

Chapter 74. LAND USE PROCEDURES

[**HISTORY:** Adopted by the Township Committee of the Township of Andover 7-27-1976, readopted 9-12-1984 by Ord. No. 84-25 (Ch. XIII A of the 1973 Code); as amended through Ord. No. 99-11. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 30.
Driveways — See Ch. 45.
Flood damage prevention — See Ch. 55.
Site plan review — See Ch. 131.
Stormwater management — See Ch. 150.
Subdivision of land — See Ch. 159.
Zoning — See Ch. 190.

Article I. Planning Board

§ 74-1. Establishment; organization; power to act as Zoning Board of Adjustment.

[Amended 3-12-2003 by Ord. No. 2003-1; 7-24-2006 by Ord. No. 2006-20 *Editor's Note: This ordinance provided that it take effect 10-1-2006.*] Pursuant to N.J.S.A. 40:55D-1 et seq., there is hereby established a Planning Board consisting of nine members and four alternate members. The membership, terms, organization, powers, function and operation of the Board shall be subject to all applicable provisions of said statute. The Planning Board shall exercise all of the powers and duties of the Zoning Board of Adjustment.

§ 74-2. Membership classes; alternate members.

- A. The Planning Board membership shall consist of the following four classes:
- (1) Class I, the Mayor.
 - (2) Class II, one of the officials of the Township, other than a member of the Township Committee, to be appointed by the Mayor. 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 member if there is both a member of the Zoning Board of Adjustment and a member of the Board of Education among the Class IV members.
 - (3) Class III, a member of the Township Committee to be appointed by it.
 - (4) Class IV, six other citizens of the Township to be appointed by the Mayor. The members of Class IV shall hold no other municipal office, except that one member may be a member of the Zoning Board of Adjustment and one may be a member of the Board of Education. 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 member unless

there is among the Class IV members both a member of the Zoning Board of Adjustment and a member of the Board of Education, in which case the member of the Environmental Commission shall be deemed to be a Class II member.

- B. For the purpose of this section, membership on a municipal board or commission whose function is advisory in nature, and the establishment of which is discretionary and not required by statute, shall not be considered the holding of a municipal office.
- C. There may be not more than four alternate members appointed to the Planning Board in the same manner as Class IV members, who shall be designated by the Mayor as "Alternate No. 1," "Alternate No. 2," "Alternate No. 3," and "Alternate No. 4."

[Amended 7-24-2006 by Ord. No. 2006-20 *Editor's Note: This ordinance provided that it take effect 10-1-2006.]*

- D. Alternate members may participate in all matters but may not vote except in the absence or disqualification of a regular member of any class; provided, however, that alternate members shall not vote in place of Class I or Class III members with respect to variance relief under N.J.S.A. 40:55D-70d. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. Voting priority shall be based on the designated number of the alternate member, with Alternate No. 1 having first priority.

[Amended 3-12-2003 by Ord. No. 2003-1; 7-24-2006 by Ord. No. 2006-20 *Editor's Note: This ordinance provided that it take effect 10-1-2006.]*

§ 74-3. Terms of office.

- A. The term of the member composing Class I shall correspond with his official tenure. The terms of the members composing Class II and Class III shall be for one year or terminate at the completion of their respective terms 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 years or terminate at the completion of his term of office as a member of the Environmental Commission, whichever occurs first.
- B. The term of a Class IV member who is also a member of the Board of Adjustment or the Board of Education shall terminate whenever the Board member is no longer a member of the other body or at the completion of the Class IV term, whichever occurs first.

[Amended 3-12-2003 by Ord. No. 2003-1]

- C. 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 their terms shall be distributed evenly over the first four years after their appointment as determined by resolution of the Township Committee. However, no term of any member shall exceed four years. Nothing herein shall affect the term of any present member 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 years except as otherwise provided in this chapter. All terms shall run from January 1 of the year in which the appointment is made.
- D. Alternate members shall serve for terms of two years, provided that in the event that two

alternate members are appointed simultaneously, the initial terms of such members shall be one and two years, respectively. Such alternate members shall be designated by the Mayor as "Alternate No. 1" and "Alternate No. 2" and shall serve in rotation in the absence or disqualification of Board members.

[Amended 3-12-2003 by Ord. No. 2003-1]

E. The terms of alternate members shall be for two years, except that of the alternate members first appointed, one shall be appointed for a two-year term and one shall be appointed for a one-year term, said terms to run from January 1 of the year in which the appointment is made. Thereafter, all appointments shall be made for a term of two years.

§ 74-4. Vacancies; removal of members.

If a vacancy in any class shall occur otherwise than by expiration of term, it shall be filled by appointment as provided in § 74-3 for the unexpired term. Any member other than a Class I member, after a public hearing if he requests one, may be removed by the Township Committee for cause.

§ 74-5. Officers.

The Planning Board shall elect a Chairman and Vice Chairman from the members of Class IV and select a Secretary who may be either a member of the Planning Board or a municipal employee designated by it.

§ 74-6. Attorney.

There is hereby created the office of Planning Board Attorney. The Planning Board may annually appoint and fix the compensation of or agree upon the rate of compensation of the Planning Board Attorney, who shall be an attorney other than the Municipal Attorney.

§ 74-7. Experts and staff.

The Planning Board may employ or contract for the services of experts and other staff and services as it may deem necessary. The Board shall not exceed, exclusive of gifts or grants, the amount appropriated by the Township Committee for its use.

§ 74-8. 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, adopt, and amend a Master Plan for the physical development of the Township. The Master Plan shall include a specific policy statement indicating the relationship of the proposed development of the Township to the master plans of contiguous municipalities, the master plan of the county, the state development plan and redevelopment plan adopted pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et al.) and the District Solid Waste Management Plan of the county. Said Master Plan shall be reexamined every six years in accordance with the provisions of N.J.S.A. 40:55D-89. The reexamination shall be completed at least once every six years from the previous reexamination. The absence of the adoption by the Planning Board of a reexamination report pursuant to statute shall constitute a rebuttable presumption that the municipal development regulations are no

longer reasonable.

[Amended 3-12-2003 by Ord. No. 2003-1]

- B. To administer the provisions of Chapter 159, Subdivision of Land, and Chapter 131, Site Plan Review, in accordance with the provisions of these chapters and the Municipal Land Use Law of 1975, N.J.S.A. 40:55D-1 et seq.
- C. To hear applications for conditional uses and in proper cases to approve conditional use permits in accordance with provisions of Chapter 190, Zoning, pursuant to N.J.S.A. 40:55D-67.
- D. To participate in the preparation and review of programs or plans required of the Planning Board by state or federal law or regulations.
- E. To assemble data on a continuing basis as part of a continuous planning process.
- F. To annually prepare a program of municipal capital improvement projects projected over a term of six years, with amendments, and recommend this program to the Township Committee.
- G. To consider and make report to the governing body within 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, which report shall identify any provisions in the proposed development regulation, revision or amendment which are inconsistent with the Master Plan and shall include recommendations concerning these inconsistencies, and any other matters the Board deems appropriate; and also pass upon other matters specifically referred to the Planning Board by the governing body pursuant to provisions of N.J.S.A. 40:55D-26b.
- H. Variance or direction for issuance of a permit.
 - (1) Whenever the proposed development requires approval of a subdivision, site plan or conditional use, but not a variance pursuant to N.J.S.A. 40:55D-70d, to grant to the same extent and subject to the same restrictions as the Board of Adjustment:
 - (a) Variances pursuant to N.J.S.A. 40:55D-70c.
 - (b) Direction pursuant to N.J.S.A. 40:55D-34 for issuance of a permit for a building or structure in the bed of a mapped street or public drainageway, flood-control basin or public area reserved pursuant to N.J.S.A. 40:55D-32.
 - (c) Direction pursuant to N.J.S.A. 40:55D-36 for issuance of a permit for a building or structure not related to a street.
 - (2) Whenever relief is requested pursuant to this Subsection H, notice of the 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.
 - (3) The developer may elect to submit a separate application requesting approval of the variance or direction of the issuance of a permit and a subsequent application for any required approval for a subdivision, site plan, or conditional use. The separate approval of the variance or direction of the issuance of a permit shall be conditioned upon grant

of all required subsequent approvals by the Planning Board. No such subsequent approval shall be granted unless the approval can be granted without substantial detriment to the public good and without substantial impairment of the intent or purpose of the zone plan and Chapter 190, Zoning.

- I. To perform such other advisory duties as are assigned to it by ordinance or resolution of the Township Committee for the aid and assistance of the Township Committee or other agencies or officers.
- J. To consider and make a report within 45 days of its receipt upon any petition for annexation submitted to the governing body of the municipality and referred to the Planning Board pursuant to the provisions of N.J.S.A. 40A:7-12.
- K. To review a petition for inclusion of a parcel in a municipality-approved farmland preservation program pursuant to N.J.S.A. 4:1C-21c.

§ 74-9. Time periods.

