

application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four (4) units to be constructed on a site that was zoned for two (2) units, the fees could equal one and a half percent (1.5%) of the equalized assessed value on the first two units; and six percent (6%) of the equalized assessed value for the two (2) additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

- B. Eligible exactions, ineligible exactions and exemptions for residential development.
- (1) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
  - (2) Developments that have received preliminary or final site plan approval prior to the date of the first adoption of the Berlin municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
  - (3) Owner-occupied residential structures demolished and replaced as a result of fire, flood, or natural disaster shall be exempt from paying a development fee.

#### **§ 193-21. Non-residential Development fees**

- A. Imposed fees. Pursuant to P.L. 2009, c. 90 and P.L. 2011, c. 122, the collection of a development fee on non-residential construction is suspended for all non-residential projects that received preliminary or final site plan approval after July 17, 2008 until July 1, 2013, provided that a permit for the construction of the building has been issued prior to January 1, 2015. All other non-residential development not meeting the exemption criteria shall pay a development fee as required herein.
- (1) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two-and-one-half percent (2.5%) of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

- (2) Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two-and-one-half percent (2.5%) of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
  - (3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two-and-one-half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
- B. Eligible exactions, ineligible exactions and exemptions for non-residential development.
- (1) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two-and-one-half percent (2.5%) development fee, unless otherwise exempted below.
  - (2) The two-and-one-half percent (2.5%) fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
  - (3) Any exemption claimed by a developer of non-residential development shall be substantiated in accordance with the exemptions required pursuant to P.L. 2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption". Non-residential development exempt from the development fee (exempted categorically, not exempted by statutory moratorium), include the following:
    - (a) State, county and local government buildings;
    - (b) Commercial farm buildings;
    - (c) Building and structures classified as a Use Group U category under the Uniform Construction Code;
    - (d) Houses of worship and ancillary structures and building exempt from real property taxation;
    - (e) Non-residential development that is an amenity made available to the public, including but not limited to, recreational facilities, community centers, and senior centers, which are developed in conjunction with or funded by a non-residential developer; and

- (f) Non-residential construction resulting from a relocation of or an on-site improvement to a non-profit hospital or skilled nursing facility.
- (4) A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
- (5) If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within forty-five (45) days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Berlin as a lien against the real property of the owner.

**§ 193-22. Collection Procedures.**

- A. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct the Planning Board or Zoning Board of Adjustment Secretary to notify the construction official responsible for the issuance of a building permit.
- B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- D. Within ninety (90) days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- E. The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- F. Within ten (10) business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized



assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

- G. Should Berlin fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (*N.J.S.A. 40:55D-8.6*).
- H. Fifty percent (50%) of the total estimated development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

**§ 193-23. Appeal Procedures.**

- A. Appeal of development fees. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by Borough of Berlin. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, *N.J.S.A. 54:48-1 et seq.*, within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
- B. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by Borough of Berlin. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, *N.J.S.A. 54:48-1, et seq.*, within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

**Section 16.** Article III, Affordable Housing Fees, §§193-24 through 193-30, shall be repealed.

**CHAPTER 335, ZONING AND LAND USE**

**Section 17.** Article II, §335-2, Definitions, shall be amended by adding the following definitions inserted in alphabetical order as follows:

DWELLING, SEMI-DETACHED SINGLE FAMILY — A dwelling which is designed for, and occupied exclusively as, the residence of one housekeeping unit;



and which is attached by means of a common vertical wall to one other dwelling intended for occupancy by one housekeeping unit.

**INCLUSIONARY DEVELOPMENT** — A development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

**LOWER INCOME** – A household with a gross aggregate family income less than 80 percent of the median gross household income for households of the same size within the housing region in which the household is located, based upon the U.S. Department of Housing and Urban Development's (HUD's) Section 8 Income Limits (uncapped) averaged across counties for the housing region; or, applying to housing affordable to such household.

**Section 18.** §335-49, Lower-Income Housing, shall be amended as follows:

- A. Purpose. The purpose of this section is to assist in the implementation of the Housing Element and Fair Share Plan of the Borough of Berlin in meeting its constitutional obligation to provide the realistic opportunity for low and moderate income housing.
- B. Required participation; percentages of lower-income housing.
  - (1) Whenever a specific site is identified for inclusionary development in the Housing Element of the Master Plan, the zoning map shall be so amended to notate that the construction of lower income housing is a requirement of any residential development. Each site so selected in the Master Plan has been subsequently rezoned following adoption of the Housing Element from a lower intensity of development to a higher density in order to provide a sufficient incentive to develop lower-income housing as a percentage of the total number of dwellings constructed.
  - (2) Residential zones without an inclusionary component. In any residential development that does not contain lower-income dwellings the developer shall pay a development fee in accordance with Chapter 193, Affordable Housing.
  - (3) For-sale housing. The minimum percentage of lower-income dwellings for sale within an inclusionary development shall be at least twenty percent (20%) of the total number of dwellings constructed.
  - (4) Rental housing. The minimum percentage of lower-income dwellings for rent within an inclusionary development shall be at least fifteen (15%) of the total number of dwellings constructed.

- (5) All lower-income housing shall be developed, constructed and occupied in accordance with Chapter 193, Affordable Housing.
- C. Reserved.
- D. Reserved.
- E. Administering and monitoring costs of lower-income units shall be in accordance with Chapter 193, Affordable Housing, of the Code of the Borough of Berlin.

