

Stephenson Avenue should be flanked by buildings with their primary entries facing the green space.

(B) Along Main Street: At least 33 percent of the street frontage on the north side of Main Street should include buildings with their primary pedestrian entries (not necessarily their vehicular entries, which may be provided from a rear alley) facing Main Street.

ii. Eatontown:

(1) Route 35 Lifestyle/Tech Center:

(A) Formal park: Town green – Around the recommended town green specified in N.J.A.C. 19:31C-3.16(b), at least 50 percent of each street frontage should include buildings with their primary entrance facing the green. In order to create daytime and evening activity, at least 50 percent of the length of building facades that contribute to this build-to line percentage should constitute mixed-use buildings with ground-floor retail use; the remainder may be medium-density residential development, in accordance with N.J.A.C. 19:31C-3.4.

(2) Golf/Conference Campus: No build-to line is recommended in this district.

(3) Pinebrook Neighborhood:

(A) Active recreation: Pinebrook Road ball-fields – As specified in N.J.A.C. 19:31C-3.16(b), one or more active recreation areas is recommended along Pinebrook Road in Eatontown, with streets bordering all sides of each area. At least 33 percent of each street's frontage around each active recreation area should be comprised of buildings with their primary entrances facing the recreation area.

iii. Tinton Falls:

(1) Town Center:

(A) Formal park: Civic green – At least 66 percent of each of the frontages on the north, south, and east sides of the recommended civic green (that is, excluding the Municipal Drive frontage), should include buildings with their primary entrances facing the green. In addition, at least 50 percent of the buildings contributing to the recommended build-to line around the civic green should constitute mixed-use buildings with ground-floor retail use; the remainder may be medium-density residential development, in accordance with N.J.A.C. 19:31C-3.4.

(2) Tech/Office/R&D Campus:

(A) Formal park: Campus green – Around the recommended campus green, as specified in N.J.A.C. 19:31C-3.16(b), at the southeast corner of Corridor Road and Laboratory Road, buildings

should occupy at least 50 percent of the frontage along each of these streets.

(3) Hemphill Neighborhood:

(A) Formal parks: Pocket parks – For the two or three recommended pocket parks specified in N.J.A.C. 19:31C-3.16(b), residential buildings should occupy at least 33 percent of the frontage along all sides of each park.

(b) The following concern transitions between different uses:

1. Development of larger scale uses (that is, offices, hospitality, institutional, and stand-alone retail) should be buffered from smaller-scale development (namely residential low-density and residential medium-density) by one or more of the following techniques:

i. Being located across a street or open space;

ii. Being located back-to-back or side-to-back across an alley or parking area;

iii. Having mixed-use development as a transitional use between the two areas; and

iv. Having a minimum 20-foot landscaped buffer where back-to-back, side-to-back or side-by-side development occurs.

2. In addition, non-residential uses located on the same block as residential uses should be located on higher-traffic streets and at the periphery or end of each block.

3. Mixed-use development is considered an appropriate transitional land use to all other permitted land use types without the need for buffering.

(c) Transitions to surrounding neighborhoods: The following buffers are recommended where no intervening street, open space, or water body may otherwise provide adequate separation and/or screening.

1. Oceanport:

i. Horseneck Center: Development should be setback at least 200 feet from the railroad right-of-way, with landscaping as specified in N.J.A.C. 19:31C-3.16(d)3 along the railroad right-of-way. All provisions of the Coastal Area Facility Review Act (CAFRA) apply for development along Parker's and Oceanport Creeks.

ii. Education/Mixed-Use Neighborhood: Buildings fronting onto Main Street in this district should be setback at least 20 feet from the public right-of-way in order to echo the prevailing setbacks along Main Street. The setback area should be landscaped with grass and low plantings, and optionally with trees. Buildings may have driveways onto Main Street in this area, or onto a rear alley.

iii. Green Tech Campus: New development in this area should be setback from Parker's Creek or its tributaries by at least 100 feet.

## 2. Eatontown:

### i. Route 35 Lifestyle/Tech Center:

(1) In the area south of the Avenue of Memories and north of Academy Avenue on the southwestern edge of this development district, buildings should front onto new internal streets and only side or back onto the Fort Monmouth Project Area boundary. No new streets should be created between new development and existing adjoining development in these areas. Buildings should provide a minimum 25-foot setback along the Fort Monmouth Project Area perimeter in this area, and such setback should be generously planted with trees and other vegetation.

(2) In the area south of Academy Avenue, new development should provide a minimum 25-foot setback along the Fort Monmouth Project Area perimeter, and such setback should be generously planted with trees and other vegetation. Buildings may either front onto Park Avenue, or onto a new street within the district.

(3) Where buildings adjoin Route 35 and development to the north of the zone, a planted buffer of 25 feet should be provided.

### ii. Pinebrook Neighborhood:

(1) Where buildings adjoin Pinebrook Road, a minimum 30-foot street-facing setback should be provided along Pinebrook Road. The setback area should be landscaped with grass and low plantings, and optionally with trees.

(2) Along this development district's borders with the existing residential neighborhood to the south and the institutional uses to the east, new buildings should only side or back onto the Fort Monmouth Project Area boundary. No new streets should be created between new development and existing adjoining development in these areas. Buildings should provide a minimum 15-foot setback along the Fort Monmouth Project Area perimeter in this area, and such setback should be generously planted with trees and other vegetation. Landscaping should be provided as specified in N.J.A.C. 19:31C-3.16(d)3 along the railroad right-of-way.

(3) Golf/Conference Campus: Existing landscaped buffers along the perimeter, other than where it is bordered by the railroad at the southern edge, should be maintained. Landscaping should be provided as specified in N.J.A.C. 19:31C-3.16(d)3 along the railroad right-of-way.

## 3. Tinton Falls:

### i. Town Center:

(1) A strong connection is recommended from the Town Center to the existing Tinton Falls Municipal Complex to the west across Municipal Drive. In accordance with build-to line recommendations in (a)3 above, buildings should face the required civic green that aligns with the Municipal Complex. A 25-foot buffer should be provided adjoining Pearl Harbor Avenue.

(2) Where buildings adjoin Tinton Avenue, a minimum 50-foot planted buffer should be provided. This buffer may either be a series of easements on individual lots, with a permanent restriction against development or clearing of trees; or a separate, common area maintained by the property owner or property association. The buffer should be generously planted with trees and other vegetation.

ii. Hemphill Neighborhood: In order to avoid multiple driveways having direct access onto Tinton Avenue, any new low-density residential development within 200 feet of Tinton Avenue should be oriented to have vehicular and pedestrian access from a new internal street rather than from Tinton Avenue. A buffer of minimum 50 feet depth should be provided between development adjoining Tinton Avenue and the Tinton Avenue right-of-way. This buffer may either be a series of easements on individual lots, with a permanent restriction against development or clearing of trees; or a separate, common area maintained by the property owner or association. The buffer should be generously planted with trees and other vegetation.

iii. Tech/Office/R&D Campus: Transition buffers of at least 50 feet should be provided from the Tech/Office/R&D Campus to adjacent development areas. The only location where new development within the development district may adjoin existing development is along Pearl Harbor Road at the western boundary. A 25-foot planted buffer should be provided between new development and Pearl Harbor Road. New development may either face Pearl Harbor Road or a new internal street. Landscaping should be provided as specified in N.J.A.C. 19:31C-3.16(d)3 along the railroad right-of-way.

## 19:31C-3.18 Building design and sustainability

### (a) The following concern massing and articulation:

1. In center and neighborhood districts, buildings should have a traditional, pedestrian-friendly massing, echoing forms of the historic Fort Monmouth. Buildings in neighborhood districts should have massing and articulation appropriate to a residential focus. In campus districts, larger-scale massing may be employed, in keeping with the allowable uses of office, institutional, and hospitality.

i. The following concern horizontal massing of buildings:

(1) Along streets, facade planes of buildings should appear as a series of distinct bays. Bays in center and neighborhood districts should not exceed 60 feet in width. Bays in campus districts should not exceed 100 feet in width. Bays may be defined through elements such as columns, pilasters, gutters or expansion joints, changes in facade plane, size and rhythm of window spacing, pattern of balconies, and/or variation in surface material and pattern. Facade articulation should vary in the design and dimensions of bays along one building facade; a monotonous repetition of the same bay along a very wide facade is discouraged.

(2) Bay definition should extend through all levels of the building(s), except where horizontal massing changes in the facade plane are provided to break up the bulk of a building.

ii. The following concern vertical massing of buildings:

(1) The following concern the base of buildings:

(A) The base of buildings should be highlighted architecturally and differentiated from upper floors in order to visually ground the building. Suggested means are: varied fenestration, materials, floor heights, horizontal banding, detailing, and/or textures/patterns. On shorter buildings such as stand-alone retail or low-density residential buildings, the base may be the lower portion of the first level; on taller buildings, the base may be the lowest one or two floors.

(B) The pattern of window openings within a building's base should relate to the building's vertical bay pattern.

(C) Retail storefronts and lobbies to upper-story offices and apartment buildings should have large clear glass windows. Overhangs, light shelves, canopies, and straight awnings should be considered along storefronts and over major building entrances. Retail signage and building-mounted lighting are also recommended to help highlight the base where appropriate.

(D) Single-family homes, townhouses, and attached residential products should have full-width porches, stoops, porticos, or entry overhangs, echoing the historic pattern of housing at the Fort Monmouth. Individual unit entries with similar defining features should also be considered for ground-floor apartments in multi-family buildings.

(2) Middle of buildings: Except on low-density residential types, the middle levels of a building should be distinguished from the base and top by horizontal belt courses, cornices, or changes in

material, facade detailing, or fenestration pattern and proportion.

(3) The following concern the top of buildings:

(A) The tops of buildings should be highlighted with a parapet wall, balustrade, or deep cornice.

(B) Flat roofs should be considered on stand-alone retail and office buildings. Flat or sloping roofs may be used for institutional/civic buildings and for mixed-use buildings. Residential buildings, both low and medium-density, should have sloping roofs in side-gabled, cross-gabled, or hipped shapes. All sloping roofs should have a minimum slope of 1:2 rise/run. Roofs exceeding 50 feet in length should have frequent dormer windows or be broken up by variations in plane and/or roofing mass.

(C) The rooflines of buildings should coordinate with, and reinforce, the variation in bay massing (horizontal differentiation).

(b) The following concern the transparency of buildings:

1. Entries: Pedestrian building entries should be clearly visible and highlighted within the front facade through projections, recessions, and/or material changes, as well as canopies, overhangs, and lighting. The distinguishing features of such entries should be carried vertically through the building mass.

2. The following concern windows:

i. The following refers to the amount of building facade in various locations that should include transparent glazing.

(1) The following concern ground-floor facade transparency:

(A) Fronting onto a recommended build-to line, any retail use should have transparent glazing occupying at least 75 percent of the ground-floor facade area. Any non-retail use fronting onto a build-to line should have transparent glazing occupying at least 50 percent of the ground-floor facade area.

(B) Fronting onto a recommended street, but not located along a recommended build-to line, facades for any use should have transparent glazing occupying at least 40 percent of the ground-floor facade area.