The following shall apply:

A. Minor subdivisions and site plans.

- (1) Minor subdivision approvals and minor site plan approvals shall be granted or denied within 45 days of the date of certification of submission of a complete application or within such further time as may be consented to by the applicant. Approval of a minor subdivision shall expire 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, *Editor's Note: See N.J.S.A. 46:23-9.9 et seq.* or a deed clearly describing the approved minor subdivision, is filed by the applicant with the County Recording Officer, the Township Engineer, and the Township Tax Assessor. Any such plat or deed must be signed by the Chairman and Secretary of the Planning Board before it will be accepted for filing by the County Recording Officer. Minor site plan approval shall be deemed to be final approval of the site plan by the Board, provided the Board finds that the application conforms to the definition of "minor site plan" and further provided that the Board may condition such approval on terms insuring the provision of improvements pursuant to N.J.S.A. 40:55D-38, N.J.S.A. 40:55D-39, N.J.S.A. 40:55D-41, and N.J.S.A. 40:55D-53.
- (2) Any approvals given pursuant to this section shall be conditioned 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.

[Amended 3-12-2003 by Ord. No. 2003-1]

B. Preliminary approval of site plans and subdivisions.

- (1) Upon submission of a complete application for a site plan which involves 10 acres of land or less, and 10 dwelling units or fewer, or for a subdivision of 10 or fewer lots, the Planning Board shall grant or deny preliminary approval within 45 days of certification of completeness of such submission or within such further time as may be consented to by the applicant.

- (2) Upon submission of a complete application for a site plan which involves more than 10 acres, or more than 10 dwelling units, or for a subdivision of more than 10 lots, the Planning Board shall grant or deny preliminary approval within 95 days of the date of certification of completeness of such submission or within such further time as may be consented to by the applicant.
 - (3) Otherwise, the Planning Board shall be deemed to have granted preliminary approval to the subdivision or site plan, and the applicant shall comply with the provisions of § 74-44.
- C. Ancillary powers. Whenever the Planning Board is called upon to exercise its ancillary powers before the granting of a variance as set forth in § 74-8H, the Planning Board shall grant or deny approval of the application within 95 days after submission by the developer of a complete application or within such further time as may be consented to by the applicant. Failure of the Planning 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 Planning Board to act shall be issued on request of the applicant.
 - D. Final approval. Application for final subdivision or site plan approval shall be granted or denied within 45 days of certification of completeness of the application or within such further time as may be consented to by the applicant.
 - E. Preliminary and final site plan approval. When considering an application for preliminary or final site plan approval and approval is granted subject to a condition or conditions to be met, the applicant shall meet the condition or conditions of the approval within six months from the date of the resolution granting the conditional approval. If the applicant can show that literal enforcement of this subsection is impractical or will exact undue hardship, the Planning Board may grant an extension or extensions from this time limitation as may be reasonable within the general intent of this chapter. Application for preliminary and final site plan approval shall be granted within the time limits set forth in N.J.S.A. 40:55D-46 and 40:55D-50.

§ 74-10. Filing of applications.

- A. Applications for development within the jurisdiction of the Planning Board pursuant to the provisions of N.J.S.A. 40:55D-1 et seq. shall be filed with the Board Secretary.
- B. An applicant shall file at least 14 days before the date of the monthly meeting of the Board. He shall provide eight copies of a sketch plat, three copies of an application for minor subdivision approval; three copies of an application for major subdivision approval or three copies of an application for site plan review, conditional use approval, or planned development. At the time of filing the application the applicant shall also file maps or other papers required by virtue of any provision of this chapter or any rule of the Planning Board.
- C. The applicant shall obtain all necessary forms from the Secretary of the Planning Board. The Secretary of the Board shall inform the applicant of the steps to be taken to initiate applications and of the regular meeting dates of the Board.

§ 74-11. Citizens' advisory committee.

The Mayor may appoint one or more persons as a citizens' advisory committee to assist or

collaborate with the Planning Board in its duties, but such persons shall have no power to vote or take other action required of the Board. Such persons shall serve at the pleasure of the Mayor.

§ 74-12. Applications provided to Environmental Commission.

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

§ 74-13. Rules and regulations.

The Board shall adopt necessary rules and regulations 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.

§ 74-14. Review by Attorney and Engineer.

In processing an application for development, whenever an applicant is required to submit deeds, easements, bonds or other guarantees to the Township or to others as a condition of approval, the applicant shall submit the required documents to the Board Secretary within 14 days after the imposition of the requirement by the Board. The Board Secretary shall forward such documents to the Planning Board Attorney and the Township Engineer for review within five days of receipt of the same from the applicant, unless instructed by action of the Board or by direction of the Board Chairman that the review is not required. Unless so instructed, the professional review shall be required, and no condition of approval shall be deemed satisfied until a report from the Planning Board Attorney and the Township Engineer is received by the Secretary indicating that the documents have been reviewed and they either are in a legal and proper form necessary to satisfy the condition imposed by the Board or they require revision to meet the condition imposed. In the event that the documents require revision, the condition shall not be deemed satisfied until the documents have been revised in accordance with the report of the Township Engineer or Planning Board Attorney, unless authorized by the Board.

§ 74-15. Review for completeness of application.

Applications for development within the jurisdiction of the Planning Board shall be reviewed for completeness in accordance with the provisions of § 74-37A of this chapter.

Article II. Zoning Board of Adjustment

§ 74-16. Abolishment.

[Amended 3-12-2003 by Ord. No. 2003-1; 7-24-2006 by Ord. No. 2006-20 *Editor's Note: This ordinance provided that it take effect 10-1-2006.*]

- A. Findings. The Zoning Board of Adjustment was created by ordinance pursuant to the terms of N.J.S.A. 40:55D-69. This aforementioned statute mandates the creation of a Zoning Board of Adjustment upon the adoption of a zoning ordinance unless the municipality is eligible for, and exercises, the option of creating a nine-member Planning Board to exercise all of

the powers and duties of the Board of Adjustment as provided by N.J.S.A. 40:55D-25c(1). The Township meets the criteria established in N.J.S.A. 40:55D-25c(1) and has determined that it is in the public's best interest to abolish the Zoning Board to Adjustment and allow the Planning Board to exercise its powers and duties.

B. Abolishment of Zoning Board of Adjustment; discharge of members.

- (1) The Zoning Board of Adjustment is hereby abolished, and all of the powers and duties granted by law to the Board are hereby transferred to the Planning Board pursuant to the authority established in N.J.S.A. 40:55D-25c(1).
- (2) All members, officers and employees of the Zoning Board of Adjustment as of the effective date of this section shall be discharged from their positions, offices or employment.

C. Reference to Board of Adjustment. All references to the Board of Adjustment contained in this Chapter 74 shall be deemed to refer to the Planning Board.

§ 74-17. Officers.

The Board of Adjustment shall elect a Chairman and Vice Chairman from its members and select a Secretary, who may be either a Board member or another Township employee.

§ 74-18. Attorney.

There is hereby created the office of Attorney to the Zoning Board of Adjustment. The Zoning Board of Adjustment may annually appoint, fix the compensation of or agree upon the rate of compensation of the Zoning Board of Adjustment Attorney, who shall be an attorney other than the Township Attorney.

§ 74-19. Experts and staff.

The Zoning Board of Adjustment may also employ or contact for and fix the compensation of experts and other staff and services as it may deem necessary. The Board shall not authorize expenditures which exceed, exclusive of gifts or grants, the amount appropriated by the Township Committee for its use.

§ 74-20. Rules and regulations.

The Board shall adopt necessary rules and regulations 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.

§ 74-21. Powers and duties.

The following shall apply:

- A. Basic powers. The powers of the Zoning Board of Adjustment shall be in accordance with N.J.S.A. 40:55D-69 et seq., and amendments and supplements thereto, and the provisions of this chapter.

- B. Interpretation. It is further the intent of this chapter to confer upon the Zoning Board of Adjustment as full and complete powers as may lawfully be conferred upon that Board, including, not by way of limitation, the authority, in connection with any case, action or proceeding before the Board, to interpret and construe the provisions of this chapter, or any term, clause, sentence or word hereof, and the Zoning Map, in accordance with the general rules of construction applicable to legislative enactments.
- C. Variances. The Board may, in appropriate cases and subject to appropriate conditions and safeguards, grant variances from the terms of this chapter in accordance with the general or specific rules contained herein, and with the general rules hereby laid down, so that equity shall be done in cases where the strict construction of the provisions of this chapter would work undue hardship. The powers and duties of the Board having been delegated to and imposed upon it by statute, the Board shall in all cases follow the provisions applicable to it in c. 291, P.L. 1975, *Editor's Note: See N.J.S.A. 40:55D-1 et seq.* or subsequent statutes in such case made and provided, and shall furnish to any person requesting the same a copy of its rules and information as to how appeals or applications may properly be filed with the Board for its decision thereon.

§ 74-22. Appeals and applications.

