

ORDINANCE 2024-10
AN ORDINANCE OF THE BOROUGH COUNCIL OF BERLIN BOROUGH TO AMEND
CHAPTER 335-13 OF THE CODE OF BERLIN BOROUGH, ENTITLED "ZONING AND
LAND USE.

§ 335-13. Fees and escrow deposits.

Any applicant to the Planning Board shall pay the amounts set forth below to the Borough of Berlin at the time of application. No application can proceed before the approving authority or receive final action on the application, until all fees are paid and escrow deposits are current:

A. Affordable housing fee. In addition to the application and escrow fees set forth below, each applicant shall pay an affordable housing fee as required by Chapter 193, Housing, Affordable, of the Borough Code.

B. Nonrefundable application fees.

(1) General fees.

(a) The publication fee for each decision rendered by the Planning Board to defray the cost of publishing said decisions shall be \$25 for a minor subdivision and \$100 for a major subdivision. **[Amended 6-20-2005 by Ord. No. 2005-14]**

(b) The Tax Map revision fee payable with the final plat application shall be as follows: **[Amended 6-20-2005 by Ord. No. 2005-14]**

[1] Tax Map updates, one to four lots: \$225 per lot.

[2] Tax Map updates, five to 10 lots: \$150 per lot.

[3] Tax Map updates, 11 or more lots: \$135 per lot.

(c) The fee for each list of names to whom the applicant is required to give notice pursuant to N.J.S.A. 40:55D-12b shall be \$10. The list shall include the current tax duplicate, the names and addresses of property owners, and the names, addresses, and positions of those persons who, not less than seven days prior to the date on which the applicant requested the list, have registered to receive notice pursuant to N.J.S.A. 40:55D-12h. The applicant shall be entitled to rely upon the information contained in such list, and the failure to give notice to any owner or to any public utility, cable television company or local utility not on the list shall not invalidate any hearing or proceeding.

C. Amount of Fees and Escrow Deposits Due.

(1) Each applicant shall, prior to its application being deemed complete, submit to the Planning Board Secretary, by certified check or money order, the following sums as application fees and escrow deposits, together with a fully executed escrow agreement in the form provided by the Borough:

Application Type**Application Fee****Escrow Fee****Residential**

Minor Subdivision	\$250.00	\$3,000.00
Major Subdivision	\$750.00	\$3,000.00 (5 Acres or Less) \$6,000.00 (Greater than 5 Acres)
Amended Subdivision	50% of full fee	50% of full fee
Application for Subdivision Approval Extension	\$500.00	\$1,500.00

Non-Residential

Minor Subdivision	\$750.00	\$3,000.00
Major Subdivision	\$1,500.00	\$3,000.00 (5 Acres or Less), \$6,000.00 (Greater than 5 Acres)
Amended Subdivision	50% of full fee	50% of full fee
Application for Subdivision Approval Extension	\$500.00	\$1,500.00

Site Plans

Minor Site Plan	\$1,000.00	\$3,000.00 (5 Acres or Less) \$6,000.00 (Greater than 5 Acres)
Major Site Plan	\$1,500.00	\$3,000.00 (5 Acres or Less), \$6,000.00 (Greater than 5 Acres)
Amended Site Plan	50% of full fee	50% of full fee
Site Plan Waiver	\$250.00	\$750.00
Subcommittee Informal Review	\$100.00	\$750.00
Application for Site Plan Approval Extension	\$500.00	\$1,500.00

Variance Applications

Hardship (N.J.S.A. 40:55D-70c)	\$250.00 (Residential) \$750.00 (Commercial)	\$1,500.00
Use of Structure (N.J.S.A. 40:55D-70d)		
Residential (single lot)	\$200.00	\$1,500.00
Residential (more than one lot)	\$500.00	\$1,500.00
Commercial	\$500.00	\$1,500.00

