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## **Article 4 – Application Review Procedures and Approval Criteria**

### Chapters:

- 4.1 General Review Procedures
- 4.2 Review Procedure Application and Approval Process (Site Design Review)
- 4.3 Conditional Use Permits
- 4.4 Variances
- 4.5 Amendments to the Zoning Map or Code
- 4.6 Subdivisions and Property Line Adjustments
- 4.7 Master Planned Developments

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## 4.1 – General Review Procedures

### Chapter 4.1 – General Review Procedures

#### Sections:

4.1.010	Purpose and Applicability
4.1.020	Type I Procedure (Staff Review - Review without Public Notice or Hearing)
4.1.030	Type II Procedure (Review with Public Notice)
4.1.040	Type III Procedure (Planning Commission Review with Public Hearing)
4.1.050	Type IV Procedure (Legislative Decision)
4.1.060	Time Limit, Consolidated Review, and Borough Planning Official's Duties

#### **4.1.010 Purpose and Applicability**

- A. Purpose.** The purpose of this Chapter and Chapter 4.2 is to establish standard application and decision-making procedures that will enable the borough, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way. Table 4.1.010 provides a key for determining the review procedure and the decision-making authority for particular approvals.
- B. Applicability of Review Procedures.** All land use and development applications and approvals, except building permits, shall be decided by using the procedures contained in this Chapter. The application submittal requirements and approval criteria are generally set out in Chapter 4.2, and the procedure “type” assigned to each application or approval governs the decision-making process for that application or approval. There are four types of review procedures as described in paragraphs 1-4 below.
- 1. Type I Procedure (Staff Review - Review without Public Notice or Hearing).** Type I decisions are made by the borough Planning Official without public notice and without a public hearing.
  - 2. Type II Procedure (Review with Public Notice).** Type II decisions are made by the Borough Planning Official, with public notice. Alternatively, the Borough Planning Official may refer a Type II application directly to the Planning Commission for its review and decision in a public meeting.
  - 3. Type III Procedure (Review – Public Hearing).** Type III decisions are made by the Planning Commission after a public hearing.
  - 4. Type IV Procedure (Legislative Decision).** The Type IV procedure applies to the creation or revision, or large-scale implementation, of public policy (e.g., adoption or amendment of regulations, zone changes, and comprehensive plan amendments). Type IV decisions are made by the Borough Assembly, upon the advice and recommendation of the Planning Commission. Type IV decisions are legislative decisions, and no administrative appeal is available.

**Table 4.1.010 – Summary of Particular Approvals by Type of Review Procedure**

<b>Approvals*</b>	<b>Review Procedures</b>	<b>Applicable Regulations</b>
Staff Review of any new use or development	Type I	Applicants are required to complete a Type I application for any new use or development, except where a Type II or Type III procedure is

## 4.1 – General Review Procedures

<b>Table 4.1.010 – Summary of Particular Approvals by Type of Review Procedure</b>		
<b>Approvals*</b>	<b>Review Procedures</b>	<b>Applicable Regulations</b>
		required. See Section 4.1.020 and 4.2.020.
Child Care Group Homes and Centers	Conditional Use Permit required	Section 2.3.100
Comprehensive Plan Amendment	Type IV	
Conditional Use Permit	Type III	Chapter 4.3
Fences and Walls, over specified height	Type I	Section 3.4.040
Historic District Overlay design and development	Type I or III	Section 2.4.040
Legal Lot Determination	Type I	Chapter 1.3
Main Street District design and development	Type I or III	Section 2.4.050
Master Planned Development Concept Plan Detailed Plan Subsequent applications for same project	Type III Type II Type I	Chapter 4.7 Chapter 4.7
Non-Conforming Use or Development Expansion of	Conditional Use Permit or Variance required	Chapter 1.4
Non-Conforming Use or Development, Extension for Discontinued Use	Type III	Chapter 1.4
Minor Lot Consolidation	Type I	Chapter 4.6
Privately Maintained Access Roads, not as part of a subdivision plat	Type II	Section 3.6.025
Property Line Adjustments, including Lot Consolidations	Type I	Chapter 4.6
Similar Use Determination	Type I	Chapter 1.5
Special Use Standards Compliance	Type I, II or III	Chapter 2.3
Subdivision or Replat Minor Subdivision Remote Subdivision Preliminary Plat Modifications to Preliminary Plat Final Plat	Type III	Chapter 4.6
Vacation of Public Easements (Some easements may also require state approval.)	Type IV	Chapter 4.6

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## 4.1 – General Review Procedures

<b>Table 4.1.010 – Summary of Particular Approvals by Type of Review Procedure</b>		
<b>Approvals*</b>	<b>Review Procedures</b>	<b>Applicable Regulations</b>
Major Variance Minor Variance	Type III Type II	Chapter 4.4
Zoning District Map or Code Change	Type IV	Chapter 4.5

\* The applicant may be required to obtain building permits and additional approvals from other agencies, such as a road authority or natural resource regulatory agency. The borough's failure to notify the applicant of any requirement or procedure of another agency shall not excuse the applicant from compliance with said requirements or procedures, nor invalidate a decision made by the borough under this Code.

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## 4.1 – General Review Procedures

### 4.1.020 Type I Procedure (Staff Review - Review without Public Notice or Hearing)

**A. Type I Procedure (Staff Review).** The borough Planning Official without public notice and without a public hearing, makes decisions through the Type I procedure. The procedure serves as a review that is intended to ensure a project proposal meets the basic and certain specific requirements of Articles 2 (Zoning) and 3 (Design Standards) and to determine whether further applications or approvals are required or more detailed plans are necessary before the borough authorizes the Building Official to issue a building permit. A building permit shall not be issued until the borough Planning Official has approved, at a minimum, a Type I application for a proposed project.

**B. Application Requirements.** Application Submittal requirements are set out in Chapter 4.2.

**C. Effective Date.** A Type I Decision is final on the date it is signed by the borough Planning Official. See also, Section 1.2.080, Type I procedure and Coordination of Building Permits.

#### **D. Appeal of Type I decisions.**

1. Except as set out in paragraph 3 below, a Type I Decision made by the borough Planning Official may be appealed to the Planning Commission by an applicant or owner of the subject property or any other party in interest. An appeal of a Type I decision is made and conducted under the same rules and procedures as appeals of Type II Decisions made by the borough Planning Official. See, Subsections 4.1.030.D.2-D.6.
2. A decision on appeal made by the Planning Commission from a Type I Decision may be further appealed to the Assembly, acting as the Board of Adjustment, by a person who was an appellant or participating appellee in the appeal before the Planning Commission. The appeal filing procedures of Subsections 4.1.040.E.2(b)-3 apply to such an appeal. The appeal shall be based upon the record created before the Planning Official, and as the record has been or may be supplemented in the manner provided for in Subsection 4.1.040.E.4. Such appeals before the Board of Adjustment shall follow the procedures for submittal of written arguments, hearing on appeal, burden of proof and standard of review as set forth in Subsections 4.1.040.E.5-6 and .F.
3. In the event that a Type I Decision indicates that other reviews and approvals are necessary prior to the proposed use or development (e.g. where a Decision indicates that a Conditional Use Permit is required for the use or development, or a further Type I procedure is necessary to determine whether a Special Use Standard is met), no final land use or development decision has been made, and no appeal can be filed.

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## 4.1 – General Review Procedures

### 4.1.030 Type II Procedure (Review With Public Notice)

The borough Planning Official with public notice, makes decisions through the Type II procedure. . Alternatively, the borough Planning Official, at the official's discretion, may refer a Type II application directly to the Planning Commission for its review and decision in a public meeting.

**A. Application Requirements.** Application Submittal requirements are set out in Chapter 4.2.

**B. Procedure.**

1. The borough Planning Official shall mail notice of a Type II application, in accordance with paragraph 4 below, to the address of record of the following individuals and agencies no less than 21 days prior to the deadline for submitting written comments on the application. The borough Planning Official shall prepare an affidavit of notice, which shall be made a part of the file, which states the date of the mailing and the names and addresses of those to whom it was mailed. The affidavit is conclusive evidence that the mailing was made. The purpose of the notice is to give nearby property owners and other interested parties the opportunity to submit written comments on the application before the Planning Official issues a decision. The intent is to invite people to participate early in the decision-making process.
2. The following parties shall be notified:
  - a. All owners of record of real property within 600 feet of the subject site, except in Rural Residential (RR) district or areas outside Service Area I where within 1,000 feet;
  - b. Any person who submits a written request to receive a notice; and
  - c. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the borough and any other affected agencies, including borough departments. The failure of another agency to respond with written comments on a pending application shall not invalidate a decision made by the borough under this Code.

The failure of any person or agency to receive any notice mailed under this Section shall not affect the validity of any proceeding under this Section.

3. At least 14 days prior to the deadline for submitting written comments on the application, the borough shall post a copy of the notice on the borough website; and at least 7 days prior to the deadline for submitting written comments on the application, the borough shall submit a copy of the notice to a newspaper with local circulation and request that it be published in its next available publication.
4. The notice, at a minimum, shall contain the following information:
  - a. The deadline for submitting written comments;
  - b. A summary of the proposed use or development and the relevant approval criteria in sufficient detail to help the public identify and locate applicable Code requirements;

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- c. The address and borough contact person for submitting written comments; and the date, time, and location the borough Planning Official or Planning Commission, as applicable, is scheduled to make a decision on the application;
  - d. The street address or other easily understandable reference to the location of the proposed use or development;
  - e. A statement that a copy of the application, and all documents and evidence relied upon by the borough Planning Official or Planning Commission, as applicable, to make its decision is available for public review. Copies of this evidence can be obtained at a reasonable cost from the borough; and
  - f. A statement that after the comment period closes, the borough will issue its decision and the notice of decision shall be mailed to the applicant, property owner (if different), those who provided written comments on the application, and those who requested a copy of the decision.
5. At the conclusion of the comment period, the borough Planning Official shall review the application and the comments received and prepare a decision approving, approving with conditions, or denying the application based on the applicable code criteria. Alternatively, if the application is referred to the Planning Commission, the borough Planning Official will transmit all written comments received, if any, along with a copy of the application to the Planning Commission for review and decision at its next regularly scheduled meeting. If referred to the Planning Commission, the Planning Official shall include a report and recommendation on the application.
6. Where the borough Planning Official refers a Type II application to the Planning Commission, the Planning Commission shall approve, approve with conditions, or deny the application through the Type II procedure based on the applicable Code criteria. The Planning Commission may continue its review to the next meeting to allow the applicant time to respond to questions. Alternatively, the Commission may decide to accept oral and written testimony in a public hearing on the application, pursuant to Section 4.1.040; in which case, a new public notice of the hearing shall be mailed to those who received the original notice under paragraph 2 above, providing notice of the public hearing.
7. Within thirty (30) days of the conclusion of the comment period, or from the date of the last public meeting of the Planning Commission at which the referred application was addressed, whichever is applicable, the borough shall issue a Notice of Decision and mail it to the applicant, property owner (if different), those who provided written comments on the application, and those who requested a copy of the Notice of Decision. The borough Planning Official shall cause an affidavit of mailing the Notice to be prepared and made a part of the file. The affidavit is conclusive evidence that the mailing was made. The affidavit shall show the date the notice was mailed and the names and addresses of those to whom it was mailed.
8. The Notice of Decision shall contain all of the following information:
  - a. A description of the applicant's proposal and the borough's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval;

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## 4.1 – General Review Procedures

- b. The address or other geographic description of the subject property, including a map of the property in relation to the surrounding area (a copy of assessor’s map may be used);
- c. A statement of where and how a copy of the Decision can be obtained;
- d. The date the Decision shall become final; and
- e. A statement regarding appeal of the Decision pursuant to Subsection D below.

**C. Effective Date of Decision.** Unless the conditions of approval specify otherwise, a decision is effective on the date of mailing.

**D. Appeal of Type II Decision.** A Type II Decision made by the borough Planning Official may be appealed to the Planning Commission; and a Type II Decision made by the Planning Commission may be appealed to the Borough Assembly, sitting as the Board of Adjustment, pursuant to the following:

**1. Who may appeal.** The following people have legal standing to appeal a Type II Decision:

- a. The applicant or owner of the subject property;
- b. Any person who was entitled to notice under Subsection B.2 above; and
- c. Any other person who participated in the proceeding by submitting written comments on the application to the borough by the specified deadline.

