

BOROUGH OF DEMAREST COUNTY OF BERGEN ORDINANCE #1180-26

The following ordinance was introduced at a regular meeting of the Council by title on April 27, 2026 and will be considered for final passage after public hearing thereon, at a meeting of the Borough Council to held at its meeting room in Borough Hall, 118 Serpentine Rd., Demarest, NJ on June 8, 2026 at 7:30 pm.

BOROUGH OF DEMAREST

BERGEN COUNTY, NEW JERSEY

ORDINANCE NO. 1180-26

AN ORDINANCE BY THE BOROUGH OF DEMAREST AMENDING THE BOROUGH OF DEMAREST CODE OF ORDINANCES TO REPEAL CHAPTER 175 ZONING ORDINANCE; TO ADOPT A NEW CHAPTER 175 ZONING ORDINANCE

WHEREAS, the Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq., authorizes and empowers the Borough of Demarest to adopt and amend zoning ordinances to regulate land use and development within its boundaries; and

WHEREAS, on November 1, 2023 the Planning Board of the Borough of Demarest prepared and adopted a Master Plan pursuant to N.J.S.A. 40:55D-28, which sets forth the goals, objectives, and policies for the orderly growth, development, and redevelopment of the municipality; and

WHEREAS, N.J.S.A. 40:55D-62 requires that the zoning ordinance of a municipality substantially implement the land use element of the Master Plan; and

WHEREAS, the Planning Board conducted a periodic reexamination of the Master Plan pursuant to N.J.S.A. 40:55D-89 and issued a report dated January 2, 2026 recommending updates to the zoning ordinance to more fully reflect the goals and objectives of the Master Plan; and

WHEREAS, the Planning Board duly noticed and held a public hearing on the proposed zoning amendments in accordance with N.J.S.A. 40:55D-64 and transmitted its recommendations to the Governing Body; and

WHEREAS, the amendments to Chapter 175 include, but are not limited to, a modified Floor Area Ratio definition, the addition of a combined side yard setback requirements for the single-family zones, and revised setback provisions for specific accessory buildings, uses and structures; and

WHEREAS, these amendments effectuate the purpose of the Municipal Land Use Law, specifically purposes A, C, and I as set forth in N.J.S.A. 40:55D-2; and

WHEREAS, the Ordinance amendments advance the following Master Plan goals as described in the 2023 Master Plan Amendment: Land Use Goal 1, Set and maintain planning standards that contribute to the quality of life for Borough residents by protecting existing land use patterns from development that could adversely affect adjacent parcels, utilities and drainage and Housing Goal 1, to Preserve the scale and character of the Borough's establishes single-family neighborhoods (Residence A through D

Districts).; and

WHEREAS, the Governing Body has reviewed the recommendations of the Planning Board and find that the proposed zoning ordinance amendments are consistent with and substantially implement the land use element of the Master Plan and serve the public health, safety, morals and general welfare of the residents of the Borough of Demarest; and

NOW BE IT ORDAINED THAT all ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency; and

BE IT FURTHER ORDAINED THAT this Ordinance shall be codified as amendments to the chapters set forth herein and shall take effect immediately upon approval and publication of notice of adoption as provided by law; and

BE IT ORDAINED by the Mayor and Council of the Borough of Demarest that the following Zoning Ordinance is hereby adopted.

ARTICLE I
Short Title & Terminology

§ 175-1. Title.

This chapter shall be known and may be cited as the "Borough of Demarest Zoning Ordinance."

§ 175-2. Interpretation of certain terms.

- A. Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular; the word "shall" is mandatory; the word "building" includes the word "structure;" "occupied" or "used" shall be construed to include the words "intended, arranged or designed to be used or occupied."
- B. Whenever a term is used in this chapter, which is defined in the Municipal Land Use Law, as amended and supplemented, such term is intended to have the meaning set forth in the definition of such term as found in the applicable statute, unless a contrary intention is clearly expressed from the context of this chapter.

§ 175-3. Definitions.

- A. Definitions. N.J.S.A. 40:55D-3, Municipal Land Use Law, and its amendments shall also become part of this Article I.
- B. The following terms or words used herein shall be interpreted or defined as follows:

ABANDONMENT

The relinquishment of property, or a cessation of the use of the property, by the owner or lessee without any intention of transferring rights to the property to another owner or of resuming the use of the property.

ACCESSORY STRUCTURE

A structure detached from a principal building located on the same lot and customarily incidental and subordinate to the principle building or use.

ACCESSORY USE

A use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land of building and located on the same lot with the principal use; for example, but not by way of limitation, swimming pools, tennis courts and other active recreational areas.

AFFORDABLE ACCESSORY APARTMENT

An affordable accessory apartment shall be a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance which is created to be occupied by a low- or moderate-income household in accordance with the applicable provisions of the substantive rules at N.J.A.C. 5:93-1 et seq. The affordable accessory apartment may be created within an existing dwelling unit, may be created within an existing structure on the lot or may be an addition to an existing home or accessory building.

ALTERATION

As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

ANIMAL CARE FACILITY

An animal control center or animal shelter, maintained by or under contract with any state, county, or municipality, whose mission and practice is, in whole, or significant part, the rescue and placement of animals in permanent homes or rescue organizations.

ANIMAL RESCUE ORGANIZATION

Any not-for-profit organization which has tax-exempt status under Section 501(c)(3) of the United State Internal Revenue Code, whose mission and practice is, in whole or in significant part, the rescue and placement of animals in permanent homes. This term does not include an entity that is a breeder or broker or one that obtains animals from a breeder or broker for profit or compensation.

ATTIC

The unheated space between the ceiling beams of the top story and the roof rafters, provided it is not on the same level as the living space.

AWNING

A roof-like cover that projects from the wall of a building for the purpose of shielding a doorway or window from the elements.

BASEMENT

A space having 70% or more of its floor-to-ceiling height below the average natural grade.

BREEDER

A person that maintains a dog or cat for the purpose of breeding and selling their offspring.

BROKER

A person that transfers a dog or cat from a breeder for resale by another person.

BUILDING

Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind and intended for use in one place.

BUILDING, ACCESSORY

A subordinate building on the same lot as the principal building or use, whose use is clearly incidental and subordinate to the principal use.

BUILDING, PRINCIPAL

A non-accessory building in which is conducted the principal use of the lot on which it is located.

BUILDING COVERAGE

The ratio of the horizontal area, measured from the exterior surface of the exterior walls of the ground floor, of all principal and accessory buildings on a lot to the total lot area.

BUILDING HEIGHT

The vertical distance measured from the average natural grade all around the building to the peak of the roof.

BUILDING LINE

A line parallel to the street right-of-way line touching that part of a building closest to the street.

CANTILIVER

A part of a beam or structure projecting beyond its support

CELLULAR TELECOMMUNICATIONS TOWER AND ANTENNA

- (1) An antenna that is intended for commercial transmission or reception of personal wireless telephone services communications and including commercial mobile services communications and licensed wireless communications and common carrier wireless exchange access services and also including any tower or other supporting structures and equipment necessary for such transmission or reception.
- (2) Expressly omitted from this definition are those antennas intended for personal private use.

CHILD CARE CENTER

Any facility which is maintained for the care, development or supervision of six or more children under six years of age who attend for less than 24 hours per day and which is licensed by the New Jersey Department of Human Services.

CHIMNEY

A structure containing one or more flues for drawing off emissions from stationary sources of combustion.

CLUB

A group of people organized for a common purpose to pursue common goals, interests, or activities and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and bylaws.

CLUB FACILITIES ACCESSORY TO A CLUBHOUSE

Parking facilities, tennis court(s); swimming pool(s); children recreation areas; paddle tennis court(s); putting greens; driving range; shuffleboard or bocci court(s); cabana(s); pump rooms; storage facilities; maintenance facilities; golf cart buildings; snack bar(s); and the full panoply of typical uses associated with a golf club.

CLUB FACILITIES ACCESSORY TO SECONDARY SOCIAL FACILITY

Parking facilities, putting green(s), driving range(s), golf cart/storage building, and maintenance buildings.

CLUBHOUSE

A golf course facility with dining room(s); banquet facilities; grill room(s); bar(s); a pro shop; golf bag room(s); locker room, shower and lavatory facilities; club offices; card room(s); and the full panoply of typical uses associated with such a facility.

COFFEE HOUSE

An establishment that serves primarily prepared coffee and other hot drinks as well as light snacks.

COMMERCIAL USE

Activity involving the sale of goods or services carried out for profit.

COMMUNITY CENTER

Concentration of activities, services, and land uses that serve, and are focal points for, the immediate neighborhoods and used for recreational, social, educational, and cultural activities.

COMMUNITY RESIDENCE

A facility licensed pursuant to P.L. 1977, c.448 (C.30:11B-1 et seq.) providing food, shelter, and personal guidance under such supervision as required, to no more than 15 developmentally disabled or mentally ill persons, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to group homes, halfway houses, intermediate care facilities, supervised apartment living arrangements, and hostels. Such a residence shall not be considered a health care facility within the meaning of Health Care Facilities Planning Act, P.L. 1971, c.136 (C.26:2H-1 et al.)

COMPOST

Relatively stable decomposed organic matter.

COMPOSTING

A controlled process of degrading organic matter by microorganisms.

CONDEMNATION

The exercise by a governmental agency of the right of eminent domain.

CONDITIONAL USE

A use permitted in a particular zoning district only upon showing that such use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in the zoning ordinance and authorized by the approving authority.

CONDITIONS OF APPROVAL

Requirements established by the approving authority before preliminary or final approval of an application for development becomes effective.

CONSERVATION AREA

Environmentally sensitive area with characteristics such as steep slopes, wetlands, floodplains, high water tables, forest areas, endangered species habitat, or dunes, or areas of significant biological productivity or uniqueness that have been designated for protection from any activity that would significantly alter their ecological integrity, balance, or character.

CONTAINER

Any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

COUNTRY CLUB

A recreational facility, usually restricted to members and their guests, that generally includes a clubhouse, dining and eating establishments, and recreational facilities such as golf courses, tennis courts, and swimming pools.

COURTYARD

Landscaped outdoor areas that are walled for privacy.

CURB

A stone, concrete, or other improved boundary marking the edge of the roadway or paved area.

DECK

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

or posts.

DENSITY

The number of families, individuals, dwelling units, households, or housing structures per unit of land.

DORMER

A projection from a sloping roof that contains a window.

DRIVEWAY

A private roadway providing access to a street or highway

DUMPSTER

An exterior waste container designed to be mechanically lifted by and emptied into or carted away by a collection vehicle.

DWELLING

A structure or portion thereof that is used exclusively for human habitation.

DWELLING, MULTIFAMILY

A building containing three or more dwelling units. Including units that are located one over another.

DWELLING, SINGLE-FAMILY

A building containing one dwelling unit and that is not attached to any other dwelling by any means and is surrounded by open space or yards.

DWELLING, TOWNHOME/TOWNHOUSE

A one-family dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical common fire-resistant walls.

DWELLING, TWO-FAMILY

A single building containing two dwelling units.

DWELLING UNIT

One or more rooms, designed, occupied, or intended for occupancy as separate living quarters, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

EQUIPMENT ROOM

A room consisting of mechanical equipment necessary for the operation of the dwelling, not intended for occupancy.

EXTERIOR WALL

Any wall that defines the exterior boundaries of a building of structure.

FAMILY DAY CARE

The private residence of a family day care provider, which is registered as a family day care home pursuant to the Family Day Care Provider Registration Act.

FENCE

A constructed barrier of any artificial material or combination of materials erected to enclose, screen, or separate areas.

FENCE, GARDEN

A temporary fence designated for separating a section of yard to protect a garden, made of wood, metal, or wire, and supported by posts.

FENCE, LIVING

Plantings created by human effort consisting of the growth or placement of hedges, trees, bushes, or any other plants, or any combination thereof, creating a barrier or boundary.

FLOOR AREA, GROSS

The total area of all floors of the principal building on a lot.

FLOOR AREA, NET

The total area of the gross floor area of a building, after excluding stairwells, elevator shafts, equipment rooms, attics and basements.

FLOOR AREA RATIO (FAR)

The net floor area of all buildings on a lot divided by the total lot area.

GARAGE, PRIVATE

A structure that is accessory to a single- or two-family dwelling, is used primarily for the parking and storage of vehicles owned and operated by the residents thereof, and is not a separate commercial enterprise available to the general public.

GAS STATION

An establishment used for the retail dispensing or sales of vehicular fuels.

GOLF COURSE

A tract of land for playing golf with 18 holes consisting of tees, greens, fairways and hazards.
[Added 8-20-2001 by Ord. No. 840]

GOLF COURSE WITH CLUB FACILITIES

A golf course with any of the facilities comprising club facilities accessory to a clubhouse and may include secondary social facility and club facilities accessory to a secondary social facility.

[Added 8-20-2001 by Ord. No. 840]

GRADE

(1) When used in conjunction with the terms “existing,” “Finished,” or “natural,” grade is the same as “elevation”;

(2) when used as a measurement, grade refers to the percentage of rise or descent of a sloping surface.

GRADE, FNISHED

The final elevation of the average ground level adjoining a building at all exterior walls after development.

GRADE, AVERAGE NATURAL

An average of a natural grade adjacent to the perimeter of a building measured at points 10 feet apart starting at the lowest elevation. Measured prior to any alterations of the grade and prior to construction.

GRADE, NATURAL

The elevation of the ground level in its natural state, before construction, filing, or excavation.

HOME OCCUPATION

Any activity carried out for financial gain by a resident and conducted in the resident's dwelling unit.

HOME PROFESSIONAL OFFICE

A home occupation consisting of the office of a practitioner of a recognized profession.

IMPERVIOUS SURFACE

A surface covered with a layer of material that is highly resistant to water infiltration. Examples of impervious surfaces include asphalt, brick, pavers, compacted surfaces, including stone roadways, driveways, parking areas, walkways, patios' buildings, concrete, metal and most structures.

IMPROVED LOT COVERAGE

The part of the site that is covered by buildings, accessory buildings, accessory uses, accessory structures, impervious or pervious parking areas, driveways, walls, walkways, pavers or similar improvements, and any other structures or impervious surfaces.

INSTRUCTIONAL USE

Uses for the teaching and practice of dance, drama, art, language, martial arts, music, aerobics, sports, fitness, photography, and the like.

ISOLATED LOT

An undeveloped, undersized lot in separate ownership from surrounding property and not meeting area requirements for the zone in which it is located.

LOT or PLOT

A designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be separately owned, used, developed, or built upon, whose frontage is on a public street or on a private street of record.

LOT, CORNER

A lot or parcel of land abutting upon two or more streets at their intersection or upon two parts of the same street, forming an interior angle of less than 135°. The minimum frontage is to be maintained on all streets. The approving authority is to designate the front of the building, and then the yard opposite the designated front of the building shall be designated as the rear yard.

LOT, THROUGH

A lot fronting on two (2) parallel streets or on two (2) streets that do not intersect at the boundaries of the lot.

LOT DEPTH

The average distance measured from the front lot line to the rear lot line.

LOT FRONTAGE

The length of the front lot line measured at the street right-of-way line.

LOT LINE

A line of record bounding a lot that divides one lot from another lot or from a public or private street or any other public space.

LOT LINE, FRONT

The lot line separating a lot from a street or right-of-way.

LOT LINE, REAR

The lot line opposite and most distant from the front lot line. In the case of a triangular or otherwise irregularly shaped lots, a line ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

LOT LINE, SIDE

Any lot line not a front lot line or a rear lot line.

LOT WIDTH

The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line.

MARIJUANA (CANNABIS)

All parts of the plant *Cannabis sativa*, Linnaeus, *Cannabis indica* or *Cannabis ruderalis*, whether growing or not; the seeds thereof, the resin, whether crude or purified, acted from any part of the plant; and every compound, manufacture, salt derivative, mixtures, or preparation of the plant, its seeds, or resin. Cannabis also means the separate resin, whether crude or purified, obtained from cannabis. Cannabis does not include the mature stalks of the plant, fiber provided from the stalks, oil or cake made from the seeds of the plant, or any other compound, manufacture salt derivative mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination. For purposes of this Chapter, Cannabis does not mean Industrial Hemp.

MEDICAL OFFICE

The office of a licensed medical or health care practitioner providing health care services to a person for the purpose of maintaining or restoring a person’s physical or mental health, including but not limited to a physician, dentist, chiropractor, podiatrist, osteopath, acupuncturist, optometrist, orthotist, occupational or speech therapist, and psychologist. The term “licensed” is defined in the New Jersey Administrative Code.

NONCONFORMING LOT

A lot, the area, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

NONCONFORMING STRUCTURE OR BUILDING

A structure or building, the size, dimension or location of which was lawful prior to the adoption, revision or amendment of the zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

NONCONFORMING USE

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

OFF-STREET PARKING SPACE

A parking space that is not located on a dedicated street right-of-way and that is directly accessible to an access aisle.

OFFER FOR SALE

To sell, offer for sale or adoption, advertise for the sale of, barter, auction, giveaway or otherwise dispose of a dog or cat.

OUTDOOR DINING

A designated area of a restaurant or casual restaurant, but outside the principal building, and where patrons may sit at tables while consuming food and beverages.

PARKING SPACE

A space for the parking of one motor vehicle and having an area of not less than 180 square feet, exclusive of passageways and aisles appurtenant thereto, with a minimum length of 20 feet and contiguous with the principal use driveway.

PERGOLA

An open air structure consisting of vertical supports and an open lattice or crossbeam roof permanently opened.

PERSONAL SERVICE SHOPS

Establishments primarily engaged in providing services involving the care of a person or their personal goods or apparel. Examples include dry cleaners, salons, barber shops, travel agencies, and the like.

PLACE OF WORSHIP

A building or structure, or groups of buildings or structures, that by design and construction are primarily intended for conducting organized religious services and associated accessory uses.

PORCH

A roofed, open area, which may be screened, attached to or part of a building, and with direct access to or from the Principal Building

PREMISES

A lot, parcel, tract, or plot of land together with the buildings and structures thereon.

PRINCIPAL USE

The primary or predominant use of the premises.

PROFESSIONAL OFFICE

A room or group of rooms used for conducting the affairs of a bank, business, profession, industry, or government and generally furnished with desks, tables, files, and communication equipment.

RESTAURANT

An establishment where food and beverages are prepared, served, and consumed on site and patrons are served by waiters/waitresses. Restaurants may also include take-out and delivery services.

RESTAURANT, CASUAL

An establishment that sells pre-prepared or rapidly prepared wrapped food directly to the customer at a counter in bags or on trays for consumption on or off the premises, such as a bagel shop, coffee shop, delicatessen, cafe, etc.

RETAIL BUSINESS

Establishments engaged in selling goods or merchandise to the surrounding neighborhood for personal or household consumption and rendering services incidental to the sale of such goods.

RIGHT-OF-WAY (ROW)

The boundary between the total width of property owned by the public body, whether or not it is dedicated as a street, road or roadway and over which the public has the right of passage and maintenance responsibility.

ROOF, FLAT

A low-slope roof with a pitch of 20 degrees or less for more than 50 % of the roof area.

SATELLITE EARTH STATION

Any apparatus, building, or structure which is designed for the purpose of receiving television, radio, microwave, satellite or similar signals in connection with what is commonly referred to as a dish-type antenna.

SECONDARY SOCIAL FACILITY

An additional building other than the clubhouse with sit down eating areas and kitchen(s) and bar(s) for serving breakfast and lunch and snacks; locker rooms and showers and lavatory facilities; card room(s); pro shop; bag room; storage space; and the full panoply of typical uses associated with such a facility. Banquet facilities are expressly prohibited. Supper is specifically excluded, excepting for sporadic barbecues and special events occurring not more than three times a month between May 1 and September 30.

SETBACK

The distance between a building or structure and any lot line.

SHED

An accessory building over 100 sq. ft. used solely for storage purposes.

SHED, SMALL

An accessory building of 100 sq. ft. or less used solely for storage purposes.

SIDEWALK

The portion of a road right-of-way paralleling and usually separated from the cartway, paved and designates for preferential or exclusive use by pedestrians.

SIGHT TRIANGLE

A 15 ft. triangular-shaped portion of land established at street intersections in which nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection.

SIGN

Any object, device, display, or structure, or part thereof, situated outdoors or indoors, that is used to advertise, identify, display, or direct or attract attention to an object, person, institution, organization, business, product, service, event, or location by means of words, letters, figures, design, symbols, fixtures, colors, illumination, or projected image.

SIGN, BILLBOARD

A commercial sign that directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located.

SIGN, BUSINESS

A sign that directs attention to a business or profession conducted, or to a commodity or service sold, offered, or manufactures, or to an entertainment offered on the premises where the sign is located.

SIGN, CONSTRUCTION

A temporary sign erected on the premises where construction is taking place, during the period of such construction, indicating the names of the architects, engineers, landscape architects, contractors or similar artisans, and the owners, financial supporters, sponsors, and similar individuals or firms having a role or interest with respect to the structure of project.

SIGN, FREESTANDING

A sign supported by structures or supports that are placed on or anchored in the ground or at ground level and which are independent of any building or other structure. Unless otherwise limited or restricted, a freestanding sign may be either a freestanding monument sign or a freestanding pole sign.

SIGN, MONUMENT

A freestanding sign, other than a pole sign, in which the entire bottom is in contact with or is close to the ground.

SIGN, OPEN HOUSE

Temporary, off-premises signs used to direct prospective purchasers to a house for sale.

SIGN, POLITICAL

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

SIGN, PORTABLE

Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to, signs to be transported on wheels; signs on vehicles; and signs on balloons or umbrellas.

SIGN, PROJECTING

A sign that is wholly or partly dependent upon a building for support and that projects more than twelve inches from such building

SIGN, REAL ESTATE

A sign pertaining to the sale or lease of the premises, or a portion of the premises, on which the sign is located.

SIGN, SIDEWALK

Any temporary freestanding display located on the sidewalk or sidewalk area adjacent to a public roadway or storefront.

SIGN, TEMPORARY

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

SIGN, WALL

All flat signs of solid-face construction and/or individual letters, which are placed against a building or other structure and attached to the exterior front, rear, or side wall of any building or other structure, so that the display surface is parallel with the plan of the wall. Signs painted on an exterior wall shall be deemed to be wall signs subject to all applicable requirements.

SIGN, WINDOW

A permanent sign that is painted or mounted onto a windowpane, or that is hung directly inside a window solely for the purpose or effect of identifying any premises from the sidewalk or street; or a temporary sign advertising special sales, events, or products.

SIGN AREA

The entire face of a sign, including the advertising surface and any framing, trim, or molding but not the supporting structure, unless the same are illuminated.

SPORTS COURT

Paved surfaces, designed and built to accommodate a variety of athletic purposes or recreational pastimes, such as tennis, basketball, and roller hockey.

STORY

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

STREET

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

STRUCTURE

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

SWIMMING POOL

A water-filled enclosure, permanently constructed or portable, having a depth of more than 24 inches below the level of the surrounding land, or an above- surface pool having a depth of more than 24 inches, designed, used, and maintained for swimming and bathing.

TEMPORARY STORAGE CONTAINER

A container designed for the outdoor storage of personal property for temporary use, which is to be delivered and removed by vehicle, excluding cargo containers.

TRAILER

A structure standing on wheels, towed or hauled by another vehicle, and used either for short-term human occupancy (also known as a “Camper”); carrying materials, goods, or objects; or as a temporary office.

WALL

A continuous vertical structure that encloses or divides an area of land.

WALL, GARDEN

A wall under two feet in height.

WALL, RETAINING

A wall over two feet in height that is constructed between lands of different elevations to stabilize the surfaces, prevent erosion, and/or protect structures.

YARD

An open space that lies between the principal building or buildings and the nearest lot line.

YARD, FRONT

A space extending the full width of the lot between the principal building and the front lot line and measured perpendicular to the building at the closest point to the front lot line.

