

**1-1 SHORT TITLE.**

This chapter shall be known and may be cited as the Land Development Regulations of the Borough of Bernardsville. (Ord. No. 581 § 1-1)

**1-2 PURPOSE.**

It is the intent and purpose of this chapter to exercise the authority delegated to municipalities under the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) to regulate development.

**1-2.1** To guide the appropriate use or development of all lands in a manner that will promote the public health, safety, morals and general welfare.

**1-2.2** To secure safety from fire, flood, panic and other natural and manmade disaster.

**1-2.3** To provide adequate light, air and open space.

**1-2.4** To ensure that the development of the municipality does not conflict with the development and general welfare of neighboring municipalities, the County and the State as a whole.

**1-2.5** To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and the preservation of the environment.

**1-2.6** To encourage the appropriate and efficient expenditure of public funds by the coordination of public development and land use policies.

**1-2.7** To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all citizens of the Borough and state.

**1-2.8** To encourage the location and design of transportation routes that will promote the free flow of traffic while discouraging locations of such facilities and routes that result in congestion or blight.

**1-2.9** To promote a desirable visual environment through creative development techniques and good civic design and arrangements.

**1-2.10** To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the Borough and in the state and to prevent urban sprawl and degradation of the environment through improper use of land.

**1-2.11** To encourage planned development that incorporates the best features of design and relates the type, design and layout of various types of development to particular sites.

**1-2.12** To encourage senior citizen community housing construction.

**1-2.13** To encourage coordination of the various public and private procedures and activities shaping land development, with a view to lessening the cost of such development and to the more efficient use of land.

**1-2.14** To promote utilization of renewable energy resources.

**1-2.15** To promote the maximum practical recovery and recycling of recyclable materials from municipal solid waste through the use of planning practices designed to incorporate the state recycling plan goals and to complement municipal recycling programs.

**1-2.16** To control flooding, soil erosion and sedimentation precipitated by development and caused by water run-off, soil disturbances, destruction or removal of ground cover or plant life, grading or filling.  
(Ord. No. 581 § 1-2; Ord. No. 98-1149 § 1 Art. 1)

**1-3 TERMS AND DEFINITIONS.**

**1-3.1 Interpretation of Certain Words and Terms.**

For the purpose of this chapter certain terms are defined as follows:

- a. The term "shall" indicates a mandatory requirement, and the term "may" indicates a permissive action.
- b. Whenever a term is used in this chapter which is defined in N.J.S.A. 40:55D-1 et seq., such term is intended to have the meaning set forth in the definition of such term found in said statute, unless a contrary intention is clearly expressed from the context of this chapter.

**1-3.2 Definitions.**

**Editor's Note:** When this subsection is amended, the definitions are inserted with their individual sources attached to each definition.

*Accessory Building* shall mean a subordinate building on the same lot with a principal or main building, devoted exclusively to an accessory use which is permitted by ordinance and which is incidental to the use of the principal building. (Ord. No. 2002-1282 § 1)

*Accessory Dwelling Unit, Detached* shall mean a dwelling unit detached from, but accessory to, the principal residence. (Ord. No. 99-1167 § 1)

*Accessory Use* shall mean a use naturally and normally incident and subordinate to the main use of the premises or lot.

*Administrative Officer* shall mean the Assistant Borough Engineer on Planning Board applications and the Board Secretary on Board of Adjustment applications. (Ord. No. 98-1149 § 1)

*Affordable Housing Board (referred to herein as the "Board")* shall mean a municipal agency appointed by the Mayor with confirmation of the Borough Council for the purpose of monitoring the Borough's program for construction of low and moderate income housing units in the Borough and which shall have such powers and duties as may be conferred upon it by ordinance. (Ord. No. 801 § 1)

*Alteration of Building* shall mean a change in the supporting members or structural parts of a building; an addition to or diminution of a building; a change in use from that permitted in one (1) zone district to a use permitted in another; a conversion of a building or a part thereof; or removal of a building from one (1)

location to another.

*Apartment* shall mean a dwelling unit located on one floor of a building containing similar units, adjoining said similar units above, below or to the side, which units may share in common facilities, such as entryways, hallways and utility systems. (Ord. No. 801 § 1)

*Applicant* shall mean a developer submitting an application for development.

*Application for Development* shall mean the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit.

*Approving Authority* shall mean the Municipal Agency or Official when acting pursuant to State Statutes or Municipal Ordinances.

*As-Built Plans* shall mean a set of plans drawn to specify the exact condition of a constructed facility.

*Assisted Living Facility* shall mean a facility which is licensed by the New Jersey Department of Health to provide apartment-style housing and congregate dining and to assure that assisted-living services are available, when needed, for four (4) or more adult persons unrelated to the proprietor. Units offer, at a minimum, one (1) unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance or as defined by the New Jersey Department of Health. (Ord. No. 2003-1323 § 1)

*Attic* shall mean a level of a dwelling directly below the roof if the level is wholly lacking a ceiling and does not include any habitable room. (Ord. No. 2000-1210 § 1)

*Automobile Sales Use* shall mean the use of a building and land area for the display and sale of new automobiles. (Ord. No. 2004-1356 § 1)

*Board of Adjustment* shall mean the Zoning Board of Adjustment of the Borough.