### **2. Appeal filing procedure.**

- a. **Notice of appeal.** Any person with standing to appeal, as provided in paragraph 1, above, may appeal a Type II Decision by filing a Notice of Appeal according to the following procedures.
- b. **Time for filing.** A Notice of Appeal shall be filed with the Borough Clerk within twenty (20) days of the effective date of the Decision.
- c. **Content of notice of appeal.** The Notice of Appeal shall be filed with the Borough Clerk on a form prescribed by the borough, accompanied by the required filing fee, and shall contain:
  - (1) An identification of the Decision being appealed, including the date of the Decision;
  - (2) A statement demonstrating the person filing the Notice of Appeal has standing to appeal; and
  - (3) A statement setting forth detailed and specific allegations of error.
- d. **Notice to Applicant.** If the appellant is not the applicant, the Borough Clerk shall thereafter mail a

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copy of the appeal to the applicant.

3. **Appellees.** Permissible appellees to an appeal are limited to the following:
  - a. The applicant or owner of the subject property;
  - b. The borough Planning Official;
  - c. Any person who was entitled to notice under Subsection B.2 above; and
  - d. Any other person who participated in the proceeding by submitting written comments on the application to the borough by the specified deadline

In order to participate in an appeal hearing, a permissible appellee must submit a written argument to the Borough Clerk within the time provided for such submittal.

4. **Scope of appeal.** The appeal of a Type II Decision shall be based upon the record created before the Planning Official or, if referred, the Planning Commission, and as the record may be supplemented on appeal in the manner provided for in Subsection 4.1.040.E.4. The hearing on appeal shall be either before the Planning Commission, where the Decision being appealed was made by the borough Planning Official, or before the Board of Adjustment, where the Decision being appealed was made by the Planning Commission upon referral.
5. **Appeal Procedure.** Hearings and decisions on appeals of Type II Decisions shall follow the procedures for submittal of written arguments, hearing on appeal, burden of proof and standard of review, as set forth in Subsections 4.1.040.E.5-6 and F.
6. **Further Appeal to the Board of Adjustment.** A decision on appeal made by the Planning Commission from a Type II Decision made by the borough Planning Official may be further appealed to the Board of Adjustment by a person who was an appellant or participating appellee in the appeal before the Planning Commission. The appeal filing procedures of Subsections 4.1.040.E.2(b)-3 apply to such an appeal. The appeal shall be based upon the record created before the Planning Official, and as the record has been or may be supplemented in the manner provided for in Subsection 4.1.040.E.4. Hearings and decisions before the Board of Adjustment shall follow the procedures for submittal of written arguments, hearing on appeal, burden of proof and standard of review as in Subsections 4.1.040.E.5-6 and .F.

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## 4.1 – General Review Procedures

### 4.1.040 Type III Procedure (Planning Commission Review with Public Hearing)

Type III Decisions are made by the Planning Commission after a public hearing.

**A. Application Requirements.** Application Submittal requirements are set out in Chapter 4.2.

**B. Procedure for Public Hearing.**

**I. Mailed and Posted Notice.**

- a. The borough shall mail notice of a public hearing on a Type III application no less than 21 days before the hearing date to the address of record of the parties listed below. The borough Planning Official shall prepare an affidavit of notice, which shall be made a part of the file. The affidavit shall state the date that the notice was mailed and the names and addresses of those to whom it was mailed. The affidavit is conclusive evidence that the mailing was made.
  - (i) All owners of record of real property located within 600 feet of the subject site except in Rural Residential (RR) district or areas outside Service Area I where within 1,000 feet;
  - (ii) Any person who submits a written request to receive a notice; and
  - (iii) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the borough and any other affected agencies, including borough departments. The failure of another agency to respond with written comments on a pending application shall not invalidate a decision made by the borough under this Code.

The failure of any person or agency to receive any notice mailed under this Section shall not affect the validity of any proceeding under this Section.

- b. At least 14 days before the hearing, the borough shall post a copy of the notice on the project site in clear view from a public right-of-way, using a poster format prescribed by the borough Planning Official.
- c. At least 14 days before the hearing, the borough shall post a copy of the notice of the hearing on the borough website; and at least 7 days before the hearing, the borough shall submit a copy of the notice to a newspaper with local circulation and request that it be published in its next available publication.

**2. Content of Notice.** Notice of a Type III hearing to be mailed and published per paragraph I above shall contain the following information:

- a. A summary of the proposed use or development and the relevant approval criteria, in sufficient detail to help the public identify and locate applicable Code requirements;

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- b. The date, time, and location of the scheduled hearing;
- c. The street address or other easily understandable reference to the location of the proposed use or development;
- d. A statement that a copy of the application, all documents and evidence submitted regarding the application, and the applicable criteria and standards, shall be available for review at the office of the borough Planning Official, and that copies shall be provided at a reasonable cost;
- e. A statement that a copy of the borough’s staff report and recommendation to the Planning Commission shall be available for review at least 7 days before the hearing;
- f. A general explanation of the requirements to submit written comment and testimony, and the procedure for conducting the public hearings; and
- g. A statement that after the public hearing closes, the Planning Commission will issue its Decision.

### **C. Conduct of the Public Hearing and Decision.**

- 1. At the commencement of the hearing, the chairperson of the Commission shall state to those in attendance the following information and instructions:
  - a. A brief description of the proposed use or development and the applicable approval criteria by Code Chapter that apply to the application;
  - b. That testimony and evidence shall address the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the application;
  - c. After the conclusion of the hearing, the commission shall deliberate and make a decision based on the facts and arguments in the public record; and
  - d. Any participant may ask the commission for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing; if the commission grants the request, it will schedule a date to continue the hearing as provided in paragraph 5 below, or leave the record open for additional written evidence or testimony as provided in paragraph 6 below.
- 2. [Reserved].
- 3. Presenting and receiving evidence.
  - a. The Planning Commission may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant, or personally derogatory testimony or evidence;

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b. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing only as provided in paragraph 6 of this Subsection.

4. [Reserved]

5. The Planning Commission may continue the hearing. An opportunity shall be provided at the continued hearing for persons to present and respond to new written evidence and oral testimony. If new evidence or testimony is submitted at the continued hearing, any person may request, before the conclusion of the hearing, that the record be left open for at least 7 days, so that he or she can submit additional written arguments in response to the new evidence or testimony. After the close of the hearing, the Commission should generally limit additional written submittals to arguments and not accept new additional evidence or testimony.

6. If the Planning Commission leaves the record open for additional written argument, the record shall be left open for at least 7 days after the hearing for the filing of such written argument.

7. The Planning Commission shall approve, approve with conditions, or deny the application through the Type III procedure based on the applicable Code criteria. Within thirty (30) days from the date of the last public meeting of the Planning Commission at which the application was addressed, the borough shall issue a Notice of Decision and mail it to the applicant, property owner (if different), those who provided written comments or oral testimony on the application, and those who requested a copy of the Notice of Decision. The borough Planning Official shall cause an affidavit of mailing the notice to be prepared and made a part of the file. The affidavit is conclusive evidence that the mailing was made. The affidavit shall show the date the notice was mailed and the names and addresses of those to whom it was mailed.

8. The Notice of a Type III Decision shall contain all of the following information:

a. A description of the applicant's proposal and the borough's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval;

b. The address or other geographic description of the subject property, including a map of the property in relation to the surrounding area (a copy of assessor's map may be used);

c. A statement of where and how the borough's Decision can be obtained;

d. The date the Decision shall become final; and

e. A statement regarding appeal of the Decision pursuant to Subsection D below.

**D. Effective Date of Decision.** Unless the conditions of approval specify otherwise, a Type III Decision is effective on the date of mailing.

**E. Appeal of Planning Commission Decision.** The Planning Commission's decision may be appealed to the

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Borough Assembly, acting as the Board of Adjustment, as follows:

### 1. **Who may appeal.** The following people have legal standing to appeal:

- a. The applicant or owner of the subject property;
- b. Any person who was entitled to notice under Subsection B.I, above; and
- c. Any other person who participated in the proceedings before the Planning Commission, by submitting written or oral testimony, evidence or arguments before the close of the public record.

### 2. **Appeal filing procedure.**

- a. **Notice of appeal.** Any person with standing to appeal, as provided in paragraph 1, above, may appeal a Type III Decision by filing a Notice of Appeal according to the following procedures.
- b. **Time for filing.** A Notice of Appeal shall be filed with the Borough Clerk within twenty (20) days of the effective date of the Decision.
- c. **Content of notice of appeal.** The Notice of Appeal shall be filed with the Borough Clerk on a form prescribed by the borough, accompanied by the required filing fee and shall contain:
  - (i) An identification of the Decision being appealed, including the date of the Decision;
  - (ii) A statement demonstrating the person filing the Notice of Appeal has standing to appeal; and
  - (iii) A statement setting forth detailed and specific allegations of errors.
- d. **Notice to Applicant.** If the appellant is not the applicant, the Borough Clerk shall thereafter mail a copy of the appeal to the applicant.

### 3. **Appellees.** Permissible appellees to an appeal are limited to the following:

- a. The applicant or owner of the subject property;
- b. The borough Planning Official;
- c. Any person who was entitled to notice under Subsection B.I above; and
- d. Any other person who participated in the proceedings before the Planning Commission, by submitting written or oral testimony, evidence or arguments before the close of the public record.

In order to participate in an appeal hearing, a permissible appellee must submit a written argument to the Borough Clerk within the time provided for such submittal.

### 4. **Scope of Appeal.** The appeal of a Type III Decision shall be based upon the record created before the

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Planning Commission, or on the record as supplemented on appeal under this Subsection.

a. No testimony or evidence may be advanced or introduced by a party during the appeal which was not previously submitted into the record before the Planning Commission. The Board's presiding officer may waive this prohibition if the officer finds that the failure to previously submit or disclose the evidence or testimony was due to:

1. Newly discovered evidence which by due diligence could not have been discovered previously and disclosed; or
2. Fraud, misrepresentation, or other misconduct of an opposing party.

**5. Standard of Review.** The Board of Adjustment may modify or set aside the Decision being appealed only if:

- (a) The appellant establishes that the Decision is not supported by substantial evidence in light of the whole record;
- (b) The Decision is not supported by adequate written findings or the findings fail to inform the basis upon which the Decision appealed from was made;
- (c) The Planning Official or Planning Commission failed to follow its own procedures or otherwise denied procedural due process to one or more of the parties; or
- (d) The Planning Official or Planning Commission failed to address, or adequately or correctly address, applicable standards and criteria.

**6. Burden of Proof.** The burden of proof that the Decision was made in error is on the appellant.

### **F. Appeal Record; Written Arguments; Appeal Hearing; Decision on appeal.**

**I. Record on Appeal.** The record on appeal shall include all of the following information:

- a. All materials submitted to and considered by the Planning Commission, including the application;
- b. The minutes of the meeting(s) and hearing(s) before the Planning Commission at which the application was addressed. The appellant is responsible for arranging for, and bearing the cost of, transcription of the hearing(s);
- c. The final written Decision; and
- d. Copies of all notices given as required by this Chapter, and correspondence regarding the application that the borough mailed or received.

The record shall be marked or numbered to provide identification for the purposes of referencing the record in written arguments submitted to the board. Any appellant or appellee may obtain a copy of the numbered record, at a cost to be established by the Borough Clerk.

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- 2. Written Arguments.** The parties to the appeal shall submit written arguments in support of their positions, with appropriate references to the record on appeal, on a schedule to be adopted by the Board. The Board of Adjustment may set page limitations for such written submittals, and establish other requirements for the form of the written submittal. Arguments not made in writing may be deemed to have been waived or abandoned. The party filing the written argument is responsible for mailing a copy in full of the submission to all other parties to the appeal, and must submit with the written argument an affidavit of service demonstrating such mailing.
  - 3. Appeal Hearing.** The Board of Adjustment shall set a date for and hold a meeting to decide an appeal. At the option of the Board, oral argument may be heard from the parties to the appeal, under such time limitations and other procedures as established by the Board.
  - 4. Decision on appeal.** The Board of Adjustment may affirm, reverse, reverse and remand for further proceedings, or modify the decision of the Planning Commission, in whole or in part. A decision on the appeal shall be in writing, and include findings of fact and conclusions of law. A decision of the Board of Adjustment shall fully dispose of the matter on appeal, except that the matter may be remanded to the Planning Commission where the Board of Adjustment determines that 1) there is insufficient evidence in the record on an issue material to the decision, or 2) there has been a substantial procedural error which requires further proceedings. A decision remanding the matter shall provide any necessary direction to the Planning Commission.
- G. Effective Date of Decision on Appeal, and Appeals to Superior Court.** A decision on appeal is effective on the date of mailing. An appeal of a Board of Adjustment decision under this Chapter shall be filed with the superior court, in accordance with the procedures set out in the court rules, within 30 days of the effective date of the decision.