YARD, REAR

A space extending across the full width of the lot between the principal building and the rear lot line and measured perpendicular to the building to the closest point of the rear lot line.

YARD, SIDE

A space situated between the building and the side lot line and extending from the front yard to the rear yard.

ARTICLE II
Establishment of Districts

§ 175-4. Districts enumerated.

For the purpose of this chapter, the Borough of Demarest is hereby divided into classes of districts as follows:

R-A	Single-Family Residence
R-BB	Single-Family Residence
R-B	Single-Family Residence
R-C	Single-Family Residence
R-D	Single-Family Residence
CB-I	Community Business I
OL	Overlay Cellular Telecommunications
G	Golf Course
R-MF	Residential Multifamily
R-MF-2	Residential Multifamily-2 Overlay District
R-MF-3	Residential Multifamily-3 District
AH	Affordable Housing
HARP	Hardenburgh Avenue Redevelopment Plan

§ 175-5. Interpretation of boundaries.

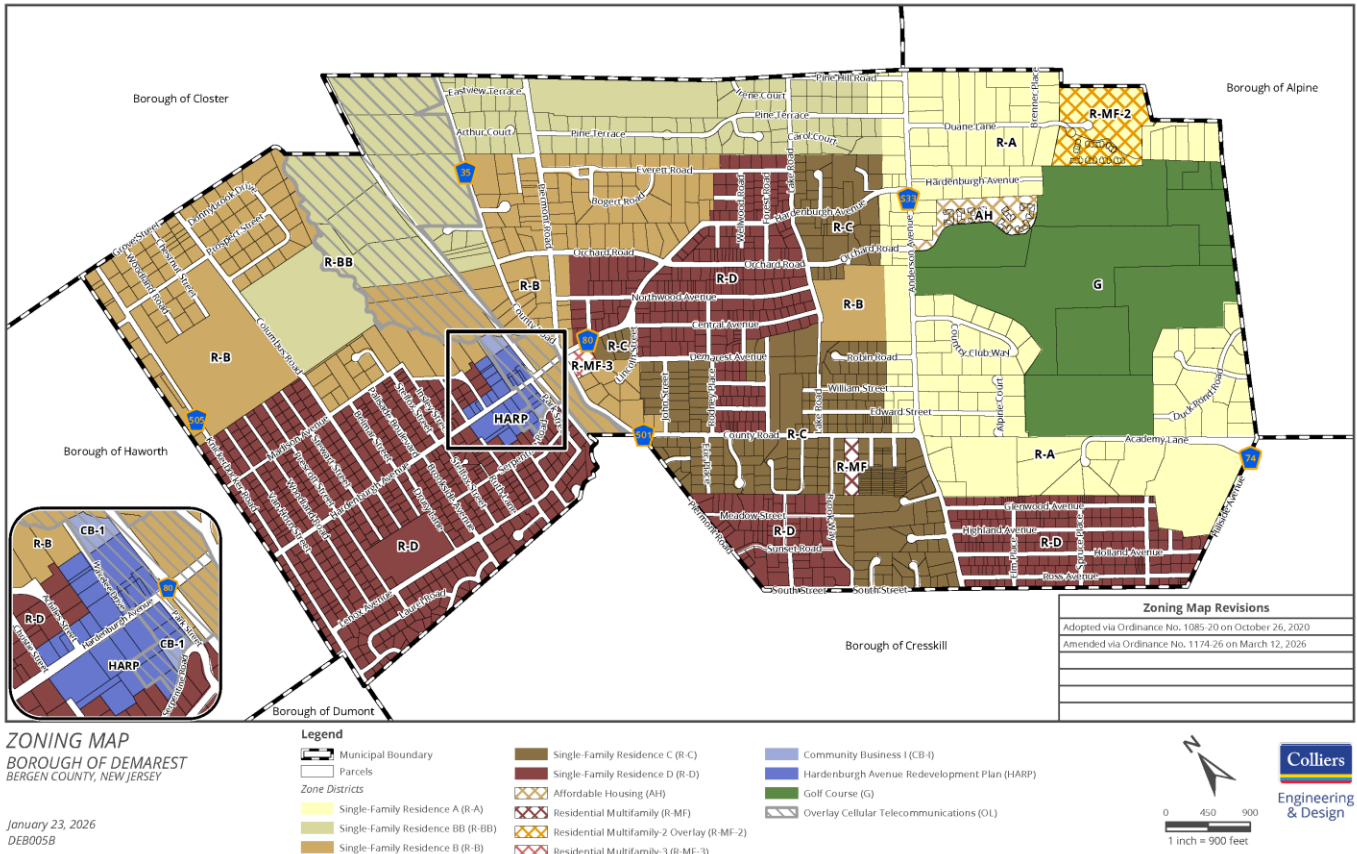
- A. Where a boundary line is shown as approximately following a lot line, such lot line shall be construed to be said boundary.
- B. Where a boundary line is shown as approximately following the center line of a street, highway, stream or railroad or a street fine or highway or railroad right-of-way, such center line, street line or right-of-way line shall be construed to be such boundary.
- C. Where a boundary line is shown as approximately parallel to a street, highway or stream, such boundary shall be construed as being parallel thereto and at such distance from the center line thereof, as indicated on the Zoning Map, Borough of Demarest, New Jersey.

§ 175-6. (Reserved)

§ 175-7. (Reserved)

§ 175-8. Zoning Map.

The Zoning Map of the Borough of Demarest prepared and submitted by Colliers Engineering & Design, dated January 23, 2026, and appended hereto and incorporated herein by reference, be and is hereby approved and adopted, supplanting and replacing the Zoning Map, dated May 2020, prepared by Maser Consulting, or the latest version adopted, subject to statutory review by the Planning Board of the Borough of Demarest.



ARTICLE III
Application of Regulations

§ 175-9. Use of land and buildings.

No land shall be hereafter used or occupied and no building or part thereof shall hereafter be used, occupied, erected, moved or altered unless in conformity with the regulations and Limiting Schedule hereinafter specified for the district in which it is located.

§ 175-10. Erection of buildings.

No building shall be designed, erected or altered to accommodate or house a greater number of families and/or to have a narrower or smaller front yard, rear yard or side yard than specified herein for the district in which such building is located.

§ 175-11. Yards and open space.

No part of a yard or other open space required about any building for the purpose of complying with the provisions of this chapter shall be included as a part of a yard or other open space similarly required for another building.

§ 175-12. Lot size.

No lot shall be so reduced in area that it does not meet the area requirements or be so reduced that any required open space will be smaller than prescribed in the regulations for the district in which said lot is located.

§ 175-13. (Reserved)

§ 175-14. (Reserved)

ARTICLE IV
Administration

§ 175-15. Administration.

- A. The provisions of this chapter shall be enforced by the Zoning Officer or the Code Enforcement Official.
- B. Zoning Permits.
 - (1) A zoning permit issued by the Zoning Officer shall be required for the following activities:
 - (a) No person shall commence the construction, reconstruction, alteration, conversion or installation of a new home, existing home, garage, swimming pool, deck, porch, hot tub, spa, shed, patio, permanent fence, driveway, wall, sign, walkway, A/C units, generators, or any other accessory building or structure without first obtaining a zoning permit.
 - (b) No person shall commence a use nor change an existing principal or accessory use of property without first obtaining a zoning permit.
 - (c) A temporary zoning permit shall be required for all temporary fencing for a period of up to one year, as determined by the Zoning Officer after issuance. A temporary permit shall be automatically revoked should the construction activity cease for a period of thirty (30) days. Requests for any extension of the permit shall be made in writing and granted at the discretion of the Zoning Officer.
 - (d) A zoning permit shall be required for any temporary storage container for a period of up to 90 days. Requests for any extension of the permit shall be made in writing and granted at the discretion of the Zoning Officer.
 - (2) The Zoning Officer shall issue a zoning permit where it is determined that the following conditions have been met:
 - (a) It is a permitted use in the proposed location
 - (b) The structure and lot meet all required bulk criteria as required by the Borough of Demarest Limiting Schedule and all other sections of the Zoning Code
 - (3) A zoning permit shall not be required for:
 - (a) Garden Fences
 - (b) Garden Walls
 - (c) Living Fences
 - (4) Administration. The Zoning Officer shall have the authority to create any checklists and/or application forms necessary for the administration of this section.
 - (5) Application Fees
 - (a) The fee for a new construction, addition, accessory building, accessory structure or use shall be \$150

- (b) The fee for a fence, wall or sign shall be \$100
 - (c) The fee for any other certificate or permit supplied by the Zoning Officer shall be \$75
- (6) Appeal.
- (a) The grant or denial of a zoning permit may be appealed to the Joint Planning Board by any interested party pursuant to N.J.S.A. 40:55D-70a.
 - (b) A notice of appeal shall be filed within 20 days of the grant or denial of the permit request.
 - (c) The Joint Planning Board shall reverse or affirm the grant or denial of the zoning permit within 120 days of the filing of the notice of appeal. The failure of the Joint Planning Board to act within the period shall constitute a decision favorable to the appellant. An extension of the time to act may be granted by written consent from the applicant.

§ 175-16. Enforcement.

- A. The provisions of this chapter shall be enforced by the Zoning Officer or the Code Enforcement Official.
- B. The Construction official shall not issue a construction permit until he has confirmed that zoning review has been completed and a zoning permit has been issued when required.
- C. The Construction Official shall not issue a construction permit until all resolution compliance items are satisfied.

§ 175-17. Violations and penalties.

Any owner, lessee or other person or persons who permit, take part in or assist in any violation of any provision of this chapter shall, upon conviction for each and every violation thereof, be subject to a fine not to exceed \$1,000 or to imprisonment in the county jail for not more than 90 days or to a period of community service not exceeding 90 days, or all of the above, in the discretion of the Judge imposing the same. When such violation shall continue for more than one day, each day of the continuation of said offense shall be considered as a separate violation of this chapter. No provision of this section shall be construed to prevent the Borough of Demarest from taking injunctive proceedings in the Superior Court of New Jersey or to any other court for the proper enforcement of this chapter and the prevention of continuance of violations of the same.

§ 175-18. Zoning Certificates

Upon request the zoning officer will review applications and if accepted provide a Zoning Certificate for the reasons below:

- A. Certificate of Zoning Compliance
 - (1) A person desiring to obtain an official acknowledgement that an existing building, lot or use meets the requirements of the current Borough zoning regulations shall request a review, which may require an accurate survey and an inspection of the premises.
- B. Certificate of Non-Conformance

- (1) A person desiring to obtain a certification pursuant to N.J.S.A. 40:55D-68 that a use or structure existed before the adoption of the ordinance that rendered the use or structure nonconforming, may apply for a certificate. A certificate under this section may be issued only if an application is made within twelve months of the adoption of the ordinance that made the structure or use nonconforming. After twelve months, application shall be made to the Joint Planning Board pursuant to N.J.S.A. 40:55D-68.

§ 175-19. Smoke detector certificate upon change of occupancy.

- A. An applicant for a smoke detector certificate upon change of occupancy of a structure used or intended for residential purposes by not more than two households shall pay an application fee of \$40.
- B. An applicant for a smoke detector certificate in case of change of occupancy of a structure used or intended for use for residential purposes by not more than two households where a reinspection is required shall pay a fee of \$40 for each reinspection.

§ 175-20. Escrow required for one- and two-family residences.

- A. For new construction of a one- or two-family residence, there shall be an application made to the Construction Office. The application shall be accompanied by an escrow deposit in the amount of \$3,000 to cover site inspections by the Borough Engineer. The sum posted hereunder shall remain on deposit with the Borough until the Borough Engineer certifies that all site inspections have been completed and all vouchers for services rendered in connection with such services have been paid in full, after which time any balance remaining shall be refunded. This subsection is solely applicable to new construction on a vacant lot.
- B. In connection with an addition to a one- or two-family residence where soil will be disturbed, applications shall be made to the Construction Office. The application shall be accompanied by an escrow deposit in the amount of \$1,500 for construction of 750 square feet or less plus \$100 for each additional 250 square feet. The sum posted hereunder shall remain on deposit with the Borough until the Borough Engineer certifies that all site inspections have been completed and all vouchers for services rendered in connection with such services have been paid in full, after which time any balance remaining shall be refunded upon issuance of a certificate of occupancy.

§ 175-21. Fees and Escrow Deposits for Variance and Conditional Use Applications

- A. An applicant for a variance or conditional use shall remit to the Borough of Demarest the following non-refundable fees:
 - (1) Variance pursuant to N.J.S.A. 40:55D-70a (Appeals) or 40:55D-70b (Interpretations): \$200
 - (2) Variance pursuant to N.J. S.A. 40:55D-70c (C Variances): \$250 + \$100 per additional variance
 - (3) Variance pursuant to N.J. S.A. 40:55D-70d (D Variances): \$500 per variance
 - (4) Conditional Use: \$500
- B. The application shall be accompanied by an escrow deposit to pay Borough Professional fees in the following amount:

- (1) Variance pursuant to N.J.S.A. 40:55D-70a (Appeals) or 40:55D-70b (Interpretations): \$2,500
 - (2) Variance pursuant to N.J. S.A. 40:55D-70c (C Variances): \$2,500 + \$250 per additional variance
 - (3) Variance pursuant to N.J. S.A. 40:55D-70d (D Variances): \$3,000 + \$1,000 per additional variance
 - (4) Conditional Use: \$5,000
- C. The escrow deposit posted hereunder shall remain on deposit with the Borough until the Attorney, Engineer and Planner for the Joint Planning Board certifies that all vouchers for services rendered in connection with the application before the Joint Planning Board have been paid in full, after which time any balance remaining shall be refunded upon request by the applicant after the issuance of a building permit.

§ 175-22. Development fees.

- A. Purpose. This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the amended Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low-, low- and moderate-income housing in accordance with a Court-approved Spending Plan.
- B. Basic requirements.
 - (1) The municipality previously adopted a development fee ordinance, which established the Municipal Affordable Housing Trust Fund.
 - (2) The municipality shall not spend development fees until the court has approved a plan for spending such fees.
- C. Definitions. The following terms when used in this section shall have the following meanings:

AFFORDABLE HOUSING DEVELOPMENT

A development included in a municipality's housing element and fair share plan, and includes, but is not limited to, an inclusionary development, a municipally sponsored affordable housing project, or a 100 percent affordable development. This includes developments with affordable units on-site, off-site, or provided as a payment in-lieu of construction only if such a payment-in-lieu option has been previously approved by the Program or Superior Court as part of the HEFSP.

AFFORDABLE HOUSING MONITORING SYSTEM OR AHMS

The Department's cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

AFFORDABLE HOUSING TRUST FUND OR AHTF

The non-lapsing, revolving trust fund established in the Department pursuant to N.J.S.A. 52:27D-320 and N.J.A.C. 5:43 to be the repository of all State funds appropriated for affordable housing

purposes.

COAH OR THE COUNCIL

The Council on Affordable Housing established in, but not of, DCA pursuant to the Act and that was abolished effective March 20, 2024, pursuant to section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1).

DEPARTMENT

The New Jersey Department of Community Affairs.

DEVELOPER

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

DEVELOPMENT FEE

Money paid by a developer for the improvement of residential and non-residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and 40:55D-8.1 through 40:55D-8.7 and N.J.A.C. 5:99-3.

EQUALIZED ASSESSED VALUE OR EAV

The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 at P.L. 1973, c. 123 (N.J.S.A. 54:1-35a, 54:1-35b, and 54:1-35c). Estimates at the time of building permit may be obtained by the tax assessor using construction cost estimates. Final EAV shall be determined at project completion by the municipal assessor.

D. Residential development fees

(1) Imposed fees.

- (a) Residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
- (b) When an increase in residential density is permitted pursuant to a “d” variance granted under N.J.S.A. 40:55D-70d (5), developers shall be required to pay a “bonus” development fee of 6.0% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5% of the equalized assessed value on the first two units; and the specified higher percentage of 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

(2) Eligible exactions, ineligible exactions and exemptions for residential development.

- (a) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made an eligible payment in lieu of on-site construction of affordable units, if permitted by ordinance, or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2, shall be exempt from development fees.
- (b) Developments that have received preliminary or final site plan approval prior to the adoption of this subsection and any preceding ordinance permitting the collection of development fees shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the construction permit is issued.
- (c) Development fees shall be imposed and collected when an existing structure is expanded by 1,000 or more square feet of livable space. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- (d) No development fee shall be collected for the demolition and replacement of a residential building resulting from a fire or natural disaster.

E. Non-residential development fees.

(1) Imposition of fees.

- (a) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- (b) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
- (c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure; i.e., land and improvements; and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

(2) Eligible exactions, ineligible exactions and exemptions for non-residential development.

- (a) The non-residential portion of a mixed-use inclusionary or market-rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.

- (b) The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- (3) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.
- (4) A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
- (5) If a property that was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the municipality as a lien against the real property of the owner.

F. Collections procedures.

- (1) Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- (2) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption," to be completed by the developer as per the instructions provided in the Form N-RDF. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided on Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- (3) The construction official responsible for the issuance of a building permit shall notify the tax assessor of the issuance of the first construction permit for a development that is subject to a development fee.
- (4) Within 90 days of receipt of that notice, the tax assessor shall provide an estimate, based on the plans filed, of the equalized assessed value of the development.
- (5) The construction official responsible for the issuance of a final certificate of occupancy shall notify the tax assessor of any and all requests for the scheduling of a final inspection on property that is subject to a development fee.
- (6) Within 10 business days of a request for the scheduling of a final inspection, the tax assessor shall confirm or modify the previously estimated equalized assessed value of the

improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

- (7) Should the municipality fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).
- (8) Fifty percent (50%) of the development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of certificate of occupancy.

G. Appeal of development fees.

- (1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by that board, collected fees shall be placed in an interest-bearing escrow account by the municipality. Appeals from a determination of the board may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
- (2) A developer may challenge non-residential development fees imposed by filing a challenge with the director of the Division of Taxation. Pending a review and determination by the director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the municipality. Appeals from a determination of the director may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

H. Affordable Housing Trust Fund.

- (1) A separate, interest-bearing Municipal Affordable Housing Trust Fund shall be maintained by the chief financial officer of the municipality for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- (2) The following additional funds shall be deposited in the Municipal Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (a) Payments in lieu of on-site construction of an affordable unit, where previously permitted by ordinance or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2;
 - (b) Funds contributed by developers to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
 - (c) Rental income from municipally operated units;

- (d) Repayments from affordable housing program loans;
 - (e) Recapture funds;
 - (f) Proceeds from the sale of affordable units; and
 - (g) Any other funds collected in connection with the municipal affordable housing program including but not limited to interest earned on fund deposits.
- (3) The municipality shall provide the Department with written authorization, in the form of a tri-party escrow agreement(s) between the municipality, the Department and the financial institution in which the municipal affordable housing trust fund has been established to permit the Division to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-2.1 et seq.
- (4) Occurrence of any of the deficiencies outlined in N.J.A.C. 5:99 may result in the Department requiring the forfeiture of all or a portion of the funds in the municipal Affordable Housing Trust Fund.
- (5) All interest accrued in the housing trust fund shall only be used on eligible affordable housing purposes approved by the Court.

I. Use of funds.

- (1) The expenditure of all funds shall conform to a Spending Plan approved by Superior Court. Funds deposited in the municipal Affordable Housing Trust Fund may be used for any activity approved by the Court to address the fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market-to-affordable program; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost-saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by Superior Court and specified in the approved Spending Plan.
- (2) Funds shall not be expended to reimburse the municipality or activities that occurred prior to the authorization of a municipality to collect development fees.
- (3) At least a portion of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. A portion of the development fees which provide affordability assistance shall be used to provide affordability assistance to very low-income households.
- (a) Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, infrastructure assistance, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.

- (b) Affordability assistance for very low-income households may include producing very low-income units or buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.
- (4) No more than 20% of all affordable housing trust funds, exclusive of those collected to fund an RCA prior to July 17, 2008, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare and implement a Housing Element and Fair Share Plan, administer an Affirmative Marketing Program and for compliance with the Superior Court and the Program including the costs to the municipality of resolving a challenge.

J. Monitoring.

- (1) On or before February 15 of each year, the municipality shall provide annual electronic data reporting of trust fund activity for the previous year from January 1st to December 31st through the AHMS Reporting System. This reporting shall include an accounting of all Municipal Affordable Housing Trust Fund activity, including the sources and amounts of all funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, previously eligible payments in lieu of constructing affordable units on site (if permitted by ordinance or by agreement with the municipality prior to the March 20, 2024 statutory elimination per P.L. 2024, c.4), funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income from municipally-owned affordable housing units, repayments from affordable housing program loans, interest and any other funds collected in connection with municipal housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

K. Ongoing collection of fees.

- (1) The ability to impose, collect and expend development fees shall continue so long as the municipality retains authorization from the Court in the form of Compliance Certification or the good faith effort to obtain it.
- (2) If the municipality fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance or Compliance Certification, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 (C. 52:27D-320).

- L. Emergent affordable housing opportunities. Requests to expend affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan shall be made to the Division and shall be in the form of a governing body resolution. Any request shall be consistent with N.J.A.C. 5:99-4.1.

§ 175-23. (Reserved)

§ 175-24. (Reserved)

ARTICLE V
Residence Districts

§ 175-25. Single-Family Residential Districts (R-A, R-BB, R-B, R-C, R-D)

A. Permitted principal uses

- (1) A single, detached dwelling used as a residence by not more than one family.
- (2) Family day cares.
- (3) Community residences.
- (4) Public parks, playgrounds, and open space.
- (5) Municipal buildings.

B. Permitted accessory uses

- (1) Private garages, attached or detached from the principal dwelling.
- (2) Storage sheds.
- (3) Gazebos.
- (4) Pergolas.
- (5) Above ground or in-ground swimming pools.
- (6) Patios and decks.
- (7) Sports courts.
- (8) Roof-mounted solar panels.
- (9) Customary and incidental accessory uses to a single-family home.
- (10) Professional or business practices, as defined in §175-3B, including without limitation, a physician, surgeon, dentist, architect, engineer, lawyer, real estate agent, insurance agent, artist, or musician, shall be a conditional accessory use in the Borough's Residence Districts, provided that all of the following conditions are met:
 - (a) Only one professional or business practice shall be permitted in any one residence.
 - (b) Such professional or business practice shall be carried on wholly within the principal building.
 - (c) Such professional or business practice shall be confined to one floor or basement and shall occupy not more than 400 square feet or 25% of the floor area of said floor or basement, whichever is the lesser.
 - (d) There shall be no advertising on the premises other than a sign subject to §175-66.B.(1)(c), and there shall be no display of goods on or about the premises.
 - (e) Retail uses shall not be permitted. There shall be no stock trade, production materials, items for resale, goods stored or sold on the premises. There shall be no outdoor storage of materials or equipment.

- (f) Not more than one employee shall be employed so that the total number of persons, including the principal, so employed shall be not more than two persons.
- (g) All parking of motor vehicles for the persons engaged in the professional or business practice, including the principal and one employee, must be parked on the premises. A maximum of one business or practice visitor may park on the street.
- (h) The hours of operation of the professional or business practice shall be limited to between the hours of 9 AM and 9 PM.
- (i) The principal conducting the activity shall be the bona fide owner or lessee and resident of the entire residential premises.

C. Permitted Accessory Structures & Encroachments

(1) Front Yard.

The following accessory buildings, uses and structures shall be permitted in the front yard subject to setback requirement herein.

- (a) Signs.
 - [1] All signs shall be subject to the rules set forth in § 175-66.
- (b) Fences & Walls.
 - [1] All fences and walls shall be subject to the rules set forth in § 175-68.
- (c) Driveways.
 - [1] Shall be a minimum of 5 feet from the side yard line.
 - [2] In the case of a corner lot all driveways must be at least 15 feet from the corner.
- (d) Walkways.
- (e) Projections. (windowsills, belt courses, cornices, eaves, overhangs and other architectural features of the principal building)
 - [1] These architectural features shall be permitted to encroach into the front yard setback not more than 3 feet.
- (f) Unroofed steps.
 - [1] Unroofed steps shall be permitted to encroach into the front yard setback not more than 5 feet.
- (g) Porches.
 - [1] Porches, whether roofed or unroofed, shall not be permitted to encroach into the front yard setback.