Fire Prevention Review Fee

Minor Subdivision	\$150.00
Major Subdivision	\$300.00

Minor Site Plan	\$200.00
Major Site Plan	\$300.00

**Planned Development
Review Fee**

Planned unit residential & residential cluster	\$1,000.00	\$3,000.00 (5 Acres or Less), \$6,000.00 (Greater than 5 Acres)
All other planned development	\$2,000.00	\$3,000.00 (5 Acres or Less), \$6,000.00 (Greater than 5 Acres)

** Applications for subdivision, site plan, or site plan waiver that are also requesting a variance as part of the application shall pay the fees for the variance plus the subdivision, site plan, or site plan waiver fees required.

- (2) Escrow deposits. An escrow deposit shall be posted and maintained in connection with any application for interpretation, for a concept or informal plan, sketch plat, preliminary plat, final plat, conditional use, variance, or related matter, as set forth below.
- (3) Escrow payments shall be for the purpose of reimbursing the Borough for the costs of any professional fees incurred for reviews, inspection charges and actual out-of-pocket expenses associated with applications on behalf of the Borough, including applications for development and variance applications involving the review of applications, review and preparation of documents, inspection of improvements or other purposes under the provisions of the Municipal Land Use Law and for such costs incurred for professional services of outside consultants when an application is of a nature beyond the scope of the expertise of the professionals normally utilized by the Borough. Said reviews shall include, but not be limited to, analysis of all application documents, maps, plans, reports and exhibits, preparation of written reports, meeting attendance, oral testimony, inspections and/or other services rendered in connection with the application under the provisions of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.). Escrow payments shall be in addition to the nonrefundable application fees required above. All escrow payments shall be placed in an escrow account pursuant to the following schedule. The Borough shall be responsible for all payments to their professionals for services rendered.
- (4) Amount of deposit; refund of interest.
 - (a) Each applicant shall make a deposit toward anticipated municipal expenses for professional services. The deposit shall be placed in an escrow account by the Borough Treasurer pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-53.1). The amount of the deposit shall be reasonable in relation to the scale and complexity of the development in accordance with the following schedule. All payments charged to the escrow account shall be pursuant to vouchers from the professionals identifying the personnel performing the service and for each date the service was performed, the hours spent to one-fourth-hour increments, the

hourly rate and the expenses incurred. If the salary, staff support and overhead for a professional are provided by Borough staff, the charge to the deposit shall not exceed 200% of the sum of the products resulting from multiplying the hourly base salary of each of the professionals by the number of hours spent by the respective professionals on the review of the application or on the inspection of the applicant's improvements, as the case may be. For other professionals the charge to the deposit shall be at the same rate as all other work of the same nature by the professional for the Borough. The Borough shall open the account, administer the account, close out the account, return unspent funds and resolve any disputes in accordance with the procedures set forth in N.J.S.A. 40:55D-53.1.

- (b) Whenever an amount of money in excess of \$5,000 shall be deposited by an applicant with the Borough for professional services employed by the Borough to review applications for development, for Borough inspection fees in accordance with N.J.S.A. 40:55D-53 or to satisfy the guaranty requirements of N.J.S.A. 40:55D-53, the money, until repaid or applied to the purposes for which it is deposited, including the applicant's portion of the interest earned thereon, except as otherwise provided in N.J.S.A. 40:55D-1 et seq., shall continue to be the property of the applicant and shall be held in trust by the Borough. Money deposited shall be held in escrow. The Borough shall deposit the money in a banking institution or savings and loan association in this state insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State, in an account bearing interest at the minimum rate currently paid by the institution or depository on time or savings deposits. The Borough shall not be required to refund an amount of interest paid on a deposit that does not exceed \$100 for the year. If the amount exceeds \$100, that entire amount shall belong to the applicant and shall be refunded to him by the Borough annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be, except that the Borough may retain for administrative expenses a sum equivalent to no more than 33 1/3% of that entire amount which shall be in lieu of all other administrative and custodial expenses.
- (5) No submission shall be deemed complete and no action to approve or conditionally approve an application shall be taken until such time as the applicant shall have posted with the Borough by cash, certified check or money order the amount of all escrow sums required to be deposited pursuant to this section calculated as shown below.
- (6) If during the processing of the application the funds remaining in the escrow account are depleted below a sum equal to 25% of the original deposit or \$500, whichever is greater, the applicant shall deposit additional funds to bring the escrow account equal to the larger of either \$500 or 40% of the original deposit before the application shall continue to be processed by the approving authority and prior to action on the application. By mutual agreement, the applicant and the approving authority may agree to another payment schedule where the size and

