

**AN ORDINANCE TO AMEND AND SUPPLEMENT THE REVISED  
GENERAL ORDINANCES OF THE CITY OF NEW BRUNSWICK,  
TITLE 16, LAND DEVELOPMENT CODE**

**BE IT ORDAINED** by the City Council of the City of New Brunswick as follows:

**SECTION I**

Title 16, Land Development Code, is hereby amended and supplemented as follows:

Chapter 16.04 - GENERAL PROVISIONS

**Sections:**

16.04.010-16.04.070 (No Changes)

16.08.010 - Planning Board—Establishment.

There is established pursuant to R.S. 40:55D-1 et seq. in the City a Planning Board of nine members consisting of the following four classes:

- A. Class I: The Mayor or the Mayor's designee.
- B. Class II: One of the officials of the City other than a member of the City Council to be appointed by the Mayor; provided that if there is an Environmental Commission, the member of the Environmental Commission who is also a member of the Planning Board as required by R.S. 40:56A-1 is deemed to be the Class II Planning Board member if there is both a member of the Zoning Board of Adjustment and a member of the Board of Education among Class IV members.
- C. Class III: A member of the City Council to be appointed by it.
- D. Class IV: Six other citizens of the City to be appointed by the Mayor. The members of Class IV hold no other municipal office, and one may be a member of the Board of Education. A member of the Environmental Commission who is also a member of the Planning Board as required by R.S. 40:56A-1 is a Class IV Planning Board member unless there be among the Class IV members of the Planning Board both a member of the Zoning Board of Adjustment and a member of the Board of Education, in which case the member of the Environmental Commission is deemed to be the Class II member of the Planning Board.
- E. Alternates Class IV. Two other citizens of the city to be appointed by the Mayor, these alternate members shall serve for terms of two years; provided, however, that in the event that two alternate members of Class IV are appointed, the initial terms of such members shall be one and two years respectively. Such alternate members shall be designated by the chairman as "Alternate No. 1" and "Alternate No. 2" and shall serve in rotation during the absence or disqualification of any regular member or members of Class IV.

16.08.20-16.08.030 (No Changes)

16.08.040 - Organization of Board.

The Planning Board selects a chairperson and vice chairperson from the members of Class IV and shall also select a secretary who may or may not be a board member.

16.08.050-16.12.080 (No Changes)

16.12.090 - Additional powers.

- A. The Zoning Board of Adjustment shall in addition to the powers specified in Section 16.12.080 of this chapter have power given by law to:
  1. Direct issuance of a permit pursuant to R.S. 40:55D-34 for a building or structure in the bed of a mapped street or public drainage way, flood-control basin or public area reserved on the official map;
  2. Direct issuance of a permit pursuant to R.S. 40:55D-36 for a building or structure not related to a street.
- B. The Board of Adjustment shall have the power to grant to the same extent and subject to the same restrictions as the Planning Board, subdivision or site plan approval pursuant to N.J.S.A. 40:55D-37 et seq. or conditional use approval pursuant to R.S. 40:55D-67 whenever the board is reviewing an application for approval of a variance pursuant to N.J.S.A. 40:55D-70(d).

16.12.100-16.12.110 (No Changes)

16.16.010 - Conflicts of interest.

- A. No member of the Board shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. No member of the Board shall participate in proceedings in which such member has a conflicting interest that may interfere with the impartial performance of his or her duties as a member of the Board. The decision as to whether a particular interest is sufficient to disqualify shall depend on the facts and circumstances of the particular case. The test shall be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the Board member to depart from his or her sworn public duty.
- B. The members of the Board shall comply with and be bound by the provisions of the Local Government Ethics Law, N.J.S.A. 40A:9-22.1, et seq. and shall annually file a statement as prepared by the local Finance Board and the Division of Local Government Services, Department of Community Affairs. Pursuant to such law, no Board member shall act in his or her official capacity in any matter where he or she, a member of his or her immediate family or a business organization in which he or she has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his or her objectivity or independence of judgment.

16.16.040 – Escrow Deposits.

