

Ordinance #13-1386

AN ORDINANCE AMENDING THE COMPREHENSIVE DEVELOPMENT ORDINANCE OF THE BOROUGH OF MILLTOWN TO ADDRESS THE REQUIREMENTS OF THE COURT AND THE COUNCIL ON AFFORDABLE HOUSING (COAH) REGARDING COMPLIANCE WITH THE BOROUGH'S AFFORDABLE HOUSING OBLIGATIONS ADDING CHAPTER XXXIV, COMPREHENSIVE DEVELOPMENT, SECTION 34-18A, DEVELOPMENT FEES.

BE IT ORDAINED by the governing body of the Borough of Milltown, Middlesex County, New Jersey, that Chapter XXXIV, Comprehensive Development, Section 34-18A of the Revised General Ordinances of the Borough of Milltown, is hereby added as follows:

34-18A DEVELOPMENT FEES.

34-18A.1 Intent and Purpose.

a. In Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.

b. Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans.

c. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low-income and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

34-18A.2 Basic requirements.

a. This ordinance shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1.

b. Milltown shall not spend development fees until COAH has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

34-18A.3 Definitions. The following terms, as used in this ordinance, shall have the following meanings:

a. **Affordable housing development** shall mean a development included in the Housing Element and Fair Share Plan; and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

b. **COAH** or the **Council** means the New Jersey Council on Affordable Housing or any successor agency.

c. **Development fee** shall mean money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

d. **Developer** shall mean the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

e. **Equalized assessed value** shall mean the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

f. **Green building strategies** shall mean those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

34-18A.4 Residential development fees.

a. Imposed fees.

1. Residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5 percent of the equalized assessed value for residential development provided no increased density is permitted.

2. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of 6 percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance 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 units to be constructed on a site that was zoned for two units, the fees could equal one and a half percent of the equalized assessed value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two 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 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 adoption of a 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. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

4. Homes replaced as a result of a natural disaster (such as fire or flood) shall be exempt from the payment of a development fee.

34-18A.5 Non-residential Development fees.

a. Imposed fees.

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 (2.5) percent 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 pay a fee equal to two and one-half (2.5) percent 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 a 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 a half (2.5) percent development fee, unless otherwise exempted below.

2. The 2.5 percent 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. Non-residential developments shall be exempt from the payment of non-residential development fees 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" Form. Any exemption claimed by a developer shall be substantiated by that developer.

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 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by Milltown as a lien against the real property of the owner.

34-18A.6 Collection procedures.

a. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.

b. 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.

c. Within 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.

d. 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.

e. The construction official responsible for the issuance of a final certificate of occupancy shall notify 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 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 Milltown fail to determine or notify the developer of the amount of the development fee within 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 (C.40:55D-8.6).

h. The developer shall pay 100 percent of the calculated development fee amount prior to the municipal issuance of a final certificate of occupancy for the subject property.

i. Appeal of development fees.

1. 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 Milltown. 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 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

2. 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 amount by the Borough of Milltown. 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, R.S.54-48-1, et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

34-18A.7 Affordable Housing trust fund.

a. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential developers and proceeds from the sale of units with extinguished controls.

b. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

1. payments in lieu of on-site construction of affordable units;
2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
3. rental income from municipally operated units;
4. repayments from affordable housing program loans;
5. recapture funds;
6. proceeds from the sale of affordable units; and
7. any other funds collected in connection with Milltown's affordable housing program.

c. Within seven days from the opening of the trust fund account, Milltown shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, The Provident Bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).

d. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

34-18A.8 Use of funds.

a. The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address Milltown's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.

b. Funds shall not be expended to reimburse Milltown for past housing activities.

c. At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low-income and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.

1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.

2. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.

3. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

d. Milltown may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.

e. No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

34-18A.9 Monitoring. Milltown shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential developers, payments in lieu of constructing affordable units on

site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with Milltown's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH or the court. All monitoring reports shall be completed on forms designed by COAH.

