

ORDINANCE NO. - 2010

AN ORDINANCE OF THE TOWNSHIP OF MENDHAM IN THE COUNTY OF MORRIS AND STATE OF NEW JERSEY AMENDING CHAPTER XXIV OF THE LAND USE ORDINANCE AND CONCERNING LAND DISTURBANCE PERMITS

WHEREAS, the Township Committee of the Township of Mendham has reviewed a recommendation of the Planning Board of Mendham Township concerning an amendment to the Land Use Ordinance to set forth the procedures and substantive requirements for the issuance of a Land Disturbance Permit; and

WHEREAS, the Township Committee of the Township of Mendham has determined that it is in the public interest to amend the Land Use Ordinance in accordance with said recommendation.

BE IT ORDAINED by the Township Committee of the Township of Mendham in the County of Morris, and State of New Jersey as follows:

Section 1. Chapter XXIV of the Land Use Ordinance entitled "Lot Development Permit" is hereby amended in its entirety to read as follows:

LAND DISTURBANCE PERMIT

24-1 LAND DISTURBANCE PERMIT

Any person proposing to conduct land disturbance which requires a permit under this chapter shall obtain a Land Disturbance Permit (LDP) from the office of the Township Engineer prior to said disturbance. The ultimate goal of the LDP process is to protect the land that is the subject of the LDP and adjoining lands from negative impacts associated with land disturbance. Such negative impacts include, but are not limited to, excess storm water runoff, soil erosion and sedimentation, and excess disturbance in general.

Unless otherwise exempted within this chapter, the following activities shall require a Land Disturbance Permit:

A. The disturbance of land in excess of 3,500 square feet of ground surface or involving the movement of more than 35 cubic yards of soil. Relocation of existing soil on the same property is considered movement/disturbance for the purposes of this chapter.

B. Regardless of size,

- The construction or reconstruction of an individual subsurface sewage disposal system (septic system).
- The construction of an in-ground swimming pool.
- The construction of a tennis court.

- The construction of a retaining wall with an exposed height of greater than 4 feet. If a project contains more than one activity that would require an LDP, all work may be combined as a single LDP. An LDP shall be limited to work on a single lot unless otherwise deemed appropriate by the Township Engineer.

#### 24-2 EXEMPTIONS

The following activities are exempt from the requirements of this Chapter:

- A. Any activity protected from municipal regulation by the Right-to-Farm Act, provided that the activity is being performed in accordance with a "Farm Conservation Plan".
- B. The planting and harvesting of crops, plants, flowers or shrubs in areas devoted to single family use.
- C. The removal and replacement of an existing driveway where no change in grade, surface type, or footprint occurs.
- D. Rehabilitation of existing lawn areas where there is no material change in grade or storm water runoff patterns.
- E. Maintenance work performed by the Township through the Department of Public Works or through contract with an outside entity.
- F. Projects exempted by State law from the requirements of this ordinance.
- G. Should the activity triggering the need for an LDP be related to an activity that is subject to approval by a Township Land Use Board, or the Township's Board of Health, the applicant may choose to incorporate the LDP process within that approval. Should this option be chosen by the applicant, a separate LDP application fee will not be required. However, review and inspection escrows must be submitted as provided herein. The exemptions provided by this Section shall not be construed to preclude the obligation for compliance with any other municipal, county and/or state regulations as required by law.

#### 24-3 SCOPE AND PURPOSE

The purpose of an LDP is to:

- A. Safeguard against adverse consequences of uncontrolled surface water drainage, degradation of freshwater wetlands and transition areas, pollution of streams, water courses and water bodies and negative impact by development on private and public lands.
- B. Enforce regulations concerning the disturbance of sloped and flood hazard areas, the protection of trees and conservation areas, and the integrity of easements and storm water detention/retention facilities.
- C. Provide for safe and suitable location of road openings, proper geometry, alignment and entrance structures for driveways, efficient fire protection and accessibility by emergency

vehicles, proper installation of utilities and utility connections, methods for suitable collection, storage and disposal of construction trash and debris, and advancement of the intent and purposes of zoning.

#### 24-3A DEFINITIONS

For purposes of interpretation and enforcement of this chapter the following words, terms and phrases shall have the meanings set forth below except when the context clearly indicates otherwise.

**APPROVED PLAN:** A Plan, as hereinafter defined, which has been reviewed and approved by the proper township authority.

