

LAND DEVELOPMENT ORDINANCE
BOROUGH OF ELMER
SALEM COUNTY, NEW JERSEY

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BOROUGH OF ELMER

SALEM COUNTY, NEW JERSEY

Ordinance No.

CHAPTER I - TITLE AND PURPOSE

ARTICLE I - TITLE

Section 1.1 Title

A comprehensive Ordinance regulating and limiting the uses of land and the uses and locations of buildings and structures; regulating and restricting the height and bulk of buildings and structures and determining the area of yards and other open spaces; regulating and restricting the density of population; dividing the Borough of Elmer into districts for such purposes; adopting a map of said Borough and the classification of such districts; establishing rules, regulations, and standards governing the subdivision and site planning of land within the Borough; establishing a Planning Board and Board of Adjustment; and prescribing penalties for the violation of its provisions.

Section 1.2 Short Title

This Ordinance shall be known and may be cited as the "Land Development Ordinance of the Borough of Elmer".

ARTICLE II - PURPOSE

Section 1.3 Purposes Enumerated

It is the general purpose of the Ordinance to encourage and guide the appropriate use and development of all land and natural resources within the Borough of Elmer in a manner which will promote the health, safety, morals, and general welfare of the community and which will further the following related and more specific objectives;

1. To guide and regulate the orderly growth and development of the Borough in accordance with a comprehensive plan.
2. To ensure that the development of the Borough of Elmer does not conflict with the development and general welfare of neighboring municipalities, the County and State as a whole.
3. To promote the establishment of appropriate population densities and concentrations that will contribute to the well being of the community and the preservation and conservation of the natural environment and natural resources.

4. To protect the established character and the social and economic well being of the community.
5. To provide sufficient space to appropriate locations for a variety of land uses according to their respective environmental requirements.
6. To promote the conservation of open space, prime agricultural lands, and other valuable natural resources and to prevent environmental degradation through the improper use of land.
7. To encourage the location and design of safe and efficient transportation routes which will promote the free flow of traffic and pedestrians.
8. To promote a desirable and attractive visual environment through creative development techniques and good community design.
9. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies.

ARTICLE III - DEFINITIONS

Section 1.4. Intent

- A. For the purposes of this Ordinance, the following rules of construction shall apply:
 1. The word "person" includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual.
 2. Words used in the singular include the plural and vice versa.
 3. Any word tense includes every tense of the word.
 4. The word "shall" is mandatory, the word "may" is permissive.
 5. The word "used" and "occupies" includes the words "designed, intended, or arranged to be" used or occupied.
 6. The words "building" includes the words "structure", "dwelling" or "residence" and includes "or any part thereof".
 7. The word "lot" includes the words "plot", "premises", and "tract".
 8. The word "zone" includes district and vice versa.

- B. Whenever a term is used in the Ordinance which is defined in N.J.S.A. 40:55D-1 et. Seq. such term is intended to have the meaning as defined in said statute, unless specifically defined to the contrary in this Ordinance.
- C. Any word or term not defined herein shall be used with a meaning of standard usage.

Section 1.5 Words and Phrases Defined

Unless otherwise stated in context, the words and phrases set forth in the following paragraphs shall have the meaning therein indicated:

Accessory Building, Structure or Use: A use or structure located on the same lot as a principal use or structure and which is customarily incidental and subordinate to the principal use or structure.

Administrative Officer: The Zoning Officer of the Borough of Elmer.

Adverse Effect: Conditions or situations creating, imposing, aggravating or leading to impractical, unsafe or unsatisfactory conditions on a subdivided property or off-tract property such as, but not limited to, improper circulation and drainage rights of way, inadequate drainage facilities, insufficient street widths, unsuitable street grades, unsuitable street locations to accommodate prospective traffic or coordinate and compose a convenient system, locating lots in manner not acceptable for the intended purposes without danger to health or safety, providing for lots of insufficient size, and neither providing nor making future allowance for access to the interior portion of the lot or for other facilities required by this Ordinance.

Agricultural Purposes: Farming and related pursuits not including the erection, alteration, enlargement, or reconstruction of a structure for residential occupancy.

Alterations or Additions, Structural: Any change in or additions to the supporting members of a building such as walls, beams, columns, guides, posts or piers.

Application for Development: The application or appeal forms and all accompanying documents required by this Ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit pursuant to N.J.S.A. 40:55D-34 or N.J.S.A. 40:55D-36.

Approving Authority: The Borough of Elmer Planning Board, unless a different Agency is designated by ordinance when acting pursuant to the authority of N.J.S.A. 40:55D-1 et

seq.

Basement: A story of a building that is partly underground which has more than one-half (1/2) its interior height measured from the floor to finished ceiling, below the average finished grade of the ground adjoining the building.

Bedroom: A room planned, designated, or used primarily for sleeping.

Building: Any structure or extension thereof or addition thereto having a roof supported by such things as columns, posts, piers, or walls which is permanently affixed to the land and intended for the shelter, business, housing, or enclosing of persons, animals, or property.

Building Area: The aggregate area occupied by all buildings on a lot as measured on a horizontal plane around the periphery of the facades and including the area under the roof of any structure not having walls.

Building Height: The vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest point of ceiling of the top story in the case of a flat roof; to the deck line of a mansard roof and to the average height between the plate and ridge of a gable, hip, or gambrel roof.

Building Setback Line: The line parallel to the street at a distance therefrom equal to the depth of the front yard required for the district under consideration.

