

RULES AND REGULATIONS ADOPTED BY
THE PLANNING BOARD OF THE BOROUGH OF OCEANPORT
RESOLUTION #PR-09-005 ADOPTED APRIL 22, 2009

Rule 1:1 Officers, Employees, Annual Meeting

1:1-1. Officers. At the Board's first meeting following January 1st of each year, the Board shall elect from its six (6) Class IV members, a Chair and a Vice Chair. These Officers shall serve for the calendar year and until their successors have been duly elected.

1:1-2. Secretary. At the first meeting of the Board for each year, the Board shall also appoint a Secretary who shall also function as the administrative officer and recording secretary for the Board. Such Secretary shall receive remuneration in accordance with the ordinances of the Borough of Oceanport and such person shall serve for the calendar year until a successor has been appointed.

1:1-3. Board Attorney. At the first meeting of each year, the Board shall also appoint a member of the New Jersey Bar, who is familiar with zoning and planning matters as attorney for the Board and shall pay such attorney such remuneration as agreed upon by the Board, Borough Administrator, Borough Council and such person in accordance with a written agreement. The attorney shall serve for the calendar year and until a successor has been appointed. Said appointment shall be in compliance with N.J.S.A. 40A:11-5 of the Local Public Contracts Law and any applicable Pay to Play Ordinances of the Borough.

1:1-4. Employees and Other Professionals. The Board may also appoint such other officers and employ such experts or staff as it may deem necessary, including but not limited to, an engineer, a planner, and such other experts as it may deem necessary. The Board and shall pay such employees and professionals such remuneration as agreed upon by the Board, Borough Administrator, Borough Council and such person in accordance with a written agreement. These individuals shall serve for the calendar year and until a successor has been appointed. Said appointment shall be in compliance with N.J.S.A. 40A:11-5 of the Local Public Contracts Law and any applicable Pay to Play Ordinances of the Borough.

Rule 1:2 Duties

1:2-1. Duties of Chair. The Chair shall preside at all meetings and hearings of the Board, decide all points of order and matters of procedure governing said meetings or hearings and perform all of the duties normally performed by the office. The Attorney for the Board or in the absence thereof, the Chair or designee of the Chair shall have all Board professionals sworn at the beginning of each meeting and all witnesses sworn before giving testimony before the Board.

1:2-2. Duties of Vice Chair. The Vice-Chair shall preside at all Board meetings and hearings in the absence or disqualification of the Chair.

1:2-3. Duties of Secretary. The Secretary shall take roll call votes and the secretary shall be responsible for the signing of all maps and deeds of subdivision or any other documents necessary to be signed pursuant to resolutions adopted by this Board. The Secretary shall additionally generally perform the administrative and clerical

work of the Board, including but not limited to the following:

(a) Conduct all official correspondence, compile the required records, keep and maintain necessary files, give all notices of meetings required to be given by the Open Public meetings Act, N.J.S.A. 10:1-1 et seq. the Municipal Land Use Law, N.J.S.A. 40:55D-1.1 et seq. and any and all other applicable ordinances.

(b) Track the dates by which decisions must be rendered and request and procure extensions as needed.

(c) Set the agendas for Board meetings with input from the Chair and Board professionals.

(d) Keep minutes of the proceedings of each meeting and hearings held by the Board.

(e) Cause to be distributed to each member of the Board and to the Board's professionals a true copy of the minutes' of each meeting.

(f) Perform such other duties as usually pertain to this office.

Rule 1:3 Meetings

1:3-1. Meetings. The regular meetings of the Board shall be held as set by the Board at its first meeting of each year by resolution. The first regular meeting after January 1 of each month shall constitute the annual organization meeting of the Board. The Chair may cancel a meeting by notifying each member of the Board and its staff at least forty-eight (48) hours in advance of the time set

for such meeting and by giving notice in accordance with the Open Public Meetings Act.

1:3-2. Special Meetings. Special meetings may be called only upon a majority vote at a prior meeting or by the Chair at any time or in the absence of the Chair by the Vice-Chair if it is determined that an emergency exists warranting the need for a special meeting as determined by the Chair or in the absence of the Chair by the Vice-Chair upon written notice provided that notice thereof be mailed or given to each member of the Board and its professional staff at least forty-eight (48) hours prior thereto and to the public as required by law, subject to requisite notice and consistent with all rules and procedures of an regular meeting.

1:3-3. Quorum. At all meetings of the Board a quorum for conducting any hearing shall consist of five (5) members. In the absence of a quorum, the members present may adjourn the meeting and the hearing on any application to another date. No hearing may proceed without a qualified quorum of the Board for that particular hearing.