**CERTIFICATION:** A written and signed statement by the Township Engineer that specific construction and/or land treatment measures required by a Plan, as hereinafter defined, have been performed in accordance with all of the terms and conditions therefore and in accordance with STATE STANDARDS, as hereinafter defined, and the provisions of this ordinance.

**COMPLETE APPLICATION:** The submission to the Township Clerk of the following: (1) an application form completed and executed by the applicant, (2) a Plan, as hereinafter defined; (3) all required accompanying documents, such as a drainage report; copies of associated permits from other agencies, copies of applicable Land Use Board resolutions, etc. (4) appropriate filing fee, (5) appropriate escrow deposit, and (6) other site specific information as may be deemed appropriate by the Township Engineer.

**CONSTRUCTION PERMIT:** A permit issued in accordance with the State Uniform Construction Code Act and Regulations promulgated thereunder.

**CUT:** A portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to excavated surface.

**DIVERSION:** A channel with or without a supporting ridge on the lower side constructed across or at the bottom of a slope.

**EMBANKMENT:** A man-made deposit of soil, rock or other materials.

**EXCAVATE:** Any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated.

**EXISTING GRADE:** The vertical location of the existing ground surface prior to cutting or filling.

**FARM CONSERVATION PLAN:** "Farm conservation plan" means a site specific plan developed by the landowner and approved by the local soil conservation district which prescribes needed land treatment and related conservation and natural resource management measures including forest management practices that are determined practical and reasonable to conserve, protect and develop natural resources, to maintain and enhance agricultural productivity and to control and prevent nonpoint source pollution. "United States Department of Agriculture, Natural

Resources Conservation Service, (NRCS) Field Office Technical Guide" means a composite of national, regional, State and local data and standards derived primarily from local universities, NRCS and conservation district offices and cooperating conservation agencies which administer natural resource conservation programs.

FILL: A man-made deposit of soil, rock or other materials.

FINISHED GRADE: The final grade or elevation of the ground surface.

FLOOD PLAIN: The relatively flat area of land which has been or may be hereafter covered by flooding.

GOVERNMENT AGENCY: Any department, commission, independent agency or instrumentality of the United States or of the State of New Jersey, and any county or other governmental unit.

GRADING: Any stripping, cutting, filling or stockpiling, or any combination thereof, this term including the land in its cut or filled condition.

LAND DISTURBANCE: Any activity involving the clearing, cutting, excavation, grading, filling, storing, transporting of land or any other activity which causes land to be exposed to the danger of erosion. In the case of earthwork, the areas dedicated to soil stockpiles shall be considered disturbance.

LAND DISTURBANCE PERMIT: A permit issued pursuant to the provisions of this chapter authorizing land disturbance subject to the terms and conditions of the permit.

LAND USE BOARD: Planning Board, Zoning Board, or combined Planning/Zoning Board as permitted by law.

MAJOR LAND DISTURBANCE PERMIT: A permit other than that exceeds one or more parameters defining a MINOR LAND DISTURBANCE PERMIT. An LDP for a new dwelling, or for the reconstruction or addition to a new dwelling that impacts more than 50% of the original dwelling, shall be considered a Major LDP, regardless of the quantity of disturbance or soil movement.

MINOR LAND DISTURBANCE PERMIT: A permit for the moving of more than thirty five (35), but less than two hundred fifty (250) cubic yards of soil, or for the disturbance of more than two thousand (2,000) but less than five thousand (5,000) square feet of ground surface area. The permit determination shall be based upon the amount of soil movement or disturbance over the period of 12 months. If multiple permit applications are filed within a 12 month period, and the combined soil moving or disturbance of the applications qualify as a MAJOR LAND DISTURBANCE PERMIT then the application shall be deemed a MAJOR LAND DISTURBANCE PERMIT, regardless of the incremental individual soil moving and/or disturbance amounts.

**MORRIS COUNTY SOIL CONSERVATION DISTRICT:** A governmental subdivision of this State, which encompasses the township, organized in accordance with the provisions of R.S. 4:24-1 et seq.

**MOVE:** To dig, excavate, remove, deposit, place, fill, grade, or otherwise change the location or contour, or to transport soil or cause the disturbance of land. This definition is not intended to include plowing, cultivating, harrowing, or disking of soil for agricultural or horticultural purposes on properties dedicated to that use, landscaping, and gardening by homeowners or agents of homeowners, provided that it does not create adverse conditions relating to sedimentation, erosion, dust, etc. or alter existing drainage patterns.