(2) Side Yard.

The following accessory buildings, uses and structures shall be permitted in the side yard subject to setback requirement herein.

- (a) Flag poles.
- (b) Driveways.
 - [1] Shall be a minimum of 5 feet from the side yard line.
 - [2] In the case of a corner lot all driveways must be at least 15 feet from the corner.
- (c) Walkways.
- (d) Projections. (windowsills, belt courses, cornices, eaves, overhangs and other architectural features of the principal building)
 - [1] These architectural features shall be permitted to encroach into the side yard setback not more than 3 feet.
- (e) Unroofed steps.
 - [1] Unroofed steps shall be permitted to encroach into the side yard setback not more than 3 feet.
- (f) Porches, whether roofed or unroofed, shall not be permitted to encroach into the side yard setback.
- (g) Detached garage.
 - [1] A detached garage shall be behind the front line of the principal dwelling.
 - [2] A detached garage shall not have a building height of more than 12 feet to the roof peak.
 - [3] There shall not be more than 1 detached private garage per lot.
 - [4] A detached garage shall be at least 10 feet from the side and rear lot lines.
- (h) Retaining Wall.
 - [1] All retaining walls are subject to the rules set forth in § 175-69.
- (i) Generators and air conditioning condensers.
 - [1] Shall be permitted to encroach not more than 5 feet into the setback and shall not be more than 5 feet from the principal building.
 - [2] Shall be screened from the view of the public right-of-way with evergreen shrubs planted at a minimum height of 3 feet.
- (j) Patio.
 - [1] Shall not be permitted to encroach into the required side yard setback of the principal building.

(3) Rear Yard.

The following accessory buildings, uses and structures shall be permitted in the rear yard subject to the setback requirement herein.

- (a) Driveways.
 - [1] Shall be a minimum of 5 feet from the side yard line.
 - [2] In the case of a corner lot all driveways must be at least 15 feet from the corner.
- (b) Walkways.
- (c) Projections. (windowsills, belt courses, cornices, eaves, overhangs and other architectural features of the principal building).
 - [1] These architectural features shall be permitted to encroach into the required setback not more than 3 feet.
- (d) Unroofed steps.
- (e) Shed.
 - [1] Shall be setback a minimum of 10 feet from the rear lot line.
 - [2] Shall be setback a minimum of 10 feet from the side lot line.
- (f) Small Shed
- (g) Detached garage.
 - [1] A detached garage shall not have a building height of more than 12 feet to the roof peak.
 - [2] There shall not be more than 1 detached private garage per lot.
 - [3] A detached garage shall be at least 10 feet from the side and rear lot lines.
- (h) Retaining wall.
 - [1] All retaining walls are subject to the rules set forth in § 175-69.
- (i) Generators and air conditioning condensers.
 - [1] Shall be permitted to encroach not more than 5 feet into the setback and shall not be more than 5 feet from the principal building.
 - [2] Shall be screened from the view of the public right-of-way with evergreen shrubs planted at a minimum height of 3 feet.
- (j) Patio.
 - [1] Shall be setback a minimum of 10 feet from the rear lot line and a minimum of 10 feet from the side lot line.
- (i) Decks.
 - [1] Shall be setback a minimum of 20 feet from the rear lot line and a minimum of 10 feet from side lot line.
- (k) Balcony.
 - [1] Shall not project more than 5 feet from the principal building facade.

[2] All balconies are required to have safety railing of not less than 4 feet in height.

(l) Accessory Buildings.

[1] Not to exceed a maximum height of 15 feet measured to the maximum roof peak, or the current height of the principal building whichever is more restrictive.

[2] Shall be setback a minimum of 15 feet from the rear lot line.

[3] Shall be setback a minimum of 10 feet from the side lot line.

[4] Any accessory building located within 10 feet of the principal building is considered part of the principal building and subject to the setback requirements of the same.

(m) Pergola.

[1] Not to exceed a maximum height of 10 feet, or the height of the principal building whichever is more restrictive.

[2] A pergola shall be setback a minimum of 10 feet from the rear lot line.

[3] A pergola shall be setback a minimum of 10 feet from the side lot line.

(n) Sports court.

[1] A sports court shall be setback a minimum of 15 feet from the rear lot line.

[2] A sports court shall be setback a minimum of 15 feet from the side lot line.

(o) Swimming Pool.

[1] All swimming pools are subject to the rules set forth in § 175-75.

(p) Pool Equipment.

[1] Pool equipment shall be accessory to a permitted pool only.

[2] Pool equipment shall be located within 10 feet of the edge of the pavement around the swimming pool.

D. Bulk Regulations

(1) In all single-family residence zones, the following regulations shall apply to the principal building:

(a) Any accessory building within 10 feet of a principal building will be considered as part of the principal building and be subject to the setbacks of the same.

Regulations	R-A	R-BB	R-B	R-C	R-D
Minimum required					
Lot frontage (ft)	200	150	150	100	100
Lot depth (ft)	200	150	150	100	100

Lot area (sq ft)	40,000	30,000	22,500	15,000	10,000
Front yard setback (ft)	50	50	50	35	25
Side yard setback (ft)	25	25	20	15	10
Combined side yard setback (ft) ^C	55	55	45	35	25 ^D
Rear yard setback (ft)	50	50	40	30	30
Rear yard width ^A (ft)	50	50	40	30	30
Maximum permitted					
Number of families	1	1	1	1	1
Building height ^B (ft)	35 ft	33 ft	33 ft	30 ft	30 ft

^A For other than rectangular lots, a rear yard width is required that is equal to the frontage requirement in the district, such width to be measured between points on each side line which are distant from the frontage line the number of feet specified as the minimum lot depth requirement in the district, such side line points to be measured at right angles to the frontage line. This requirement applies to all residence districts.

^B Flat roofs are prohibited on the principal building in all zones.

^C The minimum distance of combined side yards shall be increased by a factor of 1/10 times the number of feet by which the lot width exceeds the minimum requirements.

^D The combined total side yard requirements may be reduced by six inches for each foot a lot is less than the required width prescribed for the zone in which such lot is located, provided that no principal building shall be placed nearer than ten feet to any property line.

(2) In all single-family residence zones, the following regulations shall apply:

Regulations	R-A	R-BB	R-B	R-C	R-D
Maximum permitted					
Building coverage	15%	15%	15%	20%	20%
Improved lot coverage	30%	30%	30%	35%	35%
Residential & parking coverage ^E	25%	25%	25%	25%	25%
Floor Area Ratio (FAR)	22.5%	22.5%	22.5%	30%	30%

^E Residential and parking coverage shall include the principal building, garages and the driveway, and any other parking areas.

(3) The schedules entitled "Limiting Schedule, District" and "Limiting Schedule, Conditional Use" shall be deemed to be a part of this article and shall govern the use of land and buildings within the Borough of Demarest.

§ 175-26. Private garages.

- A. Every single-family, two-family and townhouse dwelling shall be required to have at least one garage parking space.
- B. The construction and of a private garage in any residence district shall be permitted only as accessory to a residential dwelling.

§ 175-27. Residence Districts Conditional Uses.

- A. In Districts R-B, R-C and R-D, the following uses may be allowed as conditional uses:
 - (1) Churches or houses of worship and accessory uses normally incidental thereto, including an administration office, day school and day care for preschool students, all of which shall be contained on the same site. In addition, a residence for attending clergy may be erected as an accessory use. Said uses shall be permitted, subject to the following conditions:
 - (a) The height of any structure shall not exceed the maximum requirement of the particular zone. A spire or steeple may be 30 feet in excess of the maximum height requirement, provided that the average height to width ratio shall not be more than 10.
- B. In those portions of Residence Districts R-A, R-BB, R-B, R-C and R-D, inclusive, that are within the OL-Overlay Zone, cellular telecommunications towers and antennas shall be permitted as conditional uses, provided that they comply with the following specifications and standards:
 - (1) An application to construct, modify or place the facilities will be subject to site plan review in accordance with Chapter 153, Subdivision and Site Plan Review, of the Code of the Borough of Demarest.
 - (2) The applicant will be required to demonstrate that the development is the minimal necessary to provide adequate communications as may be authorized by the Federal Communications Commission; that the proposed site is an integral part of a communications network. *CMK Communications of New Jersey v. Point Pleasant Zoning Board of Adjustment*, Docket No. L-3177-95-PW (Law Div. 1996) p. 17, citing *NYNEX Mob. Comm. Co. v. Hazlet Tp.*, 276 N.J. Super. 598, 612 (App. Div. 1994). As part of this requirement the applicant shall demonstrate that:
 - (a) The technology proposed is the least visually intrusive of the available suitable technologies.
 - (b) The height of the tower and/or antennas is the minimum necessary to provide adequate communications.
 - (c) The co-location of the antennas on other existing structures, either within or outside the Borough of Demarest, is either not practical in order to provide adequate communication; is barred by Subsection D (3) below limiting the number of carriers utilizing the same tower; or that the visual impact to the community from the proposed tower and/or antennas on the site is less than exists at such alternative locations.
 - (d) Based upon the inventory of existing towers, antennas or sites approved for towers or antennas belonging to the applicant or others, that are either within the jurisdiction of the Borough of Demarest or within 10 miles of the border thereof,

which inventory will include specific information about the location, height and design of each tower, the siting of the cellular telecommunications tower and antennas in the Borough of Demarest is necessary in order for the applicant to provide adequate efficient communications to its customers.

- (3) Not more than one tower shall be located on each site. A single tower may not have more than three commercial antenna carriers utilizing the same tower, and not more than 27 antennas shall be installed on a single tower.
- (4) Area, bulk and yard requirements.
 - (a) Minimum front yard setback: 50 feet or the height of the structure, whichever is greater.
 - (b) Minimum rear yard setback: 50 feet or the height of the structure, whichever is greater.
 - (c) Minimum side yard setback: 50 feet or the height of the structure, whichever is greater.
 - (d) Maximum height of the structure: 100 feet where there is a single commercial carrier; 115 feet where there are two commercial carriers; 130 feet where there are three commercial carriers.
 - (e) Any buildings for equipment serving a cellular telecommunications tower or antennas shall conform with setback requirements otherwise applicable in the zone district (i.e., not OL Zone, but Residence A through D or Community Business I Zones).
- (5) The base of the antenna support structure and any structures accessory to or servicing the cellular telecommunications tower and antenna's structure, except for buildings, shall be screened from the street and adjacent properties in a manner acceptable to the applicable Municipal Land Use Board. If deemed necessary by said Board to mitigate the visual impact of the antennas and related structures, the color, materials and design of the tower and antennas and related structures shall be required to be modified in appearance so as to blend in with the surrounding environment, determined by said Board to be appropriate in the particular situation. Mitigation of visual impact may, without limitation, include such methods as painting, landscaping and selection of antenna materials and design or using an alternative tower structure such as man-made trees, clock towers, bell steeples, light poles or similar alternative-design mounting structures that conceal or camouflage the presence of the tower and antennas. The equipment building shall also be constructed to be architecturally compatible with other structures located on the lot.
- (6) All structures shall be suitably secured and shall be equipped with an anticlimbing device.
- (7) Except as specifically addressed herein, design standards as established by § 153-18, Design Standards, of Chapter 153, Subdivision and Site Plan Review, shall be applicable.
- (8) Any generator located on the site in connection with the cellular telecommunications tower and/or antenna structure shall be located within an equipment structure. All fuel shall be contained in accordance with New Jersey Department of Environmental Protection Regulations.

- (9) All permitted exterior lighting, including floodlights, parking lot lighting and lighting necessary for the safety and protection of the property shall be made up of a light source and reflector so selected that acting together, the light beam is controlled and not directed across any lot line. Additionally, the intensity of light at any residential property line shall not exceed 1/2 footcandle.
- (10) The noise level at any residential property line shall not exceed the levels established by N.J.A.C. 7:29-1.2.
- (11) Applicants must agree to the co-location for multiple carriers permitted by this chapter to the extent said co-location is permitted by the property owner and to the extent carriers wishing to co-locate on an existing tower are willing to reasonably share in the allocation of costs in connection with the construction, modification and maintenance of the cellular telecommunications tower and antenna structures and any equipment structures.
- (12) Removal.
- (a) In the event that a cellular telecommunications tower and/or antenna structure is abandoned or not operated for a period of one year, the same shall be removed at the sole expense of the operator(s) or property owner(s), who will be individually obligated for the removal, within not more than three months upon written notice from the Borough.
- (b) In the event that an antenna(s) is removed or relocated, the tower or the portion of the tower no longer needed to support the remaining antennas shall be removed at the sole expense of the operator(s) or property owner(s), who will be individually obligated for the removal, within not more than three months upon written notice from the Borough.
- (c) If the operators or property owner(s) fails to remove the cellular telecommunications tower and/or antenna structure within said three-month period, pursuant to Subsection D(12)(a), or fails to remove all or a portion of the cellular telecommunications tower within said three-month period, pursuant to Subsection D(12)(b) above, the Borough may cause said removal at the cost of the operators and property owner(s), and the cost of said removal shall be a lien against the property until the Borough is reimbursed in full for all costs incurred by the Borough, including engineering and attorney's fees, reasonably expended in accomplishing the removal.
- (13) The applicant must demonstrate that pursuant to N.J.S.A. 48:17-8 it has obtained the consent, in writing, of all of the owners of property within 200 feet in all directions of the property upon which the tower and antennas are to be located or within 650 feet of the cellular telecommunications tower and antennas, whichever is greater, and that said owners were advised, in writing, by the applicant that the radio wave to be emitted from the cellular telecommunications tower and antennas is a conduit, as that term is used in N.J.S.A. 48:17-8, which will pass upon, through or over said owners' land.
- (14) The applicant must demonstrate pursuant to N.J.S.A. 48:17-8 that it has paid for or agreed to pay all owners of property within 200 feet in all directions of the property upon which the tower and antennas are to be located, or within 650 feet of the cellular telecommunications tower and antennas, whichever is greater, full compensation for any taking resulting by virtue of the radio wave to be emitted from said cellular

telecommunications tower and antenna upon, through or over said property owners' land. If there is a dispute between the applicant and the property owner as to the value of the land taken, this provision may be satisfied by the applicant having agreed to be subject to a decision, as to the fair market value of the property taken, by condemnation commissioners pursuant to the Eminent Domain Act or some other legally binding arbiter or court of competent jurisdiction.

- (15) A landscape buffer of not less than 25 feet in width shall be provided around any cellular telecommunications tower and antennas located on a lot in a residential district, abutting a residential district or abutting a lot containing a residential use.
- (16) No signs shall be permitted in connection with the siting of a cellular telecommunications tower and/or antenna structure.
- (17) An applicant must warrant that the proposed cellular telecommunications tower and antennas shall not interfere with any of the Borough's police, fire, ambulance, public works or any municipal emergency transmission or reception equipment. The applicant must further agree that, in the event that such interference occurs after the applicant's operations commence, the applicant will take all necessary steps to eliminate the interference. If the applicant is unable to eliminate the interference or fails to eliminate the interference in a timely manner, it shall cease operations from the offending location until the problem is corrected, upon receiving 10 days' advance written notice from the Borough.
- (18) The applicant shall post necessary escrows in accordance with N.J.S.A. 40:55D-53.1 and 40:55D-53.2 to pay the cost of application review and inspection charges by outside consultants retained by the Borough's Joint Planning Board (or Zoning Board of Adjustment, if applicable), which outside consultants shall include without limitation structural, mechanical, electrical and electronic engineers. After completion of construction of a cellular telecommunications tower and antennas, said professionals shall perform as-built inspections and certify to the Borough that the cellular communications tower and antennas comply with all acceptable standards before the applicant may obtain a certificate of occupancy and commence operations.
- (19) In addition to the Joint Planning Board (or Zoning Board of Adjustment, if applicable) application process, the applicant must notify the Borough not less than 45 days before construction of a cellular telecommunications tower and antennas or any new or additional services to be installed on said tower. Said notice period may run concurrently with the site plan process in whole or in part.
- (20) The applicant must provide as part of its application package an environmental impact statement (EIS) which shall evaluate the effects of the proposed project on the environment. It shall be prepared by consultants as may be deemed qualified by virtue of their systematic interdisciplinary approach to ensure the integrated use of the natural and social sciences and the environmental design arts. The EIS shall be in a form and content as shall be in conformance with guidelines adopted by resolution by the Joint Planning Board of the Borough of Demarest.
- (21) The applicant shall provide a certification that the proposed cellular telecommunications tower and antennas do not interfere with or adversely affect any properties, buildings or structures of historical significance located in the Borough of Demarest.

- (22) Applicants shall be required as a condition of approval to obtain liability insurance with limits established by resolution of the Planning Board. The Borough of Demarest shall be named as an additional insured on all insurance policies, and the Borough shall be entitled to not less than 30 days' notice of cancellation, termination or modification of the policy.
- (23) Any applicant applying to a Borough Municipal Land Use Board to construct, modify or place a cellular telecommunications tower and antennas in any area other than the OL-Overlay Zone shall be required, in addition to establishing proofs regarding the affirmative and negative criteria established by the Municipal Land Use Law,¹ to meet and satisfy all the specifications and standards of this § 175-27B in the same manner as if said cellular telecommunications tower and antennas were to be sited in the OL Zone.

§ 175-28. Affordable accessory apartments.³

A. Where permitted.

- (1) Notwithstanding any provision of this Borough of Demarest Zoning Chapter to the contrary, affordable accessory apartments shall be permitted on a lot within the A, BB, B, C or D Zoning Districts which meets the following requirements:
 - (a) The lot must fully conform to the minimum lot dimensions specified for the subject zoning district pursuant to §175-25D.;
 - (b) The lot must have a single-family detached dwelling situated thereon.

B. Definition. For the purpose of this section, the definition of an "affordable accessory apartment" shall be as follows:

- (1) An affordable accessory apartment shall be a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance which is created to be occupied by a low- or moderate-income household in accordance with the applicable provisions of the substantive rules at N.J.A.C. 5:93-1 et seq. The affordable accessory apartment may be created within an existing dwelling unit, may be created within an existing structure on the lot or may be an addition to an existing home or accessory building.

C. Requirements. All affordable accessory apartments shall meet the following requirements, although the Planning Board shall have the right to grant exceptions to one or more of the requirements for good cause shown by the applicant:

- (1) The minimum yard dimensions specified for the subject zoning district in to §175-25D shall be adhered to, provided that any existing yard dimension that is less than a minimum required dimension shall be permitted to remain, but shall not be made less by providing the affordable accessory apartment.
- (2) All affordable accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey, including all applicable building codes.
- (3) The affordable accessory apartment shall be affirmatively marketed to low- and moderate-income households throughout the Borough's Housing Region and shall be rented only to a household which is either a low- or a moderate-income household at the time of occupancy of the unit.

- (4) The affordable accessory apartment shall, for a period of at least 10 years from the date of the issuance of a certificate of occupancy, be rented only to low- or moderate- income households.
- (5) Rents of affordable accessory apartments shall be affordable to low- or moderate- income households in accordance with the applicable provisions at N.J.A.C. 5:93-7.4, and shall specifically include an allowance for utilities in accordance with N.J.A.C. 5:93-7.4(h).
- (6) There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the affordable accessory apartment is located running with the land and limiting its subsequent rental pursuant to the requirements of § 175-28C (4) and (5) hereinabove.
- (7) Each affordable accessory apartment shall have living/sleeping space, cooking facilities, a kitchen sink and complete sanitary facilities for the exclusive use of its occupants. It shall consist of no less than two rooms, one of which shall be a full bathroom.
- (8) The affordable accessory apartment shall have a separate door with direct access to the outdoors.
- (9) The affordable accessory apartments shall be affirmatively marketed to households within the Region 1 consisting of Bergen, Hudson, Passaic and Sussex Counties, in accordance with the substantive rules and the affirmative marketing plan provisions in § 175-28F of this section hereinbelow.
- (10) In the case of an existing accessory apartment previously created illegally on the subject property, the owner is entitled to legitimize the accessory apartment as an affordable accessory apartment under the terms of this section, provided that all of the requirements of this and all related affordable criteria shall apply, and except that no subsidy need be provided by the Borough of Demarest.

D. Administration of the affordable accessory apartment program. The Borough of Demarest's designated administrative agent shall administer the affordable accessory apartment program in accordance with the following:

- (1) The administrative entity shall administer the affordable accessory apartment program, including advertising, income qualifying prospective renters, setting rents and annual rental increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports, and affirmatively marketing the affordable accessory apartment program.
- (2) The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with any and all affordable housing requirements and/ or the provisions of this section. All denials shall be in writing with the reasons clearly stated.
- (3) The Borough of Demarest shall provide \$75,000 per unit to subsidize the physical creation of the first 10 affordable accessory apartments. The program shall be funded by the Borough's existing Affordable Housing Trust Fund.
- (4) Prior to the grant of such subsidy to a property owner, the property owner shall enter into a written agreement with the Borough of Demarest ensuring that the apartment shall meet the requirements of this section.

- E. Application procedures. Each application for the creation of an affordable accessory apartment shall submit the following information to the administrative entity:
- (1) A sketch of floor plan(s) showing the location, size and relationship of both the affordable accessory apartment and the primary dwelling within the building or in another structure;
 - (2) Rough elevations showing the modification of any exterior building facade to which changes are proposed; and
 - (3) A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum required building setback lines; the required parking spaces for both dwelling units; and any natural or man-made conditions which might affect construction.
- F. Affirmative marketing. The administrative entity shall be responsible to prepare and execute an affordable accessory apartment affirmative marketing plan consistent with the Borough's adopted Affirmative Marketing Plan.

§ 175-29. Residential Multifamily District.

- A. Permitted principal uses.
- (1) Townhomes.
 - (2) Stacked flats.
- B. Permitted accessory uses.
- (1) Trash.
 - (2) Fences.
 - (3) Landscaping and buffering.
 - (4) Open space.
 - (5) Roof-mounted solar panels.
- C. Bulk standards.
- (1) Minimum lot area: two acres.
 - (2) Minimum lot width: 150 feet.
 - (3) Minimum front yard setback: 35 feet.
 - (4) Minimum side yard setback: 15 feet.
 - (5) Minimum rear yard setback: 50 feet.
 - (6) Maximum building coverage: 20%.
 - (7) Maximum impervious coverage: 50%.
 - (8) Maximum building height: two stories and 30 feet.

(9) Maximum density: four units per acre.

D. Architectural standards.

- (1) Garage doors shall face in to the center of the site.
- (2) The building closest to County Road shall be designed to look like a large, single-family home.
- (3) Building offsets (projects and recesses) shall be provided every 35 feet to break up the mass of the buildings. These offsets shall be a minimum of eight inches.

E. Parking.

- (1) Parking shall be provided in conformance with the Residential Site Improvement Standards.
- (2) Where provided, garages shall be used to park cars and not converted to living space or used as storage units.

F. Signage.

- (1) One monument sign may be installed to identify the development.
- (2) Said sign shall be a maximum of 20 square feet and a maximum of 5 feet tall.
- (3) Said sign shall be set back 10 feet from the property line.
- (4) Said sign may be externally illuminated.

G. Lighting.

- (1) A lighting plan prepared by a qualified individual shall be provided with site plan applications.
- (2) All parking areas shall have a minimum average illumination of 0.5 footcandles.
- (3) No lighting at the property line shall exceed 0.5 footcandles.
- (4) Light fixtures shall be full cutoff and no taller than 15 feet.