The following shall apply:

- A. Appellant; time. Appeals to the Board of Adjustment may be taken by any interested party affected by any decision of an administrative officer of the Township based on or made in the enforcement of Chapter 190, Zoning, or the Official Map. Each appeal shall be taken within the 20 days prescribed by statute by filing a notice of appeal with the officer from whom the appeal was taken, together with five copies of the notice with the Secretary of the Board of Adjustment. The notice of appeal shall specify the grounds of the appeal. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record on which the action appealed from is taken.

[Amended 3-12-2003 by Ord. No. 2003-1]

- B. Filing. Applications addressed to the original jurisdiction of the Board of Adjustment shall be filed with the administrative officer. Five copies of the application shall be filed. At the time of filing the appeal or application, but in no event less than 20 days prior to the date set for hearing, the applicant shall also file all plot plans, maps, or other papers required by virtue of any provision of this chapter or any rule of the Board of Adjustment. The applicant shall obtain all necessary forms from the Secretary of the Zoning Board of Adjustment. The Secretary of the Board shall inform the applicant of the steps to be taken to initiate proceedings and of the regular meeting dates of the Board. The requirements for a complete application for a variance are contained in § 74-41.
- C. Stays. An appeal stays all proceedings in furtherance of the action in respect of 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 that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by the Superior Court of New Jersey on application or notice to the officer from whom the appeal is taken and on the cause shown.

§ 74-23. Power to reverse or modify decisions.

In exercising the above-mentioned power, the Board of Adjustment may, in conformity with the provisions of c. 291, P.L. 1975, *Editor's Note: See 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 the powers of the administrative officer from whom the appeal was taken.

§ 74-24. Expiration of variance.

- A. Any variance from the terms of this chapter hereafter granted by the reviewing municipal body permitting erection or alteration of any structure or permitting a specific use of any premises shall expire by limitation unless the construction or alteration shall have been actually commenced on every structure permitted by the variance or unless the permitted use has actually commenced within nine months from date of adoption of the resolution granting approval; except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing of an appeal from the decision of the Board of Adjustment to the Township Committee, in use variance cases, or to a court of competent jurisdiction, until termination of such appeal or proceeding.
- B. The reviewing municipal body may grant reasonable extensions of the time limit set forth herein, upon showing of good cause by the applicant. All requests for extensions under this section shall be made in writing setting forth reasons for the request.

§ 74-25. Powers granted by law.

The Board of Adjustment shall have such powers as are granted by law to:

- A. Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of Chapter 190, Zoning.
- B. Hear and decide requests for interpretation of the map or Chapter 190, Zoning, or for decisions upon other special questions upon which the Board is authorized to pass by provisions in Chapter 190, Zoning.
- C. Variances.
 - (1) Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to Chapter 190, Zoning, would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from the strict application of such regulation so as to relieve such difficulties or hardship;
 - (2) Where in an application or appeal relating to a specific piece of property the purposes of this chapter would be advanced by a deviation from the requirements of Chapter 190, Zoning, and the benefits of the deviation would substantially outweigh any detriment,

grant a variance to allow departure from such regulations of Chapter 190, Zoning; provided, however, that no variance from those departures enumerated in N.J.S.A. 40:55D-70d shall be granted under this subsection; and provided further that the proposed development does not require approval by the Planning Board of a subdivision, site plan or conditional use in conjunction with which the Planning Board has power to review a request for a variance pursuant to N.J.S.A. 40:55D-60a of the Municipal Land Use Law.

- D. In particular cases and for special reasons, grant a variance to allow departure from regulations set forth in Chapter 190, Zoning, to permit:
- (1) A use or principal structure in a district restricted against such use or principal structure.
 - (2) An expansion of a nonconforming use.
 - (3) Deviation from a specification or standard pursuant to N.J.S.A. 40:55D-67 pertaining solely to a conditional use.
 - (4) An increase in the permitted floor area ratio as defined in N.J.S.A. 40:55D-4.
 - (5) An increase in the permitted density as defined in N.J.S.A. 40:55D-4, except as applied to the required lot area for a lot or lots for detached one- or two-dwelling-unit buildings, which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision, in which event applications would be made pursuant to Subsection C above. A variance under this subsection shall be granted only by affirmative vote of at least five members of the Board.
- E. 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 Chapter 190, Zoning. In respect of any airport hazard areas delineated under the Air Safety and Hazardous Zoning Act of 1983, N.J.S.A. 6:1-80 et seq., no variance or other relief may be granted under the terms of this section permitting the creation or establishment of a nonconforming use which would be prohibited under the standards promulgated pursuant to that Act, except upon issuance of a permit by the Commissioner of Transportation. An application under this section may be referred to any appropriate person or agency other than the Planning Board for its report, provided that such reference shall not extend the period of time within which the Zoning Board of Adjustment shall act.

§ 74-26. Additional powers.

The Zoning Board of Adjustment shall, in addition to powers specified in § 74-25, have power given by law to:

- A. Reserved areas. Direct issuance of a permit pursuant to N.J.S.A 40:55D-34 for a building or structure in the bed of a mapped street or public drainageway, flood-control basin or public area reserved on the Official Map.
- B. Relationship to a street. Direct issuance of a permit pursuant to N.J.S.A. 40:55D-36 for a building or structure not related to a street.
- C. Others. Grant, to the same extent and subject to the same restrictions as the Planning Board, subdivision or site plan approval pursuant to N.J.S.A. 40:55D-37 et seq. or conditional use

approval pursuant to N.J.S.A. 40:55D-67 whenever the proposed development requires approval by the Board of Adjustment of a variance pursuant to N.J.S.A. 40:55D-70d. The developer may elect to submit a separate application requesting the approval of a variance and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate approval of a variance shall be conditioned upon the granting of all required subsequent approvals by the Board of Adjustment. No such subsequent approvals shall be granted unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and Chapter 190, Zoning. The number of votes of Board members required to grant any such subsequent approvals shall be as otherwise provided in this chapter for the approval in question, and the special vote pursuant to the aforesaid N.J.S.A. 40:55D-70d shall not be required.

§ 74-27. Time for decision.

[Amended 3-12-2003 by Ord. No. 2003-1]

- A. The Board of Adjustment shall render its decision not later than 120 days after the date an appeal is taken from the decision of an administrative officer or the date of certification of completeness of an application for development to the Board of Adjustment.
- B. The review committee of the Board shall certify the completeness of any application within 45 days of the date the application is filed with the administrative officer; otherwise the application shall be deemed complete. The date of certification of completeness of an application for development to the Board of Adjustment shall be determined in accordance with the provisions of § 74-37 of this chapter.
- C. The failure of the Board to render a decision within the applicable time period or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant, and the applicant shall comply with the provisions of § 74-44.
- D. In the event that the developer elects to submit separate consecutive applications for a use variance and then site plan approval, subdivision approval or conditional use approval, respectively, the one-hundred-twenty-day provision shall apply to the application for approval of the variance, but the period for granting or denying any subsequent approval shall be otherwise provided in this chapter.

§ 74-28. Documents required.

On an application for development, no condition of approval shall be deemed satisfied until all deeds, easements, bonds and guarantees required to be submitted to the Township or to others as a condition of approval shall have been reviewed by the Township Engineer and the Attorney for the Zoning Board of Adjustment in accordance with the procedure set forth in § 74-14.

§ 74-29. Annual review of decisions.

The Board of Adjustment shall, at least once a year, review its decisions on applications and appeals for variances and prepare and adopt by resolution a report on its findings on provisions of Chapter 190, Zoning, which were the subject of variance requests and its recommendations for amendment or revision of Chapter 190, Zoning, if any. The Board of Adjustment shall send copies of the report and resolution to the governing body and Planning Board.

Article III. Provisions Applicable to Planning Board and Zoning Board of Adjustment

§ 74-30. Conflicts of interest.

No member of the Planning Board or Zoning Board of Adjustment shall act on any matter in which he has either directly or indirectly any personal or financial interest. Whenever any such member shall disqualify himself from acting on a particular matter, he shall not continue to sit with the Board on the hearing of the matter nor participate in any discussion or decision relating thereto.

§ 74-31. Meetings.

The following shall apply:

- A. Frequency. 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 cancelled for lack of applications for development to process.
- B. Special meetings. Special meetings may be provided for at the call of the Chairman or on the request of any two Board members, which shall be held on notice to its members and the public in accordance with all applicable legal requirements.
- C. Quorum required. No action shall be taken at any meeting without a quorum being present.
- D. Voting. All actions shall be taken by a majority vote of the members present at the meeting except as otherwise required by any provision of N.J.S.A. 40:55D-1 et seq. Failure of a motion to receive the number of votes required to approve an application for development shall be deemed an action denying the application.
- E. Open meetings. 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 Act, c. 231, Laws of 1975. *Editor's Note: See N.J.S.A. 10:4-6 et seq.* 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.

§ 74-32. Minutes.

