

**RULES OF PROCEDURE OF THE ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF WEST ORANGE, NEW JERSEY**

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Bruce Buechler, Chairperson



Rose DeSena, Secretary

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**ARTICLE 1 ANNUAL REORGANIZATION MEETING; SELECTION OF OFFICERS;
GENERAL PROVISIONS**

1.01 Definitions.

- a. "Act" or "Statute" means the New Jersey Municipal Land Use Act, N.J.S.A. 40:55D-1, *et seq.*, as amended from time to time.
- b. The "Administrative Officer" means the duly appointed Planner for the Township of West Orange, sometimes also referred to as the "Planner."
- c. The "Board" or "Zoning Board" means the Zoning Board of Adjustment of the Township of West Orange, New Jersey, a body politic formed and created pursuant to the Act and the Ordinance [as defined below].
- d. "Master Plan" means the 1989 Master Plan of the Township of West Orange, New Jersey and each Master Plan re-examination report adopted in accordance with the Act.
- e. "Member" or "Members" means the regular members and alternate members and each of them appointed to serve on the Board pursuant to the Act and the Ordinance. The terms "Regular Members" and "Alternate Members" shall have the same meanings ascribed to them in the Act and the Ordinance.
- f. The "Open Public Meetings Act" means the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6, *et seq.*, as amended from time to time.
- g. The "Ordinance" or the "Zoning Ordinance" means the Land Use Regulations constituting the Zoning Ordinance of the Township of West Orange, codified as a Chapter XXV of the Revised General Ordinances of the Township of West Orange, as amended from time to time.
- h. "Rules" means these Rules of Procedure of the Zoning Board of Adjustment of the Township of West Orange, New Jersey.
- i. "Township" means The Township of West Orange, Essex County, New Jersey.
- j. All other capitalized terms used throughout these Rules which are not otherwise defined shall have the same meanings described to them in the Act and Ordinance.

1.02 Annual Meeting; Election of Officers.

The Annual Meeting of the Board shall be held on the first regularly scheduled meeting of the Board in the month of January each year (herein, the "Annual Meeting"), at which the Board shall elect a Chairperson and Vice-Chairperson from among the Regular Members. These officers shall serve for one year and until their successors have been duly elected and qualified. No Member may be elected as Chairperson or Vice-Chairperson for more than two (2) consecutive years.

1.03 Appointment of Secretary.

At its Annual Meeting, the Board shall also appoint a Secretary (the "Secretary"), who may also be an employee of the Township, and who is familiar with Zoning Board matters. The Secretary shall receive compensation for his/her services as determined and paid by the Township; and such person shall serve until the next Annual Meeting and/or until a successor is qualified. In absence of the Secretary, the Planner may serve as assistant secretary for a public meeting or meetings, or a Member may serve without compensation for a meeting.

1.04 Appointment of Board Attorney.

At its Annual Meeting, the Board shall also elect a member of the New Jersey Bar who is familiar with zoning and planning matters as attorney for the Board; and such attorney shall be paid a salary and such compensation and reimbursement as shall be agreed between the Township and such person (the "Attorney"). The Attorney shall serve until the next Annual Meeting and until a successor is qualified.

1.05 Appointment of Planner.

At its Annual Meeting, the Board shall also elect an individual holding a current license as a Professional Planner in the State of New Jersey as Planner for the Board. If such individual is an employee of the Township then he or she shall be paid a salary and such compensation as shall be agreed between the Township and such person. If such individual is an independent contractor then he or she shall be paid such compensation as shall be agreed between the Township and such person. The Planner shall serve until the next Annual Meeting and until a successor is qualified.

1.06 Appointment of Officers, Staff and Experts.

The Chairperson, may employ, on a temporary basis such experts or ad hoc staff as he or she may deem necessary for specific applications.

1.07 Appointment of Recording/Transcription Service.

Provided the Township has allocated and approved the necessary funding then at its Annual Meeting, the Board shall also appoint the recording/transcription service to serve until the next Annual Meeting. The compensation and reimbursement of expenses, if any, shall be as agreed between the Township and the recording/transcription service. The record or transcript of a meeting prepared by the officially designated recording/transcription service shall be the sole official record of a meeting. If the Township has not approved such funding then the tape recording system available at the meeting room shall be utilized to record the proceedings of each meeting of the Board and these recordings shall be the official record of each such meeting. Copies of these recordings may be provided to interested parties who request them and who provide or purchase an electronic device to accept such recording. An applicant may request that the Board utilize the services of a Certified Shorthand Reporter ("Reporter") retained by such applicant, in which event the transcript prepared by the Reporter shall be deemed the official record of that proceeding with the tape recording serving as the backup. The Reporter shall furnish an electronic version and one hard copy to the Secretary at no charge to the Board or the Township.

1.08 Determination of Roll Call.

At all meetings of the Board, the order of each roll call vote will be by alphabetical order of last names, except for the Chairperson who shall always vote last.

