

HOPEWELL TOWNSHIP PLANNING BOARD RULES AND REGULATIONS

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TABLE OF CONTENTS

| | |
|---|----------|
| PART I. ORGANIZATION AND ADMINISTRATION..... | 1 |
| Rule 1:1. Annual Organization; Elections; Meetings..... | 1 |
| 1:1-1. Organization Meeting..... | 1 |
| 1:1-2. Election of Officers..... | 1 |
| 1: 1-3. Board Attorney..... | 1 |
| 1:1-4. Board Engineer..... | 2 |
| 1:1-5. Planner..... | 2 |
| 1:1-6. Other Consultants..... | 2 |
| Rule 1:2. Elections to Office and Duties..... | 2 |
| 1:2-1. Vote to Elect; Term..... | 2 |
| 1:2-2. Chair..... | 3 |
| 1:2-3. Vice-Chair..... | 3 |
| 1:2-4. Secretary..... | 3 |
| 1:2-5. Assistant Secretary..... | 4 |
| Rule 1:3. Meetings..... | 5 |
| 1:3-1. Regular Meetings..... | 5 |
| 1:3-2. Work Sessions..... | 5 |
| 1:3-3. Special Meetings..... | 6 |
| 1:3-4. Quorum..... | 6 |
| 1:3-5. Open Meetings..... | 7 |
| 1:3-6. Order of Business..... | 7 |
| 1:3-7. Time limitations..... | 8 |
| 1:3-8. Parliamentary Procedure..... | 8 |
| PART II. PROCEDURES..... | 8 |
| Rule 2:1. Applications and Hearings..... | 8 |
| 2:1-1. Administration of Applications; Completeness..... | 8 |
| 2:1-2. Completeness Review..... | 8 |
| 2:1-3. Consideration of Submission Waivers by The Application Review Committee..... | 9 |
| 2:1-4. Scheduling a Public Hearing..... | 10 |
| 2:1-5. Amendment to the Application..... | 10 |
| 2:1-6. Determination of Completeness..... | 11 |

| | |
|--|--------|
| 2:1-7. Scheduling; Transmittals..... | 11 |
| 2:1-8. Filing of Maps and Documents. | 12 |
| Rule 2:2. Hearing Procedure. | 12 |
| 2:2-1. Appearance by Parties..... | 12 |
| 2:2-2. Testimony Under Oath. | 13 |
| 2:2-3. Order of Presentation. | 13 |
| 2:2-4. Testimony from the Board's expert witnesses and consultants. | 17 |
| 2:2-5. Viewing by Board; Personal Knowledge of Board Members. | 18 |
| 2:2-6. Interaction with Interested Parties..... | 18 |
| 2:2-7. Evidence; Exhibits..... | 19 |
| 2:2-8. Reports from Consultants, Officers, Boards or Agencies..... | 20 |
| 2:2-9. Continuances..... | 20 |
| 2:2-10. Refusal to Consent to Continuance..... | 21 |
| 2:2-11. Effect of Covenants, Judgments and Other Regulations Affecting Land Use..... | 21 |
| 2:2-12. Letters and Petitions in Objection. | 22 |
| 2:2-13. Burden of Proof. | 22 |
| Rule 2:3. Voting..... | 22 |
| 2:3-1. Voting Procedure..... | 22 |
| 2:3-2. Voting Margin and Effect..... | 23 |
| 2:3-3. Abstentions..... | 23 |
| 2:3-4. Voting Eligibility; Review of Record..... | 23 |
| Rule 2:4. Other Hearing Requirements and Procedures. | 23 |
| 2: 4-1. Record of the Proceedings. | 23 |
| 2: 4-2. Transcripts..... | 24 |
| 2:4-3. Inability to Make Verbatim Records. | 24 |
| 2:4-4. Subpoenas; Contempt..... | 24 |
| 2:4-5. Perjury..... | 25 |
| 2:4-6. Judicial Notice. | 25 |
| 2:4-7. Dismissal Without Prejudice. | 25 |
| 2:4-8. Amended Applications..... | 26 |
| 2:4-9. Development Regulations that Govern Review of Applications. | 26 |
| 2:4-10. Conditions. | 26 |
| 2:4-11. Final Approval Requirements..... | 27 |
| PART III. TAKING ACTION ON APPLICATIONS. | 28 |

