permit shall become null and void.

§ 540-184. Dangerous or menacing signs.

If the Zoning Administrator shall find that any sign is unsafe or insecure or is a menace to the public, he shall give written notice thereof to the owner, agent or person having the beneficial use of the premises upon which such sign may be erected. If such owner, agent or person shall fail to remove or alter the sign so as to comply with the standards herein set forth within 10 days after such notice, such sign or other advertising structure may be removed or altered to comply by the Zoning Administrator at the expense of the owner, agent or person having the beneficial use of the premises upon which such sign may be erected. The Zoning Administrator may cause any sign or other advertising structure which is an immediate peril to persons or property to be removed summarily and without notice.

§ 540-185. Procedure for exceptions.

Any person who has been denied a sign erection permit by the Zoning Officer for any reason may apply for a sign exception to the Board of Adjustment of the Borough of Hawthorne in the manner following:

- A. Written notice of appeal must be filed with the Zoning Officer as well as the Secretary of the Board of Adjustment within 45 days of the denial by the Zoning Officer.
- B. The procedure applicable to variance application shall govern thereafter, including the payment of the fee required by ordinance.
- C. If, after public hearing, upon considering the evidence and testimony, the Board of Adjustment shall conclude that the requested sign may be erected without impairing the intent and purpose of the Zone Plan of the Borough of Hawthorne and without substantial detriment to the public good, welfare and safety or impairing the intent and purpose of this chapter, and, if the Board of Adjustment shall further find that there are cogent and special reasons justifying the erection of the particular sign, the Board of Adjustment may grant a sign exemption to this chapter, authorizing and instructing the Zoning Officer to issue the sign erection permit applied for, subject, however, to conformity with this chapter in all other respects and with all other applicable and relevant state laws and ordinances, rules and regulations of the Borough of Hawthorne.

§ 540-186. Variances.

A zoning variance granted pursuant to New Jersey statute, N.J.S.A. 40:55D-70, which varies a use allowed in a particular zone district for particular premises, shall be deemed to vary the provisions of this article in the same respect for the same premises.

§ 540-187. Nonconforming uses.

Any sign existing at the time of the passage of this chapter which does not conform to any provisions hereof shall be deemed a nonconforming use and may be continued, maintained and repaired upon its present premises; provided, however, that such sign was lawful under any prior ordinance. Any sign unlawful under any prior ordinance shall

remain unlawful unless it complies with the provisions of this chapter and there is issued by the Building Inspector a sign erection permit therefor.

§ **540-188. Enforcement; violations.**

This article shall be administered and enforced by the Zoning Officer.

- A. If any person shall have been convicted of a violation of this chapter and the sign or signs shall continue as violations despite said conviction, then, upon the expiration of the time for appeal as provided by law, if no appeal has been taken, or upon conviction by the County Court if an appeal has been taken, the Zoning Officer may serve an additional 10 days' notice upon the person so convicted to require him to remove the sign or signs in violation, and if said sign or signs shall not have been so removed upon the expiration of said ten-day period, the Zoning Officer shall have the power to remove the sign or signs or cause the same to be removed without further notice but at the sole expense of the owner of the premises.
- B. It shall be unlawful for any person to intentionally erect, locate, relocate or maintain any sign which falsely identifies the premises or occupant of any premises or building, or which falsely advertises for sale on any premises or in any building any product no longer available.

ARTICLE XX

Public Garages and Gasoline Stations

§ **540-189. Construal of provisions.**

Notwithstanding any other provision of this chapter or references therein to like or similar uses, the terms of this article shall be controlling in all matters relative to public garages and gasoline stations to the extent that the same may conflict with, alter, amend or duplicate such other provisions or references.

§ **540-190. Permitted locations.**

No building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used as a public garage or gasoline station in any zone district except B-3, B-3A Business or I-1 Industrial Zones, and subject to the standards and regulations herein contained.

§ **540-191. Standards.**

Standards shall be as follows:

- A. Minimum lot size: 14,000 square feet.
- B. Minimum street frontage:
 - 1. Interior lots: 100 feet.
 - 2. Corner lots: 100 feet on each street.
 - 3. Minimum depth of lot: 75 feet.
- D. Setback from street line:

1. Building: 45 feet.
 2. Fuel pumps, to be measured from base or platform exceeding three inches in height: 25 feet.
- E. Maximum building height: one story/15 feet.
- F. Maximum building ratio, excluding pump islands: 5%.
- G. Rear yard (open space): 15 feet.
- H. Side yards (open space): 20 feet. On corner lots, only one side yard is required, on an interior sideline of the lot.

§ 540-192. Site requirements.

- A. Entrance and exit driveways. Entrance and exit driveways to and from any lot upon which is located a public garage or gasoline service station shall have an unrestricted width of not less than 15 feet nor more than 24 feet, shall be located not nearer than 10 feet from any lot sideline or 15 feet from street intersections and shall be so laid out as to avoid the necessity of any vehicle leaving the property by backing out across any public sidewalk, street, highway, right-of-way or portion thereof.
- B. Paving. The area of all driveways and other areas over which motor vehicles are intended to be driven or parked on any lot upon which is located a public garage or gasoline service station shall be paved with a bituminous or concrete surface sufficient to meet Borough paving specifications applicable to streets and roadways.
- C. Fuel pump and tank storage location. Storage facilities for gasoline, oil or other flammable materials in bulk shall be located wholly underground and no nearer than 25 feet from any lot line other than any street sideline. No gasoline pump shall be located or permitted within any enclosed or semi-enclosed building.

§ 540-193. Parking.

- A. On any premises utilized as a public garage or gasoline station, which is located adjacent to premises having common street frontage and utilized for residential purposes, the parking of motor vehicles shall be prohibited any closer to the street than 35 feet from the curblines of said street, except as follows:
1. Where the average setback line of residential dwellings fronting on the same street or streets and within 500 feet of the service station or filling station is less than 35 feet from the curblines of such street or streets, then the provision of this subsection shall apply only to the area between such average setback line and the curblines of such street.
 2. Motor vehicles of bona fide patrons of said service station or filling station which have or are about to receive any mechanical repair, maintenance or other service of the type provided on the premises in the regular course of the business conducted thereon may be parked or left standing on any portion of said premises during the regular business hours of such service station or filling station, but in no event for any single period in excess of 10 hours within the area restricted by this provision.
- B. The parking of any commercial vehicle or vehicles on premises utilized as a motor vehicle service station or gasoline filling station shall be prohibited during all periods when such stations are not open for business unless such commercial vehicles are parked entirely within the confines of a fully enclosed building.

§ 540-194. Hours of operation.

No public garage or gasoline service station shall remain open for business between the hours of 12:00 midnight and 6:00 a.m.; provided, however, that any such service station providing road service or towing service may engage in the providing of such service in emergencies during the above restricted hours.

ARTICLE XXI

Standards for Telecommunication Towers and Antennas

§ 540-195. Purpose and goals.

- A. The purpose of this article is to establish general guidelines for the siting of wireless communications towers, antennas and facilities.
- B. The goals of this article are to:
 - 1. Provide for the appropriate location and development of communications towers and antennas to serve the residents and businesses of the Borough of Hawthorne.
 - 2. Minimize adverse visual impacts of towers and antennas through careful siting, design and landscape screening techniques.
 - 3. Encourage and promote the location of new communications towers, to the extent possible, so as to minimize adverse impact upon residents and businesses in the community.
 - 4. Maximize use of any new and existing communications towers so as to minimize the total number of towers throughout the Borough.
 - 5. Permit the providers of telecommunications services to provide such services to the community at appropriate locations as determined in this article.

§ 540-196. Applicability.

All new towers and antennas, as defined herein, located in the Borough of Hawthorne, shall be governed by these regulations.

§ 540-197. General requirements.

The requirements set forth in this section shall govern the location and construction of all towers and the installation of all antennas, governed by this article.

- A. Building codes; safety standards. To ensure the structural integrity of communications towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state and local building codes, as well as standards for towers as published by the Electronic Industries Association, as may be amended from time to time. Tower owners shall conduct periodic inspections of communications towers at least once every two years to ensure structural integrity. Inspections shall be conducted by a structural engineer licensed to practice in New Jersey. The results of such inspection shall be provided to the Municipal Construction Code Official and Borough Engineer. If, upon inspection, the Borough concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said 30 days shall

constitute grounds for removal of the tower or antenna at the owner's expense. The owner shall, in the case of conflicting code standards, comply with the most stringent of the applicable standards.

B. Regulatory compliance.

1. All towers and antennas must meet or exceed current state or federal government agency standards and regulations. If such standards and regulations are changed, then the owners of the communications towers and antennas governed by this article shall bring such communications towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
2. Tower owners shall provide documentation to the designated municipal official showing that each communications tower is in compliance with all federal requirements. Evidence of compliance must be submitted every 12 months.
3. The failure of any tower owner to comply with the provisions set forth above shall permit the Borough to take all action permitted under this act and at law to compel compliance, including the imposition of fines or penalties under the Property Maintenance Code of the Borough as well as the declaration by the Borough that the tower shall be deemed abandoned as defined herein.

C. Security. Communications towers shall be enclosed by decay-resistant security fencing not less than six feet in height and shall be equipped with an appropriate anti-climbing device; provided, however, that the reviewing body may waive or permit variance from such requirements for alternative tower structures.

D. Lighting and signs. No signs or illumination are permitted on an antenna or tower unless required by a state or federal agency of competent jurisdiction, in which case the Zoning Administrator may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding uses and views.

E. Advertising. No advertising shall be permitted on an antenna or tower.

F. Visual impact.

1. Towers shall either maintain a galvanized steel finish or, subject to any applicable federal or state agency standards, be painted a neutral color, so as to reduce visual obtrusiveness. Notwithstanding the same, the reviewing body considering any application for erection of a tower may require, at its reasonable discretion, that the tower be camouflaged or constructed of an alternative material, provided that the same does not interfere with the essential function of the tower.
2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening and landscaping that will blend the tower facilities to the natural setting and built environment.
3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
4. Towers clustered at the same site shall be of similar heights and design.

5. Towers shall be the minimum heights necessary to provide parity with existing similar tower-supported antennas and shall be freestanding where the negative visual effect is less than would be created by use of a guyed tower.

G. Landscaping.

1. Landscaping shall be used to effectively screen the view of the tower compound from adjacent public ways, public property and residential property. The buffer shall be a landscaped strip of at least four feet in width and shall be properly maintained. The buffer zone is to consist of materials of a variety that can be expected to grow to form a continuous hedge at least five feet in height within two years of planting.
2. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the anchor from the transmission building or security facilities and maintenance.
3. Native vegetation on the site shall be preserved to the greatest practical extent. The applicant shall provide a site plan showing existing significant vegetation to be removed, and vegetation to be replanted to replace that lost.
4. In lieu of these standards, the reviewing body having jurisdiction over the project may allow use of an alternate detailed plan and specifications for landscape and screening, including plantings, fences, walls and other features designed to screen and buffer towers and accessory uses. The plan shall accomplish the same degree of screening achieved by the provisions above, except as lesser requirements are desirable for adequate visibility for security purposes. In certain locations where the visual impact of the tower would be minimal, such as developed heavy industrial areas, the landscaping requirements may be reduced or waived by the reviewing body having jurisdiction over the project.

H. Maintenance impacts. Equipment at a transmission facility shall be automated to the greatest extent possible to reduce traffic and congestion. Where the site abuts or has access to a collector and local street, access for maintenance vehicles shall be exclusively by means of the collector street. At facilities which require on-site personnel, a minimum of one parking space shall be provided on each site per employee.

I. Principal, accessory and joint uses.

1. Accessory structures used in direct support of a tower shall be allowed but may not be used for offices, vehicular storage or any other outdoor storage. Mobile or immobile equipment not used in direct support of a tower facility shall not be stored or parked on the site of the tower unless repairs are being made to the tower. In all zoning districts, and in addition to other bulk requirements, any accessory structure shall be located not more than 25 feet from the base of any proposed tower.
2. Antennas and towers, where permitted, within the meaning of this article, shall be a principal use rather than accessory use. Notwithstanding the same, or any conflicting provision of any other Code section or ordinance, towers may be located on sites containing another principal use in the same buildable area, provided that all of the other siting, setback, separation and general requirements of this article is met. Towers may occupy a parcel meeting the minimum lot size requirements for the zoning district in which they are located.
3. Joint use of a site is prohibited when a proposed or existing principal use includes the storage, distribution or sale of volatile, flammable, explosive or hazardous materials such as propane, gasoline, natural gas and dangerous chemicals.

- J. Municipal use of towers. The Borough of Hawthorne shall be permitted reasonable use and access of any tower to be erected within the Borough of Hawthorne for municipal purposes, including but not limited to fire, police, ambulance and public works communications and other governmental uses.

§ **540-198. Permitted uses.**

- A. General. The uses listed in Subsection B of this section are deemed to be permitted uses but shall be subject to applicable provisions of this article.
- B. Permitted uses. Antennas or towers are permitted uses on property owned, leased or otherwise controlled by the Borough of Hawthorne, provided that a license or lease authorizing such antenna or tower has been approved by the Mayor and Council upon the filing of an application and hearing as required by this article or by law.