**MULCHING:** The application of plant or other suitable materials on the soil surface to conserve moisture, hold soil in place and aid in establishing plant cover.

**NATURAL GROUND SURFACE:** The existing surface of land prior to any land disturbance.

**PROFESSIONAL ENGINEER:** An engineer duly registered or licensed by the State of New Jersey to practice in the field of engineering.

**PROJECT:** Any activity, undertaking, construction or work of any nature which involves land disturbance. The term includes but is not limited to the improvement or development of land pursuant to any conditional use, construction permit, planned development, site plan, subdivision or zoning variance.

**SEDIMENT:** Solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site or origin by erosion.

**SEDIMENT BASIN:** A pond, basin or other structure or measure that provides for the detention of water and the deposit of sediment.

**SITE:** A lot, tract or parcel of land or a combination of contiguous lots, tracts or parcels of land.

**SLOPE:** The degree of deviation of a surface from the horizontal usually expressed in percent or degree.

**SOIL:** Any earth, sand, clay, loam, gravel, humus, rock, or boulders, regardless of the presence or absence therein of organic material.

**SOIL EROSION, SEDIMENT CONTROL AND FLOOD PREVENTION PLAN:** A Plan which indicates construction and/or land treatment measures, including a schedule of the timing for their performance, to effectively prevent floods and minimize soil erosion and sedimentation. Every Plan shall meet or exceed STATE STANDARDS as hereinafter defined.

**SOILS ENGINEER:** A professional engineer who is qualified by education, training and experience to practice applied soil mechanics and foundation engineering.

**STANDARDS:** See STATE STANDARDS.

STATE STANDARDS: Standards for Soil Erosion and Sediment Control in New Jersey as promulgated by the State Soil Conservation Committee.

STRIPPING: Any activity which removes or significantly disturbs vegetated or otherwise stabilized soil surface, including clearing and grubbing operations.

STORMWATER MANAGEMENT FEATURE: A pond, basin, detention/retention facility or other structure or measure that provides for the control and/or quality of storm water runoff and/or groundwater recharge.

TEMPORARY PROTECTION: Stabilization of erosive or sediment-producing areas of land.

TOPSOIL: Soil that is composed of no less than 2% (by weight) of organic material and has the ability to support vegetation. TOPSOIL shall not include trash, construction debris, foreign matter, or stones larger than two inches (2") in diameter.

TOWNSHIP: The Township of Mendham, Morris County, New Jersey.

VEGETATIVE PROTECTION: Stabilization of erosive or sediment-producing areas of land by covering the soil with one or more of the following: (1) permanent seeding or permanent plantings producing long-term vegetative cover, (2) short-term seeding or short-term plantings producing temporary vegetative cover, and (3) sodding, producing areas covered with a turf of perennial sod-forming grass.

WATERCOURSE: A natural or artificial river, stream, brook, ditch, channel, conduit, gully, drain, culvert, ravine, wash or other waterway in which water flows in a definite direction or course, either continuously or intermittently, within a definite channel, and including any area adjacent thereto subject to inundation by reason of overflow of flood water.

#### 24-4 PROCEDURE FOR OBTAINING A LOT DEVELOPMENT PERMIT

A. Consideration of issuance of an LDP shall be made upon submittal of one (1) complete application, as defined herein, to the Township Clerk. The application shall be subject to review by the Township Engineer who may refer the application to the Township Environmental Consultant for review and comment if he deems it to be necessary. Should the application be referred, the applicant shall provide additional copies of the application.

B. Within twenty (20) days of receipt of a complete application for an LDP by the Township Engineer, action shall be taken in the form of an approval, a list of deficiencies that prevent approval, or a denial. If denied, the applicant shall be so notified and the Township Engineer shall furnish a written statement of the reasons for denial.

C. Should the applicant desire a waiver from any of the plan requirements for a Lot Development permit, said waiver requests shall be submitted in written form as part of the application with a brief explanation as to why, in the opinion of the applicant, the waiver is justified.