34-18A.10 Ongoing collection of fees. The ability for Milltown to impose, collect and expend development fees shall expire with its substantive certification unless Milltown has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If Milltown fails to renew its ability to impose and collect development fees prior to the expiration of its substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320). Milltown shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall Milltown retroactively impose a development fee on such a development. Milltown shall not expend development fees after the expiration of its substantive certification.

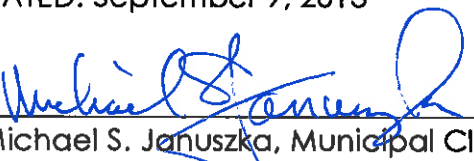
BE IT FURTHER ORDAINED that all Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

BE IT FURTHER ORDAINED that this Ordinance shall apply except where inconsistent with applicable law.

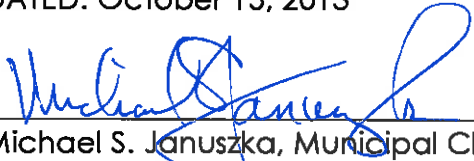
BE IT FURTHER ORDAINED that if any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

BE IT FURTHER ORDAINED that this Ordinance shall take effect upon passage and publication as provided by law.

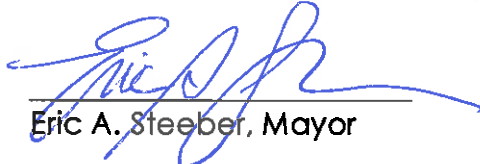
ADOPTED ON FIRST READING
DATED: September 9, 2013


Michael S. Januszka, Municipal Clerk

ADOPTED ON SECOND READING
DATED: October 15, 2013


Michael S. Januszka, Municipal Clerk

APPROVAL BY MAYOR ON THIS 16th DAY OF October, 2013


Eric A. Steeber, Mayor

I, Michael S. Januszka, Clerk of the Borough of Milltown hereby certify that the foregoing is a true copy of an ordinance duly adopted by the Borough Council of the Borough of Milltown, Middlesex County, State of New Jersey at a regular meeting held on October 15, 2013.

Michael S. Januszka, RMC
Borough Clerk

Ordinance #13-1387

**AN ORDINANCE TO AMEND CHAPTER XXXIV, COMPREHENSIVE DEVELOPMENT,
OF REVISED GENERAL ORDINANCES OF THE BOROUGH OF MILLTOWN,
COUNTY OF MIDDLESEX, STATE OF NEW JERSEY,
TO ADD SECTION 34-34 STEEP SLOPES AND
SECTION 34-35 RIPARIAN BUFFER AREA REGULATIONS.**

BE IT ORDAINED by the Borough of Milltown of the County of Middlesex and State of New Jersey that the Revised General Ordinances of the Borough of Milltown be amended as follows:

Section 1. Chapter XXXIV, Comprehensive Development, of the Revised General Ordinances of the Borough of Milltown, is hereby amended to include the following:

34-34 STEEP SLOPES.

34-34.1. Background, Scope and Purpose.

a. **Background.** The Borough of Milltown finds that disturbance of steep slopes results in accelerated erosion processes from stormwater runoff and the subsequent sedimentation of water bodies with the associated degradation of water quality and loss of aquatic life support. Related effects include soil loss, changes in natural topography and drainage patterns, increased flooding potential, further fragmentation of forest and habitat areas, and compromised aesthetic values. It has become widely recognized that disturbance of steep slopes should be restricted or prevented based on the impact disturbance of steep slopes can have on water quality and quantity, and the environmental integrity of landscapes.

b. **Purpose.** The purpose of this ordinance is to regulate the intensity of use in areas of steeply sloping terrain in order to limit soil loss, erosion, excessive stormwater runoff, the degradation of surface water and to maintain the natural topography and drainage patterns of land.

c. **Applicability.** This ordinance shall be applicable to new development or land disturbance on a steep slope within the Borough of Milltown.