1:3-4. Voting. When voting on any matters following number of the votes are required:

(a) In all matters other than those in referred to in matters subparagraph (b) below, any action may be authorized by a majority vote of the members present at the meeting.

(b) When voting on an application for a use or "d" variance or to permit a building or structure in the bed of the any street, public drainage way, flood control basin or public area reserved in any official way, at least a majority of the fully authorized

members of the Board must vote in favor of the relief sought.

(c) All matters to be determined by the Board shall be commenced by a motion. All motions require a second. The Chair shall allow discussion on any motion duly seconded. All votes shall be taken by roll call except the approval of minutes of prior Board meetings and motions for adjournment and the vote and the name of the member casting the vote shall be recorded in the minutes.

(d) If a motion to approve an application for development does not receive the number of required votes such failure shall be deemed an action denying the application.

(e) All eligible Board members shall vote on each motion unless a member feels it necessary to abstain from voting although abstentions are disfavored except for good cause. An abstention shall be regarded as an assent to the vote of the majority. If the majority of those voting affirm a measure, an abstention shall be counted towards affirmance and if the majority defeats a motion, abstentions shall be counted towards the defeat. If the Board is evenly split, the abstaining member shall be assigned to neither bloc and an abstention shall not be construed to approve an application nor can an abstention be used to create a tie. A tie vote shall defeat an application.

1:3-5. Listening to Tapes or Reading Transcripts of Missed Meetings. When any hearing before the Board shall carry over to a further meeting, any member of the Board who did not attend a meeting shall be eligible to vote on the matter upon which the hearing is conducted, notwithstanding his absence, provided that said Board member certifies in writing to the Board that he or she has read the transcript or listened to the recording of the entire

meeting for which he or she was absent. If the Board member for any reason was unable to read the transcript or listen to the recording of the entire meeting for which he or she was absent, the Board member shall be eligible to vote on a matter upon which a hearing was conducted, notwithstanding his or her absence, provided that said Board member certifies in writing to the Board that the Board member has read the transcript or listened to the recording of the entire matter at said meeting which is the subject of vote in question. This rule shall not be construed as authorizing any hearing to be held whenever less than a quorum of the Board is present.

1:3-6. Order of Business. Except as modified in the sole discretion of the Chair or Vice Chair conducting the meeting, the order of business of all regular meetings of the Board shall be as follows:

- (a) Call to Order
- (b) Salute to the Flag
- (c) Statement of Compliance with the Open Public Meetings Act
- (d) Roll Call
- (e) Action on any other business and correspondence
- (f) Approval of minutes of previous meetings
- (g) Swearing in of Professionals

(h) Old Business

(i) New Business

(j) Approval of resolutions

(k) Petitions from the Public

(l) Adjournment

1:3-7. Open Public Meetings Act. All meetings, hearings or any other action by the Board, except executive sessions pursuant to the Open Public Meetings Act, shall be open to the public.

1:3-8. Alternate Members. The two alternate members of the Board appointed by the Mayor shall be designated by the Mayor as "Alternate No. 1" and "Alternate No. 2" respectively and each alternate shall retain said designation during the term for which he was appointed. Such alternate members shall participate in Board affairs subject to the following provisions:

(a) An alternate member may sit with the Board and participate in discussions of any Board business or hearings being held by the Board, but may not vote except as designated by the Chair to serve in the place of a regular member who is absent or disqualified or has a conflict by either directly or indirectly having a personal or financial interest in the application.

(b) A vote on any matter shall not be delayed by the Planning Board so that a regular member may vote instead of an alternate member, provided that where the alternate member is designated to serve in place of a regular member who is disqualified from

participating in the hearing of a particular case or cannot participate due to a conflict by either directly or indirectly having a personal or financial interest in the application, the alternate member shall be designated to serve only with respect to such case.

(c) In the event that a choice must be made as to which alternate is to vote, alternate No. 1 shall vote.

(d) Any alternate member who has been designated to serve in the place of an absent or disqualified regular member shall, during the period of his service, enjoy all of the rights and privileges and shall be subject to all of the duties and disabilities pertaining to regular members, but no alternate member shall be eligible to serve as Chair, Vice Chair or Secretary of the Board.

1:3-9. Time at Meeting. The Board shall be under no obligation to consider new matters after 10:00 p.m., and will take no new testimony beyond 10:30 p.m. This rule may be waived by the Chair or by an affirmative vote by a majority of the Board members present and qualified.