D. If permitted construction activity (including earthwork set forth in the LDP, tree removal based on tree removal permit, excavation based upon building permit, etc.) does not lawfully

commence within one (1) year of the approval date of the permit, the permit shall be deemed to have expired. For good cause, the Township Engineer may extend an LDP for one (1) additional year if it is determined that the certified plan remains in substantial compliance with the development regulations in place at the time of expiration.

E. In the event that the disturbance is associated with activity that is subject to additional permits, approvals, or certifications from other jurisdictions or authorities, the LDP shall not be issued until all such permits have been issued with verification provided to the Township Engineer. Other jurisdictions and authorities may include, but not be limited to, the following:

1. N.J. Department of Environmental Protection.
2. Morris County Soil Conservation District.
3. Mendham Township Board of Health.
4. Mendham Township Tree Protection Committee.

F. The issuance of a Land Disturbance Permit shall not supersede or circumvent the authority of any other applicable jurisdiction or authority requiring permits and/or approvals including, but not limited to the Mendham Township Land Use Boards, the Mendham Township Building Department, the Mendham Township Tree Committee, the Morris County Soil Conservation District, the Morris County Planning Board, the N.J. Department of Environmental Protection, etc.

#### 24-5 APPLICATION FOR MINOR LAND DISTURBANCE PERMIT

Applications for a Minor Land Disturbance Permit shall be submitted to the Township Clerk and shall include the following:

A. One (1) completed application form and application checklist as prescribed by the Township and supplied by the Township Engineer.

B. Fees and escrow deposits as set forth in Section 13-14.

C. One (1) copy of the Minor Land Disturbance Permit Plan. The Minor LDP Plan shall be prepared by a professional engineer, architect, or landscape architect licensed in New Jersey. However, where an LDP involves drainage facilities for sites of ten (10) acres or more or involves storm water detention facilities or involves a site traversed by a water course, the LDP shall only be prepared by a New Jersey licensed professional engineer, except that associated building plans may be prepared by an architect. The LDP Plan shall be drawn to a scale of not less than one (1) inch equals thirty (30) feet. The Lot Development Plan shall be prepared in sufficient detail to show the following items:

1. A Key Map based on the Official Tax Map of the Township of Mendham showing all areas within 500 feet of the lot which is the subject of the application. The scale of the Key map shall be at a scale of no less than one (1) inch equals two hundred (200) feet and show all properties and rights-of-ways within five hundred (500) feet of the subject site.

2. A topographic map of the work area, and those areas within 50 feet thereof, showing 2 foot contour intervals. The plan shall also include the elevations of existing finished floors, garage floors and patios.
3. The location of any existing streams, water courses, ponds, storm sewers, delineated wetlands, delineated wetland transition areas, storm drainage detention and retention structures or areas, drainage facilities which relate to drainage of storm waters emanating from or affecting the subject lot. Where applicable, the information required should be as set forth pursuant to the requirements of N.J.A.C. 7:7A-1 et seq.
4. The location of all existing and proposed structures within 50 feet of the work area, including, but not limited to, buildings, swimming pools, tennis courts, garages, outbuildings, decks, patios, walkways, fences, dry wells, water supply wells, overhead and underground utility lines, and any individual subsurface sewage disposal systems.
5. The elevation of the finished garage floor, first floor and lowest floor of existing and proposed structures, where same is within 50 feet of the work area.
6. A zoning table, showing the items set forth on the Schedule of Requirements on Township's Zoning Map, showing existing and proposed values, including any supplemental setback calculations required in Chapter XXI of this ordinance.
7. Where building construction or alteration is proposed, a calculation of building height and floor area to confirm compliance with the limits for the zoning district in which the site is located, shall be provided. The building dimensions shall be taken from a fully dimensioned architectural plan with said architectural plan referenced on the LDP Plan and provided as part of the application.
8. Construction details for all site improvements.
9. Where building construction or alteration is proposed, a roof plan of all proposed structures along with the location of all proposed and existing roof leader drains and the area of roof flowing to each leader shall be shown.
10. All intended grading, cutting and/or filling represented by proposed contour lines at a corresponding 2 foot contour interval including changes in drainage pattern, drainage swales, structures, piping, railroad tie or rock walls or other retaining structures.
11. Calculation of the total amount of soil movement on the site as a function of the volume of cut and fill resulting from grading and excavation operations, as well as the area of disturbance that will result from the planned work. The plan shall also indicate the amount of soil moving, in square feet and in cubic yards that has occurred on the site within the previous twelve (12) months. The applicant shall identify sources of any proposed fill as well as methods and locations for disposal of any cut materials.
12. The total area of new impervious cover and the area of disturbance shall be noted.