(C) Adjacent to (or across a street from) a recommended open space of type formal park, active recreation, or passive open space, but not located on a build-to line, facades should have transparent glazing occupying at least 40 percent of the ground-floor facade area. However, if the ground-floor facade also faces a recommended

build-to line, the higher minimum described above should instead apply.

(2) The following concern upper-story transparency:

(A) Upper-story facades (any story above the ground floor) for any use facing a recommended build-to line should have transparent glazing occupying at least 40 percent of the upper-floor facade area.

(B) Upper-story facades (any story above the ground floor) for any use facing a recommended street should have transparent glazing occupying at least 25 percent of the upper-floor facade area. However, if the upper-story facade also faces a build-to line, the higher minimum described in (b)2i(2)(A) above should instead apply.

(C) Adjacent to (or across a street from) a recommended open space of type formal park, active recreation, or passive open space should have transparent glazing occupying at least 25 percent of the upper-floor facade area. However, if such facade also faces a recommended build-to line or recommended street, the appropriate higher minimum described in (b)2i(2)(A) above should instead apply.

(c) The following concern architectural style:

1. Relationship to historic Fort Monmouth buildings: Within the Oceanport Horseneck Center district and the Eatontown Golf/Conference Campus district, design of new buildings shall draw inspiration from the traditional forms of the buildings within these districts that are required to be adaptively reused. This includes the pedestrian-friendly scale; building height and footprint; symmetrical massing; traditional building materials and detailing; the relationship of the buildings to streets and open space; and the use of key iconic buildings as focal points to terminate or highlight key views.

2. Elsewhere in Fort Monmouth Project Area: Elsewhere in the Fort Monmouth Project Area, new buildings may be built with more modern architectural styles, materials, and forms, provided they comport with this subchapter.

(d) The following concern materials:

1. The following concern building materials:

i. Stone, masonry, brick, wood, fiber cement siding, precast, cast stone, manufactured stone masonry, and glass, as well as cast iron, steel, aluminum, and other types of metal should be the primary materials for facades. No more than three different primary materials should be used on any one building facade. Within the primary materials, variations in colors, textures, and

pattern may be employed to further break up the bulk or mass of a building.

ii. Any security grates, access panels, and garage window grilles should be enlivened with artwork, decorative tiling, or ornamental metalwork where possible.

2. Consistent application: Facade design and finish materials should be considered in three-dimensions, particularly as buildings turn corners. Materials and/or details should be extended around building corners and extensions in order to avoid a "pasted-on" appearance. All building facades adjacent to or easily visible from a street, walkway, or open space should exhibit the same or similar degree of architectural detailing as the building's primary, street-facing facade.

3. The following concern transparency of glazing:

i. The following applies to ground floor facades. Reflective, mirrored, smoked, and dark tinted glass should not be used. Lightly-tinted glass may be used for energy-efficiency reasons only if the lightest-color tint that is closest to clear is used. Translucent glass, which allows for shadows and silhouettes behind the glass, should be used rather than spandrel glass, which is virtually opaque, in areas where light is to be admitted while direct views are obscured (such as screened parking areas or mechanical rooms). Spandrel glass should be used only to conceal structural elements (for example, supporting columns and floor slabs) and to maintain a glazed façade appearance.

ii. On upper-story facades, there is no restriction on the type or transparency of glazing.

(e) The following concern screening of service, mechanical, and related areas:

1. Loading areas: Building trash and recycling collection bins should be located on the interior of buildings or screened from view of streets and open space by means of fencing and/or landscaped buffers. Loading docks should have operable doors or gates so that they may be closed when not in use. Except where a building is completely surrounded by recommended streets, leaving no other possible location, loading docks should be located away from recommended street frontages.

2. Mechanical equipment: Building mechanical equipment on the first floor or at-grade is encouraged to be fully contained within the building. Alternately, it should be located in the rear yard or within the interior side yard area and screened with evergreen trees and shrubs and attractive fencing.

3. Rooftop mechanical equipment: Any rooftop mechanical equipment that may be visible from a street should be screened from view in a manner consistent with the architectural design and materials of the building, or set

back far enough from the building edge that it is not visible from any street or open space.

4. Outdoor retail sales areas: Any exterior sales areas should be enclosed by screening that is compatible to the overall building form and comprised of quality materials that are in keeping with the building architectural style. No chain link fencing should be allowed for screening purposes.

(f) Private open space: Private open spaces should include both shared/common and individual spaces. Where possible, private open space shall be integrated and coordinated with the multi-use trail and public open spaces. Specific suggestions for each type of private open space follow below.

1. The following concern shared/common private open space:

i. A shared/common private open space such as a rooftop terrace, courtyard, or lawn area should be provided at each residential or mixed-use building containing multi-family units. Examples of where shared private open spaces could be provided include: atop the roof of a parking garage that is directly linked to or integral to the residential building; atop the roof or a mid-level terrace of the residential building itself; at-grade within an interior courtyard; to the front or side of the building; or any combination of these locations.

ii. For office-only and mixed-use buildings that are primarily occupied by office uses, shared private open space should also be considered.

iii. Shared open spaces should be appropriately sited with respect to the height and setback of the surrounding buildings to maximize light and minimize shadow impacts for the users and the public. These spaces should be attractively landscaped, easily accessible to all users, and include seating and amenities appropriate to their size.

2. The following concern individual private open space for residences:

i. Each low-density residential unit should include individual private open space in the form of a front stoop or porch as well as a front yard. Terraces and/or balconies, and rear patios or yards, should be considered as well. These private open spaces should provide an extension of the interior living space and a transition zone from the public to private realm.

ii. Medium density residential types, as well as residential units in mixed-use buildings, should similarly include individual private open spaces such as balconies or terraces, and yards and patios for ground-floor units.

(g) The following concern green design/sustainability:

1. Developers within the Fort Monmouth Project Area should attain LEED certification for individual buildings

through LEED-NC, for New Construction; LEED-EB: O&M, Existing Buildings, Operations & Maintenance; LEED-CS, Core & Shell; LEED-Homes; or other LEED rating system. Developers applying for site plan review should achieve LEED-ND, Neighborhood Development at the minimum certification level.

2. Preservation of existing geothermal fields: Several geothermal fields for alternative energy lie within Eatontown's Route 35 Lifestyle/Tech Center district. One of these geothermal fields is recommended as a formal park within this development district, the town green as specified in N.J.A.C. 19:31C-3.16(b). Other geothermal fields at the Fort Monmouth Project Area should also be preserved where possible, through integration with the open space and/or surface parking system, as they provide valuable low-cost sustainable energy. For operational reasons, the only uses that should be allowed over active geothermal fields are surface parking lots and open space.

3. Green roofs: Green roofs should be considered on all new and existing buildings. Green roofs may be intensive (light shrubbery not to be walked on) or extensive (landscaping that can be walked and played on, as shared/common open space for building occupants). Green roofs may be used at the top roof level of a building as well as on lower-level courtyards atop parking garage levels.

4. Building preservation and adaptive reuse: N.J.A.C. 19:31C-3.4(b) specifies the preservation and adaptive reuse of various existing buildings within the Fort Monmouth Project Area.

5. Reuse of construction and demolition materials: Building debris created from demolition of existing buildings at Fort Monmouth should be reused for new foundations, roads, and walkways, where possible. All construction waste should also be reused or recycled on-site wherever possible, to minimize truck trips off-site.

6. Low-impact landscaping: Development within the Fort Monmouth Project Area should use native plants in all landscaped areas, in order to reduce the need for irrigation and fertilization, and select organic alternatives whenever the use of fertilizers is unavoidable for pest control. The proper selection of native and drought-tolerant plant materials should minimize the need for chemical treatment of landscaped areas. An integrated turf management and pest control program should be considered, in conjunction with selection of appropriate turf grasses, to strictly control the application of pesticides and fertilizer so as to minimize potential impact to groundwater and potential transport to nearby waterways via surface runoff.

7. Tree preservation: Existing street trees and trees within forested open space areas throughout the Fort Monmouth Project Area should be preserved wherever possible. All trees within recommended open spaces should be protected with fencing during construction, and preserved after construction is completed.

**19:31C-3.19 Application of rules**

(a) The following concern the relationship between this subchapter and the Reuse Plan:

1. This subchapter is designed to promote flexibility in connection with the implementation of the Reuse Plan, and is intended to be consistent with the land uses described in the Reuse Plan. This subchapter does not supersede the Reuse Plan and is not intended to be, nor should it be construed as, amendments to the Reuse Plan; principal land uses permitted in the Reuse Plan are specifically permitted under this subchapter. All development and redevelopment within the Fort Monmouth Project Area shall be consistent with the Reuse Plan. The Authority will evaluate all development and redevelopment within the Fort Monmouth Project Area for consistency with the Reuse Plan.

2. In determining whether a proposed development or redevelopment project or proposed LRHL redevelopment plan is consistent with the Reuse Plan, the Authority shall consider, among other things, the following, as applicable:

i. Whether the proposed land uses and location thereof would result in a material departure from the land uses and locations described in the Reuse Plan;

ii. Whether approval of the project or consent to the proposed LRHL redevelopment plan would result in a material change in the overall development yield or affordable housing obligations of the host municipality as described in the Reuse Plan, or would result in any negative impact to the Authority's obligations pursuant to the Fair Housing Act of 1985;

iii. Whether approval of the project or consent to the proposed LRHL redevelopment plan will result in any significant adverse impact on other areas of Fort Monmouth;

iv. Whether approval of the project or consent to the proposed LRHL redevelopment plan would substantially impair the intent and purposes of the Reuse Plan (that is, whether the Reuse Plan will remain a rational and coordinated land use plan following the development of the project or implementation of the LRHL redevelopment plan);

v. Whether the approval of the project or consent to the proposed LRHL redevelopment plan would have any negative impact to the Authority's obligations pursuant to Defense Base Closure and Realignment Act of 1990, Pub. L. 101-510 (10 U.S.C. § 2687) and any agreement with the U.S. Army conveying Fort Monmouth property to the Authority, and whether such approval or consent would require Federal review, consent, or approvals; and

vi. Whether approval of the project or consent to the proposed LRHL redevelopment plan would have significant adverse infrastructure ramifications different from those envisioned in the Reuse Plan.

3. Where a proposed development or redevelopment project is determined by the Authority to be inconsistent with the Reuse Plan, the Authority shall require the adoption of either a Reuse Plan amendment pursuant to N.J.A.C. 19:31C-3.27(c) or a use-type variance pursuant to N.J.A.C. 19:31C-3.21 prior to the approval of any application submitted to the Authority or the host municipality as provided in this subchapter.

4. Where a proposed LRHL redevelopment plan is determined by the Authority to be inconsistent with the Reuse Plan, the Authority shall require the adoption of either a Reuse Plan amendment pursuant to N.J.A.C. 19:31C-3.27(c) or a variance pursuant to N.J.A.C. 19:31C-3.25(b)4iii prior to the consent by the Authority to the LRHL redevelopment plan.

(b) The following concern the application and interpretation of this subchapter:

1. The provisions of this subchapter shall have application to the Fort Monmouth Project Area.

2. This subchapter shall apply to the construction and uses of all non-exempt buildings and structures and uses of land within the Fort Monmouth Project Area. No non-exempt building, structure, or land, or any part thereof, shall be used or occupied and no building or structure shall be erected, constructed, reconstructed, moved, repaired, extended, converted, altered, maintained, used, occupied, or reoccupied within the Fort Monmouth Project Area unless in conformity with all the provisions of this subchapter specified for the development district in which it is located.