1.09 Meeting Dates.

At its first regular meeting in November, the Board shall adopt the days for the regular meeting schedule for the following calendar year, consistent with the provisions of Section 3.01, below, and the dates of the regular meetings shall be advertised as provided by the Act and the Open Public Meetings Act.

ARTICLE 2 DESCRIPTION OF THE DUTIES OF BOARD OFFICERS, MEMBERS AND PERSONNEL

2.01 Chairperson.

The Chairperson shall:

- a. Perform all duties pertaining to his/her office and as required by law, ordinance and these Rules.
- b. Establish the agenda and order of proceedings of each meeting.
- c. Decide all points of order and matters of procedure and evidence governing the proceedings of the Board.
- d. Rule upon the credentials of each proposed expert witness after conducting a *voir dire* examination and allowing each Member to pose questions and offer comments.

2.02 Vice-Chairperson.

In the absence or recusal of the Chairperson, the Vice-Chairperson shall carry out the duties of the Chairperson.

2.03 Secretary.

The Secretary shall, under the direction of the Chairperson and the Planner, generally perform the administrative work of the Board including, but not limited to, the following:

- a. Attend all meetings of the Board (the "Meetings") and have the care and custody of all records, exhibits, documents, maps, plans and papers of the Board.
- b. Process all official correspondence and notify the appropriate municipal employees of all Meetings and when their attendance is desired. All official correspondence shall have the Chairperson's approval and signature.
- c. Take roll call votes and note the yea or nay of each Member as he/she votes, and also note any abstentions and the reasons therefore at each meeting.
- d. Arrange for a tape recording as record of the proceedings of each Meeting in accordance with these Rules and prepare and preserve minutes of the proceeding of each Meeting. The Members shall receive a draft copy of these minutes prior to the next regular meeting of the Board. In lieu of a tape recording, any other transcribing method may be used consistent with these Rules.
- e. Give all notices of Meetings required to be given by the Open Public Meetings Act, the Municipal Land Use Law or any other applicable law or ordinance.
- f. Prior to each Meeting, deliver to each Member all information that is required for that Meeting, including the agenda, reports, correspondence, minutes, resolutions, applications, etc.
- g. Prior to each Meeting, examine all papers and forms filed, including the list of property owners and proofs of service, and evidence of payment of municipal property taxes and advise the Attorney or the Planner of any such deficiencies.

2.04 Planner.

The Planner shall generally perform the following duties for the Board:

- a. Attend all Meetings.
- b. Certify to the applicant and the Board the correctness of application as to form, content and completeness of each application, within the time provided by law.
- c. Conduct official communications.
- d. Prepare and submit to the Board a report concerning each application.

Whenever the Planner is not a full-time employee of the Township, then for such periods, all references in these Rules to the "Planner" shall be deemed to include the Secretary or such other individual as may be designated or assigned to a particular task by the Board or the Chairperson.

2.05 Conflict of Interest.

Any Member or professional representing the Board shall disqualify him/herself from proceedings involving any application in which he/she has, either directly or indirectly, any personal, financial or other disqualifying interest. Such disqualifying interest may include, but not be limited to, the following situations:

- a. When the person or a member of his/her immediate family, or a corporation, partnership, limited liability company or other entity in which they have an equity or ownership interest in owns property located within 200 feet of the property affected by the application, whether or not such property is located in the Township of West Orange.
- b. Where the applicant is within the third degree of consanguinity to the Member or is the husband or wife of any person so related.
- c. When the applicant or his/her attorney is the employer, employee, or partner of the Board person or is a corporation or other entity in which the Member is a significant shareholder or has other significant financial interest.

- d. When the Member has any other personal or pecuniary interest in the proceeding with either the applicant or the applicant's attorney.

Any such disqualification or statement of interest shall be made on the record at the commencement of the hearing on that application. When a Member is in doubt concerning a potential conflict, advice of the Board Attorney should be sought on the record.

2.06 Member Duties.

- a. Members are encouraged to visit the sites which are the subject matter of each application;
- b. Members shall review the application and all documents, correspondence and other materials filed with the Secretary for each application prior to the meeting; and
- c. Members shall familiarize themselves with the agenda and all proposed minutes and resolutions prior to each meeting.

2.07 New Members.

In addition to attending the Basic Course in Land Use Law and Planning offered through the Office of the New Jersey Department of Community Affairs, all Members appointed to the Zoning Board, after being duly sworn, shall make themselves available, as soon as practicable after their appointment, to the Board Attorney or Planner and any Member designated by the Chairperson, for a briefing session to cover:

- a. The Act, the Open Public Meetings Act, the Ordinance and all related documents.
- b. These Rules and Master Plan.
- c. Board's responsibilities and limitations.
- d. Legal aspects of zoning and planning.
- e. Conflicts of interest.
- f. Electronic communication requirements, limitations and etiquette.
- g. Such other training as may be required by law or any state or county agency with such authority.

New Members shall also receive the following:

- 1. The Ordinance.
- 2. These Rules.
- 3. The Master Plan and all Master Plan re-examination reports.
- 4. All such other materials as shall be deemed necessary by the Chairperson, Board Attorney or Planner.