13. If the grade of any portion of the driveway exceeds 8%, the plan shall also contain a profile of the entire driveway.

14. Drywells shall be provided with a capacity equivalent to 3 inches of runoff from new roof areas.

15. The location of all wooded areas on the lot, and such details as may be required by Chapter XXIII of this ordinance relative to tree protection.

16. The location, size and specie of any proposed plants, trees, landscaping, ground cover, seedling or stabilization which have bearing upon the drainage of storm waters emanating from or affecting the subject lot.

17. A slope analysis consistent with the standards of Section 16-10.13. In determining slope disturbance, the applicant shall also include the disturbance associated with all site work during the previous 12 month period.

18. The nature and volume of construction trash and debris, location and protection of temporary storage and methods of disposal of such trash and debris.

19. In addition to the details set forth above, the plan shall specify and contain any improvements required under the terms and conditions of prior subdivision or site plan approvals which have not been installed at the time the application for an LDP is made.

D. If the scope of work is deemed to have possible adverse impacts on the subject parcel or adjoining lands, the Township Engineer may require the submission of additional mappings, calculations, site improvements, etc. to help evaluate the application and protect against negative impacts resulting from the activity. Similarly, if the scope of the application is found to not benefit from one or more of the above plans requirements, the Township Engineer shall have the ability to waive said requirements.

#### 24-6 APPLICATION FOR MAJOR LAND DISTURBANCE PERMIT

Applications for a Major Land Disturbance Permit shall be submitted to the Township Clerk and shall include all of the items required for a Minor Land Disturbance Permit, except as modified and supplemented below:

A. The Lot Development Permit Plan must make reference to a boundary and topographic survey prepared by a Professional Land Surveyor licensed in the State of New Jersey. A signed and sealed copy of said survey(s) shall be provided with the application package.

B. The topographic map shall show the subject lot and adjoining public and/or private streets with a 2 foot contour interval. The plan shall also include the elevations of existing finished floors, garage floors and patios. Further, when deemed necessary by the Township Engineer for reasons based upon good engineering practices, map shall also contain additional topographic information including data and contours relative to adjacent lands within 200 feet of the subject lot.

C. The location of all existing and proposed structures, including, but not limited to, buildings, swimming pools, tennis courts, garages, outbuildings, decks, patios, walkways, fences, dry wells, water supply wells, overhead and underground utility lines, and any individual subsurface sewage disposal systems.

D. The elevation of the finished garage floor, first floor and lowest floor of existing and proposed structures.

#### 24-7 DESIGN STANDARDS

A. The requirements and regulations set forth in the following sections are incorporated as requirements and regulations of this Chapter:

1. Section 16-10.7 – Driveways

2. Section 16-10.9 – Stormwater for projects not meeting the definition of a “Major Development” under Chapter 24B.

3. Section 16-10.14 – Protection of Wetlands & Wetland Transition Areas.

4. Chapter 18 - Flood Hazard Area Regulations.

5. Chapter 21 – Zoning

6. Chapter 23 – Tree Preservation

7. Chapter 24B - Stormwater for projects meeting the definition of a “Major Development under Chapter 24B.

B. To prevent adverse impacts on the site, or on adjoining properties, the following minimum work items shall be specifically noted on the plans and further explained via construction details:

1. This plan shall not be used for construction unless it contains the “APPROVED” stamp as affixed by the Township Engineer. At least one copy of the approved plan shall be kept on site at all times.

2. The construction of a retaining wall with an exposed height of greater than 4 feet shall require the following:

a. Stability calculations shall be submitted as part of the LDP application. The calculations shall be prepared by a professional engineer, licensed in the State of New Jersey.

b. A note on the plan that acknowledges that any application for a Certificate of Compliance or a Certificate of Occupancy shall be accompanied by certification by a professional engineer, licensed in the State of New Jersey, that the wall has been constructed in accordance with the design calculations and is stable.

3. As a minimum, silt fence shall be installed in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey along the downhill boundary of the area to be disturbed. An additional silt fence shall completely encircle any soil stockpiles.

4. A Stabilized Construction Entrance shall be installed and maintained in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey along the downhill boundary of the area to be disturbed.