Certificate of Occupancy: A document which shall be deemed to authorize and be required for each occupancy and use of the building or the land to which it applies, and shall continue in effect only so long as such building and the use thereof and the use of the land is in full conformity with the provisions of this Ordinance and any requirements made pursuant thereto.

Channel: The identifiable bed and banks of a stream which convey a normal, constant or intermittent flow of a stream.

Club: Any organization catering exclusively to members and their guests or any organization for religious, vocational, civic or recreational purposes which is not conducted for financial gain.

Cluster Development: An area to be developed as a single entity according to a plan containing detached, single-family residential housing units which have a common public space area as an appurtenance and in accordance with the provisions of this Ordinance.

Common Open Space: An open space area within or related to

a site designated as a development, and designed or 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.

Conditional Use: A use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for location or operation of such use contained in this Ordinance, and upon the issuance of an authorization thereof by the Planning Board.

Coverage:: That percentage of the plot or lot area covered by all buildings and impervious materials. Any area of a lot covered with porous materials will not be included in the calculation of coverage.

Density, Gross: The number of dwelling units per acre of gross area of site.

Development: The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure; any mining, excavation or land-fill; any use or change in the use of any building or other structure or land; or the extension of use of land for which permission may be required pursuant to N.J.S.A. 40:550-1 et. seq.

Drainage Easement: A limited property right assigned by deed or other legal means permitting the use of a specified area for the installation and maintenance of storm water sewers or drainage ditches, or the restriction of areas 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.

Dwelling: A building designed or used primarily for family residence. The word "dwelling" shall not include boarding or rooming houses, hotels, motels or other structures designed or used for transient purposes.

Dwelling, Multiple Family: A building containing two or more dwelling units in accordance with the provisions of this Ordinance.

Dwelling, Single Family: A detached building used for one dwelling unit only.

Erosion: The detachment and movement of soil or rock fragments by water, ice and gravity.

Essential Service: Structures and physical improvements, whether publicly or privately owned, necessary to permit the

orderly development of an area, including such facilities as streets, water, sewerage, gas, telephone and electric lines; supporting structures such as manholes, catch basins, pumping stations, solid waste collection stations; transformer stations and utility poles; but not including generating or storage plants; processing stations, maintenance yards or administration headquarter facilities.

Family: Any number of persons living together in a single dwelling unit but not including more than six (6) persons unrelated by blood, marriage, or adoption.

Fence or Wall; a structure which permanently or temporarily prohibits or inhibits unrestricted travel between properties or portions of properties or between the street or public right-of-way and a property.

Flood Plain: The area adjoining any natural stream and including any water or drainage course or body of water subject to periodic flooding or overflow.

Floodway: Any portion of a flood plain lying within fifty (50) feet of the adjacent channel edge of a natural stream or within twenty-five (25) feet from the edge of a lake or center line of any watercourse other than a natural stream.

Floor Area, Gross: The sum of the horizontal areas of the several floors of a building, excluding basement space, but including the area of permanently roofed porches and terraces. All dimensions shall be measured from the outside face of exterior walls or from the centerline of a party or common wall.

Floor Area, Gross Habitable: The portion of gross floor area assigned for human habitation and fully enclosed by the inside surfaces of walls, windows, doors, and partitions; having a head room of at least six (6) feet, six (6) inches; including living, eating, cooking and other household space but excluding garages, carports, porches, unheated sheds and basements. Attics or portions thereof may be considered habitable floor area provided they are fully finished and meet the proper height requirements.

Garage: A freestanding or attached building or an area included in the principal building for utilization in the storage and maintenance of one or more motor vehicles.

Garden Apartment: A multiple family dwelling structure not more than two (2) rooms in depth, or two and one-half (2 1/2) stories in height, designed as part of a residential project under single management, providing joint or common use of open areas by occupants, whether for recreation, parking or other purposes.

Gasoline Service Stations; any area of land, including the

structure thereon, used for the retail sale of petroleum products or sale of motor vehicle accessories and services.

Historic Site: Any building, structure, area or property that is significant in the history, architecture, archeology or culture of the nation, state or community and listed as such in the Borough Master Plan.

Home Occupation: An occupation or profession which is clearly incidental to the use of the lot and dwelling for residential purposes and which complies with the standards and requirements of the Zoning Chapter.

Impervious Materials: Materials that do not permit the natural absorption and permeation of soils by rain or other surface water including but not limited to concrete, asphalt, chemical treatment of soils or artificial ground covering.

Impervious Materials Coverage: That percentage of a lot or site covered by impervious materials which shall include facilities such as swimming pools, tennis courts and other recreational courts, as well as roads, walkways, patio, driveways, and parking areas.

Interested Party: 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 Borough development regulations or whose right to use, acquire, or enjoy property under said regulations has been denied, violated or infringed upon by any action or failure to act.

Kennel: Any building or land parcel used for the commercial keeping of dogs, and/or other household pets. The keeping of more than ten (10) such adult animals on any one property shall be deemed to constitute a kennel.

Loading Space: An off-street space not less than twelve (12) feet in width, sixty (60) feet in length, and with fifteen (15) feet of vertical clearance available for the loading or unloading of trucks.

Lot: 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.

Lot Area: The area contained within the lot lines of a lot, excluding any portions of a street right-of-way.

Lot, Corner: A lot on the junction of two or more intersecting streets where the interior angles of intersection does not exceed 135 degrees. Each corner lot shall have two (2) front yards, one (1) side yard, and one (1) rear yard.