2.08 Designation of Alternate Members.

The four Alternate Members of this Board appointed by the Governing Body shall be designated by the appointing authority as "Alternate No. 1", "Alternate No. 2", "Alternate No. 3", and "Alternate No. 4" respectively, and each Alternate shall retain said designation during the term for which he/she was appointed.

2.09 Appointment of an Alternate to Serve on an Application.

- a. An Alternate Member who has been designated to sit in place of a Regular Member and who has participated in any hearing or matter coming before the Board shall, subject to the provisions of 2.09b. below, continue to Act in the place of such Regular Member until the final disposition of said matter by the Board provided he/she has attended, and continues to attend every meeting for this application.

- b. If the application continues after the meeting from which the Regular Member was absent and the Regular Member then either reads the transcript or listens to the official tape recording, then that Regular Member shall resume his or her place as a Voting Member on the application and the Alternate Member shall not vote.

2.10 Alternate No. 1.

In the event that a choice must be made as to which Alternate Member is to vote, Alternate No. 1 shall be the first to vote and then the other Alternates, as may be necessary shall vote in the order of their numerical designations.

2.11 Alternate May Serve at Adjourned or Continued Hearing Even if Not Present at Prior Hearings.

When a Regular Member has been present and has participated in the first hearing on any matter, an Alternate Member shall be designated to serve during the absence of the Regular Member during any adjourned or continued hearing or hearings on the same matter. If a vote is taken that same evening then said Alternate can vote if he/she was present at such first hearing or any prior adjourned or continued hearing on such matter or has attested to either reading the complete transcripts or listening to the official tape recording or recordings from such hearings.

2.12 Rights and Privileges of Alternate Members.

An Alternate Member who has been designated to serve in place of an absent or recused Regular Member shall, during the period of his/her service, enjoy all the rights and privileges and shall be subject to the duties and disabilities pertaining to Regular Members, but no Alternate Member shall be eligible to serve as Chairperson or Vice-Chairperson of the Board.

2.13 Participation in Discussions and Voting by Alternate Members.

Alternate Members may participate in discussions of the proceedings but may not vote except in the instances as defined above in this Article 2. No vote shall be delayed in order that a Regular Member may vote instead of an Alternate Member.

2.14 Removal of Members.

A Regular or Alternate Member may be removed from the Board by the Governing Body for cause pursuant to N.J.S.A. 40:55D-69. Among other reasons, the Board may recommend to the Governing Body as constituting just cause for removal that a Member be removed based upon absence of a Regular or Alternate Member from three (3) consecutive regular meetings or four (4) regular meetings within a ten (10) month period, without being previously excused by the Chairperson. A Regular or Alternate Member may also be removed for misconduct.

ARTICLE 3 MEETINGS

3.01 Regular Meetings.

The regular meetings of the Board shall be held generally on the third Thursday of each month at 8:00 p.m., at the Municipal Building/Council Chambers, 66 Main Street, West Orange provided there is a matter to be reviewed, unless such day falls on a holiday, or there is a conflict, in which case the meeting shall be on the next available date on which a quorum can reasonably be assembled. Regular meetings may be changed for special reasons upon a vote of the majority of the Board, and provided the proper notice required by law is given. The first regular meeting after January 1st of each year shall constitute the annual organizational meeting of the Board. Whenever there are no matters to be considered at any regular meeting, other than the organizational meeting, the Chairperson may dispense with such meeting by notifying each Member of the Board at least 48 hours in advance of the time set for such Meeting and by giving notice in accordance with the Open Public Meetings Act.

3.02 Special Meetings.

A special meeting, devoted exclusively to the consideration of one or more specific applications may be requested by an applicant in writing or orally at a meeting and approved by the Board at an open public meeting or via email. The fees and expenses for such a meeting shall be paid by the applicant and shall cover the cost of attendance of the Board Attorney, the Secretary, the Planner, Board Engineer, the Public Advocate, transcription service and all advertising pertaining to the special meeting. Such funds as shall be deemed necessary to cover the costs of the special meeting, as determined by the Chairperson or the Planner, shall be paid by the applicant and placed in an escrow account at least ten (10) calendar days prior to the date of that special meeting. All fees resulting from a special meeting shall be paid promptly from this account. Evidence of such additional payments shall be placed in the docket file of the application. If there are two or more applicants at a special meeting, they shall share the cost of the meeting, in a manner to be determined by the Chairperson or the Planner. The applicant shall also pay for a transcript of its hearing at any special meeting. No other business can be discussed at this meeting except the subject matter or matters for which the meeting was called.

A special meeting may be called by the vote of the majority of the members of the Board either in person at a meeting or by telephone or email, provided notice thereof be mailed or given to each Member of the Board at least two (2) calendar days prior thereto, and to the public as required by the Open Public Meetings Act.