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## 4.1 – General Review Procedures

### 4.1.050 Type IV (Legislative Decisions)

Type IV decisions are legislative decisions made by the Borough Assembly. Legislative decisions are adopted by ordinance, unless otherwise specifically indicated.

**A. Timing of Requests.** The Borough Assembly may establish a schedule for when it will accept applications for amendments to this Code, the Zoning Map or the Comprehensive Plan. The Borough Assembly may also initiate its own legislative proposals for amendments at any time. The Assembly shall may seek the advice and recommendation of the Planning Commission on any such proposed amendments, in the manner provided for in paragraph C below.

**B. Application Requirements.**

1. Application forms. Applications for proposed amendments shall be made on forms provided by the borough Planning Official.
2. Submittal Information. The application shall contain all of the following information:
  - a. The information requested on the application form;
  - b. A clear statement of the amendments requested, and a map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and recommendation decision (as applicable);
  - c. The required fee; and
  - d. One copy of a letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards.

**C. Procedure.**

1. Planning and Zoning Commission. The Assembly shall refer proposed amendments it wishes to consider to the Planning and Zoning Commission, under the following procedure:
  - a. The Commission shall hold a public hearing on proposed amendments. Notice of the public hearing shall be provided no less than 21 days before the hearing date to the address of record of the parties listed below. The borough Planning Official shall prepare an affidavit of notice, which shall be made a part of the file. The affidavit shall state the date that the notice was mailed and the names and addresses of those to whom it was mailed. The affidavit is conclusive evidence that the mailing was made.
    - (i) All owners of record of real property located within 600 feet of the subject site(s) except in Rural Residential (RR) district or areas outside Service Area I where within 1,000 feet;
    - (ii) Any person who submits a written request to receive a notice; and
    - (iii) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the borough and any other affected agencies, including borough departments. The failure of another agency to respond with written comments on a proposed amendment shall not invalidate a decision made by the borough under this Code.

The failure of any person or agency to receive any notice mailed under this Section shall not affect the validity of any proceeding under this Section.

- b. At least 14 days before the hearing, the borough shall post a copy of the notice of the hearing on the site(s) of the proposed amendments in clear view from a public right-of-way, using a poster format prescribed by the borough Planning Official.
- c. At least 14 days before the hearing, the borough shall post a copy of the notice of the hearing on the borough website; and at least 7 days before the hearing, the borough shall submit a copy of the notice to a newspaper with local circulation and request that it be published in its next available publication.

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## 4.1 – General Review Procedures

- d. Notice of the public hearing before the Commission shall contain the following information:
- (i) A summary of the proposed amendments;
  - (ii) The date, time, and location of the scheduled hearing;
  - (iii) The street address(es) or other easily understandable reference to the location(s) of the proposed amendment;
  - (iv) A general explanation of the requirements to submit written comment and testimony, and the procedure for conducting the public hearings; and
  - (v) A statement that after the public hearing closes, the Commission will consider the amendments and issue its written recommendation on the amendments to the Assembly.
- e. Upon conclusion of the public hearing, the Commission shall prepare and adopt a written recommendation on the proposed amendments, to be submitted to the Assembly.
- f. The notice requirements of subparagraphs 1(a)-(b) do not apply to public hearings held to recommend the initial boundaries of zoning districts following adoption of this Development Code. Proposals for initial boundaries shall be initiated by the Commission, and notice of the Commission hearings shall be conducted by general mailings to owners of the properties subject to the amendments, as demonstrated by the Borough's tax assessment records, and by posting and publication of the notice as provided for in subparagraph 1(c). The location description called for in subparagraph 1(d)(iii) can be provided by use of a map showing the boundaries to be considered. The recommendations of the Commission may be submitted to the Assembly in one proposal, or in multiple proposals by zoning district or discrete area.
2. Hearings before the Assembly on proposed amendments are conducted and noticed similar to Assembly hearings on other legislative proposals, except that notice of a hearing on a zoning map amendment shall be mailed to the owners of the properties subject to the amendment. If the Planning Commission does not, within 90 days of referral, submit a written recommendation to the Assembly on the amendment, as provided for under paragraph 1(e) above, the Assembly may proceed with consideration of the amendment without Commission input.
- D. Final Decision and Effective Date.** An amendment, if approved, shall take effect and shall become final as specified in the enacting ordinance. Notice of the final action on a proposed amendment shall be mailed to an applicant and all those who requested notice.

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## 4.1 – General Review Procedures

### 4.1.060 Time Periods; Consolidated Review; Borough Planning Official's Duties; No Stay Pending Appeal

- A. Time Periods.** In computing time periods prescribed or allowed by this Chapter, the day of the act or event from which the designated period of time begins shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which case the period runs until the end of the next day that is not on a weekend or legal holiday.
- B. Consolidated Review of Applications.** When an applicant applies for more than one type of land use or development approval for the same one or more contiguous parcels of land, the proceedings shall be consolidated for review and decision. When proceedings are consolidated, required notices may be consolidated, provided the notice shall identify each application to be decided. When more than one application is reviewed in a hearing, separate findings and decisions shall be made on each application.
- C. Borough Planning Official's Duties.** The borough Planning Official shall perform all of the following duties with regard to administration of this Code:
1. Prepare application forms based on the provisions of this Code and applicable state law;
  2. Prepare required notices and process applications for review and action;
  3. Assist the Planning Commission and Borough Assembly in administering the hearings process;
  4. Answer questions from the public regarding the borough's land use and development regulations;
  5. Prepare staff reports summarizing pending applications, including applicable decision criteria;
  6. Prepare findings consistent with borough decisions on land use and development applications;
  7. Prepare notices of final decisions, file the notices in the borough's records, and mail a copy of the notices to all parties entitled to notice under this Code; and
  8. Maintain and preserve the file and public record for each application.
- D. Mailings.** Any mailing required under this Article shall be addressed to the property owner at the mailing address as it appears on the current assessment roll of the borough.
- E. Stay Pending Appeal.** A decision being appealed under 4.1.020D, 4.1.030D, or 4.1.040E shall not be stayed pending appeal, but action by any person in reliance on the decision shall be at the risk that the decision, may be set aside, on appeal.

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## 4.2 – Site Design Review

### Chapter 4.2 - Review Procedure Application Process and Approval (Site Design Review)

#### Sections:

- 4.2.010 Purpose
- 4.2.020 Applicability
- 4.2.030 Review Procedure
- 4.2.040 Application Submission Requirements
- 4.2.050 Approval Criteria
- 4.2.060 Assurances
- 4.2.070 Approval Period, Extension, and Modifications

#### **4.2.010 Purpose**

The purpose of this Chapter is to provide for a uniform application process for Types I, II, and III review procedures, so as to: carry out the development pattern and plan of the borough and its comprehensive plan policies through efficient and effective review of site development proposals. This application process is known as site design review.

#### **4.2.020 Applicability**

Site Design Review, is required for all new use and development, except for the following:

- A. Change in occupancy from one type of land use to a different land use resulting in no increase in vehicular traffic or development, except where the new use requires a Conditional Use Permit or Variance, or Special Use or Design Standards in Articles 2 or 3 apply;
- B. Development and land uses, including public or private improvements, that are already approved as part of a separate or prior Site Design Review or Conditional Use Permit, provided that modifications to such plans may require approval of a Variance pursuant to Chapter 4.4; and
- C. Regular maintenance, repair, and replacement of materials (e.g., roof, siding, awnings, etc.), parking resurfacing, and similar maintenance and repair.

#### **4.2.030 Review Procedure**

Site Design Review shall be conducted using the applicable procedure for the proposed use or development --- Type I, II, or III, as specified in this Code.

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## 4.2 – Site Design Review

### 4.2.040 Application Submission Requirements

All of the following information is required for Site Design Review application submittal, except where the borough Planning Official determines that certain information is not pertinent.

#### A. General Submission Requirements

1. **Submittal Information.** The borough Planning Official shall advise the applicant on application submittal requirements. At a minimum, the application shall include all of the following information:
  - a. The information requested on the application form;
  - b. Plans, photographs and exhibits required for the specific approval(s) being sought (For example, requirements for a Minor Variance are in Chapter 4.4);
  - c. A written statement or letter explaining how the use or development satisfies each and all of the relevant criteria and standards in sufficient detail;
  - d. Information demonstrating compliance with prior decision(s) and conditions of approval for the subject site, as applicable; and
  - e. The required fee.
2. **Public and Private Improvement Facilities and Services Review.** The Public Works Director and Utilities Director shall advise as to the scope of the review. The review is intended to ensure that all public or private improvement facilities and infrastructure have capacity for the intended use. The review shall address, at a minimum, the transportation system, including required improvements for vehicles and pedestrians; the drainage system; water system; and sewer system. For each system, the review shall propose improvements necessary to meet borough requirements.

**B. Additional Information for Type III Procedures.** In addition to the general submission requirements, an applicant shall provide the following information for a review under a Type III procedure, as deemed applicable by the borough Planning Official. The borough Planning Official may request any additional information that the Official determines is needed to adequately review the proposal.

1. **Site map.** The site map shall contain all the following information:
  - a. The entire subject property and the surrounding property to a distance sufficient to determine the location of the use or development in the borough, and the relationship between the proposed site and adjacent property and development. The property boundaries, dimensions, and gross area shall be identified;
  - b. Topographic contour lines at two-foot intervals for slopes, as available, except where the planning borough official determines that larger intervals will be adequate for steeper slopes;

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## 4.2 – Site Design Review

- c. Identification of slopes greater than 15 percent, with slope categories identified in 5 percent increments (e.g., 0%-5%, >5%-10%, >10%-15%, >15%-20%, and so forth);
- d. The location and width of all public and private streets, drives, sidewalks, pathways, rights-of-way, and easements on the site and adjoining the site;
- e. Potential natural hazard areas, including, as applicable, the base flood elevation identified on FEMA Flood Insurance Rate Maps or as otherwise determined through site specific survey, and areas designated by the borough or state as having a potential for geologic hazards (e.g. landslide);
- f. Areas subject to Overlay Zones;
- g. Site features, including existing structures, pavement, areas having unique views, drainage ways, anadromous streams, canals, and ditches;
- h. North arrow, scale, and the names and addresses of all persons listed as owners of the subject property on the most recently recorded deed; and
- i. The name and address of the project designer, engineer, surveyor, and/or planner, if applicable.

**2. Proposed site plan.** The site plan shall contain all the following information, as applicable:

- a. The proposed development or use site, including boundaries, dimensions, and gross area;
- b. Features identified on the existing site maps that are proposed to remain on the site;
- c. Features identified on the existing site map, if any, which are proposed to be removed or modified by the development or use;
- d. The location and dimensions of all proposed public and private streets, drives, rights-of-way, and easements;
- e. The location and dimensions of all existing and proposed structures, utilities, pavement, and other public and private improvements on the site. Setback dimensions for all existing and proposed buildings shall be provided on the site plan;
- f. The location and dimensions of entrances and exits to the site for vehicular, pedestrian, and bicycle access, as applicable;
- g. The location and dimensions of all parking and vehicle circulation areas (show striping for parking stalls);
- h. Pedestrian and bicycle circulation areas, including sidewalks, internal pathways, pathway connections

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## 4.2 – Site Design Review

to adjacent properties, and any bicycle lanes or trails;

- i. Loading and service areas, including locations for waste disposal, loading, and delivery;
- j. Any proposed outdoor recreation spaces, common areas, plazas, outdoor seating, street furniture, and similar improvements;
- k. Location, type, and height of outdoor lighting or street light plan, if applicable; and
- l. Locations, sizes, and types of signs.

**3. Architectural drawings.** Architectural drawings shall include, as applicable:

- a. Elevations with dimensions, for all buildings and other structures;
- b. Materials, colors, and type, for all buildings and other structures; and
- c. Name and contact information of the architect or designer.

**4. Preliminary grading plan.** A preliminary grading plan prepared by a registered engineer or licensed contractor shall be required for development sites one-half acre or larger, or where otherwise required by the borough. The preliminary grading plan shall show the location and extent to which grading will take place, indicating general changes, location of culverts, drainage ditches, contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed. Surface water treatment plans may also be required, in accordance with Section 3.6.050.