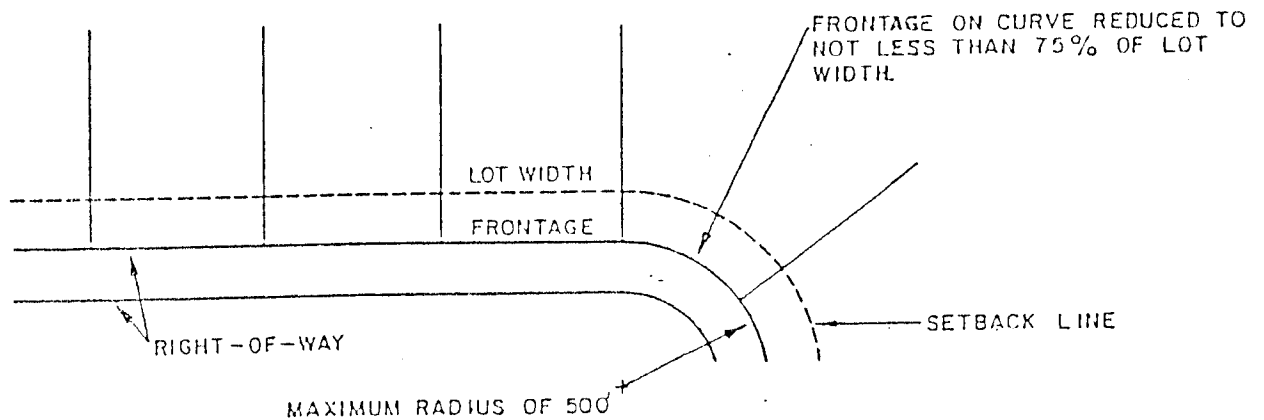
Lot Depth: The mean horizontal distance between the front and rear lot lines measured in the general direction of the side lot lines.

Lot Frontage: The horizontal distance between side lot lines measured along the street line. The minimum lot frontage shall be the same as the lot width except that on curved alignments with an outside radius of less than five hundred (500) feet, the minimum distance between the side lot lines measured at the street line shall not be less than seventy-five (75) percent of the required lot width. In the case of a corner lot, either street frontage which meets the minimum frontage required for that zone may be considered the lot frontage.

LOT FRONTAGE

LOT WIDTH

SCALE: 1" = 200'



Lot Line - Front: The right of way of the street or road on which the lot fronts or abuts.

Lot Line - Rear: a lot line other than a street line which is the furthest lot line from the street.

Lot Line - Side: Any lot line other than a front or rear lot line.

Lot Width: The horizontal distance between side lot lines measured at the building setback line.

Maintenance Guarantee: Any security, other than cash, which

may be accepted by the municipality for the maintenance of any improvement pursuant to the provisions of this Ordinance.

Major Subdivision: Any division of land not classified as a minor subdivision.

Master Plan A composite of the mapped and written proposals recommending the physical development growth policy of the municipality which have been duly adopted by the Planning Board.

Migrant Labor Housing: Any farm building other than a principal dwelling, which complies with state migrant housing laws and this Ordinance, used for temporary residence by farm laborers during the growing season.

Minor Subdivision: A subdivision of land that does not involve (1) the creation of more than two lots, in addition to any one retained parcel, (2) planned development, (3) any new street, or (4) the extension of any off-tract improvement. In counting lots to determine whether or not a proposed subdivision is a minor subdivision, the following lots shall be counted:

- a. All lots to be created by the proposed subdivision.
- b. All lot(s) in excess of one that are to be retained by the subdivider.
- c. No lots shall be counted twice and in case of resubdivision, any lot eliminated or replaced shall be deducted.
- d. All lots created by prior subdivision out of the original parcel within the last six (6) years.

Non-Conforming lot, Structure, or Use: A lot, of which the area, dimension, or location; or a structure of which the size, dimension or lot location; or, an activity of use upon a lot or within a structure which was lawful prior to the adoption, revision, or amendment of this Ordinance, but which fails to conform to the requirements of the zoning district in which it is located.

Off-Site: 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 located on a continuous portion of a street or right-of-way.

Off-Tract: Not located on the property which is the subject of a development application or on a contiguous portion of a street or right-of-way.

On-Site; Located on the lot in question.

On-Tract: Located on the property which is the subject of a development application or on a contiguous portion of a street or right-of-way.

Open Space: 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 such open space, and provided that improvement shall be limited to those buildings, structures, streets, off-street parking and other improvements that are designed to be incidental to the natural openness of the land.

Parking, Off-Street: A space off the street right-of-way, which, exclusive of driveways and aisles giving access thereto, is not less than ten (10) feet wide and twenty (20) feet long if in an enclosed garage, or not less than eight and one-half (8 1/2) feet wide by nineteen (19) feet long if in the open and which is available and accessible for the parking of a motor vehicle.

Performance Guarantee: Any security which may be accepted by the municipality pursuant to this Ordinance, and provided that not more than ten (10) percent of the total performance guarantee shall be required in cash.

Permitted Use: Any use of land or buildings as permitted by this Ordinance.

Planned Development:

Planned Residential Development: (see Cluster Development)

Planned Commercial Development: An area of a minimum contiguous acreage as specified by the Zoning Chapter to be developed according to a plan as a single entity containing one (1) or more structures with appurtenant common areas to accommodate commercial or office uses, or both and meeting the other standards specified in this Ordinance.

Planned Industrial Development: An area of a minimum contiguous acreage as defined by the Zoning Chapter to be developed according to a plan as a single entity containing one (1) or more structures with appurtenant common areas to accommodate industrial uses and any other uses incidental to the predominant uses as may be permitted by this Ordinance.