3.03 Quorum.

A quorum for the conduct of business of the Zoning Board of Adjustment shall consist of at least four (4) Members. In the absence of a quorum, the Members present shall adjourn the meeting and the hearing on any motion or application to another date. In the event a Full Board (as defined below) are not present to vote on an application, an applicant that is seeking a "d" use variance may request an adjournment until a full Board is present, without the necessity of re-service of notices or public advertisement. However, the Chairperson shall make public announcement of the adjourned date of the new hearing.

3.04 Voting.

When voting on matters, except on a motion for adjournment where a quorum is not present, the following number of votes is required, so long as a quorum is present:

- a. In all matters concerning a "d" use variance, five (5) affirmative votes for approval are required.
- b. In all other matters, a majority of the Members present is required.
- c. A "Full Board" shall mean seven (7) Members eligible to vote on the matter.

3.05 Absent Members.

When any hearing before the Board shall carry over one or more meetings, a Member who was absent for one or more of the meetings shall be eligible to vote on the matter upon which the hearing is conducted, notwithstanding his/her prior absence, provided that said Member certified to the Board in writing before the beginning of the reconvened hearings, that he/she has either read the transcript of the entire proceedings on the matter at the meeting for which he/she was absent or if no transcript is available then he/she has listened to the official tape recording of the proceedings on the matter. This rule shall not be construed as authorizing any hearing to be held whenever less than a quorum of the Board is present.

3.06 Order of Business.

The order of business at all regular meetings of the Board shall be, subject to the Chairperson's discretion to modify, as follows:

- a. Call to order.
- b. Pledge of Allegiance.

- c. Statement of compliance with Open Public Meetings Act and instructions concerning the recording system, if applicable.
- d. Opening statement.
- e. Roll call.
- f. Announcement of future meeting dates.
- g. Correspondence.
- h. Consideration of memorializing resolutions.
- i. Motions for adjournment of any scheduled cases and any other motions.
- j. Unfinished or adjourned hearings.
- k. Hearing of new cases.*
- l. Adjournment.

*No testimony of witnesses or other proceedings on an application shall begin after 11:00 P.M., unless this rule is waived by the Board. Unless waived, all meetings shall will end at 11:00 p.m.

3.07 Open Meetings.

All meetings, hearings and any Action by the Board shall be open to the public except for an executive session as permitted by N.J.S.A. 10:4-12(b) of the Open Public Meeting Act.

3.08 Incomplete Hearings.

All incomplete hearings may be adjourned until a future date as determined by the Chairperson, without the necessity of re-service of notice. However, the Chairperson shall make a public announcement of the adjourned date of the next hearing.

ARTICLE 4 BOARD PROCEDURES

4.01 Filing of an Application.

An application for a "c" bulk variance, "d" use variance, "c" or "d" variance with site plan approval, "c" or "d" variance with subdivision approval and "d" sign variance, shall be commenced by filing an original and 19 copies of an application (including but not limited to site plan drawings, architectural drawings and all other reports), in accordance with all requirements set forth in Section 4.02. Applicants shall be encouraged to submit small format plans and drawings for distribution to the Board Members. On such occasions, sixteen of the nineteen copies shall be small format plans and drawings (18" x 24") for distribution to the Board Members and various of the Board Professionals.

4.02 Filing Requirements.

- a. An application shall comply with the Ordinance, including for the avoidance of doubt, the check-list requirements. The failure of an applicant to follow the instructions and check-list requirements of the Ordinance will result in the application being deemed incomplete which may cause a delay in establishing a hearing date. All statutory time periods for action by the Board commence to run only upon the certification by the Secretary or the Planner that the application is complete as required by the Act, the Ordinance and paragraph 4.03 b. of these Rules. Application forms with a copy of the checklist shall be provided by the Secretary. Applicants shall completely fill in the form and shall supply any and all other information and data that may be required for the relief sought.
- b. Where an applicant or any interested party proposes to offer the testimony of a licensed professional planner, then that professional planner shall submit to the Secretary, not less than ten (10) calendar days before the hearing date at which that witness will be called to testify, the original plus fourteen copies of a written report setting forth, among other things, the planners' opinions, the facts upon which they are based and the sources for all references relied upon by that planner. Such references to court decisions, statutes, administrative regulations, ordinances and the like shall be in proper citation form. In the event a professional planner fails to file such a report then the Chairperson

may either foreclose the witness from testifying or, in the case of the applicant, require an adjournment to allow the Board sufficient time to study the report. Interested parties may not use the failure to submit a report as a means to delay a final decision in any matter.