3. All uses not specifically permitted by the applicable rules are prohibited.

4. The Authority shall have exclusive jurisdiction to interpret this subchapter and the Official Zoning Map. The zoning officers and zoning boards shall refer to the Authority all requests or applications for interpretation of this subchapter received by them.

i. Prior to the submission of a request for an interpretation, the requester shall attend a pre-submission conference with the Authority staff. Any statements or recommendations made by any representative of the Authority in the context of a pre-submission conference shall be considered non-binding on the prospective applicant, the Authority, and the host municipality and shall confer no legal rights.

ii. A request for an interpretation shall be submitted in writing and filed with the Authority.

iii. The written request for an interpretation shall include a properly completed and signed Authority application form, which shall request the following information:

(1) The applicant's name and address;

(2) The location of the property that is the subject of the application;

(3) If the applicant is not the property owner, the property owner's name and address as well as the property owner's authorization for the application;

(4) An excerpt of the existing rule or portion of the map for which an interpretation is sought;

(5) An explanation of the request for interpretation;

(6) Payment of the Authority uniform application fee pursuant to N.J.A.C. 19:31C-3.28(b)1; and

(7) Other such information as the Authority may deem necessary from a specific requester.

iv. Upon receipt of a complete application, the Authority staff shall review the request and make its recommendation to the FMERA Board. The decision of the Authority shall be memorialized by a formal written resolution of the FMERA Board adopted at the meeting at which the interpretation is decided.

v. A copy of the decision of the Authority shall be transmitted to the applicant by the Authority via certified mail.

vi. No person shall contact or attempt to contact any member of the Authority pertaining to a request for interpretation. No person shall contact or attempt to contact the Authority once the staff has deemed a request for interpretation complete and begins its review of the request.

vii. The Authority's interpretation shall be binding on the enforcement and administration of this subchapter, including, but not limited to, site plan and subdivision approvals by host municipality and county planning boards, unless and until superseded by a subsequent interpretation or change in this subchapter.

(c) The following concern exemptions:

1. The following activities or projects within the Fort Monmouth Project Area are exempt from this subchapter, except as and to the extent otherwise expressly provided in this subchapter to the contrary:

i. Projects of the United States on land owned by the United States, and subdivisions and mergers by deed from the United States, are exempt from local site plan and subdivision approval under the Fort Monmouth Economic Revitalization Authority Act, and from this subchapter;

ii. Projects undertaken by, and subdivisions or mergers by deed from, the Authority, EDA, or other State entities (including, but not limited to, interim use and occupancy of existing buildings or properties owned or controlled by them, and renovations associated with

such interim use and occupancy) are exempt from local site plan and subdivision approval under the Fort Monmouth Economic Revitalization Authority Act, provided that all such projects, unless otherwise specifically exempted in this subsection, shall be subject to Authority's review and approval for compatibility (in the case of interim use and occupancy) or consistency (in the case of development or redevelopment) with the Reuse Plan and this subchapter;

iii. Roadway or infrastructure maintenance, repair, or replacement work within municipal, county, and State right-of-ways;

iv. Maintenance, repair, or replacement of existing utility structures or the installation of new underground utility structures within utility easements, where such work is conducted by the utility company or authorized representative;

v. County projects, on land owned by the county, and municipal projects, on land owned by the host municipality, shall not require local site plan or subdivision approval; provided that all such projects shall be subject to a Redevelopment Agreement or memorandum of understanding between the County or host municipality and the Authority or EDA as designated redeveloper, and to review by the Authority for consistency with the Reuse Plan and this subchapter; and

vi. Applications regarding alterations to individual detached one- or two-family homes and related accessory uses and not requiring any variances shall be exempt from site plan review and approval. Applications for alterations to individual detached one- or two-family homes and related accessory uses that require bulk and area-type variances shall be processed pursuant to this subchapter as minor site plans.

(d) The following concern zoning compliance letters:

1. Zoning compliance letters for properties within the Fort Monmouth Project Area shall be provided by the zoning officer, in consultation and cooperation with the Authority. The zoning officers shall provide to the Authority copies of all requests for zoning compliance letters received by them and all zoning compliance letters issued by them for properties within the Fort Monmouth Project Area.

2. In connection with exempt projects pursuant to (c) above (other than applications regarding alterations to individual detached one- or two-family homes and related accessory uses, as to which the zoning officer shall issue the zoning compliance letter), the Authority may provide a zoning compliance letter or confirmation of exemption for a specific property within the Fort Monmouth Project Area, upon written request and payment of the Authority uniform application fee pursuant to N.J.A.C. 19:31C-3.28(b)1.

3. The written request to the Authority for a zoning compliance letter shall include a properly completed and signed Authority application form, which shall request the following information:

- i. The applicant's name and address;
- ii. The location of the property that is the subject of the application;
- iii. If the applicant is not the property owner, the property owner's name and address as well as the property owner's authorization for the application;
- iv. The basis for the claimed exemption;
- v. Where applicable, a chronological list of all prior Authority actions taken or approvals granted, and all prior land use approvals granted by the host municipality, if any, for the subject property; and
- vi. Other such information as the Authority may deem necessary from a specific requester.

4. The Authority shall provide to the zoning officer a copy of each request for zoning compliance letters received by the Authority and of all zoning compliance letters issued by the Authority for properties within the host municipality.

(e) The following concern building permits and certificates of occupancy:

1. Building permits and certificates of occupancy for project improvements constructed within the Fort Monmouth Project Area shall be issued by the appropriate code official of the host municipality, or by the New Jersey Department of Community Affairs, as per applicable laws and subject to the requirements of this subchapter.

2. The host municipality code official shall refer to the Authority for review by the Historic Preservation Advisory Committee all applications for building permits involving properties within the Fort Monmouth Project Area identified in the Programmatic Agreement as buildings required for preservation" or select historic properties, where the Authority mandatory conceptual review and site plan approval by the planning board are not required prior to the issuance thereof, and shall not issue such permit prior to receiving the results of that review.

#### **19:31C-3.20 Site plan and subdivision applications; mandatory conceptual review**

(a) The Authority shall be an interested party entitled to notice in connection with all hearings of any local planning board relating to applications for development of land within 200 feet of the boundary of the Fort Monmouth Project Area.

(b) The following concern applications for site plan and subdivision approval:

1. All non-exempt development or redevelopment within the Fort Monmouth Project Area shall require site plan and/or subdivision approval.

2. Applications for subdivision approval and site plan approval in connection with development within the Fort Monmouth Project Area shall be submitted to the planning board of the host municipality in which the development parcel is located, and where and to the extent required pursuant to the County Planning Law, N.J.S.A. 40:27-1 et seq., to the County planning board, for review and approval.

3. The Authority shall be an interested party entitled to notice in connection with all local planning board hearings relating to applications for development of land within the Fort Monmouth Project Area.

4. An application for development within the Fort Monmouth Project Area may not be deemed complete by a planning board until the planning board has received the Authority's written determination as to the results of its mandatory conceptual review pursuant to (c) below.

5. It shall be a condition of each final site plan or subdivision approval granted by the planning boards that the developer shall have entered into a redevelopment agreement with the Authority or EDA as designated redeveloper for the project that is the subject of the application, unless the project is exempt from the requirement of a redevelopment agreement pursuant to N.J.A.C. 19:31C-3.24(b).

6. Whenever a planning board shall make a land use decision pursuant to this subsection, a copy of the approved plans and of the memorializing resolution and all accompanying exhibits or reports incorporated by reference in the resolution shall be provided to the Authority, within not more than 10 working days following the adoption of the memorializing resolution.

(c) The following concern mandatory conceptual review (MCR) of site plan and subdivision applications by the Authority:

1. Prior to or simultaneous with submitting an application for subdivision or site plan approval to the planning board (or to the County planning board, if such submission is made prior to submission to the planning board), the application shall be submitted to the Authority for MCR.

2. The application for MCR shall consist of the following. Where the application involves a minor subdivision or minor site plan, the Authority, in its discretion and upon written request of the applicant, may waive one or more of the submission requirements in (c)2ii, iii, or iv below, where strict compliance therewith is impractical or not necessary in order for the Authority to perform the MCR.

i. A properly completed and signed Authority application form, which shall request the following information:

- (1) The applicant's name and address;
- (2) Identification and the location of the property that is the subject of the application, by municipal block and lot number if available, or by the Authority parcel designation;
- (3) If the applicant is not the property owner, the property owner's name and address as well as the property owner's authorization for the application;
- (4) What approvals the applicant seeks from the host municipality and/or the County;
- (5) A brief description of the proposed development;
  - (A) For residential developments, the project description shall include a statement of how the project meets the affordable housing requirements set forth in N.J.A.C. 19:31C-3.23;
  - (B) If the proposed residential development does not satisfy the affordable housing requirements set forth in N.J.A.C. 19:31C-3.23, the application shall include a detailed explanation of the applicant's position as to economic feasibility and documentation in support thereof (including, but not limited to, a project pro forma and market studies);
- (6) A list of all variances and design exceptions requested;
- (7) A list of all buildings required for preservation or select historic properties as defined in the Programmatic Agreement, if any, included within or impacted by the project, and as to each whether any required NJSHPO referral has been made. Where NJSHPO referral is required, an application for MCR may be deemed incomplete in the absence of such referral;
- (8) A list of all open space or other environmental features, if any, listed in the natural resources inventory which are included within or impacted by the project;
- (9) The names and contact information of all professionals representing the applicant;
- (10) If the applicant is seeking subdivision approval, a brief description of the parent parcel and of the proposed lots;
- (11) A chronological list of all prior Authority actions taken or approvals granted, and land use approvals granted by the host municipality, if any, for the subject property;

(12) Any other supplemental information requested or required by the Authority; and

(13) Payment of the MCR application fee pursuant to N.J.A.C. 19:31C-3.28(b)1 and the posting of the MCR escrow deposit pursuant to N.J.A.C. 19:31C-3.28(b)2;

ii. The complete subdivision approval or site plan approval application submitted or to be submitted to the host municipality (or to the County, as the case may be), together with any application submission requirement waiver requests submitted or to be submitted to the planning board by the applicant;

iii. The architectural elevations of the proposed project, if not already included in the application pursuant to the host municipality's regulations; and

iv. A written statement by the applicant as to the application's relationship to each of the evaluation criteria set forth in (c)5 below, including, where variances or design exceptions are requested, a brief statement of the grounds on which the applicant believes the variances or exceptions may be granted, and a brief description of the consequences to the applicant and property owner if the variances or exceptions are denied.

3. Upon receipt of a complete application, the Authority staff shall conduct the MCR. Such conceptual review by the Authority staff shall be completed within 45 days of the Authority's receipt of the complete application, or within such later time period agreed to by the applicant, unless accompanied by a request for a use-type variance, in which case the time periods applicable to the determination of a request for a use-type variance set forth in N.J.A.C. 19:31C-3.21 shall apply.