- A. Escrow Deposit Required: In addition to the fees required by Sections 16.24.090 through 16.24.190 of this code, the following system of fixed fees and escrow deposits is established to cover costs incurred by the City for reviewing and hearing applications for development. The Chief Financial Officer shall make all of the payments to professionals for services rendered to the City for review of applications for development, review and preparation of documents, inspection of improvements or other purposes under the provisions of N.J.S.A. 40:55D-1 et seq. The application review and inspection charges shall be limited only to professional charges for review of applications, review and preparation of documents and inspections of developments under construction and for review by outside consultants when an application is of a nature beyond the scope of the expertise of the professionals normally utilized by the municipality. The only cost that shall be added to any such charges shall be actual out-of-pocket expenses of such professionals or consultants including normal and typical expenses incurred in processing applications and inspecting improvements. No applicant shall be charged for any municipal, clerical or administrative functions, overhead expenses, meeting room charges or any of the municipal costs and expenses except as provided for specifically by statute, nor shall a municipal professional add any such charge to their bill.
- B. Reimbursement: The City shall be entitled to be reimbursed for the review of applications, both as to completeness and as to content; for the review and preparation of documents such as, but not limited to; site and other development plans, technical reports, drafting resolutions, developer's agreements, and necessary correspondence with applicant or applicant's professionals. A fixed fee or escrow shall be paid to or deposited with the Department of Planning, Community and Economic Development to cover the cost of any professional fees incurred for review of and/or testimony concerning an application for development, and out-of-pocket expenses such as costs related to scheduling special meetings requested by the applicant.

The term "professional", as used herein, shall include the services of a duly licensed engineer, surveyor, planner, attorney, appraiser or other expert who would provide professional services to ensure that an application complies with the standards set forth in City ordinances and experts whose testimony may be solicited to give further information to the Approving Board in any area addressed by any of applicant's experts.

- C. Escrow Deposit Schedule: Prior to an application being ruled complete, the following sums shall be paid. The amount submitted shall be held in escrow:

<b>Residential Development</b>	<b>Review Escrow</b>
Variance with no site plan or subdivision (1-2 unit detached houses exempted)	\$ 2,000.00
Site Plan Application	
0-10 units	4,000.00
11-25 units	6,000.00
26 or more units	10,000.00
<b>Nonresidential Development</b>	<b>Review Escrow</b>
Variance with no site plan or subdivision	\$ 2,000.00
Site Plan Application	
Total Floor Area	
Less than 1,250 sq. ft.	2,000.00
1,250 sq. ft. to 20,000 sq. ft.	6,000.00

Greater than 20,000 sq. ft.	10,000.00
<b>Subdivision Applications</b>	<b>Review Fee</b>
Minor Subdivision	\$ 600.00
Major Subdivision	1,000.00

- D. **Concept Review Fee:** An applicant requesting an informal conceptual review shall pay an escrow deposit of One Thousand Dollars (\$1,000.00) to cover the cost of the conceptual review.
- E. **Form of Payment:** Every payment or escrow shall be paid or deposited via check or money order.
- F. **Deposits of Funds:** All funds shall be deposited by the Chief Financial Officer in accordance with N.J.S.A. 40:55D-53.1.
- G. **Payments:** Each payment charged to the deposit for review of applications, review and preparation of documents and inspection of improvements shall be pursuant to a voucher from the professional which voucher shall identify the personnel performing the service, and each date the services were performed, the hours spent to one-quarter hour increments, the hourly rate and the expenses incurred. All professionals shall submit vouchers to the Chief Financial Officer on a monthly basis in accordance with the schedules and procedures established by the Chief Financial Officer. The professional shall send an informational copy of all vouchers or statements submitted to the Chief Financial Officer simultaneously to (1) the applicant and (2) the Administrative Officer.

The Chief Financial Officer shall prepare and send to the applicant a statement which shall include an accounting of funds listing all deposits, interest earnings, disbursements and the cumulative balance of the escrow account. This information shall be provided on a quarterly basis, if monthly charges are One Thousand Dollars (\$1,000.00) or less, or on a monthly basis if monthly charges exceed One Thousand Dollars (\$1,000.00).