1:3-10. Time Limit for Presentation. The presentation of any Applicant shall be limited to one (1) hour at each meeting. This rule may be waived by the Chair or by an affirmative vote by a majority of the Board members present and qualified.

Rule 2:1 Commencement of Application

2:1-1. Informal Review. Prior to the filing of an application, at the request of the applicant, the Planning Board shall grant to the applicant an informal review of a conceptual plan for

development. The applicant shall be required to submit fees for such an informal review by the Board and its professionals as determined by the Board. Neither party shall be bound by the results or comments made during such a review. The Board shall be under no obligation to provide recommendations to the applicant and shall not entertain or comment on possible variance relief except to indicate the possible existence of a general negative position on a type of variance should one exist as a trend the Board has followed in prior circumstances involving a particular type of variance.

2:1-2. Commencement of Application. An application for subdivision approval, site plan review, conditional use approval or any other relief over which the Planning Board has jurisdiction, shall be commenced by filing an original and required copies of an application with the administrative assistant. The applicant shall file his application in accordance with the checklist requirements of the ordinance. The failure of the applicant to follow the instructions and the checklist requirements of the appropriate ordinance will result in the application being deemed incomplete and will delay the hearing of same. All statutory time periods for action by the Planning Board commence to run only upon the filing of a complete application as required for the relief sought by the applicant. A checklist of required submissions shall be furnished to each applicant. All applications shall be filed on the forms provided by the Board.

2:1-3. Filing of Application and Completeness Review. Upon receipt of an application, required fees and escrow by the Board Secretary, the application shall be assigned a file identifier, which shall thereafter appear on all subsequent papers filed in the application. The original copy of that application, together with a copy of all other documents filed with the application, shall be

filed in a permanent file to be kept in the Board offices. The Planning Board Engineer shall then review the application for completeness in accordance with the definition of a complete application as contained in N.J.S.A. 40:55D-10.3. If the application is found to be incomplete, the Board Secretary shall notify the applicant within forty-five (45) days of the filing of such application. Such notification shall be in writing and shall set forth the reasons that the application has been found to be incomplete. Upon the submission by an applicant of additional information in order to comply with checklist requirements of the ordinance, the Planning Board Engineer shall review the additional information for completeness within forty-five (45) days of the filing of that additional information. Upon failure to notify the applicant in writing that the application is incomplete within a 45-day period, the application shall be deemed complete in accordance with N.J.S.A. 40:55D-10.3.

2:1-4. Waiver of Checklist Items. An applicant may request in writing that a checklist item be waived. The Board shall consider such requests for waivers of checklist items at a Board meeting within forty-five (45) days of the request. If the applicant requests a waiver related to the submission of an environmental impact statement, the Board Secretary shall refer that request to the Environmental Commission for comment. The discussion by the Board on a waiver request shall be limited to the Board members and the Board professionals and shall not be open to the applicant or to the public with respect to input and comments. The Board's decision on whether a waiver of a checklist item shall be granted must be made within forty-five (45) days of the submission of the applicant's application. The Board Secretary shall advise the applicant in writing of the Board's decision on the waiver request.

2:1-5. Application Deemed Complete. When an application is deemed complete, the application shall be distributed by the Administrative Assistant to the Board professionals, and to appropriate township departments and agencies for review. The applicant may request a meeting with the Board's professional staff to review technical issues and the Board or the Board's professionals may grant such requests in their discretion as long as all applicable fees are current and the cost of the applicable professional's fees are available in the applicable escrow account for the reasonable payment of same. Thereafter, at the Board's discretion, the application shall be assigned a hearing date with adequate public notice if required. The administrative assistant shall endeavor to provide the applicant with copies of all written review reports prior to any public hearings. If the public notice is deemed inadequate at the time hearing, the application may be denied without prejudice or the application may be considered to be incomplete, notwithstanding any earlier certification of completeness, until the applicant has given proper statutory notice. The Board shall be deemed to have no jurisdiction to hear an application unless proper statutory notice has been given by the applicant.

2:1-6. Time to Provide Maps and Reports. When a hearing date has been assigned, it shall be the applicant's obligation insure that all maps, reports and documents to be considered by the Board at the hearing on the application must be on file in the office of the Board not less than twenty-one (21) days prior to the hearing it is to be considered at to provide adequate time for the Board professionals to review the documents and report to the Board.

Rule 2:2 Procedure for Hearing Applications

2:2-1. Appearance by Applicant. At the time of the hearing on the application, the applicant shall appear in person or such person may be represented by an attorney at law admitted to practice in the State of New Jersey. Every corporation shall be represented by an attorney at law admitted to the practice of law in the State of New Jersey.