§ **540-199. Use on Borough-owned or -leased property.**

General. The following provisions shall govern the issuance of approvals for towers, antennas and facilities on Borough property:

- A. The Municipal Council may approve the uses listed in this section as an incident to a lease or license duly approved by the Mayor and Council.
- B. Each applicant for administrative approval shall apply to the Zoning Officer of the municipality, providing the information required by this article.
- C. The Zoning Officer, in consultation, if necessary, with the Municipal Engineer, shall review the application for completeness to determine if the proposed use complies with the requirements of this article. The matter shall thereafter be referred to the Planning Board of the Borough of Hawthorne for site plan review in accordance with the requirements of this article.
- D. In connection with any administrative approvals, the Planning Board may grant waivers from the provisions of Article IV of this chapter or other relevant and applicable provisions hereof upon a showing by the applicant that the advantages of the waiver outweigh the detriment and that the waiver will not substantially impair the public good.
- E. The Planning Board shall use the standards of the within ordinance as set forth in Article IV of this chapter in determining whether to permit the proposed construction.
- F. If the application is denied by the Planning Board, the applicant shall have a right to file an appeal in the Superior Court or apply for an approval as otherwise provided in this article.
- G. The applicant shall deposit with the Borough a nonrefundable fee in the amount of \$3,500 for administrative costs that may be incurred in the review of the application. In the event that it is determined that the costs incurred by the Borough for legal or engineering review by its professional consultants exceeds the amount of the application fee, the applicant may be required to post a cash escrow as may be determined by the Borough and administered in a manner conformable to the requirements of the Municipal Land Use Law.

§ **540-200. Conditionally permitted uses in industrial zones.**

- A. In the event of a denial of an application to the Planning Board for permission pursuant to this article to erect a tower facility on Borough property or in the event the applicant can demonstrate an inability to construct a

tower on Borough-owned or -leased property, the applicant may file a site plan application and conditional permit application with the Planning Board for site plan approval and conditional permit approval for a wireless communications facility consistent with the requirements of the within article. Any departure from the provisions of the within article shall require an application for a variance pursuant to N.J.S.A. 40:55D-70d.

B. Such an application shall be governed by the following standards, as well as other standards and requirements in this chapter:

1. Modification of existing towers.

(a) An existing tower may be modified or rebuilt to a taller height, not to exceed 30 feet over the tower's existing height, to accommodate the collocation of an additional antenna, but shall not exceed the overall height limitations of this article.

(b) The height change referred to may only occur one time per communications tower.

(c) A tower which is being rebuilt to accommodate the collocation of an additional antenna shall be subject to all of the criteria of this article as if a new tower application is being made.

(d) After the tower is rebuilt to accommodate collocation, only one tower may remain on the site.

2. New towers and facilities. All new towers and facilities, other than those located on property owned or leased by the Borough of Hawthorne, shall be governed by the provisions set forth herein.

§ **540-201. Business and residential zone districts.**

A. Towers, antennas and structures within the meaning of this article are prohibited in residential or business districts other than on Borough- owned or -leased property. An applicant shall have a right to submit a use variance application to the Zoning Board of Adjustment pursuant to the provision of N.J.S.A. 40:55-70d. The applicant shall, in addition to meeting the criteria of the affirmative and negative proof under N.J.S.A. 40:55-70d, have the burden of proof as to the criteria of this article applicable to Borough property or as to industrially zoned property as well as any other criteria in the within article. The applicant shall also have the burden of proof of demonstrating that it cannot build the facility on Borough-owned land or industrial-zoned land as evidenced by denials pursuant to this section or other demonstration of such inability.

B. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Planning Board or Zoning Board of Adjustment that no existing tower, structure or alternative technology, that does not require the use of towers or structures, can accommodate the applicant's proposed antenna. An applicant shall submit information requested, by the Board related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

1. No existing towers or structures are located within the geographic area which meet applicant's engineering requirements.

2. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.

3. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
4. The applicant'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 applicant's proposed antenna.
5. 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 unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
6. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
7. The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed a new tower or antenna development shall not be presumed to render the technology unsuitable.

C. Bulk requirements.

1. Setback. The applicant shall comply with all setback requirements of the zone in which the tower is proposed. Notwithstanding the same, the Board may reduce the standard setback requirements should the same better serve the requirements of this article and the applicant otherwise complies with the Municipal Land Use Law. In any event, all accessory structures associated with the proposed tower shall be located not more than 25 feet from the base of the tower.
2. Separation. Tower separation shall be measured from the base of the tower to the lot line of any adjoining use or property. Any tower proposed in a business or residential zone or within 300 feet of property zoned for business or residential use or within 300 feet of any property used for residential purposes shall be separated from the lot line a distance of 200 feet or 300% of the height of the tower, whichever is the greater. For towers located in industrial zones and not within 300 feet of any business or residential zone or any property used for residential purposes, the existing setback for the zone shall apply.
3. Height. In all applications to the Planning Board or the Zoning Board, the height of a tower for a single use shall not exceed 60 feet; for two users shall not exceed 70 feet; and for three or more users shall not exceed 80 feet. The Board reviewing the application may impose a limitation for a lesser height, provided that the lesser height will achieve the required transmission or coverage.

§ **540-202. Buildings and equipment.**

- A. Location. For all equipment cabinets or structures used in association with antennas, other than antennas mounted on rooftops or structures, the equipment cabinet or structure shall be located in accordance with the bulk requirements of the zone applicable to accessory buildings or structures, other than any limitation applicable to the number of such accessory uses or structures, in which the same is located, but in all events, not more than 25 feet from the base of the tower. All such structures shall be appropriately screened by a planting row having an ultimate height equal to or exceeding the height of the structure and a planted hedge of at least 36 inches.

- B. Height and area. In all zones, the height of any equipment cabinet or structure used in association with antennas shall not exceed 10 feet as measured from the ground elevation as defined in this chapter. The area of any such equipment cabinet or structure shall not exceed 300 square feet of gross floor area.

§ **540-203. Antennas mounted on rooftops or structures.**

- A. The location of an antenna on a rooftop or structure for purposes as set forth herein shall be governed by the provisions of this article. All height limitations as imposed herein shall be measured from the ground elevation of the building or structure as the same is defined in this chapter.
- B. The equipment cabinet or structure used in association with such antennas shall comply with the following:
 - 1. The cabinet or structure shall not contain more than 300 square feet of gross floor area or be more than 10 feet in height, measured from the mean ground level. The cabinet or structure shall be limited to use accessory to the tower.
 - 2. If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than 50% of the roof area.
 - 3. Equipment storage buildings or cabinets shall comply with all applicable building codes and shall be architecturally compatible with the building.
 - 4. Mounting of equipment, cabinet or structure on rooftop is permitted only if there is no feasible alternative.

§ **540-204. Application review.**

- A. In the review of any application for approval pursuant to the provisions of the within article, the reviewing board shall not impose unreasonable restrictions on the rights of the applicant pursuant to the provisions of the United States Constitution and the provisions of federal legislation or the regulations of the FCC.
- B. In connection with any application either to the Planning Board or the Board of Adjustment, all of the technical standards contained in the within article as to any category of application shall apply to any application.
- C. Any application to site the facility on Borough property shall be subject to the public bidding statutes of the State of New Jersey as well as subject to a lease agreement with appropriate financial conditions agreeable to the Borough.
- D. In deciding an application after notice and hearing, the Planning Board or Board of Adjustment shall adopt a resolution which shall contain specific findings of fact and conclusions of law dealing with the criteria of the Land Use Act and the within article.
- E. In deciding an application, the Planning Board or Zoning Board of Adjustment shall make specific findings of fact and conclusions as to whether the proposed structure will be aesthetically displeasing in its setting and shall have the right to impose conditions in order to minimize any adverse aesthetic impact.
- F. In any application other than an application to locate a tower on Borough-owned or -leased property, the Planning Board or Zoning Board of Adjustment shall give consideration to the nature of the community, the other uses permitted in the zone, the existing uses in the surrounding area, the alternative means available for satellite transmission and reception and any other circumstances which may be pertinent.

- G. The Planning Board or Zoning Board of Adjustment shall give consideration as to whether prohibiting the applicant from erecting its facility in Hawthorne would have the probable practical effect of prohibiting the applicant's communications facility from operating or that the audience it could reach would be different. The Board may also consider whether there are other available locations outside of Hawthorne on which applicant's facilities could be more suitably located and still provide essentially the same communications services.

§ **540-205. Removal of antennas and towers.**

All towers and antennas shall be maintained in compliance with standards contained in applicable building and technical codes so as to ensure the structural integrity of such towers. If, upon inspection by the Zoning Administrator, such tower is determined not to comply with the code standards or to constitute a danger to persons or property, then upon notice being provided to the owner of the tower and the owner of the property, if such owner is different, such owners shall have 30 days to bring such tower into compliance. In the event that such tower or antenna is not brought into compliance within 30 days, the Borough may provide notice to the owners requiring the tower or antenna to be removed. In the event that such tower or antenna is not removed within 30 days of receipt of such notice, the Borough may remove such tower or antenna and place a lien upon the property for the costs of removal. Delay by the Borough in taking action shall not in any way waive the Borough's right to take action. The Borough may pursue all legal remedies available to it to ensure that communications towers and antennas not in compliance with the code standards or which constitute a danger to persons or property are brought into compliance or removed. The Borough may seek to have the tower or antenna removed regardless of the owners' or operators' intent to operate the tower or antenna and regardless of any permits, federal, state or otherwise, which may have been granted.

§ **540-206. Abandoned towers.**

- A. Any antenna or tower that is not operated for a continuous period of 180 consecutive days shall be considered abandoned, whether or not the owner or operator intends to make use of the tower. The owner of an abandoned antenna or tower and the owner of the property where the tower is located shall be under a duty to remove such a tower or antenna. If such antenna and/or tower is not removed within 60 days of receipt of notice from the Borough notifying the owners of such abandonment, the Borough may remove such tower and/or antenna and place a lien upon the property for the costs of removal. The Borough may pursue all legal remedies available to it to ensure that abandoned communications towers and antenna are removed. Delay by the Borough in taking action shall not in any way waive the Borough's right to take action. The Borough may seek to have the communications tower or antenna removed regardless of the owners' or operators' intent to operate the tower or antenna and regardless of any permits, federal, state or otherwise, which may have been granted.
- B. If the owner of an abandoned tower or antenna wishes to use such abandoned tower or antenna, the owner first must apply for and receive all applicable permits and meet all of the conditions of this article as if such tower or antenna were a new tower or antenna.

ARTICLE XXII

Distributive Antenna Systems

§ **154-207. Installation of Distributive Antenna Systems (“DAS”) Within the Public Right-of-Way.**

- A. Communications antenna relating to a “DAS” system shall be permitted in areas in which all utilities are located aboveground regardless of the underlying zoning district, so long as such antenna are located on existing poles in the public right-of-way. Antenna shall not be located on any sign listed in the Manual on

Uniform Traffic Control Devices (MUTCD) nor on any traffic signal pole, mast arm device or associated equipment.

- B. Communications antenna and support equipment shall be co-located on existing poles, such as existing utility poles or street light poles. New poles for communication antenna intended to solely support a “DAS” system are expressly prohibited unless otherwise approved by the governing body upon a showing that such installation is absolutely necessary and can be accomplished in a manner that is consistent with the following standards:
1. Any new DAS pole and its accessory equipment shall be located so as to not cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrian or vehicular traffic, or to otherwise inconvenience public use of the right of way as determined by the Borough;
 2. New DAS poles cannot be located within 1000 feet of another pole either on the same side or across the street from an existing pole used for a DAS system.
 3. In no case shall a new DAS pole be located within thirty-six (36) inches of the exposed back of the curb or from the edge of pavement or within an easement extending onto privately owned land;
 4. No new DAS pole shall be located within five (5) feet of a private driveway or in a manner that would otherwise obstruct visibility from a private driveway to the public right of way.
 5. Any required accessory equipment intended to support the DAS pole shall not be located on the ground but shall be placed within an underground vault or alternatively, be pole mounted. If pole mounted, screening requirements and height and extension from pole limitations cited herein for co-location shall govern.
 6. Construction of a new pole shall comply with all applicable building and electrical code requirements and shall require a construction permit. Prior to the issuance of a construction permit, the Borough Engineer shall, at the applicant’s cost, review and approve the construction drawings in conjunction with the Borough Construction Official.
 7. Any disturbance to the public right of way as a result of the construction of a new pole shall be restored to its original condition post construction to the satisfaction of the Borough Engineer;
 8. A DAS pole shall be maintained in good condition and repair by qualified maintenance and constructional personnel at the cost of the responsible party that operates the pole so that the pole shall not endanger the life of any person or any property in the Town.
 9. Insurance by each owner or operator of a DAS pole shall provide to the Borough a certificate of insurance, in a form acceptable to the Borough Attorney, evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering the new pole.
 10. Each owner or operator of a DAS pole shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the Person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the DAS pole. Each person that owns or operates a DAS pole shall defend any actions or proceedings against the Borough in which it is claimed that personal

injury, including death, or property damage was caused by the construction, installation, operation maintenance or removal of a DAS pole. Such indemnification shall be provided to the Borough prior to the issuance of a construction permit in a form acceptable to the Borough Attorney.