H. Landscaping.

- (1) Landscaping shall be provided to promote a desirable visual environment, to accentuate building design, screen parking areas and mitigate averse visual impacts.
- (2) Shade trees shall be provided at a rate of one per 50 linear feet along the public right-of-way. Shade trees shall be a minimum three-inch caliper.
- (3) Side yard setbacks shall be suitably landscaped where they abut existing single-family homes to provide a solid screen. Said screen shall consist of six-foot-tall evergreens.
- (4) Parking and driveways areas shall be landscaped with a combination of shade trees and shrubs. Shrubs shall be a minimum of 2.5 feet tall at installation.
- (5) Foundation plantings shall be provided to soften the mass of the buildings. Said plants shall provide seasonal interest at varying heights to complement and provide pedestrian

scale to the proposed development.

I. Trash.

- (1) Trash and recycling shall be stored inside each individual garage space.

J. Affordable housing.

- (1) Block 145, Lot 5 shall provide two affordable family rental units in accordance with the Settlement Agreement.
- (2) The affordable units shall meet the standards listed in Article X, Affordable Housing.
- (3) The developer/HOA shall be responsible for retaining a qualified administrative agent, who shall be the Borough's administrative agent, or a certified entity approved by the Council.
- (4) All necessary steps shall be taken to make affordable units provided creditworthy pursuant to applicable law.

§ 175-30. Residential Multifamily-2 Overlay District.

A. Permitted principal uses.

- (1) All uses permitted in the Residential A Zone.
- (2) Townhouses.

B. Permitted accessory uses.

- (1) Recreation centers for the condominium development, lounges, game rooms, private recreational facilities and similar uses serving condominium developments.
- (2) Community pool.
- (3) Off-street parking.
- (4) Fences and walls.
- (5) Signs.
- (6) Trash enclosures.
- (7) Landscaping and buffering.
- (8) Public or private open space facilities.
- (9) Gazebo to be centrally located containing mailboxes for the condo unit owners.
- (10) Roof-mounted solar panels.

C. Bulk standards.

- (1) Minimum tract area: 18 acres, which shall include any acreage for which an environmental easement has been granted to the New Jersey Department of Environmental Protection.

- (2) Minimum tract setback, excluding access roads and utilities: 25 feet, except for patios and decks, which patios and decks may be set back 20 feet from any property line, and further excepting accessory buildings and accessory uses abutting Block 120, Lot 16.02 (Alpine Country Club), which accessory buildings or accessory uses may be set back five feet from the property line at such locations.
- (3) Minimum distance between buildings:
 - (a) Eighteen feet between principal buildings.
 - (b) Accessory buildings may be 10 feet from other accessory buildings or principal buildings.
- (4) Maximum building length: 200 feet excluding eaves, gutters, and covered porches.
- (5) Maximum building coverage: 10%.
- (6) Maximum impervious coverage: 15%.
- (7) Maximum density: 24 units for the entire tract.
- (8) Maximum building height: 2.5 stories and 37 feet, which is measured for each individual unit from the average finished grade to the peak. Average finished grade shall be calculated by taking proposed finished grades at ten-foot intervals along each exterior wall of each individual unit at the foundation line.

D. Architectural standards.

- (1) Buildings shall be constructed of brick, stone, cast stone, hardy plank siding, or other high-quality material.
- (2) Buildings shall be designed to avoid long monotonous, uninterrupted walls or rooflines. Wall offsets shall be used to provide architectural interest and variety and relieve the visual effect of a simple, long wall. Said offsets include projections from the building, such as balconies, canopies, porches, and decks.
 - (a) The maximum spacing between wall offsets shall be 25 feet.
 - (b) The minimum projection or depth of any offset shall be at least one foot.
- (3) Roofline offsets, which include dormers and gables, shall be provided to provide architectural interest and variety to the massing of a building. The maximum spacing between roof offsets shall be 35 feet.
- (4) The architectural design of the front facade shall be continued around all visibly exposed sides of a building. All sides of a building shall be consistent in design, including style, materials, and details.
- (5) All main building entrances shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, etc.
- (6) Gable and hipped roofs shall be used to the greatest extent possible. Both gable and hipped roofs shall provide overhanging eaves on all sides that extend a minimum of one foot beyond the building wall.

E. Parking.

- (1) Parking shall be provided in conformance with the Residential Site Improvement Standards, including the guest parking requirements.
- (2) A minimum of one attached garage space is required per unit.

F. Signage.

- (1) One monument sign is permitted to be installed to identify the development, and one sign shall be permitted to identify the roadway as private.
- (2) Said sign shall be a maximum of 20 square feet and a maximum of five feet tall.
- (3) Said sign may be externally illuminated.

G. Lighting.

- (1) A lighting plan prepared by a qualified individual shall be provided with site plan applications.
- (2) All parking areas shall have a minimum average illumination of 0.5 footcandles.
- (3) Public and private streets shall have a minimum average of one footcandle over the cartway.
- (4) No lighting at the property line shall exceed 0.5 footcandles, except for where there is an access road.
- (5) Light fixtures shall be full cutoff where required and no taller than 15 feet.

H. Landscaping.

- (1) Landscaping shall be provided to promote a desirable visual environment, to accentuate building design, screen parking areas, and mitigate adverse visual impacts.
- (2) Landscape plans shall be prepared by a New Jersey licensed landscape architect. A plant list shall be provided, listing quantity, plant key, botanical name, common name, installation size, and mature size.
- (3) Shade trees shall be provided easterly from the intersection of Duane Lane and Brenner Place at an average of 50 feet on center. Shade trees shall be provided along all internal roadways, whether public or private, at an average of 60 feet on center. Shade trees shall be a minimum of three inches caliper and 10 feet in height at the time of planting. The following shade tree species are permitted:
 - (a) Regent Scholar.
 - (b) Chinese Elm.
 - (c) October Glory Maple.
 - (d) Katsure tree.
 - (e) Maidenhair tree.
 - (f) Greenspire Linden.

- (g) Village Green Zelkova.
 - (h) Red Sunset Maple.
 - (i) Such other species as approved by the Borough Engineer or Planner.
- (4) Foundation plantings shall be provided to soften the mass of the front facade of buildings. Said plants shall provide seasonal interest at varying heights to complement and provide pedestrian scale to the proposed development.
 - (5) Surface parking areas shall be landscaped with a combination of shade trees and shrubs. Shade trees shall be a minimum three-inch caliper and shrubs shall be no less than one foot tall at the time of installation. One shade tree and one shrub shall be provided for every 10 parking spaces.
 - (6) The tract setback shall be suitably landscaped, where required by the Planning Board, to provide a visual screen from adjacent uses. Where existing vegetation can provide a suitable screen, the existing vegetation shall be illustrated on the landscaping plan to confirm. If additional landscaping is required, the landscape architect shall develop a plan that reasonably accomplishes same. Excluded from the foregoing shall be areas that are to be used for detention/water quality facilities. In such areas, the developer, through its landscape architect, shall create an appropriate landscape area separating the new development from the existing golf course.
- I. Fences, walls, and entrance gate/piers.
- (1) Fences and walls between a building and public street shall be a maximum of six feet tall.
 - (2) Fences and walls not located between a building and public street shall be a maximum of six feet tall.
 - (3) The piers supporting the entrance gates to the development and the adjoining walls to such piers shall not exceed seven feet in height plus decorative lighting may be installed on top, provided such decorative lighting does not exceed two feet for a total of not more than nine feet in height. The entrance gates shall not exceed nine feet in height.
- J. Trash. Trash and recycling may be stored inside each individual unit, or in the recreation center area, or in a common trash enclosure subject to the following requirements:
- (1) The trash enclosure shall not be visible from any public street.
 - (2) The trash enclosure shall be constructed of a six-foot-tall masonry wall on three sides and a solid heavy-duty gate closure on the fourth side.
 - (3) The trash enclosure shall be surrounded and screened on three sides by a mixture of evergreen plants. Evergreen plants must be at least six feet tall at the time of planting.
- K. Affordable housing.
- (1) Block 119, Lots 1.05, 1.06, and 1.07 (which were to have been changed to Block 119, Lot 1.51) and Block 120, Lots 1.03 and 1.04 (which were to have been changed to Block 120, Lots 1.31, 1.32, 1.41 and 1.42 on the Tax Assessment maps of the Borough of Demarest) shall provide five affordable housing units through a payment in lieu of \$1,000,000. The payments shall be made based upon the milestones set forth herein:
 - (a) Upon the commencement of site work, road construction or excavation: \$250,000.

The term "site work" is specifically understood to exclude the eastern extension of Duane Lane including the construction of the cul-de-sac and site clearing of the property;

- (b) Upon the issuance of the first building permits(s) for actual construction of the first townhouse building: \$250,000;
- (c) Upon issuance of the 10th certificate of occupancy to occupy residential units in the development: \$500,000.

L. Utilities. All utilities shall be underground.

M. Site improvement standards.

- (1) Streets, curbs, gutters, sidewalks (which at the discretion of the developer may be waived if they are not on a public street), pavements, street signs, parking lots, the water supply, fire hydrants, the sanitary sewer system, and stormwater management shall be designed pursuant to the Residential Site Improvement Standards (N.J.A.C. 5:21).

N. Off-site improvements.

- (1) Off-tract improvements are required whenever an application for development requires the construction of off-tract improvements that are clearly, directly, and substantially related to or necessitated by the proposed development. The Planning Board, as the case may be, may require as a condition of final site plan or subdivision approval that the applicant provide for such off-tract improvements if such off-tract improvements are necessitated by the townhouse development. Off-tract improvements shall include water, sanitary sewer, drainage, and street improvements.
- (2) Determination of cost. When off-tract improvements are required, the Borough Engineer shall calculate the cost of such improvements in accordance with the procedures for determining performance guaranty amounts in N.J.S.A. 40:55D-53.4. Such costs may include, but not be limited to, any or all costs of planning, surveying, permit acquisition, design, specification, bidding, construction, construction management, inspection, legal, traffic control and other common and necessary costs of the construction of improvements. The Borough Engineer shall also determine the percentage of off-tract improvements that are attributable to the applicant's development proposal and shall expeditiously report his findings to the Planning Board and the applicant.
- (3) Improvements required solely for the application's development. Where the need for an off-tract improvement is necessitated by the proposed development and no other property owners receive a special (i.e., more than incidental) benefit thereby, or where no planned capital improvement by a governmental entity is contemplated, or the improvement is required to meet the minimum standard of the approving authority, the applicant shall be solely responsible for the cost and installation of the required off-tract improvements. The applicant shall elect to either install the off-tract improvements or pay the municipality for the cost of the installation of the required off-tract improvements.
- (4) Performance guaranty. If the applicant elects to construct the improvements, the applicant shall be required to provide, as a condition of final approval, a performance guaranty for the off-tract improvements in accordance with N.J.S.A. 40:55D-53 and § 172-12.1N (2) above.

- (5) Certification of costs. Once the required off-tract improvements are installed and the performance bond released, the developer shall provide a certification to the Borough Engineer of the actual costs of the installation. The Borough Engineer shall review the certification of costs and shall either accept them, reject them, or conditionally accept them. In the review of costs, the Borough Engineer shall have the right to receive copies of invoices from the developer sufficient to substantiate the certification. Failure of the developer to provide such invoices within six months of the Borough Engineer's request shall constitute forfeiture of the right of future reimbursement for improvements that benefit other.
- (6) Time limit for reimbursement. Notwithstanding any other provisions to the contrary, no reimbursement for the construction of off-tract improvements providing excess capacity shall be made after 10 years has elapsed from the date of the acceptance of the certification of costs by the Borough Engineer.

O. General.

- (1) All applications within the Residential Multifamily-2 Overlay District shall include a statement from the developer or its professional that the proposed development is in compliance with § 153-4H of the Borough of Demarest Code.
- (2) All applications within the Residential Multifamily-2 Overlay District shall comply with § 153-4, Performance standards.
- (3) Site plans submitted as part of any application within the Residential Multifamily-2 Overlay District shall be prepared in accordance with § 153-5.

§175-31 Residential Multifamily-3 District.

A. Permitted principal uses.

- (1) Townhomes.

B. Permitted accessory uses.

- (1) Off-street parking.
- (2) Fences and walls.
- (3) Landscaping and buffering.

C. Bulk standards.

- (1) Minimum lot area: 70,000 square feet
- (2) Minimum lot frontage: 500 feet
- (3) Minimum Front Yard Setback from County Road: 110 feet
- (4) Minimum Side Yard Setback abutting Hardenburgh Avenue: 40 feet
- (5) Minimum Side Yard Setback Abutting a Lot: 35 feet
- (6) Minimum Rear Yard Setback: 35 feet
- (7) Minimum Setback to Attached Decks and/or Patios: 30 feet

- (8) Minimum Setback to Mechanical Equipment: 35 feet
- (9) Maximum Building Coverage: 18%
- (10) Maximum Improved Lot Coverage: 32%
- (11) Maximum Building Height (Per Unit and As Measured to the Mid-Point of the Roof), which is defined as the distance between the finished garage floor elevation and midpoint of the roof between the highest ridge and eave: 35 feet and 3 stories
- (12) Maximum Number of Units: 7 units
- (13) Maximum Number of Bedrooms In Any Unit: 3 bedrooms
- (14) No improvements, other than utilities landscaping, shall be installed within 100 feet of the County Road right-of-way. Landscaping in this area shall be capped at an amount not to result in the development of the Property being classified as a Major Development under the New Jersey Department of Environmental Protection Storm Water Management Regulations.

D. Architectural Standards.

- (1) The project shall be designed with two buildings, one containing four units and one containing three units. The buildings shall be designed in a manner to blend with the surrounding single-family homes.
- (2) Buildings shall be constructed of brick, stone, cast stone, hardy plank siding, or other high-quality materials.
- (3) The architectural design of the front façade(s) shall be continued around all visibly exposed sides of a building. All sides of a building shall be consistent in design, including style, materials, and details.
- (4) Building offsets (projections and recesses) shall be provided every 35 feet to break up the mass of the buildings. Offsets shall have a minimum depth of one foot.
- (5) Gable and hipped roofs shall be used to the greatest extent possible. Both gable and hipped roofs shall provide overhanging eaves on all sides that extend a minimum of one foot beyond the building wall.

E. Parking.

- (1) Parking shall be provided as follows:
 - (a) A minimum of 1.8 spaces per one-bedroom unit (inclusive of guest parking)
 - (b) A minimum of 2.3 spaces per two-bedroom unit (inclusive of guest parking)
 - (c) A minimum of 2.4 spaces per three-bedroom unit (inclusive of guest parking)
- (2) Where provided, garages shall be used to park cars and shall not be converted to living space or used as storage units.

F. Lighting.

- (1) A lighting plan prepared by a qualified individual shall be provided with site plan applications.
- (2) All parking areas and drive aisles (excluding driveways exclusively servicing a unit) shall have an average illumination of 0.5 footcandles.
- (3) No lighting at the property line shall exceed zero footcandles, with the exception of curb cuts along the right-of-way and areas within 10 feet of said curb cuts.
- (4) Light fixtures shall be full cutoff with a mounting height not to exceed 15 feet.

G. Landscaping.

- (1) Landscaping shall be provided to promote a desirable visual environment, to accentuate building design, screen parking areas, and mitigate adverse visual impacts.
- (2) Landscape plans shall be prepared by a New Jersey licensed landscape architect. A plant list shall be provided, listing quantity, plant key, botanical name, common name, installation size, and mature size.
- (3) Shade trees shall be provided within ten feet of public rights-of-way at a rate of one per 60 linear feet of frontage. Shade trees shall be installed with a minimum caliper of three inches.
- (4) Parking areas and driveways shall be landscaped with a combination of shade trees and shrubs. Shade trees shall have a minimum caliper of three inches and shrubs shall be a minimum of 30 inches tall at installation.
- (5) Landscape buffer.
 - (a) A landscaped buffer shall be provided within 25 feet of the side and rear property lines coinciding with adjacent residential uses. Within this buffer no existing tree shall be cut or removed unless the tree is dead, dying, or diseased or if the removal of the tree is necessary for the installation of utilities.
 - (b) Buffer plantings shall consist of a combination of shade trees, evergreen trees, ornamental trees, and shrubs to provide a natural looking buffer, while providing a visual screen.
 - (c) Buffer plantings shall include the following:
 - [1] One shade tree shall be provided for every 50 feet of linear feet of buffer.
 - [2] One evergreen tree shall be provided for every 20 feet of linear feet of buffer.
 - [3] One ornamental tree for every 50 feet of linear feet of buffer.
 - [4] Ten shrubs for every 50 linear feet of buffer.
 - [5] Existing shade and evergreen trees within the buffer may be counted in fulfilling the required buffer planting.
 - (d) Buffer plants shall be the following sizes at the time of planting:
 - [1] Shade trees shall have a minimum caliper of three inches and minimum height of 12 feet, balled and burlapped.

[2] Evergreen trees shall be planted at a minimum height of six feet, balled and burlapped.

[3] Ornamental trees shall have a minimum caliper of two inches.

[4] Shrubs shall be planted at a minimum height of two feet. However, at least 50% of shrubs shall be more than two feet at installation. Additionally, at least 50% of shrubs shall be evergreen.

(e) No more than 25% of the plantings shall be of the same species and/or variety of plant.

(f) Buffer plantings shall be arranged in a natural staggered pattern and shall not be lined up in straight, single rows.

(g) All buffer plants shall be deer resistant.

(6) Foundation plantings shall be provided to soften the mass of the buildings. Said plants shall provide seasonal interest at varying heights to complement and provide pedestrian scale to the proposed development.

(7) All applications for development shall comply with Chapter 163, "Trees" as limited by C. (14) above.

H. Trash.

(1) Trash and recycling shall be stored inside each individual garage space or unit.

I. Affordable housing.

(1) Block 63, Lot 5 shall provide one affordable non-restricted unit in accordance with the Mediation Agreement.

(2) Pursuant to the Mediation Agreement, the developer shall provide a subsidy payment for a fractional unit of 0.4 pursuant to Section §175-86.

(3) The affordable units shall meet the standards in Article X, Affordable housing, and the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26, et seq) in effect at the time of application.

(4) The developer/HOA shall be responsible for retaining a qualified administrative agent, who shall be the Borough's administrative agent, or a certified entity approved by the Council.

(5) All necessary steps shall be taken to make the affordable unit provided creditworthy pursuant to applicable law.

J. Site improvement standards.

(1) Streets, curbs, gutters, sidewalks (which at the discretion of the developer may be waived if they are not on a public street), pavements, street signs, parking lots, the water supply, fire hydrants, the sanitary sewer system, and stormwater management shall be designed pursuant to the Residential Site Improvement Standards (N.J.A.C. 5:21).

K. Off-site improvements.

(1) Off-tract improvements are required whenever an application for development requires the construction of off-tract improvements that are clearly, directly, and substantially related to

or necessitated by the proposed development. The Planning Board, as the case may be, may require as a condition of final site plan or subdivision approval that the applicant provide for such off-tract improvements if such off-tract improvements are necessitated by the townhouse development. Off-tract improvements shall include water, sanitary sewer, drainage, and street improvements.

- (2) Determination of cost. When off-tract improvements are required, the Borough Engineer shall calculate the cost of such improvements in accordance with the procedures for determining performance guaranty amounts in N.J.S.A. 40:55D-53.4. Such costs may include, but not be limited to, any or all costs of planning, surveying, permit acquisition, design, specification, bidding, construction, construction management, inspection, legal, traffic control and other common and necessary costs of the construction of improvements. The Borough Engineer shall also determine the percentage of off-tract improvements that are attributable to the applicant's development proposal and shall expeditiously report his findings to the Planning Board and the applicant.
- (3) Improvements required solely for the application's development. Where the need for an off-tract improvement is necessitated by the proposed development and no other property owners receive a special (i.e., more than incidental) benefit thereby, or where no planned capital improvement by a governmental entity is contemplated, or the improvement is required to meet the minimum standard of the approving authority, the applicant shall be solely responsible for the cost and installation of the required off-tract improvements. The applicant shall elect to either install the off-tract improvements or pay the municipality for the cost of the installation of the required off-tract improvements.
- (4) Performance guaranty. If the applicant elects to construct the improvements, the applicant shall be required to provide, as a condition of final approval, a performance guaranty for the off-tract improvements in accordance with N.J.S.A. 40:55D-53 and K (2) above.
- (5) Certification of costs. Once the required off-tract improvements are installed and the performance bond released, the developer shall provide a certification to the Borough Engineer of the actual costs of the installation. The Borough Engineer shall review the certification of costs and shall either accept them, reject them, or conditionally accept them. In the review of costs, the Borough Engineer shall have the right to receive copies of invoices from the developer sufficient to substantiate the certification. Failure of the developer to provide such invoices within six months of the Borough Engineer's request shall constitute forfeiture of the right of future reimbursement for improvements that benefit other.
- (6) Time limit for reimbursement. Notwithstanding any other provisions to the contrary, no reimbursement for the construction of off-tract improvements providing excess capacity shall be made after 10 years has elapsed from the date of the acceptance of the certification of costs by the Borough Engineer.

L. General.

- (1) All applications within the Residential Multifamily-3 District shall include a statement from the developer or its professional that the proposed development is in compliance with § 153-4H of the Borough of Demarest Code.
- (2) All applications within the Residential Multifamily-3 District shall comply with § 153-4, Performance standards.

- (3) Site plans submitted as part of any application within the Residential Multifamily-3 District shall be prepared in accordance with § 153-5.

§ 175-32. (Reserved)

§ 175-33. (Reserved)

§ 175-34. (Reserved)

ARTICLE VI
Affordable Housing District

§ 175-35. Affordable housing district designation.

The 8.44 acres shown on a plan entitled "Preliminary Site Plan - 48 units Alpine Country Club Condominiums" prepared by Michael J. Hubschman, P.E., P.P., dated December 12, 2000, a copy of which is on file in the Borough Clerk's office is designated as Affordable Housing District (AH District).

§ 175-36. Permitted uses in AH District; definitions.

In the AH District, the following are permitted of right.

- A. Residential townhomes/townhouses, attached single-family dwelling units and apartment flats.
- B. For purposes of this article:
 - (1) A "townhome/townhouse" is a one-family dwelling unit in a row of at least two such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more common fire-resistant walls.
 - (2) An "attached single-family dwelling unit" is a one-family dwelling unit attached to one or more one-family dwellings by common vertical walls.
 - (3) An "apartment flat" is a one-family dwelling unit on one floor of a building containing three or more such flats.

§ 175-37. Density.

The density in the AH District shall be a total of 48 dwelling units.

§ 175-38. Low- and moderate-income housing.

Four of the 48 units shall be age-restricted low- and moderate-income dwelling units. "Age restricted" shall mean housing for older persons as used and defined in 42 U.S.C. § 3607. Low-income housing means housing affordable according to Federal Department of Housing and Urban Development occupied or reserved for occupancy by households with a gross household income equal to 50% or less of the median gross household income for households of the same size within the Northeast housing region and which is subject to affordability controls promulgated by the Council on Affordable Housing. Moderate-income housing means housing affordable according to Federal Department of Housing and Urban Development occupied or reserved for occupancy by households with a gross household income in excess of 50% but less than 80% of the median gross household income for households of the same size within the Northeast housing region and which is subject to affordability controls promulgated by the Council on affordable housing.

§ 175-39. Bedroom distribution.

The age-restricted dwelling units required by § 175-38 shall utilize bedroom distribution in accordance with N.J.A.C. 5:93-7.3(b).

§ 175-40. Rent and sale prices.

The maximum rent and/or sale prices of the age-restricted dwelling units required by § 175-38 shall be determined pursuant to N.J.A.C. 5:93-7.4.

§ 175-41. Distribution of low- and moderate-income units.

At least two of the four age-restricted units shall be affordable to low-income households.

§ 175-42. Setbacks.

- A. All units in the AH District shall be set back not less than 45 feet from any residential property, excepting that the setback from the rear property line of any residential property fronting on Hardenburgh Avenue shall be not less than 70 feet.
- B. All improvements in the AH District shall be set back not less than 70 feet from the rear property line of any residential property fronting on Hardenburgh Avenue excepting:
 - (1) Hammerhead vehicle turnaround and driveway areas may be constructed within said setback but not less than 50 feet from the rear property line of any residential property fronting on Hardenburgh Avenue.
 - (2) Retaining wells, berms, and landscaping.