Planning Board: The established Planning Board of the Borough of Elmer.

Plat: A map or maps of a subdivision or site plan and is used interchangeably with "plan" in the Ordinance.

Preliminary Approval: The conferral of certain rights pursuant to the provisions of this Ordinance prior to final approval after specific elements of a development plan have

been agreed upon by the Planning Board and the applicant.

Principal Use; the main purpose for which a lot or building is used.

Restaurant: Any establishment, however designed, at which food is sold for consumption on the premises. However, a snack bar or a refreshment stand at a public or community swimming pool, playground, playfield or park operated solely by the agency or group operating recreational facilities and for the convenience of the patrons shall not be deemed to be a "restaurant". "Restaurant" does not include take-out or drive-in establishments which permit the consumption of food within motor vehicles.

Resubdivision: Either the further division or relocation of lot lines of any lots within a subdivision previously made and approved or recorded according to law, or the alteration of any street 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. The designation of a subdivision as a "resubdivision" shall be determined on the basis of the tract or parcel of land affected without regard to any change in ownership.

Reverse Frontage: The provision in the design of a land development allowing for lots adjacent to an abutting existing road to front on an internal street, without any direct access from the adjacent lots to the existing road. (See Plate 5)

Right-of-Way Lines: The boundary lines of land used or intended for use as streets and utilities and from which setbacks or front yard depths and lot depths shall be measured. Where existing records are vague or show a lesser dimension, they shall be considered to be not less than fifty (50) feet apart, twenty-five (25) feet from the center line thereof.

Roadside Stand: A permanent structure together with its surrounding display area and supporting off-street parking area designed for the retail sale of farm produce and located as an accessory use in accordance with the provisions of this Ordinance. The intermittent sale of homegrown produce as an accessory use not involving a building or structure, not occupying more than three hundred (300) feet and not creating any undue traffic hazards shall not be deemed to constitute a "roadside stand".

Shopping Center: A group of commercial establishments built on one tract that is planned and developed as an operating unit, it provides on-site parking in definite relationship to the type and total size of the stores. The commercial establishments may be located in one or several buildings,

attached or separated.

Right Triangle Easement: A triangular shaped area at the intersection of two roads established in accordance with the requirements of this Ordinance in which visual obstructions are permitted in order to promote traffic study. (see Plates 7, 8, 9, 10)

Sign: Any building or structure or portion thereof on which any announcement, declaration, demonstration, display, illustration or insignia used to identify, advertise or promote the interest of any person, business, or product when the same is placed in view of the general public.

Site Plan: A development plan of one 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, floodplains, marshes, and waterways, (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 and screening devices, and (3) any other information that may be reasonably required in order to make an informed determination concerning the adequacy of the plan in accordance with the requirements of this Ordinance.

Story: That portion of a building included between the surface of any floor and the ceiling above it, provided that there is a clear headroom of six (6) feet six (6) inches or more.

Street: Any street, avenue, boulevard, road, parkway, drive, or other way which (1) is an existing state, county or municipal roadway, or (2) is shown on a plat heretofore approved pursuant to law; or (3) is approved by official action as provided by N.J.S.A. 40:55D-1 et. seq. or (4) is shown on a plat duly filed and recorded in the office of the County Clerk prior to the appointment of the Planning Board and the grant to the board of the power to review plats. The term "street" includes the land between street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, sidewalks, parking areas and other areas within the street lines. Streets and roads in the Borough are classified according to their function as follows:

- A. Minor Arterial - A highway serving regional traffic movement so its primary purposes and only abutting property as a matter of course. The design of this highway is intended to be superior to any of the other listed classes to ensure maximum efficiency and safety in the movement of regional traffic.
- B. County Major Collector - A County road of primary importance which is designed to supplement the arterial network. The purpose is to serve both regional and

County needs by collecting local traffic and leading it to arterials and abutting property only as a matter of course. To maintain and improve the efficiency of the route, the design is superior to other County roads and all access is to be strictly controlled.

C. County Minor Collector - A County road of secondary importance which is designed to collect concentrated residential traffic and lead it to major collectors or the arterial network. Minor collectors complete the important County collector road network. The access and design of these roads are to be controlled to maintain the integrity of the County road system.

D. County - Local Road or Borough Collector - A County road which serves only local purposes is defined as a County - Local Road and is intended to be designed and treated as a Borough through road. Both of these types of roads should be designed and are intended to provide access to adjacent property and to channel traffic from minor streets to the County collector system. Direct access from abutting land would be permitted in minor development provided the proposed design of the roads is maintained.

E. Minor Street - All minor streets are designed and intended to serve abutting property as their primary purpose and to discourage all other traffic not generated by the development. Types of minor streets are as follows:

1. Marginal Service Street - An internal street running along the edge of a land development, allowing for several lots to have access to an adjoining existing road via a common access point defined by a buffer strip between the internal street and the adjoining existing road. (see Plates 2, 3, 4)
2. Cul-de-Sac - A minor land service street closed at one end, being no more than 75 feet in length, and having an adequate vehicle turning area at the closed end.
3. Loop Street - A through land service street serving a maximum of twenty (20) residential units which begins and ends on the same existing or proposed road.

Street Line: The right-of-way line of a street, road, or other public right-of-way used or intended for use by vehicular traffic.

Structure: Anything constructed, assembled, or erected which requires location on the ground or attachment to

something having such location on the ground including buildings, fences, tanks, towers, signs, advertising devices, and swimming pools.

