

ORDINANCE

O-1-2021

BOROUGH OF NORTH CALDWELL, ESSEX COUNTY, NEW JERSEY

AN ORDINANCE TO AMEND AND SUPPLEMENT THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF NORTH CALDWELL, COUNTY OF ESSEX, STATE OF NEW JERSEY, CHAPTER 53, ARTICLE III

WHEREAS, the Governing Body of the Borough of North Caldwell is required to upgrade regulations to be consistent with New Jersey Department of Environmental Protection standards.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of North Caldwell, County of Essex, State of New Jersey as follows:

1. **Chapter 53. On-Site Stormwater Detention, Stormwater Controls**, of the Borough of North Caldwell is amended and supplemented as stated below:

§ 53-28 **Scope and purpose.**

A. Policy statement. Flood control, groundwater recharge, and pollutant reduction through nonstructural or low-impact techniques shall be explored before relying on structural BMPs. Structural BMPs should be integrated with nonstructural stormwater management strategies and proper maintenance plans. Nonstructural strategies include both environmentally sensitive site design and source controls that prevent pollutants from being placed on the site or from being exposed to stormwater. Source control plans should be developed based upon physical site conditions and the origin, nature, and the anticipated quantity or amount of potential pollutants. Multiple stormwater management BMPs may be necessary to achieve the established performance standards for water quality, quantity, and groundwater recharge.

B. Purpose. It is the purpose of this article to establish minimum stormwater management requirements and controls for minor and major development as defined in Section **53-29**.

C. Applicability.

(1) This article shall be applicable to all projects that meet the definition of minor or major development as defined below.

(2) This article shall also be applicable to all major developments undertaken by the Borough of North Caldwell.

(3) This article shall also be applicable to any project by any governmental agency that meets the definition of major development.

D. Compatibility with other permit and ordinance requirements. Development approvals issued for subdivisions and site plans pursuant to this article are to be

considered an integral part of development approvals under the subdivision and site plan review process and do not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated by any other applicable code, rule, act, or ordinance. In their interpretation and application, the provisions of this article shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. This article is not intended to interfere with, abrogate, or annul any other ordinances, rule or regulation, statute, or other provision of law except that, where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, the more restrictive provisions or higher standards shall control.

§ 53-29 **Definitions.**

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application. All terms in this section shall be defined in the NJDEP Stormwater Rule (N.J.A.C. 7:8, et seq.). The following additional terms are defined for this chapter only.

EXEMPT DEVELOPMENT - Shall mean any development that creates an increase of less than 500 square feet of impervious area and disturbs less than 2,500 square feet of land. Further, an exempt development shall not meet the definition of "minor development."

MINOR DEVELOPMENT - Shall mean any development that results in the creation of an increase of 500 square feet or more of impervious area or one that disturbs more than 2,500 square feet of land area. Further, a minor development shall not meet the definition of "major development".

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

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

Major development includes all developments that are part of a common plan of development or sale (for example, phased residential development) that

collectively or individually meet any one or more of conditions 1, 2, 3, or 4 above. Projects undertaken by any government agency that otherwise meet the definition of "major development" but which do not require approval under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., are also considered "major development".

§ 53-30 Design and performance standards for stormwater management measures.

- A.** Exempt Developments. Any project meeting the definition of "exempt development" shall be exempt from the provisions of this section.
- B.** Minor Developments. Minor developments shall be designed to include the following stormwater management measures:
 - (1)** Water Quality. Soil erosion and sediment control measures shall be installed in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey.
 - (2)** Rate/Volume Control. Seepage pits or other infiltration measures shall be provided with a capacity of three (3") inches of runoff for each square foot of new impervious area. Stone used in the infiltration devices shall be two and one-half (2 1/2") inches clean stone and design void ratio of 40% shall be used. The infiltration measures shall be designed with an overflow to the surface which shall be stabilized and directed to an existing stormwater conveyance system or in a manner to keep the overflow on the developed property to the greatest extent feasible. If the new impervious surface is not roof area, an equivalent area of existing roof may be directed to the infiltration system. This shall be permitted where the existing roof is not already directed to infiltration devices.
- C.** Major Developments. All major developments shall have their stormwater management designed in accordance with the design standards and Green Infrastructure standards of the Residential Site Improvement Standards (RSIS, N.J.A.C. 5:21) and the NJDEP Stormwater Rule (N.J.A.C. 7:8). These standards shall apply to all projects, residential and nonresidential as well as projects by the Borough, Board of Education and other agencies subject to review by the Borough.

§ 53-31 Waivers and Exceptions.

- A.** Standards for Relief. Waivers from strict compliance with the design standards shall only be granted upon showing that meeting the standards would result in an exceptional hardship on the applicant or that the benefits to the public good of the deviation from the standards would

outweigh ANY detriments of the deviation. A hardship will not be considered to exist if reasonable reductions in the scope of the project would eliminate the noncompliance.