*Boarding House or Lodging House* shall mean a dwelling having one (1) kitchen and used for the purpose of providing lodging, or both meals and lodging, to persons occupying such dwelling other than members of a family, for pay or compensation of any kind, whether computed by day, week or month.

*Building* shall mean a combination of materials to form a construction adapted to permanent, temporary, or continuous occupancy and having a roof.

*Building Envelope* shall mean the lot area exclusive of yard requirements in which the principal building may be placed.

*Building Permit* shall mean a document signed by the zoning official (1) which is required by ordinance as a condition precedent to the commencement of a use or the erection, construction, reconstruction, alteration, conversion or installation of a structure or building and (2) which acknowledges that such use, structure or building complies with the provisions of the municipal zoning ordinance or variance therefrom duly authorized by a municipal agency. The term building permit shall be the same as zoning permit.

*Building, Principal* shall mean a structure in which is conducted the principal use of the site on which it is situated. In any residential district any dwelling shall be deemed to be a principal building on the lot on which it is located.

*Cable Television Company* shall mean a cable television company as defined pursuant to N.J.S.A. 48:5A-3. (Ord. No. 98-1149 § 1)

*Capital Improvement* shall mean a government acquisition of real property or major construction project.

*Certificate of Compliance* shall mean a certificate signed by the Borough Engineer, Building Subcode Official and Zoning Officer certifying that the conditions of a subdivision or site plan have been completed as approved or modified.

*Channel* shall mean the bed and banks of a river, stream, brook or spring which convey water most of the time.

*Circulation* shall mean systems, structures and physical improvements for the movement of people, goods, water, air, sewage or power by such means as streets, highways, railways, waterways, towers, airways, pipes and conduits, and the handling of people and goods by such means as terminals, stations, warehouses, and other storage buildings or transshipment points.

*Co-location* shall mean the attachment of commercial wireless telecommunication antenna to an existing wireless telecommunication structure. (Ord. No. 2003-1307 § 1)

*Commercial Vehicle* shall mean any vehicle, other than a passenger car, having more than two (2) axles and/or four (4) wheels and/or exceeding a loading capacity of three-fourths (3/4) ton. (Ord. No. 98-1149 § 1)

*Common Open Space* shall mean an open space area within or related to a site designated as a development, and designed and intended for the use or enjoyment of residents and owners of the development. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the private use or enjoyment of residents and owners of the development.

*Common Ownership* shall mean ownership of two (2) or more contiguous parcels of real property by one (1) person or by two (2) or more persons owning such property jointly, as tenants by the entirety, or as tenants in common.

*Complete Application* shall mean an application form completed as specified by this chapter and the rules and regulations of a Municipal Agency of the Borough and all accompanying documents required by ordinance for approval of the application for development, including where applicable, but not limited to, a site plan or subdivision plat; provided that a Municipal Agency of the Borough may require such additional information not specified in this chapter, or any revisions in the accompanying documents, as are reasonably necessary to make an informed decision as to whether the requirements necessary for approval of the application for development have been met. The application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents so required by such Municipal Agency or the Borough.

*Compound Area* shall mean an on ground enclosed area accommodating the placement of supportive radio-electronic equipment, cabinets or shelter building. (Ord. No. 2003-1307 § 1)

*Concept Plan* shall mean the optional, initial development plan for subdivisions and/or site plans of sufficient accuracy and detail to be used for the purpose of informal review, evaluation and non-binding comment by the Planning Board and meeting the requirements of this chapter.

*Conditional Use* shall mean a use permitted in a particular zoning district only upon a showing that such use in a specific location will comply with the conditions and standards for the location or operation of such use as contained in Article 12 of this chapter, and upon the issuance of an authorization therefor by the Planning Board.

*Condominium* shall mean the form of ownership of real property under a master deed providing for ownership by one (1) or more owners of units of improvements together with an undivided interest in common elements appurtenant to each such dwelling unit.

*Conference or Management Training Center* shall mean a facility devoted to the conduct of meetings, conferences, seminars, classes, instruction, or management training at which facility the permanent staff does not exceed twenty (20%) percent of the number of persons customarily present at the facility when the stated activities are being conducted. (Ord. No. 93-969 § 1)

*Corner Lot* shall mean a lot at the junction of, and having frontage on, two (2) or more intersecting streets.

*Cul-de-sac* shall mean the termination area of a dead-end street suitable for maneuvering vehicles.

*Dependent living facility* shall mean a facility which provides supportive health and social services in addition to a housing unit for senior citizens. Dependent living facilities for senior citizens include facilities such as: assisted-living, extended care, intermediate care and skilled nursing home facilities. (Ord. No. 2003-1323 § 1)

*Design Flood* shall mean the relative size or magnitude of a major flood of reasonable expectancy, which reflects both flood experience and flood potential and is the basis of the delineation of the floodway and the flood hazard area and of the water surface elevations thereof. See Article 14.

*Design Flood Profile* shall mean the elevations of the water surface of the design flood.

*Developer* shall mean the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development including the holder of

an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

*Development* shall mean the division of a parcel of land into two (2) or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, excavation or landfill, and any use or change in, the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to this chapter.

*Development Regulation* shall mean a zoning ordinance, subdivision ordinance, site plan ordinance, official map ordinance or other municipal regulation of the use and development of land, or amendment thereto adopted and filed pursuant to the Municipal Land Use Law.