4.03 Assignment of Docket Numbers; Complete and Incomplete Applications.

- a. Upon receipt of an application by the Secretary, the application shall be assigned a docket number, which shall thereafter appear on all papers filed in the case. Upon an application being deemed complete, the date of that determination shall be added to the end of each docket number. The original copy of the application shall be filed in the permanent case docket of the Board.
- b. The Planner or the Secretary shall review the application for its completeness, in accordance with the Act, the Ordinance and these Rules. In the event the application is found to be incomplete, the applicant shall be notified within the statutory time requirement of forty-five (45) calendar days after the filing of the application. Such notification shall be in writing and shall set forth the reasons that the application has been found to be incomplete.
- c. If the application is found to be complete, the Secretary shall certify to the applicant that the application is complete; and the application shall be determined to be complete as of the day it was certified, for purposes of commencement of time periods for action by the Board.
- d. Upon failure to notify the applicant, in writing, within the forty-five (45) calendar day period that the application is incomplete, the application shall be deemed complete.
- e. If the applicant disputes the determination of the Planner that the application is incomplete, the applicant can request to be heard at the next regular meeting of the Board for an appeal of the Planner's decision.
- f. If the application includes any requests for waivers the Planner's certification of completeness shall be considered conditioned upon the Board's grant of the requested waiver. Should the Board deny the request for waiver, the application shall be considered incomplete as of the date of the Board's action. Should the Board approve all requested waivers, the application shall be deemed complete as of the date of the Board's action.
- g. When an application is made for any variance relating to a use or structure which is not permitted in the zone in which the subject property is located or for relief pursuant to N.J.S.A. 40:55D-70(d), the applicant may submit at the time of filing his/her its application for a variance, an application for site plan review or for subdivision approval, prepared in accordance with all applicable Ordinance requirements and regulations of the Planning Board together with the fees and deposits in the amount which would have been charged by the Planning Board in connection with the submission of a similar site plan review application. Application for site plan review need not be filed at the time of filing an application for a use variance, but any variance granted by the Board shall be subject to proper submission of a site plan in accordance with the Ordinance.

4.04 Bifurcation.

An applicant seeking a variance pursuant to N.J.S.A. 40:55D-70(d) may, as permitted by N.J.S.A. 40:55D-76(b) either simultaneously file an application for any required site plan or subdivision approval or may make a subsequent application to this Board for such approval. The Board may consider the variance request before dealing with the subdivision or site plan and in such events the time requirements shall be as provided for in N.J.S.A. 40:55D-76(c).

4.05 Assignment of Hearing Date; Notice.

Upon an application being deemed to be complete, in accordance with the Act, the Ordinance and these Rules the case shall be assigned a hearing date. The applicant shall be responsible to provide all notices in accordance with N.J.S.A. 40:55D-12. If at the time of the hearing, any notice given by the applicant, as required by law, is deemed inadequate or otherwise not in accordance with law, the application will be declared to be incomplete, notwithstanding an earlier certification of completeness. The application shall be assigned a new hearing date and the applicant shall be required to provide proper notice in accordance with law. If the agenda before the Board is full, an application may be deemed complete without the assignment of a hearing date. The application shall then be given the first available hearing

date. In such situations, the applicant shall waive the applicability of the statutory requirements for taking final action on the application.

- a. Where for a fee a municipal official has furnished the applicant with a list of the property owners entitled to notice pursuant to the provisions of N.J.S.A. 40:55D-12(c), a copy of the official certification and list shall be annexed to the applicant's affidavit of "service" to be filed with the Secretary.
- b. The service and publication of notices as provided are jurisdictional requirements. An affidavit of proof of the service of notices on property owners and a proof publication of all notices as required by law by the authorized official of the newspaper which published same, shall be submitted to the Secretary prior to or at the commencement of the hearing.
- c. All applicants taking appeals or seeking interpretations of the Ordinance under N.J.S.A. 40:55D-70 (a) or (b), appeals and interpretations, shall be required to serve and publish notice of the application pursuant to the provisions of N.J.S.A. 40:55D-12. An affidavit of service and proof of publication as specified in paragraph 4.05 b. of these Rules, above, shall be submitted to the Secretary prior to or at the commencement of the hearing.
- d. The Chairperson or the Planner may request that an applicant serve and publish notice in the public interest, where not required by the Act, the Ordinance or these Rules.

Prior to the scheduled hearing of an application, the Township Engineer and Planner, the Environmental Commission, and any other municipal agency or official required to review the application shall submit a written report to the Board at least ten (10) calendar days before the scheduled hearing date, setting forth the results of the review conducted and any recommendations regarding the application.

4.06 Payment of Taxes.

The applicant, at the time of filing the application, shall file with the Board a certification of the Tax Collector that real estate taxes and/or assessments on the subject property have been paid current. If no certification is filed, the application will be deemed incomplete. All applicants shall be required to maintain payment of real estate taxes current through the pendency of the hearings on the application until a final decision is rendered. In the event of a delinquency which is not cured within fifteen (15) calendar days of its due date the Chairperson shall suspend the scheduling of hearings and the statutory time for rendering a decision shall be tolled until the real estate taxes, and any late charges and interest, have been brought current.

4.07 Additional Materials.

After an application has been deemed complete, the Board and/or the Planner may request additional information from the applicant to aid in deciding the application. An applicant may also submit amended materials, plans or additional information at his/her its own discretion. If such materials are to be submitted after said application has been deemed complete, such submission shall be delivered to the Secretary at least ten (10) calendar days before the next scheduled hearing date. If an interested party has appeared in a matter, whether by counsel or *pro se*, the Board or the Planner may request additional information from each such interested party to aid in deciding the application. All such submissions shall be delivered to the Secretary at least ten (10) calendar days before the next scheduled hearing date.