4. The Authority staff shall review each application to determine whether one or more use-type variances or an amendment to the Reuse Plan may be required. If the Authority staff determines that a use-type variance or an amendment to the Reuse Plan is required, the planning board shall not have jurisdiction over the subdivision application or site plan application until the applicant obtains approval from the Authority for the required use-type variances or an amendment to the Reuse Plan.

5. In addition to determining whether use-type variances may be required, in conducting the MCR the Authority staff may evaluate the application for, and express the Authority's position as to, each of the following criteria, if and as applicable to the application under consideration:

i. The need and justification for, and desirability of, any bulk and area-type variances requested by the applicant or that the Authority identifies as being required;

ii. Adequacy of access to and egress from the subject property, the impact of the proposed project on

the existing roadway system within the Fort Monmouth Project Area boundaries, the relationship of the proposed project to the existing municipal or County roadway system, and the need for roadway improvements, relocations or modifications;

iii. Availability and adequacy of water, sewer, gas, electric, and telecommunications utilities, potential impacts of the proposed project on existing utilities infrastructure within the Fort Monmouth Project Area, the relationship of the project to the existing municipal or other utilities systems, and the need for infrastructure improvements or modifications;

iv. The need for and existence or availability of easements in connection with access and utilities;

v. Architectural and aesthetic review; and

vi. Any other aspect of the project that, in the opinion of the Authority is relevant to the successful redevelopment of the Fort Monmouth Project Area, including, but not limited to, the potential impacts of the proposed project on future redevelopment within the Fort Monmouth Project Area.

6. Where an application involves buildings required for preservation or select historic properties as defined in the Programmatic Agreement, the Authority shall provide a copy of the application for MCR to the Historic Preservation Advisory Committee for its review pursuant to (d) below. The results of the Historic Preservation Advisory Committee's review shall be included or incorporated into the written report of the results of the Authority's MCR.

7. A copy of each application for MCR shall be provided to the Environmental Advisory Committee, for informational purposes. Where the application involves open space to be preserved or sensitive environmental features identified in the natural resources inventory, the Authority shall request that the Environmental Advisory Committee review the application pursuant to (e) below. The results of the Environmental Advisory Committee's review shall be included or incorporated into the written report of the results of the Authority's MCR.

8. The results of the Authority's MCR will be communicated to the applicant and the planning board in writing. Except to the extent the jurisdiction of the planning board is restricted as provided in (c)4 above with regard to use-type variances or a Reuse Plan amendment, the MCR does not in any way obviate or supersede site plan or subdivision approval by the planning board (or, where applicable, the County planning board).

9. If following the completion of the MCR the application is materially modified or revised, notice of such modifications or revisions shall be provided to the Authority, and the Authority, by written notice to the planning board and the applicant, may require additional or supplemental conceptual review, if the Authority deter-

mines that such modifications or revisions materially and negatively alter the assumptions on which conceptual review was based.

(d) The following concern the Authority's Historic Preservation Advisory Committee:

1. The Authority's Historical Preservation Advisory Committee shall be the exclusive historic preservation commission, as established pursuant to section 21 of P.L. 1985, c. 516 (N.J.S.A. 40:55D-107), for all land use matters and approvals within the Fort Monmouth Project Area.

2. The Authority shall provide to the Historical Preservation Advisory Committee for its review a copy of each application for mandatory conceptual review that involves buildings required for preservation or select historic properties as defined in the Programmatic Agreement.

3. The Programmatic Agreement is not reproduced in this subchapter, but a current copy of the Programmatic Agreement shall be kept in the offices of the Authority.

4. The Historic Preservation Advisory Committee shall review the proposed project for consistency with the requirements of the Programmatic Agreement and any applicable preservation covenants required thereunder. The results of the Historic Preservation Advisory Committee's review may be incorporated in a resolution of the Committee or in the Committee's minutes, or in a written report of the Committee, at the Committee's discretion. The Historic Preservation Advisory Committee's review shall constitute part of and be coordinated with the timing of the Authority's mandatory conceptual review, so that the results and report thereof, if any, may be included or incorporated into the written report of the results of the Authority's mandatory conceptual review.

5. As required pursuant to N.J.A.C. 19:31C-3.19(e)2, the Historic Preservation Advisory Committee shall review and report on applications for building permits for properties identified in the Programmatic Agreement as buildings required for preservation or select historic properties, in all situations where the Authority mandatory conceptual review and site plan approval from the planning board are not required prior to issuance of the permit. The Authority shall report the results of the Historic Preservation Advisory Committee review of such permit application in writing to the host municipality code official who submitted the request for review, within 45 days of the Authority's receipt of the request. Failure of the Historic Preservation Advisory Committee to render a report within the 45-day period shall be deemed to constitute a report in favor of issuance of the permit and without the recommendation of conditions to the permit.

6. Meetings of the Historic Preservation Advisory Committee as part of the Authority's mandatory conceptual review of a project shall be conducted in accordance with the Senator Byron M. Baer Open Public Meetings Act, P.L. 1975, c. 231 (N.J.S.A. 10:4-6 et seq.).

(e) The following concern the Authority's Environmental Advisory Committee:

1. The Authority's Environmental Advisory Committee shall be the exclusive environmental commission, as established pursuant to P.L. 1968, c. 245 (N.J.S.A. 40:56A-1 et seq.), for all land use matters and approvals within the Fort Monmouth Project Area.

2. The Authority shall provide to the Environmental Advisory Committee an informational copy of each application for mandatory conceptual review. Where the application involves open space to be preserved or other environmental features to be preserved or protected as identified in the natural resources inventory, the Authority shall request the Environmental Advisory Committee's review of the application.

3. The natural resources inventory shall be prepared by the Authority staff, giving due consideration to the Reuse Plan and the natural resource inventories, if any, of the host municipalities, and approved by the FMERA Board. A current copy of the natural resources inventory shall be kept in the offices of the Authority.

4. The Environmental Advisory Committee shall review the proposed project for impacts upon the open space parcels and other environmental features to be protected or preserved as identified in the natural resources inventory (or prior to the completion thereof, in the Reuse Plan). The results of the Environmental Advisory Committee's review may be incorporated in a resolution of the Committee or in the Committee's minutes, or in a written report of the Committee, at the Committee's discretion. The Environmental Advisory Committee's review shall constitute part of and be coordinated with the timing of the Authority's mandatory conceptual review, so that the results and report thereof, if any, may be included or incorporated into the written report of the results of the Authority's mandatory conceptual review.

5. Meetings of the Environmental Advisory Committee as part of the Authority's mandatory conceptual review of a project shall be conducted in accordance with the Senator Byron M. Baer Open Public Meetings Act, P.L. 1975, c. 231 (N.J.S.A. 10:4-6 et seq.).

### 19:31C-3.21 Variances and exceptions

(a) The following concern bulk and area-type variances:

1. In connection with subdivision and site plan approval, the Planning Board shall have the authority to grant bulk and area-type variances from the requirements contained in this subchapter or applicable LRHL redevelopment plan, upon the satisfaction of either of the following criteria:

i. By reason of the exceptional narrowness, shallowness, or shape of the property; exceptional topographic conditions or physical features uniquely affect-

ing the property; or an extraordinary and exceptional situation uniquely affecting the property or structures lawfully existing thereon, strict application would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer; or

ii. A determination that the purposes of the Reuse Plan and this subchapter would be advanced by a deviation from the bulk and area requirements of this subchapter and the benefits of the deviation would substantially outweigh any detriment.

2. No bulk and area-type variance may be granted without a determination that the variance can be granted without substantial detriment to the public good and that the granting of the variance will not substantially impair the intent and purpose of the Reuse Plan or this subchapter.

3. Where bulk and area-type variances are requested or identified by the Authority as being required during mandatory conceptual review, the Authority may include in its written report of the results of its mandatory conceptual review a statement with the Authority's position as to whether the variances can be granted without substantially impairing the intent and purpose of the Reuse Plan or this subchapter, or a statement as to why the Authority has determined that granting the variances would substantially impair the intent and purpose of the Reuse Plan or this subchapter.

4. Where the need or a request for a bulk and area-type variance is identified following the completion of the Authority's mandatory conceptual review, the planning board, prior to the completion of the public hearing on the application, shall so inform the Authority and shall afford the Authority the opportunity to provide for the record the Authority's statement pursuant to (a)3 above. The Authority's statement may be provided either as a written addendum to its report of the results of its mandatory conceptual review or by oral testimony, at the Authority's discretion.

(b) The following concern use-type variances, other than density variances:

1. The Authority shall have sole and exclusive jurisdiction to grant, for special reasons shown, a variance from the requirements of the Reuse Plan or this subchapter to permit:

i. A use or principal structure in a development district restricted against such use or principal structure;

ii. A continuation or an expansion of a non-conforming use;

iii. Deviation from a specification or standard pursuant to this subchapter pertaining solely to a conditional use;

iv. An increase in the permitted floor area ratio in a development district as established by this subchapter; and

v. A height of a principal structure which exceeds by 10 feet or 10 percent the maximum height permitted in a development district for a principal structure.

2. In lieu of granting any use-type variance, the Authority, in its discretion, may require the adoption of a Reuse Plan amendment pursuant to N.J.A.C. 19:31C-3.27(c) or an amendment to this subchapter, or both. The decision of the FMERA Board to require a Reuse Plan amendment or an amendment to this subchapter shall be memorialized in a resolution adopted by the FMERA Board.

3. An application for a use-type variance may be included as part of an application for mandatory conceptual review, or may be bifurcated from the development application to which it pertains and submitted separately and in advance of such development application. If not submitted together with an application for mandatory conceptual review, an application for a use-type variance shall be submitted on a properly completed and signed Authority application form, which shall request the following information:

i. The applicant's name and address;

ii. Identification and the location of the property that is the subject of the application, by municipal block and lot number if available, or by the Authority parcel designation;

iii. Identification of the particular rule from which the variance is sought;

iv. Provision of a statement of why the variance is sought and of the special reasons that warrant the granting thereof;

v. A description the consequences to the applicant and project if the variance is denied;

vi. Inclusion of site plans, reports, or other data that demonstrate the extent of the relief being sought;

vii. If the applicant is not the property owner, the property owner's name and address as well as the property owner's authorization for the application;

viii. A chronological list of all prior Authority actions taken or approvals granted, and land use approvals granted by the host municipality, if any, for the subject property;

ix. Inclusion of such other such information as may be deemed necessary from a specific applicant by the Authority; and

x. Inclusion of payment of the use-type variance application fee pursuant to N.J.A.C. 19:31C-3.28(b)1

and the posting of the use-type variance escrow deposit pursuant to N.J.A.C. 19:31C-3.28(b)2.

4. In the granting of any use-type variance, the Authority may impose such conditions, safeguards, limitations, and restrictions upon the premises benefited by the variance as may be necessary to: comply with other standards set forth in this subchapter; reduce or minimize any potentially injurious effect of such variance upon other property in or abutting the Fort Monmouth Project Area; carry out the general purpose and intent of this subchapter and the Reuse Plan; and promote the planning principles of the Reuse Plan.

5. If, prior to or in conjunction with an application for mandatory conceptual review, an applicant requests a use-type variance, or if, during the course of mandatory conceptual review, the Authority determines that a use-type variance or an amendment to the Reuse Plan is required, the planning board shall not have jurisdiction over the application unless and until the applicant obtains approval from the Authority for the required use-type variance, or until an amendment to the Reuse Plan or this subchapter is adopted.