*Deviation* shall mean a modification of the final plan which may be permitted by the Approving Authority if caused by change of conditions beyond the control of the developer since the date of final approval. The deviation shall not substantially impair the intent and purpose of the Master Plan and Zoning provisions of this chapter.

*District* shall mean any portion of the territory of the Borough within which certain uniform regulations and requirements or various combinations thereof apply under the provisions of this chapter.

*Drainage* shall mean the removal of service water or ground water from land by drains, grading or other means and includes control of runoff during and after construction or development to minimize erosion and sedimentation, to assure the adequacy of existing and proposed culverts and bridges, to induce water recharge into the ground where practical, to lessen nonpoint pollution, to maintain the integrity of stream channels for their biological functions as well as for drainage, and the means necessary for water supply preservation or prevention or alleviation of flooding. (Ord. No. 98-1149 § 1)

*Drainage Right-of-Way* shall mean the lands required for the installation of storm water sewers or drainage ditches, or required along a natural stream or watercourse for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage, for which access easement by a public agency may be required as a deeded right.

*Drive-in, drive-through or car hop restaurant* shall mean any restaurant, refreshment stand, snack bar, dairy bar, hamburger stand or hot dog stand where food is served primarily for consumption at counters, stools or bars outside the building or primarily for consumption in automobiles parked on the premises, whether brought to said automobiles by the customer or by employees of the restaurant, regardless of whether or not additional seats or other accommodations are provided for customers inside the building. (Ord. No. 2014-1654 § 1)

*Driveways* shall mean an access way for vehicles from a public or private thoroughfare serving one (1) building or a group of buildings under common ownership.

*Dwelling* shall mean a building or portion thereof designed or used exclusively for residential purposes by (1) one or more persons including single family dwellings, multiple family dwellings and apartment dwellings, boarding and lodging houses, but not including motels, hotels, mobile homes, tourist cabins, trailers, or trailer courts. (Ord. No. 94-1000 § 1)

*Dwelling, Single Family* shall mean a dwelling designed for occupancy by only one (1) family. (Ord. No. 94-1000 § 1)

*Dwelling Unit* shall mean the dwelling accommodation consisting of a suite of one (1) or more rooms occupied or intended to be occupied by one (1) family.

*Environmental Constraints* shall mean natural resources and features or land characteristics which have sensitivity to improvements and may require conservation measures or the application of creative development techniques to prevent degradation of the environment and to promote the public health, safety and general welfare. Such environmental constraints include soils which are unsuitable for land disposal of sewage, slopes in excess of fifteen (15%) percent, erosion-prone soils, shallow depths to the layers of bedrock, seasonal shallow water tables, major rock outcroppings, vegetation, watercourses, and other land susceptible to flooding, in accordance with this chapter.

*Environmental Evaluation Map* shall mean a plat which, in addition to identification and graphic notations, has indicated thereon legal data, environmental constraints and environmentally controlled areas which may indicate a sensitivity to damage by the process of development.

*Environmentally Controlled Areas* shall mean land, the development of which is subject to special controls to enforce the exercise of exceptional care in property improvement and use which is necessitated by the presence of one (1) or more environmental constraints.

*Estate* shall mean a large property with a land area substantially in excess of the requirements in the least-density residential districts which accommodates an estate mansion and accessory buildings and appurtenances.

*Estate Mansion* shall mean a large single family residence building fulfilling the following requirements:

- a. Was at one time the principal building of an estate;
  - b. Located on a minimum tract of twenty (20) acres;
  - c. The principal portion of the building was constructed or enlarged prior to January 1, 1940;
  - d. Has a minimum of fifteen (15) rooms;
  - e. Has a minimum of five thousand (5000) square feet;
  - f. Has been sufficiently maintained or can be adequately refurbished to meet uses permitted of an estate mansion by this chapter.
- (Ord. No. 93-969 § 1)

*Erosion* shall mean the detachment and movement of soil or rock fragments by water, wind, ice and gravity.

*Extended care facility* shall mean a long-term care facility or a distinct part of a facility licensed by the New Jersey department of Health as a nursing home, infirmary unit of a home for the aged or a governmental medical institution or as defined by the New Jersey Department of Health. (Ord. No. 2003-1323 § 1)

*Facade* shall mean the total wall surface, including door and window area of a building's principal face. In computing permitted sign area, only one (1) face of a building may be used as the principal face.

*Family* shall mean a person, or any number of persons living together as a single housekeeping unit in a dwelling, as distinguished from a group occupying a boarding house, lodging house or hotel. (Ord. No. 581 § 1-3.2; Ord. No. 94-994 § 1)

*Fast Service Restaurant* (Ord. No. 769 § 1; deleted by Ord. No. 2014-1654 § 1)

*FCC* shall mean Federal Communications Commission. (Ord. No. 2003-1307 § 1)

*Field Change, General* shall mean a modification of the final plan which may be permitted by the Approving Authority occurring either prior to or during the installation of an improvement which may result, but not substantially, in a change of the general terms, conditions, layout and design as approved.