Minutes of every regular or special meeting shall be kept and shall include the names of the persons appearing and addressing the Board and of the persons appearing by attorney, the action taken by the Board, any findings 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 Township Clerk. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceedings concerning the subject matter of the minutes. This interested party may be charged a fee for reproduction of the minutes for his use as provided for in the rules of the Board.

§ 74-33. Fees.

Editor's Note: See also Art. VI, Fees and Charges, of this chapter. Fees or charges for the submission of applications or for rendering of any service by the Planning Board or Zoning Board of Adjustment or any member of their administrative staffs for the review of an application for development, for

inspections or for taking of appeals shall be set forth in any general fee ordinance of the Township or as established in any ordinance regulating the use and development of land. Any fee paid in connection with an informal review of a concept plan for development for which the developer intends to prepare and submit an application for development shall be a credit toward fees for the review of the application for development.

§ 74-34. Hearings.

The following shall apply:

- A. Rules. The Planning Board and Zoning Board of Adjustment may make rules governing the conduct of hearings before such bodies. These 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 may designate shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, and the provisions of the County and Municipal Investigations Law, P.L. 1953, c. 38 (N.J.S.A. 2A:67A-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 of cross-examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.
- 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 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 expense.
- F. When any hearing before the Planning Board or Zoning Board of Adjustment shall carry over two or more meetings, a member of the Board who was absent for one or more of the meetings shall be eligible to vote on the matter upon which the hearing was conducted, notwithstanding his absence from one or more of the meetings; provided, however, that the Board member has available a transcript or a recording of the meeting from which he was absent and certifies in writing to the Board that he has read the transcript or listened to the recording.

§ 74-35. Hearing notice.

Whenever a hearing is required on an application for development pursuant to N.J.S.A. 40:55D-1 et seq., or as to any matter coming before the Zoning Board of Adjustment, the applicant shall give notice thereof as follows:

- A. Newspaper. Public notice shall be given by publication in the official newspaper of the Township at least 10 days prior to the date of the hearing.
- B. Notice to adjoining property owners. Notice shall be given to the owners of all real property located in this state as shown on the current tax duplicate or duplicates within 200 feet in all

directions of the property which is the subject of hearing, and whether located within or without the Township.

- (1) Such notice shall be given by serving a copy thereof on the owner, as shown on said current tax duplicates, or his agent in charge of the property, or mailing a copy thereof by certified mail to the property owner at his address, as shown on said current tax duplicate or duplicates.
- (2) The above requirements shall be deemed satisfied where condominiums or horizontal property regimes are within 200 feet of the applicant's property by making service in the following manner:
 - (a) If the applicant's property abuts a condominium and the owner of any unit is within 200 feet of the applicant's property and said unit has a unit above or below it, by giving notice to the condominium association.
 - (b) If the applicant's property abuts a horizontal property regime and an apartment of the co-owner is within 200 feet of the applicant's property and such apartment has an apartment above or below it, by giving notice to the horizontal property regime.
 - (c) If the applicant is the owner of the condominium unit or co-owner of an apartment, notice shall be given to all other unit owners or apartment co-owners within 200 feet of the unit or apartment owned or co-owned by the applicant.
- (3) Notice to a partnership owner may be made upon any partner. Notice to a corporate owner may be made by service upon its president, vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. This notice shall include a copy of any maps or documents required to be on file with the Municipal Clerk pursuant to Section 6b of c. 291, Laws of 1975. *Editor's Note: See N.J.S.A. 40:55D-10b.*

- C. Adjacent municipalities. Notice of all hearings on applications for development involving property located within 200 feet of an adjoining municipality shall be given by personal service or certified mail to the clerk of that municipality. This notice shall be in addition to the notice required to be given pursuant to Subsection B to the owners of lands in the adjoining municipality which are located within 200 feet of the subject premises.
- D. County Planning Board. 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 situate within 200 feet of a municipal boundary.
- E. Commissioner of Transportation. 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 State Planning Commission of a hearing on an application for development of property which exceeds 150 acres or 500 dwelling units. Such notice shall include a copy of any maps or documents required to be on file with the Township Clerk pursuant to N.J.S.A. 40:55D-10b.

- G. Proof of service. All notices hereinabove specified in this section shall be given at least 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. When service is made by certified mail, the mailing receipts (white) shall be postmarked by the post officer. A return receipt (green) is not required.
- H. Complete notice. Any notice made by certified mail as hereinabove required shall be deemed complete upon mailing in accordance with the provisions of N.J.S.A. 40:55D-14.
- I. 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 and 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 Township 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.
- J. Documents. Any maps and documents for which approval is sought at a hearing shall be on file and available for public inspection at least 10 days before the date of the hearing during normal business hours in the office of the Township Clerk.
- K. Additional notice; when required. Notice pursuant to Subsections C, D, E and F of this section shall not be required unless public notice pursuant to Subsections A and B of this section is required. Notice under Subsections A and B is not required for:
 - (1) Review of certain site plans as specified in Chapter 131, Site Plan Review, of the Code of the Township of Andover;
 - (2) Minor subdivisions; and
 - (3) Final approval pursuant to N.J.S.A. 40:55D-50.

§ 74-36. List of property owners.

Pursuant to the provisions of N.J.S.A. 40:55D-12c, the Tax Assessor of the Township shall, within seven days after receipt of a request therefor, and upon receipt of payment of the maximum fees provided for in said section of the statute, a minimum of \$10 or \$0.25 per name for a list containing over 40 names, 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 § 74-35B.

§ 74-37. Complete application; decisions.

- A. Checklist requirements for applications for developments are as follows:

[Amended 3-12-2003 by Ord. No. 2003-1; 7-23-2007 by Ord. No. 2007-11]

- Checklist 1 General Requirements
- Checklist 2 Minor Subdivision
- Checklist 3 Preliminary Major Subdivision

Checklist 4	Final Major Subdivision
Checklist 5	Preliminary Site Plan — Conditional Use
Checklist 6	Final Site Plan — Conditional Use
Checklist 7	Appeals, Interpretations, Special Questions, Variances
Checklist 8	Soil Removal

(1) All applications must meet the requirements of the general checklist and the specific application for development checklist, except soil removal applications, which must meet the general and Checklist 8 requirements only. If both preliminary and final approvals of an application for development are being applied for at the same time, the requirements of the general checklist and the preliminary and final checklists shall be met.

(2) See Checklists 1 through 8, which are attached hereto and made a part of this chapter and are included at the end of this chapter.

B. An application for development shall be complete for purposes of commencing the applicable time period for action by a municipal agency when so certified by the municipal agency or its authorized committee or designee. In the event that the agency, committee or designee does not certify the application to be complete within 45 days of the date of its submission, the application shall be deemed complete upon the expiration of the forty-five-day period for purposes of commencing the applicable time period, unless the application lacks information indicated on a checklist as hereinafter specified, a copy of which shall have been provided to the applicant, and the municipal agency or its authorized committee or designee has notified the applicant in writing of the deficiencies in the application within 45 days of submission of the application. The applicant may request that one or more of the submission requirements be waived, in which event the agency shall grant or deny the request within 45 days. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that he is entitled to approval of the application. The municipal agency 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 the 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 agency.

C. Decisions.

(1) The municipal agency shall include findings of fact and conclusions based thereon in each decision on any application for development and shall reduce the decision to writing. The municipal agency shall provide the findings and conclusions through:

(a) A resolution adopted at a meeting held within the time period provided in this chapter for action by the municipal agency on the application for development; or

(b) A memorializing resolution adopted at a meeting held no later than 45 days after the date of the meeting at which the municipal agency voted to grant or deny approval.

Only the members of the municipal agency who voted for the action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution. An action pursuant to N.J.S.A. 40:55D-9 (resulting from the failure of a motion to approve an application) shall be memorialized by resolution as provided above, with those members voting against the motion for approval being the members eligible to vote on the memorializing resolution. The vote on any such resolution shall be deemed to be a memorialization of the action of the municipal agency and not to be an action of the municipal agency; however, the date of the adoption of the resolution shall constitute the date of the decision for purposes of the mailings, filings and publications required under N.J.S.A. 40:55D-10. If the municipal agency fails to adopt a resolution or memorializing resolution as hereinabove specified, any interested party may apply to the Superior Court in a summary manner for an order compelling the municipal agency to reduce its findings and conclusions to writing within a stated time, and the cost of the application, including attorney fees, shall be assessed against the municipality.

- (2) Copies. A copy of the decision shall be mailed by the Board within 10 days of the date of decision to the applicant or, if represented, then to his attorney, without separate charge. A copy of the decision shall also be mailed to all persons who have requested it and who have paid the fee prescribed by the Board for this service. A copy of the decision shall also be filed in the office of the Township Clerk, who shall make a copy of the 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 Township.

§ 74-38. Publication of decision.