6. A public hearing on an application requesting or requiring a use-type variance shall be held in accordance with N.J.A.C. 19:31C-3.26.

7. Use-type variances may be granted where the applicant demonstrates to the satisfaction of the Authority that special reasons exist for the granting of such variance, that the granting of the requested variance will not substantially impair the intent and purpose of the Reuse Plan and this subchapter, and that the variance can be granted without substantial detriment to the public good. In determining whether to grant a request for a use-type variance, the Authority must determine, based upon the evidence presented by the applicant and the Authority staff's recommendation, that:

i. Special reasons exist for the granting of the variance requested, including that the granting of the requested variance at the specified location will specifically and materially advance the planning objectives of the Reuse Plan and this subchapter;

ii. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and

iii. Adequate infrastructure, including storm and sanitary sewers, utilities, and access roads, will be provided and shall be so designed to prevent and/or minimize negative impacts upon the existing infrastructure. In addition, the proposed use will not decrease the ability of said infrastructure to perform in a safe and efficient manner;

iv. The variance will not have a substantial adverse environmental impact;

v. The variance will not substantially impair the intent and purpose of the Reuse Plan or this subchapter; and

vi. The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood of the subject property.

8. All use-type variances granted by the Authority shall require the affirmative vote of seven members of the FMERA Board, and shall be memorialized in a resolution adopted by the FMERA Board.

9. The approval of a use-type variance shall become null and void five years after the date on which the Authority adopts the resolution approving the variance, unless within such period:

i. Site plan and subdivision approval for the project is obtained from the planning board; or

ii. A certificate of occupancy pursuant to N.J.A.C. 19:31C-3.19(e) and a certificate of completion pursuant to N.J.A.C. 19:31C-3.24(f) are obtained for the project, and the use is commenced.

(c) The following concern requirements applicable to use-type variance for increased density:

1. Requests for a use-type variance seeking an increase in the permitted density as established by this subchapter shall first be heard and decided by the zoning board of the host municipality where the property in question is located, pursuant to N.J.S.A. 52:271-34.e(2). If the zoning board hearing such variance request does not vote in favor of the variance request, the Authority may not grant such a variance.

2. If the zoning board approves a request for a variance to increase density, the Authority may proceed to review and consider the application pursuant to the procedures and standards set forth in N.J.A.C. 19:31C-3.21(b) except as otherwise provided in this section.

3. Applications to the Authority that include a request for a density variance shall include the memorializing resolution and the record of the zoning board's approval of the variance.

4. Except where the zoning board has denied the density variance, the Authority may approve, conditionally approve, or deny such an application. In lieu of granting a use-type variance increasing density, the Authority, in its discretion, may require the adoption of a Reuse Plan amendment pursuant to N.J.A.C. 19:31C-3.27(c) or an amendment to this subchapter, or both.

5. In deciding the request for density variance, the Authority may rely on the record of the public hearings

conducted by the zoning board. Nothing in this section shall preclude the Authority from requiring a separate public hearing in accordance with N.J.A.C. 19:31C-3.26 on an application for a density variance, if the Authority, in its sole discretion, determines that such a hearing is necessary or desirable.

6. The Authority shall approve or deny the application for the density variance within 120 days of a complete submission, unless the applicant agrees to extend the time.

(d) The following concern design exceptions:

1. The respective planning board, when acting upon site plan and subdivision applications, shall have the power to grant exceptions from the requirements listed in N.J.A.C. 19:31C-3.10 through 3.12 as may be reasonable and within the general purpose and intent of this subchapter or the Reuse Plan if:

i. The literal enforcement of one or more of the rules in this subchapter is impractical; or

ii. The literal enforcement of one or more of the rules in this subchapter will exact undue hardship because of peculiar conditions pertaining to the land in questions.

#### 19:31C-3.22 Nonconforming uses, lots, and structures; temporary uses

(a) The following concern nonconforming uses, lots, and structures:

1. The following apply to nonconforming uses:

i. Any nonconforming use of land or structure, or portions thereof, may be continued if otherwise lawful, subject to the provisions of this section.

ii. A nonconforming use shall not be extended, expanded, or increased in intensity, or otherwise altered so as to increase the degree of nonconformity.

iii. A nonconforming use shall not be changed to any use other than a use permitted in the development district. When a nonconforming use has been changed to any permitted use, it shall not thereafter revert to a nonconforming use.

iv. No nonconforming use shall be moved in whole or in part for any distance to any location on the same or any other lot, unless such use conforms to the requirements of the development district in which it is located after being so moved.

v. When a nonconforming use is discontinued or abandoned for 12 continuous months, any subsequent use or occupancy of the land or structure in which the nonconforming use was located shall comply with the rules of the development district in which it is located.

vi. No use that is accessory to a principal non-conforming use shall continue after such principal use has ceased or terminated, unless otherwise permitted by the applicable rules.

2. The following apply to nonconforming structures/buildings:

i. Any nonconforming structure/building, or portion thereof, may be continued if otherwise lawful, subject to the provisions of this section.

ii. No nonconforming structure/building shall be enlarged or added to in any manner unless such enlargement or addition conforms to the requirements of the development district in which it is located.

iii. No nonconforming structure/building shall be moved in whole or in part for any distance to any other location on the same or any other lot, unless the entire structure shall thereafter conform to the requirements of the development district in which it is located after being so moved.

iv. Nonconforming structures/buildings may be maintained, repaired, or remodeled, including the incidental repair, installation, or relocation of nonbearing partitions, fixtures, wiring, or plumbing, provided that such maintenance, repair, or remodeling shall not create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure. Nothing in this subchapter shall be deemed to prevent the strengthening or restoration of a structure to a safe condition in accordance with an order of a public official who is charged with protecting the public safety.

v. In the event that a nonconforming structure/building is subject to partial destruction, by any means, such structure shall not be restored unless site plan approval is obtained and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion.

vi. In the event that a nonconforming structure/building is subject to substantial destruction, by any means, such structure shall not be restored unless it conforms to the requirements for the development district in which it is located and a zoning certificate is obtained.

vii. Notwithstanding the provisions of this section, any structure that is devoted to a nonconforming residential use in any development district may be remodeled, extended, expanded, and enlarged, provided that after any such remodeling, extension, expansion, or enlargement, such structure shall not be used to accommodate a greater number of dwelling units than such structure accommodated prior to any such work.

(b) The following concern temporary uses and structures:

1. The planning board may permit temporary uses and structures under circumstances that will serve to facilitate the redevelopment of the Fort Monmouth Project Area and/or protect the public health, safety, and welfare. Restrictions and requirements applicable to permanent structures within the Fort Monmouth Project Area may be partially or totally modified for a temporary period in order to facilitate the construction of a redevelopment project and/or protect the public.

2. Temporary uses and structures shall be subject to site plan approval by the planning board (which may be included as part of the site plan approval for the project to which it relates), and only in conjunction with an approved site activity within the Fort Monmouth Project Area, such as construction or site remediation, or in order to provide protection for the public.

3. The planning board shall evaluate temporary structures and uses on a case-by-case basis. No approval shall be granted unless the applicant demonstrates the following:

i. Temporary uses and structures may be approved when evidence is provided to show that the structure or use serves a purpose that will facilitate redevelopment of the Fort Monmouth Project Area and/or protect the public health, safety, and welfare; and

ii. Temporary uses and structures shall comply with all applicable rules, unless otherwise permitted by planning board, with the Authority's consent.

4. The maximum duration of any temporary use shall be limited. The Planning Board, with the Authority's consent, shall determine the maximum duration of a temporary use or structure.

### 19:31C-3.23 Affordable housing

(a) Development within the Fort Monmouth Project Area shall ensure that affordable housing units are constructed and comply with applicable provisions of the Fair Housing Act of 1985 and implementing rules and guidelines. As used in this section, "low or moderate income" shall have the meaning in the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and implementing rules and guidelines.

(b) For developments consisting of newly-constructed residential units located, or to be located, within the Fort Monmouth Project Area, at least 20 percent of the residential units constructed shall be required to be reserved for occupancy by low or moderate income households, to the extent this is economically feasible.

(c) A developer of a project consisting of newly-constructed residential units within the Fort Monmouth Project Area being financed in whole or in part with State funds, including, but not limited to, transit villages designated by the Department of Transportation and units constructed on State-owned property, shall be required to reserve at least 20

percent of the residential units constructed for occupancy by low or moderate income households.

(d) Affordable housing units constructed within the Fort Monmouth Project Area in accordance with COAH rules and guidelines and this subchapter may be utilized by the host municipality where such units are located toward fulfilling its COAH obligation (if such obligation specifically includes the host municipality's obligation attributable to development within the boundaries of the Fort Monmouth Project Area).

(e) The Authority shall identify and coordinate regional affordable housing opportunities in cooperation with the host municipalities in areas with convenient access to infrastructure, employment opportunities, and public transportation. Coordination of affordable housing opportunities may include methods to regionally provide housing in line with regional concerns, such as transit needs or opportunities, environmental concerns, or such other factors as COAH may permit; provided, however, that such provision by the Authority may not result in more than a 50 percent change in the fair share obligation of any municipality.

(f) Notwithstanding any other law or provision of this subchapter to the contrary, no development fees assessed within the Fort Monmouth Transportation Planning District (as defined in the Fort Monmouth Economic Revitalization Authority Act) shall be assessed for any low and moderate income housing units which are constructed within the Fort Monmouth Project Area pursuant to this subchapter.

#### 19:31C-3.24 Redevelopment agreements; designated redevelopment agreement

(a) The following concern redevelopment agreements required:

1. Except as otherwise specifically provided to the contrary in this subchapter, all redevelopment within the Fort Monmouth Project Area shall be implemented pursuant to a redevelopment agreement or the designated redevelopment agreement. The Authority or EDA as designated redeveloper shall be a party to, and empowered to enforce, all redevelopment agreements concerning property or projects within the Fort Monmouth Project Area. Without limiting the generality of the foregoing sentence, where the Authority has consented to the designation of an area in need of redevelopment or rehabilitation and to the adoption of a redevelopment plan by a host municipality pursuant to the LRHL, the Authority or EDA as designated redeveloper shall be a necessary party to, and empowered to enforce, any redevelopment agreement entered into between the host municipality and the redeveloper.

2. It shall be a condition of each final site plan or final subdivision approval granted by the planning boards that the applicant shall enter into a redevelopment agreement with the Authority or EDA as designated redeveloper for the project that is the subject of the application, unless the

project is exempt from the requirement of a redevelopment agreement pursuant to (b) below.

(b) Exemptions: The following types of projects shall not be considered redevelopment for the purposes of this subchapter and shall not require a redevelopment agreement:

1. Applications exempt from site plan review involving alterations to individual, detached one- or two-family homes and accessory uses; and

2. The Authority or EDA as designated redeveloper in its discretion may waive the requirement for a redevelopment agreement in respect of projects involving only minor site plan or minor subdivision approval, where such waiver would not be contrary to the purposes and intent of the provisions of this subchapter or the Reuse Plan.

(c) The following concern the EDA as designated redeveloper of certain properties:

1. Under N.J.S.A. 52:27I-33.a, the EDA is designated as a designated redeveloper for any property acquired by or conveyed to the Authority.