- B. Mitigation.** If the reviewing agency for the project determines that a waiver is appropriate, the applicant must execute a mitigation plan. The scope of the mitigation plan shall be commensurate with the size of the project and the magnitude of the relief required. The mitigation project shall be taken from the list of projects in the Municipal Stormwater Management Plan. All mitigation projects are subject to the approval of the Borough Engineer.
- C. Reviewing Agency.** All applications subject to the review of the Land Use Board shall be reviewed by the Board concurrently with subdivision or site plan review. Applications not subject to Land Use Board review shall be reviewed by the Borough Engineer.
- D. Appeals.** The appeal of the determination of the Borough Engineer shall be made in accordance with N.J.S.A. 40:55D-70a.

§ 53-32 Maintenance and repair.

- A. Applicability.** Projects subject to review as in Section **53-28C** of this article shall comply with the requirements of Sections **53-32B** and **53-32C**.
- B. General maintenance.**
 - (1)** The design engineer shall prepare a maintenance plan for the stormwater management measures incorporated into the design of a major development.
 - (2)** The maintenance plan shall contain specific preventative maintenance tasks and schedules; cost estimates, including estimated cost of sediment, debris, or trash removal; and the name, address, and telephone number of the person or persons responsible for preventative and corrective maintenance (including replacement). Maintenance guidelines for stormwater management measures are available in the New Jersey Stormwater Best Management Practices Manual. If the maintenance plan identifies a person other than the developer (for example, a public agency or homeowners' association) as having the responsibility for maintenance, the plan shall include documentation of such person's agreement to assume this responsibility, or of the developer's obligation to dedicate a stormwater management facility to such person under an applicable ordinance or regulation.
 - (3)** Responsibility for maintenance shall not be assigned or transferred to the owner or tenant of an individual property in a residential development or project, unless such owner or tenant owns or leases the entire residential development or project.

(4) If the person responsible for maintenance identified under Subsection **B(2)** above is not a public agency, the maintenance plan and any future revisions based on **B(7)** below shall be recorded upon the deed of record for each property on which the maintenance described in the maintenance plan must be undertaken.

(5) Preventative and corrective maintenance shall be performed to maintain the function of the stormwater management measure, including repairs or replacement to the structure; removal of sediment, debris, or trash; restoration of eroded areas; snow and ice removal; fence repair or replacement; restoration of vegetation; and repair or replacement of nonvegetated linings.

(6) The person responsible for maintenance identified under Subsection **B(2)** above shall maintain a detailed log of all preventative and corrective maintenance for the structural stormwater management measures incorporated into the design of the development, including a record of all inspections and copies of all maintenance-related work orders.

(7) The person responsible for maintenance identified under Subsection **B(2)** above shall evaluate the effectiveness of the maintenance plan at least once per year and adjust the plan and the deed as needed.

(8) The person responsible for maintenance identified under Subsection **B(2)** above shall retain and make available, upon request by any public entity with administrative, health, environmental, or safety authority over the site, the maintenance plan and the documentation required by Subsection **B(6)** and **(7)** above.

(9) The person responsible for maintenance identified under Subsection **B(2)** above shall file a copy of all reports annually, not later than March 31, with the Borough Engineer.

(10) The requirements of Subsection **B(3)** and **(4)** do not apply to stormwater management facilities that are dedicated to and accepted by the municipality or another governmental agency.

(11) In the event that the stormwater management facility becomes a danger to public safety or public health, or if it is in need of maintenance or repair, the municipality shall so notify the responsible person in writing. Upon receipt of that notice, the responsible person shall have 14 days to effect maintenance and repair of the facility in a manner that is approved by the Borough Engineer or his designee. The municipality, in its discretion, may extend the time allowed for effecting maintenance and repair for good cause. If the responsible person fails or refuses to perform such maintenance and repair, the

municipality or county may immediately proceed to do so and shall bill the cost thereof to the responsible person.

C. Nothing in this section shall preclude the municipality in which the major development is located from requiring the posting of a performance or maintenance guarantee in accordance with N.J.S.A. 40:55D-53.

§ 53-38 **Violations and penalties.**

Any person who erects, constructs, alters, repairs, converts, maintains, or uses any building, structure or land in violation of this article shall be subject to a penalty as stated in Chapter 1, Article II General Penalty, Section 1-5 et seq. Each and every day in which a person shall be in violation of this article shall constitute a separate offense.

INTRODUCED: January 26, 2021

PUBLIC HEARING: February 23, 2021

APPROVED: February 23, 2021

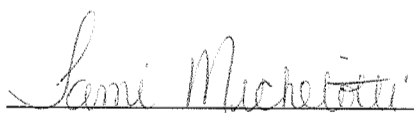
MOVED BY: Councilman Atlas

SECONDED BY: Councilman Floria-Callori

COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT	COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT
ASTORINO	X				KESSLER	X			
ATLAS	X				REES	X			
FLORIA-CALLORI	X				TILTON	X			

ATTEST:

APPROVED:


 TAMI MICHELOTTI, BOROUGH CLERK


 JOSEPH H. ALESSI, MAYOR