

§23-01 Applicability, Definitions, Prohibitions, Variances, and Incorporation by Reference of Appendices.

(a) *Applicability.* This Rule applies to all Drainage proposals, all Private sewer or Private drain plans, all Private sewer or Private drain Construction permit applications, and the construction of all Private sewers or Private drains in the City of New York and shall not apply to Internal private drains.

(b) *Definitions.* For the purpose of this Rule, the following definitions apply:

(1) "Allowable flow" means, for drainage design purposes only, a predetermined quantity of Flow that can be released into an existing outlet sewer system.

(2) "Alteration map" means a map showing proposed changes to the City map.

(3) "Applicant" means the owner of a proposed development or his or her legally designated representative.

(4) "Applicant's offering plan" or "applicant's offering prospectus" means the set of legal documents setting forth the rights, privileges, and duties of purchasers of shares in the applicant's proposed development.

(5) "Block" means a tract of land bounded by consecutive intersecting streets.

(6) "City" means the City of New York.

(7) "City drainage plan" means a plan for the proper sewerage and drainage of the City of New York or any part thereof prepared and adopted in accordance with §24-503 of the Administrative Code of the City of New York.

(8) "City map" means the city map referred to in §§198 and 199 of the New York City Charter.

(9) "Condominium association" means the legal entity comprising the present and future homeowners of the proposed condominium development.

(10) "Construction permit" or "permit to construct" means a written authorization issued by the department to construct a private sewer or private drain.

(11) "Contributory drainage area" means a drainage area bounded by the ridge lines or furthest boundaries reaching a point of discharge.

(12) "Department" means the Department of Environmental Protection.

(13) "Detention basin" means a structure designed to store an accumulation of stormwater runoff and release it at a controlled rate into an existing outlet sewer system of limited capacity.

(14) "Drainage proposal" means a plan showing a proposed sewerage system to serve a proposed development and contributory drainage area that does not conform with the city drainage plan.

(15) "Dwelling unit" means one or more rooms in a building that are arranged, designed, used or intended for use by one family.

(16) "Finally mapped street" means a street as shown on the city map.

(17) "Flow" means a continuous movement of stormwater or wastewater.

(18) "Homeowners' association" means the legal entity comprising the present and future homeowners of the proposed development.

(19) "Internal private drain" means all drainage systems within the boundaries of a proposed development, including the internal private roads of such development.

(20) "Internal private roads" mean private internal right of ways that are within the boundaries of a proposed development and are not part of finally mapped streets or record streets.

(21) "Legally designated representative" means a professional engineer or a registered architect licensed by the State of New York who represents the owner in connection with a proposal, plan, or application under this rule.

(22) "Legal outlet" means an outlet sewer system designed and built according to a city drainage plan or approved private sewer or private drain plan and which is the allowable outlet to accommodate the sanitary, stormwater, or combined flow from the proposed development.

(23) "Lot" means a tax lot as shown on the tax map of the city.

(24) "Mapping action" means a proceeding to change the city map pursuant to the New York City Charter.

(25) "Opinion of dedication" means an opinion by the corporation counsel that a street is an open and continuously traveled street dedicated for public use.

(26) "Owner" means any individual, firm, corporation, company, association, society, institution or any other legal entity that owns the property, appurtenances, and Sewer easements comprising the proposed development.

(27) "Private" means owned or controlled by any entity other than the department.

(28) "Private drain" means a private sanitary, stormwater, or combined drain that is constructed in a finally mapped street, record street, or sewer easement and discharges into an existing legal outlet, but shall not include Internal private drains.

(29) "Private sanitary force main" means a privately owned, operated, and maintained drain designed to receive the wastewater discharged from a private pumping station and convey it under pressure to a point of discharge.

(30) "Private pumping station" means a privately owned, operated, and maintained wastewater collection facility required for the pumping of sanitary or stormwater runoff or combined sewage from the proposed development.

(31) "Private sewage treatment plant" means a privately owned, operated, and maintained facility on a private property that is used for the physical, chemical, or biological treatment of the wastewater from a proposed development and contributory drainage area.