2. The Authority and EDA shall enter into a designated redevelopment agreement detailing the terms and conditions of the designated redeveloper relationship. The designated redevelopment agreement between the Authority and EDA is not reproduced in this subchapter, but a current copy of the agreement, as the same may be amended or modified from time to time, shall be kept in the offices of the Authority.

3. The EDA shall be a necessary party to any redevelopment agreement concerning any property or project acquired by the Authority unless the EDA has not assumed the role of designated redeveloper.

4. The designated redevelopment agreement shall provide that, when the EDA undertakes a specific project, an addendum to the agreement will be added that contains, without being limited to, the following provisions regarding the specific project:

i. A provision limiting the use of the property to the uses permitted pursuant to the Reuse Plan and this subchapter;

ii. A provision requiring the commencement and completion of the project within a period of time that the Authority and the EDA fix as reasonable;

iii. A provision that any lease may provide that all improvements shall become the property of the Authority or EDA as designated redeveloper; and

iv. Such other covenants, provisions, and continuing controls as may be deemed necessary to effectuate the purposes of the Fort Monmouth Economic Revitalization Authority Act.

5. When the EDA undertakes a specific project, the Authority shall review and approve the proposed project as set forth in N.J.A.C. 19:31C-3.19(c)1ii. Such approval shall require the affirmative vote of seven members of the FMERA Board.

(d) The following concern the required contents of redevelopment agreements:

1. All redevelopment agreements pertaining to properties or projects within the Fort Monmouth Project Area shall designate the redeveloper of the property or project that is the subject of the agreement, and at a minimum shall also contain the following, which shall be covenants running with the land prior to completion of the project as evidenced by the Authority's issuance of a certificate of completion as provided in (f) below:

i. A provision limiting the use of the property to the uses permitted pursuant to the Reuse Plan, and this subchapter and/or, where applicable, to the uses permitted pursuant to the LRHL redevelopment plan adopted by the host municipality with the Authority's consent;

ii. A provision requiring the redeveloper to commence and complete the project within a period of time that the Authority or EDA as designated redeveloper deems reasonable; and

iii. A provision restricting transfer and providing that the redeveloper shall be without power to sell, lease, or otherwise transfer the property, project, or redevelopment agreement, or any part thereof, prior to the completion of the project, without the written consent of the Authority or EDA as designated redeveloper.

2. All redevelopment agreements shall require that the covenants required pursuant to (d)1i through iii above shall be incorporated into a declaration of covenants and restrictions to be recorded against the subject property, subject to expiration upon the issuance of a certificate of completion as provided in (f) below.

3. Redevelopment agreements entered into in connection with an LRHL redevelopment project shall contain a provision pursuant to N.J.S.A. 40A:12A-39.e whereby the host municipality delegates to the Authority or EDA as designated redeveloper the right and ability to enforce the redevelopment agreement and to take other actions pursuant to the powers granted to the host municipality or redevelopment entity by the LRHL, including, but not limited to, declaring redeveloper defaults and the issuance of certificates of completion for the project, unless the Authority or EDA as designated redeveloper in its sole discretion determines otherwise.

(e) The following concern optional contents of a redevelopment agreement:

1. Redevelopment agreements pertaining to properties or projects within the Fort Monmouth Project Area may contain the following as appropriate under the circumstances:

i. Representations and warranties of the redeveloper (for example, qualified to do business in New Jersey, no financial problems, no legal problems, has or will have wherewithal to construct the project, all previously submitted information is accurate, etc.);

ii. A guaranty of the redeveloper's performance or payment may be required (for example, where redeveloper is a "shell" entity, the parent company or controlling individuals may be required to guaranty performance or payment), and where third party guaranty of redeveloper's performance or payment or both is provided, representations and warranties of the guarantor;

iii. Where the property is owned by the Authority or EDA as designated redeveloper and to be conveyed by the Authority or EDA as designated redeveloper to the redeveloper, and a separate agreement is not in place in respect of such conveyance, the terms and conditions of the conveyance, including purchase price, time frame for closing, etc.;

iv. In connection with a conveyance of property owned by the Authority or EDA as designated redeveloper, a limited right of reverter, exercisable by the Authority or EDA as designated redeveloper if the redeveloper has not commenced construction of the project within the agreed upon project timetable or otherwise defaults in the performance of its obligations under the redevelopment agreement, resulting in termination of the agreement and redeveloper status;

v. In connection with a lease of property by the Authority or EDA as designated redeveloper, the lease terms may provide that all improvements shall become the property of the Authority or EDA as designated redeveloper at the expiration or termination of the lease term;

vi. Where applicable, the scope and responsibility for costs of due diligence and environmental matters, including remediation if required, and site access terms and agreements, including indemnification of the Authority or EDA as designated redeveloper in connection therewith;

vii. Where applicable, provisions relating to the financing of the project and financial assistance, if any, to be provided or facilitated for the project;

viii. Cross-default provisions relating to any financial agreement between the host municipality and the redeveloper in connection with the project;

ix. Provisions addressing the rights and obligations of project mortgagees, in the event of a redeveloper event of default;

x. Provisions whereby the redeveloper agrees to defray the costs of the Authority or EDA as designated redeveloper arising out of or in connection with the negotiation, preparation and performance of the Authority's obligations or of obligations of EDA as designated redeveloper, pursuant to the redevelopment agreement, and arrangements for the payment thereof;

xi. Where applicable, provisions relating to the posting of performance and maintenance bonds for project-related improvements as may be required pursuant to the site plan or subdivision approvals for the project, and such other matters as might be addressed in a developer's agreement required as a condition of planning board approval of the project; and

xii. Any other covenants, provisions, conditions, or contingencies, or continuing controls as may be deemed necessary or desirable by the Authority or EDA as designated redeveloper to effectuate and achieve the purposes of the Fort Monmouth Economic Revitalization Authority Act and the effective redevelopment of the project and the Fort Monmouth Project Area.

(f) The following concern certificates of completion:

1. Unless the redevelopment agreement provides otherwise, the Authority or EDA as designated redeveloper shall issue certificates of completion for all redevelopment projects within the Fort Monmouth Project Area, upon completion thereof in accordance with the requirements of the redevelopment agreement.

2. Upon completion of any project subject to a redevelopment agreement within the Fort Monmouth Project Area, and the issuance of certificates of occupancy by the code official of the host municipality for such project, the applicant may apply to the Authority for a certificate of completion.

3. The application for a certificate of completion shall be submitted on a properly completed and signed Authority application form, which shall request the following information:

i. The applicant's certification to the Authority that all improvements have been completed in accordance with the redevelopment agreement and project approvals;

ii. Copies of all certificates of occupancy for the project issued by the code official of the host municipality; and

iii. A certification by the applicant that the redevelopment agreement is in full force and effect and the applicant is not aware of any default or event of default in the performance of its obligations thereunder,

or of any facts which, upon the giving of notice would constitute an event of default thereunder.

4. The Authority or EDA as designated redeveloper may inspect the project to ensure it was completed in accordance with the redevelopment agreement. If the project is deemed completed in compliance with the requirements of the redevelopment agreement, the Authority or EDA as designated redeveloper shall issue a certificate of completion for the project. The certificate of completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants with respect to the project in the declaration of covenants recorded against the subject property pursuant to the terms of the redevelopment agreement.

5. Within 30 days after receipt of the application, the Authority or EDA as designated redeveloper shall provide the redeveloper with the certificate of completion, or a written statement setting forth in detail the reasons why it believes that the redeveloper has failed to complete the project in accordance with the provisions of the redevelopment agreement or is otherwise in default of its obligations thereunder and what reasonable measures or acts will be necessary in the reasonable opinion of the Authority or EDA as designated redeveloper for the redeveloper to be entitled to the certificate of completion.

#### 19:31C-3.25 LRHL Redevelopment and redevelopment plans

(a) The following concern an LRHL area in need of redevelopment or rehabilitation designation:

1. The Authority may request that a host municipality consider the designation of any portion of the Fort Monmouth Project Area within its municipal boundaries as being an area in need of redevelopment or an area in need of rehabilitation pursuant to the provisions of the LRHL; or the Authority may consent to a request by a host municipality to so designate a portion of the Fort Monmouth Project Area.

2. The Authority may initiate its own investigation, or may request that a host municipality study property located within its municipal boundaries to determine if such property meets the criteria for designation as an area in need of redevelopment or area in need of rehabilitation under the LRHL. Alternatively, a host municipality may request that the Authority undertake such an investigation or consent to the host municipality undertaking such an investigation on its own initiative. The Authority may request that additional properties be investigated that are not identified in the original request.

3. The Authority's consent is required for all LRHL area in need designations by a host municipality, whether requested by the Authority or by the host municipality.

4. A request by a host municipality for the Authority's consent to the designation as an area in need of redevelopment or area in need of rehabilitation pursuant to the LRHL shall be submitted to the Authority, in writing, signed by the chief executive officer of the municipality. The request shall include a properly completed and signed Authority application form, which shall request the following information:

- i. Identification and the location of the property proposed for designation by municipal block and lot number if available, or by the Authority parcel designation;
- ii. The existing zoning and land use of the properties proposed for designation;
- iii. A map showing the boundaries of the area proposed to be investigated;
- iv. A description of existing structures, if any, on the properties proposed for designation;
- v. An area investigation study and a statement indicating why the area may be in need of redevelopment; and
- vi. A copy of the host municipality's resolution designating the area in need of redevelopment or rehabilitation.

5. The procedures to be followed by the host municipality for the designation of an area in need pursuant to the LRHL shall be the procedures set forth in the LRHL. Any resolution adopted by the governing body designating an area in need prior to the Authority's consent thereto shall be expressly conditioned upon, and shall not be effective until, the Authority's consent to the designation.

6. When considering whether to consent to an area in need of redevelopment or an area in need of rehabilitation designation by a host municipality, the Authority may request a review by and statement from the Authority's planner, concurring with the findings and recommendations of the area study; and a review by and opinion from the Authority's attorney, that the procedures utilized and the area investigation meet the legal requirements for area designation pursuant to the LRHL and applicable case law. The Authority may also consider the extent of the area subject to the designation, the justification for the designation, and whether the designation will contribute to the successful redevelopment of the Fort Monmouth Project Area.

7. The Authority may consent to, consent with conditions, or withhold its consent to the area in need of redevelopment or area in need of rehabilitation designation. The Authority's consent to an area in need designation shall require the affirmative vote of seven members and shall be memorialized by a formal written resolution of the Authority adopted at the meeting at which the Authority determines whether to consent to the designation.

8. Amendments to expand the boundaries of a previously designated area in need shall be deemed a new action requiring Authority consent, and shall follow all procedures set forth in this subsection.

(b) The following concern LRHL redevelopment plans:

1. The Authority's consent is required for the host municipality's adoption of a redevelopment plan pursuant to LRHL for a duly designated area in need of redevelopment or rehabilitation or a portion thereof.