§ 175-43. Landscaping; berms.

In connection with any development in the AH District:

- A. Within 50 feet of the rear property lines of the residential properties fronting on Hardenburgh Avenue there shall be constructed a berm not less than three feet in height.
- B. Within 50 feet of the rear property lines of residential properties fronting on Hardenburgh Avenue and Anderson Avenue, there shall be planted evergreens and other landscaping not less than eight feet in height.

§ 175-44. Streetlighting.

In connection with any development in the AH District, there shall be installed low-level coverage lamp-type lighting so as to create a gas-light fixture effect.

§ 175-45. Height.

The dwelling units shall not exceed three stories and 30 feet in height from the average elevation of the proposed finished grade all around the dwelling units to the highest point of the roof measured to the horizontal line halfway between the eave and the ridge of the roof, but in no event shall the ridge of the roof exceed 35 feet in height.

§ 175-46. (Reserved)

§ 175-47. (Reserved)

§ 175-48. (Reserved)

§ 175-49. (Reserved)

§ 175-50. (Reserved)

§ 175-51. (Reserved)

ARTICLE VII
Golf Course District

§ 175-52. Permitted uses.

In the G Golf Course District, the following uses are permitted by right:

- A. Single-family residences subject to the same restrictions as the R-A single-family residential zone.

§ 175-53. Accessory uses.

- A. The following accessory uses are permitted in conjunction with a single-family residence:

- (1) Garage parking spaces, attached or detached from the principal dwelling.
- (2) Storage sheds.
- (3) Gazebos.
- (4) Pergolas.
- (5) Above ground or in-ground swimming pools.
- (6) Patios and decks.
- (7) Sports courts such as tennis, volleyball, full and half basketball courts, etc.
- (8) Roof-mounted solar panels.
- (9) Customary and incidental accessory uses to a single-family home.

- B. A clubhouse, subject to the following standards:

- (1) It must be located entirely within 600 feet of the property line fronting the county road on which the golf course has its frontage.
- (2) Minimum setback of 200 feet from Anderson Avenue, the county road on which the golf course has its frontage.
- (3) Minimum setback of 100 feet from any property line other than the county road on which the golf course has its frontage.
- (4) Maximum floor area of the clubhouse building (excluding other club facilities buildings and structures) of 40,000 square feet.
- (5) Maximum clubhouse building coverage of 20,000 square feet.
- (6) Maximum clubhouse height of 40 feet from the average elevation of the proposed finished grade all around the clubhouse to the highest point of the roof measured to the horizontal line halfway between the eave and ridge of the roof, but in no event shall the ridge of the roof exceed 45 feet in height and 2 1/2 stories.

- C. Club facilities accessory to a clubhouse, subject to the following standards:

- (1) Minimum setback of 10 feet from Anderson Avenue, the county road on which the golf course has its frontage.

- (2) Minimum setback from lot lines in Residence A District of 25 feet excepting a private drive or private road need only be set back not less than 15 feet from lot line in Residence A District.
 - (3) Minimum number of parking spaces of 72 and maximum number of parking spaces of 215. Front yard parking is permitted.
 - (4) Maximum number of tennis courts is eight.
 - (5) Maximum impervious area of clubhouse and club facilities accessory to a clubhouse of six acres.
 - (6) The county road on which the golf course has its frontage shall be buffered from any uses or structures by deciduous street trees not less than 2 1/2 inches caliper measured six inches above the ground planted 40 feet on center with understory conifer shrubbery of a type three feet to four feet in height when fully grown subject to sight distance requirements. This standard is the minimum standard which may be modified pursuant to the provisions of § 163-6 of the Borough Code.
 - (7) Notwithstanding the frontage requirements, the Alpine Country Club may access its club facilities accessory to clubhouse, from a new street (to be dedicated to the Borough) located in Block 120, Lot 13.
 - (8) The tennis courts may be lighted, provided that all lights must be turned off by 10:00 p.m. daily.
- D. Club facilities accessory to a secondary social facility, subject to the following standards:
- (1) Access must be achieved through private driveways internal to the site originating from the Anderson Avenue access.
 - (2) The maximum floor area of a secondary social facility shall be 20,000 square feet.
 - (3) The maximum building coverage of a secondary social facility shall be 10,000 square feet.
 - (4) The maximum height of a secondary social facility shall be 31 feet and eight inches (i.e., not more than 10 feet above the 21 feet, eight-inch structure which existed in the general area of Academy Lane as of November 2000).
 - (5) A secondary social facility shall be set back a minimum of 190 feet from any municipal street, excepting that any porte cochere must only have a minimum setback of 170 feet.
 - (6) Club facilities accessory to a secondary social facility shall meet the following standards.
 - (a) Maximum number of parking spaces permitted shall be 160.
 - (b) Parking areas shall be set back a minimum 70 feet from any public street.
 - (c) All uses, except as set forth in Subsection E. below, shall have a minimum setback of 50 feet from any public street and from any residential property line.
 - (d) Lighting shall be limited to that which is the minimum permitted by the Code of the Borough of Demarest.
 - (e) Outdoor speaker or public address systems and all manner of sound projection devices are strictly prohibited.
 - (f) Setback areas from public streets shall be densely landscaped to produce an appropriate

and substantial buffer. The landscaping shall include at least one row of trees which are a minimum of 15 feet in height to ensure that all floors of the secondary social facility are substantially shielded from neighboring properties; and to shield headlights from vehicles parking in a parking area accessory to a secondary social facility.

- (g) Fencing constructed of a solid material and uninterrupted shall be required to shield headlights from vehicles parking in a parking area accessory to a secondary social facility. Said fencing shall not be required in those areas where a structure exists which shields the headlights of vehicles. Low level landscaping shall also be required on the side of the fence nearest contiguous property lines in addition to the landscaping set forth in Subsection D (6)(f) above.

E. Additional club facilities.

- (1) Notwithstanding the provisions of Subsections B, C and D above, there shall be permitted an accessory structure for maintenance that shall meet the following standards:
 - (a) The maintenance building must be set back a minimum of 35 feet from any public street and 75 feet from any other property line.
 - (b) The maintenance building may not exceed 8,000 square feet.
 - (c) Activities in the maintenance building must be conducted so that noise emanating from said building minimally meets the standards of N.J.A.C. 7:29-1.2(a).
 - (d) The maintenance building shall be screened from a public street and neighboring residential properties by a row of trees which are a minimum of 15 feet in height.
- (2) Notwithstanding the provisions of Subsections A, B, and C above, there shall be permitted an accessory structure for storage of items not in use that will remain stored uninterruptedly for not less than a season at a time (i.e., dead storage) or golf carts that shall meet the following standards.
 - (a) There shall be a minimum setback from a public street of 10 feet.
 - (b) It shall have a maximum floor area of 5,100 square feet.
 - (c) There shall be landscaping shielding the storage/golf cart building from neighboring uses, including without limitation 15 feet evergreens.

F. Roof-mounted solar panels.

§ 175-54. Golf Course District Conditional Uses.

A. Golf courses and golf courses with club facilities subject to the following conditions:

- (1) Minimum contiguous area of 140 acres of land within the Borough.
- (2) Minimum frontage of 450 feet along a section of Anderson Avenue, a County Road within the Borough. Vehicular access to the site shall be restricted to access from said Anderson Avenue.
- (3) The golf course shall be an eighteen-hole regulation course.

§ 175-55. (Reserved)

§ 175-56. (Reserved)

ARTICLE VIII
Community Business District I

§ 175-57. Permitted principal uses.

In the Community Business District I, the following uses are permitted by right:

- A. Those uses permitted in residence districts (Article IV).
- B. A store or shop for the conduct of retail business, provided that all merchandise shall be contained wholly within a building.
- C. A personal service shop.
- D. Professional offices
- E. Restaurants, including casual restaurants, and taverns.
- F. A laundry and/or dry-cleaning agency, provided that no laundering or dry cleaning is done on the premises.
- G. Child care centers
- H. Instructional uses.
- I. Medical offices.
- J. Public parks, playgrounds, and open space.
- K. Banks
- L. Adult daycare.
- M. Municipal offices and uses.

§ 175-58. Accessory uses

In the Community Business District I, the following accessory uses are permitted by right:

- A. Off-street parking and loading.
- B. Signs.
- C. Fences and walls, including retaining walls.
- D. Roof-mounted solar panels.
- E. Outdoor dining associated with permitted food establishments is permitted so long as a four-foot-wide unobstructed pedestrian passage is provided.

§ 175-59. Prohibited uses

The following uses are prohibited in the Community Business District I:

- A. Any use not specifically permitted shall be prohibited.
- B. Automobile repair stations.

- C. Gas stations.
- D. New or used car lots.
- E. Tattoo parlors.
- F. Adult uses.
- G. Drive-through facilities associated with retail, restaurants, and casual restaurants.

§ 175-60. Conditional uses

- A. In those portions of the Community Business I District that are within the OL-Overlay Zone, cellular telecommunications towers and antennas shall be permitted as conditional uses, provided that they comply with the specifications and standards of Section §175-27B.

§ 175-61. Bulk Regulations

- A. Minimum side yard setback: 15 feet.
- B. Minimum rear yard depth: 30 feet.
- C. Maximum building coverage: 50%
- D. Maximum building stories: 2
- E. Maximum building height: 30 feet.
- F. Maximum impervious surface area: 90%

§ 175-62. Encroachments

Accessory buildings, uses and structures and improvements shall be permitted only in a rear yard, subject to the following regulations, which shall apply to the entire rear yard, not just the required minimum depth:

- A. No accessory use, building or structure shall be erected with a mean roof height in excess of 12 feet. For purposes of this section, "mean roof height" shall be 1/2 the distance between the highest part of the roof and the top of its supporting wall.
- B. All accessory uses, buildings or structures in any community business district shall be set back from the rear property line at least five feet, except when abutting a residence district, where such setback shall be at least 10 feet.
- C. Generators and air conditioning units shall be permitted in the side or rear yards, subject to the following provisions:
 - (1) Generators and air conditioning units shall not be permitted to encroach into any required rear or side yard setback.
 - (2) Generators and air conditioning located in the side yard shall be screened from the view of the public right-of-way.

§ 175-63. (Reserved)

§ 175-64. (Reserved)

ARTICLE IX
Supplementary Regulations For All Districts

§ 175-65. Area and bulk.

The schedules entitled "Limiting Schedule, District" and "Limiting Schedule, Conditional Use" shall be deemed to be a part of this article and shall govern the use of land and buildings within the Borough of Demarest.

§ 175-66. Signs.

A. All Districts

(1) Permitted

(a) Political Signs

(b) Real Estate Signs

[1] Not more than four square feet in area.

[2] Located at least two feet from the front property line.

[3] In no case shall such sign be illuminated.

(c) A sign of not more than two square feet advertising the location elsewhere of a church or a public or semipublic building shall be permitted.

(d) Construction Signs

[1] Not more than four square feet in area.

[2] In no case shall such sign be illuminated.

[3] Construction signs shall only be permitted during the course of construction after a valid construction permit has been issued and on the issuance of a CO, CA or TCO shall be removed.

(2) Prohibited

(a) Neon tubes outlining all or part of a building or premises are strictly prohibited.

(3) Temporary Signs

(a) Temporary Signs shall be permitted subject to the following regulations.

[1] No temporary sign shall be placed on public property.

[2] Temporary signs shall not be more than 6 square feet in size.

[3] Temporary signs shall not be situated less than 5 feet from a property line.

[4] Temporary signs shall not impede the flow of pedestrian traffic.

[5] Temporary signs shall only remain for 30-days, with the option to request two 30-day extensions from the zoning officer.

B. Residence Districts

(1) Permitted

(a) Open House Signs

(b) Garage or Estate Sale Signs

(c) Business Signs for a permitted home occupation

[1] No Business Sign will be granted without the business first obtaining the required use permit for their business from the zoning officer.

[2] Such sign shall only advertise or promote the business located within said building.

[3] Such signs shall not exceed a height of 10 inches or a length of 18 inches.

[4] There shall not be more than one sign per lot.

[5] In no case shall such signs be illuminated except by a light fixture which is an integral part of the sign and so arranged as to have the light shine only on the sign.

(2) Prohibited

(a) Advertising Signs

C. Community Business District

(1) Permitted

(a) Business Signs

[1] Such sign shall not exceed 18 inches in height.

[2] Such sign shall not cover more than 75% of the width of the building to which it is attached.

[3] Such sign shall not project more than one foot from said building.

[4] Such sign shall only advertise or promote the business located within said building.

(b) Window Signs

[1] A window sign shall not cover more than 30% of the window.

(c) Wall Signs

(d) Sidewalk Signs

[1] Such sign shall not be more than 5 feet from the business.

[2] Such sign shall not impede the flow of pedestrian traffic.

[3] Such sign shall not be more than 3 feet in height.

(e) Projecting Signs

§ 175-67. (Reserved - Billboards)

§ 175-68. Fences & Walls

No fence shall be erected without first obtaining a zoning permit.

A. All fences erected in the Borough of Demarest shall be subject to the following requirements:

- (1) The maximum height for rear and side yard fences shall not exceed six feet.
- (2) The total height of the fence will not include any slight undulations of the grounds, provided that 80% of the fence does not exceed the maximum height of six feet.
- (3) Front yard fences shall be less than 50% solid and shall not exceed a maximum height of four feet.
- (4) Fences must be constructed with the face or finished side away from the property and the structural side toward the inside.
- (5) Fences shall not impede the flow of natural drainage and shall not cause surface water to be blocked or dammed to create ponding.
- (6) Every fence or wall shall be maintained in a safe, sound, upright condition.
- (7) No fence may be erected so as to encroach upon a public right-of-way or to interfere with vehicular traffic or with the sight triangles on corner lots.
- (8) Fence heights will be measured from the Average Natural Grade, excluding berms and swales.
- (9) The following fences and fencing materials are specifically prohibited: barbed-wired fences, canvas, cloth, electrically charged fences, poultry netting, expandable fences and collapsible fences.

B. Temporary Construction Fences

- (1) For all new construction a temporary fence shall be maintained until construction and sitework is deemed complete by the zoning officer, construction official or property maintenance official.
- (2) For a substantial addition or alteration as determined by the zoning officer, construction official or property maintenance official a temporary fence shall be maintained until construction and sitework is deemed complete by the zoning officer, construction official or property maintenance official.
- (3) Upon completion of construction and site work such fence shall be promptly removed.
- (4) Such a fence shall be a minimum of 4 feet in height, and a maximum of 6 feet in height.
- (5) Such a fence shall include an attached privacy screen.
- (6) Such a fence shall be permitted up to the property lines and shall completely encompass the work area provided that it does not interfere with any sight triangle.
- (7) Such a fence shall be maintained in a clean and upright condition.
- (8) Such a fence shall be locked at all times that the construction site does not have workers present.

- (9) Such fence shall not require a zoning permit when an active construction permit exists for the property.

§ 175-69. Retaining Walls.

A. Retaining Walls

- (1) A construction permit shall be required for retaining walls four feet high or greater.
- (2) Retaining walls over four feet high must be designed by a New Jersey-licensed professional engineer.
- (3) Retaining walls shall have their height measured collectively when placed behind each other unless there is a minimum of 4 feet between each wall.
- (4) Retaining walls shall be set back from all property lines a minimum of 10 feet.

§ 175-70. Off-street parking.

In conjunction with any building or use of land, there shall be provided on the same lot therewith sufficient parking spaces to meet the minimum requirements specified herein. No parking area once established shall be diminished unless the remaining parking area meets the minimum requirements specified herein.

A. All Districts

- (1) Library, museum or club: one space for each employee, plus one space for each 300 square feet of net floor area or any fraction thereof.
- (2) Schools, grades 1 to 8 inclusive: one space per employee, including teachers, plus 10%.
- (3) Schools, grades 9 to 12 inclusive: one space per employee, including teachers, plus one space for each six pupils.
- (4) Places of worship: parking shall equal 40% of the maximum fire occupancy of the entire building or structure.
- (5) Where any of the foregoing uses, other than places of worship, consist of structures containing auditoriums, halls, cafeterias, gymnasiums or other rooms that may be used for a public assemblage, there shall be provided one additional parking space for each one-hundred-square-foot area of such auditorium, hall, cafeteria or gymnasium.

B. Residence Districts (R-A, R-BB, R-B, R-C & R-D)

- (1) Dwelling: Parking for residential uses shall comply with the standards of the Residential Site Improvement Standards, N.J.A.C. 5:21, which shall be minimum requirements.
- (2) At least two off-street parking spaces shall be provided per dwelling unit.

C. Community Business District I

- (1) No parking space or access thereto, except entrance or exit drives as limited in this section, shall be between the front building setback line and the street line. Entrance and exit drives connecting the parking area and the street shall be permitted between the front building setback line and the street line as required above provided that:
 - (a) Such drives shall not exceed 15 feet in total aggregate width for each 50 feet of

street line abutting such lot but in no case exceeding 30 feet in total aggregate width for each street line upon which a lot abuts.

- (b) Such drives shall be at least 60 feet distant, measured along the street line from the point of intersection of two intersecting street lines or from a bend in the street line of one street where the change in direction is 30° or greater.
- (2) Retail stores: one space for each 350 square feet of floor area.
- (3) Restaurants and casual restaurants: one space for every three seats plus one space for every two employees during the peak shift.
- (4) Professional offices: one space for each 250 square feet of floor area.
- (5) Medical office: one space for each 142 square feet of floor area.
- (6) Personal services: one space for each 200 square feet of floor area.
- (7) Instructional uses: one space for each 120 square feet of public area for uses with less than 5,000 square feet of public area. For uses with 5,000 or more square feet of public area, the parking requirement shall be determined based on maximum fire occupancy.
- (8) A 10-foot-wide buffer area shall be provided along all property lines a parking area faces. Evergreen trees shall be planted within the buffer area and installed at a minimum height of six feet.

D. Special or conditional parking and storage regulations.

- (1) Certain vehicles, boats, house trailers and other conveyances, as herein provided shall not be parked, stored or garaged unless it is the only commercial vehicle stored or garaged thereat and has a body, box or platform adapted for carrying goods or materials, with a registered gross vehicle weight of less than 5,000 pounds when loaded.
- (2) Storage exception. A commercial vehicle having a body, box or platform adapted for carrying goods or materials, with a registered gross vehicle weight of less than 5,000 pounds when loaded, shall only be permitted in a residential district on the condition that said vehicle is stored in a garage at all times.
- (3) The following vehicles shall not be parked, stored or garaged in a residential district:
 - (a) Commercial vehicles with a registered gross vehicle weight of 5,000 pounds or more when loaded.
 - (b) Any other truck, trailer or vehicle with a registered gross vehicle weight of 5,000 pounds or more when loaded.
 - (c) Any unregistered vehicles.
 - (d) Motorboats, sailboats or other watercrafts 20 feet or more in length.
 - (e) House trailers, housing units, mobile homes and self-propelled housing units.
 - (f) Collapsible housing units, whether assembled or disassembled.
 - (g) Animal conveyances, either trailer or self-propelled.

- (4) Non applicability. This section shall not be applicable to or curtail the use of commercial vehicles making deliveries to or performing services at premises in a residential district.

§ 175-71. Temporary storage containers.

- A. Regulations.
 - (a) Location. A temporary storage container shall be placed only in the driveway, allotted parking spaces, or unimproved portion of the property. The following provisions shall also apply:
- B. No temporary storage container shall be placed in public or utility rights-of-way, nor shall it obstruct the sidewalk.
 - (a) Size and number. No tax lot within the Borough shall contain more than one outdoor temporary storage container. No temporary storage container shall exceed 8 feet in height, 8 feet in width and 16 feet in length.
 - (b) Use. A temporary storage container shall only be utilized on private property, only for a limited purpose of temporarily storing common household items such as furniture, clothing or other household belongings, coming from or to a structure on the property that is being renovated or sold.
- C. The following items are expressly prohibited from being stored or kept within a temporary storage container: hazardous substances, including chemical, flammable or explosive materials, firearms, ammunition, prescription drugs or narcotics, any material or contraband the possession of which is unlawful, food, other than as packaged for sale in cans, jars or bottles, or trash.
- D. In no event shall a temporary storage container be used for the temporary habitation of humans or animals.
 - (a) Signage. All temporary storage containers shall comply with the following:
- E. A temporary storage container shall have no signage other than the name, address and telephone number of the person or entity engaged in the business of renting or otherwise placing the unit.
- F. The sign shall be permanently adhered to, or painted on, a temporary storage container, and the container shall have no more than one sign attached to a side, and no more than two signs total.
- G. A sign attached to a temporary storage container shall be no larger than 15% of the area on the side to where it is attached.
 - (a) Lighting. There shall be no lighting fixtures attached to a temporary storage container, nor shall any lighting fixture be solely utilized to light a container.
 - (b) Maintenance. A temporary storage container shall be in good condition, free from evidence of deterioration, weathering, discoloration, rust, ripping, tearing, or other holes or breaks. When not in use, the container shall be locked at all times.

§ 175-72. Nonconforming lots, buildings and uses.

- A. Any lot existing heretofore as a legal, separate parcel and not complying with the minimum lot frontage, lot depth or lot area at the time of passage of this chapter may, notwithstanding such fact, be improved with a building, provided that the other regulations of its zone are adhered to and provided that the owner owns no other adjacent land which may be included as part of the lot in question.
- B. Any building or use of a building, legal heretofore but not complying with the terms of this chapter at the time of passage, may, notwithstanding such fact, be continued as a nonconforming structure or use.
- C. When a nonconforming use is changed to a use permitted in the district in which it is located, it shall not be thereafter changed from said conforming use to a nonconforming use.
- D. A nonconforming use or structure shall not be modified, extended or expanded.
- E. A nonconforming use or structure may be restored or repaired in the event of partial destruction thereof by fire or other causes.
- F. Whenever a nonconforming use or structure has been abandoned, such use or structure shall not thereafter be reestablished, and any subsequent use or structure shall be in conformity with the provisions of this chapter.
- G. Notwithstanding Subsection D, a residential structure in a one-family zone that is nonconforming only because it encroaches into a required front, side, or rear yard setback may be expanded as long as all of the following conditions are met:
 - (1) No part of the expansion occurs within any required front, side, or rear yard setback. The expansion must take place only in portions of the lot that fully comply with setback requirements.
 - (2) The expansion does not increase or intensify the existing nonconformity in any way. The structure may not extend further into a setback than it already does.
 - (3) Except for the existing setback encroachment, the expanded structure complies with all provisions of the Limiting Schedule.

§ 175-73. Transition requirements.

- A. Lot divided by district boundary. Where a lot is divided by a district boundary, such lot shall be regulated by all of the area and bulk and use regulations of the more restricted district.
- B. Transition at district boundaries. Where a lot in the Community Business District abuts a lot in a residence district, there shall be provided along such boundary line in the Community Business District I an unencumbered yard space as required by the Limiting Schedule for the abutting residence district. This requirement shall take precedence over the provisions of Note C of the Limiting Schedule. Within the required transition area, an evergreen buffer that is at least six feet tall and four feet wide shall be provided.

§ 175-74. Lighting.