11. The removal and replacement of a DAS pole and/or its related equipment for the purposes of upgrading or repairing the pole is permitted, so long as such repair or upgrade does not increase the overall size, height or design of the originally approved pole. Any modification shall require a new permit and authorization by the Borough.
 12. Should it be the intent of the owner or operator of a DAS pole to abandon the pole and discontinue its use, the owner or operator shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned DAS poles shall be removed as follows:
 - (a) All unused or abandoned DAS poles and accessory facilities shall be removed within six (6) months of the cessation of operations at the site unless otherwise extended by the Borough;
 - (b) If the DAS pole and all related facilities are not removed within six (6) months of the cessation of operations at the site, or within any longer period approved by the Borough, the DAS pole and all its related facilities may be removed by the Borough and the cost of removal assessed against the owner of the DAS pole;
 13. The Borough may assess appropriate and reasonable permit fees directly related to the Borough's actual costs in reviewing, processing the application for approval as well as related inspection, monitoring and related costs.
 14. Prior to the approval of the construction permit for the new DAS pole, the owner or operator of the pole shall provide the Borough financial security sufficient to guarantee the removal of such pole in a form acceptable to the Borough Attorney. Said financial security shall remain in place until the DAS pole is removed.
 15. In accordance with applicable law, the Borough reserves the right to deny an application for a new DAS pole for numerous factors, including but not limited to, visual impact, design, and safety standards.
- C. Antenna and all support installations shall be designed so as to minimize visual impacts as follows:
1. Antenna and all support equipment shall be treated to match the supporting structure. Antenna and accompanying equipment shall be painted, or otherwise coated to be visually compatible with the support structure upon which they are mounted.
 2. All equipment shall be compatible in scale and proportion to the structure upon which they are mounted. All equipment used shall utilize the smallest and least intrusive technology available.
 3. There shall be no more than one (1) such antenna per pole. One (1) additional antenna may be permitted provided that such antenna can be designed and accommodated on a pole in a manner that complies with the requirements of this section.
 4. No antenna shall exceed a height of four (4) feet above the structure upon which they are mounted.
 5. Antenna shall not project more than four (4) inches from the pole upon which it is attached.
- D. Within sixty (60) days following written notice from the Borough, or such longer period as the Borough determines is reasonably necessary or such shorter period in the case of an Emergency, an owner of an

antenna in the public right-of-way shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any antenna when the Borough, consistent with its authority under the police power and state law, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:

1. The construction, repair, maintenance or installation of any Borough or other public improvement in the right-of-way;
 2. The operations of the Borough or other governmental entity in the right-of-way;
 3. Vacation of a street or road or the release of a utility easement; or
 4. An Emergency as determined by the Borough.
- E. The Borough shall determine the time, place and manner of construction, maintenance, repair and/or removal of all communication antenna(s) in the right-of-way based upon public safety, traffic management, physical burden on the right-of-way, and related considerations. The applicant/owner/operator of the antenna or "DAS" system shall be responsible for the repair of any damage to paving, existing utility lines, or any surface or subsurface installations arising from its construction, installation or maintenance.

ARTICLE XXIII

Nonconforming Buildings and Uses

§ 540-208. Continuation of uses.

If, at the time of the enactment of this chapter, any building is being used, or any building is being constructed or altered and is completed within six months thereafter, in a manner or for a purpose which does not conform to requirements of this chapter but which is not prohibited by any other existing ordinance of the Borough of Hawthorne, such use, manner or purpose may be continued, nor shall any change of title or of right to possession affect such continuation of an existing use; subject, however, to the provisions of this article hereinafter set forth.

§ 540-209. Regulations.

No existing building or structure devoted to a nonconforming use shall be enlarged, extended, reconstructed or structurally altered, except as follows:

- A. Restoration. Any nonconforming building or structure which, as a result of fire, explosion or other casualty, is partially damaged or destroyed and the cost of necessary alterations, repairs or reconstruction does not exceed 60% of its market value (not including land value), may be restored, reconstructed or used as before, provided that the bulk, height and area requirements shall not be in excess of that which existed prior to said damage. Such restoration must be commenced within six months and completed within one year of such occurrence or the use of such building, structure or land as a legal nonconforming use shall thereafter be terminated.
- B. Extension. A nonconforming use shall not be extended, but the extension of a lawful use to any portion of a nonconforming building which existed prior to the enactment of this chapter shall not be deemed the extension of such nonconforming use; and further provided, however, that where a nonconformity as to lot size, setback, side yard, rear yard or other standard based upon measurement renders a lot, building or use nonconforming, any extension, addition or alteration of such building or other buildings or structures on the

same lot which does not increase or extend the specific nonconformity shall not be deemed an extension of a nonconforming 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. Repairs. Normal maintenance repairs and incidental alteration of a building or structure containing a nonconforming use shall be permitted, provided that said repairs and alterations do not extend the volume or area of space occupied by the nonconforming use.
- F. Construal of provisions. 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.

§ 540-210. Discontinuance of nonconformance.

- A. Abandonment. The discontinuance of a nonconforming use for a period of one year and/or the change of use to a more restrictive or conforming use for any period of time shall be considered an abandonment thereof, and such nonconforming use shall not thereafter be revived. Intent to resume active operations shall not constitute continuance of a nonconforming use.
- B. Partial destruction. Any nonconforming building or structure which, as a result of fire, explosion or other casualty, is partially damaged or destroyed and requires alterations, repairs or reconstruction, the cost of which exceeds 60% of its market value (not including land); the use of such building or structure as a nonconforming use shall thereafter be terminated and any new construction shall be in accordance with the regulations of this chapter.

ARTICLE XXIV

Affordable Housing Requirements

§ 540-211. Affordable housing obligation.

- A. This Article is intended to assure that affordable housing units are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This chapter shall apply except where inconsistent with applicable law.
- B. The Hawthorne Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Housing Element and Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways the Borough of Hawthorne shall address its fair share for affordable housing as directed by the Superior Court and documented in the Housing Element.
- C. This chapter implements and incorporates the adopted and endorsed Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C.5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985, as amended.

§ **540-212. Definitions.**

ACCESSORY APARTMENT

A self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

ACT

The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.), as amended.

ADAPTABLE

Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

ADMINISTRATIVE AGENT

The entity responsible for administering the affordability controls with respect to specific restricted units in accordance with this chapter, the regulations of the Council on Affordable Housing set forth at N.J.A.C. 5:93 et seq., and the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26 et seq.

AFFIRMATIVE MARKETING

A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

AFFORDABILITY AVERAGE

The average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE

A sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:93-7.4; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

AFFORDABLE HOUSING DEVELOPMENT

A housing development all or a portion of which consists of restricted units.

AFFORDABLE HOUSING PROGRAM(S)

Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE UNIT

A housing unit proposed or created pursuant to the Act and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12.

AGENCY

The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

AGE-RESTRICTED UNIT

A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80 percent of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

ALTERNATIVE LIVING ARRANGEMENT

A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

ASSISTED LIVING RESIDENCE

A facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

CERTIFIED HOUSEHOLD

A household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

COAH

The Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.).

DCA

The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT

A housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

DEVELOPER

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

DEVELOPMENT

The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use 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 N.J.S.A. 40:55D-1 et seq.

INCLUSIONARY DEVELOPMENT

A development containing both affordable units and market rate units. This term includes, but is not necessarily limited to new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

LOW-INCOME HOUSEHOLD

A household with a total gross annual household income equal to 50 percent or less of the median household income.

LOW-INCOME UNIT

A restricted unit that is affordable to a low-income household.

MAJOR SYSTEM

The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

MARKET-RATE UNITS

Housing not restricted to low- and moderate-income households that may sell or rent at any price.

MEDIAN INCOME

The median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the Court.

MODERATE-INCOME HOUSEHOLD

A household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.

MODERATE-INCOME UNIT

A restricted unit that is affordable to a moderate-income household.

MUNICIPAL HOUSING LIAISON

The employee charged by the governing body with the responsibility for oversight and administration of the affordable housing program for the Borough of Hawthorne.

NON-EXEMPT SALE

Any sale or transfer of ownership other than the transfer of ownership between spouses; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

RANDOM SELECTION PROCESS

A process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

REGIONAL ASSET LIMIT

The maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

REHABILITATION

The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

RENT

The gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

RESTRICTED UNIT

A dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under the New Jersey Housing and Mortgage Finance Agency's Urban Homeownership Recovery Program (UHORP) or the Agency's Market Oriented Neighborhood Investment Program (MONI).

UHAC

The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

VERY LOW-INCOME HOUSEHOLD

A household with a total gross annual household income equal to 30 percent or less of the median household income for the applicable housing region.

VERY LOW-INCOME UNIT

A restricted unit that is affordable to a very low-income household.

WEATHERIZATION

Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

§ 540-213. Applicability.

- A. The provisions of this chapter shall apply to all developments that contain low-and/or moderate-income housing units, including any affordable housing developments that currently exist, any affordable housing developments that are proposed to be created within the Borough of Hawthorne pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan, as well as any currently unanticipated future developments that will provide low- and/or moderate-income housing units.
- B. All affordable housing developments, including those intended to be funded through federal Low Income Housing Tax Credit programs, shall be deed restricted to comply with COAH and UHAC Rules pertaining to the income and bedroom distributions of the units.

§ 540-214. Rehabilitation program.

- A. The Borough will work with Passaic County and hire a separate entity to rehabilitate units in the Borough to address the Borough’s Rehabilitation Obligation. Any such rehabilitation programs shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
- B. All rehabilitated rental and owner-occupied units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner occupied units, the control period will be enforced with a lien and, for renter occupied units, the control period will be enforced with a deed restriction.
- C. The Borough of Hawthorne shall dedicate \$20,000 for each unit to be rehabilitated through this program.
- D. The Borough shall adopt a resolution committing to fund any shortfall in the Borough’s Rehabilitation Program.
- E. The Borough of Hawthorne shall designate, subject to the approval of the Court, COAH, or any successor entity, one or more Administrative Agents to administer the rehabilitation program in accordance with N.J.A.C. 5:93. The Administrative Agent(s) shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of the Court, COAH, or any successor entity. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- F. Units in a rehabilitation program shall be exempt from Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
 - 1. If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to UHAC regulations.
 - 2. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to UHAC regulations.
 - 3. Rents in rehabilitated units may increase annually based on the standards in UHAC.
 - 4. Applicant and/or tenant households shall be certified as income-eligible in accordance with UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

§ 540-215. Inclusionary zoning.

- A. Maximum densities and minimum set-asides: The maximum permitted densities and minimum required affordable housing set-asides for inclusionary development shall be as set forth for each individual inclusionary zone district in Chapter 540, “Zoning,” of the Borough Code.
- B. Phasing: In inclusionary developments, the following schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Affordable Units Completed
25	0
25+1	10
50	50

51	50
75	75
76	75
90	100

C. Design:

1. In inclusionary developments, to the extent possible, affordable units shall be integrated with the market units
2. In inclusionary developments, affordable units shall have access to all of the same common elements and facilities as the market units.

§ **540-216. New construction.**

A. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units.

1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least thirteen percent (13%) of all restricted rental units within each bedroom distribution shall be very low-income units (affordable to a household earning thirty percent (30%) or less of regional median income by household size). The very low-income units shall be counted as part of the required number of low income units within a development. At least fifty percent (50%) of the very low-income units must be available to families.
2. At least twenty-five percent (25%) of the obligation shall be met through rental units, including at least half in rental units available to families.
3. A maximum of twenty-five percent (25%) of the Township's obligation may be met with age restricted units. At least half of all affordable units in the Township's plan shall be available to families.
4. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.
5. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - (a) The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total affordable units
 - (b) At least 30 percent of all affordable units shall be two-bedroom units
 - (c) At least 20 percent of all affordable units shall be three-bedroom units; and
 - (d) The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer and the Borough
6. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted affordable units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

B. Accessibility Requirements:

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.
2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (b) An adaptable kitchen on the first floor;
 - (c) An interior accessible route of travel on the first floor;
 - (d) An interior accessible route of travel shall not be required between stories within an individual unit;
 - (e) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Borough of Hawthorne has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
 - (1) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - (2) To this end, the builder of restricted units shall deposit funds within the Borough's affordable housing trust fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
 - (3) The funds deposited under paragraph (2) above shall be used by the Borough of Hawthorne for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - (4) The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Hawthorne.
 - (5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's affordable housing trust fund in care of the Borough's Chief Financial Officer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
 - (6) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements.

Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

C. Maximum Rents and Sales Prices:

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and by the Court, Council on Affordable Housing, or a successor entity.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted units shall be affordable to households earning no more than 52 percent of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13 percent of all restricted rental units shall be affordable to very low-income households.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
 - (a) A studio shall be affordable to a one-person household
 - (b) A one-bedroom unit shall be affordable to a one- and one-half-person household
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four and one-half person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
 - (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one- and one-half-person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and

private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. Income limits for all units that are part of the Borough's Housing Element and Fair Share Plan, and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1, shall be updated by the Borough annually within thirty (30) days of the publication of determinations of median income by HUD as follows:
 - (a) The income limit for a moderate-income unit for a household of four shall be eighty percent (80%) of the HUD determination of the median income for COAH Region 1 for a family of four. The income limit for a low-income unit for a household of four shall be fifty percent (50%) of the HUD determination of the median income for COAH Region 1 for a family of four. The income limit for a very low-income unit for a household of four shall be thirty percent (30%) of the HUD determination of the median income for COAH Region 1 for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than the previous year.
 - (b) The income limits are based on carrying out the process in Paragraph (a) based on HUD determination of median income for the current Fiscal Year, and shall be utilized by the Borough until new income limits are available.
10. In establishing sale prices and rents of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by the Council:
 - (a) The price of owner-occupied affordable units may increase annually based on the percentage increase in the regional median income limit for each housing region determined pursuant to Paragraph (9). In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.
 - (b) The rent of affordable units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Northern New Jersey Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.