A brief notice of every final decision shall be published in the official newspaper of the Township. This publication shall be arranged by the Secretary of the Planning Board or Zoning Board of Adjustment, as the case may be, without separate charge to the applicant. The notice shall be sent to the official newspaper for publication within 10 days of the date of any such decision.

§ 74-39. 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 due or delinquent on the property which is the subject of the application or, if it is shown that taxes or assessments are delinquent on the property, any approvals or other relief granted by either Board shall be conditioned upon either the prompt payment of the taxes or assessments or the making of adequate provision for payment in a manner that adequately protects the Township.

§ 74-40. Disclosure of ownership by corporation or partnership.

- A. A corporation or partnership applying to a municipal agency for permission to subdivide a parcel of land into six or more lots, or applying for a variance to construct a multiple dwelling of 25 or more family units, or for approval of a site to be used for commercial purposes, shall list the names and addresses of all stockholders or individual partners owning at least 10% of its stock of any class, or at least 10% of the interest in the partnership, as the case may be.

- B. If a corporation or partnership owns 10% or more of a stock of a corporation, or 10% or greater interest in a partnership, subject to disclosure pursuant to Subsection A of this section, that corporation or partnership shall list the names and addresses of its stockholders holding 10% or more of its stock, or 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 noncorporate stockholders and individual partners exceeding the ten-percent ownership criteria have been listed.

§ 74-41. Requirements for complete variance application.

When applying for a variance, the applicant shall comply with the following requirements:

- A. The applicant shall furnish proof of compliance with § 74-35 regarding notice and publication of the application.
- B. The applicant shall file a complete application form for the application as approved in the rules and regulations of the Zoning Board of Adjustment of the Township of Andover. The application form shall be filled out completely and, where necessary, supplemented by additional information in order to make it clear to the Board what relief is being sought and accompanied by the appropriate fee.
- C. The applicant shall file with the application one photograph of the subject premises depicting the area for which a variance is sought.
- D. The applicant shall file with the application 14 certified and sealed copies of a plot plan or survey, prepared to scale, on a scale not less than one inch equals 50 feet. The plot plan or survey shall contain the following information. The plot plan for a single-family residence shall be prepared, certified and sealed by a licensed land surveyor. For plans other than single-family, the site plan shall be prepared by a licensed professional engineer, architect or land surveyor as required by law.
 - (1) All structures within 200 feet of the property which is the subject of the application.
 - (2) North point.
 - (3) Dimensions of lot lines and structures.
 - (4) Lot area, in total square feet, or acreage to the nearest hundredth (e.g., 13.57).
 - (5) Title block containing tax block and lot numbers; revision lines should be in vertical lines along the left of the title block.
 - (6) Zoning district(s).
 - (7) Names of the road or roads on which the lot fronts.
 - (8) Easements and rights-of-way, if any.
 - (9) Location of streams, if any.
 - (10) Location of all existing structures on subject premises and distances of the same from lot lines.

- (11) Location of the proposed structure or change, showing the front, rear and side yard dimensions.
 - (12) Building area allowed (draw lines showing required front, rear and side yard setbacks).
 - (13) Location, arrangement and dimensions of parking area, driveway or service areas.
 - (14) Names of adjoining property owners.
 - (15) Location of all buildings on all adjoining properties (including all setbacks).
 - (16) Description of the general topography of the land.
 - (17) Proposed location of wells and septic on lot.
 - (18) Such other pertinent information as is required in any pertinent section of Chapter 190, Zoning, governing the application.
 - (19) A key map showing the following. The scale of the key map portion of the plat shall be not less than one inch equals 400 feet.
 - (a) The entire tract clearly delineated by crosshatching, shading or other appropriate means, distinguishing it from adjoining lands.
 - (b) Adjoining properties.
 - (c) The tax map lot and block designation of the subject premises and of adjoining lands.
 - (d) The street on which the subject premises is located, including state or county route number and the common road name.
 - (e) Reference meridian.
- E. The applicant shall file, with the application, a statement complying with the provisions of N.J.S.A. 40:55D-48.1 and/or 40:55D-48.2 (statement of ownership, interest of corporation or partnership).
- F. Affidavit of ownership shall be filed with the application.
- G. The applicant shall file with the application a proposed form of notice to be published in the newspaper and to adjoining landowners in accordance with N.J.S.A. 40:55D-12. The notice shall state the lot and block numbers of the property, the specific use or uses proposed, and the variances being sought so far as known, together with the numbers of the ordinances from which the variances are sought, stating the time and place of hearing and the date after which the application may be inspected and other approvals sought (e.g., site plan, conditional use, subdivision, appeals, interpretations, etc.)

§ 74-42. Amendments to applications and documents.

In the event an applicant submits a revised application or a revised form of any document for which an approval is sought or a revision to a document is required to be made by the reviewing municipal

agency, the applicant shall submit, in writing, with the revision or revised document, a detailed description of the revisions made, including their page numbers or other location in the document, and an affidavit stating that this is a complete list of the revisions made and that no other revisions have been made since _____ (insert date), date of last revision.

§ 74-43. Conditional approvals.

- A. Conditions precedent. Whenever any application for development is approved subject to specified conditions intended to be fulfilled before the approval becomes effective, said conditional approval shall lapse and become null and void unless all specified conditions are fulfilled within six months of the date of conditional approval.
- B. The fulfillment of all conditions precedent shall be reported in writing to the municipal agency, which may cause such reports to be verified in an appropriate manner. Only upon fulfillment of all conditions shall any subdivision map or site plan be assigned or any required building permit, occupancy permit or zoning permit be issued.
- C. Conditions subsequent. Whenever any application for development is approved subject to conditions which by their terms are incapable of being fulfilled, or are not required to be fulfilled prior to the final approval of the application, the performance of which is not guaranteed by bonds or securities of any type, failure to fulfill any such condition within six months from the date of the final approval of the application for development shall be grounds for the issuance of a stop-work order by the enforcing official and the withholding of any zoning permit, certificate of occupancy or any other approval until such condition or conditions are fulfilled.
- D. Nothing herein contained shall be construed as preventing the municipal agency from specifying a longer period of time within which any specific condition must be fulfilled or from granting, upon an ex parte application, an extension of time for fulfilling a condition for good cause shown.
- E. The fulfillment of all conditions shall be reported in writing to the municipal agency, which may cause such reports to be verified in an appropriate manner. Only upon fulfillment of all conditions shall any subdivision map or site plan be signed or any required building permit, occupancy permit, zoning permit or other required approval be issued.

§ 74-44. Default approvals; applicant's obligations.

An applicant shall comply with the provisions of this section whenever the applicant wishes to claim approval of his application for development by reason of the failure of a municipal agency to grant or deny approval within the time periods specified in the Municipal Land Use Law and this chapter:

- A. The applicant shall provide notice of the default approval to the municipal agency and to all those entitled to notice by personal service or certified mail of the hearing on the application for development; but for purposes of determining who is entitled to notice, the hearing on the application for development shall be deemed to have required public notice pursuant to Subsection a of N.J.S.A. 40:55D-12. The applicant shall arrange publication of the notice of the default in the official newspaper of the municipality, if there is one, or in a newspaper of general circulation in the municipality.
- B. The applicant shall file an affidavit or proof of service and publication with the Secretary of

the Planning Board or Zoning Board of Adjustment, as the case may be.

§ 74-45. Required off-tract improvements.

[Amended 3-12-2003 by Ord. No. 2003-1]A developer, as a condition of approval of an application for development, may be required to pay impact fees, or a pro rata share of the cost of providing only reasonable and necessary street improvements, transportation improvements, water facilities, sewage facilities, drainage facilities, and easements therefor, located outside the property limits of the development but reasonably related to construction or improvements within the development as set forth herein.

- A. Improvements to be constructed at the sole expense of the developer. In cases where an off-tract improvement or improvements are reasonably related to construction or improvements within the development, and where no other property owners receive a special benefit thereby, the reviewing municipal board shall require the developer, as a condition of approval, at the developer'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.
- B. Contributions by developer toward required off-tract improvements.
 - (1) In cases where an off-tract improvement or improvements are reasonably related to construction or improvements within the development, and where the Planning Board determines that properties outside the development will also be benefited by the improvements, such determination shall be made by the Planning Board in writing. Such resolution or determination of the Planning Board shall specify the off-tract improvement or improvements which are reasonably related to construction or improvements within the development, and the terms and conditions which shall be imposed upon the developer to insure the successful and reasonable implementation of the same. General criteria to be considered by the reviewing municipal board include the total cost of the off-tract improvement, the benefits conferred and the needs created by the development, the population and land use projections for the general area of the developer's property and other areas to be served by the off-tract improvement, the estimated time for construction, and the condition and periods of usefulness of the improvement, which periods may be based in part upon the criteria of N.J.S.A. 40A:2-22. In addition, the need to protect the health, safety and general welfare of the Township and the area should be considered as well as the Township development ordinances and Master Plan. The Board may seek the assistance of the Board Attorney, Engineer and any other consultants, qualified experts or Township officials.
 - (2) In the event that the reviewing municipal board determines that one or more improvements constitute off-tract improvements, the board shall notify the Township Committee, specifying the board's recommendation relative to the estimated cost of the same, the developer's prorated share of the cost, and possible methods or means to implement the same, including but not limited to performance and maintenance guarantees, cash contributions, development agreements, construction by the developer or construction by the Township.
 - (3) The reviewing board shall not grant final approval on the development until all aspects of such conditions have been mutually agreed upon by both the developer and the Township Committee and a written resolution to that effect by the Township Committee

has been transmitted to the reviewing municipal board.