| | |
|---|----|
| Rule 3:1. Decisions. | 28 |
| 3:1-1. Decision Based on Evidence. | 28 |
| 3:1-2. Alternative Relief. | 28 |
| 3:1-3. Reservation of Decision. | 28 |
| 3:1-4. Memorializing Resolution. | 29 |
| 3:1-5. Time. | 31 |
| 3:1-6. Transmittal of Decision and Publication of Notice. | 31 |
| Rule 3:2. Rehearing; Modification. | 32 |
| 3:2-1. Misrepresentation, Fraud, Mistake. | 32 |
| 3:2-2. Rehearing. | 33 |
| 3:2-3. Vacation or Modification. | 33 |
| 3:2-4. Res Judicata. | 33 |
| PART IV. AVAILABLE AND ELIGIBILITY OF MEMBERS. | 34 |
| Rule 4:1. Alternate Members. | 34 |
| 4:1-1. Designation. | 34 |
| 4:1-2. Appointment of Alternate to Serve on Case. | 34 |
| 4:1-3. Alternate to Serve Until Final Disposition. | 35 |
| 4:1-4. Alternate No. 1 to Vote. | 35 |
| 4:1-5. Rights and Privileges. | 35 |
| 4:1-6. Participation in Discussions; Voting. | 35 |
| 4:1-7. Training Requirements. | 36 |
| Rule 4:2. Rule of Necessity. | 36 |
| 4:2-1. Appointment of Additional Members. | 36 |
| Rule 4:3. Disqualification for Interest. | 37 |
| 4:3-1. Disqualification Generally. | 37 |
| 4:3-2. Local Government Ethics Law. | 37 |
| 4:3-3. Examples of Disqualification for Interest. | 38 |
| 4:3-4. Removal from the Panel. | 38 |
| 4:3-5. Disclosure of Possible Conflicts; Waiver by Parties. | 39 |
| 4:3-6. Remedy. | 39 |
| 4:3-7. Disclosure of Reason for Disqualification. | 40 |

| | |
|--|-----------|
| Rule 4:4. Attendance..... | 40 |
| 4:4-1. Determination of Vacancy for Excessive Absences..... | 40 |
| PART V. MISCELLANEOUS MATTERS..... | 40 |
| Rule 5:1. Fees..... | 40 |
| 5:1-1. Application Fees..... | 40 |
| 5:1-2. Escrow Deposits for Professional Services..... | 41 |
| 5:1-3. Special Meeting Costs..... | 41 |
| Rule 5:2. Payment of Taxes..... | 41 |
| 5:2-1. Proof of Payment; Alternative Agreement..... | 41 |
| Rule 5:3. Committees..... | 42 |
| 5:3-1. Standing Committees..... | 42 |
| 5:3-2. Committee Composition..... | 42 |
| 5:3-3. Special Committees..... | 42 |
| Rule 5:4. Amendments..... | 42 |
| 5:4-1. Amendments to the Rules..... | 42 |

PART I. ORGANIZATION AND ADMINISTRATION.

Rule 1:1. Annual Organization; Elections; Meetings.

1:1-1. Organization Meeting.

The Board shall convene a meeting in January of each year at 7:00 p.m. for the purpose of organizing the affairs of the Board for the calendar year. Such meeting shall be conducted in the presence of the Board Attorney who was appointed for and who served through the preceding calendar year, and who shall serve pro term until reappointment or replacement.

1:1-2. Election of Officers.

At the organization meeting, the Board shall elect from its Class IV members a Chair and Vice-Chair. The Board shall also elect a Secretary and an Assistant Secretary either from among its members or from the administrative staff of the Township. The Secretary and Assistant Secretary shall be compensated according to an agreement reached in accordance with the ordinances and the budget of the Planning Board provided by the Township Committee. The Assistant Secretary shall serve as the Board's Recording Secretary.