Subdivision: The division 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 shall not be considered "subdivisions" within the meaning of this ordinance if no new streets are created; (1) divisions of land found by the Planning Board to be for agricultural purposes, as defined by this Ordinance, and in which all resulting parcels are five (5) acres or larger in size; (2) divisions of property by testamentary or interstate provision; (3) divisions of property upon court orders; and (4) conveyance so as to combine existing lots by deed or other instrument. The term "subdivision" shall also include the term "resubdivision". However, any readjustment of lot lines resulting in no new lots shall not be considered a subdivision nor shall require Planning Board review and approval.

Swimming Club: A public or privately owned pool open to the public on an annual membership basis, having dressing rooms, off-street parking and other appropriate accessory facilities.

Swimming Pool, Private: A non-commercial, privately owned pool constituting an accessory use to a residential unit or units and located on the same lot therewith. A wading pool with a depth of less than eighteen (18) inches located above ground level, with an area of less than one hundred twenty-five (125) square feet, temporary in character and constructed of material other than concrete or masonry shall not be deemed a swimming pool.

Two-Family Structure: Two single family dwelling units butted side to side.

Townhouse: A single family two story dwelling unit with two (2) vertical party walls shared with adjacent dwelling units, or one (1) party wall if at the end of a group of dwelling units; having direct access to the outside, provided with on-site vehicular access or parking or designed as part of a residential cluster with shared access and parking; and so laid out that each unit is susceptible to sale on an individual lot.

Borough: Borough of Elmer, Salem County, New Jersey.

Variance: Permission to depart from the literal requirements of the Zoning Chapter or other development regulations specified in this ordinance pursuant to N.J.S.A. 40:55D-1 et. seq.

Watercourse: Any land area or use either naturally formed or artificially designed for the storage, passage, retention or flow of water, including but not limited to the

following: lake, pond, canal, ditch, stream or swale.

Yard: An open space on the same lot with the principal building, unobstructed by buildings or structures, from the ground to the sky, except to fences, walls, poles and posts, or except as otherwise provided in this Ordinance.

Yard, Front: The yard extending across the entire width of the lot between the street right-of-way line and the nearest part of the principal building. the setback line shall be synonymous with the nearest limit of the required "front yard" area.

Yard, Rear: A yard extending across the rear of the lot between the inner side yard lines. Depth of a required rear yard shall be measured in such a manner that the yard established is a strip of the minimum depth required by district regulations with the setback line parallel with the rear lot line.

Yard, Side: A yard extending along the side lot line from the front yard to the rear lot line. In the case of corner lots there shall be only one side yard, adjacent to the interior lot line. Width of a required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with the setback line parallel to the side lot line.

CHAPTER II - DEVELOPMENT PROCEDURES

ARTICLE I - PLANNING BOARD

Section 2.1 Establishment: Composition

- A. There is hereby established, pursuant to N.J.S.A. 40:55D-1 et seq. in the Borough of Elmer, a Planning Board of seven (7) members consisting of the following three classes:

Class I. The Mayor

Class II. One of the officials of the municipality other than a member of the governing body to be approved by the Mayor.

Class III. One member of the governing body to be appointed by the governing body.

Class IV. Four (4) other citizens of the municipality to be appointed by the Mayor.

- B. The members of Class IV shall hold no other municipal office.

Section 2.2 Terms of Office

- A. The term of the member composing Class I shall correspond with his official tenure.
- B. The terms of the members composing Class II and Class III shall be for 1 year or terminate at the completion of their respective terms of office, whichever occurs first.
- C. The terms of all Class IV members first appointed pursuant to this Ordinance shall be so determined that to the greatest practicable extent the expiration of each term shall be distributed evenly over the first four (4) years after their appointment as determined by resolution of the governing body; provided, however, that no term of any member shall exceed four (4) years, and further provided that nothing herein shall affect the term of any present member of the Planning Board, all of whom shall continue in office until the completion of the term for which they were appointed. Thereafter, all Class IV members shall be appointed for a term of four (4) years or less, as needed to evenly distribute expiration dates as provided above.
- D. All terms shall run from January 1 of the year in which the appointment was made.

Section 2.3 Vacancies and Removal

- A. If a vacancy of any class shall occur otherwise than by expiration of term, it shall be filled by appointment as provided above for the unexpired term.
- B. Any member other than a Class I member, after a public hearing if he requests one, may be removed by the governing body for cause.

Section 2.4 Organization

The Planning Board shall elect a Chairman and Vice Chairman from the members of Class IV and select a Secretary who may be either a member of the Planning Board or a municipal employee designated by it.

Section 2.5 Experts and Staff

- A. There is hereby created the office of Planning Board solicitor. The Planning Board may annually appoint and fix the compensation of the Planning Board Solicitor who shall be an attorney other than the municipal attorney.
- B. The Planning Board may also employ or contract for the services of experts and staff as it may deem necessary. The Board shall not, however, exceed exclusive of gifts or grants, the amount appropriated by the governing body for its use.

Section 2.6 Powers and Duties Generally

- A. The Planning Board shall have the following powers and duties:
 1. To make and adopt and from time to time amend a master plan for the physical development of the municipality including any areas outside the boundaries, which in the board's judgment bear essential relation to the planning of the municipality, in accordance with the provisions of C.40:55D-28.
 2. To administer provisions of all development regulations of the municipality in accordance with the provisions of said regulations and the municipal Land Use Law of 1975, N.J.S.A. 40:55D-1 et seq.
 3. To consider and make recommendations to the governing body within thirty-five (35) days after referral as to any proposed development regulation submitted to it pursuant to the provisions of C.40:55D-26(a), and also pass upon other matters

specifically referred to the Planning Board by the governing body, pursuant to the provisions of C.40:55D-26(b).