- H. **Additional Deposits, If Necessary:** If an escrow account or deposit contains insufficient funds to enable the municipality or approving authority to perform required application reviews or improvement inspections, the Chief Financial Officer shall provide the applicant with a notice of the insufficient escrow or deposit balance. In order for work to continue on the development or the application, the applicant shall within a reasonable time period post a deposit to the account in an amount to be agreed upon by the City and the applicant. In the interim, any required health and safety inspections shall be made and charged back against the replenishment of funds.
- I. **Scope of Charges:** All professional charges for review of an application for development, review and preparation of documents or inspection of improvements shall be reasonable and necessary, given the status and progress of the application or construction. Review fees shall be charged only in connection with an application for development presently pending before the approving authority or upon review of compliance with the conditions of approval, or review of requests for modification or amendment made by the applicant. A professional shall not review items which are subject to approval by any State governmental agency and not under municipal jurisdiction except to the extent consultation with a State agency is necessary due to the effect of State approvals on the subdivision or site plan.
- J. **Limitation of Inspection Fees.** Inspection fees shall be charged only for actual work shown on a subdivision or site plan or required by an approving resolution. Professionals inspecting improvements under construction shall charge only for inspections that are reasonably necessary to check the progress and quality of the work and such inspections shall be reasonably based on the approved development plans and documents.
- K. **Payment Required Prior to Issuance of Permits:** No zoning permits, building permits, certificates of occupancy or any other types of permits may be issued with respect to any approved application for development until all bills for reimbursable services have been received by the municipality from professional personnel rendering services in connection with such application and payment has been made.
- L. **Close Out Procedures:** The following close-out procedure shall apply to all deposits and escrow accounts and shall commence after the approving authority has granted final approval and signed the subdivision plat or site plan, in the case of application review escrows and deposits, or after the improvements have been approved as provided in N.J.S.A. 40:55D-53, in the case of improvement inspection escrows and deposits. The applicant shall send written notice by certified mail to the Chief Financial Officer of the municipality and the approving authority, and to the relevant municipal professional, that the application or the improvements, as the case may be, are completed. After receipt of such notice, the professional shall render a final bill to the Chief Financial Officer of the municipality within 30 days, and shall send a copy simultaneously to the applicant. The Chief Financial Officer of the municipality shall render a written final accounting to the applicant on the uses to which the deposit was put within 45 days of receipt of the final bill. Any balances remaining in the deposit or escrow account, including

interest in accordance with N.J.S.A. 40:55D-53.1, shall be refunded to the developer along with the final accounting.

16.16.050 - Hearings.

- A. Rules. The Planning Board and Zoning Board of Adjustment may separately make rules governing the conduct of hearings before each board. Said rules shall not be inconsistent with the provision of N.J.S.A. 40:55D-1 et seq. or of this chapter.
- B. Oaths. The Chair, the Board Attorney or person designated by the Chair shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, and the provisions of the "County and Municipal Investigations Law" C. 38, P.L. 1953, N.J.S.A. 2A:67A-1 et seq. shall apply.
- C. Testimony. The testimony of all witnesses relating to an application for development is taken under oath or affirmation and the right of cross-examination is permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the Chair and to reasonable limitations as to time and number of witnesses. Restrictions by the Chair must be reasonable in accordance with due process of law.
- D. Evidence. Technical rules of evidence are not applicable to the hearing, but the board may exclude irrelevant, immaterial or unduly repetitious evidence.
- E. Records. Each board provides for the verbatim recording of the proceedings by either stenographer, mechanical or electronic means at applicants expense. The board shall furnish a transcript or duplicate recording in lieu thereof on request to any interested party at his or her expense.

16.16.060-16.16.070 (No Changes)

16.16.080 - Decisions.

- A. Decision in Writing. Each decision on any application for development is set forth in writing as a resolution of the board which includes findings of fact and legal conclusions based thereon.
- B. Copies to Certain Parties. A copy of the decision is mailed by the board within ten (10) days of the date of decision to the applicant or if represented, then to his or her attorney, without separate charge. A copy of the decision is also mailed to all persons who have requested it and who have paid the fee prescribed by the board for such service.

16.16.090-16.20.010 (No Changes)

16.20.020 - Duties and responsibilities.

The technical advisory committee shall have the following duties and responsibilities:

- A. The Technical Advisory Committee shall review all development applications. In order for an application to be reviewed by the Technical Advisory Committee, documents required by the administrative officer for referral to the committee must be received by the Division of Planning at least twenty (20) days prior to the date of the Technical Advisory Committee meeting. All revisions to documents which are part of an application certified to be complete must be submitted at least twenty (20) days prior to the date of a subsequent Technical Advisory Committee meeting at which the revisions are to be reviewed. No application for development is scheduled for review by the Planning Board or Board of Adjustment until such time as the Technical Advisory Committee has certified, in writing, that the applicant has complied with all of the provisions of this chapter. Waiver of the above may only occur in the event that the Technical Advisory Committee determines that any particular recommendation(s) and/or requirement(s) cannot be addressed prior to a hearing by the appropriate board.
- B. Determine whether the application complies with the technical standards established pursuant to City ordinances and applicable state regulations and advise the applicable board with respect thereto;
- C. Make recommendations on the design and technical elements of an application to the applicable board;
- D. Recommend to the applicable board, where appropriate, action regarding waiver of particular technical requirements, or imposition of standards;
- E. Review applications for facade improvements, and recommend appropriate action to the applicable board;
- F. Act as the Minor Site Plan Committee and Minor Subdivision Committee of the Planning Board in accord with 16.24.120 and 16.28.070; and
- G. Review such other matters as are requested by the chairpersons of the planning board or zoning board or zoning board of adjustment.