ARTICLE 5 HEARING PROCEDURES

5.01 Appearance by Parties.

Except as may otherwise be provided in the Act, the Ordinance or elsewhere in these Rules, at the time of the hearing on the application, the applicant, or any other party, 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, partnership, limited liability company or other legal entities shall be represented by an Attorney-At-Law admitted to practice in the State of New Jersey.

5.02 Dismissal Without Prejudice.

The Board on its own motion may dismiss any application, without prejudice, if neither the applicant, nor anyone on his/her 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 Act, the Ordinance, or these Rules. Any applicant may, at any time before the commencement of the hearing, voluntarily withdraw his/her application by submitting the request in writing in which case the application shall be dismissed without prejudice. If the Board's agenda is full and it cannot hear the application within the statutory time requirement, the applicant shall sign a consent to continuance form to a date fixed by the Planner or Secretary.

5.03 Swearing of Persons Giving Testimony.

All persons giving testimony at all public hearings of the Board shall be sworn under oath by the Chairperson, or his/her designee or the Board Attorney or, if applicable, the reporter/transcriber, or shall affirm the truth of the testimony to be provided before giving any testimony.

5.04 Order of Presentation.

When a case is called by the Chairperson, the following shall be the order of presentation:

- a. The applicant shall identify him/herself, shall be sworn under oath or affirm, and state the relief sought from the Board. If the applicant is represented by an attorney as provided for above, the attorney shall identify him/herself and the law office which is represented, identify the client and then proceed with opening remarks.
- b. The applicant or attorney shall then present his/her testimony and the testimony of the witnesses. He/she shall also submit such documentary evidence or exhibits to be relied upon to establish his/her right to the relief sought in the application, and identify the person responsible for the creation of such documents and exhibits.
- c. Prior to opening that portion of the meeting to the public, at the end of the testimony of each witness in support of the applicant, the Chairperson shall allow the Members and the Board's professionals to ask questions of the witness having just testified, and shall then permit reasonable cross-examination by an attorney representing any members of the public, after which the public shall be afforded an opportunity to ask questions of witnesses, but not to make any statements.
- d. Where a group of interested parties is represented by an attorney, the attorney shall present to the Chairperson a list of persons he/she represents; and such persons shall participate in the proceedings only through their attorney.
- e. After the applicant has submitted all evidence in support of the application, the attorney for any members of the public and members of the public not represented by counsel may then put in his/her case either in support of or in opposition to the application on behalf of his/her client or clients, calling any witnesses and introducing any documentary evidence upon which they rely on in connection with their support, objection or presentation concerning the application. Each witness shall be sworn under oath or shall affirm and shall be subject to reasonable cross examination by the applicant or his/her/its attorney, and the Chairperson, after first permitting questions by the Members and the Board's professionals, shall then allow any members of the public to ask questions relating to the testimony of such witnesses.
- f. After all of the evidence has been presented to the Board in support of, or in opposition to, the relief sought by the applicant, the Chairperson shall then open the meeting to allow any members of the public to make any statement relative to the application before the Board. Such member of the public shall be first sworn or shall affirm after identifying him/herself, and shall be subject to cross examination, as well as subject to a time limit upon such presentation as reasonably determined and stated upon the record by the Chairperson.
- g. Rebuttal testimony or evidence shall be admitted in such order as the Chairperson shall designate.
- h. All witnesses may be cross examined by any Member of the Board, the Board's Professionals and then any interested person.

- i. Any Member may place evidence before the Board as to any relevant matter of which he/she has personal knowledge, strictly for the purpose of amplifying the record, including facts ascertained from site visit of the premises in question and the general area. Members shall place on the record all such matters on which such Member may rely in arriving at a determination on the application.
- j. The Board may also take the testimony of any expert witness employed by it; and such expert shall be subject to cross-examination by the applicant or the applicant's attorney, objectors and all others.

5.05 Closing of Hearing; Continuances.

When the applicant and all interested persons have had an opportunity to be heard, the Chairperson shall determine if the hearing shall be closed. The applicant, or any other 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 sound discretion, may either grant or deny such 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 for such purposes. In the absence of any request to continue the hearing, the Chairperson shall declare the hearing to be closed and, thereafter, no further evidence will be received on the application, unless the matter is re-opened in accordance with these Rules. In considering a request to continue any hearing, the Chairperson should consider the effect of the time limits for decisions. A request for a continuance by an applicant shall require a waiver of the time for decision.

5.06 Evidence.

The formal rules of evidence will not be strictly adhered to by this Board. However, no decision shall be based upon any facts not proven 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 identified on the record, whether or not eventually admitted into evidence during a hearing, they shall be marked and shall be retained by the Board as part of the permanent file. After the Board has rendered its decision and the time for filing any appeal has expired, the Secretary may return any such exhibits or documents to the person who offered them upon his/her request, except for site plans. Each Member may evaluate the testimony and documents presented by the applicant and any objectors for credibility and shall provide such evidence the weight and probative value as each Member, in the exercise of his or her reasonable discretion, shall deem appropriate.