2. The application for the Authority's consent to the adoption or proposed adoption of an LRHL redevelopment plan by a host municipality shall consist of:

i. A properly completed and signed Authority application form, which shall request the following information:

(1) Identification and the location of the property that is the subject of the proposed LRHL redevelopment plan, by municipal block and lot number if available, or by the Authority parcel designation;

(2) A brief description of the LRHL redevelopment plan, including identification of departures from the requirements of the Reuse Plan and this subchapter;

(3) The names and contact information of all professionals representing the applicant in connection with the preparation of the LRHL redevelopment plan; and

(4) Any other supplemental information required by the Authority;

ii. A complete copy of the LRHL redevelopment plan as adopted by the host municipality;

iii. A copy of the host municipality's resolution designating the area in need of redevelopment or rehabilitation, the area investigation study, and of the Authority's resolution consenting thereto;

iv. A copy of the planning board's review of the proposed LRHL redevelopment plan and report to the governing body pursuant to the requirement of the LRHL and a copy of the record of all relevant proceedings conducted by the planning board;

v. Copies of all notices sent or published in connection with the host municipality's consideration and adoption of the LRHL redevelopment plan; and

vi. A copy of the host municipality's adopted ordinance adopting the LRHL redevelopment plan and a copy of the record of all relevant proceedings conducted by the governing board.

3. In accordance with N.J.A.C. 19:31C-3.19(a), all provisions of the LRHL redevelopment plan shall be consistent with the Reuse Plan. All provisions of the LRHL

redevelopment plan shall also be consistent with this subchapter. In determining whether the LRHL redevelopment plan is consistent with this subchapter, the Authority shall consider the following, as applicable:

i. Whether consent to the LRHL redevelopment plan would result in a departure from the requirements of this subchapter relating to:

(1) A use or principal structure in a development district restricted against such use or principal structure;

(2) A continuation or an expansion of a non-conforming use;

(3) Deviation from a specification or standard pertaining solely to any conditional use;

(4) An increase in the permitted floor area ratio;

(5) An increase in the permitted density; or

(6) A height of a principal structure which exceeds by 10 feet or 10 percent the maximum height permitted in the development district for a principal structure;

ii. Whether consent to the LRHL redevelopment plan would result in a material change in the overall development yield or affordable housing obligations of the host municipality as provided in this subchapter, or would result in any negative impact to the Authority's obligations pursuant to the Fair Housing Act of 1985;

iii. Whether consenting to the LRHL redevelopment plan will result in any significant adverse impact on other areas of Fort Monmouth;

iv. Whether consenting to the LRHL redevelopment plan would substantially impair the intent and purposes of this subchapter (that is, whether this subchapter will remain rational and coordinated land use rules following the implementation of the LRHL redevelopment plan);

v. Whether the consent to the LRHL redevelopment plan would have any negative impact to the Authority's obligations pursuant to Defense Base Closure and Realignment Act of 1990, Pub.L. 101-510 (10 U.S.C. § 2687), any agreement with the U.S. Army conveying Fort Monmouth property to the Authority, and whether such consent would require Federal review, consent, or approvals; and

vi. Whether consenting to the LRHL redevelopment plan will have significant adverse infrastructure ramifications within the Fort Monmouth Project Area.

4. The Authority may consent to, consent with conditions, or withhold its consent to the host municipality's adoption of the LRHL redevelopment plan that is consistent with the Reuse Plan and this subchapter. If the Authority determines the LRHL redevelopment plan to be

inconsistent with the Reuse Plan or this subchapter, the Authority may withhold its consent or consent with one or more of the following conditions and/or variances:

i. The Authority may require, as a condition to its consent, an amendment to the Reuse Plan pursuant to N.J.A.C. 19:31C-3.27(c) so that the LRHL redevelopment plan is consistent with the amended Reuse Plan and/or in lieu of variances pursuant to (b)4iii below.

ii. The Authority may require, as a condition to its consent, an amendment to this subchapter so that the LRHL redevelopment plan is consistent with the amended rules.

iii. In its resolution consenting to the adoption of the LRHL redevelopment plan, the Authority may grant variances for each inconsistency with the Reuse Plan under N.J.A.C. 19:31C-3.19(b)2i and with this subchapter under (b)3i above. Before the Authority may grant a variance for an increase in the permitted density established in this subchapter, the Authority shall submit the proposed density variance to the zoning board of the host municipality that adopted the LRHL redevelopment plan. The zoning board shall hear and decide the submitted variance only. If the Zoning Board does not vote in favor of the submitted variance, the Authority shall not be permitted to grant that variance. Any resolution consenting to the adoption of the LRHL redevelopment plan containing such variances shall be adopted by the affirmative vote of seven members of the FMERA Board, shall identify the provisions of the rules from which the variances are granted, and shall state the Authority's reasons for granting the variances.

5. In determining whether to consent to an LRHL redevelopment plan, the Authority may rely upon the record of all relevant proceedings of the host municipality, including the planning board's review and report and the public meetings and hearings conducted by the planning board and governing body in connection with the adoption of the LRHL redevelopment plan ordinance. Nothing in this subsection shall preclude the Authority from requiring a separate public hearing in accordance with N.J.A.C. 19:31C-3.26 on an application for consent to the adoption of an LRHL redevelopment plan, if the Authority, in its sole discretion, determines that such a hearing is necessary or desirable. The Authority may also consider the following, among other things:

i. The justification for utilizing an LRHL redevelopment plan;

ii. Whether the LRHL redevelopment plan is proposed as an overlay alternative to, or as superseding, the applicable provisions of this subchapter; and

iii. Any other aspect of the proposed LRHL redevelopment plan that, in the opinion of the Authority, is relevant to the successful redevelopment of the Fort Monmouth Project Area, including, but not limited to,

the potential impacts of the LRHL redevelopment plan on future redevelopment within the Fort Monmouth Project Area and the implications of the LRHL redevelopment plan for the Authority's ability to oversee redevelopment of the property within the Fort Monmouth Project Area.

6. No LRHL redevelopment plan for property within the Fort Monmouth Project Area shall be effective unless and until the Authority has consented to its adoption, notwithstanding the fact that the host municipality may have enacted an ordinance adopting the LRHL redevelopment plan prior to receiving the Authority's consent thereto. All such ordinances adopted by the governing body prior to the Authority's consent thereto shall be expressly conditioned upon, and shall not become effective until, the Authority consents to the adoption thereof.

7. All LRHL redevelopment plans shall include a provision requiring a redevelopment agreement between the Authority or EDA as designated redeveloper, the host municipality, and the redeveloper.

8. LRHL redevelopment plans may provide that in connection with subdivision and site plan approval, the planning board shall have the authority to grant bulk and area-type variances from requirements contained in this subchapter or the LRHL redevelopment plan, as applicable. All LRHL redevelopment plans shall include a provision requiring that any request for a use-type variance from the requirements of the LRHL redevelopment plan be treated and processed as a request for an amendment to the LRHL redevelopment plan pursuant to this subchapter, including the requirement in (b)10 below for Authority consent to such an amendment.

9. The Authority's consent to the adoption of an LRHL redevelopment plan shall be memorialized by a formal written resolution of the Authority adopted at the meeting at which the Authority determines whether to consent to the adoption.

10. Amendments to an LRHL redevelopment plan previously consented to by the Authority shall be deemed a new action requiring consent, and shall follow all procedures set forth in this subsection.

11. Redevelopment plans duly adopted by a host municipality pursuant to the LRHL with the Authority's consent shall be noted on the official zoning map.

12. Development standards and design guidelines specifically set forth in an LRHL redevelopment plan duly adopted by a host municipality with the Authority's consent shall apply to projects within the area encompassed by the LRHL redevelopment plan, to the extent described in the LRHL redevelopment plan. Where the LRHL redevelopment plan does not provide a corresponding development standard or design guideline for an aspect of a project that would be addressed under this subchapter, the requirements or development and design guideline in this

subchapter shall apply unless the LRHL redevelopment plan specifically provides otherwise. Generally applicable requirements and development and design guidelines in this subchapter relating to all development districts within the Fort Monmouth Project Area and not specifically enumerated in the LRHL redevelopment plan shall apply to projects within the area encompassed by the LRHL redevelopment plan, unless and to the extent the LRHL redevelopment plan specifically provides otherwise.

### 19:31C-3.26 Hearings

(a) The following concern public hearings:

1. Whenever the Authority is required to hold a public hearing pursuant to this subchapter, the Authority shall hold a public hearing in accordance with this section and shall select a reasonable time and place for the conduct of the public hearing, and shall so advise the applicant.

2. The Authority shall provide notice of the public hearing pursuant to (b) below.

3. For use-type variance applications, 10 copies of any plans, reports, exhibits, or other data to be submitted as evidence during a public hearing shall be required to be submitted.

i. Failure to produce 10 copies of such plans, reports, exhibits, or other data submitted as evidence at the public hearing shall not invalidate the proceedings.

ii. Failure to submit 10 copies of any plans, reports, exhibits, or other data submitted as evidence within one week of the public hearing shall cause the Authority staff to reproduce the required number of copies, the cost of which shall be borne by the applicant.

iii. Photographs of three-dimensional exhibits shall be deemed acceptable copies.

4. A party to a hearing shall include the applicant and the host municipality, and any of the following persons, agencies, or organizations who have entered an appearance of record either prior to commencement of the public hearing or when permitted by the Authority:

i. Any person, agency, or organization entitled to individual notice under (b) below; and

ii. Any person that can demonstrate that their right to use, acquire, or enjoy property in which that person holds an interest may be directly and substantially impacted by the application for development. Increased economic competition or other impacts upon a business that are unrelated to the purposes of the MLUL as set forth at N.J.S.A. 40:55D-2, shall not constitute a direct and substantial impact that may impact a person's right to use, acquire, or enjoy property.

5. The Authority shall designate a hearing officer to conduct the hearing. The hearing officer shall be qualified

to administer oaths and may compel the attendance of witnesses, the production of relevant papers, and inquire into and establish qualifications of witnesses appearing.

6. Applicants, other than individuals or sole proprietorships, shall be represented by a New Jersey attorney-at-law.

7. All testimony by witnesses at any hearing shall be given under oath, and every party of record at a hearing shall have the right to present evidence and to examine and to cross-examine witnesses on all relevant issues, but the hearing officer may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony and cross-examination. Expert testimony shall be provided by a New Jersey-licensed professional engineer, professional planner, registered architect, or other professionals.

8. The Authority shall arrange for a transcript of the hearing, the cost of which shall be borne by the applicant. All exhibits accepted into evidence shall be properly identified. The reason for the exclusion of any exhibits from evidence shall be clearly noted in the record. The transcript and exhibits shall be filed with the Authority and shall be a part of the public record.

9. The hearing officer may continue the hearing from time to time as may be reasonably necessary, and may refer the matter back to the Authority staff for further review or investigation. A copy of any reports resulting from such further review or investigation shall be filed with the Authority and become part of the public record.

10. The public hearing(s) shall be concluded within such time periods as reasonably calculated to enable the Authority to take action within the time periods required by this subchapter, unless the applicant consents in writing or on the record to an extension of the time period. The public record shall be closed at the time of conclusion of the public hearing(s).

11. Following the conclusion of the hearing, the hearing officer shall provide to the FMERA Board all evidence submitted, copies of all transcripts, and a written recommendation. The FMERA Board may grant, deny, or grant the application with conditions, and in so doing may modify the recommendation of the hearing officer. Notice of the FMERA Board's decision will be published in a newspaper of general circulation available in the host municipality in which the property is located, and written notice of the FMERA Board's decision will be provided to the applicant and to the host municipality.