Any exterior lighting in connection with any use in all districts shall be so arranged and shielded as to reflect the light downward and away from all adjoining properties and structures so that the lights and glare from lights will not become a nuisance to adjoining properties. The following standards shall apply to lighting in all districts:

A. Any exterior lighting in connection with any use in all districts shall be so arranged and shielded as to reflect the light downward and away from all adjoining properties and structures so that the lights and glare from lights will not become a nuisance to adjoining properties. The following standards shall apply to lighting in all districts:

- (1) All parking areas and walkways thereto and appurtenant passageways and driveways serving commercial, public, office, industrial, apartment or other similar uses having common off-street parking and/or loading areas and building complexes requiring area lighting shall be adequately illuminated for security and safety purposes. The lighting plan in and around the parking areas shall provide for nonglare, color-corrected lights focused downward.
- (2) Stairways and sloping or rising paths, building entrances and exits shall be illuminated.
- (3) The maximum height of freestanding lights shall be no more than 25 feet or the height of the building, whichever is less, measured from the ground level to the center line of the light source, spaced a distance not to exceed five times the mounting height. However, freestanding lights within 100 feet of a residential use shall be no more than 15 feet tall.
- (4) Any other outdoor lighting, such as building and sidewalk illumination, driveways with no adjacent parking, the lighting of signs and ornamental lighting, shall be shown on the lighting plan in sufficient detail to allow determination of the effects to adjacent properties, traffic safety and overhead sky glow. The objective of these specifications is to minimize undesirable off-premises effects.
- (5) Where lights along property lines would be visible to adjacent residents, the lights shall be appropriately shielded. Site lighting, other than that needed for security purposes, shall be set on a timer system that shuts off all but security lighting of the site by 11:00 p.m.
- (6) The following intensity of footcandles shall be provided:
 - (a) Parking lots: a minimum average of 1.0 footcandle throughout.
 - (b) Intersections: a minimum 3.0 footcandles.
 - (c) Maximum at property lines: 1.0 footcandle where non-residential uses abut and 0.5 footcandle where non-residential uses abut residential uses. The maximum footcandles at the property line shall exclude driveways and intersections.
 - (d) In residential districts: a minimum average of 0.5 footcandle, with a maximum average of 1.0 footcandle.

B. Lighting for accessory residential sports courts, including but not limited to, tennis courts, volley ball courts, basketball courts, and the like, shall comply with the following requirements:

- (1) Lighting fixtures must be a minimum of 25 feet from the rear and side lot lines. No lighting shall be permitted in any front yard.
- (2) At all times the lighting intensity at the property lines shall be a maximum of 0.5 footcandle. This measurement shall be conducted in accordance with generally accepted engineering standards, and the measurement shall include and be the sum of the combined illumination of the sports court lighting, other lighting on the property and lighting from any natural light sources.
- (3) Lighting on sports courts shall not be permitted after 10 PM.

- (4) Fixtures shall be of a type and shall be mounted and shielded in such a manner as to prevent the light source from being visible off the property. Such lighting shall further be of a type and located and positioned in such a manner as not to illuminate adjacent properties.
- (5) The mounting height of lighting fixtures shall not exceed 15 feet.

§ 175-75. Swimming Pools

- A. No person shall construct, install or maintain a swimming pool in the Borough of Demarest without first submitting a plot plan and specifications for the same to the Zoning Official of the Borough of Demarest, who shall issue a zoning permit if the plan and specifications comply with the ordinances of the Borough.
- B. All swimming pools shall be set back from all side lot lines a minimum of 15 feet.
- C. All swimming pools shall be set back from the rear lot line at a minimum of 15 feet.
- D. All swimming pools shall be at a minimum distance of 10 feet from all buildings on a lot.
- E. All swimming pools shall be provided with a continuous unobstructed walkway at least three (3) feet in width, measured horizontally from the edge of the pool, along not fewer than two (2) sides; for circular or oval pools, such walkway shall extend along at least fifty percent (50%) of the pool's perimeter.
- F. All swimming pools now or hereafter constructed shall be enclosed by a substantial fence in conformance with all UCC codes. All pool fences require a UCC permit from the Construction Official.
- G. All ladders or steps leading up to an above ground swimming pool from the exterior grounds shall be removed from the swimming pool when the swimming pool is unguarded and unattended.

§ 175-76. Waterway Buffers

In all districts and in connection with all brooks and streams, a mandatory open space, unencumbered by any building or structure, shall be maintained as follows: bordering Tenakill Brook, no footing or foundation of any building or structure shall be closer than 50 feet to the top of the bank of the stream; bordering all other brooks and streams, no footing or foundation of any building or structure shall be closer than 25 feet to the top of the bank of the stream. These minimum open space setbacks may be expanded as a result of applications to the New Jersey Department of Environmental Protection for stream encroachment permits. Said permit applications shall be required when the tributary drainage area for the brook or stream exceeds 50 acres.

§ 175-77. Prohibited Uses

- A. Sale of Animals
 - (1) Restrictions on the sale of animals.
 - (a) No retail establishment shall sell, deliver, offer for sale, barter, auction, give away, or otherwise transfer or dispose of cats or dogs. Nothing in this section shall prohibit a retail establishment from collaborating with animal care facilities or animal rescue organizations to offer space for such entities to showcase adoptable dogs or cats provided the retail establishment shall not have any ownership interest in the animals

offered for adoption and shall not receive a fee for providing space for the adoption of any of these animals.

(2) Penalty.

- (a) A retail establishment that violates this section shall be subject to a civil penalty of \$500, and each dog or cat offered for sale in violation of this section shall constitute a separate violation.

B. Marijuana.

- (1) The cultivation, manufacture, warehousing, distribution and sale of marijuana and/or the paraphernalia that facilitates the use of such marijuana, whether for medicinal purposes or recreational use, is prohibited in all Zones established in the Borough. This does not include the delivery of marijuana and marijuana products offered for sale and delivery from outside of the Borough to residential locations.

§ 175-78. (Reserved).

§ 175-79. (Reserved).

§ 175-80. (Reserved).

§ 175-81. Satellite earth stations.

- A. Any property owner or person or entity in possession of property shall submit to the Zoning Official, prior to placement of a satellite earth station (dish), in excess of one meter in diameter if the property is located in Single Residence District A, BB, B, C or D or in excess of two meters in diameter if the property is located in the CB-I Commercial Business I District a plot plan and specifications showing the size of the dish, the proposed location of same on the subject premises and such other information as may be required herein. **[Amended 12-16-1996 by Ord. No. 782]**
- B. The Zoning Official shall review said plan and render a decision within 20 days of the submission of said plan or within such further time as may be consented to by the property owner or person in possession of the property.
- C. The plan shall be drawn on a map to a scale not smaller than one-inch equals 40 feet and not larger than one-inch equals 10 feet and shall include and show the following information:
- (1) The name and address of the applicant and the owner, and the name, address and the title of the person or entity preparing the plan and accompanying data, the date of preparation and the dates of each revision where applicable.
 - (2) An appropriate place for the signature of the Zoning Official.
 - (3) The lot(s) and block number of the lot(s) from the Borough Tax Map, and the length and bearings of the lot lines of the proposed project.
 - (4) The location, names and pavement and right-of-way widths of all existing and proposed streets abutting the lot or lots in question, the property lines of all abutting properties, together with the names and addresses as disclosed on the Borough Tax Map and the tax rolls as of the date of the application, and the location of existing buildings within 200 feet of the site in question.

- (5) All existing buildings and structures and all accessory buildings and structures and all accessory buildings on the lot, if any, with dimensions showing present and finished grade elevations at all corners.
- (6) All existing and proposed setback dimensions and landscape areas.
- (7) Existing and proposed plantings to provide screening as required by this section.
- (8) Any and all other information necessary to meet any of the requirements of this section not listed above.

D. Dimensions.

- (1) The satellite earth station antennas (dish) shall be in conformance with the following maximum dimensions:

District	Maximum Diameter (meters)	Maximum Overall Height (feet)
Residence R-A	2.4	9
Residence R-BB	2.4	9
Residence R-B	1.8	7
Residence R-C	1.2	5
Residence R-D	1.2	5
Community Business I	2.4	9

- (2) Maximum height as used herein measures the actual height of the dish from its bottom to its top.

- E. No satellite earth station shall be closer than 35 feet from any side property line and no closer than 20 feet from any rear property line.
- F. In all zoning districts the dish shall be erected on a secure ground-mounted foundation. Maximum height indicated in the above schedule will be from ground level at the location of the dish foundation.
- G. The dish should be in an unobtrusive location. It shall be effectively screened by a special planting screen or fence, as approved by the Zoning Official, which shall be maintained in good condition, so that the dish shall not be readily visible from any adjacent property or public street. Provision shall be made to minimize noise impact on adjacent properties.
- H. Power control and signal cables from or to the dish shall be underground and installed in accordance with the appropriate building code, if required.
- I. The application fee for a permit to install a dish shall be \$25. In addition, the applicant shall deposit the sum of \$100 to cover the cost of review sources deemed necessary by the Zoning Official and/or Construction Official, such as the Borough Engineer, Borough Attorney or other Borough personnel. The Treasurer shall place the deposit in a trust account and shall charge all disbursements for said review services. Any unused portion of the deposit shall be returned to the applicant. If the cost of review services exceeds the amount of the deposit, sufficient additional funds shall be deposited before any permit shall be issued.

- J. Section 175-81.E, F, G, H and I shall not be applicable to a dish one meter or less in diameter if the dish is to be placed, located or installed on property in Single Residence District A, BB, B, C or D or a dish two meters or less in diameter if the dish is to be placed, located or installed on property in the CB-I Commercial Business I District.
- K. Notwithstanding Subsections E, F, G, H and I, if an applicant presents credible evidence to the Zoning Officer that satellite signals cannot be obtained or that said signal reception will be impaired by strict compliance with the regulations of Subsections E, F, G, H and I, or any of them, then the Zoning Officer may grant waivers from the strict application of those regulations so as to not unnecessarily burden access to satellite reception while promoting fair and effective competition among competing communication services providers. "Credible evidence," as used herein, shall mean a certification or affidavit from a qualified expert either that the satellite earth station will not have the look angle from azimuth alignment and elevation alignment needed to receive signals in a substantially unobstructed manner unless one or more of the regulations, specifying which one or ones, are waived in whole or part; or that to comply with the regulations and obtain substantially unobstructed signal reception would impose the expenditure of a sum of money, including costs required to screen, pole mount or otherwise specially install the antenna, greater than the aggregate purchase or total lease cost of the equipment as normally installed.
- L. The regulations of this section are enacted to protect and preserve the aesthetic ambiance of the Borough of Demarest, a residential community wherein 99.4% of the parcels are residential or vacant land.

ARTICLE X
Affordable Housing

§ 175-82. Purpose and applicability.

- A. This section of the Code sets forth regulations regarding the very low-, low- and moderate-income housing units in the Borough of Demarest consistent with the provisions outlined in P.L 2024, Chapter 2, including the amended Fair Housing Act (“FHA”) at N.J.S.A. 52:27D-301 et seq., as well as the Department of Community Affairs, Division of Local Planning Services (“LPS”) at N.J.A.C. 5:99 et seq., statutorily upheld existing regulations of the now-defunct Council on Affordable Housing (“COAH”) at N.J.A.C. 5:93 and 5:97, the Uniform Housing Affordability Controls (“UHAC”) at N.J.A.C. 5:80-26.1 et seq., and as reflected in the adopted municipal Fourth Round Housing Element and Fair Share Plan (“HEFSP”).
- B. This article is intended to ensure that very low-, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very low-, low- and moderate-income households shall occupy these units pursuant to statutory requirements. This article shall apply to all inclusionary developments, individual affordable units, and 100% affordable housing developments except where inconsistent with applicable law. Low-Income Housing Tax Credit financed developments shall adhere affirmative marketing and random selection procedures set forth in UHAC.
- C. The Demarest Planning Board has adopted a HEFSP pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan describes the ways the municipality shall address its fair share of very low-, low- and moderate-income housing as approved by the Superior Court and documented in the Housing Element.
- D. This article implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of P.L 2024, Chapter 2, the FHA, N.J.A.C. 5:99, NJ Supreme Court upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC at N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- E. Applicability.
 - (1) Nothing herein shall be interpreted to deprive the Borough of any rights, including the right to seek approval of any waivers permitted under UHAC or other relevant sources of law.
 - (2) The provisions of this article shall apply to all affordable housing developments and affordable housing units that are proposed to be created pursuant to the municipality’s most recently adopted HEFSP.
 - (3) This article shall apply to all developments that contain very low-, low- and moderate-income housing units included in the Municipal HEFSP, including any unanticipated future developments that will provide very low-, low- and moderate-income housing units.
 - (4) Projects receiving federal Low Income Housing Tax Credit financing and proposed for credit in the Borough’s most recently adopted HEFSP shall comply with the affirmative fair marketing requirements of UHAC at N.J.A.C. 5:80-26.16 and the length of the affordability controls applicable to such projects shall be not less than a 30-year compliance period plus a 15-year extended-use period, for a total of not less than 45 years.

§ 175-83. Definitions.

The following terms when used in this section shall have the meanings given in this section:

ACCESSORY APARTMENTS

A residential dwelling unit that provides complete independent living facilities with a private entrance for one or more persons, consisting of provisions for living, sleeping, eating, sanitation, and cooking, including a stove and refrigerator, and is located within a proposed preexisting primary dwelling, within an existing or proposed structure that is an accessory to a dwelling on the same lot, constructed in whole or part as an extension to a proposed or existing primary dwelling, or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling. Accessory apartments are also referred to as “accessory dwelling units”.

ACT

The New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

ADAPTABLE

Constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the “State Uniform Construction Code Act,” P.L.1975, c. 217 (C.52:27D-119 et seq.) and in accordance with the provisions of section 5 of P.L.2005, c. 350 (C.52:27D-123.15).

ADMINISTRATIVE AGENT

The entity approved by the Division responsible for the administration of affordable units, in accordance with N.J.A.C. 5:99-7, and UHAC at N.J.A.C. 5:80-26.15.

AFFIRMATIVE MARKETING

A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.16.

AFFIRMATIVE MARKETING PLAN

The municipally adopted plan of strategies from which the administrative agent will choose to implement as part of the Affirmative Marketing requirements.

AFFIRMATIVE MARKETING PROCESS OR PROGRAM

The actual undertaking of Affirmative Marketing activities in furtherance of each project with very low- low- and moderate-income units.

AFFORDABILITY ASSISTANCE

The use of funds to render housing units more affordable to low- and moderate-income households and includes, but is not limited to, down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner's association or condominium fees and special assessments, common maintenance expenses, and assistance with emergency repairs and rehabilitation to bring deed-restricted units up to code, pursuant to N.J.A.C. 5:99-2.5.

AFFORDABILITY AVERAGE

An average of the percentage of regional median income at which restricted units in an affordable development are affordable to low- and moderate-income households.

AFFORDABLE

In the case of an ownership unit, that the sales price for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.7 and, in the case of a rental unit, that the rent for the unit conforms to

the standards set forth at N.J.A.C. 5:80-26.13.

AFFORDABLE HOUSING DEVELOPMENT

A development included in a municipality's housing element and fair share plan, and includes, but is not limited to, an inclusionary development, a municipally sponsored affordable housing project, or a 100 percent affordable development. This includes developments with affordable units on-site, off-site, or provided as a payment in-lieu of construction only if such a payment-in-lieu option has been previously approved by the Program or Superior Court as part of the HEFSP. Payments in lieu of construction were invalidated per P.L. 2024, c.2.

AFFORDABLE HOUSING DISPUTE RESOLUTION PROGRAM OR THE PROGRAM

The dispute resolution program established pursuant to N.J.S.A. 52:27D-313.2.

AFFORDABLE HOUSING MONITORING SYSTEM OR AHMS

The Department's cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

AFFORDABLE HOUSING TRUST FUND OR AHTF

The non-lapsing, revolving trust fund established in DCA pursuant to N.J.S.A. 52:27D-320 and N.J.A.C. 5:43 to be the repository of all State funds appropriated for affordable housing purposes. All references to the "Neighborhood Preservation Nonlapsing Revolving Fund" and "Balanced Housing" mean the AHTF.

AFFORDABLE UNIT

A housing unit proposed or developed pursuant to the Act, including units created with municipal affordable housing trust funds.

AGE-RESTRICTED HOUSING

A housing unit that is designed to meet the needs of, and is exclusively for, an age-restricted segment of the population such that: 1. All the residents of the development where the unit is situated are 62 years or older; 2. At least 80 percent of the units are occupied by one person that is 55 years or older; or 3. The development has been designated by the Secretary of HUD as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

AGENCY

The New Jersey Housing and Mortgage Finance Agency established by P.L.1983, c. 530 (C.55:14K-1 et seq.).

ASSISTED LIVING RESIDENCE

A facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregate dining and to ensure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor. Apartment units must offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance.

BARRIER-FREE ESCROW

The holding of funds collected to adapt affordable unit entrances to be accessible in accordance with N.J.S.A. 52:27D-311a et seq. Such funds shall be held in a municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-2.6.

BUILDER'S REMEDY

Court-imposed site-specific relief for a litigant who seeks to build affordable housing for which

the court requires a municipality to utilize zoning techniques, such as mandatory set-asides or density bonuses, including techniques which provide for the economic viability of a residential development by including housing that is not for low- and moderate-income households.

CERTIFIED HOUSEHOLD

A household that has been certified by an administrative agent as a very-low-income household, a low-income household, or a moderate-income household.

CHOICE

The no-longer-active Choices in Homeownership Incentives for Everyone Program, as it was authorized by the Agency.

COAH OR THE COUNCIL

The Council on Affordable Housing established in, but not of, DCA pursuant to the Act and that was abolished effective March 20, 2024, pursuant to section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1).

COMMISSIONER

The Commissioner of the Department of Community Affairs.

COMPLIANCE CERTIFICATION

The certification obtained by a municipality pursuant to section 3 of P.L.2024, c. 2 (C.52:27D-304.1), that protects the municipality from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next round begins, which is also known as a “judgment of compliance” or “judgment of repose.” The term “compliance certification” shall include a judgment of repose granted in an action filed pursuant to section 13 of P.L.1985, c. 222 (C.52:27D-313).

CONSTRUCTION

New construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217(N.J.S.A. 52:27D-119 et seq.).

COUNTY-LEVEL HOUSING JUDGE

A judge appointed pursuant to section 5 at P.L. 2024, c. 2, to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal Fair Share plans and housing elements with the Act.

DCA AND DEPARTMENT

The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT

A housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

DEPARTMENT

The New Jersey Department of Community Affairs.

DEVELOPER

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

having an enforceable proprietary interest in such land.

DEVELOPMENT

The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

DEVELOPMENT FEE

Money paid by a developer for the improvement of residential and non-residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and 40:55D-8.1 through 40:55D-8.7 and N.J.A.C. 5:99-3.

DISPUTE RESOLUTION PROGRAM

The Affordable Housing Dispute Resolution Program, established pursuant to section 5 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-313.2).

DIVISION

The Division of Local Planning Services within the Department of Community Affairs.

EMERGENT OPPORTUNITY

A circumstance that has arisen whereby affordable housing will be able to be produced through a delivery mechanism not originally contemplated by or included in a fair share plan that has been the subject of a compliance certification.

EQUALIZED ASSESSED VALUE OR EAV

The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 at P.L. 1973, c. 123 (N.J.S.A. 54:1-35a, 54:1-35b, and 54:1-35c). Estimates at the time of building permit may be obtained by the tax assessor using construction cost estimates. Final EAV shall be determined at project completion by the municipal assessor.

EQUITY SHARE AMOUNT

The product of the price differential and the equity share, with the equity share being the whole number of years that have elapsed since the last non-exempt sale of a restricted ownership unit, divided by 100, except that the equity share may not be less than five percent and may not exceed 30 percent.

EXIT SALE

The first authorized non-exempt sale of a restricted unit following the end of the control period, which sale terminates the affordability controls on the unit.

EXCLUSIONARY ZONING LITIGATION

Litigation challenging the fair share plan, housing element, ordinances, or resolutions that implement the fair share plan or housing element of a municipality based on alleged noncompliance with the Act or the Mount Laurel doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder's remedy.

EXTENSION OF EXPIRING CONTROLS

Extending the deed restriction period on units where the controls will expire in the current round of a housing obligation, so that the total years of a deed restriction is at least 60 years.

FAIR SHARE OBLIGATION

The total of the present need and prospective need, including prior rounds, as determined by the Affordable Housing Dispute Resolution Program, or a court of competent jurisdiction.

FAIR SHARE PLAN

The plan or proposal, with accompanying ordinances and resolutions, by which a municipality proposes to satisfy its constitutional obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal housing element, and which addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.

FHA

The New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

GREEN BUILDING STRATEGIES

The strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

HMFA OR THE AGENCY

The New Jersey Housing and Mortgage Finance Agency established pursuant to P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

HOUSEHOLD INCOME

A household's gross annual income calculated in a manner consistent with the determination of annual income pursuant to section 8 of the United States Housing Act of 1937 (Section 8), not in accordance with the determination of gross income for Federal income tax liability.

HOUSING ELEMENT

The portion of a municipality's master plan adopted in accordance with the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28.b(3) and the Act consisting of reports, statements proposals, maps, diagrams, and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low- and moderate-income housing, which shall include the municipal present and prospective obligation for affordable housing, determined pursuant to subsection f. at N.J.S.A. 52:27D-304.1.

HOUSING REGION

A geographic area established pursuant to N.J.S.A. 52:27D-304.2b.

INCLUSIONARY DEVELOPMENT

A residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate- income households.

JUDGMENT OF COMPLIANCE OR JUDGMENT FOR REPOSE

A determination issued by the Superior Court approving a municipality's fair share plan to satisfy its affordable housing obligation for a particular 10-year-round.

LOW-INCOME HOUSEHOLD

A household with a household income equal to 50 percent or less of the regional median income.

LOW-INCOME UNIT

A restricted unit that is affordable to a low-income household.

MAJOR SYSTEM

The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

MIXED USE DEVELOPMENT

Any development that includes both a non-residential development component and a residential development component, and shall include developments for which: (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities maybe considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same lot or adjoining lots, including, but not limited to, lots separated by a street, a river, or another geographical feature.

MODERATE-INCOME HOUSEHOLD

A household with a household income in excess of 50 percent but less than 80 percent of the regional median income.

MODERATE-INCOME UNIT

A restricted unit that is affordable to a moderate-income household.

MONI

The no-longer-active Market Oriented Neighborhood Investment Program, as it was authorized by the Agency.

MUNICIPAL HOUSING LIAISON OR MHL

An appointed municipal employee who is, pursuant to N.J.A.C. 5:99-6, responsible for oversight and/or administration of the affordable units created within the municipality.

MUNICIPAL AFFORDABLE HOUSING TRUST FUND

A separate, interest-bearing account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing previously approved prior to March 20, 2024 (per P.L. 2024, c.2), barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this chapter.

MUNICIPAL DEVELOPMENT FEE ORDINANCE

An ordinance adopted by the governing body of a municipality that authorizes the collection of development fees.

NEW CONSTRUCTION

The creation of a new housing unit under regulation by a code enforcement official regardless of the means by which the unit is created. Newly constructed units are evidenced by the issuance of a certificate of occupancy and may include new residences created through additions and alterations, adaptive reuse, subdivision, or conversion of existing space, and moving a structure from one location to another.

NEW JERSEY AFFORDABLE HOUSING TRUST FUND

An account established pursuant to N.J.S.A. 52:27D-320.

NEW JERSEY HOUSING RESOURCE CENTER OR HOUSING RESOURCE CENTER

The online affordable housing listing portal, or its successor, overseen by the Agency pursuant to N.J.S.A. 52:27D-321.3 et seq.

95/5 RESTRICTION

A deed restriction governing a restricted ownership unit that is part of a housing element that received substantive certification from COAH pursuant to N.J.A.C. 5:93, as it was in effect at the time of the receipt of substantive certification before October 1, 2001, or any other deed restriction governing a restricted ownership unit with a seller repayment option requiring 95 percent of the price differential to be paid to the municipality or an instrument of the municipality at the closing of a sale at market price.

NON-EXEMPT SALE

Any sale or transfer of ownership of a restricted unit to one's self or to another individual other than the transfer of ownership between spouses or civil union partners; the transfer of ownership between former spouses or civil union partners ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary; and the transfer of ownership by court order.

NONPROFIT

An organization granted nonprofit status in accordance with section 501(c)(3) of the Internal Revenue Code.