1: 1-3. Board Attorney.

The Board shall annually appoint or reappoint an Attorney-At-Law of the State of New Jersey having recognized competence in the law of local government, land use and zoning. The Board Attorney shall be compensated pursuant to a professional services agreement and shall be the legal advisor and representative of the Planning Board. The Board Attorney shall attend the regular meetings of the Board and any additional meetings authorized by the Chair. The Attorney shall participate in the review of applications for development and shall participate in planning and administrative affairs as authorized by the Board. The Attorney shall be

responsible for advising the Board on all legal matters, preparing resolutions and prosecuting and defending litigation and appeals on behalf of the Board.

1:1-4. Board Engineer.

The Board shall appoint or reappoint a licensed professional engineer in the State of New Jersey who shall review and report on the applications and the other matters pending before the Board at the direction of the Board. The Board Engineer shall attend the meetings of the Board unless otherwise instructed. The Board shall, except in extraordinary circumstances, appoint the same engineer appointed by the Township Committee.

1:1-5. Planner.

The Board may appoint or engage a licensed professional planner in the State of New Jersey who shall review applications and land use matters, prepare Master Plans, reexamination reports and ordinances and attend meetings of the Board unless otherwise instructed.

1:1-6. Other Consultants.

The Board may also appoint such other consultants, officers and/or assistants and engage such additional experts or staff as it may be necessary from time to time.

Rule 1:2. Elections to Office and Duties.

1:2-1. Vote to Elect; Term.

A candidate receiving the majority vote of the entire qualified membership of the Planning Board shall be deemed elected to the office for which the vote was taken and shall serve for one year or until he or she is re-elected or his or her successor shall take office. Consistent with N.J.S.A. 40:55D-23, the members qualified to vote shall not exceed the nine

members that are entitled to vote including Alternates in the event of absence or disqualification of the regular members of any class. In no event shall more than nine members vote. In the event that an office shall become vacant because of resignation, death or other reason or by the operation of law, the office shall be filled as soon as possible by the same election procedure, and the term of such office shall be the unexpired term of the predecessor.

1:2-2. 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 shall perform all the duties normally appertaining to his or her office, as required by law, ordinance, these rules or prevailing parliamentary practice.

1:2-3. Vice-Chair.

The Vice-Chair shall preside at all Board meetings and hearings in the absence or disqualification of the Chair, and shall have all the powers of the Chair. In the event that the Chair and Vice-Chair cannot act, the Class IV member of the Board with the greatest seniority shall act.

1:2-4. Secretary.

The Secretary, unless otherwise delegated to the Assistant Secretary, shall generally perform the secretarial work of the Board, including, but not limited to the following:

- (a) make a verbatim record of the proceedings of each hearing of the Board in accordance with these rules and keep minutes of the proceedings of each meeting (including

work sessions) held by the Board and enter therein such resolutions and orders as are adopted by the Board;

(b) sign the plans and resolutions.

(c) perform such other duties as normally appertain to the office of the Secretary of the Planning Board, and assign and delegate such parts of such duties as may be appropriate to the Assistant Secretary;

(d) provide supervision to the Assistant Secretary.

1:2-5. Assistant Secretary.

The Assistant Secretary shall perform all functions that have been delegated and assigned from the Secretary along with the administrative and managerial work of the Board, including, but not limited to the following:

(a) cause to be mailed to otherwise delivered or made available to each member of the Board and the professional consultants to the Board true copies of the minutes and all other documents and materials pertaining to the business of the Board; conduct all official correspondence, compile all required records, keep and maintain all necessary files and indexes with respect to the operation of the Board, provide all notices of meetings required to be given pursuant to the Open Public Meetings Act, the Municipal Land Use Law or any other applicable law or ordinance;

(b) attend all meetings of the Board, take and have custody of all records, documents, maps, plans, and evidence, and provide for the care and custody of items for which no other provision is made by the statute or these rules; take or direct the taking of roll call votes, and insure the recordation of affirmative and negative votes as well as abstentions;

(c) perform the functions assigned to the Assistant Secretary under the Township's ordinances and the Municipal Land Use Law and assign such parts of such duties as may be appropriate to an assistant or designee;

(d) sign the plans and resolutions as directed by the Secretary.

