

**BERNARDSVILLE BOROUGH
ORDINANCE #2021-1872**

**AN ORDINANCE AMENDING STORMWATER REGULATIONS
AND SUPPLEMENTING AND AMENDING SECTION 29 OF
CHAPTER 12 IN THE BOROUGH LAND USE CODE**

BE IT ORDAINED by the Council of the Borough of Bernardsville, in the County of Somerset, New Jersey that the Borough Land Use Code is hereby supplemented and amended as follows:

Section 1. Section 12-29 entitled "Stormwater Management" is hereby amended in its entirety to read as follows:

§ 12-29 **STORMWATER MANAGEMENT.**

§ 12-29.1 **Definitions.**

[Ord. No. 2006-1423 § 1; Ord. No. 07-1478 § 1]

All terms in this section shall be defined in the NJDEP Stormwater Management Rule (N.J.A.C. 7:8, et seq.). The following additional terms are defined for this chapter only.

EXEMPT DEVELOPMENT

Shall mean any development that creates less than 500 square feet of roof area and less than 1,000 square feet of new impervious area in total and disturbs less than 2,500 square feet of land.

MINOR DEVELOPMENT

Shall mean any development that does not meet the definition of "exempt development" as defined herein or the definition of major development as defined herein or in the NJDEP Stormwater Rule (N.J.A.C. 7:8).

MAJOR DEVELOPMENT

Shall mean any individual "development," as well as multiple developments that individually or collectively result in:

1. The disturbance of one or more acres of land since February 2, 2004;
2. The creation of one-quarter acre or more of "regulated impervious surface" since February 2, 2004;
3. The creation of one-quarter acre or more of "regulated motor vehicle surface" since March 2, 2021; or
4. A combination of 2 and 3 above that totals an area of one-quarter acre or more. The same surface shall not be counted twice when determining if the combination area equals one quarter acre or more.

Major development includes all developments that are part of a common plan of development or sale (for example, phased residential development) that collectively or individually meet any one or more of conditions 1, 2, 3, or 4 above. Projects undertaken by any government agency that otherwise meet the definition of "major development" but which do not require approval under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., are also considered "major development".

§ 12-29.2 Design Standards.

[Ord. No. 2006-1423 § 1; Ord. No. 07-1478 § 1]

- a. **Exempt Developments.** Any project meeting the definition of exempt development shall be exempt from the provisions of this section.
- b. **Minor Developments.** Minor developments shall be designed to include the following stormwater management measures:
 1. **Water Quality.** Soil erosion and sediment control measures shall be installed in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey.
 2. **Runoff Quantity Control.** Seepage pits or other infiltration measures shall be provided with a capacity of three inches of runoff for each square foot of new impervious area. Stone used in the infiltration devices shall be 2-1/2 inch clean stone and a design void ratio of 33% shall be used. The infiltration measures shall be designed with an overflow to the surface which shall be stabilized and directed to an existing stormwater conveyance system or in a manner to keep the overflow on the developed property to the greatest extent feasible. If the new impervious surface is not roof area, an equivalent area of existing roof may be directed to the infiltration system. This shall be permitted where the existing roof is not already directed to infiltration devices.
- c. **Major Developments.** All major developments shall have their stormwater management designed in accordance with the Residential Site Improvement Standards (RSIS, N.J.A.C. 5:21) and the NJDEP Stormwater Management Rule (N.J.A.C. 7:8). These standards shall apply to all projects, residential and nonresidential, in all zone districts, as well as projects by the Borough, Board of Education and other agencies subject to review by the Borough.

§ 12-29.3 Operation, Maintenance and Repair of Stormwater Management Facilities.

[Ord. No. 07-1478 § 1]

- a. **Minor Developments**
 1. Present and future owners of property containing privately owned stormwater management facilities are required to ensure adequate long-term operation and maintenance of such facilities in accordance with a Stormwater Management Operations and Maintenance Manual.