(b) The following concern notice of public hearings:

1. Whenever a public hearing is required pursuant to this subchapter, the Authority shall arrange for public notice, the cost of which shall be borne by the applicant. The notice shall include:

- i. The time and location of the public hearing;
- ii. A statement describing the subject matter of the hearing;
- iii. The nature of any approval sought, together with any relief sought;
- iv. Identification of the applicant and owner of the subject property; and
- v. A statement that the application and supporting materials will be available for public inspection at the offices of the Authority at least 10 days prior to the hearing.

2. At least 10 days in advance of the public hearing, the Authority shall arrange for publication of the public notice in a newspaper of general circulation available in the host municipality in which the property is located, and shall provide for notice either in person, by certified mail, or otherwise, to the following:

- i. Any party entitled to personal notice of an application pursuant to the MLUL; and
- ii. The municipal clerk of each municipality in which property owners must be served notice, pursuant to N.J.A.C. (b)2i above.

3. The applicant shall obtain and submit to the Authority a certified list or lists of property owners entitled to notice from the tax assessor of the host municipality or municipalities in which property owners must be served notice pursuant to (b)2i above. The Authority and the applicant shall be entitled to rely upon the information contained in such list, and failure to give notice to any property owner not on the list shall not invalidate any hearing or proceeding. Said lists shall be produced and certified no earlier than 90 days prior to the date of the hearing.

4. Whenever a public hearing is required pursuant to this subchapter, the applicant shall pay the cost of such legal notices as shall be required to be given and the cost of the preparation of a stenographic record of any such hearing.

#### 19:31C-3.27 Administrative

(a) All applications submitted to the Authority pursuant to this subchapter shall be accompanied by an application fee and, where applicable, an escrow deposit, pursuant to N.J.A.C. 19:31C-3.28(b)2, unless such application is exempt from the requirements thereof or the fee or deposit waived by the Authority.

(b) Every application required by this subchapter shall be filed with the Authority and, if so stated, with the applicable host municipality.

(c) The following concern Reuse Plan amendment procedures:

1. The Authority may amend the Reuse Plan, in whole or in part, from time to time, pursuant to this section and N.J.S.A. 52:27I-35.

2. An application may be submitted to the Authority to amend the Reuse Plan. Such application shall be filed with the Authority, in writing, and signed by the applicant.

i. The application shall state the following clearly and concisely:

(1) The full name and address of the applicant;

(2) The substance or nature of the amendment that is requested;

(3) The reasons for the request and the applicant's interest in the request; and

(4) Other such information as may be deemed by the Authority staff to be necessary to determine the desirability of a requested amendment.

ii. Any document submitted to the Authority that is not in substantial compliance with this section shall not be deemed to be an application for Reuse Plan amendment requiring further agency action. The document shall be returned to the sender with a deficiency explanation.

3. Upon receipt of a complete application for Reuse Plan amendment, the following shall occur:

i. The application shall be dated and logged by the Authority staff.

ii. The Authority staff shall acknowledge to the applicant receipt of the application.

iii. The Authority staff shall review the application and prepare a preliminary analysis with recommendations that shall be submitted to the FMERA Board for its consideration and approval.

iv. The FMERA Board may act on the application to:

(1) Deny the application;

(2) Grant the application and request the Authority staff to initiate a Reuse Plan amendment proceeding in accordance with (c)4 below; or

(3) Refer the matter to the Authority staff for further deliberations, which may include the preparation of records and studies necessary to evaluate the desirability of the requested Reuse Plan amendment. Upon conclusion of the deliberations, the FMERA Board shall either deny or grant the petition in accordance with this section.

v. The Authority staff shall notify the applicant of the action on the application.

4. The Authority staff may initiate a Reuse Plan amendment by presenting a proposed amendment to the FMERA Board. Any departures from the requirements of the Reuse Plan and these rules contained in the proposed amendment shall be identified to the FMERA Board.

5. In determining whether to approve a Reuse Plan amendment, the FMERA Board shall consider the following, as applicable:

i. Whether approval of the Reuse Plan amendment would result in a material change in the overall development yield or affordable housing obligations of the host municipality as described in the Reuse Plan, or would result in any negative impact to the Authority's obligations pursuant to the Fair Housing Act of 1985;

ii. Whether approval of the Reuse Plan amendment will result in any significant adverse impact on other areas of Fort Monmouth;

iii. Whether approval of the Reuse Plan amendment would substantially impair the intent and purposes of the Reuse Plan (that is, whether the Reuse Plan will remain a rational and coordinated land use plan following the incorporation of the Reuse Plan amendment);

iv. Whether approval of the Reuse Plan amendment would have any negative impact to the Authority's obligations pursuant to Defense Base Closure and Realignment Act of 1990, Pub.L. 101-510 (10 U.S.C. § 2687) and any agreement with the U.S. Army conveying Fort Monmouth property to the Authority, and whether such approval would require Federal consent or approvals; and

v. Whether approval of the Reuse Plan amendment would have significant adverse infrastructure ramifications different from those envisioned in the Reuse Plan.

6. Prior to the adoption of any amendment to the Reuse Plan, the Authority shall transmit a copy of the proposed Reuse Plan amendment to the governing body of each host municipality. If the Reuse Plan amendment proceeding was initiated by an application, the Authority staff shall notify the applicant of the transmittal.

7. Within 45 days of receipt of the proposed Reuse Plan amendment, the governing body of each host municipality may transmit to the Authority a written report containing the host municipality's recommendations concerning the proposed Reuse Plan amendment. When considering whether to adopt the proposed Reuse Plan amendment, the FMERA Board may rely on the record of public hearings, if any, that may have been conducted by the host municipalities.

8. The Authority staff shall review the report from each host municipality and prepare a preliminary analysis with proposed reasons for accepting or not accepting the recommendations from the host municipalities; such

analysis shall be submitted to the FMERA Board for its consideration and approval.

9. Any action by the Authority to amend the Reuse Plan shall require the affirmative vote of seven members. To the extent that the approved Reuse Plan amendment contains departures from the requirements of this subchapter, the amendment shall control. If, pursuant to N.J.A.C. 19:31C-3.21(b)2 or 3.25(b)4i, departures from the requirements of this subchapter are included in the Reuse Plan amendment in lieu of a variance, the resolution approving the Reuse Plan amendment shall so state, and the approval of the Reuse Plan amendment shall have the effect of a variance as to such departures.

10. If the Reuse Plan amendment proceeding was initiated by an application, the Authority staff shall notify the applicant of the final action of the Authority.

(d) The following concern appeals from Authority actions:

1. Any person or entity adversely affected by a decision of the Authority staff that constitutes a decision of the Authority may appeal that decision as set forth in (d)3 below. Any recommendation of the Authority staff shall not be subject to appeal.

2. Any person or entity adversely affected by a decision of the FMERA Board may appeal that decision as set forth in (d)3 below.

3. Appeals allowed under (d)1 and 2 above shall proceed as follows:

i. The person or entity appealing the decision shall submit, by certified mail to the Authority, within 15 calendar days from the date of the Authority's action, a written notice of appeal containing the following:

(1) A brief statement of facts describing the Authority decision being appealed;

(2) The nature and scope of the interest of the person or entity appealing such decision;

(3) A statement of all facts alleged to be at issue and the relevance of the facts to the Authority's decision for which the appeal is made; and

(4) Any request for an informal in-person hearing.

ii. The Director of the Authority may designate an Authority or EDA staff member to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the FMERA Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal.

iii. Following completion of the record review and any in-person hearing, the hearing officer shall issue a written report to the FMERA Board containing his or her

finding(s) and recommendation(s) on the merits of the appeal.

iv. The FMERA Board shall consider the hearing officer's recommendation(s) and, based on that review, shall issue a final agency decision on the appeal.

4. Appeals under (d)3 above are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., or the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

5. Appeals from any decision made by the FMERA Board under (d)3iv above shall be made by way of judicial review of the Superior Court of New Jersey Appellate Division pursuant to the New Jersey Court Rules.

6. Appeals from any decision made by the host municipalities or the County, or any officials or boards of the host municipalities or the County, shall be made pursuant to existing law, including host municipality ordinances and the New Jersey Court Rules.

(e) Except as otherwise provided for in this subchapter, if the person or entity described in whom or in which Authority is vested to decide an application fails to act within the time specified, the application shall not be deemed approved or consented to by virtue of said failure to act.

(f) The following concern severability:

1. The provisions of this subchapter shall be separable, in accordance with the following:

i. If any section, subsection, paragraph, sentence, clause, or phrase of this subchapter is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this subchapter.

ii. If the application of any provision of this subchapter to a particular property, building, or structure is for any reason held to be unconstitutional or invalid, such decision shall not affect the application of said provisions to any other property or structure.

(g) No person shall, with respect to any application made to the Authority, whether such application requires a decision by the FMERA Board or Authority staff, attempt to contact any member or staff of the Authority in an effort to improperly influence them with respect to their decision regarding the subject application. This prohibition shall also apply to rulemaking. Any member or staff of the Authority who has been contacted in this regard shall immediately report such contact to the Office of the Attorney General, which shall take any necessary and appropriate action.

#### 19:31C-3.28 Fee schedule

(a) General provisions are as follows:

1. This fee schedule shall apply to all applications submitted to the Authority pursuant to this subchapter, unless waived.

2. Any application fee, or portion thereof, provided for in this section, may be waived by the Director of the Authority upon good cause shown, including, but not limited to, financial hardship, size and scope of the application and/or business entity, and general economic conditions in the regions. Applications submitted by a host municipality or the County are exempt from the payment of fees.

3. Application fees are nonrefundable, except that a full refund of fees may be made by the Director of the Authority provided that a written request to withdraw the application is received before the close of the second working day after receipt of the same.

4. Escrow deposits shall be utilized by the Authority to defray costs for professional fees incurred by or on behalf of the Authority in reviewing and considering an application. The Authority shall be entitled to be reimbursed for all professional charges incurred by the Authority in connection with the consideration of the applications for which an escrow deposit is required. Properly reimbursable professional charges shall be reasonable and necessary and shall relate to reviews and related activities performed by the Authority's consultants and professionals. Additions to the escrow deposit may subsequently become necessary to cover all reimbursable costs and expenses incurred by the Authority pursuant to the terms of this subchapter.

(b) The following concern application fees and escrow deposits:

1. Application fees are as follows:

i. The Authority uniform application fee (administrative fee applicable to all applications): \$250.00.

ii. Application fee for mandatory conceptual review: \$250.00 for minor site plan or minor subdivision; \$1,000 for all other applications.

iii. Application fee for use-type variance submitted separate from application for mandatory conceptual review: \$1,000.

2. Required escrow deposits are as follows:

i. Application for mandatory conceptual review: \$1,000 for minor site plan or minor subdivision; for all other applications, \$2,500, plus \$100.00 per 1,000 square feet of land area to be disturbed, to a maximum initial deposit of \$10,000.

ii. Application for use-type variance submitted separate from application for mandatory conceptual review: \$1,000, plus \$100.00 per 1,000 square feet of land area to be disturbed, to a maximum initial deposit of \$5,000.