**5. Landscape plan.** Where screening is required, it shall show the following, pursuant to Chapter 3.4:

- a. The location and height of existing and proposed fences, walls, buffering, or landscape screening materials.

**6. Deed restrictions.** Copies of all existing and proposed restrictions or covenants, including those for roadway access control and roadway maintenance.

**7. Narrative.** Letter or narrative report documenting compliance with the applicable approval criteria contained in Section 4.2.050, as applicable.

**8. Other information** determined necessary by the borough Planning Official. The borough may require studies or exhibits prepared by qualified professionals to address specific site features or project impacts (e.g., traffic, noise, impact to utilities, environmental features, natural hazards, etc.), as necessary to determine a proposal's conformance with this Code.

### 4.2.050 Approval Criteria

An application may be approved if the proposal meets all of the following criteria. The Borough Planning Official or Planning Commission, in approving the application, may impose reasonable conditions of approval, consistent with the applicable criteria.

- A. The application is complete, in accordance with Section 4.2.040, above;
- B. The use or development complies with all of the applicable provisions of the underlying Zoning District, as well as any Special Use or Overlay Zone requirements (Article 2), including, but not limited to, building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards;
- C. The proposal includes required upgrades, if any, to existing development that does not comply with the applicable land use district standards, pursuant to Chapter 1.4 Non-Conforming Uses and Development;
- D. The proposal complies with all of the Development and Design Standards of Article 3, as applicable, including, but not limited to:
  - 1. Chapter 3.3 Access and Circulation;
  - 2. Chapter 3.4 Screening, Fences and Walls, and Signs;
  - 3. Chapter 3.5 Parking and Loading; and
  - 4. Chapter 3.6 Public and Private Improvements.
- E. For non-residential uses, all adverse impacts to adjacent properties, such as light, glare, noise, odor, vibration, smoke, dust, or visual impact, are avoided; or where impacts cannot be avoided, they are minimized;
- F. The proposal meets all existing conditions of approval for the site or use, as required by prior borough land use and development decision(s), as applicable; and
- G. For a proposal requiring a Conditional Use Permit or Variance, the proposal meets the criteria set forth in Chapter 4.3 or 4.4, respectively.

Note: Compliance with other borough codes and requirements, although not specifically land use or development criteria, may be required prior to issuance of building permits.

### 4.2.060 Assurances

Public or private facility improvements required as part of a Site Design Review approval shall be subject to the performance guarantee and warranty bond provisions of Section 3.6.100, as applicable.

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## 4.2 – Site Design Review

### 4.2.070 Approval Period, Extension, and Modifications

The proposed use or development shall not commence until the applicant has received all applicable land use and development approvals. Construction of public or private facility improvements shall not commence until the borough has approved all required improvement plans (e.g., utilities, streets, public land dedication, etc.). The borough may require bonding or other assurances for improvements, under the provisions of Section 3.6.100. Site Design Review approvals are subject to all of the following standards and limitations:

- A. Initial Approval Period.** Site Design Review approval, including an approval of a Conditional Use Permit or Variance, shall expire 18 months from the date of approval if the approved use has not commenced or a building permit obtained for the approved development, unless an extension has been granted under Subsection B below. An extension request must be submitted within the 18-month approval period. Once approval has expired, a new Site Design Review is required.
- B. Extension.** Upon written request by the applicant, the borough Planning Official, through a Type I procedure under Section 4.1.020, may grant one written extension of the initial approval period, not to exceed 12 months in length; provided that:
1. No changes are made on the original approved plan;
  2. Construction on the site is not in violation of the original approved plan;
  3. The applicant demonstrates that failure to obtain a building permit or to begin use was reasonably beyond the applicant's control, and can show intent of initiating and completing development or commencing use on the site within the extension period; and
  4. There have been no changes to the applicable Code provisions on which the approval was based. If there have been changes to the applicable Code provisions and the subject plan does not comply with those changes, then the extension shall not be granted; in such a case, a new Site Design Review is required.
- C. Minor Modifications to Site Design Review Approved Plans and Developments During Approval Period.** A request for a minor modification to an approved plan or development, including a Conditional Use Permit or Variance, submitted during the 18-month approval period, or an extension thereto approved under Subsection B above, is subject to the provisions of this Subsection. Any request for a modification which does not fall within the criteria of paragraph 1 below, or which is submitted after expiration of the initial approval period and an extension, will require a new Site Design Review process.
1. **Minor Modifications.** The Planning Official reviews Minor Modifications to Site Design Review approvals through a Type I procedure under Section 4.1.020. Any one of the following changes constitutes a Minor Modification:

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## 4.2 – Site Design Review | Compliance With Conditions

- a. A change in land use, from a less intensive use to a more intensive use, as evidenced by parking, paved area, an estimated increase in automobile or truck trips (peak and/or average daily trips), an increase in hours of operation, an increased demand for parking, additional paved area, or similar factors, where the increase is 10 percent or less, provided the standards of Article 2 and Article 3 are met;
- b. An increase in floor area in a commercial or industrial development, or an increase in the number of dwelling units in a multifamily development, by 10 percent or less, provided the standards of Article 2 and Article 3 are met;
- c. A reduction in required setbacks, or an increase in lot coverage, by 10 percent or less, provided the standards of Article 2 and Article 3 are met;
- d. A change in the type and/or location of vehicle access points or approaches, driveways, or parking areas affecting off-site traffic when the roadway authority determines the change would not cause a significant adverse impact on traffic operations or safety (i.e., requiring mitigation);
- e. A reduction to screening, or a reduction to the area reserved for common open space or landscaping, by 10 percent or less; or
- f. Other changes similar to those in paragraphs a-e above, in scale, magnitude, or impact to adjacent properties, as determined by the Borough Planning Official.

2. **Minor Modification Applications.** An application for Minor Modification shall include an application form (Section 4.2.040), filing fee, letter describing the modification, and site plan using the same plan format as in the original approval. The Borough Planning Official may require other relevant information, as necessary, in evaluating the request.

3. **Minor Modification Approval Criteria.** The Borough Planning Official shall approve, deny, or approve with conditions an application for Minor Modification based on findings of compliance or noncompliance with the applicable requirements of this Code and the conditions of approval of the original decision.

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## 4.4 – Conditional Use Permits

### Chapter 4.3 - Conditional Use Permits

#### Sections:

- 4.3.010 Purpose
- 4.3.020 Approvals Process
- 4.3.030 Application Submission Requirements
- 4.3.040 Criteria, Standards, and Conditions of Approval
- 4.3.050 Revocation and Cancellation of Permit

#### **4.3.010 Purpose**

There are certain uses which, due to the nature of their impacts on surrounding land uses and public facilities, require a case-by-case review and analysis. Conditional uses are identified in Articles 1, 2 and 3. The purpose of this Chapter is to provide procedures and standards for permitting conditional uses.

#### **4.3.020 Approvals Process**

The Planning Commission, using a Type III procedure per Section 4.1.040, reviews conditional use applications. The Planning Commission may require periodic review and renewal of Conditional Use Permits, or may provide for the expiration of permits.

#### **4.3.030 Application Submission Requirements**

Applications for Conditional Use Permits shall comply with Section 4.2.040 Site Design Review Application Submission Requirements.

#### **4.3.040 Criteria, Standards, and Conditions of Approval**

The Planning Commission shall approve, approve with conditions, or deny an application for a conditional use, including requests to enlarge or alter a conditional use, based on findings of fact with respect to all of the criteria and standards in A. and B., below.

##### **A. Use Criteria**

1. The site size, dimensions, location, topography, and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations;
2. The negative impacts of the proposed use, if any, on adjacent properties and on the public can be mitigated through application of other Code standards, or other reasonable conditions of approval;

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## 4.3 – Conditional Use Permits

3. All required public or private improvement facilities, including water, sanitary sewer, and streets, have adequate capacity or are to be improved to serve the proposal, consistent with borough standards or are not required under other borough code;
4. The proposed use is expressly allowed by conditional use under Article 2, or found to be a substantially similar use under Section 1.5.010; a Conditional Use Permit may not grant a Variance without a Variance application being reviewed with the Conditional Use application; and
5. The use is in general conformity with the comprehensive plan, or other officially adopted plans.

**B. Conditions of Approval.** The borough may impose conditions that are found necessary to ensure that the proposed use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and improvement facilities is minimized. Violation of any condition imposed shall result in revocation of the permit and further conditional use activities on the property shall constitute a violation of this Code and shall be punishable accordingly. These conditions may include, but are not limited to, one or more of the following:

1. Limiting the hours, days, place, and/or manner of operation;
2. Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor, and/or dust;
3. Requiring larger setback areas, lot area, and/or lot depth or width;
4. Limiting the building or structure height, size, lot coverage, and/or location on the site;
5. Designating the size, number, location, and/or design of vehicle exits and entrances or off-street parking and loading areas;
6. Requiring street rights-of-way to be dedicated and street improvements made, or the installation of pathways or sidewalks, or road maintenance agreements established, as applicable;
7. Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;
8. Limiting the number, size, location, height, and/or lighting of signs;
9. Limiting or setting standards for the location, type, design, and/or intensity of outdoor lighting;
10. Requiring berms, and the establishment of standards for their installation and maintenance;
11. Requiring and designating the size, height, location, and/or materials for fences;
12. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat

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## 4.3 – Conditional Use Permits

areas, drainage areas, historic resources, cultural resources, and/or sensitive lands; and

13. Requiring improvements to electric, water, sanitary sewer, or storm drainage systems, in conformance with borough standards.

### **4.3.050 Revocation and Cancellation of Permit.**

- A.** A Conditional Use Permit granted under this Chapter may be revoked and cancelled by the Planning Commission, or a condition of approval may be added or modified, in the event that the property's use violates any condition of approval of the permit, if the circumstances surrounding the granting of a Conditional Use Permit have substantially changed, or the property's use is detrimental to the public health, safety, or welfare or constitutes a public nuisance.
- B.** Before taking action on a permit, the Planning Commission shall hold a public hearing on the matter. The borough Planning Official shall mail notice of the hearing to the holder of the permit, no less than 21 days prior to the hearing. The notice shall also be posted on the borough website.
- C.** The permit holder may, at the hearing, present evidence and testimony, and the guidelines for the hearing shall established by the commission.
- D.** Within 30 days after the hearing, or any continuation of the hearing, has concluded, the Planning Commission may issue a Decision revoking and cancelling the permit. The revocation and cancellation of a Conditional Use Permit shall have the effect of denying all rights granted by the Conditional Use Permit. The Commission may, in lieu of revocation or cancellation, impose additional, or modify existing, conditions of approval of the permit, as the commission determines necessary or appropriate. The Commission's Decision, including its findings of fact, shall be made in writing, and mailed to the permit holder. The Decision is effective upon the date of mailing.
- E.** In the event of revocation and cancellation of a permit, the permit holder shall immediately discontinue the use of the property for which the permit had been granted. In the event of additional or modified conditions of approval, the permit holder shall immediately use the property in conformance with the additional or modified conditions.
- F.** A Decision revoking and cancelling a permit, or adding or modifying a permit's conditions of approval, may be appealed by the permit holder to the Borough Assembly, acting as the Board of Adjustment.. The procedures set out in Subsections 4.1.040.E.2(b) - (c), .4-.6, and 4.1.040.F-G apply to such an appeal, and the Planning Official shall be the appellee for purposes of the written arguments and the appeal hearing. In the event that the permit holder timely and properly appeals the Decision to the Board of Adjustment, such appeal stays enforcement proceedings until a final decision of the Board, unless the Planning Commission has determined, in its Decision, that there is an imminent peril to life or property.

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## 4.4 - Variances

### Chapter 4.4 - Variances

#### Sections:

- 4.4.010 Purpose
- 4.4.020 Intent
- 4.4.030 Minor Variances
- 4.4.040 Major Variances
- 4.4.050 Application Submission Requirements

#### **4.4.010 Purpose**

This Chapter provides standards and procedures for Minor and Major Variances, which allow variations from development or use standards established in this Code. The criteria for approval of a Variance are set out in Sections .030 and .040, below; where another Section of this Code sets out specific criteria for a Variance, those provisions shall apply in addition to the applicable criteria of this Chapter. In the case of a conflict, the more specific criteria shall govern.