**Section 19.** §335-80, R-2 and PR-2, High Density Residential District, shall be amended as follows:

**§335-80. R-2 and PR-2, High Density Residential District**

- A. Purpose and Pinelands Relationship.
  - (1) The purpose of the R-2 District is to create a zoning district for detached single family residential uses, including age-restricted residential uses; lower-income housing, child care, houses of worship and recreational uses.
  - (2) Districts designated with the “PR-2” designation are located within the Pinelands Management Area and to the degree that this section may be inconsistent with the regulations pertaining to the area, §335.77.K entitled, “Pinelands”, shall prevail.
- B. Permitted principal uses (land and buildings). The following shall be permitted principal uses:
  - (1) Detached single family dwellings.
  - (2) Reserved.
  - [-(3) through -(6) shall remain unchanged.]
- C. [Shall remain unchanged.]
- D. Conditional uses.
  - (1) [Shall remain unchanged.]
  - (2) [Shall remain unchanged.]
  - (3) Semi-detached single family and townhouse dwellings when used exclusively as habitation for lower income households in accordance with Chapter 193, Affordable Housing, on site(s) included in the Housing Element of the Master Plan.

- E. [Shall remain unchanged.]
- F. Density, bulk and yard requirements for residential uses.

- (1) [Shall remain unchanged.]
- (2) Lower-income single family semi-detached dwelling shall meet the following standards:

<b>Standard</b>	<b>Requirement</b>
Minimum lot size:	4,000 square feet
Minimum street frontage:	40 feet
Minimum lot width:	40 feet
Minimum lot depth:	100 feet
Minimum front yard setback:	30 feet, except when abutting a collector or higher order street, 50 feet
Minimum setback of garage door from street:	5 feet greater than building face
Minimum side yard setback, common wall:	0 feet
Minimum side yard setback, other:	8 feet
Minimum rear yard setback:	25 feet
Maximum permitted building coverage:	35%
Maximum permitted impervious coverage:	50%
Maximum permitted building height:	30 feet
Maximum number of stories:	2

- (3) Lower-income townhouse dwelling shall meet the following standards:

<b>Standard</b>	<b>Requirement</b>
Overall townhouse tract:	
Minimum tract area:	3 acres
Minimum tract width:	400 feet
Minimum lot size, fee simple dwelling:	2,000 square feet
Minimum lot frontage, fee simple dwelling:	20 feet
Minimum lot width per unit, and lot for fee simple dwellings:	20 feet
Minimum lot depth for fee simple dwellings:	100 feet

Minimum yards and setbacks for buildings:

From perimeter of original tract:	75 feet
From interior street:	25 feet
From parking lot or the parking lot driveway/aisle:	15 feet
Garage door from interior street or drive:	25 feet
Front yard (can include parking and driveways):	30 feet
Side yard, common vertical wall:	0 feet
Side yard, no common wall, without parking and driveways:	15 feet
Rear yard with parking and driveways:	40 feet
Rear yard without parking and driveways:	25 feet
Side yards for decks:	3-foot minimum, 10-foot aggregate
Maximum building height:	35 feet
Maximum number of stories:	2 ½
Maximum lot coverage, fee simple lots:	75%
Maximum tract coverage (buildings and paving):	45% of overall tract

(4) Maximum density for inclusionary development shall be six units per acre.

G. [Shall remain unchanged.]

**Section 20.** Continuation. In all other respects, the Zoning and Land Use Ordinance of the Borough of Berlin shall remain unchanged.

**Section 21.** Severability. If any portion of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole, or any other part thereof. Any invalidation shall be confined in its operation to the section, paragraph, sentence, clause, phrase, term, or provision or part there of directly involved in the controversy in which such judgment shall have been rendered.

**Section 22.** Interpretation. If the terms of this Ordinance shall be in conflict with those of another Ordinance of the Code of the Borough of Berlin, then the restriction which imposes the greater limitation shall be enforced.

**Section 23.** Repealer. All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency only.

**Section 24.** Enactment. This Ordinance shall take effect upon the filing thereof with the Camden County Planning Board after final passage, adoption, and

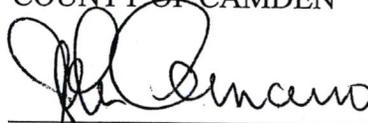
publication by the Borough Council of the Borough of Berlin in the manner prescribed by law.

Introduced:

**INTRODUCED** 11/21/2012

Adopted:

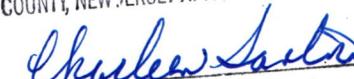
BOROUGH OF BERLIN IN THE  
COUNTY OF CAMDEN

  
\_\_\_\_\_  
Hon. John Armano, Mayor

Attest:

  
\_\_\_\_\_  
Charleen Santora, Borough Clerk

IT IS HEREBY CERTIFIED THAT THE FOREGOING  
IS A TRUE AND CORRECT COPY OF A ~~RESOLUTION~~ **ORDINANCE**  
DULY ADOPTED BY THE MAYOR AND BOROUGH  
COUNCIL OF THE BOROUGH OF BERLIN, CAMDEN  
COUNTY, NEW JERSEY AT A MEETING HELD ON 12/27/2012

  
\_\_\_\_\_  
BOROUGH CLERK