2. The Stormwater Management Operations and Maintenance Manual shall contain a description of the project, including the amount of land disturbance and the amount of new impervious surface being created; specific inspection and maintenance tasks, including the requirement to at least once a year, measure and record the water level in the facility after a major storm exceeding 1-inch of rainfall in order to determine the time to drain; ownership and maintenance responsibilities; estimated cost of debris and sediment removal; preventative and corrective maintenance measures and; inspection and maintenance log forms.
3. The inspection and maintenance log forms are required to be submitted to the Borough Engineer by April 1 of each year.
4. Penalties for noncompliance shall be in accordance with the penalty provision of the Borough General Ordinances.
5. If the stormwater facilities are not adequately maintained by the private owners, the Borough shall retain the right to perform the required maintenance and charge the private entity accordingly. This access shall be part of all drainage easements on private property.

b. Major Developments

1. The design engineer shall prepare a maintenance plan for the stormwater management measures incorporated into the design of a major development.
2. The maintenance plan shall contain specific preventative maintenance tasks and schedules; cost estimates, including estimated cost of sediment, debris, or trash removal; and the name, address, and telephone number of the person or persons responsible for preventative and corrective maintenance (including replacement). The plan shall contain information on BMP location, design, ownership, maintenance tasks and frequencies, and other details as specified in Chapter 8 of the NJ BMP Manual, as well as the tasks specific to the type of BMP, as described in the applicable chapter containing design specifics.
3. If the maintenance plan identifies a person other than the property owner (for example, a developer, a public agency or homeowners' association) as having the responsibility for maintenance, the plan shall include documentation of such person's or entity's agreement to assume this responsibility, or of the owner's obligation to dedicate a stormwater management facility to such person under an applicable ordinance or regulation.
4. Responsibility for maintenance shall not be assigned or transferred to the owner or tenant of an individual property in a residential development or project, unless such owner or tenant owns or leases the entire residential development or project.
5. If the party responsible for maintenance identified under §12-29.3b.3 above is not a public agency, the maintenance plan and any future revisions based on §12-29.3b.7

below shall be recorded upon the deed of record for each property on which the maintenance described in the maintenance plan must be undertaken.

6. Preventative and corrective maintenance shall be performed to maintain the functional parameters (storage volume, infiltration rates, inflow/outflow capacity, etc.) of the stormwater management measure, including, but not limited to, repairs or replacement to the structure; removal of sediment, debris, or trash; restoration of eroded areas; snow and ice removal; fence repair or replacement; restoration of vegetation; and repair or replacement of non-vegetated linings.
7. The party responsible for maintenance identified under §12-29.3b.3 above shall perform all of the following requirements.
 - (a) Maintain a detailed log of all preventative and corrective maintenance for the structural stormwater management measures incorporated into the design of the development, including a record of all inspections and copies of all maintenance-related work orders;
 - (b) Evaluate the effectiveness of the maintenance plan at least once per year and adjust the plan and the deed as needed; and
 - (c) Retain and make available, upon request by any public entity with administrative, health, environmental, or safety authority over the site, the maintenance plan and the documentation required by §12-29.3b.6 and B.7 above.
 - (d) A copy of all inspection logs and preventative and corrective maintenance logs shall be submitted to the Borough Engineer annually by April 1 of each year.
8. In the event that the stormwater management facility becomes a danger to public safety or public health, or if it is in need of maintenance or repair, the municipality shall so notify the responsible person in writing. Upon receipt of that notice, the responsible person shall have fourteen (14) days to effect maintenance and repair of the facility in a manner that is approved by the municipal engineer or his designee. The municipality, in its discretion, may extend the time allowed for effecting maintenance and repair for good cause. If the responsible person fails or refuses to perform such maintenance and repair, the municipality or County may immediately proceed to do so and shall bill the cost thereof to the responsible person. Nonpayment of such bill may result in a lien on the property.
- c. Nothing in this subsection shall preclude the municipality in which the major development is located from requiring the posting of a performance or maintenance guarantee in accordance with N.J.S.A. 40:55D-53

§ 12-29.4 Waivers and Exceptions.