Rule 1:3. Meetings.

1:3-1. Regular Meetings.

Regular meetings of the Planning Board shall be held at the Municipal Building at 7:00 p.m. on the fourth Thursday of each month or at such other meetings scheduled at the annual reorganization meeting. If the regular meeting falls on a legal holiday, such meeting shall be held on such other day as the Board may select. Whenever there are no matters to be considered at any regular meeting other than the organization meeting, the Chair may dispense with such meeting by directing the Secretary or Assistant Secretary to provide notice of cancellation to each member of the Board by reasonable means and as soon as possible in advance of the time set for such meeting. In addition, the Secretary or Assistant Secretary will give notice of the cancellation in accordance with the Open Public Meetings Act or will otherwise post the cancellation for the convenience and information of the public.

1:3-2. Work Sessions.

For purposes of administration of the Board's affairs, a "work session" may be added to the Board's meeting schedule at the direction of the Chair, or in his or her absence, by the Vice-Chair during a regular meeting of the Board. The purpose of work sessions shall be to discuss and study planning matters within the jurisdiction of the Board, specifically consideration of the master plan, re-examination reports and review of land use ordinances referred to the Planning

Board for review. In addition, capital improvement projects may be considered at work sessions as well as any other planning and advisory functions assigned to the Planning Board pursuant to Ordinance or direction of the Township Committee. In the event that it is necessary to schedule a special meeting to consider applications for development, special meetings may be scheduled at the direction of the Planning Board.

1:3-3. Special Meetings.

Special meetings may be called by the Chair or, in his or her absence, by the Vice-Chair, at any time upon the written request of two (2) or more members of the Board, provided the notice thereof be mailed or given to each member of the Board and to the public as required or allowed by law. An applicant may request but shall not be entitled to a special meeting. Special meetings at the request of an applicant may be scheduled at the pleasure of the Board provided the public interest is fairly and reasonably served. The applicant shall be responsible for all fees and costs related thereto.

1: 3-4. Quorum.

At all meetings of the Board, a quorum to conduct any business of the Board shall consist of five (5) members who do not have a conflict of interest. In the event that a decision is to be rendered on an application, then a voting quorum of five (5) members who are qualified to vote is required. A member shall be qualified to vote on an application for development if the member attended all meetings or certifies in writing that he or she listened to the tapes or read a transcript of the meetings. In the absence of a quorum, the members present may convene a meeting only for the purpose of adjourning the same to another date. No application may be

decided without a qualified voting quorum of the Board for the particular hearing at which the application is to be decided.

1:3-5. Open Meetings.

Except as otherwise provided in these rules and regulations, the meetings of the Board shall be open to the public at all times. Nothing herein shall be construed to limit the discretion of the Board to permit, prohibit or regulate the active participation of the public at any meeting. The Board may exclude the public only from those portions of a meeting at which the Board discusses matters within the exclusions provided under N.J.S.A. 10:4-12b.

1:3-6. Order of Business.

Subject to the discretion of the Chair to the contrary, the order of business for all sessions of the Board shall be as follows:

- (a) call to order;
- (b) statement of compliance with Open Public Meetings Act;
- (c) roll call;
- (d) approval of minutes of previous meetings;
- (e) motions for adjournments of any scheduled cases and any other motions;
- (f) adoption of resolutions;
- (g) old business(continued hearings);
- (h) new business (new hearings);
- (i) other business;
- (j) public comment for items not on the agenda;
- (k) closed sessions;

- (l) adjournment.

1:3-7. Time limitations.

The Board shall be under no obligation to consider new matters after 10:00 p.m., and will take no testimony or action after 11:00 p.m. This rule may be waived by an affirmative vote by a majority of the Board member then present, and qualified.

1:3-8. Parliamentary Procedure.