D. Utilities:

1. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
2. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

§ **540-217. Occupancy standards.**

- A. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
1. Provide an occupant for each bedroom;
 2. Provide children of different sexes with separate bedrooms;
 3. Provide separate bedrooms for parents and children; and
 4. Prevent more than two persons from occupying a single bedroom.
- B. Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

§ **540-218. Control periods for restricted ownership units and enforcement mechanisms.**

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this chapter until the Borough of Hawthorne elects to release the unit from such requirements; however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- B. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- C. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- D. At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this chapter, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.=
- E. The affordability controls set forth in this chapter shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- F. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

§ **540-219. Price restrictions for restricted ownership units, homeowner association fees and resale prices.**

- A. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
1. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
 2. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
 3. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the affordable unit owners and the market unit owners.
 4. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

§ 540-220. Buyer income eligibility.

- A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- B. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's certified monthly income.

§ 540-221. Limitations on indebtedness secured by ownership unit; subordination.

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the Administrative Agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- B. With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C.5:80-26.6(b).

§ 540-222. Control periods for restricted rental units.

- A. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this chapter until the Borough of Hawthorne elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be

amended and supplemented, for at least 30 years. For new projects receiving nine-percent low-income housing tax credits, a control period of not less than a thirty-year compliance period plus a fifteen-year extended use period shall be required.

- B. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of Passaic County. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- C. A restricted rental unit shall remain subject to the affordability controls of this chapter, despite the occurrence of any of the following events:
 - 1. Sublease or assignment of the lease of the unit
 - 2. Sale or other voluntary transfer of the ownership of the unit; or
 - 3. The entry and enforcement of any judgment of foreclosure.

§ 540-223. Rent restrictions for rental units; leases.

- A. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- C. Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this chapter.

§ 540-224. Tenant income eligibility.

- A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - 1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
 - 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
 - 3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of median income.
- B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- B. The applicant shall file documentation sufficient to establish the existence of the circumstances in B(1) through B(5) above with the Administrative Agent, who shall counsel the household on budgeting.

§ 540-225. Affirmative marketing requirements.

- A. The Borough shall adopt by resolution an affirmative marketing plan, subject to approval of the court, that is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- B. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. In addition, the affirmative marketing plan shall maintain certain notification requirements. It is a continuing program that directs marketing activities toward Housing Region 1 and is required to be followed throughout the period of restriction.
- C. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in Housing Region 1, comprised of Passaic, Hudson, Passaic and Sussex Counties.
- D. The Borough has the ultimate responsibility for adopting the affirmative marketing plan and for the proper administration of the affirmative marketing program, including initial sales and rentals and resales and rentals. The administrative agent designated by the Borough shall implement the affirmative marketing plan to assure the affirmative marketing of all affordable units.
- E. In implementing the affirmative marketing plan, the administrative agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- F. The affirmative marketing plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the affirmative marketing plan, the administrative agent shall consider the use of language translations where appropriate.
- G. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.

- H. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the Borough in which the units are located; and the developer's rental office. Pre-applications shall be emailed or mailed to prospective applicants upon request.
- I. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.
- J. In addition to other affirmative marketing strategies, the administrative agent shall provide specific notice of the availability of affordable housing units in Hawthorne to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Passaic County NAACP, Passaic County NAACP, Passaic County Urban League, Passaic County Housing Coalition, and Supportive Housing Association.

§ 540-226. Enforcement of affordable housing regulations.

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an Owner, Developer or Tenant of an affordable unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - 1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - (a) A fine of not more than \$500.00 per day or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - (b) In the case of an Owner who has rented his or her affordable unit in violation of the regulations governing affordable housing units, payment into the Borough's affordable housing trust fund of the gross amount of rent illegally collected;
 - (c) In the case of an Owner who has rented his or her affordable unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
 - 2. The Borough may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the affordable unit.
 - (a) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the affordable unit of the violating Owner shall

be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

- (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the affordable unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.
- (c) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the affordable unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the affordable unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the affordable unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (e) Failure of the affordable unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the affordable unit as permitted by the regulations governing affordable housing units.
- (f) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

§ **540-227. Appeals.**

Appeals from all decisions of an Administrative Agent designated pursuant to this chapter shall be filed in writing with the Court, COAH, or a successor entity.

§ **540-228. Reporting and monitoring requirements.**

- A. On the first anniversary of the execution of the Borough's settlement agreement with Fair Share Housing Center Re: In the Matter of the Borough of Hawthorne, County of Passaic, Docket No. PAS-L-2412-15, which was executed by the Borough on June 8, 2020, and every anniversary thereafter through the end of the period of protection from litigation referenced in said agreement, the Borough shall provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing or Division of Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Division of Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
- B. On the first anniversary of the execution of the Borough's settlement agreement with Fair Share Housing Center Re: In the Matter of the Borough of Hawthorne, County of Passaic, Docket No. PAS-L-2412-15, which was executed by the Borough on June 8, 2020, and every anniversary thereafter through the end of this agreement, the Borough shall provide annual reporting of the status of all affordable housing activity within the Borough through posting on the municipal website, with copies provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the court-appointed special master and Fair Share Housing Center.
- C. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough shall post on its municipal website, with copies provided to Fair Share Housing Center, a status report as to its implementation of its affordable housing plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the Borough, with copies provided to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced. Any interested party may, by motion, request a hearing before the Court regarding these issues.
- D. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the execution of the Borough's settlement agreement with Fair Share Housing Center Re: In the Matter of the Borough of Hawthorne, County of Passaic, Docket No. PAS-L-2412-15, which was executed by the Borough on June 8, 2020, and every third year thereafter, the Borough shall post on its municipal website, with copies provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the Borough, with copies provided to Fair Share Housing Center, on the issue of whether the municipality has complied with its very low-income housing obligation.

§ **540-229. Affordable housing mandatory set-aside.**

- A. Purpose. This section is intended to ensure that any site that benefits from a rezoning, variance, site plan approval or redevelopment plan approved by the Borough, Planning Board or Zoning Board of Adjustment that results in multi-family residential development of five (5) dwelling units or more produces affordable housing at a set-aside rate of twenty percent (20%) for affordable for-sale units and at a set-aside rate of fifteen percent (15%) for affordable rental units. This Ordinance shall apply except where inconsistent with applicable law.

- B. If the Borough, the Borough Planning Board or Zoning Board of Adjustment permits the construction of multi-family or single-family attached residential development that is “approvable” and “developable,” as defined at N.J.A.C. 5:93-1.3, the Borough or the Borough’s Land Use Board shall require that an appropriate percentage of the residential units be set aside for low and moderate-income households.
- C. This requirement shall apply beginning with the effective date of this Ordinance to any multi-family or single-family attached residential development, including the residential portion of a mixed-use project, which consists of five (5) or more new residential units at a density of six (6) dwelling units or more per acre, whether permitted by a zoning amendment, site plan approved by the Borough Planning Board, use variance granted by the Borough’s Zoning Board of Adjustment, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation.
- D. For any such development for which the Borough’s land use ordinances already permitted residential development as of the effective date of this Ordinance, this requirement shall only apply if the Borough permits an increase in approvable and developable gross residential density to at least twice the permitted approvable and developable gross residential density as of the effective date of this Ordinance.
- E. Nothing in this section precludes the Borough, Borough’s Planning Board or Board of Adjustment from imposing an affordable housing set-aside in a development not required to have a set-aside pursuant to this section consistent with N.J.S.A. 52:27D-311(h) and other applicable law
- F. For inclusionary projects in which the low and moderate units are to be offered for sale, the appropriate set-aside percentage is twenty percent (20%); for projects in which the low and moderate-income units are to be offered for rent, the appropriate set-aside percentage is fifteen percent (15%). Where the set-aside percentage results in a fractional unit, the total set-aside requirement shall be rounded upwards to the next whole number.
- G. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.
- H. This requirement does not apply to any sites or specific zones otherwise identified in the Borough’s Settlement Agreement with Fair Share Housing Center (“FSHC”) or in the Borough’s Housing Element and Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein.
- I. Furthermore, this requirement shall not apply to developments containing four (4) or less dwelling units.
- J. Where a developer demolishes existing dwelling units and builds new dwelling units on the same site, the provisions of this section shall apply only if the net number of dwelling units is five (5) or more.
- K. All subdivision and site plan approvals of qualifying residential developments shall be conditioned upon compliance with the provisions of this section.
- L. All affordable units to be produced pursuant to this section the Uniform Housing Affordability Controls rules (N.J.A.C. 5:80-26.1 et seq.), as may be amended from time to time.

§ 540-230. Development Fees

In *Holmdel Builder's Association v. Holmdel Borough*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the imposition of rules by COAH. The purpose of this article is to establish standards for the collection, maintenance and expenditure of development fees pursuant to COAH's adopted rules. Fees collected pursuant to this article shall be used for the sole purpose of providing low- and moderate-income housing. This section shall be interpreted within the framework of COAH's rules on development fees.

A. Definitions.

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

COAH

The New Jersey Council on Affordable Housing.

DEVELOPMENT FEES

Money paid by an individual, person, partnership, association, company or corporation related to the improvement of property as permitted in COAH's rules and as required by this article.

EQUALIZED ASSESSED VALUE (EAV)

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

JUDGMENT OF REPOSE

A judgment issued by the Superior Court approving a municipality's plan to satisfy its fair share obligation.

SUBSTANTIVE CERTIFICATION

A determination by COAH, the Superior Court of New Jersey or any entity approved by State Law to act on affordable housing matters approving a municipality's housing element and fair share plan in accordance with the provisions of the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) and the rules and criteria as set forth herein.

§ 540-231. Residential and nonresidential fees.

A. Residential development fees. Residential development shall be subject to an affordable housing development fee as follows:

1. One-half of 1% of the equalized assessed value (EAV), or the coverage amount on the homeowner warranty document for a for-sale unit or the appraised value on the document utilized for construction financing for a rental unit, of each new residential dwelling unit, provided no increased density is permitted.
2. If a "d" variance for an increase in density is granted pursuant to N.J.S.A. 40:55D-70.d.(5) in any zoning district in the Borough of Hawthorne, then the additional residential units realized above what is permitted by right under the existing zoning will incur a bonus development fee of 6% of the EAV rather than the development fee of 1/2 of 1%. If the zoning on a site has changed during the two-year period preceding the filing of the "d" variance application, the density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the "d" variance application. The development fee may be based on the EAV or on the coverage amount on the homeowner warranty document for each additional for-sale unit or on appraised value on the document utilized for construction financing for a rental unit.
3. Developers of sites zoned for inclusionary development in the Borough's R-6 Affordable Housing Zone shall be required to make a payment to the Hawthorne Housing Trust Fund in lieu of the on-

site construction of low- and moderate-income housing units, in accordance with the settlement agreement approved by Superior Court on April 18, 2004.

B. Nonresidential development fees. Nonresidential development shall be subject to an affordable housing development fee as follows:

1. One percent of the equalized assessed value (EAV), or the appraised value on the document utilized for construction financing, for all new nonresidential development.
2. One percent of the increase in equalized assessed value (EAV) due to expansion, full or partial demolition and reconstruction, improvement, and/or alteration of any nonresidential building.
3. If a "d" variance increasing the permitted floor area is granted pursuant to N.J.S.A. 40:55D-70.d.(4), then the additional floor area realized greater than that which is permitted by right under the existing zoning will incur a bonus development fee of 6% of the EAV rather than the development fee of 1%.

If the zoning on a site has changed during the two-year period preceding the filing of the "d" variance application, the floor area permitted by right for the purposes of calculating the bonus development fee shall be the maximum amount of floor area permitted by right during the two-year period preceding the filing of the "d" variance application.

§ 540-232. Eligible exaction, ineligible exaction and exemptions.

- A. Developers of low- and moderate-income units shall be exempt from paying development fees.
- B. Developers of new nonresidential structures, except as excluded herein, and new residential structures, shall pay a development fee in the manner prescribed herein.
- C. Developers that expand an existing nonresidential structure and expand a residential structure where it results in additional dwelling units shall pay a development fee. The development fee shall be calculated based on the increase in the equalized assessed value of the improved structure.
- D. Developers that have received preliminary or final approval prior to the effective date of this article shall be exempt from paying a development fee unless the developer seeks a substantial change in the approval. Examples of a substantial change include a substantial alteration in site layout, development density, or types of uses within the development.
- E. Developers of any church, library, school, college, governmental facility, hospital for humans, or nursing home shall be exempt from paying a development fee.

§ 540-233. Collection of fees.

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

§ 540-234. Housing trust fund.

- A. There is hereby created an interest-bearing housing trust fund in such bank as may be selected for the purpose of receiving development fees from residential and nonresidential developers, which fund shall be maintained in a separate account at a financial institution designated by the Chief Financial Officer who shall be responsible for the administration of the housing trust fund and authorization for any expenditures. All development fees paid by developers pursuant to this article shall be deposited in this fund. No money shall be expended from the housing trust fund unless the expenditure conforms to a spending plan approved by Superior Court or COAH.
- b. If the Superior Court or COAH determines that the Borough of Hawthorne is not in conformance with COAH's rules on development fees, the Superior Court or COAH is authorized to direct the manner in which all development fees collected pursuant to this article shall be expended. Such authorization is pursuant to this article, COAH's rules on development fees, and the written authorization from the governing body to the financial institution that is the depository for the Borough housing trust fund. The Borough shall execute an escrow agreement with COAH and the financial institution where the housing trust fund is maintained to enable COAH to monitor disbursement of collected development fees and direct the expenditure of development fees, after proper notice, hearing and Court or COAH approval, if the imposition, collection, and/or expenditure of fees does not conform with this article, COAH rules, or the Court or COAH-approved spending plan.