#### **4.4.020 Intent**

Variances are intended to provide relief from Code development standards in specific situations. Variance procedures are intended to ensure that the resulting development is compatible with adjacent properties and is consistent with the intent of the Code. Variances are not permitted to be made to allow a use which is prohibited, or otherwise not allowed, within a zoning district.

- A. Minor Variances.** Minor Variances provide relief from specific Code provisions when a Code provision has the unintended effect of preventing reasonable development in conformance with all other Code requirements. Minor Variances are allowed in limited situations pursuant to Section 4.4.030.
- B. Major Variances.** Major Variances provide greater flexibility to Code standards than Minor Variances, where the physical characteristics of a site or its surroundings prevent reasonable development in compliance with a Code standard. Major Variances are allowed in limited situations pursuant to Section 4.4.040.

#### **4.4.030 Minor Variances**

Minor Variances allow minor variations from Code standards, and are intended to provide reasonable flexibility for land uses and development. Minor Variances are subject to the following standards and procedures.

- A. Applicability.** Minor Variances are limited to the following:

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## 4.4 – Variances

1. **Setbacks:** Up to a 10 percent reduction to a minimum setback.
  2. **Lot Coverage:** Up to a 10 percent increase to the maximum lot coverage.
  3. **Lot Dimensions:** Up to a 10 percent decrease to a minimum lot dimension.
  4. **Lot Area:** Up to a 10 percent decrease in minimum lot area.
  5. **Other Dimensional Standards:** Up to a 10 percent increase or decrease in a quantitative (numerical) standard not listed above. This is limited to standards in Article 2 (Table 2.2.040 and Chapter 2.3 Special Use Standards) and Article 3; it does not include Building Code requirements, Standard Construction Specifications, engineering design standards, public safety standards, or standards implementing state or federal requirements, as determined by the Planning Official.
- B. Approval criteria.** The Planning Official, through a Type II procedure, may approve a Minor Variance upon a finding that it meets all of the following criteria. The burden is on the applicant to demonstrate compliance with the criteria.
1. The Minor Variance allows for a building plan that is compatible with adjacent land uses, or it does not create a conflict with adjacent uses;
  2. The Minor Variance is necessary to allow for normal interior building functions, such as mechanical equipment/utility closets, heating and ventilation systems, restrooms, stockrooms, shelving, and similar interior building functions;
  3. Approval of the Minor Variance does not create (a) violation(s) of any other adopted ordinance or Code standard, and does not create the need for a Major Variance;
  4. The application seeks approval for Variance(s) on only one lot or parcel.
  5. Requests for more than one Minor Variance on the same lot or parcel shall be consolidated on one application and reviewed concurrently by the borough, however each requested Variance must separately meet the approval criteria;
  6. Not more than three Minor Variances may be approved for one lot or parcel in a continuous 12-month period; and
  7. All applicable Building Code requirements and Standard Construction Specifications shall be met.

### 4.4.040 Major Variances

- A. Applicability.** A Major Variance is a variance that does not otherwise meet the criteria under Section 4.4.030.
- B. Approval Criteria.** The Planning Commission, through a Type III procedure, may approve a Major

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## 4.4 - Variances

Variance upon finding that it meets all of the following criteria. The burden of proof is on the applicant to demonstrate compliance with the criteria.

1. The Variance is necessary because the subject Code provision does not account for special or unique physical circumstances (for example, lot shape, existing streams or drainages) of the subject site, existing development patterns, or adjacent land uses. A legal lot determination made under Chapter 1.3 is sufficient evidence of a hardship for purposes of approving a Variance for a nonconforming use or development;
2. The Variance is the minimum necessary to address the special or unique physical circumstances related to the subject site and the applicant has demonstrated that no feasible alternative exists that would not require the Variance;
3. The need for the Variance is not self-imposed by the applicant or property owner. (For example, the Variance request does not arise as a result of a property line adjustment or subdivision approval previously granted to the applicant);
4. The Variance does not conflict with other applicable borough policies or other applicable regulations;
5. The Variance will result in no foreseeable harm to adjacent property owners or the public; and
6. All applicable Building Code requirements and Standard Construction Specifications shall be met.

### **4.4.050 Application Submission Requirements**

Applications for Minor or Major Variances shall comply with Section 4.2.040, Site Design Review Application Submission Requirements.

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## 4.5 – Amendments to Zoning Map, this Code, or the Comprehensive Plan

### Chapter 4.5 – Amendments to Zoning Map, this Code, or the Comprehensive Plan

#### Sections:

- 4.5.010 Purpose
- 4.5.020 Procedure
- 4.5.030 Criteria
- 4.5.040 Record of Amendments

#### **4.5.010 Purpose**

The purpose of this Chapter is to provide procedures for legislative amendments to this Code and the Zoning Map.

**4.5.020 Procedure.** The Borough Assembly, by ordinance, approves the following amendments under this Chapter. The Assembly may seek Planning Commission review and recommendation prior to adoption of an amendment.

- A.** Amendments to the Development Code are Legislative (Type IV) actions.
- B.** Amendments to the Zoning Map are Legislative (Type IV) actions.
- C.** Amendments to the Comprehensive Plan are Legislative (Type IV) actions.

#### **4.5.030 Criteria**

Amendments should be based upon the overall goals and strategies of the Comprehensive Plan or other borough adopted plan, and found to be in the best interests of the public with regard to community conditions and standards.

#### **4.5.040 Record of Amendments**

The borough Planning Official shall maintain a record of amendments to this Code, the Zoning Map, and the Comprehensive Plan in a format convenient for public use. In the case of a Zoning Map amendment, the relevant portion of the map shall be made part of the ordinance.

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## 4.6 – Subdivisions and Property Line Adjustments

### Chapter 4.6 - Subdivisions and Property Line Adjustments

#### Sections:

- 4.6.010 Purpose
- 4.6.020 General Requirements
- 4.6.030 Preliminary Plat Approval Process
- 4.6.040 Pre-Planning for Large Sites
- 4.6.050 Lot Size Averaging, Flag Lots, Infill Development, Emergency Vehicle Access and Maximum Drive Lane Length
- 4.6.060 Preliminary Plat Submission Requirements
- 4.6.070 Preliminary Plat Approval Criteria
- 4.6.080 Subdivision-Related Variances
- 4.6.090 Final Plat Submission Requirements and Approval Criteria
- 4.6.100 Filing and Recording
- 4.6.110 Re-platting and Vacation of Plats
- 4.6.120 Property Line Adjustments
- 4.6.130 Minor Lot Consolidation
- 4.6.140 Vacation of Public Rights-of-way and Easements

#### **4.6.010 Purpose**

The Planning Commission shall act as the borough platting authority under this Chapter 4.6, the provisions of which are applicable throughout the borough outside of the City of Kupreanof. The purpose of this Chapter is to implement the objectives in Subsections A-E, below:

- A.** Provide rules, regulations, and standards governing the approval of subdivisions, consolidations, and property line adjustments as follows:
  - 1. A subdivision is the division of land to create new lots or tracts.
  - 2. Minor Subdivision. A subdivision in which a single parcel of land is divided into no more than four smaller parcels that meets the following criteria:
    - a. The plat provides legal and physical access to a public highway or street for each lot created by the subdivision;
    - b. The plat does not contain or require a dedication of a street, right-of-way, or other area;
    - c. The plat does not require a vacation of a public dedication of land or a Variance from a subdivision regulation; and
    - d. The outside corners of each lot are marked and at least two outside corners of the whole subdivision tract are referenced to publicly recorded survey markers.
  - 3. Remote Subdivision. A subdivision in which a single parcel is divided into smaller parcels and meets one of the following criteria:

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## 4.6 – Subdivisions and Property Line Adjustments

- a. The proposed subdivision is not located on Mitkof Island; or
  - b. If located on Mitkof Island, the proposed subdivision is solely accessed by either a navigable waterbody or a trail. The boundary of the proposed subdivision must be greater than one-half mile from a public right-of-way on Mitkof Island.
4. Property line adjustments are modifications to lot lines or parcel boundaries that do not result in the creation of new lots.
  5. A lot consolidation is the replatting of two or more adjacent lots into one.
- B.** Carry out the borough’s development pattern, as envisioned by the borough’s comprehensive plan.
- C.** Encourage efficient use of land resources and public services, and to provide transportation options.
- D.** Promote the public health, safety, and general welfare through orderly and efficient development.
- E.** Provide adequate light and air, prevent overcrowding of land, and provide for adequate transportation, water supply, sewage, fire protection, pollution control, surface water management, and protection against natural hazards.

### 4.6.020 General Requirements

- A. Subdivision Approval.** Applications for subdivision approval shall be processed by means of a preliminary plat evaluation and a final plat evaluation, according to the following steps:
1. The preliminary plat must be approved before the final plat can be submitted for approval consideration;
  2. The final plat must demonstrate compliance with all conditions of approval of the preliminary plat; and
  3. For minor subdivisions and remote subdivisions where there are no public facility improvements required and no conditions of approval to comply with, a final plat may be approved at the same time as the preliminary plat.

Note: Property line adjustments and lot consolidation requests are subject to Sections 4.6.120 and 4.6.130; they are not subject to Sections 4.6.020 through 4.6.110.

- B. Compliance With Alaska Statutes.** All subdivision proposals shall conform to applicable state statutes and regulations.
- C. Future Re-division Plan.** When subdividing tracts into large lots (defined for purposes of this Subsection as greater than three times or 300 percent the minimum lot size allowed by the underlying zoning or 3 acres, whichever is smaller), the lots shall be of such size, shape, and orientation as to facilitate future re-

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## 4.6 – Subdivisions and Property Line Adjustments

division and extension of streets and utilities. The applicant shall submit a future re-division plan indicating how re-division of oversized lots and extension of planned public facilities to adjacent parcels can occur in the future. (See also, Section 4.6.040 Pre-planning for Large Sites.)

**D. Adequate Utilities.** All lots created by subdivision shall have adequate public utilities and facilities such as streets, water, sanitary sewer, and electric systems, pursuant to Chapter 3.6. If the subdivision is not served by a public sanitary sewer and provision for such service has not been made and Alaska Department of Environmental Conservation (ADEC) has no governing regulations, or elects not to involve itself in the plat approval process, then the minimum lot size for a residential or commercial lot not connected to municipal water and sewer system is presumptively forty thousand (40,000) square feet. Minimum lot size may be varied by the Planning Commission, under Section .080 of this Chapter.

1. If for reasons of soils, special conditions or other reasons (for example, installation of a holding tank, community wastewater system) a smaller lot size might be appropriate, and provided that public health and safety is not likely to be jeopardized, the planning commission may permit smaller lot sizes.
2. The Planning Commission, because of soil conditions, proximity to open waters, or for other good cause, may impose a larger lot size.
3. Any exception to the presumptive minimum lot size, either requiring a larger lot size or permitting a smaller lot size, made by the Planning Commission, shall be made by specific findings of fact.

**E. Adequate Drainage.** All subdivision proposals shall have adequate surface water drainage facilities that reduce exposure to flood damage. Water quality or quantity control improvements may be required, pursuant to Chapter 3.6.

**F. Legal and Practical Access.** A subdivision shall have legal and practical access, and all lots created or reconfigured shall have legal and practical access, in compliance with this Code. A plat will not be approved unless

- (1) the plat clearly shows how access is provided to the subdivision and to each lot within the subdivision; and
- (2) the subdivider provides documentation verifying the existence of public access rights from the subdivision to a road system, public airport, or navigable water body; documentation must be in the form of a plat of record, recorded easement, or reservation. If written documentation does not exist, the subdivider may demonstrate that a provision of state or federal law otherwise provides public access rights to the subdivision.

### 4.6.030 Preliminary Plat Approval Process

**A. Review of Preliminary Plat.** The review of preliminary plats shall be conducted using the Type III procedure under Section 4.1.040. All preliminary plats, including all subdivisions, are subject to the approval criteria in Section 4.6.070.

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### **B. Preliminary Plat Approval Period and Extensions.**

1. Preliminary plat approval shall be effective for a period of two years from the date of approval; approval shall lapse if a final plat has not been submitted or other assurance provided, pursuant to Section 4.6.090, within the two-year period, unless an extension is granted under paragraph 2 below. The Planning Commission may approve phased subdivisions, pursuant to Subsection D below, with an overall time frame of more than two years between preliminary and final plat approvals.