*Field Change, Technical* shall mean a modification by an authorized Borough Official resulting in a departure from an approved plan (either preliminary or final) if minimal in nature or necessitated by unusual or extraordinary circumstances occurring either prior to or during the installation of an improvement which is technical in nature only, within accepted construction practices and not in conflict with the authority expressed in a general field change or deviation as defined in this chapter.

*Final Approval* shall mean the official action of the Approving Authority taken on a preliminary approved major subdivision or site plan after all conditions, engineering plans and other requirements have been completed or fulfilled and the required improvements have been installed or guarantees properly posted for their completion, or approval conditioned upon the posting of such guarantees.

*Final Plat* shall mean the final map of all or a portion of the subdivision which is presented to the Approving Authority for Final Approval in accordance with these regulations and which, if approved, shall be filed with the Clerk of the County of Somerset.

*Flashing Sign* shall mean an illuminated sign in which the artificial light is intermittent or is not maintained in a stationary position or constant intensity.

*Flood Hazard Area* shall mean the floodway, and additional portions of the floodplain that are subject to flood flow at lesser depths and lower velocities than

the floodway, that are inundated by the design flood and that are delineated in Article 14 of this chapter.

*Flood Map* shall mean the map identified in Article 14 of this chapter.

*Floodplain* shall mean a relatively flat area adjoining a channel which has been or may be hereafter covered by flood water from the channel.

*Floodway* shall mean the channel of a watercourse and portions of the adjacent floodplain that carry the greater part of flood flow at greater depths and velocities than do other parts of the floodplain, that constitute the minimum area required for the passage of flood waters without aggravating flood conditions upstream and downstream, that are necessary to preserve the natural regimen of the river or stream for the reasonable passage of the design flood and that are delimited in Article 14 of this chapter, and Ordinance No. 558.

*Floor Area* shall mean the area in square footage of all floors, of all stories above grade of a building, computed by measuring the dimensions at the outside walls, without deductions for stairwells, cathedral ceilings and like features. (Ord. No. 2000-1210 § 1; Ord. No. 2002-1282 § 4)

*Free-Standing Sign* shall mean a sign erected on or supported by a base, frame, pole or braces in or upon the ground and not attached to any building.

*Geological Data* shall mean test pits to a maximum depth of seventeen (17) feet to confirm soil classification bounds and true soil profiles to ascertain soil erosion potential, stormwater runoff capacity, suitable potable water supply and suitability of the land for disposal of sewage.

*Governing Body* shall mean the Mayor and Borough Council of the Borough.

*Grade Plane* shall mean the elevation of the mean average finished ground level adjoining a building. Where the finished ground level slopes away from a building, the grade plane shall be established by the lowest points within the area between building and a point six (6) feet from the building, or at the property line if the building is less than six (6) feet from the property line. (Ord. No. 2002-1282 § 9)

*Gross Floor Area*, for nonresidential uses, shall mean the area of all floors, computed by measuring the dimensions of the outside walls of a building, excluding those spaces not generally utilized by employees or patrons. (Ord. No. 2004-1370 § 1)

*Ground Sign*. See "Free-Standing Sign."

*Habitable Room* shall mean a room designed to be used for living, sleeping, eating or cooking, excluding bathrooms, toilet compartments, laundries, foyers, hallways, storage rooms, cellars, and similar accessory spaces. Habitable rooms must have a clear height from finished floor to finished ceiling of not less than seven (7) feet except that in rooms with sloping ceilings the clear height shall be not less than seven (7) feet over not less than one-third (1/3) of the floor area, the floor area excluding any space less than five (5) feet in height.

*Height of Building* shall mean the vertical distance from a plane representing the average ground elevation around the foundation to the level of the highest point of the roof surface or any equipment that projects above the surface if the roof is flat, or in the case of sloping roofs, to a point one-half (1/2) the distance between the top of the uppermost plate and the highest point of the roof.

*Hotel* shall mean a building containing hotel units, each having its only access from an interior corridor, designed and intended to be used as overnight sleeping accommodations for transient guests; which building has a public lobby and full-time management serving the guests and which may contain ancillary services and facilities, such as restaurants, shops and boutiques, recreation facilities, meeting rooms and convention facilities which shall be accessible from the interior of the building.

*Hotel Unit* shall mean a room or suite of rooms in a hotel which shall consist of a bedroom, a bathroom and closet or closet area, and which may include not more than one additional room for sitting or sleeping purposes.

*Housing Administrator* shall mean a consultant or municipal employee retained by the Borough Council for the purpose of administering and coordinating the affordable housing provisions of this chapter, Article 13, (Ordinance No. 801) and who shall have such duties and responsibilities as herein set forth. (Ord. No. 801 § 1)

*Illuminated Sign* shall mean a sign lighted by an exterior or interior artificial light source.

*Impervious Coverage* shall mean all buildings, structures, patios, pools, solid decks, tennis courts, sidewalks, driveways and all surfaces through which water cannot readily pass in order to infiltrate into the ground below. For the purpose of calculating the maximum impervious area on a lot, all driveways, including gravel, shall be considered as impervious area. (Ord. No. 2002-1282 § 5)

*Industrial, Light*. See Manufacture, Light. (Ord. No. 96-1057)

*Institutional Uses* shall mean churches, schools, hospitals and other similar public or semi-public buildings or uses which are operated on a non-profit basis; federal, state, county or other governmental buildings and uses, but not including local borough public buildings and uses.