4. to assemble data on a continuing basis as part of a continuous planning process.
5. To annually participate in the preparation and review of a municipal capital improvements program projected over a term of six (6) years and amendments thereto when requested by the governing body.
6. To participate in the preparation and review of programs or plans required by state or federal law or regulations.
7. When reviewing applications for approval of subdivision plans, site plans or conditional uses, to grant to the same extent and subject to the same restrictions as the Zoning Board of Adjustment:
 - a. Variances pursuant to subsection 57c of Chapter 291 P.L. 1975, from lot area, lot dimensional set back, and yard requirements shall not be granted for more than one lot.
 - b. Direction pursuant to section 25 of said Act for issuance of permit for building or structure in the bed of a mapped street or public drainage way, flood control basin, or public area reserved pursuant to section 23 of said Act.
 - c. Direction pursuant to section 27 of said Act for issuance of a permit for a building or structure not related to a street.

Whenever relief is requested under this subsection, the hearing notice to the development application shall include reference to the type of relief requested.

8. To perform such other advisory duties as are assigned to it by ordinance or resolution of the governing body for the aid and assistance of the governing body or other agencies or officers.
8. The Planning Board shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this Ordinance.

ARTICLE II - DEVELOPMENT REVIEW PROCEDURES

Section 2.7 Application Procedures

Any applicant for subdivision, site plan or conditional use review and approval within the jurisdiction of the Planning Board shall obtain all necessary forms from the Planning Board Secretary. Said officer shall inform the applicant of the steps to be taken in securing Planning Board action and of the board's regular meeting dates. The applicant shall submit six (6) copies of plat or plans together with a completed application form and all required accompanying documents and fees to the Planning Board Secretary at least ten (10) days prior to the next regularly scheduled meeting. The Secretary shall immediately forward a copy of the plat or plans to the Borough Engineer and such other persons as designated by the Planning Board.

Section 2.8 General Review Procedures

- A. The Planning Board shall determine on the basis of advice from the Borough Engineer and the Planning Board Secretary, that the application is complete and properly submitted and therefore subject to review or that the application is incomplete, in which case the developer shall be advised within forty-five (45) days of the initial submission as to the additional materials required. An amended application shall be submitted in the same manner as the original application.
- B. An applicant for subdivision approval may make a sketch plat submission for purposes of classification and informal discussion. If a sketch submission results in classification as a major subdivision, the application shall not be deemed to be complete until all preliminary application requirements have been met. Notwithstanding this procedure for sketch submission, nothing shall prohibit an applicant from initially submitting to the Planning Board for preliminary major subdivision approval.
- C. Whenever review or approval of the application by the County Planning board is required by Section 5 of P.L. 1968, c. 285 (c. 40:27-6.3) in the case of a subdivision, or Section 8 of P.L. 1968, c. 285 (c.40:27-6.6) in the case of a site plan, the Planning Board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required period.

Section 2.9 Minor Subdivision Approval

Minor subdivision approvals shall be granted or denied

within forty-five (45) days of the date of submission of a complete application or within such further time as may be consented to by the applicant. Said approval shall not be subject to notice requirements or a public hearing and shall be the final action of the Board which may be conditioned upon improvement provisions pursuant to N.J.S.A. 40:55d-38. Failure of the Planning Board to act within the prescribed period shall constitute minor subdivision approval. Approval of a minor subdivision shall expire 190 days from the date of Planning Board approval unless within such period, a plat in conformity with such approval and the Map Filing Law, or a deed clearly describing the approved minor subdivision is filed by the developer with the County Clerk, Borough Engineer, and Borough Tax Assessor. Any such plat or deed must be signed by the Chairman and Secretary of the Planning Board before it will be accepted for filing by the County Clerk. The zoning requirements and approval terms and conditions shall not be changed for a period of two (2) years after the date of minor subdivision approval provided the subdivision has been duly recorded.

Section 2.10 Major Subdivisions and Site Plans

A. Preliminary Approval

1. Upon submission of a complete preliminary application for subdivision of ten (10) or fewer lots or a site plan of ten (10) acres or less, the Planning Board shall grant or deny preliminary approval within forty-five (45) days of submission or within such time as may be consented to by the developer. Upon submission of a complete preliminary application for a subdivision of more than ten (10) lots, a site plan of more than ten (10) acres, or planned development application, the Planning Board shall grant or deny preliminary approval within ninety-five (95) days or within such further time as may be consented to by the developer. All such applications shall be subject to a public hearing after proper notice. Failure to act within the period prescribed shall constitute preliminary approval of the subdivision or site plan.
2. In the event, preliminary approval of a subdivision or site plan is denied because of failure to comply with municipal or regional development regulations, a notation to that effect together with the signature of the Planning Board Secretary shall be placed on the plat and reasons for the decision shall be stated in the denial resolution.
3. Preliminary approval of a major subdivision, site plan or planned development shall be granted by resolution which shall set forth any conditions

that must be met, including required performance guarantees, and plat changes that must be made precedent to final action. A notation indicating preliminary approval shall be placed on each plat and plan together with the signature of the Chairman and Secretary of the Planning Board. This preliminary approval does not authorize the recording of a subdivision or the issuance of a building permit for a site plan.