[Ord. No. 2006-1423 § 1; Ord. No. 07-1478 § 1]

a. Minor Developments

1. Waivers from strict compliance with the design standards shall only be granted upon showing that meeting the standards would result in an exceptional hardship on the applicant or that the benefits to the public good of the deviation from the standards would outweigh any detriments of the deviation. A hardship will not be considered to exist if reasonable reductions in the scope of the project would eliminate the noncompliance.
2. If the review agency for the project determines that a waiver is appropriate, the applicant must execute mitigation.. The scope of the mitigation shall be commensurate with the size of the project and the magnitude of relief required. The mitigation project may be taken from the list of projects in the Municipal Stormwater Management Plan or another project identified by the applicant. In lieu of undertaking a specific mitigation project, a monetary contribution may be made to the Municipality for funding toward a municipal stormwater control project, subject to the approval of the review agency. All mitigation projects are subject to the approval of the Municipal Engineer.

b. Major Developments

1. A waiver from strict compliance with the requirements of the municipal stormwater ordinance shall only be approved in those cases where an applicant has demonstrated the inability to strictly comply with any standard of the Borough's municipal stormwater management plan, the stormwater management ordinance or the NJDEP Stormwater Management Rule (N.J.A.C. 7:8). Waivers from strict compliance with the design and performance standards for stormwater management measures as set forth shall only be granted upon demonstrating that the conditions outlined in the NJDEP Stormwater Management Rule at 7:8-4.6(a)1 through 3 are met.
2. A waiver from strict compliance for such projects can only be obtained if the applicant agrees to undertake a suitable mitigation measure identified in the mitigation section of the municipality's Stormwater Management Plan. In such cases, the applicant must submit a mitigation plan and report detailing how the project's failure to strictly comply will be compensated. In cases where a waiver is granted, an applicant should provide mitigation, if possible and/or practical, within the same drainage area within which the subject project is proposed, or contribute funding toward a municipal stormwater control project, or provide for equivalent treatment at an alternate location, or provide for another equivalent water quality benefit, in lieu of implementing the required stormwater control measures on their specific site.
3. Any approved waiver from the design and performance standards for stormwater management measures outlined above shall be submitted by the municipal review agency

to the county review agency and the NJDEP, by way of a written report describing the waiver, as well as the required mitigation, within 30 days of the approval.

- c. Review Agency. All applications subject to the review of the Planning Board or Board of Adjustment shall be reviewed by those Boards concurrently with subdivision or site plan review. Applications not subject to Planning Board or Board of Adjustment review shall be reviewed by the Municipal Engineer.
- d. Appeals. The appeal of the determination of the Municipal Engineer shall be made in accordance with N.J.A.C. 40:55D-70a.

§ 12-29.5 Application and Review Fees.

[Ord. No. 2006-1423 § 1; Ord. No. 07-1478 § 1]

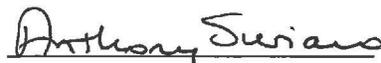
- a. There shall be no additional fees for stormwater review for applications to the Planning Board or Board of Adjustment.
- b. Applications for minor development shall be accompanied by an initial review fee in the amount of \$300 to cover review by the Municipal Engineer and \$500 to cover engineering and inspection of the approved stormwater management facility.
- c. Applications for major development shall be accompanied by an initial fee in the amount of \$1,000 to cover review by the Municipal Engineer. If a major development project is approved, an additional inspection escrow deposit shall be made in an amount to be determined by the Municipal Engineer in accordance with §11-1.1j.1(b).

Section 2. Any or all other ordinances or parts thereof in conflict or inconsistent with any of the terms hereof are hereby repealed to such extent as they are so in conflict or inconsistent.

Section 3. In case any article, section or provision of this ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect any other article, section or provision of this ordinance except insofar as the article, section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 4. This ordinance shall become effective immediately upon final passage and publication as required by law.

ATTEST:


Anthony Suriano, Borough Clerk

COUNCIL OF THE BOROUGH OF
BERNARDSVILLE IN THE COUNTY
OF SOMERSET

By: 
Mary Jane Canose, Mayor

1st Reading and Introduction: February 8, 2021

1st Publication: February 11, 2021

Referral to Planning Board: February 9, 2021

Notice to County Planning Board Prior to Adoption: February 9, 2021

Notice to Clerks of Adjoining Municipalities (if required): February 9, 2021

Notice to Affected Property Owners (if required): n/a

2nd Reading; Minor amendment and Adoption: February 22, 2021

2nd Publication: February 25, 2021

Filing with County Planning Board: February 25, 2021