§ 540-235. Use of funds.

- A. Money deposited in the Hawthorne Housing Trust Fund may be used for any activity approved by COAH or by, when applicable, a Court of competent jurisdiction, addressing the Borough of Hawthorne's low- and moderate-income housing obligation. Such activities may include, but are not necessarily limited to, housing rehabilitation, new construction, regional contribution agreements, the purchase of land for low- and moderate-income housing, extensions and/or improvements of roads and infrastructure to low- and moderate-income housing sites, assistance designed to render units more affordable to low- and moderate-income households and administrative costs necessary to implement the Borough of Hawthorne's Housing Element and Fair Share Plan. The expenditure of all money shall conform to a spending plan approved by COAH or, when applicable, by a Court of competent jurisdiction.
- B. At least 30% of the fees collected shall be devoted to render units more affordable unless exempt as per N.J.A.C. 5:93-8-16(c). Such exemptions include fees used to fund the Borough of Hawthorne's rehabilitation program, a regional contribution agreement (RCA), or a new construction project. Examples of activities that render units more affordable include, but are not limited to, down payment and closing cost assistance, low interest loans and rental assistance.
- C. No more than 20% of the fees collected shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement: a rehabilitation program; a new construction program; a regional contribution agreement, an affirmative marketing program, other costs necessary to develop, revise or implement the Borough of Hawthorne's Housing Element and Fair Share Plan. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, compliance with COAH monitoring requirements, and review of regional affirmative marketing plans for specific inclusionary developments in Hawthorne. Development fees shall not be used to defray the costs of existing municipal staff. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees.
- D. Development fee revenues shall not be expended to reimburse the Borough of Hawthorne for housing activities that preceded its judgment of repose from the Superior Court.

§ 540-236. Monitoring.

The Borough shall complete and return to COAH all monitoring forms related to the collection of development fees, expenditures or revenues and implementation of the spending plan certified by COAH. Quarterly financial reports and annual program implementation and auditing reports shall be completed by the Borough on forms designed by COAH.

§ 540-237. Expiration.

This article shall expire if:

- A. The Court vacates the Borough of Hawthorne's judgment of repose or revokes this article;
- B. The Borough of Hawthorne's judgment of repose expires prior to the Borough of Hawthorne filing an adopted housing element with COAH, petitioning for substantive certification, or receiving COAH's approval of this article;
- C. COAH dismisses or denies the Borough of Hawthorne's petition for substantive certification; or
- D. If the Borough of Hawthorne is under COAH's jurisdiction and has a certified housing element and fair share plan, COAH revokes substantive certification or this article.

§ 540-238. COAH direction of funds.

- A. In the event that any of the conditions set forth in Subsection B below occur, COAH shall be authorized, on behalf of the Borough, to direct the manner in which all development fees collected pursuant to this article shall be expended. Should any such condition occur, such revenues shall immediately become available for expenditure at the direction of COAH upon the Borough Clerk's receipt of written notification from COAH that such a condition has occurred. In furtherance of the foregoing, the Borough shall, in establishing a bank account pursuant this article, ensure that the Borough has provided whatever express written authorization which may be required by the bank to permit COAH to direct disbursement of such revenues from the account following the delivery to the bank of the aforementioned written notification provided by COAH to the Borough Clerk.
- B. Occurrence of the following may result in COAH taking an action pursuant to Subsection A above: failure to submit a spending plan within the time limits imposed by COAH; failure to meet deadlines for information required by COAH in its review of this article, the Borough's housing element or spending plan; failure to address COAH's conditions for approval of a plan to spend development fees within the deadlines imposed by COAH; failure to address COAH'S condition for substantive certification within the deadlines imposed by COAH; failure to submit accurate monitoring reports within the time limits imposed by COAH; failure to implement the spending plan for development fees within the time limits imposed by COAH, or within reasonable extensions granted by COAH; expenditure of development fees on activities not permitted by COAH.

§ 540-239. Municipal Liaison

- A. The position of Municipal Housing Liaison (MHL) for the Borough of Hawthorne is established by this ordinance. The Borough shall make the actual appointment of the MHL by means of a resolution.
 - 1. The MHL must be either a full-time or part-time employee of Hawthorne.
 - 2. The person appointed as the MHL must be reported to the Court and thereafter posted on the Borough's website.

3. The MHL must meet all the requirements for qualifications, including initial and periodic training, if such training is made available by COAH or the DCA.
 4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Hawthorne, including the following responsibilities which may not be contracted out to the Administrative Agent, or the Administrative Agent appointed by a specific developer:
 - a) Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 - b) The implementation of the Affirmative Marketing Plan and affordability controls;
 - c) When applicable, supervising any contracting Administrative Agent;
 - d) Monitoring the status of all restricted units in the Borough's Fair Share Plan;
 - e) Compiling, verifying and submitting annual reports as required;
 - f) Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
 - g) Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the Affordable Housing Professionals of New Jersey (AHPNJ), if such continuing education opportunities are made available by COAH or the DCA.
- B. Subject to the approval of the Court, the Borough of Hawthorne shall designate one or more Administrative Agent(s) to administer and to affirmatively market the affordable units constructed in the Borough in accordance with UHAC and this Ordinance. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and may be subject to approval of the Court appointed Special Master or the Court. The Operating Manual(s) shall be available for public inspection in the office of the Borough Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s). The Municipal Housing Liaison shall supervise the work of the Administrative Agent(s).

§ 540-240. Administrative Agent.

- A. An Administrative Agent may be either a designated municipal employee, an independent entity serving under contract to and reporting to the Borough or reporting to a specific individual developer. The fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required. The Borough Administrative Agent shall monitor and work with any individual Administrative Agents appointed by individual developers. The Administrative Agent(s) shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which includes:
1. Affirmative Marketing:
 - (a) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Hawthorne and the provisions of N.J.A.C. 5:80-26.15; and

- (b) Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

2. Household Certification:

- (a) Soliciting, scheduling, conducting and following up on interviews with interested households;
- (b) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
- (c) Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
- (d) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
- (e) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located;
- (f) Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Hawthorne when referring households for certification to affordable units; and
- (g) Notifying the following entities of the availability of affordable housing units in the Borough of Hawthorne: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Passaic County Branch of the NAACP, Senior Citizens United Community Services (S.C.U.C.S.), and the Supportive Housing Association.

3. Affordability Controls:

- a) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
- b) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
- c) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Passaic County Register of Deeds or Passaic County Clerk's office after the termination of the affordability controls for each restricted unit;
- d) Communicating with lenders regarding foreclosures; and
- e) Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

4. Resales and Re-rentals:

- a) Instituting and maintaining an effective means of communicating information between owners and the Borough's Administrative Agent, or any Administrative Agent appointed by a specific developer, regarding the availability of restricted units for resale or re-rental; and
- b) Instituting and maintaining an effective means of communicating information to low- (or very low-) and moderate-income households regarding the availability of restricted units for resale or re-rental.

5. Processing Requests from Unit Owners:
 - a) Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;
 - b) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
 - c) Notifying the municipality of an owner's intent to sell a restricted unit; and
 - d) Making determinations on requests by owners of restricted units for hardship waivers.
6. Enforcement:
 - a) Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
 - b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Borough's Administrative Agent, or any Administrative Agent appointed by a specific developer;
 - c) Posting annually, in all rental properties (including two-family homes), a notice as to the maximum permitted rent together with the telephone number of the Borough's Administrative Agent, or any Administrative Agent appointed by a specific developer, where complaints of excess rent or other charges can be made;
 - d) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
 - e) Establishing a program for diverting unlawful rent payments to the Borough's Affordable Housing Trust Fund; and
 - f) Creating and publishing a written operating manual for each affordable housing program administered by the Borough's Administrative Agent, or any Administrative Agent appointed by a specific developer, to be approved by the Borough Council and the Court, setting forth procedures for administering the affordability controls.
7. Additional Responsibilities:
 - a) The Borough's Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
 - b) The Borough's Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this Ordinance. The Borough's Administrative Agent will be responsible for collecting monitoring information from any Administrative Agents appointed by specific developers.
 - c) The Borough's Administrative Agent, or any Administrative Agent appointed by a specific developer, shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

Section 3. If any section, subsection or part of this ordinance is adjudged by a Court of competent jurisdiction to be unconstitutional or invalid, such judgement shall not impair or invalidate the remainder of this ordinance.

Section 4. This Ordinance shall take effect upon final adoption and publication as provided by law.

Frank Matthews
Council President

Attest:
Lori Fernandez, RMC
Borough Clerk

Appendices

Zone Schedule

CHAPTER 540									
BOROUGH OF HAWTHORNE SCHEDULE OF AREA, BULK AND COVERAGE CONTROLS									
District	Minimum Lot Area (square feet)	Minimum Lot Area per Dwelling Unit (square feet)	Minimum Lot Width (feet)	Minimum Lot Depth (feet)	Minimum Front Yard (feet)	Minimum Side Yard (one/both feet)	Minimum Rear Yard (feet)	Maximum Height (feet/stories)	Maximum Lot Coverage (percentage)
R-1A One- Family	18,750	18,750	125	150	50	15/40	50	35/2 ½	25
R-1 One Family	5,000	5,000	50	100	20	10/20	25	35/2 ½	35
R-2 One & Two Family									
Detached Single-Family	5,000	5,000	50	100	20	10/20	25	35/2 ½	35
Two-Family Dwelling	6,500	3,250	65	100	20	10/25	25	35/2 ½	35
R-3 Apartment – Medium Density									
Detached Single-Family	5,000	5,000	50	100	20	10/20	25	35/2 ½	40
Two-Family	4,500	2,250	65	100	20	10/25	25	35/2 ½	40
Multifamily	10,000	1,600	100	100	25	10/20	20	35/2 ½	75
R-4 Garden Apartment	80,000	2,700 per (1) bedroom 3,200 per multi-bedroom units	200	150	40	20	30	35/2 ½	35
R-5 Planned Unit									

Development									
Single-family detached, groups of semi attached or clustered units	10,000		100	100	40	10/25	30	35/2 ½	40
Townhouses					60 interior street/100 major street			35/2 ½	
R-6 Affordable Housing	9 acres				30	30/30	30	45 feet	50

**CHAPTER 540
BOROUGH OF HAWTHORNE SCHEDULE OF AREA, BULK AND COVERAGE CONTROLS**

District	Minimum Lot Area (square feet)	Minimum Lot Area per Dwelling Unit (square feet)	Minimum Lot Width (feet)	Minimum Lot Depth (feet)	Minimum Front Yard (feet)	Minimum Side Yard (one/both feet)	Minimum Rear Yard (feet)	Maximum Height (feet/stories)	Maximum Lot Coverage (percentage)
R-7 Assisted Living/Affordable Housing	4.5 acres		250		100	50/50	50	45/3	Building: 20 Impervious: 45
R-8 Supportive Housing/Affordable Housing	.5		100		10	10/25	20	40/3	Building: 50 Impervious: 75
R-9 Affordable Housing	50,000		175		75	10/30	25	50 feet	Building: 30 Impervious: 75
R-10 Detached Single-Family Affordable Housing	4,000		40	100	20	8/16	40	28/2	Building: 40 Impervious: 50
B-1 Neighborhood Commercial	5,000	-	50	100	10	10//15	25	25/2	50
B-2 Central Business	None	-	None	100	10	None, but if provided 10 feet, plus 5 for each story in excess of 2 stories	25	35/3	Building: 50 Impervious: 75

**CHAPTER 540
BOROUGH OF HAWTHORNE SCHEDULE OF AREA, BULK AND COVERAGE CONTROLS**

District	Minimum Lot Area (square feet)	Minimum Lot Area per Dwelling Unit (square feet)	Minimum Lot Width (feet)	Minimum Lot Depth (feet)	Minimum Front Yard (feet)	Minimum Side Yard (one/both feet)	Minimum Rear Yard (feet)	Maximum Height (feet/stories)	Maximum Lot Coverage (percentage)
B-3 Retail Business	20,000	-	100	150	Minimum: 25 Maximum: 35	15/30	35	40/3	Maximum Building: 50 Maximum impervious: 70
B-3A Retail Business	12,500	-	100	100	Minimum: 20 Maximum: 35	10/20	30	40/3	Maximum Building: 50 Maximum Impervious: 70
O-1 Research & Restricted Offices	80,000	-	200	400	100	50	75	35/3	80
I-1 Industrial	10,000	-	80	100	25	10 feet plus 5 feet for each story in excess of 2 stories	25	35/3	50