An applicant shall be any developer presenting a development application with the term developer to be defined to mean any legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option or contract to purchase, contract purchaser or any other person having an enforceable proprietary or legal interest in such land. N.J.S.A. 40:55D-3 et. seq. If the applicant is anyone except the owner of the property the applicant shall present as part of the application a certified statement from the owner or owners of record indicating that the owner or owners are aware of its content and consent to the application.

2:2-2. Testimony Under Oath. All persons giving testimony at the hearing shall be duly sworn by the Board Attorney, or in the absence of the Board Attorney, by the Chair, or his or her designee, before giving any testimony.

2:2-3. Order of Presentation. When a case is called by the Chair, the following shall be the order of presentation, unless the Board wishes to change the order of presentation for this one application.

(a) The applicant shall identify himself, enter an appearance on the record and be sworn. The applicant shall then indicate the relief the applicant is seeking from the Planning Board. If the

applicant is represented by an attorney, the attorney shall identify themselves and the office which they represent, identify their client and then proceed with their opening remarks.

(b) The applicant or the applicant's attorney shall then present their testimony and the testimony of their witnesses. They shall also submit such documentary evidence or exhibits upon which they intend to rely in order to establish the right to the relief sought in the application.

(c) At the end of the testimony of each witness in support of the applicant, the Chair shall allow Board members, and then other interested parties, including the public, to ask questions of the witness having just testified and permit reasonable cross-examination by an objector. An attorney representing a group of objectors or interested parties shall submit to the Board a written list of the persons represented by such attorney and shall submit a copy of same to the applicant or the applicant's attorney. Such persons shall participate in the proceedings only through their attorney.

(d) The Board shall submit all reports from its professionals and other governmental agencies as part of the record. The Planning Board Engineer and Planning Board Consultant shall comment and report their findings at the public hearing.

(e) At the time the applicant has submitted all of his evidence in support of his application, an objector may then put in his case, calling any witnesses and introducing any documentary evidence or exhibits upon which he will rely in his objection. Each such witness may be subject to reasonable cross-examination by the applicant or his attorney, and the Chair shall allow any members of the public to

ask relevant questions of such witnesses.

(f) After all the evidence has been presented to the Board in support of or in opposition to the relief sought by the applicant, the Chair shall then open the meeting to the public, to allow any member of the public to make a statement relative to the application before the Board. Such a member of the public shall be first sworn after identifying himself.

(g) Rebuttal testimony or evidence shall then be admitted in such order as the Chair shall designate. Only relevant objections shall be considered by the Board and the Board shall not consider unreasonable, repetitive or disorderly objections. The Chair shall have the authority to limit objections to those expressed by interested parties. An interested party shall be defined as any person, whether residing within or without the municipality, whose rights to use, acquire or enjoy property is or may be effected by any action by the Board under the Municipal Land Use Law or who rights to use, acquire or enjoy property under said act or any other law of New Jersey or the United States have been denied, violated or infringed by an action or failure to act under said act or action of the Board and as the term is more fully defined in the Municipal Land Use Law N.J.S.A. 40:55D-4.

(h) All witnesses may be cross-examined by any member of the Board, Board professionals, Board attorney, or any interested person as defined aforesaid.

(i) Any member of the Board may place evidence before the Board as to any relevant matter of which he has personal or official knowledge, for purpose of amplifying the record, including but not limited to facts ascertained from viewing of the premises in

question or the general area.

2:2-5. Closing of Hearing. When the applicant and all interested persons have had an opportunity to be heard, the Chair shall determine if the hearing shall be closed. The applicant, or another interested person, may request from the Board a continuance of the hearing for the purpose of presenting further relevant evidence. The Board, acting in its own discretion, may either grant or deny such a request. In cases where the Board feels that testimony or other evidence should be received in the public interest from any municipal, county, or state official or from any other persons, in order to assist the Board in rendering a just decision, the Board may, on its own motion, continue the hearing to another date certain for such purposes. In the absence of any request to continue the hearing, the Chair shall declare the hearing to be closed and, thereafter, no further evidence will be received in the action, unless the matter is re-opened by a motion granted by the Board where good cause is shown. In considering a request to continue or re-open any hearings, the Chair should consider the effect of the time limits for decision as set forth in Rule 3:3-1.