## 16.20.030 – 16.24.060 (No Changes)

## 16.24.060 - Site plan review—Where required.

Unless specifically exempted hereinafter, site plan approval in accordance with this chapter is required for all development. No certificate of occupancy is issued unless there has been compliance with all of the terms and provisions of site plan approval.

## 16.24.070 - Site plan exemption.

- A. No site plan application and approval is required prior to the issuance of a building permit or a certificate of occupancy for any of the following types of development:
1. Interior alterations provided that no expansion of a nonconforming use results from same;
  2. Erection or placement of signage which is in conformance with the provisions of the City's zoning ordinance;
  3. Single-family and two-family dwellings and accessory structures to such uses;
  4. Changes in use in which the use is permitted and parking for the use is provided on the subject site in conformance with the city's zoning ordinance;
  5. Accessory structures limited to eight feet by ten (10) feet in size and further provided that no such structure exceeds ten (10) feet in height; and
  6. Façade changes and renovations that do not expand the building coverage, impervious coverage, floor area or building height.
- B. Notwithstanding the above, prior to the issuance of a building permit or a Certificate of Occupancy, the Administrative Officer shall obtain an opinion from the Technical Advisory Committee that the proposed development will not have any adverse impacts upon drainage, any public improvements or the surrounding area.

## 16.24.080 - Minor site plan.

Approval by the Minor Site Plan Committee of the Planning Board of a minor site plan application prior to the issuance of a building permit or Certificate of Occupancy is required for the following types of development:

- A. Additions to buildings or the construction of accessory buildings which would result in an increase of less than ten (10) percent to the existing gross floor area of the building(s) on the lot and further provided that the addition will not require an increase of greater than ten (10) percent to the existing number of parking spaces on site. Be it further provided that the proposed development must comply with all existing zoning requirements.

## 16.24.090 - (No Changes)

## 16.24.100 - Site plan application.

- A. An applicant must file with the Administrative Officer the following documents:
1. Completed site plan review application form;
  2. Application fee (see Section 16.24.260);
  3. Certification of paid taxes;
  4. Certified list of all property owners within two hundred (200) feet of subject property;
  5. Two copies of any protective covenants, deed restrictions, easements, court decisions or board decisions affecting the property and submission of an easement due diligence checklist certification;
  6. Survey of property;
  7. Letter of principal points describing the proposed development;
  8. Complete set of drainage calculations as per the requirements set forth in Section 16.24.270, Section 16.24.270A, or Section 10.2 of the city's engineering standards, whichever is applicable;
  9. Completed variance application form (if applicable);
  10. A written statement of anticipated traffic impacts of the proposed development;
  11. A written statement of the environmental impacts of the proposed development;
  12. For any application for the construction of multi-family dwellings of three or more units, single family developments of 50 or more units or any commercial, institutional, or industrial development for the utilization of 1,000 square feet or more of land: must provide a recycling plan. This plan must contain, at a minimum, the following:
    - a) A detailed analysis of the expected composition and amounts of solid waste and recyclables generated at the proposed development and
    - b) Locations documented on the application's site plan that provide for convenient recycling opportunities for all owners, tenants, and occupants. The recycling area shall be of sufficient

size, convenient location and contain other attributes (signage, lighting, fencing, etc.) as may be determined by the Municipal Recycling Coordinator.

13. Nineteen (19) copies of site plan in accordance with Sections 16.24.190 and 16.24.270 and prepared in accordance with N.J.A.C. 13:40-7, which must also include the following:
    - a. A landscaping plan which lists the species of plants to be provided, the calipers and/or height of any trees, the spacing proposed between each plant, and details of any proposed planters;
    - b. A lighting plan which shows a detail of any proposed lighting fixture and includes photometric contours to indicate the intensity of any lighting;
    - c. A grading plan showing existing contours at intervals of one foot where slopes are three percent or less and intervals of two feet where slopes are more than three percent, based upon U.S. Coast and Geodetic Survey data. Where any changes in contours are proposed, existing grades are indicated by a dashed line and finished grades are shown by solid lines;
    - d. A utility plan showing the dimensions and locations of all existing and proposed utilities, including water, electric, gas, sanitary sewer and storm sewer; and
    - e. Soil erosion and sediment control plan.
  14. Architectural plans, including floor plans depicting all rooms dimensions, room uses, all means of ingress and egress and elevations of all visible sides of buildings;
  15. Site logistics plans, if any sidewalks or streets are to be closed for construction staging or safety;
  16. Personal document file (PDF) of the site plan, subdivision plat and architectural plans;
  17. Payment of professional review escrow fees in accordance with Section 16.16.040;
  18. Middlesex County Utility Authority tracking form;
  19. Written requests for waivers of any site plan submission standards;
  20. If determined necessary by the administrative officer, a Phase 1 environmental report or a no further action letter from the New Jersey Department of Environmental Protection; and
  21. If determined necessary by the administrative officer, a site traffic circulation plan graphically showing the ability of vehicles anticipated to use the site to navigate through the site without obstruction.
- B. Any applicant may request the Administrative Officer to waive any of the above required documents. The request must be made in writing and must specifically state the reasons for the waiver request. Upon receipt of a request to waive certain requirements, it shall be the duty of the Administrative Officer to render a decision regarding the request within ten (10) days of receipt of same.
- C. Submittal of all of the above mentioned items constitutes a complete application as per N.J.S.A. 40:55D-10.3. Failure to submit all of the above mentioned items constitutes an incomplete application and the Administrative Officer shall notify applicant of same, in writing, within forty-five (45) days of submission of the application.
- D. The application must be submitted to the Technical Advisory Committee and/or the Minor Site Plan Committee of the Planning Board for its review and approval in accordance with the provisions of Sections 16.24.110 and 16.24.120 of this chapter. The application may be submitted to the Technical Advisory Committee before it is deemed complete.