scope of the application may warrant it. The approving authority may dismiss an application in the event that an applicant does not replenish the escrow account or does not post sufficient escrow fees to continue the processing of an application.

- (7) The administrative officer shall review the submission to determine whether the escrow amount complies with the above schedule. In the event that the administrative officer and the applicant agree that the complexity of the plan or the need for additional expertise may be required and that a greater escrow deposit would be more appropriate for the application, a larger dollar amount shall be deposited. In the event that subsequent replenishment of the escrow fund is needed, the percentage deposits set forth above shall be the minimum payment required.
 - (8) If additional moneys were expended over the posted escrow amount, the applicant shall pay such moneys within 14 days of notification. Payment of such money shall be a mandatory condition of approval of all action taken by the Borough. No construction permit or certificate of occupancy shall be issued until all such fees are paid. Any required escrow payment that has not been paid within 30 days of notification shall be passed to the Borough Attorney for collection in the form of a lien on the property.
 - (9) Refunds for withdrawn applications. In the event an application is withdrawn, the applicant will be responsible for any and all professional fees accrued to date. Any debit or credit will be settled within 30 days of receipt of the written withdrawal notice.
- D. Reduced fee, schedule for charitable organizations. Any charitable, philanthropic, fraternal and religious nonprofit organization holding a tax exempt status under the Federal Internal Revenue Code of 1954 [26 U.S.C. § 501(c) or (d)] may apply, at the time of submission of its application, for a 50% reduction in the fee schedule as set forth in Subsection B above but shall be required to pay the escrow deposits as set forth in Subsection C above.
- E. Additional fees for guaranties and inspections. See § 335-14.
- F. Development and redevelopment review fees.
- (1) Purpose. With the goal of enhancing planning, redevelopment and economic development activities within the Borough of Berlin and the intent that such activities further the interests of sustaining and promoting growth and development in the Borough, the Borough hereby establishes escrow accounts for fees to defray costs for redevelopment projects.
 - (2) Authority. Pursuant to N.J.S.A. 40A:12A-8(f) of the Local Redevelopment and Housing Law, potential redevelopers with the Borough of Berlin ("Borough") shall be required to enter into a redevelopment escrow funding agreement ("funding agreement") to cover the Borough's administrative expenses,

evaluations, negotiation and approval of agreements, legal, engineering, planning, and other professional review fees, and other costs associated with the implementation and administration of redevelopment projects (collectively "redevelopment project costs and expenses") with the Borough Council, the Redevelopment Authority, Economic Development Commission, and/or the Planning Board.

- (3) Fees. Prior to submission of an application for development including redevelopment or rehabilitation to Council, the Redevelopment Authority, Economic Development Commission, and/or the Planning Board, fees shall be payable based on the cost of the proposed project.
- (4) Application fee. The application fee for redevelopment/rehabilitation projects: \$500.
- (5) Escrow funding agreement and procedures regarding redevelopment matters.
 - (a) This redevelopment funding agreement shall be a prerequisite to all redevelopment agreements with the Borough where the cost of the redevelopment project is as described below.
 - (b) The funding agreement acknowledges and binds the developer to post an escrow with the Borough to pay the Borough's redevelopment project costs and expenses. This includes, but is not limited to, all legal, engineering, planning, and/or other professional costs associated with the redevelopment. The appropriate Borough Official shall establish an escrow account for the redevelopment project. The escrow deposit will be held by the Borough and disbursed pursuant to a redevelopment funding agreement. The funding agreement shall be initiated, implemented and managed by the Borough Council, the Redevelopment Authority, Economic Development Commission, and/or the Planning Board.
 - (c) Escrow amounts for redevelopment matters.