2:2-6. Rules of Evidence. The formal rules of evidence are not enforced before Planning Boards. The "residuum rule" or less restrictive informal rules of evidence for administrative hearings shall apply. However, no decision shall be based upon any facts not proved or on matters which are not in the record, unless they be such items of which the Board is entitled to take judicial notice. When any documents or exhibits are admitted into evidence during a hearing, they shall be marked and shall be retained by the Board as a part of the permanent file. After the Board has rendered its decision and the time for the filing of any appeal has expired, the Board's Secretary may return any such exhibits or documents to the

person who offered them upon their request. No petitions or letters of objection shall be accepted and admitted in evidence though the writer or signer of the letter may appear and testify at the hearing.

2:2-7. Burden of Proof By Applicant. The burden of proof is on the applicant, and it is the applicant's responsibility to supply competent and credible evidence in order that the Board might determine the nature and degree of relief sought by the applicant. The applicant must establish, to the Board's satisfaction that the applicant is, pursuant to statutory provisions, entitled to the relief being sought. When an applicant has taken a substantial time to present their case and then refuses to consent to a continuance so objectors can be heard or the Board has insufficient opportunity to consider the matter, such refusal by the applicant may be deemed arbitrary and unreasonable by the Board. Should the applicant move to decide the matter without affording such opportunity, the applicant shall be at risk of a denial of the application for failure to sustain the burden of proof and failure to afford the Board an opportunity to reach an informed decision.

2:2-8. Dismissal of Actions. The Board on its own motion may dismiss any action without prejudice, if neither the applicant, nor anyone on his behalf, appears at the time set for the hearing of said application. Further, the Board on its own motion may dismiss without prejudice any application for failure to comply with the provisions of the appropriate ordinance, these rules or for failure to comply with the instructions of the Planning Board. Any applicant may, at any time before the commencement of the hearing, voluntarily withdraw their application without prejudice.

2:2-9. Report By Board Expert. The Board on its own motion may at any time receive a written report on any particular matter from any governmental officer or agency or outside professional in connection with the pending case. A copy of any such report shall be made available to the applicant, who shall, if he so requests, have an opportunity to question the person(s) generating such report as to any fact or conclusion contained therein. Otherwise, such report shall be admitted as part of the record. The Board may also refer any application to any appropriate agency for its review and report.

2:2-10. Approval By Borough Committees and Agencies. The applicant must promptly contact as soon as practicable after the applicant's application has been deemed complete such agencies and committees of the Borough of Oceanport including but not limited to the Borough of Oceanport Environmental Commission, Shade Tree Committee, Board of Health, Police Department and Fire Bureau, and make such required submissions and schedule and make such presentations and appearances as are required to procure such reports, findings and approvals as are required from said committees or agencies. Unless specifically waived by the Board, the failure to obtain an approval from these Boards or Committees and Commissions may result in a denial of the application.

Rule 3:1 Post Hearing Procedures

3:1-1. Decisions By Board. Decisions rendered by the Board shall be in the form of a resolution, as required by N.J.S.A. 40:55D-10 (g), including occasions where an application is denied because of a motion to approve the application did not receive the required number of votes. The written decision may be provided at the meeting at which the Board takes its action or by a resolution of memorialization. The Board may direct by a vote of a majority of

the Board members present the preparation of either a Resolution of Approval or a Resolution of Denial by the Board Attorney to be voted on at a future meeting. This direction is nothing more than an instruction of preference to the Board Attorney and in no way is to be considered a vote on the merits of the Application. The resolution of memorialization shall be adopted within forty-five (45) days of the action being taken by the Board. Such resolution of memorialization shall be adopted by a majority vote of the members of the Board who voted in favor of the action previously taken and who are present at the time the resolution of memorialization is being voted on. No other member shall vote thereon. Action is deemed to have taken place at the original meeting and not the date at which the resolution of memorialization is adopted, except that the date of the adoption shall constitute the date of decision for the required mailing of a copy of the decision to the applicant and or the placing of a publication of the Board's decision in the official newspaper of the municipality as required by subsection (h) and (i) of N.J.S.A. 40:55D-10. The decisions of the Board, after the determination of a complete application, shall be made as follows pursuant to N.J.S.A. 40:55-D-46, et seq. and related Statute sections:

(a) For preliminary site plan approval per N.J.S.A. 40:5D-61:

(1) For a minor site plan, or for a site plan involving ten (10) acres of land or less, or ten (10) dwelling units or less, forty-five (45) days.

(2) For more than ten (10) acres, for more than ten (10) dwelling units, ninety-five (95) days.

(b) For preliminary major subdivisions

- (1) For ten (10) lots or fewer, forty-five (45) days.
- (2) For more than ten (10) lots, ninety-five (95) days.