34-34.2 Definitions. The following words and phrases shall have those meanings set reflected below:

a. "Disturbance" means the placement of new impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation.

b. "Impervious surface" means any structure, surface, or improvement that is demonstrated to reduce or prevent absorption of stormwater into land, and includes paver blocks, decks, patios, elevated structures, and similar structures, surfaces, or improvements.

c. "Redevelopment" means the construction of structures, dwellings, improvements or impervious surfaces on areas which previously contained structures, other improvements or impervious surfaces.

d. "Steep Slopes" means any slope equal to or greater than 20 percent as measured over any minimum run of 10 feet that may be located within the area of Klinesville Channery Loam as delineated on the Soil Survey Geographic (SSURGO) Database for Middlesex County, New Jersey from the U.S. Department of Agriculture, Natural Resources Conservation Service.. Steep slopes are determined based on contour intervals of two feet or less.

34-34.3 Designation of Areas. The percent of slope (rise in feet per horizontal distance) shall be established by measurement of distance perpendicular to the contour of the slope. The percent of slope shall be

calculated for each two-foot contour interval. For example, any location on the site where there is a one-foot rise over a 10-foot horizontal run constitutes a 10 percent slope; a 1.5 foot rise over a 10-foot horizontal run constitutes a 15 percent slope; a two-foot rise over a 10-foot horizontal run constitutes a 20 percent slope.

34-34.4 Steep Slope Limits. For steep slopes any disturbance shall be prohibited except as provided below:

- a. Redevelopment projects; and
- b. New disturbance necessary to protect public health, safety or welfare, such as necessary linear development with no feasible alternative; to provide an environmental benefit, such as remediation of a contaminated site; to reduce and/or stabilize steep slopes; to prevent hardship on the property owner peculiar to the property; or to prevent hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment; disturbance associated with improvements to a structure within the existing foundation footprint; disturbance associated with municipal projects and improvements on municipal property; and disturbance on occupied single family residential properties.

The applicant shall demonstrate through site plans depicting proposed development and topography that new disturbance is not located in areas with a 20 percent or greater slope.

34-34.5 Conflicts and Severability.

a. Conflicts. All other ordinances, parts of ordinances, or other local requirements that are inconsistent or in conflict with this ordinance are hereby superseded to the extent of any inconsistency or conflict, and the provisions of this ordinance apply.

a. Severability.

i. Interpretation: This Ordinance shall be so construed as not to conflict with any provision of New Jersey or Federal law.

ii. Notwithstanding that any provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the Ordinance shall continue to be of full force and effect.

iii. The provisions of this Ordinance shall be cumulative with, and not in substitution for, all other applicable zoning, planning and land use regulations.

34-34.6 Enforcement, Violation and Penalties. A prompt investigation shall be made by the appropriate personnel of the Borough of Milltown, of any person or entity believed to be in violation hereof. If, upon inspection, a condition which is in violation of this Ordinance is discovered, a civil action shall be undertaken in the Special Part of the Superior Court, or in the Superior Court, if the primary relief sought is injunctive or if penalties may exceed the jurisdictional limit of the Special Civil Part, by the filing and serving of appropriate process. Nothing in this Ordinance shall be construed to preclude the right of the Borough of Milltown, pursuant to N.J.S.A. 26:3A2-25, to initiate legal proceedings hereunder in Municipal Court. The violation of any section or subsection of this Ordinance shall constitute a separate and distinct offense independent of the violation of any other section or subsection, or of any order issued pursuant to this Ordinance. Each day a violation continues shall be considered a separate offense. The regulations

set forth in the Article shall be subject to, and enforced in the same manner as, the violation and penalty provisions of Subsection 34-39.2 of this Code.

Section 2. Chapter XXXIV, Comprehensive Development, of the Revised General Ordinances of the Borough of Milltown, is hereby amended to include the following:

34-35 RIPARIAN BUFFER AREA REGULATIONS.