#### 16.24.120 - Minor Site Plan Committee.

There is established a Minor Site Plan Committee of the Planning Board. The committee consists of at least one member of the Planning Board who is appointed by the chairperson of the Planning Board. The remaining members of the Minor Site Plan Committee consist of the representatives of the Technical Advisory Committee. It shall be the duty of the committee to review all development applications classified by the Administrative Officer as being minor site plan applications in accordance with Section 16.24.080 of this chapter. In accordance with the provisions of N.J.S.A. 40:55D-46.1, no notice or public hearing is required in order for the Minor Site Plan Committee of the Planning Board to approve a minor site plan.

#### 16.24.130 - Preliminary site plan approval.

Upon written certification by the Technical Advisory Committee that an application for development is in compliance with all of the provisions of this chapter, an applicant submits nineteen (19) copies of the site plan and all other related drawings to the Administrative Officer. Submission of the above must be made at least ten (10) days prior to the date of the public hearing on the application. Nothing in this chapter precludes an applicant from seeking both preliminary and final site plan approval at the same time.

#### 16.24.140 - Final site plan approval.

An applicant files with the Administrative Officer a completed site plan review application form, a letter of principal points discussing all changes and modifications from the approved preliminary site plan and nineteen (19) copies of the final site plan for review by the Technical Advisory Committee. The final site plan incorporates any changes or modifications proposed by the applicant or required by the Planning Board or Board of Adjustment. Upon certification from the Technical Advisory Committee that the final site plan is in compliance with preliminary site plan approval, the applicant submits nineteen (19) copies of the final site plan for board review. Nothing in this chapter precludes an applicant from seeking both preliminary and final site plan approval at the same time.

16.24.150 – 16.28.090. (No Changes)

16.28.110 – 16.28.150 (No Changes)

**SECTION II**

**SEVERABILITY:**

If any section, paragraph or provision of this Ordinance is declared to be invalid by a court of competent jurisdiction such finding shall not affect the remaining provisions hereof and the entire Ordinance shall be null and void.

**SECTION III**

**REPEALER:**

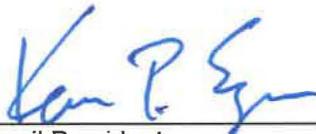
All ordinances inconsistent with the provisions of this Ordinance are repealed to the extent of such inconsistency.

**SECTION IV**

**EFFECTIVE DATE:**

This Ordinance shall become effective twenty (20) days following final adoption and shall be published as required by law.

ADOPTED ON FIRST READING  
DATED: *June 17, 2015*

  
\_\_\_\_\_  
Council President

ADOPTED ON SECOND READING  
DATED:

\_\_\_\_\_  
Council President

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVAL OF THE MAYOR ON THIS DAY OF \_\_\_\_\_, 2015.

\_\_\_\_\_  
Mayor

APPROVALS:

\_\_\_\_\_  
City Administrator

\_\_\_\_\_  
City Attorney  
  
Department Planning, Community  
and Economic Development

TKS/kc

COUNCILMEMBER	Y	N	AB	COUNCILMEMBER	Y	N	NV	AB
ANDERSON	X			GARLATTI, M	X			
ESCOBAR	X			EGAN, Pats	X			
FLEMING, VP 5	X							

FIRST READING VOTE ON JUNE 17, 2015 M= MOVED S= SECOND NV= NO VOTE AB= ABSENT