

4-1 APPLICATION OF PROVISIONS.

The provisions of this Article shall apply to both the Planning Board and the Zoning Board of Adjustment. (Ord. No. 581 § 4-1)

4-2 CONFLICTS OF INTEREST.

No member of the Board shall act on any matter in which he has either directly or indirectly any personal or financial interest. Whenever such member shall disqualify himself from acting on a particular matter, he shall not continue to sit with the Board on the hearing of such matter nor participate in any discussion or decision relating thereto. (Ord. No. 581 § 4-2)

4-3 MEETINGS.

4-3.1 Meetings of the Board shall be scheduled no less often than once a month and any meetings so scheduled shall be held as scheduled unless canceled for lack of applications for development to process.

4-3.2 Special meetings may be provided for at the call of the Chairman or on the request of any two (2) Board members, which shall be held on notice to its members and the public in accordance with all applicable legal requirements.

4-3.3 No action shall be taken at any meeting without a quorum being present.

4-3.4 All actions shall be taken by a majority vote of the members of any Municipal Agency of the Borough present at the meeting except as otherwise required by any provision of N.J.S.A. 40:55D-1 et seq.

4-3.5 All regular meetings and all special meetings shall be open to the public. Notice of all such meetings shall be given in accordance with the requirements of the Open Public Meetings Law, c.231, Laws of N.J. 1975, and as otherwise provided by law.

4-3.6 Failure of a motion to approve an application for development to receive the number of votes required for approval shall be deemed an action denying the application.

4-3.7 The adoption of a resolution of memorialization, pursuant to subsection 4-9.1 of this chapter, shall not be construed to alter the applicable time period for rendering a decision on the application for development. Such resolution shall be adopted by a vote of a majority of the members of any Municipal Agency of the Borough who voted for the action previously taken, and no other member shall vote thereon. The vote on such resolution shall be deemed to be a memorialization or an action of a Municipal Agency of the Borough and not to be an action on an application for development by a Municipal Agency of the Borough, except that failure to adopt such a resolution within the forty-five (45) day period shall result in the approval of the application for development, notwithstanding any prior action taken thereon.
(Ord. No. 581 § 4-3)

4-4 MINUTES.

Minutes of every regular or special meeting shall be kept and shall include the names of the persons appearing and addressing the Board and of the persons appearing by attorney, the action taken by the Board, the findings, if any, made by it and reasons therefor. The minutes shall thereafter be made available for public inspection during normal business hours at the office of the Municipal Clerk. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceedings concerning the subject matter of such minutes. Such interested party may be charged a fee for reproduction of the minutes for his use as provided by ordinance. (Ord. No. 581 § 4-4)

4-5 FEES.

Fees for application or for the rendering of any service by these Boards or any member of their administrative staffs shall be pursuant to Article 15 of this chapter. (Ord. No. 581 § 4-5)

4-6 HEARINGS.**4-6.1 Rules.**

The Board may make rules governing the conduct of hearings before it, which rules shall not be inconsistent with the provisions of N.J.S.A. 40:55D-1 et seq., or of this chapter. (Ord. No. 581 § 4-6.1)

4-6.2 Oaths.

The officer presiding at the hearing or such person as he may designate shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, and the provisions of the County and Municipal Investigations Law, P.L. 1953, c.38 (N.J.S.A. 2A:67A-1 et seq.) shall apply. (Ord. No. 581 § 4-6.2)

4-6.3 Testimony.

The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer and the right of cross examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses. (Ord. No. 581 § 4-6.3)

4-6.4 Evidence.

Technical rules of evidence shall not be applicable to the hearing, but the Board may exclude irrelevant, immaterial or unduly repetitious evidence. (Ord. No. 581 § 4-6.4)

4-6.5 Records.

Any Municipal Agency of the Borough conducting any hearing shall provide for a verbatim recording of the proceedings by either a stenographer, mechanical or electronic means. The Municipal Agency of the Borough shall furnish a transcript, or duplicate recording in lieu thereof, on request to any interested party at his expense, pursuant to Article 15 of this chapter. The transcript shall be certified in writing by the transcriber to be accurate. (Ord. No. 581 § 4-6.5)

4-6.6 Members Not Present.

A member of a municipal agency who was absent for one (1) or more of the meetings at which a hearing was held or was not a member of the municipal agency at that time, shall be eligible to vote on the matter upon which the hearing was conducted, notwithstanding his absence from one (1) or more of the meetings; provided, however, that such Board member has available to him the transcript or recording of all of the hearing from which he was absent or was not a member, and certifies in writing to the Board that he has read such transcript or listened to such recording. (Ord. No. 98-1149 § 1 Art. 4)

4-7 HEARINGS: PUBLIC NOTICE REQUIRED.