5. The site shall be graded as to provide a temporary sedimentation area to protect downstream properties from erosion and sedimentation associated with construction activities.

6. The burying or burning of brush, stumps, trees or any construction related materials is prohibited.

C. Should the property in question be encumbered by Conservation Easements, said easements shall be delineated with the easement markers set forth in Mendham Township Standard Detail. The number and location of markers shall be determined on a site by site basis by the Township Engineer. The markers shall be set prior to the start of site disturbance.

D. A slope analysis shall verify that the final grading of the lot and the land to be disturbed by the improvements are consistent with the terms of any prior subdivision or site plan approval with regard to protection of critical areas as related to the subject lot as set forth in Sections 16-10.13. Where no prior subdivision or site plan approval has established the extent of slope disturbance for the lot in question, the standards fixed by Section 16-10.13 shall apply.

E. Graded slopes at cuts and fills in earth shall be stable and shall generally have a ratio of 3 (horizontal):1 (vertical). However, a slope of 2:1 may be permitted by the Township Engineer where conditions warrant. In no event shall a graded slope have a ratio of less than 2 to 1. Cuts in rock shall have slopes as steep as 1:1 upon certification by the applicant's professional engineer that said rock cuts will remain stable.

F. The top of a cut or the bottom of a fill shall not be closer than ten (10) feet to any lot line unless site conditions warrant or as approved by the Township Engineer. For graded slopes 3:1 or steeper, in no event shall the vertical grade difference of side slopes exceed ten (10 ft) feet without the introduction of an eight (8 ft.) foot wide terrace.

G. Lots shall be provided with adequate drainage and the ground immediately adjacent to all foundations shall be sloped away from the structure with a minimum fall of 6 inches within the first 10 feet.

H. Roof leaders for new structures shall be connected to drywells with five inch (5") PVC pipe with a minimum of one (1) gutter downspout for every four hundred (400 sq. ft.) square feet of horizontal roof area. All new utility lines shall be installed underground.

#### 24-8 INSPECTION

E. In order to assure compliance with the terms of the LDP, periodic inspections of the site development operations shall be made by the Township Engineer. The Township Engineer, at his

discretion, may call upon the Township's Environmental Consultant as required during the course of the work.

F. When deemed necessary, the Township Engineer may require that additional temporary measures be taken during the course of any lot development activity or construction work to prevent adverse effects upon adjoining lands or roads.

G. The failure of an owner of property to comply with an approved LDP for such property, including any temporary measures to be taken during the performance of lot development activity or construction work, shall constitute a violation of this chapter.

H. The applicant shall provide unencumbered access to Township Officials for the purpose of inspections. Failure to provide such access within 24 hours of a request by a Township Official shall be considered a violation of this chapter.

I. The applicant shall maintain the inspection escrow account, municipal fees and taxes throughout the construction. Failure to do so shall be considered a violation of this chapter.

#### 24-9 AS-BUILT SURVEY

The applicant shall provide an as-built survey as prepared by a licensed Professional Land Surveyor. It shall be prepared at the same scale as the certified plan and shall, as a minimum, include the following:

A. Metes and Bounds.

B. Building setback dimensions.

C. Locations of driveways, driveway pillars, lawn inlets, drywell markers, easement markers, and other pertinent features.

D. Locations of retaining walls with top and bottom of wall elevations.

E. Elevations of first floor, garage floor, highest roof ridge, and highest roof appurtenances (chimney, cupola, etc.).

F. Ground elevations at the approximate locations of the spot grades used in the computation of building height.

#### 24-10 CERTIFICATE OF COMPLIANCE

A. A Certificate of Occupancy shall not be issued by the Construction Official for any property which is the subject of an LDP until the Township Engineer has inspected the property, and issued a Certificate of Compliance. The Township Engineer shall make a final inspection and issue a report within five (5) business days after written request and submission of a complete as-built survey by the applicant.

B. In the event that the Township Engineer determines that extenuating circumstances do not permit the completion of the required work to effectuate full compliance with the LDP, the Township Engineer may issue a Certificate of Substantial Compliance. A Certificate of Substantial Compliance will authorize the Construction Official to issue a Certificate of Occupancy upon the posting with the Township of a cash deposit in an amount equal to 120% of the estimated cost of the work remaining to be performed, and further conditioned upon the execution of a written cash deposit agreement between the Township of Mendham and the applicant. This agreement shall obligate the applicant to complete the remaining work by a specified date and which agreement shall specifically list all work remaining to be performed in order to effectuate full compliance with the LDP, and to allow the Township to utilize the cash deposit to bring the site to compliance.