- (c) For final approval or site plan and major subdivisions, forty-five (45) days.

- (d) For minor subdivision or minor site plan approval, forty-five (45) days.

- (e) For conditional use permits, ninety-five (95) days.

- (f) For variances, one hundred and twenty (120) days.

- (g) For a permit for a structure in the bed of a street or other reserved public area (N.J.S.A.40:55D-34) or for a structure not related to a street (N.J.S.A.40:55D-35), one hundred and twenty (120) days.

- (h) For a combined application, the longest time period applicable.

- (i) These time periods may be extended by the applicant.

3:1-2. Resolutions of the Board. A copy of the Board's resolution shall be furnished to the applicant or the applicant's attorney within ten (10) days from the date of the Board's action. Said action shall be published once in an official newspaper of the municipality in accordance with the provisions of the Municipal Land Use Law. Notices of Approval shall be published by the applicant at the Applicant's expense. Notices of Denial shall be published by the Board unless publication is directed to be by the Applicant at the applicant's expense in the Resolution of Denial. The resolution of

the Board shall contain:

(a) A statement of the Board's findings of fact and its conclusions of law, the Board's decision, and any conditions imposed upon the relief granted or other provision as the Board may deem appropriate and necessary.

(b) Where the Board has determined to impose conditions on the relief granted, such conditions shall be clearly set forth in the resolution. The Board may, when it is deemed necessary to protect the public interest, specifically provide in its resolution for the retention of jurisdiction over the matter before the Board for a reasonable time. Such time may be specifically set forth or may be conditioned on the happening of a certain event.

(c) The resolution shall set forth with specificity the relief granted to the applicant. The Board may grant such relief as it deems appropriate in keeping with the intent and purpose of the appropriate ordinance, as the case may be, although the relief granted may be different in kind or degree from that requested in the appeal or application.

3:1-3. Board Failure to Act in Timely Manner. The failure of the Board to render a decision within the time period set forth in Rule 3:1-1, or within such other time as may be consented to, either in writing, or on the record at the hearing of the Board, by the applicant, shall constitute a favorable action and the applicant shall request an appropriate certificate, pursuant to statutory provision.

3:1-4. Board Decision to Be Public. The Board's decision must be made public at a public meeting and the Board's vote on the making of its decision and the adoption of its resolution must be taken at a public meeting validly held.

3:1-5 Decision at Meeting. The Board may decide to vote to either approve or deny an application after the conclusion of the matter and after deliberation by the Board. The decision of the Board will then be memorialized in a Resolution of Approval or Denial and voted on by as to whether it properly memorializes the action taken by the Board and the Boards findings of fact by those members qualified to vote at a subsequent valid public meeting.

3:1-5. Decision Reserved by Board. The Board may decide to reserve decision on a matter after the hearing is completed and may make its decision at the next meeting provided that the period within which to decide the application will not expire prior to the next succeeding meeting. The Board may also authorize the Board Attorney to prepare a resolution for consideration at the next meeting provided that the period within which to decide the application will not expire prior to such meeting. The making of a resolution prepared for consideration shall not be construed as the making of a decision, but shall be only an indication of an intention to act upon an application in a certain manner and the Board shall not be bound by such measure.

3:1-6. Resolution Filed with County Clerk. The resolution of approval shall be filed by the applicant with the County Clerk in the Book of Deeds at the applicant's expense and proof of said recording shall be provided to the Secretary of the Board as a condition of Approval.

Rule 4:1 Fees, Record of Proceeding and Miscellaneous Matters

4:1-1. Escrow Fees. The applicant shall pay application and escrow fees for the purpose of defraying expenses incidental to the proceedings described in these rules and regulations. The fees applicable to each application shall be determined by reference to the appropriate ordinances. The Board may refuse to take any action or any further action on any application which has either an escrow deficiency or which a sufficient escrow exists to reasonably meet the requisite costs for the action which is being requested or required by the applicant.

4:1-2. Recording of Hearings. In accordance with the provisions of Municipal Land Use Law, the Board shall provide a verbatim recording of all hearings by mechanical or electronic means. A duplicate recording shall be furnished to any interested party at the requesting party's expense. The Board may elect to furnish a duplicate recording so as to permit any interested party to have a transcript prepared from such tape.

4:1-3. Fees for Special Meetings. Should an applicant request that the Planning Board consider his application at other than a regular meeting of the Board, the applicant shall, in addition to the fees provided, pay any and all costs incurred by the Board in connection with the holding of such special meeting. The Board is under no obligation to grant a request for a special meeting.