Public notice of a hearing shall be given for an extension of approvals for five (5) or more years under subsection d. of N.J.S.A. 40:55D-49 and subsection b. of N.J.S.A. 40:55D-52; for modification or elimination of a significant condition or conditions in a memorializing resolution in any situation wherein the application for development for which the memorializing resolution is proposed for adoption required public notice, for appeals from determinations of administrative officers pursuant to subsection a. of N.J.S.A. 40:55D-70 and for requests for interpretation pursuant to subsection b. of N.J.S.A. 40:55D-70 and for any other applications for development shall be given, except for, with the following exceptions: (1) conventional site plan review pursuant to N.J.S.A. 40:55D-46, (2) minor subdivisions pursuant to N.J.S.A. 40:55D-47 or (3) final approval pursuant to N.J.S.A. 40:55D-50. Public notice shall also be given in the event that relief is requested pursuant to N.J.S.A. 40:55D-60 or N.J.S.A. 40:55D-76 as part of an application for development otherwise excepted herein from public notice. Public notice shall be given by publication in the official newspaper of the municipality if there be one, or in a newspaper of general circulation in the municipality. (Ord. No. 2015-1680)

4-7.1 Public notice shall be given by publication in the official newspaper of the municipality at least ten (10) days prior to the date of the hearing.

4-7.2 The public notice of the hearing shall be given to the owners of all real property within the State of New Jersey shown on the current tax duplicate located within two hundred (200) feet in all directions of the property which is the subject of such hearing. Notice shall be given by serving a copy thereof on the property owner as shown on the current tax duplicate, or his agent in charge of the property or by mailing a copy thereof by certified mail to the property owner at his address as shown on the said current tax duplicate. Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, a vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. This requirement shall be deemed satisfied by notice to the condominium association, in the case of any unit owner whose unit has a unit above or below it, or to the horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it. Notice to a condominium association, horizontal property regime, community trust or homeowner's association, because of its ownership of common elements or areas located within two hundred (200) feet of the property which is the subject of the hearing, may be made in the same manner as to a corporation without further notice to unit owners, co-owners, or homeowners on account of such common elements or areas.

4-7.3 Notice of all hearings on applications for development involving property located within two hundred (200) of an adjoining municipality shall be given by personal service or certified mail to the clerk of such municipality, which notice shall be in addition to the notice required to be given pursuant to subsection 4-7.2 of this Article to the owners of lands in such adjoining municipality which are located within two hundred (200) feet of the subject premises.

4-7.4 Notice shall be given by personal service or certified mail to the County Planning Board of a hearing on an application for development of property adjacent to an existing County road or proposed road shown on the Official County Map or on the County Master Plan, adjoining other County land or situate within two hundred (200) feet of a municipal boundary.

4-7.5 Notice shall be given by personal service or certified mail to the Commissioner of Transportation of a hearing on an application for development of property adjacent to a State highway.

4-7.6 Notice shall be given by personal service or certified mail to the Director of the Division of State and Regional Planning in the Department of Community Affairs of a hearing on an application for development of property which exceeds one hundred fifty (150) acres or five hundred (500) dwelling units. Such notice shall include a copy of any maps or documents required to be on file with the Municipal Clerk pursuant to N.J.S.A. 40:55D-10b.

4-7.7 All notices hereinabove specified in this section shall be given at least ten (10) days prior to the date fixed for hearing and the applicant shall file an affidavit of proof of such service with the Board holding the hearing on the application for development.

4-7.8 Any notice made by certified mail as hereinabove required shall be deemed complete upon mailing in accordance with the provisions of N.J.S.A. 40:55D-14. (Ord. No. 581 § 4-7.8)

4-7.9 Form of Notice.

All notices required to be given pursuant to the terms of this chapter shall state the date, time and place of the hearing, the nature of the matters to be considered and identification of the property proposed for development by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the Municipal Tax Assessor's Office and the location and times at which any maps and documents for which approval is sought are available as required by law. (Ord. No. 581 § 4-7.9; Ord. No. 98-1149 § 1 Art. 4)

4-8 LIST OF PROPERTY OWNERS FURNISHED.

Upon the written request of an applicant, the Administrative Officer of the Borough shall, within seven (7) days make and certify a list from the current tax duplicates of names and addresses of owners to whom the applicant is required to give notice pursuant to subsection 4-7.2 of this chapter. The applicant shall be entitled to rely upon the information contained in such list and failure to give notice to any owner not on the list shall not invalidate any hearing or proceeding. A fee pursuant to Article 15 shall be charged for such list. (Ord. No. 581 § 4-8)

4-9 RECORD OF DECISIONS.