*Interested Party* shall mean in a criminal or quasi-criminal proceeding, any citizen of the State of New Jersey; and in the case of a civil proceeding in any court or in an administrative proceeding before a municipal agency, any person, whether residing within or without the municipality, whose right to use, acquire, or enjoy property is or may be affected by any action taken under this chapter, or whose rights to use, acquire, or enjoy property under this chapter, or under any other law of this state or of the United States has been denied, violated or infringed by an action or a failure to act under the Municipal Land Use Law or municipal ordinances.

*Intermediate care facility* shall mean a facility licensed by the New Jersey Department of Health which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or physical condition, require care and services (above the level of room and board) which can be made available to them only through facilities such as these or as defined by the New Jersey Department of Health. (Ord. 2003-1323 § 1)

*Local Utility* shall mean any sewerage authority created pursuant to the "sewerage authorities law," N.J.S.A. 40:14A-1 et seq.; any utilities authority created pursuant to the "municipal and county utilities authority law," N.J.S.A. 40:14B-1 et seq.; or any utility, authority, commission, special district or other corporate entity not regulated by the Board of Regulatory Commissioners under Title 48 of the Revised Statutes that provides gas, electricity, heat, power, water or sewer service to a municipality or the residents thereof. (Ord. No. 98-1149 § 1)

*Lot* shall mean a designated parcel, tract or area of land established by a plat or otherwise, as permitted by law and to be used, developed or built upon as a unit. (Ord. No. 98-1149 § 1)

*Lot Area* shall mean the computed area contained within the lot lines.

*Lot Frontage* shall mean the length of the front lot line.

*Lot Lines* shall mean the property lines bounding the lot.

- a. *Lot Line, front* shall mean the line separating the lot from a street (same as street lot line).
- b. *Lot Line, rear* shall mean the lot line or lines opposite the most distant from the front lot line or the point at which the two (2) side lot lines meet.
- c. *Lot Line, side* shall mean any lot line or lines opposite the most distant from the front lot line or the point at which the two (2) side lot lines meet.
- d. *Lot Line, street* shall mean the same as front lot line.

*Low Income* shall mean total gross household income equal to fifty (50%) percent or less of the median household income for households of the same size and using the median income data for household size prepared by the United States Department of Housing and Urban Development (HUD) for the region which includes Bernardsville.

*Maintenance Guarantee* shall mean any security, which may be accepted by the Borough for the maintenance of any improvements required by this Code, including but not limited to surety bonds, letters of credit under the circumstances specified in N.J.S.A. 40:55D-53.5, and cash. (Ord. No. 98-1149 § 1)

*Major Site Plan* shall mean all site plans not classified as minor site plans.

*Major Subdivision* shall mean any subdivision which is not classified as a minor subdivision.

*Manufacture, Light* shall mean a use engaged in the production of finished products or parts from previously prepared materials including processing, assembly, treatment, packaging, and incidental storage and distribution of such products. (Ord. No. 96-1057)

*Master Plan* shall mean a composite of one (1) or more written or graphic proposals for the development of the municipality as set forth in and adopted pursuant to Article 6 of this chapter.

*Minor Site Plan* shall mean a development plan of one (1) or more lots, not located in a Riparian Yard, and not exceeding one (1) acre in size or, having buildings with aggregate floor areas in excess of five thousand (5,000) square feet, and complying with the requirements enumerated in Article 9 of this chapter. A minor site plan does not involve:

- a. A planned development;
- b. Any new street; or
- c. Extension of any off-tract improvement which is to be prorated pursuant to N.J.S.A. 40:55D-42.

*Minor Subdivision* shall mean a subdivision of land for the creation of no more than four (4) lots provided that such subdivision does not involve:

- a. A planned development;
  - b. Any new street;
  - c. The extension of any off-tract improvement, the cost of which is to be prorated pursuant to N.J.S.A. 40:55D-42; or
  - d. Land subdivided within the last five (5) years.
- (Ord. No. 2001-1258)

*Moderate Income* shall mean total gross household income between fifty (50%) percent and eighty (80%) percent of the median household income for households of the same size for the region which includes Bernardsville, using the median income data for household size prepared by HUD.

*Municipal Agency* shall mean the Borough Planning Board or Board of Adjustment, or Borough Council when acting pursuant to this chapter and any agency created consistent with this chapter that is acting pursuant to this chapter.

*Municipal Resident* shall mean a person who is domiciled in the Borough of Bernardsville. (Ord. No. 98-1149 § 1)

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

*Nonconforming Structure* shall mean a structure the size, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

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

*Nursing Home Facility* shall mean an extended or intermediate care facility licensed by the New Jersey Department of Health to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves or as defined by the New Jersey Department of Health, also known as skilled nursing home facility. (Ord. No. 2003-1323 § 1)

*Official Map* shall mean a map adopted by ordinance pursuant to Article 8 of this chapter.