C. In the event that the property is the subject of a contract of sale, the Construction Official shall not issue a Certificate of Occupancy prior to full compliance with the LDP unless, in addition to receiving written evidence of the existence of the cash deposit agreement, the contract-purchaser requests in writing that the Certificate of Occupancy be issued pursuant to the provisions of Section 24-11B above and the cash deposit agreement.

D. In the event that a Certificate of Occupancy is issued prior to full compliance with the LDP and compliance is not effected by the date set forth in the cash deposit agreement, the failure to complete the work by such date shall give the Township of Mendham the right to have the work performed and the cost thereof paid from the cash deposit pursuant to the terms of the cash deposit agreement.

E. The Township Engineer shall not issue a Certificate of Compliance or Certificate of Substantial Compliance if there are insufficient funds in the applicant's escrow for the payment of current and anticipated invoices relating to the application or if there are any outstanding fees or fines relating to the property.

#### 24-11 APPEAL TO PLANNING BOARD FROM DISAPPROVAL BY TOWNSHIP ENGINEER OF APPLICATION FOR LDP

A. Whenever the Township Engineer disapproves an application for an LDP, or refuses to issue a Certificate of Compliance or Substantial Certificate of Compliance, the applicant may appeal such action to the Planning Board.

B. All such appeals shall be filed with the Planning Board Secretary in writing upon a form provided for that purpose. No filing fee shall be required. Unless the appeal is filed within 30 days following the action by the Township Engineer the disapproval shall be deemed final.

C. The Planning Board shall consider each appeal at a public meeting within forty-five (45) days of the filing of the appeal, as scheduled by the Planning Board.

D. Prior to the meeting, the applicant shall give notice thereof in accordance with the notice requirements set forth in the Municipal Land Use Law and the Township of Mendham code for Major Subdivisions. The notice shall state the fact that the LDP was denied by the Township Engineer, shall state the reasons for denial as expressed by the Township Engineer, and shall

state that the proposed LDP is on file at the office of the Planning Board Secretary and may be examined during regular business hours on any business day prior to the hearing.

E. For good cause shown, the Planning Board may direct the issuance of an LDP in cases where the Plan Details do not conform to the Design Standards contained herein. As used in this section, the term good cause shall mean that the applicant has demonstrated that by reason of the unique shape, shallowness or narrowness of the lot, or by reason of exceptional topographic conditions or physical features uniquely affecting the lot, the strict application of said Design Standards would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the lot owner. The burden of establishing the existence of good cause shall be upon the applicant who shall also establish to the satisfaction of the Planning Board that the issuance of the LDP will not substantially impair the purposes set forth in Section 24-3 and that the LDP may be issued without substantial adverse impact upon the surrounding properties and neighborhood.

F. In no case shall the Planning Board direct the issuance of an LDP where the LDP is inconsistent with the terms of any prior subdivision or site plan approval with regard to protection of critical areas.

#### 24-12 VIOLATIONS AND PENALTIES

The provisions of this Chapter shall be enforced by the Township Engineer, who is empowered to cause the land subject to activity regulated by this Chapter to be inspected and examined and to order the remedying of any condition found to exist in violation of any provision of this Chapter. Any person violating any provision of this Chapter shall be subject to a fine of not more than \$1,000.00 per violation at the discretion of the Municipal Court Judge, except that the minimum fine that may be imposed for a violation shall be \$100.00. Each day that a violation exists following the Notice of Violation shall be considered a separate violation.

**Section 2.** Severability. The provisions of this Ordinance are severable, and the invalidity of any phrase, clause or part hereof shall not affect the validity or effectiveness of the remainder of the Ordinance.

**Section 3.** This Ordinance shall take effect after final passage and publication pursuant to law.

Introduced:  
Adopted:  
Effective:

ATTEST:

**TOWNSHIP OF MENDHAM  
IN THE COUNTY OF MORRIS**

By: \_\_\_\_\_  
Ann L. Carlson, RMC  
Township Clerk

By: \_\_\_\_\_  
Richard Krieg,  
Mayor