Robert's Rules of Order, latest edition, shall be followed whenever a particular procedure or practice is not contemplated by these rules.

PART II. PROCEDURES.

Rule 2:1. Applications and Hearings.

2:1-1. Administration of Applications; Completeness.

Applications for development shall be considered by the Board in accordance with the Municipal Land Use Law (hereinafter referred to as "MLUL") and the Land Use and Development Ordinance (hereinafter referred to as "LUDO"). Upon receipt of an application by the Secretary or Assistant Secretary, the application shall be assigned an account number which shall thereafter appear on all subsequent papers filed in the case, as well as the Block and Lot number. The original copy of the application, together with a copy of all other documents filed with the application, shall be filed in the permanent case file of the Board.

2:1-2. Completeness Review.

(a) An application for development shall not be accepted for filing unless accompanied by all required application and escrow fees.

(b) When an application has been filed, the Secretary and/or Assistant Secretary shall review the application for administrative completeness items, such-as corporate disclosure

statements. The Secretary and/or Assistant Secretary shall immediately forward the application to the engineer, planner and the health department for completeness review under their respective checklists and advise them of a due date for the completeness reports.

(c) The engineer, planner and the health department shall review the application for completeness and shall prepare reports as to whether the application is complete or incomplete. If incomplete, the report shall state which information indicated on the checklist is lacking. These reports shall be submitted to the Secretary and/or Assistant Secretary for forwarding to the applicant by the due date.

(d) Within forty-five days of submission of the application, the Secretary and/or Assistant Secretary shall notify the applicant in writing that the application is complete or that the application is incomplete due to deficiencies in meeting checklist requirements.

(e) If the application is declared incomplete, the applicant may submit the missing information or request submission waivers.

2:1-3. Consideration of Submission Waivers by the Technical Review Committee.

(a) A Technical Review Committee (hereinafter referred to as the “TRC”) is authorized to consider the request for submission waivers. The TRC shall consist of the engineer, planner and health department. The TRC shall consider and act on the applicant’s request for submission waivers within 45 days of the request and, within that time period, shall report to the Secretary and/or Assistant Secretary. The Secretary and/or Assistant Secretary shall forward the TRC decision on the applicant’s request for submission waivers to the applicant by the due date.

(b) If the TRC grants the submission waivers, the Board may nevertheless subsequently require a correction of the information found to be deficient and may require that the applicant submit additional information not specified in the ordinance, if reasonably

necessary to make an informed decision. If the Board subsequently determines that the information is necessary, the applicant shall revise its plans to submit the necessary information prior to the board rendering a decision on the application.

(c) If the TRC denies the request for submission waivers, the application will not be placed on an agenda for a public hearing as the application will be incomplete until the applicant submits the information required by the TRC. It is the policy of the Board to hear only complete applications.

2:1-4. Scheduling a Public Hearing.

(a) If the TRC grants the request for submission waivers, or if the application is deemed complete, the Board will schedule the application on its agenda for a subsequent public hearing.

(b) Although the Board is under no obligation to place an incomplete application on the agenda, the Board may schedule a public hearing on an incomplete application if the applicant demonstrates compelling circumstances which will cause exceptional and unavoidable hardship to justify deviation from the rules. The Board is under no obligation to schedule a hearing on an incomplete application.

2:1-5. Amendment to the Application.

(a) In the event that the application is revised to result in a substantial amendment in the layout of improvements, completeness review shall occur again and the application shall be considered a new application. A substantial amendment in the layout of improvements shall include, but not be limited to, any one of the following:

1. Any plan change or revision which results in an increase or decrease in any bulk dimension or design standard dimension by more than five percent;

2. Any change or revision in use;
3. Any revision in site access, road layout, division or subdivision of property, or development location, layout, or phasing;
4. Any change in the method of wastewater disposal;
5. Any change in the method or type of storm water management, including changes which affect storm drainage;
6. Any stream corridor disturbance;
7. Tree removal for trees over twelve inches in diameter at a height of 4.5 feet above grade;
8. Any changes which, cumulatively, require a re- evaluation of the plans by any of the Board's professional consultants.