4. Preliminary approval of a subdivision plat or site plan shall confer upon the developer the following rights:
 - a. That the zoning requirements, and the general terms and conditions on which preliminary approval was granted shall not be changed for a three (3) year period from the date of preliminary approval unless modified by ordinance provisions relating to public health or safety.
 - b. That the developer may submit for final approval, on or before the expiration date of preliminary approval, the whole or a section or sections of the preliminary subdivision plat or site plan; and
 - c. That the applicant may apply for and the Planning Board may grant extensions of one (1) year or longer as provided by N.J.S.A. 40:55D-49.

B. Final Approval

1. Application for final major subdivision or site plan approval shall be granted or denied within forty-five (45) days of submission of a complete final application or within such further time as consented to by the developer. Failure of the Planning Board to act within the prescribed period shall constitute final approval.
2. Final approval of a major subdivision, site plan, or planned development shall be granted only after all requirements and conditions imposed at the time of preliminary approval have been complied with and all required easements have been submitted and approved as to content by the Borough Engineer and approved as to form by the Borough Solicitor.
3. Final approval of a major subdivision shall expire ninety-five (95) days from the date of the signing of the plat unless, within such period, a plat meeting the "Map Filing Law" and bearing the

signature of the Chairman and Secretary of the Planning Board shall have been duly filed with the County Clerk. The Planning Board may, for good cause shown, extend the period for recording for an additional period not to exceed 190 days from the date of signing of the plat.

4. Final approval of a major subdivision or site plan shall confer upon the developer the following rights:
 - a. Zoning requirements applicable to the preliminary approval first granted and all other rights conferred upon the developer in Subsection A of this Section shall not be changed for a period of two (2) years after the date of final approval; provided that in the case of a major subdivision the rights conferred by this Section shall expire if the plat has not duly and properly recorded. The Planning Board may extend such protection periods by extensions of one (1) year but not exceeding three (3) such extensions. The granting of final approval of a major subdivision or site plan terminates the time period of preliminary approval given pursuant to Subsection A of this Section for any portion granted final approval.
 - b. In the case of a subdivision or site plan of planned development or residential cluster of fifty (50) acres or more or a conventional subdivision or site plan for one hundred fifty (150) acres or more, the Planning Board may extend the period of protection as provided in N.J.S.A. 40:550-52.
5. Upon final approval, copies of the approved plat or plans shall be distributed by the Planning Board Secretary to the Planning Board files, Borough Engineer, Zoning Officer, Tax Assessor, County Planning Board, and the applicant.

Section 2.11 Conditional Use Approval

In exercising its power to grant conditional uses pursuant to N.J.S.A. 40:55d-67 and Subsection A (2) of Section 2.6 of this ordinance, the Planning Board shall grant or deny a conditional use application within ninety-five (95) days of submission of a complete application or within such further time as may be consented to by the applicant. Said application shall be subject to a public hearing after proper notice. The review of the conditional use application shall include any required site plan review within this prescribed period. Failure by the Planning Board to act within the prescribed period shall constitute

approval of the application.

Section 2.12 Ancillary Powers

Whenever the Planning Board is called upon to exercise its ancillary powers before granting approval for a variance or for the issuance of building permits as set forth in Subsection A (6) of Section 2.6 of this Ordinance, the Planning Board shall grant or deny approval of the application within ninety-five (95) days after submission by the developer of a complete application or within such further time as may be consented to by the applicant. Failure of the Planning board to act within the period prescribed shall constitute approval.

Section 2.13 Simultaneous Review and Approval

The Planning Board shall have the power to review and approve or deny conditional uses or site plans simultaneously with review for subdivision approval without the developer being required to make further application to the Planning Board, or the Planning Board being required to hold further hearings. The longest time period for action by the Planning Board whether it be for subdivision, conditional use or site plan approval shall apply. Whenever approval of a conditional use is requested by the developer pursuant to this section, notice of the hearing on the plat shall include reference to the request for such conditional use.

Section 2.14 Exception in Application Regulation

The Planning Board when acting upon application for a preliminary or minor subdivision approval or preliminary site plan approval shall have the power to grant such exceptions from the requirements for approval as may be reasonable and within the general purpose and intent of the provisions for review and approval of this ordinance, if the literal enforcement of one or more provisions of this ordinance is impractical or will exact undue hardship because of peculiar conditions pertaining to the land in question, provided such exceptions and the reasons therefore shall be recorded in the minutes.

Section 2.15 Appeals to Borough Council

An appeal from any final decision of the Planning Board may be taken to the Borough Council provided such appeal shall be taken in accordance with C. 40:550-17.

ARTICLE III - ZONING BOARD OF ADJUSTMENT

Section 2.16 Establishment, Composition

- A. A Zoning Board of Adjustment is hereby established pursuant to C. 40:550-69 et seq. consisting of seven (7) residents of the Borough of Elmer appointed by the Mayor with the approval of the Borough Council to serve

for terms of four (4) years from January 1 of the year of their appointment. The terms of the members first appointed shall be so determined that to the greatest practicable extent the expiration of such terms shall be distributed evenly over the first four (4) years after their appointment, provided that the initial term of no member shall exceed four (4) years. Nothing in this Chapter shall, however, be construed to affect the term of any present member of the Zoning Board of Adjustment, all of whom shall continue in office until the completion of the term for which they were appointed, at which time their replacement shall be appointed for a term of four (4) years or less as needed to evenly distribute expiration dates as provided above.

- B. No member of the Zoning Board of Adjustment may hold any elective office or position under the municipality.

Section 2.17 Vacancies and Removal

- A. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term only.
- B. A member may be removed by the governing body for cause, but only after a public hearing if requested by him.