Application Checklist

**CHAPTER 540
BOROUGH OF HAWTHORNE MUNICIPAL CODE**

APPLICATION CHECKLISTS

	Minor Sub- division	Minor Site Plan	Preliminary Major Subdivision	Prelimin -ary Site Plan	Final Major Subdivision	Final Site Plan	Check One: Submitted	Waiver Requested
PLAT SPECIFICATIONS								
1. Plat clearly and legibly drawn or reproduced at a scale not smaller than 1-inch equals 50 feet.	X	X	X	X	X	X		
2. Sheet size either 15 x 21, 24 x 36, or 30 x 42.	X	X	X	X	X	X		
3. Plans shall be prepared by an architect or engineer if application involves only the location of proposed buildings and their relationship to the site and the immediate environs.	X	X	X	X	X	X		
4. Plans shall be prepared by an architect, planner or engineer if application involves only the location of drives, parking layout, pedestrian circulation, and means of ingress and egress.	X	X	X	X	X	X		
5. Plans shall be prepared by an engineer if application involves only drainage facilities for site plans of 10 acres or more; or involving stormwater detention facilities; or traversed by a water course.	X	X	X	X	X	X		
6. Plat prepared to scale based on deed description, tax map or similarly reasonable accurate data for the purpose of review and discussion by the Municipal Agency. (Concept discussion only)								
GENERAL INFORMATION								
7. Metes and bounds description the entire tract or property based upon a current (within 5 years) land survey, prepared by a New Jersey licensed surveyor. Development boundaries shall be clearly delineated.	X	X	X	X	X	X		
8. Property line shown, length in feet and hundredths, bearings in degree, minutes and seconds.	X	X	X	X	X	X		
9. Key map showing location of tract to be considered in relation to surrounding area, within 500 feet.	X	X	X	X	X	X		

	Minor Sub-division	Minor Site Plan	Preliminary Major Subdivision	Preliminary Site Plan	Final Major Subdivision	Final Site Plan	Check One: Submitted	Waiver Requested
10. Title block containing name and address of applicant and owner; name of development; name, address, signature and seal of preparer; lot and block numbers; date prepared; date of last amendment and zoning district.	X	X	X	X	X	X		
11. Each block and lot numbered in conformity with the municipal tax map as determined by the municipal tax assessor.	X	X	X	X	X	X		
12. Scale of map, both written and graphic.	X	X	X	X	X	X		
13. North arrow giving reference meridian.	X	X	X	X	X	X		
14. Space for signatures of Chairperson, Secretary and Engineer of the Municipal Agency.	X	X	X	X	X	X		
15. List of all property owners within 200 feet of subject property as disclosed by a current (within 6 months) certified list of the most recent tax records.	X	X	X	X	X	X		
16. Any municipal limits within 200 feet of the development and the names and zoning of the adjoining municipalities.	X	X	X	X	X	X		
17. Location of existing and proposed property lines with dimensions in feet to the nearest two decimal places.	X	X	X	X	X	X		
18. Zoning district in which parcel is located, indicating all setbacks, lot coverage, height, floor area ratio, density, and other applicable zone requirements, both as to required and proposed. Indicate the above both written and graphically.	X	X	X	X	X	X		
19. Acreage of affected parcel to the nearest hundredth of an acre.	X	X	X	X	X	X		
20. Number of lots following subdivision including areas in acres if 1 acre or over or in square feet if under 1 acre.	X		X		X			
21. Submission of site photographs of existing conditions, including existing structures, site frontage and adjacent properties.	X	X	X	X	X	X		
22. Aerial photograph of site not smaller than 8 1/2" x 11", in color.	X	X	X	X	X	X		
23. Submission of all applications, checklists, plans, reports and other materials in electronic format on CD.	X	X	X	X	X	X		

NATURAL FEATURES ON SITE

AND WITHIN 200 FEET THEREOF

	Minor Sub-division	Minor Site Plan	Preliminary Major Subdivision	Preliminary Site Plan	Final Major Subdivision	Final Site Plan	Check One: Submitted	Waiver Requested
24. Cliffs and rock outcroppings.	X	X	X	X				
25. Contours to determine the natural drainage of the land. Intervals shall be up to 10% grade – 2 feet; over 10% grade – 5 feet.	X	X	X	X	X	X		
26. Flood plains.	X	X	X	X	X	X		
27. Natural and artificial watercourses, streams, shorelines and water boundaries and encroachment lines.	X	X	X	X	X	X		
28. Aquifer recharge areas, including safe sustained ground water yield.	X	X	X	X	X	X		
29. Wooded areas indicating predominant species and size.	X	X	X	X	X	X		
30. Location of trees 4 inches or more in diameter, as measured 4 feet above ground level, outside of wooded area, designating species of each.			X	X	X	X		
31. Areas in which construction is precluded due to presence of stream corridors and/or steep slopes.	X	X	X	X	X	X		
32. All areas to be disturbed by grading or construction.	X	X	X	X	X	X		

MAN-MADE FEATURES ON SITE AND WITHIN 200 FEET THEREOF

33. Location and uses of existing and proposed structures and their setbacks from existing and proposed property lines.	X	X	X	X	X	X		
34. Location of existing and proposed sidewalks and driveways.	X		X	X	X	X		
35. Location of existing and proposed parking spaces and loading areas including evidence of compliance with ADA guidelines.		X		X		X		
36. Location of existing and proposed easements or rights of way including power lines.	X	X	X	X	X	X		
37. Location of railroads, bridges, culverts, drain-pipes, water and sewer mains and other man-made installations affecting the tract.	X	X	X	X	X	X		
38. Location of existing and proposed wells and septic systems.	X	X	X	X	X	X		
39. When applicant intends to use a conventional septic disposal system: location of test holes, test results and approximate location of the intended	X	X	X	X	X	X		

disposal field.

	Minor Sub-division	Minor Site Plan	Preliminary Major Subdivision	Preliminary Site Plan	Final Major Subdivision	Final Site Plan	Check One: Submitted	Waiver Requested
40. Plans and profiles of existing and proposed utility layouts, such as sewers, stormwater management facilities, water, gas, communications and electric, showing feasible connections to existing or proposed utility systems.			X	X	X	X		
41. Location and description of monuments whether set or to be set.	X	X			X	X		
42. Location, names and widths of all existing and proposed streets on the property and within 200 feet of the tract.	X	X	X	X	X	X		
43. Required road dedication.	X	X	X	X	X	X		
44. Road orientation (as it relates to energy conservation).	X	X	X	X	X	X		
45. Sketch of prospective future street system of the entire tract where a preliminary plat covers only a portion thereof.			X	X				

MISCELLANEOUS

46. Proposed sight easements where required.	X	X	X	X	X	X		
47. Proposed drainage easements where required.	X	X	X	X	X	X		
48. Dimensioned preliminary architectural elevations and plans of any proposed buildings showing windows and doors, roof treatments, HVAC units, and preliminary floor plans of each floor of the building.		X		X		X		
49. Circulation plan showing:								
a. Location of off-street parking;		X		X		X		
b. Traffic improvements such as signals, signs and channelization;		X	X	X	X	X		
c. Pedestrian circulation;		X	X	X	X	X		
d. Loading and unloading bays;		X		X		X		
e. Proposed vehicular access including curb cuts;		X	X	X	X	X		
f. Traffic circulation around the site;		X		X		X		
g. Aisle and parking space dimensions;		X		X		X		
h. Handicapped parking in accordance with ADA guidelines.		X		X		X		
50. Landscaping plan including the types, quantity, size and location of all proposed vegetation, including shade trees. The scientific and common names			X	X	X	X		

of all vegetation shall be included.

	Minor Sub-division	Minor Site Plan	Preliminary Major Subdivision	Preliminary Site Plan	Final Major Subdivision	Final Site Plan	Check One: Submitted	Waiver Requested
51. Lighting plan showing location and height of existing and proposed site lights, all construction details and catalog cuts, and isolux diagrams showing the 0.3 and 0.5 fc lines.		X	X	X	X	X		
52. Sign plan showing location of existing and proposed traffic control signs, street signs, development signs, and appropriate sign details showing size, height, materials and lighting.			X	X	X	X		
53. Soil Erosion and Sediment Control Plan consistent with the requirements of the local soil conservation district.	X	X	X	X	X	X		
54. Design calculations showing proposed drainage facilities to be in accordance with the appropriate drainage run-off requirements.			X	X	X	X		
55. Environmental Impact Assessment including all of the following:			X	X	X	X		
a. Plan and description of the proposed development.								
b. Inventory of existing natural resources.								
c. Assessment of environmental impacts.								
d. Unavoidable adverse environmental impacts.								
e. Steps to minimize adverse environmental impacts.								
f. Documentation as required by the Borough soil testing ordinance (Ch. 311 of Code).								
g. Details and matter to be evaluated:								
1. Sewage facilities.								
2. Water supply.								
3. Stormwater.								
4. Stream encroachments.								
5. Flood plains.								
6. Wetlands.								
7. Solid waste disposal.								
8. Air pollution.								
9. Traffic.								
10. Social/economic.								
11. Aesthetics.								
12. Licenses, permits, etc.								

	Minor Sub-division	Minor Site Plan	Preliminary Major Subdivision	Preliminary Site Plan	Final Major Subdivision	Final Site Plan	Check One: Submitted	Waiver Requested
56. If an Environmental Impact Assessment is not required, a general description of the proposed development and a brief assessment of its effect on the site and neighborhood. This shall include, where applicable, the number of employees, hours of operation, frequency of deliveries and/or shipments, and the nature of materials and chemicals on site.	X	X	X	X	X	X		
57. The purpose of any proposed easement of land reserved or dedicated to public or common use shall be designated and the proposed use of sites other than residential shall be noted.	X	X	X	X	X	X		
58. A copy of all existing and proposed protective covenants or deed restrictions of every nature affecting the subject property including a statement as to whether such deeds or covenants are of record.	X	X	X	X	X	X		
59. If lots are proposed to be subdivided fronting on or requiring access to a State Highway, applicant shall submit any permits issued by NJDOT pursuant to NJAC 16:47-1 et seq.	X		X		X			
60. Any sections of this checklist for which a waiver is specifically being requested and a narrative paragraph explaining why the applicant is entitled to such waiver.	X	X	X	X	X	X		
61. List of design waivers and variances requested or obtained (with the applicable Ordinance sections). List of waivers or <i>de minimis</i> exceptions from RSIS (with applicable reference sections). Justifications shall be provided for each.	X	X	X	X	X	X		

	Minor Sub-division	Minor Site Plan	Preliminary Major Subdivision	Preliminary Site Plan	Final Major Subdivision	Final Site Plan	Check One: Submitted	Waiver Requested
--	--------------------	-----------------	-------------------------------	-----------------------	-------------------------	-----------------	----------------------	------------------

ADDITIONAL DOCUMENTS

62. Affidavit from applicant with reasonable supporting documentation verifying compliance with all terms and conditions of the preliminary approval.					X	X		
63. Affidavit from applicant indicating that the final plan is identical to the preliminary plan. If not, list specific changes with respect to any deviations.					X	X		
64. Separate written estimates of proposed construction costs for both on- and off-site improvements.					X	X		

65. A performance guarantee estimate by applicant's engineer for all public improvements submitted.	X	
66. If development is in sections, Final Plat should so indicate. Also, adequate proof that each section stands on its own for access, stormwater, utilities, etc.	X	
67. Organization documents including:		
a. Article of Incorporation for any association or other organization to maintain the common open space or community facilities.	X	X
b. By-laws and membership rules and regulations of any such organization defining its rights.	X	X
c. A copy of the Master deed detailing the rights and privileges of individual owners of common property.	X	X
d. A copy of all materials submitted to the Department of Community Affairs as required by the NJ Planned Real Estate Development Full Disclosure Act. Regulations and evidence of acceptance of and/or approval by the Department of Community Affairs.	X	X
e. Covenants or easements restricting the use of the common open space or elements.	X	X
f. Covenants or agreements requiring homeowners or residents to pay the organization for the maintenance of the common open space and/or community facilities. This shall include a proposed schedule of membership fees for at least the first 3 years of operation.	X	X

Minor Sub-division	Minor Site Plan	Preliminary Major Subdivision	Prelimin-ary Site Plan	Final Major Subdivision	Final Site Plan	Check One: Submitted	Waiver Requested
---------------------------	------------------------	--------------------------------------	-------------------------------	--------------------------------	------------------------	-----------------------------	-------------------------

68. Maintenance agreements. If there is to be no homeowners association or similar arrangement for the maintenance of common facilities, the developer shall furnish an agreement under which private roads and other facilities will be maintained, refuse collected and other supplementary services provided.	X	X
69. A deed, including a legal description by bearings and distances with corresponding area in square feet and/or acres, of all lands to be dedicated for	X	X

public use; i.e., easements, roads, etc.