NON-RESIDENTIAL DEVELOPMENT

Any building or structure, or portion thereof, including, but not limited to, any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code, N.J.A.C. 5:23, promulgated to effectuate the State uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., including any subsequent amendments or revisions thereto;

Hotels, motels, vacation timeshares, and child-care facilities; and

The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A.52:27D-330 et seq.

NON-RESIDENTIAL DEVELOPMENT FEE

The fee authorized to be imposed pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

ORDER FOR REPOSE

The protection a municipality has from a builder's remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

PAYMENT IN LIEU OF CONSTRUCTING AFFORDABLE UNITS

The prior approval of the payment of funds to the municipality by a developer when affordable units are not produced on a site zoned for an inclusionary development. The statutory permission for payments in lieu of constructing affordable units was eliminated per P.L. 2024, c.2.

PERSON WITH A DISABILITY

A person with a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, aging, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, the inability to speak or a speech impairment, or physical reliance on a service animal, wheelchair, or other remedial appliance or device.

PRICE DIFFERENTIAL

The difference between the controlled sale price of a restricted unit and the contract price at the exit sale of the unit, determined as of the date of a proposed contract of sale for the unit. If there is no proposed contract of sale, the price differential is the difference between the controlled sale price of a restricted unit and the appraised value of the unit as if it were not subject to UHAC, determined as of the date of the appraisal. If the controlled sale price exceeds the contract price or, in the absence of a contract price, the appraised value, the price differential is zero dollars.

PRIOR ROUND UNIT

A housing unit that addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations, including any unit that: (1) received substantive certification from COAH; (2) is part of a third-round settlement agreement or judgment of compliance approved by a court of competent jurisdiction, inclusive of units created pursuant to a zoning designation adopted as part of the settlement agreement or judgment of compliance to create a realistic opportunity for development; (3) is subject to a grant agreement or other contract with either the State or a political subdivision thereof entered into prior to July 1, 2025, pursuant to either item (1) or (2) above; or (4) otherwise addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations. A unit created after the enactment of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) on March 20, 2024, is not a prior round unit unless: (1) it is created pursuant to a prior round development plan or zoning designation that received COAH or court approval on or before the cutoff date of June 30, 2025, or the date that the municipality adopts the implementing ordinances and resolutions for the fourth round of affordable housing obligations, whichever occurs sooner; and (2) its siting and creation are consistent with the form of the prior round development plan or zoning designation in effect as of the cutoff date, without any amendment or variance.

PROGRAM

The Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L.2024, c. 2 (C.52:27D-313.2).

PROSPECTIVE NEED

A projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. Prospective need shall be determined by the methodology set forth pursuant to sections 6 and 7 of P.L.2024, c. 2 (C.52:27D-304.2 and C.52:27D-304.3) for the fourth round and all future rounds of housing obligations.

QUALIFIED URBAN AID MUNICIPALITY

A municipality that meets the criteria established pursuant to N.J.S.A. 52:27D-304.3.c (1).

RANDOM SELECTION PROCESS

A lottery process by which currently income-eligible applicant-households are selected, at random, for placement in affordable housing units such that no preference is given to one applicant over another, except in the case of a veterans' preference where such an agreement exists; for purposes of matching household income and size with an appropriately priced and sized

affordable unit; or another purpose allowed pursuant to N.J.A.C. 5:80-26.7(k)3. This definition excludes any practices that would allow affordable housing units to be leased or sold on a first-come, first-served basis.

RCA ADMINISTRATOR

An appointed municipal employee who is responsible for oversight and/or administration of affordable units and associated revenues and expenditures within the municipality that were funded through regional contribution agreements.

RCA PROJECT PLAN

A past application, submitted by a receiving municipality in an RCA, delineating the manner in which the receiving municipality intended to create or rehabilitate low- and moderate-income housing.

RECEIVING MUNICIPALITY

For the purposes of an RCA, a municipality that contractually agreed to assume a portion of another municipality's fair share obligation.

RECONSTRUCTION

Any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied, pursuant to the Rehabilitation Subcode of the uniform Construction Code, N.J.A.C. 5:23-6. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

RECREATIONAL FACILITIES AND COMMUNITY CENTERS

Any indoor or outdoor buildings, spaces, structures, or improvements intended for active or passive recreation, including, but not limited to, ballfields, meeting halls, and classrooms, accommodating either organized or informal activity.

REGIONAL CONTRIBUTION AGREEMENT OR RCA

A contractual agreement, pursuant to the Act, into which two municipalities voluntarily entered into and was approved by COAH and/or Superior Court prior to July 18, 2008, to transfer a portion of a municipality's affordable housing obligation to another municipality within its housing region.

REGIONAL MEDIAN INCOME

The median income by household size for an applicable housing region, as calculated annually in accordance with N.J.A.C. 5:80-26.3.

REHABILITATION

The repair, renovation, alteration, or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

RENT

The gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. With respect to units in assisted living residences, rent does not include charges for food and services.

RESIDENTIAL DEVELOPMENT FEE

Money paid by a developer for the improvement of residential property as permitted pursuant to

N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:99-3.2.

RESTRICTED UNIT

A dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of this subchapter but does not include a market-rate unit that was financed pursuant to UHORP, MONI, or CHOICE.

SPENDING PLAN

A method of allocating funds contained in an affordable housing trust fund account, which includes, but is not limited to, development fees collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to N.J.S.A. 52:27D-329.1 et seq., for the purpose of meeting the housing needs of low- and moderate-income individuals.

STATE DEVELOPMENT AND REDEVELOPMENT PLAN OR STATE PLAN

The plan prepared pursuant to sections 1 through 12 of the “State Planning Act,” P.L.1985, c. 398 (C.52:18A-196 et al.), designed to represent a balance of development and conservation objectives best suited to meet the needs of the State, and for the purpose of coordinating planning activities and establishing Statewide planning objectives in the areas of land use, housing, economic development, transportation, natural resource conservation, agriculture and farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services, and intergovernmental coordination pursuant to subsection f. of section 5 of P.L.1985, c. 398 (C.52:18A-200).

SUPPORTIVE HOUSING HOUSEHOLD

A very low-, low- or moderate-income household certified as income eligible by an administrative agent in accordance with N.J.A.C. 5:80-26.14, in which at least one member is an individual who requires supportive services to maintain housing stability and independent living and who is part of a population identified by federal or state statute, regulation, or program guidance as eligible for supportive or special needs housing. Such populations include, but are not limited to: persons with intellectual or developmental disabilities, persons with serious mental illness, person with head injuries (as defined in Section 2 of P.L. 1977), persons with physical disabilities or chronic health conditions, persons who are homeless as defined by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 578, survivors of domestic violence, youth aging out of foster care, and other special needs populations recognized under programs administered by the U.S. Department of Housing and Urban Development, the Low-Income Housing Tax Credit Program, the McKinney–Vento Act, or the New Jersey Department of Human Services. A supportive housing household may include family members, unrelated individuals, or live-in aides, provided that the household meets the income eligibility requirements of this subchapter, except that in the case of unrelated individuals not operating as a family unit, income eligibility shall be tested on an individual basis rather than in the aggregate; the unit is leased or sold subject to the affordability controls established herein; and the supportive services available to the household are designed to promote housing stability, independent living, and community integration. The determination of whether unrelated individuals are operating as a family unit shall be made based on the applicant’s self-identification of household members on the affordable housing application.

SUPPORTIVE HOUSING SPONSORING PROGRAM

Grant or loan program which provided financial assistance to the development of the unit.

SUPPORTIVE HOUSING UNIT

A restricted rental unit that is affordable to very low-, low- or moderate-income households and is reserved for occupancy by a supportive housing household. A supportive housing unit is

intended to provide long-term, community-based housing for individuals with intellectual or developmental disabilities, as defined at N.J.S.A. 30:6D-25(b). Such units must be leased subject to the affordability controls established herein; remain subject to Affirmative Marketing requirements, household certification, and administrative agent oversight; and may, with the approval of the municipal housing liaison and the administrative agent, be leased either by the bedroom or to a single household in the case of multi-bedroom configurations, provided such arrangement is consistent with the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968) and the project's Affirmative Marketing Program. A supportive housing unit may, with the approval of the administrative agent, be subject to a master lease by an approved supportive housing operator, provided that all subleases are to be certified supportive housing households and remain fully subject to the affordability controls of this subchapter. Rents for supportive housing units shall not exceed the rent standards established and published by the New Jersey Department of Human Services. Supportive housing units are also referred to as permanent supportive housing units.

TRANSITIONAL HOUSING

Temporary housing that: (1) includes, but is not limited to, single-room occupancy housing or shared living and supportive living arrangements; (2) provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing; (3) is licensed by the department; and (4) allows households to remain for a minimum of six months.

TREASURER

The Treasurer of the State of New Jersey.

UHAC

The Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26.

UHORP

The Agency's Urban Homeownership Recovery Program, as it was authorized by the Agency Board.

UNIT TYPE

Type of dwelling unit with various building standards including but not limited to single-family detached, single-family attached/townhouse, stacked townhouse (attached building containing 2 units each with separate entrances), duplex (detached building containing 2 units each with separate entrances), triplex (3 units each with separate entrance), quadplex (4 units each with separate entrance), multifamily / flat (2 or more units with a shared entrance). Inclusion of a garage, or not, shall not define the unit type.

VERY-LOW-INCOME HOUSEHOLD

A household with a household income less than or equal to 30 percent of the regional median income.

VERY-LOW-INCOME HOUSING

Housing affordable, according to the Federal Department of Housing and Urban Development or other recognized standards, for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

VERY-LOW-INCOME UNIT

A restricted unit that is affordable to a very-low-income household.

VETERAN

A veteran as defined at N.J.S.A. 54:4-8.10.

VETERANS' PREFERENCE

The agreement between a municipality and a developer or residential development owner that allows for low- to moderate-income veterans to be given preference for up to 50 percent of rental units in relevant projects, as provided for at N.J.S.A. 52:27D-311.j.

WEATHERIZATION

Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors and is considered a major system for rehabilitation.

§ 175-84. Monitoring and reporting requirements.

A. The municipality shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its court-approved Housing Element and Fair Share Plan:

- (1) The municipality shall provide electronic monitoring data with the Department pursuant to P.L 2024, Chapter 2 and N.J.A.C. 5:99 through the Affordable Housing Monitoring System (AHMS).
- (2) On or before February 15 of each year, the municipality shall provide annual reporting of its municipal Affordable Housing Trust Fund activity to the Department on the AHMS portal. The reporting shall include an accounting of all municipal Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended, for the previous year from January 1st to December 31st.
- (3) On or before February 15 of each year, the annual reporting of the status of all affordable housing activity shall be provided to the Department on the AHMS portal, for the previous year from January 1st to December 31st.

§ 175-85. Borough-wide set-aside ordinance.

- A. Any property in the Borough of Demarest that receives a use variance, density variance increasing the permissible density at the site, a rezoning permitting multifamily residential housing where not previously permitted or a new redevelopment plan, to permit multifamily residential development, which would yield five or more additional units (over and above those already permitted as of right), that are developed at a density of six or more units per acre, shall provide a minimum affordable housing set-aside of 20% regardless of tenure.
- B. This requirement shall not apply to sites zoned for inclusionary residential development to meet the Realistic Development Potential or the overlay zones created to meet the unmet need as part of the Borough's Housing Element and Fair Share Plan, which shall comply with the applicable zoning or redevelopment plan requirements of providing affordable housing units.
- C. This requirement does not and shall not be construed to grant any developer the right to any rezoning, variance, redevelopment designation or other relief or establish any obligations on the part of the municipality to grant such rezoning, variance, redevelopment designation or other relief.

- D. A property shall not be permitted to be subdivided so as to avoid compliance with this requirement.
- E. All affordable units created pursuant to this section shall be governed by the provisions of Article X Affordable Housing.

§ 175-86. Fractional units and subsidy payments.

- A. Inclusionary developments that result in a fractional affordable housing obligation of 0.49 or less may round the number of affordable units down. The application shall make a prorated subsidy payment to cover the fraction.
- B. If the required number of affordable units results in a fraction of 0.5 or greater, the applicant shall round up and provide the additional affordable unit.
- C. The subsidy payment for Demarest shall be \$247,200 for 2026. The subsidy payment shall increase by 3% each year. To calculate the subsidy payment, the developer shall multiply the fraction by the payment. For example, a fraction of 0.4 triggered in 2026 would require a payment of \$98,880. The payment shall be made to the Borough’s Affordable Housing Trust Fund.

§ 175-87. Affordable housing programs.

- A. Pursuant to amended UHAC regulations at N.J.A.C. 5:80-26.1 et seq. and, in addition, pursuant to P.L. 2024, c.2 and specifically to the amended FHA at N.J.S.A. 52:27D-311.m, “All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute, including but not limited to P.L. 2024, c.2, or binding court decisions.” The following are many of the main provisions of the COAH regulations at either N.J.A.C. 5:93 or 5:97 that have been upheld by the NJ Supreme Court. Municipalities should consult the cited full COAH regulations when preparing the HEFSP for required documentation, etc. Additional compliance details may also be included in the specific municipal program manual.

§ 175-88. New construction programs.

- A. The following requirements shall apply to all new or planned developments that contain very low-, low- and moderate-income housing units. To the extent possible, details related to the adherence to the requirements below shall be outlined in the resolution granting municipal subdivision or site plan approval of the project to assist municipal representatives, developers and Administrative Agents.
- B. Completion Schedule (previously known as phasing). Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following completion schedule for very low-, low- and moderate-income units whether developed in a single-phase development, or in a multi-phase development:

Maximum Percentage of Market-Rate Units Issued a Temporary or Final Certificate of Occupancy	Minimum Percentage of Affordable Units Issued a Temporary or Final Certificate of Occupancy
25+1	10

50	50
75	75
90	100

C. Design. The following design requirements apply to affordable housing developments, excluding prior round units.

(1) Design of 100 percent affordable developments:

(a) Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.

[1] Each bedroom in each restricted unit must have at least one window.

[2] Restricted units must include adequate air conditioning and heating.

(2) Design of developments comprising market-rate rental units and restricted rental units. The following does not apply to prior round units, unless stated otherwise.

(a) Restricted units must use the same building materials and architectural design elements (for example, plumbing, insulation, or siding) as market-rate units of the same unit type (for example, flat or townhome) within the same development, except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.

(b) Restricted units and market-rate units within the same affordable development must be sited such that restricted units are not concentrated in less desirable locations.

(c) Restricted units may not be physically clustered so as to segregate restricted and market-rate units within the same development or within the same building, but must be interspersed throughout the development, except that age-restricted and supportive housing units may be physically clustered if the clustering facilitates the provision of on-site medical services or on-site social services. Prior round affordable units shall be integrated with market rate units to the extent feasible.

(d) Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.

(e) Restricted units must include adequate air conditioning and heating and must use the same type of cooling and heating sources as market-rate units of the same unit type. This shall apply to prior round units.

(f) Each bedroom in each restricted unit must have at least one window.

(g) Restricted units must be of the same unit type as market-rate units within the same building.

- (h) Restricted units and bedrooms must be no less than 90 percent of the minimum size prescribed by the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
- (3) Design of developments containing for-sale units, including those with a mix of rental and for-sale units. Restricted rental units shall meet the requirements of section C. (2) above. Restricted sale units shall comply with the below:
 - (a) Restricted units must use the same building standards as market-rate units of the same unit type (for example, flat, townhome, or single-family home), except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.
 - (b) Restricted units may be clustered, provided that the buildings or housing product types containing the restricted units are integrated throughout the development and are not concentrated in an undesirable location or in undesirable locations. Prior round affordable units shall be integrated with market rate units to the extent feasible.
 - (c) Restricted units may be of different unit housing product types than market-rate units, provided that there is a restricted option available for each market rate housing type. Developments containing market-rate duplexes, townhomes, and/or single-family homes shall offer restricted housing options that also include duplexes, townhomes, and/or single-family homes. Penthouses and higher priced end townhouses shall be exempt from this requirement. The proper ratio for restricted to market-rate unit type shall be subject to municipal ordinance or, if not specified, shall be determined at the time of site plan approval.
 - (d) Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
 - (e) Penthouse and end units may be reserved for market-rate sale, provided that the overall number, value, and distribution of affordable units across the development is not negatively impacted by such reservation(s).
 - (f) Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.
 - (g) Each bedroom in each restricted unit must have at least one window.
 - (h) Restricted units must include adequate air conditioning and heating.

D. Utilities.

- (1) Affordable units shall utilize the same type of cooling and heating source as market-rate units within the affordable housing development.
- (2) Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance in accordance with N.J.A.C. 5:80-26.13(e).

E. Low/moderate split and bedroom distribution.

- (1) Affordable units shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.
- (2) In each affordable housing development, at least 50% of the restricted units within each bedroom distribution rounded up to the nearest whole number shall be very low- or low-income units.
- (3) Within rental developments, of the total number of affordable rental units, at least 13%, rounded up to the nearest whole number, shall be affordable to very low-income households. The very low-income units shall be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count, and counted as part of the required number of low-income units within the development.
- (4) Affordable housing developments that are not age-restricted or supportive housing shall be structured such that:
 - (a) At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;
 - (b) Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;
 - (c) The combined number of efficiency and one-bedroom units shall be no greater than 20%, rounded down, of the total number of low- and moderate-income units.
 - (d) At least 30% of all low- and moderate-income units, rounded up shall be two-bedroom units.
 - (e) At least 20% of all low- and moderate-income units, rounded up shall be three-bedroom units.
 - (f) The remaining units may be allocated among two- and three- bedroom units at the discretion of the developer.
- (5) Affordable housing developments that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangements, shall be structured such that, at a minimum, the number of bedrooms shall equal the number of age-restricted or supportive housing low- and moderate-income units within the inclusionary development. Supportive housing units whose sponsoring program determines the unit arrangement shall comply with all requirements of the sponsoring program. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit. In affordable housing developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must comprise at least 5% of those restricted units.

F. Accessibility requirements.

- (1) Any new construction shall be adaptable; however, elevators shall not be required in any building or within any dwelling unit for the purpose of compliance with this section. In buildings without elevator service, only ground floor dwelling units shall be required to be constructed to conform with the technical design standards of the barrier free subcode. "Ground floor" means the first floor with a dwelling unit or portion of a dwelling unit,

regardless of whether that floor is at grade. A building may have more than one ground floor.

- (2) Notwithstanding the exemption for townhouse dwelling units in the barrier free subcode, the first floor of all townhouse dwelling units and of all other multi-floor dwelling units that are attached to at least one other dwelling unit shall be subject to the technical design standards of the barrier free subcode and shall include the following features:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (b) An adaptable kitchen on the first floor;
 - (c) An interior accessible route of travel, however an interior accessible route of travel shall not be required between stories;
 - (d) An adaptable room that can be used as a bedroom, with a door, or the casing for the installation of a door that is compliant with the Barrier Free Subcode, on the first floor;
 - (e) If not all of the foregoing requirements in (2)(a) through (2)(d) can be satisfied, then an interior accessible route of travel shall be provided between stories within an individual unit; and
 - (f) An accessible entranceway as set forth in P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the municipality has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
 - [1] Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - [2] To this end, the builder of restricted units shall deposit funds within the Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - [3] The funds deposited shall be expended for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - [4] The developer of the restricted units shall submit to the Construction Official a design plan and cost estimate for the conversion from adaptable to accessible entrances.
 - [5] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Affordable Housing Trust Fund and earmarked appropriately.
 - (g) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is “site-impracticable” to meet the requirements. If full compliance with this section would be site impracticable, compliance with this section for any portion of the dwelling shall be required to the extent that it is not site impracticable.

Determinations of site impracticability shall comply with the Barrier Free Subcode at N.J.A.C. 5:23-7.

G. Accessory apartment program.

- (1) An accessory apartment program shall provide low- and moderate-income units or may be limited to only low- or only moderate-income units.
- (2) Per N.J.A.C. 5:97-6.8(c)1, at the time of initial occupancy of the unit and for at least ten years thereafter, the accessory apartment shall be rented only to income eligible households consistent with the income category and rent structure of the unit.
- (3) Rents of accessory apartments shall be established using the same methodology of affordable rental units discussed herein.
- (4) There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental for the duration of the control period.
- (5) The municipal accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
- (6) Per N.J.A.C. 5:97-6.8(b)2, the municipality shall provide a minimum of \$25,000 per unit to subsidize the creation of each low-income accessory apartment or \$20,000 per unit to subsidize the creation of each moderate-income accessory apartment. The subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates. Demarest will provide \$75,000 per unit to subsidize the creation of accessory apartments.

H. Supportive Housing and Group Homes (per N.J.A.C. 5:97-6.10).

- (1) The following provisions shall apply to group homes, residential health care facilities, and supportive shared living housing:
 - (a) The unit of credit shall be the bedroom. However, the unit of credit shall be the unit if occupied by a single person or household.
 - (b) Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to the Act.
 - (c) Occupancy shall not be restricted to youth under 18 years of age.
 - (d) In affordable developments with 20 or more restricted units that are supportive housing, two-bedroom units must compose at least five percent of those restricted units.
 - (e) The bedrooms and/or units shall comply with UHAC with the following exceptions:
 - [1] Affirmative marketing; however, group homes, residential health care facilities, permanent supportive housing and supportive shared living housing shall be affirmatively marketed to broadest possible population of qualified individuals with special needs in accordance with a plan approved by the sponsoring program;
 - [2] Affordability average and bedroom distribution (N.J.A.C. 5:80-26.4).
 - (f) With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental

Disabilities, group homes, residential health care facilities, supportive shared living housing and permanent supportive housing shall have the appropriate controls on affordability in accordance with the Act. In the event that a supportive housing provider is unable to record or execute a long-term deed restriction, the units shall be subject to annual recertification by the Municipal Housing Liaison to confirm continued occupancy and compliance with this Section.

(g) Objective standards shall be applied in the selection of tenants for supportive housing units and shall be designed to ensure that individuals are not excluded in an arbitrary or capricious manner.

(h) The following documentation shall be submitted by the sponsor to the municipality prior to marketing the completed units or facility:

[1] If applicable, proof that the supportive and/or special needs housing is regulated by the New Jersey Department of Health and Senior Services, the New Jersey Department of Human Services or another State agency in accordance with the requirements of this section, which includes validation of the number of bedrooms or units in which low- or moderate-income occupants reside.

(i) The sponsor/owner shall complete annual monitoring as directed by the MHL.

§ 175-89. Regional income limits.

- A. Administrative agents shall use the current regional income limits for the purpose of pricing affordable units and determining income eligibility of households.
- B. Regional income limits are based on regional median income, which is established by a regional weighted average of the "median family incomes" published by HUD. The procedure for computing the regional median income is detailed in N.J.A.C. 5:80-26.3.
- C. Updated regional income limits are effective as of the effective date of the regional Section 8 income limits for the year, as published by HUD, or 45 days after HUD publishes the regional Section 8 income limits for the year, whichever comes later. The new income limits may not be less than those of the previous year.

§ 175-90. Maximum initial rents and sales prices.

- A. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC N.J.A.C. 5:80-26.4.
- B. The average rent for all restricted units within each affordable housing development shall be affordable to households earning no more than 52 percent of regional median income.
- C. The maximum rent for restricted rental units within each affordable housing development shall be affordable to households earning no more than 60% of regional median income. The maximum rent may be increased to no more than 70 percent of regional median income for moderate-income units within affordable developments where very-low-income units compose at least 13 percent of the restricted units; however, the number of units with rent affordable to households earning 70 percent of regional median income may not exceed the number of very-low-income units in excess of 13 percent (rounded up) of the restricted units.
- D. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units. Very low-income

units, if required, should be distributed between each bedroom count as proportionally as possible to the total number of restricted units within each bedroom count, and shall be part of the low-income requirement.