2:1-6. Determination of Completeness.

Upon a determination of completeness, the Secretary and/or Assistant Secretary shall so notify the applicant, and the application shall be determined to be complete as of the day it is so certified by the Secretary and/or Assistant Secretary for purposes of commencement of the time period within which the Board must act upon an application.

2:1-7. Scheduling; Transmittals.

Upon a determination of completeness in accordance with these rules and regulations, the application shall be assigned a hearing date. Prior to the meeting at which the application is to be heard, the Secretary and/or Assistant Secretary shall forward copies of all application materials and documents to the Board members and professional staff. Applications shall be

scheduled so as to comply with statutory and ordinance limitations in time. Scheduling of matters shall be at the discretion of the Chair or as authorized by the Chair.

2:1-8. Filing of Maps and Documents.

At least ten (10) days prior to the time appointed for the hearing, the applicant must file the required maps and documents for which approval is sought with the Secretary and/or Assistant Secretary. This time requirement for filing of revised plans and other application documents applies to every hearing on an application, unless waived by the Board. Where a number of adjourned hearings are held, revised maps and supplemental documents shall be filed ten (10) days prior to such adjourned hearing, unless waived by the Board. This filing requirement is necessary in order to afford the Board and its professional an opportunity to review the revisions prior to the adjourned hearing.

Rule 2:2 . Hearing Procedure.

2:2-1. Appearance by Parties.

At the time of the hearing on an application, the applicant, or in the case of an appearance by a non-applicant party, such party shall appear in person, or such person may appear by Attorney-At-Law admitted to practice in the State of New Jersey. No corporation shall be heard except through counsel. Notwithstanding the above, in the event the Board elects to conduct the meeting with a virtual platform, the parties and members of the public can participate at the virtual meeting under modified procedures provided those modified procedures satisfy the due process rights for the applicant, objector and members of the public.

2:2-2. Testimony Under Oath.

All persons giving testimony at a hearing shall be duly sworn by the Board Attorney or, in the absence of the Board Attorney, the Chair or his or her designee. If a court reporter is present, the reporter shall administer the oath in the absence of the Board Attorney. All consultants providing advice to the Planning Board shall be sworn at the time of their appointment and shall remain under oath for the term of their professional appointment.

2:2-3. Order of Presentation.

Each application shall be considered in accordance with the following order of presentation:

- (a) At the beginning of each hearing, the Chair will summarize the procedures to be followed for the hearing.
- (b) The Chair will call the application to be heard.
- (c) The Board Attorney will make a statement of jurisdiction and acceptance of the notices.
- (d) The Chair will confirm whether any alternate member will vote and whether there are any abstentions or disqualifications of Board members.
- (e) At the beginning of the hearing, if the applicant is represented by counsel, the attorney shall enter his or her appearance, identifying the name and location of his or her firm, identifying the client who is represented, and shall then proceed to make opening remarks. The applicant will be afforded the opportunity to make an introductory overview of the application. This presentation should describe the project, its location, the variances and waivers which may be sought and the fields of expertise of the witnesses who will testify. If possible, there should be an estimate of the amount of time anticipated to present the case. This introduction should

identify, to the extent possible, any special problems or concerns with the application and the position of the Applicant with respect to the recommendations of ARC. The introductory presentation shall be completed in no more than ten minutes.

(f) The Planning Board Engineer, Planner, Health Officer and Traffic Consultant will present a preliminary analysis of the application based on the written reports submitted to the Board, identifying provisions of the Ordinance from which relief is sought and issues to which the Board should pay particular attention. This preliminary analysis will not contain any recommendations as to any relief sought or as to design changes. The consultants should identify whether the Board should retain consultants in any other field of expertise to address the issues in the application.

(g) The Application Review Committee shall then present its report and recommendations to the Board.

(h) The Environmental Commission, Historic Preservation Commission, and Fire Commissioners shall be afforded an opportunity to identify issues of importance.

(i) The applicant shall then present testimony and such other evidence upon which applicant intends rely in order to establish a basis for the relief sought. All witnesses shall be sworn in prior to testifying.