70. An electronic copy of the approved plans in a form acceptable to the Borough Engineering Department.

X

X

**CHAPTER 540
BOROUGH OF HAWTHORNE MUNICIPAL CODE**

APPLICATION CHECKLISTS

“A” Appeal	“B” Interpretation or Special Question	“C” Variance	“D” Variance	“Condi- -tional” Use	Planning Variance	Check One: Submitted	Waiver Requested
---------------	---	-----------------	-----------------	----------------------------	----------------------	-------------------------	---------------------

PLAT SPECIFICATIONS

- | | | | | | | | |
|--|---|---|---|---|---|--|--|
| 1. Plat clearly and legibly drawn or reproduced at a scale not smaller than 1-inch equals 50 feet. | X | X | X | X | X | | |
| 2. Sheet size either 15 x 21, 24 x 36, or 30 x 42. | X | X | X | X | X | | |
| 3. Plans shall be prepared by an architect, planner, engineer, land surveyor, or the applicant, where appropriate. | X | X | X | X | X | | |
| 4. Plat prepared to scale based on deed description, tax map or similarly reasonably accurate data for the purpose of review and discussion by the Municipal Agency. | X | X | X | X | X | | |

GENERAL INFORMATION

- | | | | | | | | |
|--|---|---|---|---|---|--|--|
| 5. Metes and bounds description of the entire tract or property based upon a current (within 5 years) land survey, prepared by a New Jersey licensed surveyor. Development boundaries shall be clearly delineated. | X | X | X | X | X | | |
| 6. Property line shown in degree, minutes and seconds. | X | X | X | X | X | | |
| 7. Key map showing location of tract to be considered in relation to surrounding area. | X | X | X | X | X | | |
| 8. Title block containing name and address of applicant and owner; name of development; name, address, signature and seal of preparer; lot and block numbers; date prepared; date of last amendment and zoning district. | X | X | X | X | X | | |
| 9. Each block and lot numbered in conformity with the municipal tax map as determined by the municipal tax assessor. | X | X | X | X | X | | |
| 10. Scale of map, both written and graphic. | X | X | X | X | X | | |
| 11. North arrow giving reference meridian. | X | X | X | X | X | | |
| 12. Space for signatures of Chairperson, Secretary and Engineer of the Municipal Agency. | | | | X | X | | |

“A”	“B”	“C”	“D”	“Condi	Planning	Check One:
-----	-----	-----	-----	--------	----------	------------

	Appeal	Interpretation or Special Question	Variance	Variance	-tional” Use	Variance	Submitted	Waiver Requested
13. List of all property owners within 200 feet of subject property as disclosed by a current (within 6 months) certified list of the most recent tax records.	X	X	X	X	X	X		
14. Any municipal limits within 200 feet of the development and the names and zoning of the adjoining municipalities.			X	X	X	X		
15. Location of existing and proposed property lines with dimensions in feet to the nearest two decimal places.			X	X	X	X		
16. Zoning district in which parcel is located, indicating all setbacks, lot coverage, height, floor area ratio, density, and other applicable zone requirements, both as to required and proposed. Indicate the above both written and graphically.			X	X	X	X		
17. Zone requirements per Ordinance and per application.			X	X	X	X		
18. Acreage of affected parcel to the nearest hundredth of an acre.			X	X	X	X		
19. Submission of site photographs of existing conditions, including existing structures, site frontage and adjacent properties.			X	X	X	X		
20. Aerial photograph of site not smaller than 8 ½” x 11”, in color.			X	X	X	X		
21. Submission of all applications, checklists, plans, reports and other materials in electronic format on CD.			X	X	X	X		

NATURAL FEATURES ON SITE AND WITHIN 200 FEET THEREOF

22. Cliffs and rock outcroppings.					X	X		
23. Contours to determine the natural drainage of the land. Intervals shall be up to 10% grade – 2 feet; over 10% grade – 5 feet.					X	X		
24. Flood plains.					X	X		
25. Natural and artificial watercourses, streams, shorelines and water boundaries and encroachment lines.					X	X		
26. Aquifer recharge areas, including safe sustained ground water yield.					X	X		
27. Wooded areas indicating predominant species and size.					X	X		
	“A”	“B”	“C”	“D”	“Condi	Planning	Check One:	

	Appeal	Interpretation or Special Question	Variance	Variance	-tional” Use	Variance	Submitted	Waiver Requested
28. Location of trees 4 inches or more in diameter, as measured 4 feet above ground level, outside of wooded area, designating species of each.					X	X		
29. Areas in which construction is precluded due to presence of stream corridors and/or steep slopes.					X	X		
30. All areas to be disturbed by grading or construction.					X	X		

MAN-MADE FEATURES ON SITE AND WITHIN 200 FEET THEREOF

31. Location and uses of existing and proposed structures and their setbacks from existing and proposed property lines.			X		X	X		
32. Location of existing and proposed sidewalks and driveways.			X		X	X		
33. Location of existing and proposed parking spaces and loading areas including evidence of compliance with ADA guidelines.			X		X	X		
34. Location and type of existing and proposed easements or rights of way including power lines.			X		X	X		
35. Location of railroads, bridges, culverts, drain-pipes, water and sewer mains and other man-made installations affecting the tract.			X		X	X		
36. Location of existing and proposed wells and septic systems.			X		X	X		
37. When applicant intends to use a conventional septic disposal system: location of test holes, test results and approximate location of the intended disposal field.			X	X	X	X		
38. Plans and profiles of existing and proposed utility layouts, such as sewers, stormwater management facilities, water, gas and electric, showing feasible connections to existing or proposed utility systems.			X		X	X		
39. Location and description of monuments whether set or to be set.			X		X	X		

“A” Appeal	“B” Interpretation or Special	“C” Variance	“D” Variance	“Condi- tional” Use	Planning Variance	Check One: Submitted	Waiver Requested
---------------	----------------------------------	-----------------	-----------------	---------------------------	----------------------	-------------------------	---------------------

Question

STREETS

40. Location, names and widths of all existing and proposed streets on the property and within 200 feet of the tract.		X		X
41. Required road dedication.	X	X		X
42. Road orientation (as it relates to energy conservation).		X		X
43. Plans, profiles and cross-sections of all proposed new streets and/or access to proposed streets.	X	X		X

MISCELLANEOUS

44. Proposed sight easements where required.		X		X
45. Proposed drainage easements where required.		X		X
46. Dimensioned preliminary architectural elevations and plans of any proposed buildings showing windows and doors, roof treatments, HVAC units, and preliminary floor plans of each floor of the building.		X		
47. Circulation plan showing:		X		
a. Location of off-street parking;		X		
b. Traffic improvements such as signals, signs and channelization;		X		
c. Pedestrian circulation;		X		
d. Loading and unloading bays;		X		
e. Proposed vehicular access including curb cuts;		X		
f. Traffic circulation around the site;		X		
g. Aisle and parking space dimensions;		X		
h. Handicapped parking in accordance with ADA guidelines.		X		
48. Landscaping plan including the types, quantity, size and location of all proposed vegetation, including shade trees. The scientific and common names of all vegetation shall be included.		X		
49. Lighting plan showing location and height of existing and proposed site lights, all construction details and catalog cuts, and isolux diagrams showing the 0.3 and 0.5 fc lines.		X		

“A”	“B”	“C”	“D”	“Condi	Planning	Check One:	
Appeal	Interpretation	Variance	Variance	-tional”	Variance	Submitted	Waiver

	or Special Question		Use		Requested
50. Sign plan showing location of existing and proposed traffic control signs, street signs, development signs, and appropriate sign details showing size, height, materials and lighting.			X		
51. Soil Erosion and Sediment Control Plan consistent with the requirements of the local soil conservation district.			X		
52. Design calculations showing proposed drainage facilities to be in accordance with the appropriate drainage run-off requirements.	X	X	X	X	
53. Environmental Impact Assessment including all of the following*:	X	X	X	X	
a. Plan and description of the proposed development.					
b. Inventory of existing natural resources.					
c. Assessment of environmental impacts.					
d. Unavoidable adverse environmental impacts.					
e. Steps to minimize adverse environmental impacts.					
f. Documentation as required by the Borough soil testing ordinance (Ch. 311 of Code).					
g. Details and matter to be evaluated:					
1. Sewage facilities.					
2. Water supply.					
3. Stormwater.					
4. Stream encroachments.					
5. Flood plains.					
6. Wetlands.					
7. Solid waste disposal.					
8. Air pollution.					
9. Traffic.					
10. Social/economic.					
11. Aesthetics.					
12. Licenses, permits, etc.					

“A” “B” “C” “D” “Condi Planning Check One:

	Appeal	Interpretation or Special Question	Variance	Variance	-tional” Use	Variance	Submitted	Waiver Requested
54. If an Environmental Impact Assessment is not required, a general description of the proposed development and a brief assessment of its effect on the site and neighborhood. This shall include, where applicable, the number of employees, hours of operation, frequency of deliveries and/or shipments, and the nature of materials and chemicals on site.			X	X	X	X		
55. The purpose of any proposed easement of land reserved or dedicated to public or common use shall be designated and the proposed use of sites other than residential shall be noted.	X	X	X	X	X	X		
56. A copy of all existing and proposed protective covenants or deed restrictions of every nature affecting the subject property including a statement as to whether such deeds or covenants are of record.	X	X	X	X	X	X		
57. Any sections of this checklist for which a waiver is specifically being requested and a narrative paragraph explaining why the applicant is entitled to such waiver.	X	X	X	X	X	X		
58. List of design waivers and variances requested or obtained (with the applicable Ordinance sections). List of waivers or <i>de minimis</i> exceptions from RSIS (with applicable reference sections). Justifications shall be provided for each.			X	X	X	X		

**CHAPTER 540
BOROUGH OF HAWTHORNE MUNICIPAL CODE**

SCHEDULE A

Street Construction Specifications

I. General requirements.

A. All streets, curbs, sidewalks, driveways and parking and loading areas shall be designed and constructed in accordance with the provisions set forth below, except where such provisions conflict with the Residential Site Improvement Standards at N.J.A.C. 5:21. In the event of a conflict between this schedule and the Residential Site Improvement Standards (RSIS), the RSIS shall govern.

B. The entire street right-of-way shall be cleared of all brush and trees. The materials and methods of construction shall be in accordance with the requirements set forth in the New Jersey Department of Transportation Standards Specifications for Road and Bridge Construction, latest edition. No street paving shall be performed between November 1 and April 1 of the following year without the prior written permission of the Borough Engineer.

C. Pavement.

1. The minimum compacted thickness of subbase bituminous pavement shall be as follows:

(a) For local streets: five (5) inches of DGABC; five (5) inches of bituminous stabilized base course; two (2) inches of bituminous concrete surface courses (FABC).

(b) For collector streets: six (6) inches of DGABC; six (6) inches of bituminous stabilized base course; two (2) inches of bituminous concrete surface courses (FABC).

(c) For arterial streets: six (6) inches of DGABC; six (6) inches of bituminous stabilized base course; two (2) inches of bituminous concrete surface courses (FABC).

2. The minimum width of bituminous pavement shall be as follows:

(a) For local streets in conventional development: twenty-six (26) feet.

(b) For collector streets: forty (40) feet as shown on the Master Plan of the Borough.

(c) For arterial streets: forty-six (46) feet as shown on the Master Plan of the Borough.

3. A minimum period of six (6) months shall elapse between the placement of the bituminous stabilized base course and FABC surface course.

II. Subgrade.

A. All boulders, clay balls, organic matter, tree trunks, spongy soil and other objectionable material shall be removed and replaced by material approved by the Borough Engineer.

B. Roadway excavation.

1. Roadway excavation shall include the transportation of the material excavated and the disposal of surplus material in a manner and at a location satisfactory to the Borough Engineer.

2. Roadway excavation shall be carried to the lines, grades and slopes shown on the plans or as approved by the Borough Engineer. All materials shall be removed within the prescribed neat lines of

excavation.

3. Rock slopes shall be finished to a uniform surface, and pieces of rock which are loose or may become loose shall be removed. Earth slopes and other surfaces shall be smooth and have a neat finish.

4. Roadway excavation shall be carried out in such a manner that the subgrade is kept well-drained at all times.

C. Embankment shall be constructed from excavated material only when suitable in a manner and at locations indicated upon the plans or as approved by the Engineer.

D. Soil.

1. Soil in the road subgrade shall be tested and classified in accordance with the American Association of State Highway Officials Classification for Soils.

2. The select material for subgrade, where required, shall be approved bank-run sand and gravel, quarry-processed material or other suitable material of similar structural characteristics as approved by the Borough Engineer.

E. Preparation.

1. The subgrade shall be formed to the required lines, grades and cross sections. The preparing of the subgrade shall not be commenced until all underlying drains and other subsurface structures have been constructed and their trenches have been properly backfilled and consolidated.

2. The subgrade shall be properly shaped, rolled and uniformly compacted with a ten (10) ton roller so as to conform with the lines, grades and typical cross sections of this specification and the approved final plat profile drawings.

3. The subgrade shall be shaped and consolidated in maximum lifts at eighteen (18) inches by rolling with a three (3) wheel roller, weighing not less than ten (10) tons, until it presents a firm and unyielding surface. In places where a roller cannot be used, it shall be thoroughly tamped and rammed with a hand tamp weighing not less than fifty (50) pounds.

4. The subgrade shall be maintained in a satisfactory condition and properly drained until the pavement or pavement foundation is placed thereon.

5. Pavement mixtures shall not be deposited on the subgrade until it is properly finished to the satisfaction of the Engineer or when it is wet or frozen.

F. No cuts and fills with side slopes steeper than one (1) on three (3) will be permitted, except when this provision is specifically waived by the Borough Engineer.

III. Subbase.

The materials and methods of construction for the various types of subbase shall be as described in the New Jersey Department of Transportation Standards Specifications for Road and Bridge Construction, latest edition. In general, subbase materials shall consist of quarry-processed stone or clean stone at the direction of the Borough Engineer.

IV. Base course.

A. The materials and methods of construction for the base course shall be as described in Department of Transportation Standards Specifications for Road and Bridge Construction, latest edition.

- B. Soil aggregates shall be natural or prepared mixtures, consisting predominantly of hard, durable particles of stone, sand and stone dust so combined that they will produce mixtures conforming to the gradation requirements specified herein.