C. Methods of construction. When the recommendation of the reviewing municipal board is received by the Township Committee, together with estimates of the cost of construction, the Township Committee shall then decide whether the off-tract improvement is to be constructed by the Township as a general improvement, by the Township as a local improvement, by the applicant solely, or by the applicant under a formula providing for partial reimbursement by the Township for benefits to properties other than the development.

D. Methods of implementation.

- (1) Performance and maintenance guarantees. The reviewing municipal board may require a performance guarantee and/or maintenance guarantee to insure the construction of an off-tract improvement as a condition of approval of the development.
- (2) Developer's agreement. The reviewing municipal board may require as a condition of approval a developer's agreement to be entered into between the applicant and the Township Committee governing the installation of improvements within and outside of the development, including off-tract improvements. Said agreement shall be approved as to form by the reviewing municipal board, board attorney and board engineer. The agreement shall specify the manner of construction of the improvements, the amount of cash contributions, and amount and form of performance and maintenance guarantees, the timing of the installation and payment of contributions and the posting of performance guarantees and maintenance guarantees and other appropriate obligations of the parties.
- (3) Cash contributions; method of payment. Where a cash contribution is required by this chapter, such contributions shall be deposited with the Treasurer of the Township with a copy of the applicant's transmittal letter forwarded to the Township Committee, the Township Engineer and the Planning Board. Any and all monies received by the Treasurer shall be deposited in an escrow account for the purpose of undertaking the improvements specified. Where the Township has received funds from a developer for the purpose of providing facilities, the Township shall deposit those funds in an interest-bearing bank account until used. If the Township has not expended those funds in eight years of collection, the funds shall be returned to the developer with accrued interest, upon application of the developer for the return of the funds.
- (4) 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 a cash contribution, guarantee or other surety of the applicant in lieu of such conditions imposed by the Township.
 - (b) Where a benefit assessment or other similar tax levy is imposed upon the applicant for the off-tract improvement provided.
 - (c) Where the applicant, where permitted by the reviewing municipal board, undertakes the improvement in lieu of the Township, subject to standards and other conditions as may be imposed by the board and Township Committee.

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

(a) Streets; circulation improvements. For street widening, alignment, corrections, channelization of intersections, constructions 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 computed considering the following factors, and the ratio thus calculated shall be increased by 10% for contingencies:

Total cost of the roadway improvement
and/or extension

Future peak-hour traffic

=

Developer's cost

Future peak-hour traffic generated by
the development

[1] Existing and projected traffic patterns.

[2] Quality of roads, sidewalks and other improvements in the area.

[3] Other factors related to the need created by the application and the anticipated benefit thereto.

(b) Water distribution facilities. For 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 and properties in gallons to the sum of the deficiency in gallons per day for the existing system or subsystem and the estimated daily use of water for the proposed development. The ratio thus calculated shall be increased by 10% for contingencies.

(c) Sanitary sewage distribution facilities. For 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 period 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 ratios thus calculated shall be increased by 10% for contingencies and shall be the ratio used to determine the cost to the applicant.

(d) Stormwater and drainage improvements. For stormwater and drainage improvements,

including the installation, relocation or replacement of storm drains, culverts, catch basins, manholes, riprap or improved drainage ditches and appurtenances thereto and the relocation or replacement of other storm drainage facilities or appurtenances associated therewith, the applicant's proportionate share shall be determined as follows:

- [1] The capacity and the design of the drainage system to accommodate stormwater runoff shall be based on a method described in Urban Hydrology for Small Watershed Technical Release 55, Soil Conservation Service, United States Department of Agriculture, January 1975, as amended, and shall be computed by the developer's engineer and approved by the Township Engineer or Board Engineer.
- [2] The capacity of the enlarged, extended or improved system required for the development and areas outside of the developer's tributary to the drainage system shall be determined by the developer's engineer, subject to approval of the Township Engineer. The plans for the improved system shall be prepared by the developer's engineer and the estimated cost of the enlarged system calculated by the developer's engineer. The prorated share for the proposed improvement shall be computed as follows:

Total enlargement or improvement cost of drainage facilities		Total tributary cfs
	=	
Developer's cost		Development cfs

- [3] The ratio thus calculated shall be increased by 10% for contingencies.
 - [4] Where no drainage system exists which will receive the flow of surface water from the development, the developer shall furnish all drainage rights-of-way deemed necessary by the reviewing municipal board.
- E. Watercourses. Where a development is traversed by a watercourse, drainageway, channel or stream, there shall be provided a stormwater easement or drainage right-of-way conforming with the lines of such watercourse and such further width or construction as both will be adequate for the purpose to the Township or other entity as designated by the reviewing municipal board.
 - F. General municipal facilities. (Reserved)
 - G. Cultural facilities. (Reserved)
 - H. Educational facilities. (Reserved)
 - I. General considerations. In calculating the proportionate or pro rata amount of the cost of any required off-tract improvement which shall be borne by the developer, the reviewing municipal board shall also determine the pro rata share of the cost to be borne by other owners of lands which will be benefitted by the proposed improvements, if any.

- J. Impact fees. For the purpose of this subsection, "impact fees" means cash or in-kind payments required to be paid by a developer as a condition of approval of a development for the developer's proportional share of the cost of providing new or expanded reasonable and necessary public improvements located outside the property limits of the development but reasonably related to the development based upon the need for the improvement created by, and the benefits conferred upon, the development.

Article IV. Appeals

§ 74-46. Appeals to Zoning Board of Adjustment.

Any appeal to the Zoning Board of Adjustment may be taken by any interested party affected by any decision of the Zoning Officer of the Township based on or made in the enforcement of Chapter 190, Zoning, or the Official Map. Such appeal shall be taken within 20 days by filing a notice of appeal in the manner set forth in § 74-22 of this chapter and in accordance with the provisions of N.J.S.A. 40:55D-64, as amended.

Article V. General Provisions

§ 74-47. Definitions.

Whenever a term is used in this chapter which is defined in c. 291, Laws of 1975, *Editor's Note: See N.J.S.A. 40:55D-1 et seq.* that term is intended to have the meaning set forth in the definition of the term found in said statute, unless a contrary intention is clearly expressed from the context of this chapter.

§ 74-48. Repealer.

All sections of Chapter 159, Subdivision of Land, Chapter 190, Zoning, Chapter 131, Site Plan Review, or any other ordinance of the Township which contain provisions contrary to the provisions of this chapter shall be and are hereby, to the extent of such inconsistency, repealed.

§ 74-49. Regulations continued.

Pursuant to the provisions of c. 291, Laws of 1975, § 81, *Editor's Note: See N.J.S.A. 40:55D-1 et seq.* the substantive provisions of the existing Chapter 159, Subdivision of Land, Chapter 190, Zoning, and Chapter 131, Site Plan Review, of the Township and the development regulations set forth therein shall continue in full force and effect for a period of six months from the effective date of said Act or until the Township exercises the authority delegated by the Act to regulate development, whichever occurs first.

§ 74-50. Lot-line adjustment approvals.

[Amended 3-23-2009 by Ord. No. 2009-03]

- A. Application. An application for approval of a lot-line adjustment shall be submitted to the Township Engineer. The applicant shall submit five copies of the application and a survey prepared by a licensed land surveyor indicating the existing and proposed lot lines and all existing structures and buildings, as well as such other information as the Township Engineer may require. The applicant shall also submit an application fee of \$100 and review fees of \$500. Upon approval of the lot line adjustment, the applicant shall also submit to the

secretary an administrative fee in the amount of \$100 to cover the cost of revisions to the municipal tax maps.

B. Findings. The Township Engineer may approve a lot line adjustment subject to the following criteria:

- (1) The adjustment involves one lot line between two adjoining lots;
- (2) Owner(s) of both lots consent(s) in writing to the adjustment;
- (3) No new lots are created; and
- (4) Both lots are conforming after the adjustment, or any preexisting nonconformities are not increased.

C. Subsequent subdivision. Subsequent subdivision of either of the adjusted lots within two years of the filing of the adjusted lot deeds in the County Clerk's office shall be accepted only as a major subdivision.

§ 74-51. Title.

This chapter shall be known and may be cited as the "Land Use Procedures Ordinance of the Township of Andover."

§ 74-52. Ordinances to be filed with County Planning Board.