2. The Planning Commission may, upon written request by the applicant and payment of the required fee, grant written extensions of the approval period not to exceed one year per extension, provided that all of the following criteria are met:

- a. The applicant has submitted written intent to file a final plat within the requested one-year extension period;
- b. An extension of time will not prevent the lawful development of abutting properties;
- c. There have been no changes to the applicable Code provisions on which the approval was based. If such changes have occurred, a new preliminary plat application shall be required;
- d. The extension request is made before expiration of the original approval period, or any extension period previously granted; and
- e. No more than two extensions shall be granted without a new public hearing.

**C. Modifications.** The applicant may request modification(s) to an approved preliminary plat or conditions of approval. Review of the modifications by the Planning Commission shall be conducted using a Type III procedure, pursuant to 4.1.040, and the scope of review is limited to only the modification request(s).

**D. Phased Subdivision.** The Planning Commission may approve plans for phasing a subdivision, and changes to approved phasing plans, provided the applicant's proposal meets all of the following criteria. (See also, Section 4.6.040 Pre-planning for Large Sites) The proposed phasing plan shall be reviewed in conjunction with the preliminary plat application, and Planning Commission approval is required for any subsequent modifications to phasing plans.

1. In no case shall the construction time period (i.e., for required public facility improvements, including utilities and streets) for the first subdivision phase be more than two years;
2. Public facility improvements shall be constructed in conjunction with or prior to each phase; and
3. The phased development shall not result in requiring the borough or a third party (e.g., owners of lots) to construct public facility improvements that are required as part of the approved development proposal.

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### 4.6.040 Pre-planning for Large Sites

- A. Purpose.** This Section requires the pre-planning of large sites in conjunction with applications for large phased subdivisions and master plan developments, the purpose of which is to avoid piecemeal development with inadequate public facilities.
- B. Applicability.** This Section applies to applications affecting more than 40 contiguous acres of land under the same ownership, even where only a portion of the site is proposed for subdividing.
- C. Conceptual Master Plan Required.** Prior to submittal of an application for an area subject to this Section, a conceptual master plan shall be submitted to the borough Planning Official for the project or proposal. The conceptual master plan shall illustrate the type and location of planned streets, utility corridors, parks, open spaces, and land uses for the ultimate buildout of the subject property and for the entire site. The plan shall demonstrate how future development, including any proposed phasing, can meet all the guidelines under Subsection D, below.
- D. Criteria.** The conceptual plan required under Subsection C, above, is not required to be engineered but shall have a sufficient level of detail so that the borough officials can determine that it meets the following design guidelines:
1. Streets are interconnected to the extent practicable; blocks are walkable in scale (generally 200-600 feet in length), except where topography, existing development, or other physical features require longer blocks, in which case pedestrian access ways connect through long blocks;
  2. Water, sewer, storm drainage, and electric facilities logically extend to serve the site at buildout, consistent with this Development Code. Where a public facility plan identifies a need for new capacity-related improvements (e.g., water storage, sewage treatment, pump stations, etc.) in the future, the plan shall describe conceptually how such improvements can be accommodated;
  3. Overall, the plan achieves a housing density that is within 80% - 110% of planned densities, consistent with the Comprehensive Plan and this Development Code; and
  4. The plan reserves land needed for public use (e.g., mooring/dock, parking area, utilities, schools, trails parks, fire stations, and other facilities), in accordance with the Comprehensive Plan and to the extent allowed under applicable law.
- E. Implementation.** The borough will review the conceptual master plan required by this Section and provide input to the applicant. The borough may also refer the plan to outside agencies with jurisdiction for their input. The conceptual master plan is not binding, but the applicant is encouraged to refine the plan based on borough input before submitting an application for the subject property. The applicant is also required to contact adjacent property owners, within 600 feet of the subject property (except in a Rural Residential (RR) district or outside of Service Area I, where within 1000 feet), and solicit their input prior to submitting an application.

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## 4.6 – Subdivisions and Property Line Adjustments

### 4.6.050 Lot Size Averaging, Flag Lots, Infill Development, Emergency Vehicle Access and Maximum Drive Lane Length

- A. Lot Size Averaging.** To allow flexibility in subdivision design and to address physical constraints, such as topography, existing development, significant trees, and other natural and built features, the Planning Commission, under Section .080 of this Chapter, may grant a 10 percent modification to the lot area and/or lot dimension (width/depth) standards in Chapter 2.2, provided that the overall density of the subdivision does not exceed the allowable density of the district and the Planning Commission finds that all of the following are met:
1. Granting the modification is necessary to achieve planned housing densities, as allowed by the underlying zoning district, or to improve development compatibility with natural features or adjacent land uses;
  2. Where a proposed subdivision would abut an existing subdivision with standard-, or larger-, sized lots, defined here as lots which meet or exceed the requirements of the underlying zoning district,, the perimeter of the proposed subdivision shall contain standard-, or larger-, sized lots; except that this provision does not apply where the existing lots are larger than 20,000 square feet; and
  3. The Planning Commission may require screening, buffering, or other transitions in site design where substandard lots are proposed to abut standard-, or larger-, sized lots.
- B. Flag Lots.** Flag lots may be created only when a through street cannot be extended to serve abutting uses or future development. A flag lot driveway (“flag pole”) shall serve not more than four dwelling units, including accessory dwellings and dwellings on individual lots. The layout of flag lots, the placement of buildings on such lots, and the alignment of shared drives shall be designed so that future street connections can be made as adjacent properties develop, to the extent practicable, and in accordance with the transportation connectivity and block length standards of Subsection 3.6.020.D.
- C. Infill Development and Mid-Block Lanes.** Infill development is the development or division of vacant, bypassed lands located in an area that is mainly developed. Where consecutive flag lot developments or other infill development could have the effect of precluding local street extensions through a long block, the Planning Commission may require the improvement of a mid-block lanes through the block. For purposes of this Subsection, mid-block lanes are private drives serving more than two dwelling units with reciprocal access easements; such lanes are an alternative to requiring public right-of-way street improvements where physical site constraints preclude the development of a standard street. Mid-block lanes, at a minimum, shall be paved, have adequate storm drainage (surface retention, where feasible, is preferred), meet the construction standards for alleys, and conform to the standards of Subsections D through E, below.
- D. Emergency Vehicle Access.** A shared driveway serving more than one lot shall have a reciprocal access and maintenance easement recorded for all lots it serves. No fence, structure, or other obstacle shall be placed within the drive area. Where required, emergency vehicle apparatus lanes, including any required turn-around, shall conform to applicable Building and Fire Code requirements. Fire sprinklers may also be required for buildings that cannot be fully served by fire hydrants (i.e., due to distance from hydrant or insufficient fire flow).

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## 4.6 – Subdivisions and Property Line Adjustments

### 4.6.060 Preliminary Plat Submission Requirements

Applications for preliminary plat approval, including Remote Subdivisions and Minor Subdivisions, shall contain all of the following information:

#### A. General Submission Requirements.

1. Information required for a Type III review (see Section 4.1.040);
2. Public Facility Improvements and Services Review. The review shall assess the effect of the development on public facility improvements and services. The Public Works Director shall advise as to the scope of the review, which shall address, at a minimum, the transportation system, including required improvements for vehicles and pedestrians; the drainage system; water system; and sewer system. For each system, the review shall propose improvements necessary to meet borough standards under adopted ordinances and facility plans;
3. All plats shall be prepared by a professional land surveyor, properly registered in the state and shall be drawn to scale and provided in a format, size and quantity as required by the borough Planning Official; and
4. Electronic files or documents submitted for plat approval shall be as required by the borough Planning Official.

**B. Preliminary Plat Information.** In addition to the general information described in Subsection A, above, the preliminary plat application shall consist of drawings and supplementary written material (i.e., on forms and/or in a written narrative) adequate to provide all of the following information.

#### I. General information:

- a. The name of the subdivision must be shown in bold letters. The subdivision name must be unique and must not be so similar to any name appearing on any recorded plat in the same recording district as to reasonably lead to confusion as to the legal identity of the subdivision. If the Planning Official determines that a subdivision name submitted does not comply with this Subsection, the Official shall notify the applicant if the subdivision name must be changed in order for the plat to be approved;
- b. Date, north arrow, and scale of drawing;
- c. Location of the development sufficient to define its location in the borough, boundaries, and a legal description of the site;
- d. Zoning of the parcel to be divided, including any Overlay Zones;
- e. A title block including the name of the subdivision, names, addresses, and telephone numbers of the

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## 4.6 – Subdivisions and Property Line Adjustments

owners of the subject property and, as applicable, the name of the licensed engineer and/or surveyor, and the date of the survey;

- f. Identification of the drawing as a “preliminary plat”; and
- g. Supporting ownership information shall be in written form and shall accompany the preliminary plat. It shall include: a title report or certificate to plat that is prepared by a title company authorized to issue policies in the State of Alaska, or the Alaska Department of Natural Resources, or US Bureau of Land Management; the names of the owners of record; and all encumbrances affecting the parent parcel. It shall be executed no more than 30 days before submittal. Prior to the recording of the final plat, such title report or certificate to plat shall also be updated to a date not more than seven days prior to submission of the final plat to the Borough Clerk for signatures prior to recording.

**2. Existing Conditions.** Except where the Planning Official deems certain information is not relevant, applications for Preliminary Plat approval shall contain all of the following information on existing conditions of the site:

- a. Access: Location, name, and present width of all streets, alleys, trails and rights-of-way on and abutting the site;
- b. Easements: Width, location and purpose of all existing easements of record on and abutting the site;
- c. Utilities: Location and identity of all utilities on and abutting the site. If electric service, water mains and sewers are not on or abutting the site, indicate the direction and distance to the nearest services.
- d. Contours: Topography shall be shown with contour intervals of: (1) two feet for any portion of the proposed subdivision within the floodplain of any watercourse; (2) five feet outside floodplain areas if the ground slope is less than or equal to ten percent; or (3) intervals of ten feet if the ground slope is greater than ten percent. Requirements (1) and (2) are waived when lot size exceeds 20 acres;
- e. Waters: The location of water bodies, drainage courses, streams, flood hazard areas, and identification of anadromous streams and lakes listed in the State of Alaska’s Catalog of Waters Important for the Spawning, Rearing or Migration of Anadromous Fishes;
- f. North arrow and scale;
- g. Other information, as deemed necessary by the Planning Official for review of the application. The borough may require studies or exhibits prepared by qualified professionals to address specific site features and Code requirements.

**3. Proposed Development.** Except where the Planning Official deems certain information is not relevant, applications for Preliminary Plat approval shall contain all of the following information on the

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## 4.6 – Subdivisions and Property Line Adjustments

proposed development:

- a. Proposed streets, rights-of-way, open space, and park land (if any): location, names, right-of-way dimensions, approximate radius of street curves, and approximate finished street center line grades. All streets and drives serving more than two lots that are being held for private use and all reservations and restrictions relating to such private streets and drives shall be identified;
- b. Easements: location, width and purpose of all proposed easements;
- c. Lots, blocks, and tracts (including private tracts, e.g., private open space, common area, or street): approximate dimensions, area calculation in square feet, and identification numbers for all proposed lots, blocks, and tracts;
- d. Uses: Proposed uses of the property, including all areas proposed to be dedicated as public right-of-way or reserved as open space for the purpose recreation, or other use;
- e. Improvements: Proposed public street improvements, pursuant to Chapter 3.6;
- f. Development: On slopes exceeding an average grade of 10 percent, the preliminary location of development on lots (e.g., building envelopes), demonstrating that future development can meet minimum required setbacks and applicable design standards;
- g. Utilities: Preliminary design for extending electricity, water and sewer service to each lot, per Chapter 3.6;
- h. Storm water: Proposed method of storm water drainage and treatment, if required, pursuant to Chapter 3.6;
- i. Other utilities: The approximate location and identity of other utilities, including the locations of street lighting fixtures, as applicable;
- j. Zero lot line: If a zero lot line subdivision is proposed (i.e. where the proposed housing units come up to, or very near to, the setback of each lot, including but not limited to townhomes and patio homes), the preliminary layout shall show the location of all lots and housing units intended for such use;
- k. Overlay Zones: Evidence of compliance with applicable Overlay Zones, including but not limited to Petersburg Borough Floodplain Management Overlay;
- l. Streets: Evidence of contact with the applicable road authority for proposed new street connections, if required; and
- m. Wastewater system: If a community or cluster domestic wastewater system is proposed, evidence of contact with the Alaska Department of Environmental Conservation.