[1] Potential redevelopers shall be required to make payments to an escrow account to cover the Borough's redevelopment project costs and reasonable expenses, including, but not limited to, professional review and administrative expenses, towards the potential redeveloper's project. The initial deposit requirement and, if necessary, the amount to be replenished shall be based on the cost of the potential redeveloper's project as described below:

Cost of Redevelopment Project	Escrow Deposit
\$0 to \$250,000.00	\$5,000.00
\$250,000.00 to \$500,000.00	\$10,000.00

\$500,000.00 to \$1,000,000.00	\$15,000.00
Over \$1,000,000.00	\$20,000.00

- [2] If, depending on the scope of the project, the balance of the escrow deposit has insufficient funds and/or falls below \$2,000, the potential redeveloper may be required to replenish the escrow account within 20 days from an agreement reached between the potential redeveloper and the Borough Council, the Redevelopment Authority, Economic Development Commission, and/or the Planning Board.
- (d) Each applicant who shall submit a plan for site approval shall agree in writing, by execution of an escrow agreement, to pay all reasonable costs for professional review of the plans and application and for inspection of the improvements required by the Planning Board or Zoning Board. All costs shall be paid in full prior to the issuance of any building permits and any additional escrow due and owing shall be paid in full before any occupancy of the premises is permitted or occupancy permit is issued.
 - (e) All relevant provisions regarding the collection, deposit and disposition of application and escrow fees as set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., are hereby incorporated herein by reference fully.
 - (f) Escrow for inspection. The escrow deposit for inspection shall be 5% of the cost of improvements or \$500, whichever is greater, except for extraordinary circumstances.
 - (g) Escrow fees. The escrow fees required at the time of submission are minimums, which must be submitted with the application for development. An application for development shall not be deemed complete until all required fees have been paid.
 - (h) Application of escrow fees. Escrow fees shall be applied to professional costs charged to the Borough's professional consultants (planner, engineer, attorney and any other consultant or specialist retained by the Board) for services rendered in the review of the development application. Additional escrow fees shall be required when the original escrow amount is depleted by 50% or more and the application is still in progress. The amount of additional escrow fees required shall be equal to the difference between the remaining escrow moneys and the original escrow fees deposited. The review of any application which is found to be deficient in the required escrow moneys shall cease until such time as the additional escrow fees have been deposited.
 - (i) After an application has received final approval and it has been determined that no further reviews will be involved, any remaining escrow moneys shall be refunded to the applicant, upon the applicant's

request. Failure of the applicant to request unused funds, for a period of two years, shall render the moneys within the account nonrefundable. The Clerk of the Planning Board and Zoning Board of Adjustment shall notify the Chief Financial Officer, who will transfer the remaining escrow from said account into the general treasury. A detailed account of all moneys expended from the escrow funds shall be available to the applicant upon request.



By: Rick Miller, Mayor

ATTEST:

Rachel Von Der Tann
Rachel Von Der Tann, RMC, Borough Clerk

I, Rachel Von Der Tann, RMC, Borough Clerk of the Borough of Berlin, hereby certify the foregoing to be a true and correct copy of an Ordinance introduced by the Mayor and Borough Council at their meeting of April 11, 2024 in the Municipal Building, 59 South White Horse Pike, Berlin, New Jersey.

Rachel Von Der Tann
Rachel Von Der Tann, RMC, Borough Clerk

Introduced: April 11, 2024
Adopted: May 9, 2024