The Township Clerk shall file with the County Planning Board copies of all ordinances of the Township relating to land use, such as subdivision, zoning and site plan review ordinances, and all amendments thereto. In accordance with the provisions of N.J.S.A. 40:55D-16, development regulations, except for the Official Map, shall not take effect until a copy thereof shall be filed with the County Planning Board. A zoning ordinance or amendment or revision thereto which, in whole or in part, is inconsistent with or not designed to effectuate the land use plan element of the Master Plan shall not take effect until a copy of the resolution required by N.J.S.A. 40:55D-62 shall be filed with the County Planning Board.

§ 74-53. Protection of freshwater wetlands and streams.

Applicants for major subdivision, site plans and conditional uses, and for "D" variances for nonresidential uses, shall comply with the provisions of § 159-111, Protection of freshwater wetlands. Subsection L deals with the protection of freshwater wetlands and streams and is applicable to those applications.

§ 74-54. Wastewater management plan.

- A. The Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., as well as the New Jersey Department of Environmental Protection Regulations, N.J.A.C. 7:15-1 et seq., require that Andover Township adopt a wastewater management plan. This plan should be included in the Township Master Plan pursuant to N.J.S.A. 40A:55D-28b(5). The funding of said plan, together with any revisions thereto, should be fairly allocated among developers of land who are to benefit from said study.
- B. A wastewater management plan escrow account is hereby created. Said account is to be

permanent in nature and to be used for the payment for the preparation of the original wastewater management plan and any revisions thereto.

- C. All developers of land in Andover Township who anticipate or who may be reasonably expected to construct an on-site disposal system treating 2,000 gallons or more per day, or who expect to apply for connection to a public sewer system, or intend to propose a package plant for their property or propose alternative methods of on-site wastewater disposal, shall participate in the funding of the wastewater management plan.
- D. Each developer shall contribute to the wastewater management account his or its pro rata share of the cost of the preparation of the plan at the time the Township signs the contract for the preparation of the wastewater management plan.
- E. After the completion of the original wastewater management plan, any developer who wishes to supplement and amend the plan may apply to do so at his own cost and expense in lieu of a contribution to the wastewater management plan escrow account calculated as set forth above.

Article VI. Fees and Costs

§ 74-55. Performance and maintenance guarantees.

- A. Whenever it is required as a condition to subdivision approval, site plan approval, or conditional use approval that a performance guarantee must be furnished in favor of the municipality in an amount not exceeding 120% of the estimated cost of any required improvements within a stated time, the time allowed for installation of the improvements for which the performance guarantee has been provided may be extended by the Township Committee by resolution. As a condition of or as a part of any such extension, the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed 120% of the cost of the installation as determined as of the time of passage of the resolution. The Township Committee shall have the authority to review the performance guarantee and have the right to require the applicant to increase the amount of the performance guarantee posted to cover any increase in the cost of the improvements. Said increase shall only be required in the event the Township Engineer, in writing, certifies to an increase in the cost of the improvements.
- B. Upon substantial completion of all required appurtenant utility improvements and the connection of the same to the public system, the obligor may notify the Township Committee in writing of such completion or substantial completion as provided for in N.J.S.A. 40:55D-53d, and, after inspection and report of the Municipal Engineer, the Township Committee may approve, partially approve or reject the improvements. Where partial approval is granted, the bond of the obligor may be reduced, provided that 30% of the amount of the performance guarantee posted may be retained to insure completion of all improvements. Notice shall be given to the obligor as required by N.J.S.A. 40:55D-53e.

§ 74-56. Professional review and expert witness fees.

- A. Escrow deposits. The Planning Board and/or Zoning Board of Adjustment shall require escrow deposits in accordance with the provisions of this section. Such deposits shall be utilized to pay the cost of any professional services incurred for the review of an application for development to the Board. They shall also be utilized to pay the cost of review and/or

testimony by an expert witness or witnesses retained by the Municipal Board. The chief financial officer of the municipality shall make all of the payments to professionals for services rendered to the municipality or approving authority for review of applications for development, review and preparation of documents, inspections of improvements or other purposes under the provisions of N.J.S.A. 40:55D-1 et seq.

- B. Professional services defined. The term "professional services" as utilized herein shall include the services of a duly licensed engineer, surveyor, planner, attorney, scientist, realtor appraiser, or other professional or expert who provides services for review, advice, preparation of reports and/or expert testimony, for inspection of the property and surrounding area and for tests performed in order to assist the Board in the review of the application before it. The municipality shall be entitled to be reimbursed for the review of applications, both as to completeness and as to content, and for the review and preparation of documents, such as but not limited to drafting resolutions, developers' agreements, correspondence regarding an application and inspection of improvements or other purposes under the provisions of N.J.S.A. 40:55D-1 et seq.
- C. Amount of escrow. Subject to the provisions of Subsection D, each applicant shall, prior to the application being ruled complete pursuant to the provisions of the Municipal Land Use Law and this section, submit sums in accordance with § 74-57 of this chapter to be held in escrow in accordance with the provisions hereof.

[Amended 4-13-2009 by Ord. No. 2009-11]

D. Completeness of application.

- (1) The Planning Board and/or the Board of Adjustment or its authorized committee or designee, as the case may be, shall, in conjunction with the appropriate representatives of the staff of the Township of Andover, review said application for development to determine whether the escrow amount set for the above is adequate. In conducting such review said Board shall consider the following criteria:
 - (a) The presence or absence of public water and/or sewer servicing the site.
 - (b) Environmental considerations, including but not limited to geological, hydrological and ecological factors.
 - (c) Traffic impact of the proposed development.
 - (d) Impact of the proposed development on existing aquifer and/or water quality.
- (2) Upon completion of said review, the Board or its authorized committee shall determine whether the escrow amount specified above is sufficient, excessive or insufficient. In the event the Board or its authorized committee shall determine that amount is excessive, it shall specify the amount that shall be deemed sufficient, including a specification, if appropriate, that no escrow be posted. In the event the Board or its authorized committee shall determine the amount specified above is insufficient, it shall so specify and shall further set forth the amount required to be posted in light of the criteria specified herein.
- (3) No application for development shall be deemed complete until such time as the applicant shall have posted with the Township of Andover in cash, certified check or money order the amount of escrow deposit determined by the Planning Board and/or

Board of Adjustment to be required in accordance with the provisions of this section.

- E. Additional escrow deposits. The Board may require additional escrow deposits by the applicant to be posted during the course of the review of an application, provided the original amounts escrowed pursuant to this section have been exhausted and additional professional services or expert services must reasonably be incurred because of the presence of one or more factors enumerated in Subsection D in order to complete the review of the application and to properly decide the same. In the event additional escrow monies are required, they shall not be deemed items required for the application to be complete but may be required as additional information reasonably required to decide the application. In the Board's discretion, their payment may be required as a condition of any approval granted.
- F. Charges for certain professional services to the applicant. The applicant shall be responsible for reimbursing the municipality with regard to certain specific professional services in accordance with the following:

- (1) No applicant shall be required to reimburse the municipality for the cost of attendance by the municipality's professional employees at any regularly scheduled meeting of the municipal agency or board at which a hearing is held on the application. However, the municipality shall be entitled to be reimbursed for the cost of the attendance of its professional consultants at meetings and/or hearings at which the application in question is reviewed. Where review of other applications occurs at the same meeting and/or hearing at which the attendance of the municipality's professional consultant is also required, the cost of the attendance of the municipality's professional consultant shall be reimbursed to the municipality based on the time spent reviewing each application.

[Amended 5-8-2006 by Ord. No. 2006-12]

- (2) The municipality shall be entitled to be reimbursed for attendance of its professional personnel at special meetings of a municipal agency or board which were requested to be called by the applicant.
 - (3) The cost of the preparation of documents, including but not limited to resolutions or memorializing resolutions, setting forth the findings of fact and conclusions of law of the municipal agency or board with respect to an application shall be reimbursable to the municipality. The escrow provisions of N.J.S.A. 40:55D-1 et seq. relating to escrow and escrow fees shall be followed.
 - (4) The fees for other professional services incurred by the Board shall be reimbursed by the applicant to the Township.
- G. Reasonable charges for professional and expert services. No professional personnel submitting charges to the municipality for any of the services referred to in this section shall charge for any of the services at any higher rate or in any different manner than would normally be charged the municipality for similar work as ascertained by the professional's contract of employment with the municipality or by provisions of the municipal salary ordinance. The charges shall be reasonable. Payment of any bill rendered by a professional to the municipality with respect to any service for which the municipality is entitled to reimbursement under this section shall in no way be contingent upon receipt of reimbursement by the developer, nor shall any payment to a professional be delayed pending reimbursement from a developer.