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## 4.6 – Subdivisions and Property Line Adjustments

### 4.6.070 Preliminary Plat Approval Criteria

- A. Approval Criteria.** The Planning Commission may approve, approve with conditions, or deny a preliminary plat. The Planning Commission decision shall be based on findings of compliance with all of the following approval criteria:
1. The preliminary plat application shall conform to the requirements of Chapter 4.6;
  2. All proposed lots, blocks, and tracts, and proposed land uses, shall conform to the applicable provisions of Article 2, except as modified by the provisions of Chapter 4.6 (e.g., remote subdivisions, lot size averaging, and adequate utilities);
  3. Access to individual lots, and public or private improvements necessary to serve the development, including but not limited to electric, water, sewer, and streets, shall conform to Article 3;
  4. The proposed plat name, or substantially similar name, is not already recorded for another subdivision within the Petersburg Recording District, or the Juneau Recording District if to be recorded in that district;
  5. The proposed streets, utilities, and surface water drainage facilities conform to adopted Petersburg Borough Standard Construction Specifications, and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public and private facility improvements and dedications;
  6. All proposed private common areas and improvements, including private drives, if any, are identified on the preliminary plat and maintenance of such areas is assured through appropriate legal instrument;
  7. Evidence that any required state and federal permits, as applicable, have been obtained or can reasonably be obtained prior to development;
  8. Evidence that improvements or conditions required by the borough, road authority, utilities, and/or other service providers, as applicable to the project, have been or can be met.
  9. The Planning Commission shall deny permission to subdivide land within flood hazard areas unless all Floodplain Management Overlay requirements of Section 2.4.030 of this Code (PMC Chapter 17.14) have been fulfilled.
- B. Conditions of Approval.** The Planning Commission may attach such conditions as are necessary to carry out provisions of this Code, and other applicable ordinances and regulations.

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## 4.6 – Subdivisions and Property Line Adjustments

### 4.6.080 Subdivision-Related Variances

Subdivision-related Variances shall be processed in accordance with Chapter 4.4. Applications for such a Variance shall be submitted at the same time as an application for subdivision, lot line adjustment or consolidation is submitted; when practical, the applications shall be reviewed concurrently.

### 4.6.090 Final Plat Submission Requirements and Approval Criteria

Final plats require review and approval by the Planning Commission prior to recording in the Petersburg Recording District, State of Alaska or Juneau Recording District, State of Alaska, as appropriate. The final plat submission requirements, approval criteria, and procedure are as follows:

- A. Submission Requirements.** The applicant shall submit the final plat within two years of the approval of the preliminary plat or within an extension period, as provided by Section 4.6.030. The format of the plat shall conform to 11 AAC 53.100-.260 and Petersburg Borough Plat Certifications and Notes, incorporated herein by reference.
- B. Approval Process and Criteria.** Review by the Planning Commission of applications for final plats shall be conducted using a Type III procedure, pursuant to Section 4.1.040. The Planning Commission shall approve or deny the final plat application based on findings of compliance or noncompliance with all of the following criteria:
1. The final plat is consistent in design (e.g., number, area, dimensions of lots, easements, tracts, rights-of-way, etc.) with the approved preliminary plat, and all conditions of approval have been satisfied;
  2. All public and private facility improvements required by the preliminary plat have been installed and approved by the borough or applicable service provider if different than the Petersburg Borough (e.g., road authority), or otherwise guaranteed or bonded in conformance with Section 3.6.100;
  3. The streets, access ways, and easements for public use are dedicated without reservation or restriction other than reversionary rights upon vacation of any such street, road or easement;
  4. All required streets, access ways, easements, and other dedications or reservations are shown on the plat;
  5. The plat contain a dedication to the public of all public facility improvements, including, but not limited to, streets, access ways, public pathways and trails, parks, and water and sewer facilities, as applicable;
  6. As applicable, the applicant has furnished acceptable copies of Covenants, Conditions, and Restrictions (CC&R's); easements; maintenance agreements (e.g., for access, common areas, parking, etc.); and other documents pertaining to common improvements recorded and referenced on the plat;
  7. Verification by the borough that electricity, water and sanitary sewer service is available to every lot as depicted on the preliminary plat, pursuant to Chapter 3.6; and

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## 4.6 – Subdivisions and Property Line Adjustments

8. The final plat shall bear the executed certificates as required by Petersburg Borough Platting Standards.

### 4.6.100 Filing and Recording

A new lot is not a legal lot for purposes of ownership (title), sale, lease, or development/land use until a final plat is recorded for the subdivision containing the lot. The final plat filing and recording requirements are as follows:

- A. Filing Plat with district recorder's office.** Within one year of final plat approval by the Planning Commission, the applicant shall present the original plat for signature of borough officials as required. Failure to adhere to the time limits of this Section shall void the approval of the final plat.
- B. Recording.** When signed by borough officials, as required, the original plat shall be recorded with the appropriate district recorder within ten business days by the Borough Clerk. The Planning Official may authorize the surveyor who prepared the plat to record the plat. The cost of recording shall be borne by the subdivider.
- C. Proof of Recording.** Upon recording with the district recorder, the applicant shall submit to the borough a paper copy of the recorded final plat, if requested. This shall occur prior to the issuance of building permits for the newly created lots.
- D. Prerequisites to Recording the Plat.** No plat shall be recorded unless all required certificates and dedications have been executed and all ad valorem taxes, all special assessments, fees, or other charges which may by law be placed on the tax roll have been paid in full.

### 4.6.110 Re-platting and Vacation of Plats

A plat or portion thereof may be considered for re-plat or vacation upon receiving an application signed by all of the owners of the subject property. Except as required for a property line adjustment under Section 4.6.120, a minor lot consolidation under Section 4.6.130, or right-of-way and easement vacations under Section 4.6.140, the same procedure and standards that apply to the creation of a plat (preliminary plat followed by final plat) shall be used to re-plat or vacate a plat. A re-plat or vacation application may be denied if it abridges, destroys or otherwise interferes with any public right in any public uses, improvements, or streets, alleys or other access, or if it fails to meet any applicable borough standards.

### 4.6.120 Property Line Adjustments

A Property Line Adjustment is the modification of a lot boundary when no new lot is created. The borough Planning Official reviews applications for Property Line Adjustments pursuant to the Type I procedure, under Section 4.1.020. The application submission and approval process for Property Line Adjustments is as follows:

- A. Submission Requirements.** All applications for Property Line Adjustment shall be made on forms provided by the borough and shall include information required for a Type I review (see Section 4.1.020). The application shall include a preliminary lot line map drawn to scale identifying all existing and proposed

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## 4.6 – Subdivisions and Property Line Adjustments

lot lines and dimensions, footprints and dimensions of existing structures (including accessory structures), location and dimensions of driveways and public and private streets within or abutting the subject lots, location of lands subject to the Petersburg Borough Floodplain Management Overlay, existing fences and walls, and any other information deemed necessary by the borough Planning Official for ensuring compliance with borough codes. The application shall be signed by all of the owners of the subject property, as appearing on the deeds of the subject lots.

**B. Approval Criteria.** The borough Planning Official shall approve or deny a request for a Property Line Adjustment in writing, based on all of the following criteria:

1. **Parcel Creation.** No additional parcel or lot is created by the Property Line Adjustment;
2. **Lot standards.** All lots and parcels conform to the applicable lot standards of the zoning district (Article 2), including lot area, dimensions, setbacks and coverage, and accurate new legal descriptions are provided. As applicable, all lots and parcels shall conform to the Petersburg Borough Floodplain Management Overlay, or other applicable Overlay Zone; and the adjustment does not create a zoning or Building Code violation.
3. **Access and Road Authority Standards.** All lots and parcels conform to the standards or requirements of Chapter 3.3 Access and Circulation, and all applicable road authority requirements are met. If a lot is nonconforming to any borough or road authority standard, it shall not be made less conforming by the Property Line Adjustment.
4. **Taxes Paid.** All ad valorem taxes and all special assessments, fees, or other charges which may by law be placed on the tax roll have been paid in full.

### C. Recording Property Line Adjustments

1. **Recording.** Upon the borough's approval of the proposed Property Line Adjustment, the applicant shall submit a survey map created by a registered land surveyor for the review and approval of the Planning Official. If approved by the Official, the Official shall sign the map, and the applicant shall record the survey map with the applicable district recorder's office within 60 days of approval; if not recorded within the 60-day approval period, the approval expires and a new approval is necessary.
2. **Time limit.** Upon recording, the applicant shall promptly submit a copy of the recorded Property Line Adjustment survey map to the borough, and prior to any application being filed for a building permit on the re-configured lots.

#### 4.6.130 Minor Lot Consolidation

A Minor Lot Consolidation is the consolidation of four or fewer abutting lots of record into one. The Borough Planning Official reviews applications for Minor Lot Consolidations pursuant to the Type I procedure, under Section 4.1.020. A lot consolidation which would involve five or more abutting lots of record, or which would consolidate four or few abutting lots of record into more than one lot, are considered re-plats, under

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## 4.6 – Subdivisions and Property Line Adjustments

Section 4.6.110. The application submission and approval process for Minor Lot Consolidations is as follows:

- A. Submission Requirements.** All applications for Minor Lot Consolidations shall be made on forms provided by the borough and shall include information required for a Type I review (see Section 4.1.020). The application shall include a preliminary lot line map drawn to scale identifying all existing and proposed lot lines and dimensions, footprints and dimensions of existing structures (including accessory structures), location and dimensions of driveways and public and private streets within or abutting the subject lots, location of lands subject to the Petersburg Borough Floodplain Management Overlay, existing fences and walls, and any other information deemed necessary by the borough Planning Official for ensuring compliance with borough codes. If the Official finds that the map or description or drawing does not adequately identify the new lot, the Official may require the applicant to provide a plat prepared by a licensed professional land surveyor. The application shall be signed by all of the owners of the subject property..
- B. Approval Criteria.** The borough Planning Official shall approve or deny a request for a Minor Lot Consolidation in writing, based on all of the following criteria:
- 1. Common Ownership.** All lots proposed for consolidation are under common ownership. Lots proposed for Minor Lot Consolidation must be contiguous whole lots within the same recorded subdivision.
  - 2. Lot standards.** All lots and parcels conform to the applicable lot standards of the zoning district (Article 2) including lot area, dimensions, setbacks, coverage, and any applicable standards for Special Use (Chapter 2.3), and an accurate new legal description is provided. The lots are located in the same zoning district. As applicable, all lots and parcels conform to the Petersburg Borough Floodplain Management Overlay, or other applicable Overlay Zone; and the adjustment does not create a zoning or Building Code violation.
  - 3. Access and Road authority Standards.** All lots and parcels conform to the standards or requirements of Chapter 3.3 Access and Circulation and all applicable road authority requirements are met. If a lot is nonconforming to any borough or road authority standard, it shall not be made less conforming by the Minor Lot Consolidation.
  - 4. Taxes Paid.** All ad valorem taxes and all special assessments, fees, or other charges which may by law be placed on the tax roll have been paid.
- C. Recording Minor Lot Consolidations**
- 1. Recording.** Upon the borough’s approval of the proposed Minor Lot Consolidation, the applicant shall record a notice of the consolidation, in the form required by the borough and signed by all owners and the borough, with the applicable district recorder’s office within 60 days of approval; if not recorded within the 60-day approval period, the approval expires and a new approval is necessary.
  - 2. Time limit.** Upon recording, the applicant shall promptly submit a copy of the recorded notice to the borough, and prior to any application being filed for a building permit.

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## 4.6 – Subdivisions and Property Line Adjustments

### 4.6.140 Vacation of Public Rights-of-Way and Easements

**A. Approvals Processes.** All applications for Vacations of public rights-of-way (e.g., streets and other public areas) or easements, including utility easements, shall be made on forms provided by the borough. A Vacation of a public right-of-way or easement is a legislative decision, made by the Borough Assembly, under Section 4.1.050 (Type IV).

**1. Submission Requirements.** In addition to the submission requirements for a Type IV legislative decision under Section 4.1.040, applications for Vacations shall also include a map illustrating the area to be vacated, the outer boundary of the property receiving the benefit of the dedication, and the location of all known public or private facility improvements within the area proposed for vacation.

**2. Applicants.** Except as otherwise provided by law, no right-of-way or easement, or any part of one, may be vacated except upon application of the owners of the majority of the land affected by, or fronting upon, the area sought to be vacated. If the right-of-way or easement proposed for Vacation is for the benefit of a public entity other than the borough (i.e. the State of Alaska), the approval of that entity is required.