*Offsite* shall mean located outside the lot lines of the lot in question but within the property, of which the lot is a part, which is the subject of a development application or the closest half of the street or right-of-way abutting the property of which the lot is a part. (Ord. No. 98-1149 § 1)

*Off-tract* shall mean not located on the property which is the subject of a development application nor on the closest half of the abutting street or right-of-way. (Ord. No. 98-1149 § 1)

*Onsite* shall mean located on the lot in question and excluding any abutting street or right-of-way. (Ord. No. 98-1149 § 1)

*On-tract* shall mean located on the property which is the subject of a development application or on the closest half of an abutting street or right-of-way. (Ord. No. 98-1149 § 1)

*Open Space/Conservation* shall mean any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space, provided that such areas may be improved with only those structures, off-street parking and other improvements that are designed to be incidental to the natural openness of the land.

*Open Space Residential Zoning* (Repealed by Ord. No. 10-1532 §1)

*Owner* shall mean any person, partnership or corporation or other legal entity having sufficient proprietary interest in the land to permit its development, but must have a fee-simple ownership of the land before development commences.

*Parking Area* shall mean an open area other than a street or other public way, used for the parking of motor vehicles and available for public use whether for a fee or as a service or privilege for clients, customers, suppliers or residents.

*Parking Space* shall mean accommodation for the off-street parking of a motor vehicle, having an area and dimensions exclusive of access drives and aisles, as hereinafter specified in this chapter.

*Party Immediately Concerned* shall mean for purposes of notice any applicant for development, the owners of the subject property and all owners of property and government agencies entitled to notice under Article 4.

*Performance Guarantee* shall mean any security, which may be accepted by the Borough, including but not limited to surety bonds, letters of credit under the circumstances specified in N.J.S.A. 40:55D-53.5, and cash. (Ord. No. 98-1149 § 1)

*Planning Board* shall mean the Planning Board of the Borough.

*Plat* shall mean a map or maps of a subdivision or site plan.

*Portable Sign* shall mean any sign not permanently attached to the ground or to a building and which is readily and easily movable from one (1) location to another.

*Preliminary Approval* shall mean the conferral of certain rights pursuant to this chapter prior to Final Approval after specific elements of a development plan have been agreed upon by the Approving Authority and the applicant.

*Preliminary Floor Plans and Elevations* shall mean architectural drawings prepared during early and introductory stages of the design of a project illustrating in a schematic form, its scope, scale and relationship to its site and immediate environs.

*Preliminary Plat* shall mean the preliminary map indicating the proposed layout of a development which is submitted for consideration and Preliminary Approval, and which map meets requirements of Articles 9 and 10 of this chapter.

*Principal or Main Use* shall mean the primary or predominant use of the premises.

*Private Country Lane* shall mean a private common accessway for more than one (1) but not more than four (4) single family dwelling units or four (4) single family properties. (Ord. No. 07-1477 § 2)

*Private Garage* shall mean a detached accessory building or portion of a main building used only for the storage of a passenger vehicle or vehicles as allowed in Article 12.

*Private Roads* shall mean those minor roads other than a driveway or a dedicated public street that provide access to and frontage for lots that do not abut a dedicated public street. A private road shall be labeled upon any subdivision plat, showing the same, and shall be marked "Dedicated for Road Purposes."

*Professional Uses* shall mean the offices or studios of the following professional persons: physician, surgeon, dentist, osteopath, engineer, teacher, artist, musician, lawyer, architect and other professions as determined by the Approving Authority to be similar in character.

*Public Areas* shall mean (1) public parks, playgrounds, trails, paths and other recreational areas; (2) other public open spaces; (3) scenic and historic sites; and (4) sites for schools and other public buildings and structures.

*Public Garage* shall mean a motor vehicle repair shop, motor vehicle service or filling station, motor vehicle storage garage or other building, premises or land upon which a business, service or industry involving the storage, maintenance, repair or servicing of motor vehicles is conducted or rendered.

*Public View* shall mean visible from a public thoroughfare, sidewalk, public lands or buildings. (Ord. No. 2003-1307 § 1)

*Recreational Instruction Studio* shall mean and include yoga, exercise, martial arts, personal training and similar studios. Retail sales of goods directly related to the instructional emphasis on-site may be provided in conjunction with the principal recreational instruction use. (Ord. No. 2013-1623 § 1)

*Recreational Vehicle* shall mean a vehicle without permanent foundation that can be towed, hauled or driven and primarily designed for recreational, camping and travel use, and including:

- a. *Boats and Trailers* shall mean and include any type of boat, float or raft, plus the normal equipment to transport the same on the public highway.
- b. *Camp Trailer or Folding Tent Trailer* shall mean a vehicular, portable structure built on a chassis or metal-walled body unit, mounted on wheels with a superstructure made, in part or in whole, of canvas and metal frame and designed for travel, recreational and vacation uses.
- c. *Motorized Home* shall mean a portable dwelling designed and constructed as an integral part of a self-propelled vehicle.
- d. *Pickup Camper* shall mean a structure designed primarily to be mounted on a pickup or truck and with sufficient equipment to render it suitable for a temporary dwelling for travel, recreational or vacation uses.
- e. *Travel Trailer* shall mean a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational or vacation uses.
- f. *Utility Trailer* shall mean a vehicle drawn by another vehicle and shall exclude trailers otherwise defined as recreational vehicles.