Section 2.18 Organization

The Board of Adjustment shall elect a Chairman and Vice Chairman from its members and shall also select a Secretary who may be either a member of the Board or a municipal employee designated by it.

Section 2.19 Experts and Staff

- A. There is hereby created the office of Zoning Board of Adjustment Solicitor. The Board of Adjustment may annually appoint and fix the compensation of the Board of Adjustment Solicitor who shall be an attorney other than the municipal attorney.
- B. The Zoning Board of Adjustment may also employ or contract for the services of experts and staff as it may deem necessary. The Board shall not, however, exceed exclusive of gifts or grants, the amount appropriated for its use by the governing body.

Section 2.20 Powers

- A. The Zoning Board of Adjustment shall have the following powers as granted by law:
 1. Hear and decide appeals where it is alleged by the appellant that there is error in any order,

requirement, decision, or referral made by an administrative official or agency based on or made in the enforcement of the zoning ordinance. The Board may reverse or affirm, wholly or partly or may modify the order requirement, decision or determination appealed from and make such other requirement, decision or determination as ought to be made, and to that end have all the powers of the administrative officer from whom the appeal was taken.

2. Hear and decide requests for interpretation of the zoning map or ordinance as provided in the Borough of Elmer development regulations or for decisions on other special questions upon which such Board is authorized to pass by the Zoning Chapter.
3. Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property, or by reason of exceptional topographic conditions, or by reason of other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation in the zoning ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the owner of such property, to grant upon an application or an appeal relating to such property, a variance from such strict application, so as to relieve such difficulties or hardship, provided, however, that no variance shall be granted under this paragraph to allow a structure or use in a district restricted against such structure or use; and further provided that the proposed development does not require approval by the Planning Board of a subdivision, site plan or conditional use in conjunction with which the Planning Board shall review a request for a variance pursuant to N.J.S.A. 40:55D-60.
4. Grant a variance to allow a structure or use in a district restricted against such structure or use in particular cases and for special reasons, but only by the affirmative vote of at least two-thirds of the full authorized membership of the Board.
5. Direct issuance of a permit pursuant to C.40:55D-34 for a building or structure in the bed of a mapped street or public drainageway, flood control basin, or public area reserved on the official map, but only by the affirmative vote of a majority of the full authorized membership of the Board.
6. Direct issuance of a permit pursuant to C.40:55D-

36 for a building or structure on a lot not abutting a street as required by C.40:55D-35.

- B. No variance or other relief may be granted under the provisions of this section unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. Any application under any subsection of this section may be referred to any appropriate person or agency, including the Planning Board, for its report which the Zoning Board of Adjustment shall act.
- C. The Board of Adjustment shall have the power to grant, to the same extent, and subject to the same restrictions as the Planning Board, subdivisions, site plan, or conditional use approval whenever the Board is reviewing an application for approval of a use variance pursuant to Subsection A (4) of this Section.

Section 2.21 Appeals and Applications

- A. Appeals to the Board of Adjustment may be taken by any interested party affected by any decision of an administrative officer of the municipality based on or made in the enforcement of the Zoning Ordinance or Official Map. Each appeal shall be taken within the 65 days prescribed by the statute by filing a notice of appeal with the officer from whom the appeal was taken, together with 3 copies of said notice with the Secretary of the Board of Adjustment. Said action of appeal shall specify the grounds for said appeal. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- B. Applications may be made to the Board of Adjustment under any of its powers without prior application to an administrative officer. Three (3) copies of a completed application form, six (6) copies of all plats or plans, along with all required accompanying documents and fees shall be filed with the Board of Adjustment Secretary at least ten (10) days prior to the date set for the hearing. The applicant shall obtain all necessary forms from the Board of Adjustment Secretary. The Secretary of the Board shall inform the applicant of the steps to be taken to initiate proceedings and of the regular meeting dates of the Board.
- C. An appeal stays all proceedings in furtherance of the action in respect of which the decision appealed from was made, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the

notice of appeal shall have been filed with him that by reason of facts stated in the certificate of stay would, in his opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed other than by an order of the Superior Court of New Jersey upon notice to the officer from whom the appeal is taken and on the cause shown.

- D. The Board of Adjustment shall render its decision not later than 120 days after:
1. An appeal is taken from the decision of an administrative officer, or
 2. The submission of a complete application for development to the Board pursuant to the provisions of C.40:55D-72b. Failure of the board to render a decision within such 120-day period or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant.
- E. Expiration of Variance. Any variance from the terms of the Ordinance hereafter granted by the Zoning Board of Adjustment permitting the erection or alteration of any structure or structures shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said ordinance, or unless such permitted use has actually been commenced, within two (2) years from the date of publication of the notice of determination of the Board of Adjustment, provided that a longer period of time such expiration may be granted by the Board of Adjustment, provided that a longer period of time before such expiration may be granted by the Board of Adjustment as a term and condition of the variance where the Board finds such an enlarged time period reasonably necessary and appropriate due to circumstances clearly demonstrated by the applicant at the hearing; except, however, that the running of the period of limitation herein provided shall be suspended from the date of filing an appeal from the decision of the Zoning Board of Adjustment to the Borough Council or to a court of competent jurisdiction, until the termination in any manner of such appeal or proceeding.

Section 2.22 Appeal to Borough Council

Any appeal from any decision of the Zoning Board of Adjustment may be taken to the Borough Council provided that such appeal shall be made within ten (10) days of the date of the publication of the Board's final decision. Such appeal shall be taken in accordance with C.40:55D-17.