#### **B. Planning Commission Review and Recommendation.**

**1. Planning Commission hearing.** The Planning Commission shall hold a public hearing on the Vacation request and provide notice to parties of interest.

**2. Planning Commission recommendation.** After public hearing, the Commission shall make a recommendation to the Assembly to approve, approve with modifications, or deny the proposed vacation request. The Commission shall prepare written findings in support of its recommendation, which shall be forwarded to the Assembly for its consideration.

#### **C. Assembly Decision**

**1. Assembly Decision.** The Assembly, in its legislative capacity, shall determine, by resolution, whether the Vacation shall be granted. If the Assembly does not approve the Vacation, a subsequent Vacation application on the same easement cannot be filed until one year has elapsed from the date of the Assembly resolution. If the Vacation is approved, the applicant shall proceed to prepare a platting document reflecting the Vacation, in accordance with the provisions of this Chapter.

**2. Assessed Value.** The assessed full and true value of the right-of-way or easement to be vacated shall be determined by the borough assessor and paid to the borough upon approval of the Vacation by the Assembly, unless the Assembly approves other terms or conditions.

#### **D. Title to Vacated Area**

1. Except as otherwise provided by law or by the Assembly, the title to the public right-of-way or easement vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area to be vacated is not requested by all abutting property owners to the Vacation, the owner(s) expressing interest may be permitted to acquire the entire vacated area abutting the owner(s) boundary line.

2. The Borough Assembly may determine that all or a portion of the area vacated should be devoted to another public purpose and if so, title to the area vacated and held for another public purpose does not vest as provided in Subsection A of this Section, but remains in the borough.

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## 4.6 – Subdivisions and Property Line Adjustments

3. A Vacation is not effective unless a final plat or other document depicting the Vacation is approved by the borough and recorded in accordance with this Chapter within 18 months of the date of Assembly approval; if not recorded within the 18-month approval period, the approval expires and a new approval is necessary.

4. The Borough Clerk shall file the final plat or other approved vacation document with the applicable district recorder's Office, at the applicant's expense.

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## 4.7 – Master Planned Developments

### Chapter 4.7 - Master Planned Developments

#### Sections:

- 4.7.010 Purpose
- 4.7.020 Applicability
- 4.7.030 Review and Approvals Process
- 4.7.040 Modifications to Development Standards
- 4.7.050 Concept Plan Submission
- 4.7.060 Concept Plan Approval Criteria
- 4.7.070 Concept Plan and Expiration
- 4.7.080 Detailed Development Plan Submission
- 4.7.090 Detailed Development Plan Criteria
- 4.7.100 Subsequent Development Reviews

#### **4.7.010 Purpose**

The purposes of Chapter 4.7 are to:

- A.** Implement the Comprehensive Plan by providing a means for master planning large development sites as an alternative to piecemeal subdivision development;
- B.** Encourage innovative planning that results in projects that benefit the community, for example, through greater efficiency in land use, improved protection of open spaces, transportation efficiency, and housing choices;
- C.** Encourage housing options for a range of household sizes, incomes, and lifestyles;
- D.** Encourage mixed-use development and diversified employment opportunities;
- E.** Promote an economic arrangement of land use, buildings, circulation systems, open space, and utilities;
- F.** Preserve to the greatest extent possible the existing landscape features and amenities that may not otherwise be protected through conventional development;
- G.** Encourage energy efficiency and improved air and water quality;
- H.** Implement public facility master plans; and
- I.** Provide flexibility in development standards, consistent with the above purposes.

#### **4.7.020 Applicability**

The Master Planned Development designation may be applied over any of the borough's zoning districts. It is an option available to developers of land.

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## 4.7 – Master Planned Developments

### 4.7.030 Review and Approvals Process

**A. Review Steps.** There are three required application steps to Master Planned Development approval, which may be completed individually or combined for concurrent review, prior to submittal for final plat approval or for a building permit, as applicable:

1. Application for master planned development concept plan approval;
2. Application for detailed development plan approval; and
3. Application for a preliminary subdivision plat and/or site design review approval.

**B. Approval Process.**

1. The Master Planned Development concept plan (Subsection A.1 above) shall be reviewed by the Planning Commission pursuant to the Type III procedure in Section 4.1.040, the submission requirements in Section .050, below, and the approval criteria in Section .060, below.
2. The detailed development plan (Subsection A.2 above) shall be reviewed using the Type III procedure in Section 4.1.040, to ensure substantial compliance with the approved concept plan.
3. Applications for preliminary subdivision and/or site design review for approved planned developments shall be reviewed using a Type II procedure in Section 4.1.030.
4. Steps 1-3, above, may be combined in any manner, so long as the decision-making sequence follows the order in A. above. Notification and hearings may be combined.

### 4.7.040 Modifications to Development Standards

The standards of Article 2 and Article 3 of this Development Code may be modified through the Master Plan Development process without the need for Variance under Chapter 4.4. In evaluating a modification, the decision-making authority shall consider whether the proposal, on balance, exceeds the borough's minimum requirements and provides greater community benefits than would otherwise occur under the base Development Code requirements. In evaluating community benefits, the decision-making authority shall apply the following criteria; the borough may deny an application for Master Planned Development approval that does not meet all of the following criteria:

**A. Comprehensive Plan.** The modification does not conflict with the Comprehensive Plan. A Master Planned Development may exceed the maximum residential density (minimum lot size) permitted by the underlying zone, provided that the overall density of the project (average of total dwelling units per acre) is not greater than 110 percent of the density permitted by the underlying zone.

**B. Purpose and Intent of Development Code.** The modification equally or better meets the purpose and

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## 4.7 – Master Planned Developments

intent of the Development Code Section(s) to be modified, as compared to a project that strictly conforms to Code standards.

**C. Public Benefit.** The modification provides a net benefit to the public by one or more of the following:

1. Greater variety of housing types or lot sizes than would be achieved under the base Development Code standards;
2. More open space or more usable open space than would be required under the base Development Code standards;
3. Greater protection of natural features than would be required under the base Development Code standards;
4. Avoidance of natural hazards (e.g., geological hazards, streams, or flood hazards); and
5. Improved transportation connectivity, such as the provision of pathways and/or other transportation facilities that would not otherwise be provided pursuant to base Development Code requirements.

**D. Standard Construction Specifications.** Modifications to the borough's Standard Construction Specifications require separate modification to such standards approved by the Public Works Director. The borough may grant such modifications concurrently with the Master Planned Development.

### 4.7.050 Concept Plan Submission

**A. General Submission Requirements.** An application for a Master Planned Development concept plan shall follow the submission requirements for a Type III review under Section 4.1.040, and shall include all of the following:

1. Statement of planning objectives to be achieved by the Master Planned Development through the particular approach proposed by the applicant. This statement should include a description of the character of the proposed development and the rationale behind the assumptions and choices made by the applicant;
2. Development schedule indicating the approximate dates when construction of the project and its various phases, if any, including public facility improvements, are expected to be initiated and completed. Phased developments shall be designed so that each phase is self-supporting should future proposed phases not occur;
3. Statement of the applicant's intentions with regard to the future selling or leasing of all or portions of the planned development;
4. Narrative report or letter documenting compliance with the applicable approval criteria contained in Section .060, below;

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## 4.7 – Master Planned Developments

5. Maintenance plan for any common areas or lands not dedicated to and actively maintained by a public agency or owned in fee simple; and
6. Additional reports or studies prepared by qualified professionals, as required by the borough Planning Official, to determine potential project impacts and mitigation, if any, related to: transportation; public facilities; geologic or other hazards; architecture; noise, light, solar access, air quality, or similar concerns; and natural features.

**B. Additional Information.** In addition to the general information described in Subsection A, above, the development concept plan, data, and narrative shall include all of the following exhibits and information:

1. Site map, as defined in Section 4.2.040, Site Design Review Application Submission Requirements;
2. Conceptual site plan (e.g., general land use, building envelopes, circulation, open space, utility connections, and other information necessary to convey the concept plan);
3. Grading concept (for hillside or sloping properties, or where extensive grading is anticipated);
4. Landscape concept (e.g., shows retention of existing vegetation and general planting areas);
5. Architectural concept (e.g., plans illustrate architectural styles, building heights, and general materials);
6. Sign concept (e.g., locations, general size, style, and materials of signs), as applicable; and
7. Copy of all existing covenants and restrictions, and a general description of proposed restrictions or covenants (e.g., for common areas, access, parking, etc.).

### 4.7.060 Concept Plan Approval Criteria

The decision-making body, in approving or approving with conditions a concept plan, shall make findings that all of the following criteria are met; an application must be denied in the event that not all of the criteria are met:

- A. Comprehensive Plan.** The proposal conforms to the Comprehensive Plan;
- B. Subdivision Chapter.** Except as may be modified under Section .040, above, all of the requirements for Subdivisions, under Chapter 4.6, are met;
- C. Article 2 and Article 3 Standards.** Except as may be modified under Section .040, above, all of the requirements of Article 2 and Article 3 are met;
- D. Open Space.** The plan shall contain a minimum of 20 percent open space, which may be public, private, or a combination of public and private open space. Such open space shall be integral to the master plan and connect to a majority of the proposed residential lots. Plans shall provide space for both active and passive recreational uses, and may include, but are not limited to, neighborhood parks, pathways/trails, natural

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## 4.7 – Master Planned Developments

areas, plazas, and play fields. Open space areas shall be shown on the final plan and recorded with the final plat or separate instrument; the open space shall be conveyed in accordance with one of the following methods:

1. By dedication to the borough as publicly owned open space. Open space proposed for dedication to the borough must be acceptable to the decision-making authority with regard to the size, shape, location, improvement, and environmental condition (i.e., the applicant may be required to provide an environmental assessment)<sup>1</sup>; or
2. By leasing or conveying title (including beneficial ownership) to a corporation, homeowners' association, or other legal entity. The terms of such lease or other instrument of conveyance must include provisions for maintenance and property tax payment acceptable to the decision-making authority. The decision-making authority, through conditions of approval, may also require public access be provided, where the open space is deemed necessary, based on impacts of the development and to meet public recreational needs pursuant to the Comprehensive Plan.

**E. Modifications to Standards.** Modifications to Code standards must conform to the criteria in Section .040, above.

### 4.7.070 Concept Plan and Expiration

- A. Filing.** Upon approval of a concept plan, the approved plan, including any conditions of approval, shall be binding on future uses and development of the property, except where an approval expires.
- B. Expiration.** Except as provided by Subsection C, below, a concept plan shall become void three years after the date of approval if the applicant, or successor, has not filed with the borough an application for detailed development plan and final plan approval in conformance with Sections .080 and .090, below.
- C. Extension.** The borough Planning Official, under a Type I review procedure, may grant extensions of the concept plan approval period, not to exceed one year per extension, provided that the extension request is made before expiration of the concept plan, the applicant can show intent of applying for detailed development plan review within the one-year extension period, and there have been no substantive changes to the applicable Comprehensive Plan policies and ordinance provisions on which the approval was based.

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<sup>1</sup> Acceptance of Dedication is not a guarantee of maintenance by the borough, which is subject to assembly and departmental budgetary approval.

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## 4.7 – Master Planned Developments

### **4.7.080 Detailed Development Plan Submission**

Detailed development plan submittal requirements are determined based on the conditions of approval for the concept plan. At a minimum, the detailed development plan submittal shall meet the minimum requirements for final plat submission under Chapter 4.6 and shall contain information demonstrating compliance with the concept plan. The detailed development plan shall be reviewed using the Type III procedure in Section 4.1.040 to ensure substantial conformance to the approved concept plan. The detailed development plan may combine subdivision, site design review, and/or other applications for concurrent review and approval.

### **4.7.090 Detailed Development Plan Criteria**

Approval of the detailed development plan shall be based upon a finding that it substantially conforms to the concept plan, including any concept plan conditions of approval. Minor changes to the approved concept plan may be approved with the detailed plan where the borough Planning Official finds that the modification is necessary to correct an error or to address changes in circumstances beyond the applicant's control that have occurred since the date of project approval.

### **4.7.100 Site Design Review, Final Plat, and Building Permit Approvals**

A. Site Design Reviews. For projects requiring site design review, all such approvals must be final before the Borough issues building permits. See Chapter 4.2, Site Design Review.

B. Subdivisions. For projects requiring a subdivision, the preliminary subdivision plat(s) must be final before a final plat is approved and building permits issued. Final plat(s) must follow final plat procedures and standards, except as modified by the approved concept plan. See Chapter 4.6 Subdivisions.