(Ord. No. 2015-1701 § 1)

*Restaurant* shall mean any establishment, where food and drink are prepared and served. Restaurant shall include café, bar and tavern. (Ord. No. 2014-1654 § 1)

*Resubdivision* shall mean (1) the further subdivision or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law or (2) the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, but does not include conveyances so as to combine existing lots by deed or other instrument. (Ord. No. 98-1149 § 1)

*Riparian Yard* shall mean the watercourse, the flood hazard area and a contiguous area that buffers the watercourse of the floodplain thereof from abnormal fluctuations in discharge and burdens of foreign substances and which is delineated in Article 14 of this chapter.

*Roof Sign* shall mean a sign erected above or on the roof of a building any part of which extends more than six (6) inches above the facade of a building.

*School* shall mean any structure, facility or building used wholly, or in part, for educational purposes as a public or private institution that meets the New Jersey requirements for early childhood, elementary or secondary education. (Ord. No. 2014-1669 § 1)

*Search Area* shall mean that geographic area (which may or may not extend beyond municipal boundary lines) within which wireless telecommunications facilities are required to provide reliable and adequate coverage consistent with the licensing requirements of the Federal Communications Commission (FCC). (Ord. No. 2003-1307 § 1)

*Sedimentation* shall mean the deposition of soil that has been transported from its site or origin by water, ice, wind, gravity or other natural means as a product of erosion.

*Self-Storage* shall mean a structure containing separate storage spaces of varying sizes leased or rented on an individual basis. Outdoor storage is not permitted. (Ord. No. 96-1057)

*Senior citizen* shall mean person fifty-five (55) years old or older, or as defined by the New Jersey State Department of Health. (Ord. No. 2003-1323 § 1)

*Setback Line* shall mean a line parallel to the property line established by applying the minimum yard restrictions set forth in this chapter.

*Sidewalk Sales* shall mean sales permitted in the B-1 Business District, C-1 Commercial District and Highway Development District on days designated by the Governing Body consisting of goods and merchandise sold in the ordinary course of business by business establishments on the sidewalk immediately in front of or adjacent to the establishments or within marked areas of a parking yard or lot contiguous and accessory to the business establishments adjacent thereto.

*Sight-Rights* shall mean the right or easement to control lands, required to safeguard the public against dangerous or hazardous conditions due to visual obstructions.

*Sign* shall mean any sign, billboard, ground sign, roof sign, sign printed or affixed on the exterior surface of a building or structure, illuminated sign, temporary sign awning, pennant, banner, canopy or other device which is used as, or which is in the nature of an announcement, declaration, demonstration, display graphics, artwork, illustration or insignia to identify, advertise or promote the interest of any person or product when the same is placed out of doors in view of the general public. All signs, except those permitted in Residential zone districts, shall be regarded as and be buildings or structures within the meaning and intent of this chapter. (Ord. No. 581 § 1-3.2; Ord. No. 890 § 1)

*Sign Area* shall mean the total square foot content of the background upon which the lettering or display is presented. If there is no background, the sign area shall be computed as the product of the largest horizontal width and largest vertical height of the lettering or display. This shall not be construed to include supporting members of any sign which are used solely for such purpose. For signs with two (2) display faces, the maximum area requirements shall be permitted on each side.

*Sign, Business* shall mean a sign which directs attention to a business, commodity, service or other activity conducted, sold or offered upon the premises where such sign is located.

*Silhouette Sign* shall mean a sign consisting of an image, outline, form, wording or lettering, but having no background or display surface.

*Single Ownership* shall mean ownership by one (1) person or by two (2) or more persons whether jointly, as tenants by the entirety, or as tenants in common, of a separate parcel of real property not adjacent to land in the same ownership.

*Site Plan* shall mean a development plan of one (1) or more lots on which is shown (1) the existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, flood plains, marshes and waterway, (2) the location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting, screening devices, and (3) any other information that may be reasonably required for the Approving Authority to make an informed determination of the suitability of the proposed completed site, pursuant to Article 9 of this chapter.

*Slope-rights* shall mean the right or easement to control lands, required to safeguard the public against dangerous or hazardous conditions due to excessive gradients.

*Solid Waste Transfer Station* shall mean a facility for the temporary storage of trash, garbage and other unwanted or discarded material awaiting transportation to other locations for permanent disposition.

*Stages or Sections* shall mean a development procedure whereby a large tract to be developed over a long period of time may be developed in a partial, but orderly manner.

*Standards of Performance* shall mean standards (1) adopted by ordinance regulating noise levels, glare, earthborne or sonic vibration, heat, electronic or atomic



radiation, noxious matters, smoke and airborne particles, waste discharge, screening of unsightly objects or conditions and such other similar matters as may be reasonably required by the Borough or (2) required by applicable federal or state laws or municipal ordinances.

*Story Above Grade*, or *Story* shall mean that portion of a building between the finished surface of any floor and the finished surface of the floor next above it, if there is one, else the ceiling next above it; provided that the finished surface of the floor of that portion is entirely above grade, or that the finished surface of the floor next above (or if there is no floor above, the ceiling next above) is:

- a. More than six (6) feet above grade plane;
  - b. More than six (6) feet above the finished ground level for more than fifty (50%) percent of the total building perimeter; or
  - c. More than twelve (12) feet above the finished ground level at any one point.
- (Ord. No. 2002-1282 §§ 7, 8, Ord. No. 2004-1353 § 1)

*Street* shall mean any street, avenue, boulevard, road, lane, alley, parkway, viaduct, drive or other way (1) which is an existing state, county or municipal roadway, or (2) which is shown upon a plat heretofore approved pursuant to law, or (3) which is approved by official action as provided by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., or (4) which is shown on a plat duly filed and recorded in the Office of the County Recording Officer prior to the appointment of a Planning Board and the grant to such board of the power to review plats; and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas within the street lines.