4:1-4. Board Subpoenas. The Chair of the Board or the Chair's designee may issue subpoenas, to compel the attendance of witnesses and the production of relevant evidence. Upon failure of a person under such subpoena to comply with its requirements, the Board may apply to the Superior Court for an order to compel cooperation.

4:1-5. Mistake, Misrepresentation or Fraud. The Board may presume that all material statements of fact are true. The Board may also presume that all exhibits, maps and other documents submitted are true and accurate representations of all the facts which such materials have been introduced to substantiate. In the event that it later appears to the Board on reasonable grounds that an applicant or witness has not been truthful, or that a mistake has been made, and such circumstances bear on the facts which are essential in the granting of the relief sought by the applicant and were relied upon by the Board in taking such action, then upon the discovery of such misrepresentation, fraud or mistake, the Board may rehear the matter upon the application of an interested party or on its own motion when unusual circumstances so require in the interest of justice. In such event, the Board may, upon notice to the applicant and all other interested parties require the applicant to appear before it for the purpose of explaining the testimony previously given at the hearing. At such subsequent hearing it may be determined whether or not the testimony given at the original hearing was in fact false and mistake or fraud in proceedings left uncured shall constitute grounds for rescission.

4:1-5. Application for Rehearing. An applicant or other interested party may, by right, within forty-five days (45) after the publication of notice of decision, move before the Board for a rehearing of a matter or portion thereof for the reasons provided in 4:1-4 by filing an application in the form of a letter addressed to the Board containing a statement of the grounds relied upon. If the motion is granted by the Board, it shall fix a date for the rehearing and shall require the moving party to give notice to all persons who participated in the original hearing or hearings upon such terms as the Board shall deem adequate. The Board may order a

rehearing on its own motion where unusual circumstances so require in the interest of justice. Any motions to rehear an application or portion thereof made after forty-five (45) days following the publication of decision shall be considered strictly by leave and discretion of the Board in consideration of the protected interests of the applicant as balanced against the public interest.

4:1-6. Request to Vacate or Modify Resolution. At any time after the adoption of a resolution of memorialization any person having an interest in such decision may move the Board for an order vacating or modifying any term or condition of said decision by filing with the Board a petition in the form of a letter setting forth the reasons therefore and the grounds relied upon. If the petition is granted, the Board shall fix a date for hearing and the movant shall give notice of such hearing in the same form and manner as otherwise required in the case of original applications. The Board, on its own motion, may in the proper case, similarly order all parties to show cause at a time and place fixed in notice why the terms or provisions of any variance ought not be vacated or modified.

4:1-7. Res Judicata. If the same person or their privies seek the same relief in the same factual setting, the case may be dismissed on the grounds that it has been already decided. However, if the first case was not a decision on the merits, there shall be no bar to the second application. If a second application seeks relief that is entirely different or is of lesser proportions than the first application, the second application shall not be barred. The applicant shall also be given a fair opportunity to show the Board that circumstances have changed significantly or other good cause exists. The rule of Res Judicata shall not be construed as a matter of law to disallow an application for modification or

enlargement of an approval or the lifting, modification or relaxation of conditions previously imposed in connection with an approval upon showing of changed circumstances or other good cause warranting reconsideration.

4:1-8. Terms and Definitions. Whenever a term is used in the within Rules and Regulations the term shall take on the meaning given to the term in the definition section of the Municipal Land Use Law N.J.S.A 40:55D-3 et. seq.

4:1-9. Certification of Taxes Paid. The applicant, at the time of filing the application for development, shall file with the Board a certification of the Tax Collector that the taxes and/or assessments have been paid.

4:1-10. Modifications of Rules and Regulations. Except where specifically inconsistent and therefore prohibited by the statutory requirements of the Municipal Land Use Law N.J.S.A 40: 55D-1 et. seq. or statutes related thereto, the Chair or a vote by the majority of the members present can modify any of these rules or regulations on an individual case by case basis during the time of any hearing.

Rule 4:2 Amendments

4:2-1. Amendments of Rules and Regulations. The Planning Board may from time to time amend any part or parts of these rules and regulations at any regular meeting.

Rule 4:3 Disqualification for Interest

4:3-1. Disqualifications Generally. No member of the Board

shall be permitted to act on any matter, in which he or she has, either directly or indirectly, any personal or financial interest. No member of the Board shall participate in the proceedings in which such member has a conflicting interest that may interfere with the impartial performance of his or her duties as a member of the Board. The decision as to whether a particular interest is sufficient to disqualify shall depend on the facts and circumstances of the particular case. The test shall be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the Board member to depart from their sworn public duty.