- E. The maximum sales price of restricted ownership units within each affordable housing development shall be affordable to households earning no more than 70% of median income, and each affordable housing development must achieve an affordability average that does not exceed 55% for all restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type when the number of low- and moderate-income units permits.
- F. The master deeds and declarations of covenants and restrictions for affordable developments may not distinguish between restricted units and market-rate units in the calculation of any condominium or homeowner association fees and special assessments to be paid by low- and moderate-income purchasers and those to be paid by market-rate purchasers. Notwithstanding the foregoing sentence, condominium units subject to a municipal ordinance adopted before December 20, 2004, which ordinance provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection are governed by the ordinance.
- G. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted family units, the following standards shall be met:
 - (1) A studio or efficiency unit shall be affordable to a one-person household;
 - (2) A one-bedroom unit shall be affordable to a one- and one-half-person household;
 - (3) A two-bedroom unit shall be affordable to a three-person household;
 - (4) A three-bedroom unit shall be affordable to a four and one-half person household; and
 - (5) A four-bedroom unit shall be affordable to a six-person household.
- H. In determining the initial rents and sales prices for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted and special needs and supportive housing developments, the following standards shall be met:
 - (1) A studio or efficiency unit shall be affordable to a one-person household;
 - (2) A one-bedroom unit shall be affordable to a one- and one-half-person household; and
 - (3) A two-bedroom unit shall be affordable to a two-person household or to two one-person households. Where pricing is based on two one-person households, the developer shall provide a list of units so priced to the Municipal Housing Liaison and the Administrative Agent.
- I. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Freddie Mac 30-Year Fixed Rate-Mortgage rate of interest), property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 30 percent of the eligible monthly income of the appropriate size household as determined pursuant to N.J.A.C. 5:80-26.7, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.

- J. The initial rent for a restricted rental unit shall be calculated so that the total monthly housing expense, including an allowance for tenant-paid utilities, does not exceed 30 percent of the gross monthly income of a household of the appropriate size whose income is targeted to the applicable percentage of median income for the unit, as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented. The rent shall also comply with the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.
- K. At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, following a minimum 90-day notice provided to the occupant household, the rent may be increased to an amount commensurate with the annual percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), specifically U.S. Bureau of Labor Statistics Series CUUR0100SAH, titled "Housing in Northeast urban, all urban consumers, not seasonally adjusted." The maximum allowable rent increase for the year will be effective as of the same date as the regional median income limits determined pursuant to N.J.A.C. 5:80-26.3 and published by the Agency. This rent increase may not exceed five percent in any one year and notice thereof must be filed with the administrative agent. If the landlord has charged a tenant less than the initial maximum allowable rent for a restricted unit, the landlord may, with the approval of the administrative agent, use the maximum allowable rent instead of the current rent in performing this multiplication to establish the rent for the next tenant under a new lease. LIHTC units are not governed by the provisions of this section, but rather by the provisions of the State's Qualified Allocation Plan, N.J.A.C. 5:80-33.1 through 33.40.

§ 175-91. Affirmative marketing.

- A. The municipality shall adopt, by resolution, an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.
- B. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, English-speaking ability, marital or familial status, gender, affectional or sexual orientation, disability, age (except for "housing for older persons" as defined at N.J.S.A. 10:5-1 et seq., and age-restricted units as permitted pursuant to 42 U.S.C. §§ 3601 et seq.), or number of children, source of lawful income, or any other characteristic described in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 through 50, to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region 1 and is required to be followed throughout the period of deed restriction.
- C. The Affirmative Marketing Plan provides the following preferences, provided that units that remain unoccupied after these preferences are exhausted may be offered to households without regard to these preferences.
 - (1) Where the municipality has entered into an agreement with a developer or residential development owner to provide a preference for very-low, low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311.j, there shall be a preference for veterans for up to 50 percent of the restricted rental units in a particular project.

- (2) There shall be a regional preference for all households that live and/or work in Housing Region 2 comprising Bergen, Hudson, Passaic, and Sussex Counties.
 - (3) Subordinate to the regional preference, there shall be a preference for households that live and/or work in New Jersey.
 - (4) With respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing restricted units undergoing demolition, a preference for the very-low-, low-, and moderate-income households that are displaced by the rehabilitation or demolition and replacement.
- D. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Process, including the marketing of initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the municipality shall implement the Affirmative Marketing Process to ensure the Affirmative Marketing of all affordable units, with the exception of affordable programs that are exempt from Affirmative Marketing as noted herein.
 - E. The Affirmative Marketing Process shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Process, the Administrative Agent should consider the use of language translations where appropriate.
 - F. Applications for affordable housing or notices thereof, if offered online, shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and municipal library in the municipality in which the units are located; and the developer's rental or sales office. The developer shall mail applications to prospective applicants upon request and shall make applications available through a secure online website address.
 - G. In addition to other Affirmative Marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units on the New Jersey Housing Resource Center website. Any other entities, including developers or persons or companies retained to implement the Affirmative Marketing Process, shall comply with this paragraph. Notice shall also be provided to Fair Share Housing Center Latino Action Network, Bergen County NAACP, Bergen Urban League, Bergen County Housing Coalition, and Supportive Housing Association.
 - H. In implementing the Affirmative Marketing Process, the Administrative Agent shall provide a list of HUD-certified housing counselors or otherwise experienced entities approved by the Division providing counseling services on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
 - I. The Affirmative Marketing Process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy and may begin before construction commences. For owner-occupied units, affirmative marketing advertising and outreach activities must continue until all of the marketed units have been sold, except that paid advertising may cease when the number of applications received is at least three times the number of units to be sold. For rental units, affirmative marketing advertising and outreach activities must continue, as long as applications are being accepted, except that paid advertising may cease when the number of applications received is at least three times the number of units to be filled.

- J. Applications must be accepted for no less than 45 days following the initial advertisement on the New Jersey Housing Resource Center, except for the resale of owner-occupied units, in which case, applications must be accepted for no less than 30 days.
- K. The cost to affirmatively market the affordable units shall be the responsibility of the developer, sponsor or owner, with the exception of Affirmative Marketing for resales.

§ 175-92. Selection of occupants of affordable housing units.

- A. The Administrative Agent shall use a random selection process to select occupants of very low-, low- and moderate-income housing.
- B. A pool of interested households will be maintained in accordance with the provisions of N.J.A.C. 5:80-26.16.

§ 175-93. Occupancy standards.

- A. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
 - (1) Ensure each bedroom is occupied by at least one person, except for age-restricted and supportive and special needs housing units;
 - (2) Provide a bedroom for every two adult occupants;
 - (3) With regard to occupants under the age of 18, accommodate the household's requested arrangement, except that such arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and
 - (4) Avoid placing a one-person household into a unit with more than one bedroom.

§ 175-94. Control periods for restricted ownership units and enforcement mechanisms.

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80- 26.6, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years subject to the requirements of N.J.A.C. 5:80-26.6, as may be amended and supplemented.
- B. Rehabilitated housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years (crediting towards present need only).
- C. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit. The date of commencement shall be identified in the deed restriction for units issued a CO after December 15, 2025.
- D. If existing affordability controls are being extended, the extended control period for a restricted ownership unit commences on the effective date of the extension, which is the end of the original control period.
- E. After the end of any control period, the restricted ownership unit remains subject to the affordability controls set forth in this subchapter until the owner gives notice of their intent to make an exit sale, at which point:
 - (1) If the municipality exercises the right to extend the affordability controls on the unit, no exit sale occurs and a new control period commences; or

- (2) If the municipality does not exercise the right to extend the affordability controls on the unit, the affordability controls terminate following the exit sale.
- F. Prior to the issuance of any building permit for the construction/rehabilitation of restricted ownership units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.
- G. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- H. At the time of the initial sale of the unit and upon each successive price-restricted sale, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obliging the purchaser, as well as the purchaser's heirs, successors, and assigns, to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this article, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- I. The affordability controls set forth in this article shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to price-restricted ownership units.

§ 175-95. Price restrictions for restricted ownership units and resale prices.

- A. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.7, as may be amended and supplemented, including:
- (1) The initial purchase price and affordability percentage for a restricted ownership unit shall be set by the Administrative Agent.
- (2) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the standards set forth in N.J.A.C. 5:80-26.7.
- (a) If the resale occurs prior to the one-year anniversary of the date on which title to the unit was transferred to a certified household, the maximum resale price for the unit is the most recent non-exempt purchase price.
- (b) If the resale occurs on or after such anniversary date, the maximum resale price is the most recent non-exempt purchase price increased to reflect the cumulative annual percentage increases to the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3.
- (3) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be:
- (a) Those that render the unit suitable for a larger household or the addition of a bathroom.
- (b) The maximum resale price may be further increased by an amount up to the cumulative dollar value of approved capital improvements made after the last non-exempt sale for improvements and/or upgrades to the unit, excluding capital

improvements paid for by the entity favored on the recapture note and recapture lien described at N.J.A.C. 5:80-26.6(d).

(4) No increase for capital improvements is permitted if the maximum resale price prior to adjusting for capital improvements already exceeds whatever initial purchase price the unit would have if it were being offered for purchase for the first time at the initial affordability percentage. All adjustments for capital improvements are subject to 10-year, straight-line depreciation.

B. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase but shall be separate and apart from any contract of sale for the underlying real estate. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price of the air conditioning equipment, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The seller and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

§ 175-96. Buyer income eligibility.

A. Buyer income eligibility for restricted ownership units shall be established pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented, such that very low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 30% of median income, low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for occupancy by households with a gross household income less than 80% of median income.

B. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the municipality, and subject to the Division's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit. Similarly, the administrative agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers, but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a very-low-income unit and sold at a very-low-income price point such that on the next resale the unit will still be affordable to very-low-income households and able to be purchased by a very-low-income household. A very-low-income unit that is seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(9) must first be advertised exclusively as a very-low-income unit according to the Affirmative Marketing requirements at N.J.A.C. 5:80-26.16, then advertised as a very-low-income or low-income unit for at least 30 additional days prior to referring any low-income household to the unit.

- C. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- D. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 35 percent of the household's eligible monthly income; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - (1) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for housing expenses, and the proposed housing expenses will reduce its housing costs; or
 - (2) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for housing expenses in the past and has proven its ability to pay; or
 - (3) The household is currently in substandard or overcrowded living conditions; or
 - (4) The household documents the existence of assets, within the asset limitation otherwise applicable, with which the household proposes to supplement the rent payments.

§ 175-97. Limitations on indebtedness secured by ownership unit; subordination.

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
- B. With the exception of original purchase money mortgages, neither an owner nor a lender shall at any time during the control period cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C. 5:80-26.7(c).

§ 175-98. Control periods for restricted rental units.

- A. Control periods for units that meet the definition of prior round units shall be pursuant to the 2001 UHAC rules originally adopted October 1, 2001, 33 N.J.R. 3432 and shall remain subject to the requirements of this article for a period of at least 30 years as applicable unless otherwise indicated.
- B. Other than for prior round units, control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.12, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this article for a period of at least 40 years. Restricted rental units created as part of developments receiving 9% Low-Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period for a total of 45 years.

- C. The affordability control period for a restricted rental unit shall commence on the first date that a unit is issued a certificate of occupancy following the execution of the deed restriction or, if affordability controls are being extended, on the effective date of the extension, which is the end of the original control period.
- D. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years.
- E. Prior to the issuance of any building permit for the construction/rehabilitation of restricted rental units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.
- F. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property. The deed restriction shall be recorded by the developer with the county records office, and provided as filed and recorded, to the Administrative Agent within 30 days of the receipt of a certificate of occupancy.
- G. A restricted rental unit shall remain subject to the affordability controls of this article despite the occurrence of any of the following events:
 - (1) Sublease or assignment of the lease of the unit;
 - (2) Sale or other voluntary transfer of the ownership of the unit;
 - (3) The entry and enforcement of any judgment of foreclosure on the property containing the unit; or
 - (4) The end of the control period, until the occupant household vacates the unit, or is certified as over-income and the controls are released in accordance with UHAC.

§ 175-99. Rent restrictions for rental units; leases and fees.

- A. The initial rent for a restricted rental unit shall be set by the Administrative Agent.
- B. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be retained on file by the Administrative Agent.
- C. No additional fees, operating costs, or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
 - (1) Operating costs, for the purposes of this section, include certificate of occupancy fees, move-in fees, move-out fees, mandatory internet fees, mandatory cable fees, mandatory utility submetering fees, and for developments with more than one and a half off-street parking spaces per unit, parking fees for one parking space per household.
- D. Any fee structure that would remove or limit affordable unit occupant access to any amenities or services that are required or included for market-rate unit occupants is prohibited. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit to be applied to the costs of administering the controls applicable to the unit as set forth in this article.

- E. Fees for unit-specific, non-communal items that are charged to market-rate unit tenants on an optional basis, such as pet fees for tenants with pets, storage spaces, bicycle-share programs, or one-time rentals of party or media rooms, may also be charged to affordable unit tenants, if applicable.
- F. Pet fees may not exceed \$30.00 per month and associated one-time payments for optional fees pertaining to pets, such as a pet cleaning fee, are prohibited.
- G. Fees charged to affordable unit tenants for other optional, unit-specific, non-communal items shall not exceed the amounts charged to market-rate tenants.
- H. For any prior round rental unit leased before December 20, 2024, elements of the existing fee structure that are consistent with prior rules, but inconsistent with 5:80-26.13(c)1, may continue until the occupant household's current lease term expires or that occupant household vacates the unit, whichever occurs later.

§ 175-100. Tenant income eligibility.

- A. Tenant income eligibility shall be determined pursuant to N.J.A.C. 5:80-26.14, as may be amended and supplemented, and shall be determined as follows:
 - (1) Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of the regional median income by household size.
 - (2) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of the regional median income by household size.
 - (3) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of the regional median income by household size.
- B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income or moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - (1) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs; or
 - (2) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay; or
 - (3) The household is currently in substandard or overcrowded living conditions; or
 - (4) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (5) The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.

- C. The applicant shall file documentation sufficient to establish the existence of any of the circumstances in B. (1) through B. (5) above with the Administrative Agent, who shall counsel the household on budgeting.

§ 175-101. Municipal Housing Liaison.

- A. The Municipal Housing Liaison shall be approved by municipal resolution.
- B. The Municipal Housing Liaison shall be approved by the Division, or is in the process of getting approval, and fully or conditionally meets the requirements for qualifications, including initial and periodic training as set forth in in N.J.A.C. 5:99-1 et seq.
- C. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program, including the following responsibilities, which may not be contracted out to the Administrative Agent:
 - (1) Serving as the primary point of contact for all inquiries from the Affordable Housing Dispute Resolution Program, the State, affordable housing providers, administrative agents and interested households.
 - (2) The oversight of the Affirmative Marketing Plan and affordability controls.
 - (3) When applicable, overseeing and monitoring any contracting Administrative Agent.
 - (4) Overseeing the monitoring of the status of all restricted units listed in the Fair Share Plan.
 - (5) Verifying, certifying and providing annual information within AHMS at such time and in such form as required by the Division.
 - (6) Coordinating meetings with affordable housing providers and administrative agents, as needed.
 - (7) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division.
 - (8) Overseeing the recording of a preliminary instrument in the form set forth at N.J.A.C. 5:80-26.1 for each affordable housing development.
 - (9) Coordinating with the Administrative Agent, municipal attorney and municipal Construction Code Official to ensure that permits are not issued unless the document required in C.8. above has been duly recorded.
 - (10) Listing on the municipal website contact information for the MHL and Administrative Agents.

§ 175-102. Administrative Agent.

- A. All municipalities that have created or will create affordable housing programs and/or affordable units shall designate or approve, for each project within its HEFSP, an administrative agent to administer the affordable housing program and/or affordable housing units in accordance with the requirements of the FHA, NJAC 5:99-1 et seq. and UHAC.
- B. The fees for administrative agents shall be paid as follows:
 - (1) Administrative agent fees related to rental units shall be paid by the developer/owner.

- (2) Administrative agent fees related to initial sale of units shall be paid by the developer.
 - (3) Administrative agent fees related to resales shall be paid by the seller of the affordable home.
 - (4) Administrative agent fees related to ongoing administration and enforcement shall be paid by the municipality.
- C. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s). The Operating Manual(s) shall be available for public inspection in the Office of the Clerk and in the office(s) of the Administrative Agent(s). Operating manuals shall be adopted by resolution of the Governing Body.
- D. Subject to the role of the Administrative Agent(s), the duties and responsibilities as are set forth in N.J.A.C. 5:99-7 and which are described in full detail in the Operating Manual, including those set forth in UHAC, include:
- (1) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division;
 - (2) Affirmative marketing:
 - (a) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the municipality and the provisions of N.J.A.C. 5:80-26.16.
 - (b) Providing counseling, or contracting to provide counseling services, to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements; and landlord/tenant law.
 - (3) Household certification.
 - (a) Soliciting, scheduling, conducting and following up on interviews with interested households.
 - (b) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
 - (c) Providing written notification to each applicant as to the determination of eligibility or non-eligibility within 5 business days of the determination thereof.
 - (d) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in the Appendices J and K of N.J.A.C. 5:80-26.1 et seq.
 - (e) Creating and maintaining a referral list of eligible applicant households living in the housing region, and eligible applicant households with members working in the housing region, where the units are located.
 - (f) Employing a random selection process as provided in the Affirmative Marketing Plan when referring households for certification to affordable units.
 - (4) Affordability controls.

- (a) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for the recording at the time of conveyance of title of each restricted unit.
 - (b) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and filed properly with the County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit in accordance with UHAC.
 - (c) Communicating with lenders and the Municipal Housing Liaison regarding foreclosures.
 - (d) Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.11.
- (5) Records retention.
- (a) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded recapture mortgage, and note, as appropriate.
 - (b) Records received, retained, retrieved, or transmitted in furtherance of crediting affordable units of a municipality constitute public records of the municipality as defined by N.J.S.A. 47:3-16, and are legal property of the municipality.
- (6) Resales and re-rentals.
- (a) Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental.
 - (b) Instituting and maintaining an effective means of communicating information to very low-, low-, or moderate-income households regarding the availability of restricted units for resale or re-rental.
- (7) Processing requests from unit owners.
- (a) Reviewing and approving requests from owners of restricted units who wish to refinance or take out home equity loans during the term of their ownership to determine that the amount of indebtedness to be incurred will not violate the terms of this article.
 - (b) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems.
 - (c) Notifying the municipality of an owner's intent to sell a restricted unit.
 - (d) Making determinations on requests by owners of restricted units for hardship waivers.
- (8) Enforcement.
- (a) Securing annually from the municipality a list of all affordable ownership units for which property tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

- (b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
 - (c) Sending annual mailings to all owners of affordable dwelling units reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.19(d)4;
 - (d) Establishing a program for diverting unlawful rent payments to the municipal Affordable Housing Trust Fund; and
 - (e) Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent setting forth procedures for administering the affordability controls.
- (9) The Administrative Agent(s) shall, as delegated by the municipality, have the authority to take all actions necessary and appropriate to carry out its/their responsibilities, herein.

§ 175-103. Responsibility of the owner of a development containing affordable units.

- A. The owner of all developments containing affordable units subject to this subchapter or the assigned management company thereof shall provide to the administrative agent:
- (1) Site plan, architectural plan, or other plan that identifies the location of each affordable unit, if subject to the site plan approval, settlement agreement, or other applicable document regulating the location of affordable units. The administrative agent shall determine the location of affordable units if not set forth in the site plan approval, settlement agreement, or other applicable document.
 - (2) The total number of units in the project and the number of affordable units.
 - (3) The breakdown of the affordable units by or identification of affordable unit locations by bedroom count and income level, including street addresses / unit numbers, if subject to the site plan approval, settlement agreement, or other applicable document regulating the breakdown of affordable units. The administrative agent shall determine the bedroom and income distribution if not set forth in the site plan approval, settlement agreement, or other applicable document.
 - (4) Floor plans of all affordable units, including complete and accurate identification of all rooms and the dimensions thereof.
 - (5) A projected construction schedule.
 - (6) The location of any common areas and elevators.
 - (7) The name of the person who will be responsible for official contact with the administrative agent for the duration of the project, which must be updated if the contact changes.
- B. In addition to A. above, the owner of rental developments containing affordable rental units subject to this subchapter or the assigned management company thereof shall:
- (1) Send to all current tenants in all restricted rental units an annual mailing containing a notice as to the maximum permitted rent and a reminder of the requirement that the unit must remain their principal place of residence, which is defined as residing in the unit at least

260 days out of each calendar year, together with the telephone number, mailing address, and email address of the administrative agent to whom complaints of excess rent can be issued.

- (2) Provide to the administrative agent a description of any applicable fees.
 - (3) Provide to the administrative agent a description of the types of utilities and which utilities will be included in the rent.
 - (4) Agree and ensure that the utility configuration established at the start of the rent-up process not be altered at any time throughout the restricted period.
 - (5) Provide to the administrative agent a proposed form of lease for any rental units.
 - (6) Ensure that the tenant selection criteria for the applicants for affordable units not be more restrictive than the tenant selection criteria for applicants for non-restricted units.
 - (7) Strive to maintain the continued occupancy of the affordable units during the entire restricted period.
- C. In addition to A. above, the owner of affordable for-sale developments containing affordable for-sale units subject to this subchapter or the assigned management company thereof shall provide the administrative agent:
- (1) Proposed pricing for all units, including any purchaser options and add-on items.
 - (2) Realistic condominium or homeowner association fees and any other applicable fees.
 - (3) Estimated real property taxes.
 - (4) Sewer, water, trash disposal, and any other utility assessments.
 - (5) Flood insurance requirement, if applicable.
 - (6) The State-approved planned real estate development public offering statement and/or master deed, where applicable, as well as the full build-out budget.

§ 175-104. Enforcement of affordable housing regulations.

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an owner, developer or tenant of an affordable unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - (1) The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the Court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the Court:

- (a) A fine of not more than \$1,000 or imprisonment for a period not to exceed 90 days, or both, unless otherwise specified below, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
 - (b) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (c) In the case of an owner who has rented his or her affordable unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
- C. The municipality shall have the authority to levy fines against the owner of the development for instances of noncompliance with NJHRC advertising requirements (N.J.S.A. 52:27D-321.6. (e. (2))), following written notice to the owner. The fine for the first offense of noncompliance shall be \$5,000, the fine for the second offense of noncompliance shall be \$10,000, and the fine for each subsequent offense of noncompliance shall be \$15,000.
- D. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.
- (1) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the affordable unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
 - (2) The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- or moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.
 - (3) Foreclosure due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as they apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the

Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

- (4) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the affordable unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the affordable unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess that would have been realized from an actual sale as previously described.
 - (5) Failure of the low- or moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser that may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- or moderate-income unit as permitted by the regulations governing affordable housing units.
 - (6) The affordable unit owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.
- E. It is the responsibility of the municipal housing liaison and the administrative agent(s) to ensure that affordable housing units are administered properly. All affordable units must be occupied within a reasonable amount of time and be re-leased within a reasonable amount of time upon the vacating of the unit by a tenant. If an administrative agent or municipal housing liaison becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, it shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the municipal housing liaison or the administrative agent to refer a certified tenant.
- F. Banks and other lending institutions are prohibited from issuing any loan secured by owner occupied real property subject to the affordability controls set forth in this subchapter if such loan would be in excess of amounts permitted by the restriction documents recorded in the deed or mortgage book in the county in which the property is located. Any loan issued in violation of this subsection is void as against public policy.
- G. The Agency and the Department hereby reserve, for themselves and for each administrative agent appointed pursuant to this subchapter, all of the rights and remedies available at law and in equity for the enforcement of this subchapter, including, but not limited to, fines, evictions, and foreclosures as approved by a county-level housing judge.

H. Appeals

- (1) Appeals from all decisions of an administrative agent appointed pursuant to this subchapter must be filed, in writing, with the municipal housing liaison. A decision by the municipal housing liaison may be appealed to the Division. A written decision of the Division Director upholding, modifying, or reversing an administrative agent's decision is a final administrative action.
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