(j) All applications, plans, reports and other documents which have been filed with Administrative Officer shall be considered part of the record without the necessity of marking any of these documents as exhibits. Demonstrative or supplementary evidence presented at the night of the hearing which has not previously been filed with the Administrative Officer shall be marked as an exhibit.

(k) The qualifications of each expert witness will be presented to the Board and approved or disapproved by the Chair. Any member of the Board who disagrees with the qualifications shall have the right to question the witness on their expertise. Any interested parties will also be afforded this opportunity.

(1) At the conclusion of a witness's testimony, the Chair shall allow the members, the Board's consultants and any interested parties to ask questions of such witness. The Chair shall permit reasonable cross-examination by interested parties. Cross-examination is limited to the testimony given by the witness on direct examination. If an attorney represents a group of interested parties, he or she shall submit to the Board and to the applicant a written list of persons represented. Such persons shall participate in the proceedings only through their attorney.

(m) After the conclusion of cross-examination, the Chair may afford the any interested party the opportunity to question the witness on re-direct. In the event that any new subject matters are addressed, additional cross-examination may be allowed.

(n) Upon the conclusion of the presentation of the application, the Township staff and consultants will be sworn and will present their analysis of the application, referencing any written reports and also responding to the testimony presented by the applicant's witnesses. These witnesses will be subject to cross-examination in the same manner as that allowed for the applicant's witnesses. Any member of the Board may place evidence before the Board as to any relevant matter of which he or she has personal or official knowledge for the purpose of amplifying the record, including facts ascertained from a viewing of the premises in question.

(o) The Board may also consider the reports of other municipal officials such as police and fire officers and other Township officials to testify as to facts pertinent to the

application. The Board shall also have the power to acquire additional evidence consistent with these rules.

(p) If the Applicant or an interested party requests the right to cross-examine any of these municipal officials, the Board will make appropriate arrangements to have these witnesses testify. In addition, the Chair will issue a subpoena for the attendance of witnesses at the request of any Board member, consultant or an interested party.

(q) After completion of testimony by the Applicant's witnesses and the Board's witnesses, any interested party wishing to object to the relief sought may do so in such order as may be recognized by the Chair, and may call any witnesses for testimony and introduce any documentary or other evidence upon which he or she will rely. These witnesses will be subject to cross-examination in the same manner as that allowed for the applicant's witnesses.

(r) The Board shall thereafter recognize public commentary by interested parties appearing pro se, and each such interested party shall be subject to cross-examination. The Chair shall have the right to cause any interested party appearing before the Board to be sworn and shall do so whenever an interested party will proffer facts on which the Board would be expected to rely. All rebuttal testimony or evidence shall be considered in such order as the Chair shall designate. Only relevant objections shall be considered by the Board. The Board shall not consider unreasonable, repetitive or disorderly objections. The Board shall have the power to limit objections to those expressed by interested parties as the term is defined in the Municipal Land Use Law and construed by the courts of this State.

(s) Applicant may, at the discretion of the Chair, be afforded an opportunity to present rebuttal testimony on any of the issues presented. In addition, the professional staff and interested parties may be afforded the opportunity to present rebuttal testimony. After all

evidence has been presented, the Chair shall call for a motion to close the public portion of the hearing.

(t) The Board shall then begin its deliberation on the application. Board members will summarize the issues to be resolved and consider the recommendations of its professional staff. Board members may be afforded an opportunity to present his or her position on the application and to express any concerns which they may have. At the discretion of the Chair, a straw poll may be conducted.

(u) The Board may reopen the public hearing to permit Board members to question the applicant and professional staff in order to resolve any open items regarding conditions or revisions to the plans. At the conclusion of deliberations, the Board Attorney will provide a list of proposed conditions for consideration by the Board.

(v) If the list of conditions is accepted, the Chair shall call for a motion on the application. After the motion has been seconded, there may be additional discussion and a roll call vote.

2:2-4. Testimony from the Board's expert witnesses and consultants.