34-35.1 Intent and Purpose.

a. Intent. The Borough of Milltown finds that lands adjacent to streams, lakes, or other surface water bodies that are adequately vegetated provide an important environmental protection and water resource management benefit. It is necessary to protect and maintain the beneficial character of these riparian areas by implementing requirements for the establishment, protection, and maintenance of vegetated buffers alongside the surface water bodies within the Borough consistent with the interest of landowners in making reasonable economic use of lands that include such designated areas.

b. Purpose. The purpose of these regulations is to designate riparian buffer areas and to provide for land use regulations therein in order to protect the streams, lakes, and other surface water bodies of Milltown and to comply with N.J.A.C. 7:15-5.25(g)3, which requires municipalities to adopt regulations that prevent new disturbance for projects or activities in riparian buffer areas as described herein. Compliance with the requirements of these regulations is in addition to, and not in place of, compliance with riparian buffer requirements imposed by federal or State law.

34-35.2 Definitions. Unless otherwise specifically indicated, the definitions of the words and/or terms utilized in this Article shall be as defined or described in the New Jersey Water Quality Management Planning rules, N.J.A.C. 7:15, the New Jersey Stormwater Management Rules, N.J.A.C. 7:8, and/or the New Jersey Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, as same may be amended from time to time.

34-35.3 Establishment and Protection of Riparian Buffer Areas.

a. Except as provided in Subsections 34-35.4 and 34-35.5 below, riparian buffer areas adjacent to all surface water bodies shall be protected from avoidable disturbance and shall be delineated as follows:

1. The riparian buffer area shall be 150 feet wide along both sides of the following waters not designated as C1 waters:

a. Any trout production water and all upstream waters (including tributaries);

b. Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water;

c. Any segment of a water flowing through an area that contains documented habitat for threatened or endangered species of plant or animal, which is critically dependent on the surface water body for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water; and

d. Any segment of a water flowing through an area that contains acid producing soils. According to available information from the New Jersey Department of Environmental Protection ("NJDEP"), potentially acid producing soils that exist

in Milltown are of the Kr-Raritan formation, and are generally located within the easterly and southerly area of the Borough. A formal determination regarding the presence of such soils shall be based upon field sampling and investigations, laboratory test results, a signed and sealed certification as to the presence or absence of acid producing soils prepared by a Licensed Professional Engineer of the State of New Jersey, and any other data deemed necessary by the Borough, all of which shall be furnished by the Applicant at the time of riparian buffer area boundary determination pursuant to Subsection 34-35.3.

2. For all other surface water bodies, a riparian buffer area 50 feet wide shall be maintained along both sides of the water.

b. The delineation of a riparian buffer area as described above shall be based on NJDEP geographic information system digital data or on more refined field data found acceptable to the Borough Engineer or Zoning Officer. The boundaries of the riparian buffer area shall be based on land surveys, field sampling and investigations, laboratory test results, a signed and sealed certification as to the presence or absence of acid producing soils prepared by a licensed professional engineer of the State of New Jersey, and any other data deemed necessary by the Borough Engineer or Zoning Officer, or required by State regulations or the NJDEP, all of which shall be furnished by the applicant prior to any activity or disturbance in any area affected by these regulations.

c. The portion of the riparian buffer area that lies outside of a surface water body shall be measured landward from the top of bank. If a discernible bank is not present along a surface water body, the portion of the riparian buffer area outside the surface water body shall be measured landward as follows:

1. Along a linear fluvial or tidal water, such as a stream or swale, the riparian buffer area shall be measured landward of the feature's centerline;
2. Along a non-linear fluvial water, such as a lake or pond, the riparian buffer area shall be measured landward of the normal water surface limit;
3. Along a non-linear tidal water, such as a bay or inlet, the riparian buffer area shall be measured landward of the mean high water line; and
4. Along an amorphously-shaped feature such as a wetland complex, through which water flows but which lacks a definable channel, the riparian buffer area shall be measured landward of the feature's centerline.