Sieve Size	Percent by Dry Weight Passing Sieve
1 ½	100
¾	55 to 90
No. 4	25 to 60
No. 10	20 to 50
No. 40	15 to 30
No. 200	5 to 20

- C. Where specified, the contractor shall furnish and lay a bituminous stabilized base course in the following manner:

1. The material shall leave the plant at a temperature sufficient for workability under prevailing conditions. However, the temperature of the mixture when laid down shall not be less than two hundred fifty degrees Fahrenheit (250° F). The material shall be laid using a paving machine.
2. The base course shall be compacted in the following manner: Initial rolling will be done with a three (3) wheel ten (10) ton roller or with a three (3) wheel tandem, twenty (20) ton roller operating immediately in back of the spreader. The second, third and final rolling will be performed with a two (2) or three (3) wheel tandem roller until the mixture is thoroughly compacted to the satisfaction of the Borough Engineer. Immediately upon completion of the base course, “donuts” or “ramps” of the material as the base course shall be placed around manholes, catch basins, waterline valve boxes and all other necessary protrusions.
3. Traffic may be carried, if necessary, on the base course for the minimum time necessary to maintain traffic control. The contractor shall be responsible for the maintenance of the base at all times while it is exposed to traffic.
4. Immediately prior to construction of subsequent pavement surface thereon the base course shall be cleaned of all loose and foreign materials, and all damaged areas shall be repaired to the satisfaction of the Borough Engineer, all “donuts” or “ramps” shall be removed, and the tack coat shall be applied.

- D. A secondary tack coat shall be applied to the bituminous stabilized base course if, in the opinion of the Engineer, such layer becomes coated with dust, dirt or other foreign material sufficiently to prevent a good bond between the completed base course and the surface base course.

V. Surface course.

- A. The materials and methods of construction for the surface course shall be as described in the New Jersey Department of Transportation Standards Specifications for Road and Bridge Construction, latest edition. The surface of the base course shall be clean; shall be free from frost, foreign materials and leaves; shall be dry when paving operations are to start; and shall be maintained in that condition. Bituminous concrete mix, Mix No. I-5, or approved equal shall conform to the requirement of the New Jersey Department of Transportation Standards Specifications for Road and Bridge Construction, latest edition, including the materials, mixing, transportation and all other phases of construction.

- B. The bituminous concrete mix shall have a uniform, compacted minimum depth of two (2) inches unless a change in thickness is approved and authorized by the Borough Engineer. Four (4) inch diameter core borings shall be taken by a certified testing laboratory, shall be examined, tested, etc., by this laboratory and their report shall

be sent directly to the Borough of Hawthorne. The borings shall be taken one (1) every one thousand (1,000) square yards of finished paving, with a minimum of three (3). Location of the borings shall be designated by the Borough of Hawthorne Engineering Department. The laboratory shall perform the following tests as a minimum:

1. Specific gravity.
2. Materials.
3. Thickness.
4. Density.

VI. Curbs, underdrains and crowns.

A. Curbs shall be constructed along both sides of all streets of Belgian or granite blocks and underdrains will be required where the Borough Engineer deems necessary, all-in accordance with Borough standards.

B. Curbs shall be so placed that the elevation of the top conforms to the following:

1. On roads which have thirty (30) foot or less paving, the curb top shall be level with the elevation of the finished road pavement and surface at the center line.
2. Where the paved width is forty (40) feet, the curb top shall be one (1) inch below the elevation of finished road pavement and surface at the center line.
3. Where the paved width is forty-four (44) feet or greater, the curb top shall be one and one-half (1 ½) inches below the finished road pavement and surface at the center line.

C. Excavation shall be made to the depth as required by these specifications and drawings. The base shall be a firm even surface. Where the curb is to rest on fill, this fill shall be thoroughly compacted.

D. Curb forms along the front and rear of the footing shall be set true to line and grade and held rigidly in place. The form surface shall be such as to permit a smooth even surface of neat appearance.

E. Fresh concrete shall be portland cement concrete, with an ultimate strength of three thousand five hundred (3,500) pounds per square inch and a slump of less than four (4) inches. The concrete shall be placed on a moist but not muddy base. No concrete shall be placed in temperatures below thirty-two degrees Fahrenheit (32° F). Immediately thereafter, and prior to initial set, granite and Belgium blocks shall be placed to the lines and grades specified on the plan.

F. For concrete curbs, if allowed by exception, expansion joints shall be placed at a maximum distance of twenty (20) feet apart on straight runs and on curves whose radius exceeds two hundred (200) feet and elsewhere as the Borough Engineer may direct. The expansion joint material shall be one-half (½) inch thick and will conform to the size and cross section of the curb, except that it shall set back one-half (½) inch from the top and front faces of the curb.

G. The concrete curb shall be protected by usage of sealers, burlap or comparable material and kept in first-class condition throughout the construction period of the entire subdivision or until it is accepted by the Borough.

H. Granite and Belgium blocks shall measure four (4) inches to five (5) inches deep by five (5) inches to six (6) inches wide by ten (10) inches to twelve (12) inches long.

VII. Sidewalks and driveways.

A. Sidewalks.

1. Concrete sidewalks shall, in general, be built parallel to the street line within the street area as the Planning Board may direct. The provisions of Section VI.F and G above apply to sidewalk construction.
2. Sidewalks shall be the minimum width specified in Chapter 540 or, if no minimum width is assigned, not less than four (4) feet wide. Sidewalks shall be at least four (4) inches thick, except across driveways and other passageways that might be used for vehicular traffic, in which case the thickness should be six (6) inches, and reinforcement, consisting of welded wire mesh, shall be utilized. The finished walk shall be scored such as to form squares, and expansion joints one-half (1/2) inch thick shall be provided at intervals not to exceed twenty-four (24) feet.
3. The surface shall be finished with a wood float. In no case shall a steel trowel be used. Each square shall have the four (4) sides suitably edged. Sidewalks shall slope transversely towards the paved street at a pitch of one-quarter (1/4) inch per foot.
4. Sidewalks that are in close proximity to shade trees shall be constructed with six (6) inches of three-quarters (3/4) inch clean stone below the concrete in order to deter root intrusion and sidewalk lifting.
4. All sidewalks shall be constructed in accordance with the Americans with Disabilities Act (ADA) guidelines.

B. Driveways.

1. Driveways shall be paved with bituminous concrete surface course (FABC), placed on a minimum six (6) inches compacted gravel base course. The surface course shall have a minimum compacted thickness of two (2) inches.
2. Depressed curbs at driveways shall project one and one-half (1 1/2) inches above the top of the bituminous surface course. The transition from the full height of curb to the one and one-half (1 1/2) inch high curb shall be a smooth one.
3. All driveway aprons, curbs, sidewalks, underdrains, driveways, storm drains, etc., shall be constructed in accordance with Borough standards on file with the Borough Engineer's office and all applicable ADA guidelines.

VIII. Parking and loading areas.

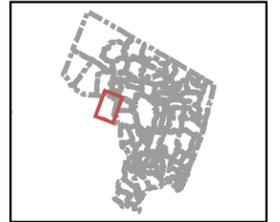
- A. All parking and loading areas on non-residential lots shall be designed in accordance with the following construction details:

Subgrade Class		Minimum Compacted Thickness	HMA Mix
Good	Surface Course	1 1/2 "	9.5M64
	Base Course	3 1/2 "	12.5M64 or 19M64
	Subbase	4-6 "	DGABC
Medium	Surface Course	1 1/2 "	9.5M64
	Base Course	4 1/2 "	12.5M64 or 19M64
	Subbase	4-6 "	DGABC
Poor	Surface Course	1 1/2 "	9.5M64
	Base Course	5 1/2 "	12.5M64 or 19M64
	Subbase	4-6 "	DGABC

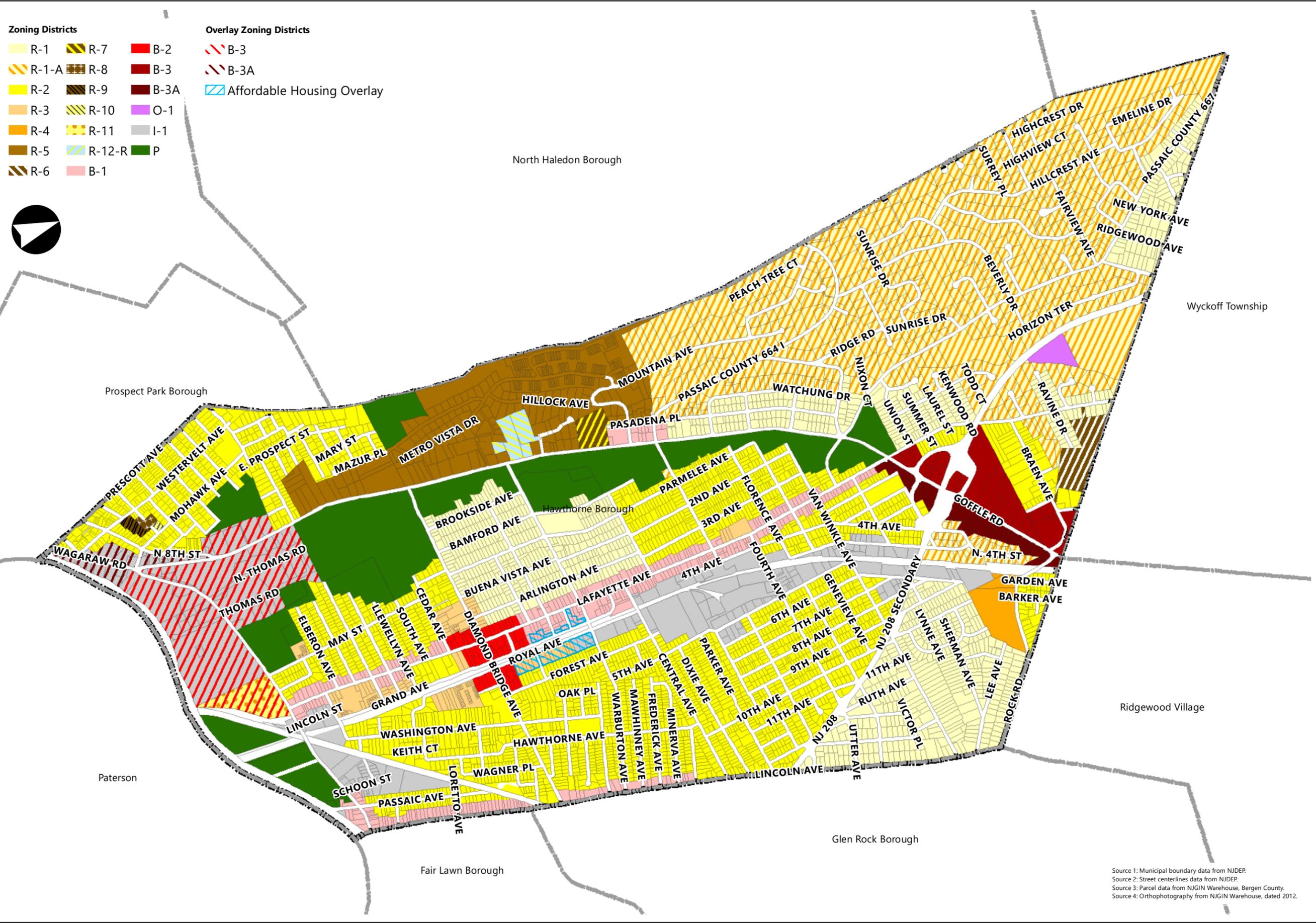
Source: "Hot Mix Asphalt Pavement Design Guide," New Jersey Asphalt Pavement Association.

- Zoning Districts**
- R-1 (Yellow)
 - R-1-A (Yellow with diagonal lines)
 - R-2 (Light Yellow)
 - R-3 (Light Orange)
 - R-4 (Orange)
 - R-5 (Dark Orange)
 - R-6 (Brown)
 - R-7 (Dark Yellow)
 - R-8 (Dark Orange)
 - R-9 (Dark Brown)
 - R-10 (Dark Yellow)
 - R-11 (Light Green)
 - R-12-R (Light Blue)
 - B-1 (Pink)
 - B-2 (Red)
 - B-3 (Dark Red)
 - B-3A (Dark Red with diagonal lines)
 - O-1 (Purple)
 - I-1 (Grey)
 - P (Green)
- Overlay Zoning Districts**
- B-3 (Red with diagonal lines)
 - B-3A (Dark Red with diagonal lines)
 - Affordable Housing Overlay (Blue with diagonal lines)

Project Title:
Land Use Plan & Reexamination
 BOROUGH OF HAWTHORNE
 PASSAIC COUNTY, NEW JERSEY



- Legend**
- Municipal Boundary (Dashed line)
 - Surrounding Municipalities (Dotted line)



Rev	Description	Date	Dwn	Ckd

Dwg. Title:
Proposed Zoning Map

Graphic Scale:
 0 325 650 1,300 Feet

JOSEPH H. BURGIS AICP
 PROFESSIONAL PLANNER
 NEW JERSEY LIC. NO. 2450

Project No.	3285.01
Sheet No.	1 of 1
Date	10/10/22
Drawn	AF/DN
Scale	1" = 1,300'

Dwg. No.
 proposed zoning map
 2022 COPYRIGHT BA - NOT TO BE REPRODUCED

Source 1: Municipal boundary data from NJDEP
 Source 2: Street centerlines data from NJDEP
 Source 3: Parcel data from NJGIN Warehouse, Bergen County.
 Source 4: Orthophotography from NJGIN Warehouse, dated 2012.