4:3-2. Local Government Ethics Law. The members of the Board shall comply with and be bound by the provisions of the Local Government Ethics Law, N.J.S. 40A:9-22.1, et seq. and shall annually file a statement as prepared by the local Finance Board and the Division of Local Government Services, Department of Community Affairs. Pursuant to such law, no Board member shall act in his or her official capacity in any matter where he or she, a member of his or her immediate family or a business organization in which he or she has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his or her objectivity or independence of judgment. To the extent that the word "involvement" as cited hereinabove extends the reach of the law beyond "interest," the same may be considered a source of disqualification and shall be closely examined by the Board. Any interest or involvement of the Board member that is not shared in common with other members of the public shall be examined to determine eligibility.

4:3-3. Examples of Disqualification for Interest. Any member of the Board shall disqualify himself or herself from sitting on the hearing of any matter in which he or she has a disqualifying

interest, such as, but not limited to, the following situation:

a) where the member owns property located within two hundred (200) feet of the property affected by the action;

(b) where the applicant is related within the third degree of consanguinity to the member by blood or is the husband or wife of any person so related;

(c) where the applicant or his or her attorney is the employer, employee, or partner of the member, or is a corporation in which the member is a shareholder or has other financial interest;

(d) where the member has any other personal or pecuniary interest in the proceeding.

4:3-4. Removal From Panel. Any member having been deemed or having deemed himself or herself disqualified in any matter shall not sit with the Board to participate in the consideration of such matter. The nature of any such disqualification shall be disclosed at the time of recusal unless doing so would constitute an unwarranted invasion of individual privacy or could adversely effect the public interest. Such member may be heard at the appropriate time as an interested party or applicant, but whenever such member appears before the Board on his or her own behalf or by legal representative, it shall be disclosed that the member's comments are made solely to exercise or protect private rights and are not expressed as a member of the Board. Every effort shall be made by such member to avoid the possible influence of fellow Board members and the appearance of impropriety from the point of view of the general public.

4:3-5. Disclosure of Possible Conflicts; Waiver by Parties.

Where conflict is only possible and not actual by virtue of involving, either directly or indirectly, any personal or financial interest, such conflict need not necessarily result in disqualification but should be disclosed. For purposes of illustration, prior dealings and friendships should be disclosed so that disqualification can be considered on an informed basis. Disclosure of interest is necessary in order to judge whether a particular interest is sufficient to disqualify or is merely remote and speculative. Concern for the impartial exercise of authority, in appearance as well as in fact, requires that where a Board member must disqualify himself or herself in a matter because of a conflict of interest, the disqualification is absolute and cannot be waived. If a conflict is only potential, and is disclosed, the Board may reasonably find that a particular interest is too remote and speculative to cause a disqualification. The Board Attorney shall be consulted in each such case. Whenever the Board is called upon to waive a potential conflict, the affected Board member shall disclose the nature of the relationship and shall satisfy the Board that the relationship would not in any way influence his or her decision.

4:3-6. Request for Executive Session. At the sole discretion of the Chairperson or upon the motion of any Board member which is seconded, an Executive Session can be requested to discuss all of the facts that might give rise to a possible potential conflict and to request input and guidance from the Board's professionals. The ultimate decision of whether a potential conflict appears to exist and whether the Board Member shall recuse himself or herself from participating in the application shall be in the sole discretion of the Board member.

4:3-7. Remedy. When a Board member fails to disqualify himself or herself where the circumstances require disqualification, any interested party may move to the Board for an Order or determination that such member is or was disqualified to act and may, even after decision, seek the vacation of the decision and a rehearing or other appropriate relief. The motion shall contain a statement of the facts upon which is based, and the Board may thereafter hold a hearing on the matter or take whatever action it may deem appropriate.

4:3-8. Disclosure of Reason for Disqualification. Whenever possible, the reason for disqualification shall be stated unless legitimate private rights would be compromised without justification in respect of the public interest.

4:3-9. Attendance at Meetings by Board Members. The proper and efficient functioning of the Planning Board requires that all Board members attend all regularly scheduled and special meetings of the Board. To insure that a quorum is available all Board members should inform the Secretary of the Board if the Board member is unable to attend any meeting at least 24 hours prior to the meeting. Failure to attend meetings or prolonged absences from meetings of the Board without good cause may subject a Board member to removal from the Board pursuant to a written request by the Chairman to the Mayor and Council for removal of said member after a public hearing, if requested by the Board member, pursuant to N.J.S.A. 40:55D-23.