d. The riparian buffer area regulations set forth in this Article shall function as an additional layer of regulatory review and development restriction where the conditions in Subsection 34-35.3(a) above apply. The zoning restrictions applicable to a given area shall remain in full force except where the provisions of these riparian buffer area regulations differ from the zoning restrictions; in which case, the provision that is more restrictive shall govern.

e. The applicant or applicant's designated representative shall be responsible for the initial determination of the presence of riparian buffer area conditions on a site and for identifying the riparian buffer area on any plan submitted to the Borough in conjunction with an application for a construction permit, subdivision approval, site plan/land development

approval, bulk or use variance approval, and/or any other approval for an activity or improvement involving land disturbance. This initial determination shall be subject to review and approval by the Borough Zoning Officer and/or Borough Engineer, as appropriate, and, where required by State regulations, the NJDEP.

34-35.4 Variances.

a. Except as set forth in Subsection 34-35.5 below, and to the extent allowed by the New Jersey Stormwater Management Rules (N.J.A.C. 7:8), the New Jersey Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), and the New Jersey Planning Act Rules (N.J.A.C. 7:38), any project or activity involving disturbance in a riparian buffer area shall require variance relief pursuant to N.J.S.A. 40:55D-70. In addition to the applicable requirements of N.J.S.A. 40:55D-70, no such variance relief may be granted unless the applicant proves that the following criteria have been met:

1. The disturbance is proposed to be located on a lot in existence as of the effective date of this Article;
2. There is insufficient room outside the riparian buffer area for the proposed use otherwise permitted by the underlying zoning;
3. There is no other reasonable or prudent alternative to placement in the riparian buffer area, including obtaining variances from setback or other requirements that would allow conformance with the riparian buffer area requirements; and
4. The applicant proves through the submission of appropriate maps, drawings, reports and testimony, that the disturbance is necessary to:
 - a. Protect the public health, safety or welfare;
 - b. Provide an environmental benefit; or
 - c. Prevent undue economic hardship to the property owner by denying the property owner all economically-viable use of the property; provided the hardship was not self-created.

The applicant shall at all times bear the burden of proving that the above criteria have been met, in addition to the criteria that the applicant must prove pursuant to N.J.S.A. 40:55D-70.

b. All variance requests shall be accompanied by a riparian buffer area disturbance plan prepared by a New Jersey professional engineer, which plan shall fully evaluate the effects on the riparian buffer area of any proposed uses, activities or improvements resulting in any ground disturbance. The riparian buffer area disturbance plan shall include the following information:

1. Existing vegetation;
2. Field-delineated surface water bodies;
3. Field-delineated wetlands;
4. The 100-year floodplain;
5. Flood Hazard Areas, including floodway and flood fringe areas, as delineated by the NJDEP;
6. Soil classifications as found on soil surveys;
7. Field soil sampling, investigations, laboratory test results, and a signed and sealed certification as to the presence or absence of

acid producing soils prepared by a licensed professional engineer of the State of New Jersey;

8. Existing subdrainage areas on site with HUC (Hydrologic Unit Code) 14 designations;

9. Slopes in each subdrainage area segmented into sections of slopes less than 15%; above 15% but less than 20%; and steep slopes greater than 20%; and

10. Description of all proposed uses/activities and improvements, and full evaluation of the effects of same in the riparian buffer area.