5.07 Burden of Proof or Burden of Persuasion.

It is the obligation of the applicant to present sufficient evidence, by way of testimony or documents or both, to persuade the Board that the relief sought by the applicant may be granted under the standards established in the Act, the Ordinance, the Master Plan, these Rules and the decisions of the New Jersey Supreme Court and the Superior Court of New Jersey.

5.08 Reports from Officers, Boards or Agencies.

The Zoning Board, on its own motion, may, at any time, request a written report on any particular matter from any officer, board or agency in connection with the pending case; provided, however, that a copy of any such report shall be made available to the applicant, who shall, if he/she/it so requests, have an opportunity to question the maker of such report as to any fact or conclusion contained therein. Copies shall also be provided to all attorneys who have appeared in the matter on behalf of any interested party. All such reports shall be made part of the docket for the application and may be reviewed and inspected by interested parties at the office of the Secretary. The Board may also refer any application to any appropriate agency for its review and report; provided, however, that the applicant shall be notified of such action, and shall be informed of when such agency holds its meetings so the applicant may arrange to be present, if he/she/its so desires. Should the Board request such a report or make such a referral, such action shall not extend the period of time within which the Zoning Board shall Act. Such reports, as may be requested by the Board, shall be submitted to the Secretary at least ten (10) calendar days prior to the scheduled hearing date.

5.09 Transfer of Applications.

Whenever an application is filed with the Zoning Board which pursuant to the provisions of the Act or the Ordinance ought to have been filed with the Planning Board, the Zoning Board may, by resolution, cause said application to be transferred to the Planning Board and shall cause notice of its action to be published as in all other cases.

5.10 Essex County Planning Board.

Whenever an application must also receive approval from the Essex County Planning Board, any changes required by the Essex County Planning Board that are not originally incorporated into the approval resolution adopted by this Board or the final approved site plan, if applicable, the applicant shall appear before the Board at a public hearing to seek an amendment.

5.11 Policy on the Use of Recording Devices.

The use of all recording devices including audio recorders, cameras, video cameras, and cellular phones with audio/photo/video recording capabilities (each referred to as a "Recording Device"), shall be subject to the following guidelines which are deemed necessary to maintain order, prevent unnecessary intrusion into the Board's proceedings, and ensure that the use of any such recording device does not disrupt the business of the Board or interfere with other citizens' right of access:

- a. Each Recording Device shall be silent and small enough that its presence and/or operation do not interfere with the Meeting or the Board's proceedings.
- b. The use of flash and/or other means of lighting is prohibited.
- c. No Recording Device shall interfere with the equipment of the Board's officially designated recording/transcription service, as reasonably determined by the operator of that equipment. The record/transcript provided by the officially designated recording/transcription service shall be the sole official record of the Meeting.
- d. No Recording Device may block or interfere with any person's ability to hear and/or see all discussion by the Board, testimony, exhibits and evidence. Toward this goal, each Recording Device shall remain in the fourth row or further back in the audience and the operator of a Recording Device shall remain seated while the meeting is in session. If the operator of a Recording Device wishes to stand while the Meeting is in session, they shall be required to stand at the rear of the meeting room behind or in the last row of seating. An exception may be granted by the Chairperson for a certified shorthand reporter licensed by the New Jersey State Board of Court Reporting retained by an applicant who may be seated in the front row during the proceedings on the application. The request for such an exception shall be delivered to the Secretary at least three (3) calendar days before the hearing date.
- e. No Recording Device may be placed on any podium, easel or on any other surface which places the top of the Recording Device more than six inches above the height of the seats in the Council Chamber or which is closer than the fourth row in the audience from where the Board sits or may deliberate without the prior approval of the Chairperson.
- f. Neither the Township, the Board nor any Member or Members shall be held responsible for any damage to or malfunction of any Recording Device.
- g. No Recording Device shall block any aisle or other method of ingress/egress.
- h. No Recording Device shall be left unattended at any time.
- i. Neither the Board nor the Township guarantees the existence of any electrical supply or the sufficiency of such service for the operation for any Recording Device.
- j. An individual or party using a Recording Device is deemed to be bound by and to abide by all of the provisions of this Rule 5.11.

ARTICLE 6 DECISION; RESOLUTION OF BOARD

6.01 Time.

- a. The Board shall render a decision within the time requirements stated in N.J.S.A. 40:55D-73
- b. Failure of the Board to render a decision within the statutory period, or within such further time that may be consented to by the applicant, shall constitute a decision favorable to the applicant.
- c. Every decision shall be made by a proper motion duly made and seconded, with the votes of all Members recorded on a roll-call vote.

