

## ORDINANCE 43-2005

### **ORDINANCE OF THE BOROUGH OF MADISON AMENDING ARTICLE I AND III OF THE LAND DEVELOPMENT ORDINANCE TO REQUIRE A ZONING PERMIT OR SITE PLAN APPROVAL TO BE OBTAINED UPON CHANGE OF USE, OWNERSHIP, OR OCCUPANCY OF A STRUCTURE OR LAND WITHIN THE BOROUGH**

WHEREAS, currently there is no effective method of tracking the changes of permitted uses, occupants or owners of non-residential real property within the Borough; and

WHEREAS, changes from one permitted use or occupant to another permitted use or occupant may alter the parking, traffic circulation, lighting, access, landscaping, or intensity of a use to the detriment of surrounding properties and residents of the Borough as a whole; and

WHEREAS, the Planning Board has recommended to the Mayor and Council that certain portions of the Borough Code be amended to require a review by the Zoning Officer whenever there is a change in the use, occupancy, or ownership of non-residential property;

NOW, THEREFORE, BE IT ORDAINED by the Counsel of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

SECTION I. The definition of "Change of Use" as set forth in Section 195-7 of the Land Development Code, is hereby deleted and replaced as follows:

**""Change of Use" Any use which differs from the previous use of a structure or land by way of function, operation, extent, or products sold, handled, or manufactured and the like, including a change from one permitted use to another kind of permitted use in the same zone, as well as any change in activity which changes, alters, or enlarges the previous use or structure or which will change, alter, enlarge, or affect drainage, traffic, parking, sidewalks, paving, landscaping, fencing, sanitary disposal or other similar consideration."**

SECTION II. The following shall be added as a new section to Article III:

**"Section 195-16.1 Zoning Permit Required for Change of Use, Change of Occupancy, or Change of Ownership:**

**A. Issuance of Zoning Permit. No property or building subject to a Change of Use, change in occupancy, or change in ownership, in whole or in part, shall be occupied or used for any purpose, and no certificate of occupancy, building permit, demolition permit, or similar permit shall be issued and no site improvements, including excavation or construction or public or private improvements shall be commenced, until the Zoning Officer of the Borough of Madison has issued a Zoning Permit for such property. If (i) the subject property complies with all provisions of the Borough Code, (ii) all matters incorporated by the Borough Engineer, any lawful prior orders issued under the authority of the construction, property maintenance, fire prevention and health codes are properly abated, (iii) all prior conditions established by site plan, subdivision, or variance approvals are satisfied, and (iv) the subject property is not subject to site plan approval as set forth below, the Zoning Officer shall issue the Zoning Permit within 10 business days of receiving a complete application and evidence that all taxes have been paid on the subject property. Otherwise, the Zoning Officer shall deny the application within the 10 day period, citing the reason or reasons for such denial.**

**B. Zoning Permit Subject to Site Plan Approval. If site plan approval is required pursuant to Section 195-20(b)(2), as determined by the Zoning Officer, no Zoning Permit shall be issued until a site plan for the subject site is approved by the Planning Board. The Zoning Officer may refer the question of whether site plan approval is required to the Technical Coordinating Committee for review and recommendation. If the Zoning Officer determines that site plan approval is required, the Planning Board may waive the requirement for site plan approval if the Board determines that the Change in Use, occupancy of ownership will have no adverse effect on drainage, traffic, parking, sidewalks, paving, landscaping, fencing, sanitary disposal or other similar considerations.**

**C. Exemptions.**

**(i) Changes in the Use, ownership, or occupancy of a residential building, or a residential portion only of a mixed-use building, shall be exempt from the requirements of this Section.**

**(ii) Any change of ownership which is exempt from the payment of the realty transfer fee imposed under New Jersey Public Law 1968, c. 49, as amended, by reason of a deed (a) for a consideration of less than \$100; (b) which confirms or corrects a deed previously recorded; (c) between husband and wife, parent and child; (d) by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of the State of New Jersey; or (e) recorded within 90 days following the entry of a divorce decree which dissolves the marriage between the grantor and grantee, shall be exempt from the requirements of this Section.**

**D. Fees. The fee for a Zoning Permit is more particularly set forth in Section 195-12. Application forms are available from the Borough Clerk or Zoning Officer.**

**E. Violations. Failure of an owner, agent or occupant to comply with this ordinance may result in the issuance of administrative penalties and violations. Each violation of this ordinance shall constitute a separate offence and a summons may be issued for each and every day that a Zoning Permit is not obtained. Each separate offense may result in a summons being issued with a maximum daily penalty of \$500 per instance. Repeat offenders will be assessed an additional penalty of \$250 per day.**

**F. Zoning Officer. Any reference to Zoning Officer set forth in this Ordinance shall be deemed to include any designee of the Zoning Officer.**

SECTION III. Section 195-20(B)(2) is hereby amended as follows:

On the third line, after the word "met", the following is added: "**as determined by the Zoning Officer or his designee.**"

After subsection (h), the following is hereby added: "**In determining whether the above criteria is met, the Zoning Officer or his designee may refer the matter to the Technical Coordinating Committee for review and recommendation.**"

SECTION IV. Section 195-20(C) is hereby amended as follows:

**"Construction Officer"** is replaced with **"Zoning Officer or his designee"**.

SECTION V. This Ordinance will take effect 60 days from its adoption.

ADOPTED AND APPROVED

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ELLWOOD R. KERKESLAGER, Mayor

Attest:

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MARILYN SCHAEFER, Borough Clerk

Introduced and passed: August 8, 2005

Published, Madison Eagle: August 11, 2005

Hearing and final adoption: September 12, 2005

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