34-35.5 Exceptions. The provisions of Subsection 34-35.4 notwithstanding, and to the extent allowed under the New Jersey Stormwater Management Rules (N.J.A.C. 7:8) and the New Jersey Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), and subject further to the review and approval by the NJDEP to the extent required by said rules, the following projects or activities involving disturbance in any riparian buffer area established pursuant to these regulations shall be allowed, and variance relief pursuant to Subsection 34-35.4 shall not be required:

a. Redevelopment Projects, including the construction of structures, dwellings, improvements and impervious surfaces on areas which previously contained structures, dwellings, improvements or impervious surfaces.

b. Linear development with no feasible alternative route; for the purposes of this section, "linear development" shall mean any development that is constructed in a linear fashion across the landscape, such as power lines, roads, sidewalks, bike paths, walkways, railways, pipelines (gas, oil), telecommunications infrastructure (excluding towers or other vertical improvements), and man-made waterways;

c. Disturbance that is in accordance with a stream corridor restoration or stream bank stabilization plan or project approved by the NJDEP;

d. Disturbance necessary to provide for public pedestrian access or water-dependent recreation that meets the requirements of the New Jersey Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, or the New Jersey Flood Hazard Area Control Act rules, N.J.A.C. 7:13;

e. Disturbance with no feasible alternative required for the remediation of hazardous substances performed with NJDEP or federal oversight pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 a et seq., or the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§9601 et seq.;

f. Any wetlands mitigation project that has been approved by the NJDEP, subject to compliance with a riparian buffer area disturbance plan prepared in accordance with Subsection 34-35.4(b) above and approved by the Borough Engineer; or

g. Any municipal or municipally-sponsored development or project that meets the requirements of the New Jersey Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, or the New Jersey Flood Hazard Control Act rules, N.J.A.C. 7:13;

h. Disturbance necessary to re-establish pre-existing improvements or reconstruct conditions that are unintentionally damaged from occurrences such as fire, vandalism or acts of God.

34-35.6 Enforcement, Violations and Penalties. The regulations set forth in this Article shall be subject to, and enforced in the same manner as, the violation and penalty provisions of Subsection 34-39.2 of this ordinance.

34-35.7 Appeals. Any person aggrieved by any decision, action or inaction of any Borough official (other than the Construction Official)

pursuant to these regulations, including any determination of the location of any riparian buffer area boundary, may appeal such decision, action or inaction to the Zoning Board of Adjustment in accordance with the provisions set forth in Subsection 34-4.1 of this ordinance.

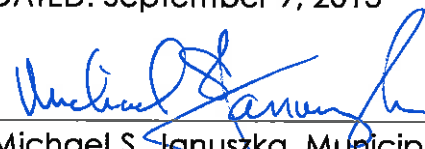
BE IT FURTHER ORDAINED that each section or subsection of this ordinance shall be deemed an independent section or subsection, and any section, subsection or part thereof held by a court of competent jurisdiction to be unconstitutional, void or ineffective for any reason shall not be deemed to affect the validity or constitutionality of any other section, subsection or part thereof.

BE IT FURTHER ORDAINED that all agreements and ordinances, or parts of agreements or ordinances, either written or oral, inconsistent with this ordinance are hereby repealed as to the extent of such inconsistency.

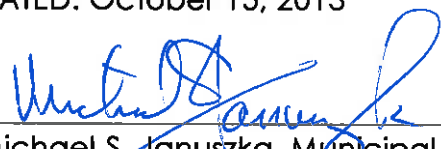
BE IT FURTHER ORDAINED that the regulations set forth in this ordinance shall be construed in such manner as not to conflict with any provision of New Jersey or federal law.

BE IT FURTHER ORDAINED that this ordinance shall take effect immediately upon their adoption and publication and filing with the Middlesex County Planning Board, as required by law.

ADOPTED ON FIRST READING
DATED: September 9, 2013


Michael S. Januszka, Municipal Clerk

ADOPTED ON SECOND READING
DATED: October 15, 2013


Michael S. Januszka, Municipal Clerk

APPROVAL BY MAYOR ON THIS 16th DAY OF October, 2013


Eric A. Steeber, Mayor

I, Michael S. Januszka, Clerk of the Borough of Milltown hereby certify that the foregoing is a true copy of an ordinance duly adopted by the Borough Council of the Borough of Milltown, Middlesex County, State of New Jersey at a regular meeting held on October 15, 2013.

Michael S. Januszka, RMC
Borough Clerk