- H. Deposit of escrowed funds; refunds. Deposits received from any applicant in excess of \$5,000 shall be held by the Municipal Treasurer in a special interest-bearing deposit account, and, upon receipt of bills from professionals duly approved by the board or governing body, as appropriate, the Treasurer may use such funds to pay the bills submitted by such professionals or experts. The municipality shall not be required to refund an amount of interest paid on a deposit which does not exceed \$100 for the year. If the amount of interest exceeds \$100, that entire amount shall belong to the applicant and shall be refunded to him by the municipality annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be, except that the municipality may retain for administrative expenses a sum equivalent to no more than 33 1/3% of that entire amount which shall be in lieu of all other administrative and custodial expenses. All sums not actually so expended shall be refunded to the applicant within 90 days after the final decision by the appropriate board with respect to such application, upon certification by the Board Secretary that such application has been finally decided.
- I. Reimbursement for inspection of improvements. The developer shall reimburse the municipality for all reasonable inspection fees paid to the Municipal Engineer for the inspection and/or testing of improvements. The municipality may require the applicant to make a deposit for all or a portion of the reasonably anticipated fees to be paid for the Municipal Engineer for such inspections pursuant to N.J.S.A. 40:55D-53h.
- J. Inspection of improvements. All of the improvements in a subdivision or site plan shall be inspected and approved by the Township Engineer. The subdivider or his agent, employee or contractor shall notify the Township Engineer and the Secretary of the reviewing municipal board when the work is ready for any required inspection specified herein or required to be performed by the Township Engineer, the Construction Official or the appropriate subcode official. This notice shall be given at least 48 hours prior to the start of the construction and at least 48 hours prior to the time the inspection is desired. Inspection shall be performed within three business days of the time for which it was requested. The work shall not proceed in a manner which shall preclude the inspection until it has been made. No underground installation shall be covered until inspected and approved.

§ 74-57. Fee schedule.

[Amended 5-8-2006 by Ord. No. 2006-12; 4-13-2009 by Ord. No. 2009-11]

- A. Minor subdivision (including lot line adjustment and/or amended application):
- (1) Application fee: \$250.
 - (2) Escrow deposit: \$3,000. (Replenish at \$1,500.)
- B. Major subdivision:
- (1) Preliminary major subdivision application fee: \$500 plus \$100 per lot.
 - (2) Resubdivision application fee: \$250 minimum or 25% of preliminary, whichever is greater.
 - (3) Preliminary major subdivision escrow deposit: \$750/lot, \$3,500 minimum (Replenish at 30% of initial deposit.), \$20,000 maximum initial deposit.

- (4) Final major subdivision application fee: \$500 minimum or 25% of preliminary, whichever is greater.
- (5) Final major subdivision escrow deposit: \$250/lot, \$2,500 minimum (Replenish at 30% of initial deposit.), \$10,000 maximum initial deposit. (Section 74-57B(3) applies to combined preliminary and major subdivision applications.)
- (6) Amended preliminary major or final major application fee: \$500.
- (7) Amended preliminary major or final major escrow deposit: \$300/lot, \$2,500 minimum (Replenish at 30% of initial deposit.), \$10,000 maximum initial deposit.

C. Site plan:

- (1) Application fee: \$250 minor; \$500 preliminary major and final major.
- (2) Minor site plan escrow deposit: \$3,000. (Replenish at \$1,500.)
- (3) Preliminary major site plan escrow deposit: \$2,000/acre of disturbance, \$3,500 minimum (Replenish at 30% of initial deposit.), \$20,000 maximum initial deposit.
- (4) Final major site plan escrow deposit: \$1,000/acre of disturbance, \$2,500 minimum (Replenish at 30% of initial deposit.), \$10,000 maximum initial deposit. (Section 74-57C (3) applies to combined preliminary and final major site plan applications.)
- (5) Amended minor, preliminary major or final major application fee: \$250.
- (6) Amended minor, preliminary major or final major escrow deposit: \$3,500. (Replenish at \$1,500.)

D. Variances:

- (1) Appeals and interpretations under N.J.S.A. 40:55D-70a and b:
 - (a) Residential application fee: \$100 each.
 - (b) Commercial/industrial/other application fee: \$500 each.
 - (c) Escrow deposit: \$1,000 each.
- (2) Bulk variance under N.J.S.A. 40:55D-70c:
 - (a) Residential application fee: \$100 each (\$300 maximum).
 - (b) Additions to existing residential structure application fee: \$100 each (\$300 maximum).
 - (c) New dwelling structure/lots on improved street application fee: \$400.
 - (d) New dwelling structure/lots on unimproved street application fee: \$800.
 - (e) Commercial application fee: \$500.

(f) Industrial application fee: \$2,500.

(g) Escrow deposit as identified above, or \$3,000 (Replenish at \$1,500.), whichever is greater.

(3) Use variance under N.J.S.A. 40:55D-70d:

(a) Residential application fee:

[1] Single-family: \$200. Where proposed residential development does not comply with the density requirements of Chapter 190, Zoning, the fee shall be \$200 for each proposed lot not conforming to the density requirements.

[2] Multifamily:

Units	Fee
2 to 5	\$500
6 to 10	\$1,000
11 to 25	\$1,500
26 to 50	\$2,000
51 to 100	\$3,000
101 to 500	\$5,000
501 and up	\$10,000

(b) Commercial application fee: \$500.

(c) Industrial application fee: \$2,500.

(4) Escrow deposit.

(a) Single-family as identified above, or \$2,000 (Replenish at \$1,000.), whichever is greater.

(b) Multifamily, commercial, industrial and others as identified above, or \$3,000 (Replenish at \$1,500.), whichever is greater.

E. Conditional use application fees.

(1) Residential zones: \$300, except for townhouses and commercial recreation.

(2) Multifamily: \$2,500.

(3) Business/residential mix: \$2,500.

(4) Business: \$1,000.

- (5) Commercial recreation: \$2,500.
 - (6) Industrial: \$3,500.
 - (7) Soil removal: \$3,500.
 - (8) BPO/R: \$1,000.
 - (9) BPO/1: \$1,000.
 - (10) Townhouses: \$2,500.
 - (11) All others: \$1,000
 - (12) Escrow deposit as identified above, or \$3,000 (Replenish at \$1,500.), whichever is greater.
- F. Transcription fees, one-hundred-percent estimated costs: \$4.50 per page.
- G. Revision fees for application previously approved: minimum of \$100 or 25% of original fee, whichever is greater.
- H. Concept plan.
- (1) Application fee: \$300.
 - (2) Escrow deposit for minor site plan and minor subdivision: \$2,000.
 - (3) Escrow deposit for major site plan and major subdivision: \$3,000.
- I. Fees for items not covered: \$300.
- J. Special meeting fees: \$650 or the actual cost to the Township of Andover, whichever is greater. The applicant shall deposit the sum of \$650 with the Township at least five days in advance of the special meeting. Any balance owed shall be paid within seven days after the conclusion of the meeting.
- K. Zoning permit: \$100 plus all fees for normal subdivisions and site plans.
- L. Application for certification of nonconforming use under N.J.S.A. 40:55D-68:
- (1) Single-family: \$200.
 - (2) Anything other than single-family: \$500.
- M. Escrow for all other applications:
- (1) Single-family: \$550, or as determined by the Township Engineer.
 - (2) Multifamily, commercial, industrial and others: \$1,000, or as determined by the Township Engineer.
- N. All deposits for engineering, legal and other technical review fees shall be made prior to the

performance of the professional services which the deposit is intended to cover. When an escrow account is reduced to the replenishment amount identified in §§ 74-57A through M, the applicant shall be required to replenish the account to not less than 100% of the original amount required, or as determined by the appropriate Township of Andover official. Failure to deposit the additional sum in accordance with § 74-56E shall render the application incomplete or missing additional information reasonably required to decide the application. In the Board's discretion, the application shall not be heard until such sum is deposited.

- O. All site improvements and utility installations for both site plans and subdivisions shall be inspected during the time of their installation under the supervision of the Township Engineer, Land Use Board Engineer, or Township designee to ensure satisfactory completion. The cost of said inspection shall be the responsibility of the owner who shall pay to the chief financial officer a sum equal to 4% of the amount of the estimated costs for the required improvements for payment of the inspection costs.
- P. Where one application for development includes several approval requests, the sum of the individual required fees shall be paid.

§ 74-58. Liens.

- A. Should any fees for applications for development, expert witness fees, consultant's fees, review fees, inspection fees or fees of any nature connected with an application for development be due and unpaid by an applicant for development and/or owner of the subject property for a period of 14 days after written notice of the amount due was mailed to the owner and applicant, the Township Clerk, or Mayor or Assistant Clerk or other officer or employee of the Township of Andover, may execute a written statement of lien showing the amount due to the Township and may record the same in the Sussex County Clerk's office as a lien on the subject property. The lien shall include interest at the rate of 12% per annum, recording fees and a reasonable attorney fee.
- B. Should the lien remain unpaid, the Township Tax Collector, Clerk or other officer authorized by the Township Committee shall have the power to sell the property to collect the amount of the lien, together with interest, attorney fees, and recording fees, pursuant to N.J.S.A. 54:5-19 et seq. and other applicable laws of the State of New Jersey.