6.02 Contents of Resolution; Publication.

The decision of the Board shall be in the form and manner as specified in N.J.S.A. 40:55D-10 g. A resolution containing the findings and conclusions shall be adopted on the date of the meeting at which the Board granted or denied approval, or, by a written memorializing resolution adopted at the next regular scheduled meeting. An action resulting from failure of a motion to approve an application shall likewise be memorialized by resolution regardless of the time at which such action occurs. Whenever a resolution of memorialization is adopted in accordance with the provisions of N.J.S.A. 40:55D-10, the date of such adoption shall constitute the date of the decision for the purposes of the mailings, filings and publications required by statute. A copy of the Board's resolution shall be furnished to the applicant or his/her/its attorney within ten (10) calendar days from the date of adoption thereof and a copy of the resolution shall be made available to any person who has requested it and has paid the Municipal fees for copies. The Secretary shall, in the manner required by §25-48.7c. of the Ordinance, arrange for publication of a notice of each decision by the Board.

6.03 Rehearing.

Any applicant or other interested person may, within twenty (20) calendar days after the publication of notice of the decision, move the Board for a rehearing of the matter by filing an application in the form of a letter addressed to the Board containing a brief statement of the grounds relied upon. If the motion is granted by the Board, it shall fix a date for 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 or Planner may deem adequate. The Board may grant a rehearing on its own motion when unusual circumstances so require in the interest of justice.

6.04 Perjury.

Any person who shall willfully give false testimony under oath in the course of any hearing held before this Board shall, in accordance with the provisions of the County Municipal Investigation Law N.J.S.A. 2A:67 A-1, et seq., be guilty of perjury. The Board shall submit the transcript of testimony it believes may be perjurious to the County Prosecutor for investigation.

6.05 Applicant's Obligation to Promptly Proceed.

Applicants have an obligation to promptly proceed with their applications. If an applicant submits an application to the Board and the Secretary, Planner or other duly designated Township employee or official sends the applicant a letter or other written communication, including an email, stating that the application is incomplete, the applicant shall then have ninety (90) calendar days to submit such additional information or revised plans or documents or both in order to complete the application. If the applicant does not complete their application within this ninety (90) calendar day period, the application shall be deemed dismissed without prejudice unless the Board has voted affirmatively to grant said applicant additional time to complete the application. The Secretary shall notify the applicant of the dismissal in writing. In the event that an applicant shall request three (3) adjournments of scheduled hearing dates, then in connection with the third or any additional such request, the Board, in its discretion, may dismiss the application without prejudice or, if sufficient evidence has been presented such that the principles of either *res judicata* or collateral estoppel has attached, with prejudice.

ARTICLE 7 FEES

7.01 Fees for Incidental Expenses.

The applicant, at the time of filing an application, shall pay to the Township fees as required by the Ordinance and these Rules, as applicable for such application.

7.02 Escrow Fees.

The Board shall also require escrow deposits in accordance with the provisions of the Ordinance. Such funds shall be utilized to pay the costs of professional fees, including the consulting engineer, audio reporting or recording fees for review of and/or testimony concerning an application for development submitted by an applicant. The Township shall deposit all escrow funds, pending completion and review of the application, in an interest-bearing account. Within ninety (90) calendar days from final approval or the signing of final plans by the Board Chairperson, Secretary and Municipal Engineer, if such plans are required, any balance remaining in an applicant's escrow account shall be refunded to such person or converted to the performance escrow if one is required. The Township shall not be required to refund interest earned in this account if the total amount for the year is less than \$100.00. If the amount of interest exceeds \$100.00, that entire amount shall be refunded; except that the Township may retain for administrative expenses a sum equivalent to no more than 33 1/3% of the interest earned.

7.03 Special Expenses.

Should any application before the Board require or necessitate any special expenses to be incurred by the Board for the rendering of special services by its planning consultant, engineer, attorney or any other expert, the applicant shall reimburse the Township for the cost of such services, directly or by authorizing payment out of the escrow funds.

7.04 Digitizing Fee.

Each applicant shall pay to the Township any digitizing fee as required by Township Ordinance Section 25-56.6, or as it may be amended from time to time, prior to the initial hearing on the application.

ARTICLE 8 RULES OF PRACTICE

8.01 Relaxation of Rules.

For good cause shown, or where the strict application of any Rule would work surprise or injustice, the Board may relax the requirement of such Rule, except where the provisions of the Rule are also statutory requirements.

8.02 Person; Interested Person.

Whenever in these Rules reference is made to "any person", "any interested person", "any person interested in the application" or the like, such terms refer to any "interested party" as defined in N.J.S. 40:55D-4.

8.03 Laws Applicable.

The provisions of the County and Municipal Investigations law shall be applicable to proceedings before this Board and the Board may exercise all of the powers conferred by said law. These Rules are adopted pursuant to the provisions of N.J.S.A. 40:55D-8 and subject generally to the provisions of the Act.

8.04 Amendments.

Amendments to these Rules may be made by the Board at any regular meeting, provided notice of such amendment has been given in writing to each Member of the Board at least three (3) business days prior to such meeting. In no case however, shall any rule as amended be applicable to any application commenced prior to the adoption of such amendment where the application thereof to such rule would result in surprise, hardship or injustice to the applicant or other interested persons.