(32) "Private sewer" means a private sanitary, stormwater, or combined sewer that is designed and constructed in accordance with the requirements of the city drainage plan and this rule which is located in a finally mapped street, record street, or sewer easement and discharges into an existing allowable legal outlet, but shall not include internal private drains.

(33) "Private sewer plan" or "private drain plan" means a construction plan for the installation of private sewers or private drains and appurtenances thereto.

(34) "Proposed development" means all the property, improvements, sewer easements, and appurtenances thereto that will be served by the private sewer or private drain that is the subject of an application for approval of a drainage proposal, a private sewer or private drain plan, or a private sewer or private drain construction permit.

(35) "Record street" means a street that appears on the tax map of the city but which may not be a finally mapped street.

(36) "Rule" means all the standards and requirements of the department governing the design and construction of private sewers or private drains as contained herein.

(37) "Runoff" means overland stormwater flow that is not absorbed into the ground.

(38) "Sewer easement" means the limited right to use that part of a private property that is designated for the construction and maintenance of a drainage facility such as a city sewer, a private sewer, a private drain, a watercourse, a watercourse diversion, or related structures, but not including internal private drains.

(39) "Special conditions" mean and include, but are not limited to, the construction or use of a private sewage treatment plant, a private on-site pumping station, a private on-site detention basin, a private watercourse diversion by an open channel or closed piping, or a proposed development requiring a mapping action.

(40) "Tax map" means the tax map of the city as defined and referred to in §11-203 of the Administrative Code of the City of New York.

(41) "Tentative lot" means a proposed tax lot as shown on the "Request to Real Property Assessment, Department of Surveying, Division for Tentative Lot Numbers."

(42) "Watercourse" means a natural or artificial channel or visible path or active trench which carries stormwater runoff from a contributory drainage area.

(43) "Watercourse diversion" means the re-routing of an existing watercourse located within the proposed development by either open channel or closed piping.

(c) *Prohibitions.*

(1) No Owner may commence construction of a private sewer or a private drain without having first obtained a written construction permit issued by the department.

(2) No construction permit may be issued until the department has received, reviewed, and approved the owner's drainage proposal, the private sewer or private drain plan, and the construction permit application and has determined that the same are complete and in full compliance with all standards and requirements of this rule including, but not limited to, all engineering, legal, and insurance standards and requirements.

(3) No drainage proposal, private sewer or private drain plan, or construction permit application may be approved by the department unless the professional seal

and signature of the professional engineer or registered architect who is the Legally designated representative of the owner appears on each sheet of such proposal, plan and application form.

(4) No legal instrument required by this rule including, but not limited to, affidavits, consents, declarations, agreements, real estate instruments, sureties, bonds, indemnities, and security deposits may be amended, modified, or canceled by the owner or his or her agents without the express prior written consent of the department.

(d) *Variances.*

(1) Upon written request by the owner of a proposed development, the department may grant a variance from one or more standards or requirements of this rule only upon adequate proof substantiating that compliance with the standard or requirement will impose an exceptional hardship as defined by sub-paragraph (2)(ii) and (2)(iii) of this subdivision. There shall be no variances from the legal, bonding, insurance, or security requirements of this rule.

(2) Every request for a variance shall:

(i) identify the specific provision of this rule for which a variance is sought;

(ii) demonstrate that compliance with the identified provision would, on the basis of conditions unique to the owner's particular situation in contrast to the rest of the industry, impose an exceptional economic or technological hardship or create an unsafe condition; and

(iii) demonstrate that the proposed variance will not result in any significant adverse impact on safety, public health, or the environment.

(3) In granting any variance, the department may impose such additional terms and conditions that the department determines are necessary to ensure that the variance will not have any adverse impact on safety, public health, or the environment.

(e) *Incorporation by reference of appendices.* All appendices to this Rule are hereby incorporated by this reference and shall have the same legal force and effect as the Rule itself.

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