4-9.1 Written Decision.

Each decision on any application for development shall be reduced to writing as follows and shall include findings of fact and legal conclusions based thereon.

The Municipal Agency of the Borough may provide such written decision and findings and conclusions within five (5) working days of the date of the meeting at

which the Municipal Agency of the Borough grants or denies approval unless a resolution of memorialization as provided in subsection 4-9.2 is adopted by the Agency. (Ord. No. 581 § 4-9.1)

4-9.2 Resolution of Memorialization.

A memorializing resolution adopted at a meeting held not later than forty-five (45) days after the date of the meeting at which the municipal agency voted to grant or deny approval. Only the members of the municipal agency who voted for the action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution. If only one (1) member who voted for the action attends the meeting at which the resolution is presented for adoption, the resolution may be adopted upon the vote of that member. An action pursuant to N.J.S.A. 40:55D-9 (resulting from the failure of a motion to approve an application) shall be memorialized by resolution as provided above, with those members voting against the motion for approval being the members eligible to vote on the memorializing resolution. The vote on any such resolution shall be deemed to be a memorialization of the action of the municipal agency and not to be an action of the municipal agency; however, the date of the adoption of the resolution shall constitute the date of the decision for purposes of the mailings, filings and publications required by subsections h. and i. of section N.J.S.A. 40:55D-10. If the municipal agency fails to adopt a resolution or memorializing resolution as hereinabove specified, any interested party may apply to the Superior Court in a summary manner for an order compelling the municipal agency to reduce its findings and conclusions to writing within a stated time, and the cost of the application, including attorney's fees, shall be assessed against the municipality. (Ord. No. 581 § 4-9.2; Ord. No. 98-1149 § 1 Art. 4)

4-10 PUBLICATION OF DECISION.

A brief notice of every final decision shall be published in the official newspaper of the municipality. Such publication shall be arranged by the Administrative Officer of the Board with separate charge to the applicant. The notice shall be sent to the official newspaper for publication within ten (10) days of the date of any such decision. (Ord. No. 581 § 4-9.2)

4-11 PAYMENT OF TAXES.

Pursuant to the provisions of N.J.S.A. 40:55D-39 and N.J.S.A. 40:55D-65, every application for development submitted to the Board shall be accompanied by proof that no taxes or assessments for local improvements are due or delinquent on the property which is the subject of such application; or if it is shown that taxes or assessments are delinquent on the property any approvals or other relief granted by the Board shall be conditioned upon either the prompt payment of such taxes or assessments or the making of adequate provision for the payment thereof in such manner that the municipality will be adequately protected. (Ord. No. 581 § 4-11)

4-12 CERTIFICATE OF ZONING OFFICER.

Every application for development submitted to the Board on property containing one (1) or more structures shall be accompanied by a certification of the Zoning Officer as to use of each of such existing structures, including the number of dwelling units, if any, contained therein. (Ord. No. 581 § 4-12)

4-13 REFERRALS.

The Zoning Board of Adjustment may refer an application under N.J.S.A. 40:55D-70 to any appropriate person or agency for its report, provided that such reference shall not extend the period of time within which the Zoning Board of Adjustment shall act. (Ord. No. 581 § 4-13; Ord. No. 98-1149 § 1 Art. 4)

4-14 LACK OF QUORUM.

In the event the Planning Board lacks a quorum because any of its regular or alternate members is prohibited from acting on a matter due to the member's personal or financial interests therein, regular members of the Board of Adjustment shall be called upon to serve, for that matter only, as temporary members of the Planning Board in order of seniority of continuous service to the Board of Adjustment until there are the minimum number of members necessary to constitute a quorum to act upon the matter. If a choice has to be made between regular members of equal seniority, the Chairman of the Board of Adjustment shall make the choice.

In the event the Board of Adjustment lacks a quorum because any of its regular or alternate members is prohibited from acting on a matter due to the members personal or financial interest therein, Class IV members of the Planning Board shall be called upon to serve, for that matter only, as temporary members of the Board of Adjustment in order of seniority of continuous service to the Planning Board until there are the minimum number of members necessary to constitute a quorum to act upon the matter. If a choice has to be made between Class IV members of equal seniority, the Chairman of the Planning Board shall make the choice. (Ord. No. 92-931 § 1)

ARTICLE 4 PROVISIONS APPLICABLE TO BOTH THE PLANNING BOARD AND BOARD OF ADJUSTMENT

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