*Structure* shall mean a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

*Subdivider* shall mean any person, partnership, corporation, or other legal entity commencing proceedings under this chapter to effect a subdivision of land hereunder for himself or for another.

*Subdivision* shall mean the subdivision of a lot, tract or parcel of land into two (2) or more lots, tracts, parcels or other divisions of land for sale or development, the following are not to be considered subdivisions within the meaning of this chapter, if no new streets are created:

- a. Divisions of land found by the Planning Board or the Subdivision and Site Plan Review Committee to be for agricultural purposes where all resulting parcels are five (5) acres or larger in size;
- b. Divisions of property by testamentary or intestate provisions;
- c. Divisions of property by court order, including but not limited to judgments of foreclosure;
- d. Consolidation of existing lots by deed or other recorded instrument;
- e. The conveyance of one (1) or more adjoining lots, tracts or parcels of land owned by the same person or persons and all of which are found and certified by the administrative officer to conform to the requirements of this chapter and are shown and designated as separate lots, tracts or parcels on the tax map or atlas of the Borough. The term "subdivision" shall also include the term "re-subdivision."

*Subdivision and Site Plan Review Committee* shall mean a committee of at least three (3) Planning Board members appointed by the Chairman of the Board for the purpose of classifying subdivisions in accordance with the provisions of this chapter, and having such other duties relating to land subdivisions, and preliminary reviews as may be conferred on the committee by the Board.

*Temporary Sign* shall mean a sign constructed of light material design or intended to be displayed for a short period of time.

*Townhouse* shall mean a building designed for or occupied exclusively by one (1) family and attached to other similar buildings or structures by party walls extending from the foundation to the roof and providing two (2) direct means of access from the outside. For the purpose of this chapter, a townhouse may include a building in fee simple, condominium or cooperative ownership or any combination thereof.

*Trailer* shall mean a vehicle used, or so constructed as to permit its being used as a licensed conveyance upon the public streets or highways and constructed in such manner as will permit occupancy as a dwelling or sleeping place for one (1) or more persons.

*Transcript* shall mean the typed or printed verbatim record of the proceedings or reproduction thereof.

*Unit* shall mean a room containing not more than two (2) beds, a bathroom and any other facilities required by the New Jersey State Department of Health. (Ord. No. 2003-1323 § 1)

*Use* shall mean the purpose for which land, a structure or a building is designed, arranged or intended or for which it is or may be occupied or maintained.

*Variance* shall mean departure from the literal requirements of these development regulations pursuant to Statutes and municipal ordinances.

*Wall Sign* shall mean any sign attached to, painted upon, or erected against the wall or facade of a building or structure.

*Watercourse* shall mean any stream, channel, lake, or pond delineated on the flood map as "watercourses," or any normally wet area contiguous thereto.

*Window Sign* shall mean a sign maintained in or painted upon a window which is clearly visible to the general public from an out-of-doors position.

*Wireless Telecommunications Antenna* shall mean panels, whips or similar apparatus, except satellite dishes that transmit or receive radio frequency signals, digital signals, analog signal, or electromagnetic waves for wireless communications. (Ord. No. 2003-1307 § 1)

*Wireless Telecommunications Carrier ("Carrier")* shall mean a company licensed by the FCC to provide cellular or personal wireless facilities to their franchise region. (Ord. No. 2003-1307 § 1)

*Wireless Telecommunications Equipment Compound* shall mean an area which houses any combination of wireless telecommunications structures, buildings, and equipment. (Ord. No. 2003-1307 § 1)

*Wireless Telecommunications Tower* shall mean a freestanding vertical structure used to support wireless telecommunications antennas. (Ord. No. 2003-1307 § 1)

*Workshop* shall mean an in-building workplace in which work is carried on. (Ord. No. 2005-1376 § 2)

*Yards* shall mean:

- a. *Front Yard* shall mean an open, unoccupied space, unless occupied by a use as hereinafter specifically permitted, extending across the full width of the lot and lying between the front lot line and the nearest line of the building, including porches, but excluding steps, bay windows, or ornamental features.
- b. *Side Yard* shall mean an open unoccupied space, unless occupied by a use as hereinafter specifically permitted, extending from the front yard to the rear yard on the same lot with the building, between the building and the side lot line, including porches, but excluding steps, bay windows, or ornamental features.
- c. *Rear Yard* shall mean a space unoccupied, except by an accessory use or building as hereinafter specifically permitted, extending across the full width of the lot between the rear lot line and the nearest line of any building, other than an accessory building, and including porches, but excluding steps, bay windows, or ornamental features.

*Zoning Map* shall mean the zoning map for the Borough together with all amendments subsequently adopted.

*Zoning Official* shall mean the officer or other designated authority charged with the administration and enforcement of this chapter.

(Ord. No. 581 § 1-3.2 as amended; Ord. No. 2015-1699 § 1; Ord. No. 2015-1701 § 1; Ord. No. 2018-1779)