(a) In addition to the usual reviews by the Board Engineer, Planner and Health Officer the Board may require review of the application by other expert witnesses and consultants on specific aspects of the application. Experts shall be qualified to the satisfaction of the Board. The Board shall have the power to engage its own independent experts to either corroborate or refute the testimony of experts produced by an applicant or other party.

(b) The Board shall not be bound to except the testimony of any expert. Where there is conflicting testimony of experts, the Board shall decide which to accept. These rules shall not be construed as requiring expert testimony in all instances to sustain a Board finding.

(c) The Board may authorize its consultants to confer with the experts for the applicant and, where appropriate, with experts hired by objectors or the Board in order to facilitate consideration of the application. Informal communications between the Board's consultant or experts and those for the applicant shall be permitted outside the context of public meetings, provided Board members do not participate in these communications. The expenses incurred by the municipality in having Board professionals and experts participate in such communications shall be charge to the Applicant's escrow account.

2:2-5. Viewing by Board; Personal Knowledge of Board Members.

Viewing the property that is the subject of the application shall be permitted upon reasonable notice and consent of parties. In that event, or in the event that one or more members of the Board are well acquainted with the subject property, knowledge thereby acquired of any particular fact or facts may be used in making a decision if such member or members establishes such facts as the record at the time of the hearing. The applicant, or objector, or any interested party shall have an opportunity to refute such facts. However, in the event that Board members visit the subject property or have historical or other knowledge of the subject property and no reference is made to the same on the record, it will be presumed that such facts were not necessary to reach an informed decision and merely helped such members to understand the evidence presented to them at the hearing. The absence of references to site visits and impressions shall not vitiate any decision otherwise reached on adequate grounds.

2:2-6. Interaction with Interested Parties.

(a) Board Members recognize that their position on the Board is *quasi-judicial* in nature. Therefore, Board Members will not have *ex parte* communications with applicants and

interested members of the public. In the event that ex parte communications are unavoidable, Board Members shall relay any information which they may have obtained to the entire Board at a regular meeting of the Board.

(b) In the event that Board Members are conducting a site inspection, and the applicant insists on being present, the Board Member shall first request the opportunity to inspect the property without the applicant being present. The Board member shall also advise the applicant and its agent that communications during the site inspection are not permitted.

2:2-7. Evidence; Exhibits.

The formal rules of evidence adopted by the Courts of the State of New Jersey shall not be enforced in the proceedings before the Planning Board. However, no decision shall be based upon any facts not proved or on matters which are not on 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 or for purposes of a hearing, they shall be marked and shall be retained by the Board as part of the permanent file. However, if a duplicate unmounted copy of the exhibit is delivered to the Board Secretary, the mounted exhibits may be removed by the Applicant. After the Board has rendered its decision and the time for filing an appeal has expired, the board Secretary may return any such exhibits or documents to the person who offered them upon request. Any evidence presented, whether by testimony or by documents and exhibits presented for the hearing(s), which are not questioned or controverted by any other party or by any member of the Board, may be deemed to be true by the Board for purposes of its decision. The Board may limit irrelevant, immaterial or redundant testimony.

2:2-8. Reports from Consultants, Officers, Boards or Agencies.

(a) The Board may refer an application to consultants or agencies for a report provided that such reference shall not extend the time within which the Board must act. Such reports from consultants or agencies shall be made available to the applicant and to other interested parties for examination and refutation.

(b) The applicant and interested parties shall have the right to subpoena the officer making the report for purposes of cross-examination as to its contents and basis for the conclusions. The Board shall either obtain such reports prior to the hearing, giving all interested parties the right to examine the same, or the hearing may be adjourned to a specific time and place for the purpose of receiving the reports and recommendations of public officials or agencies involved.

(c) If the applicant submits revised plans, the Board shall not take action on the application until the Board's consultants have reviewed the revised plans and issued written reports regarding same.

2:2-9. Continuances.

All cases may be continued to another date certain, as scheduled by the Board. The Chair shall announce to all those present the date, time and place to which the hearing on the matter is continued. Although no further notice must be given pursuant to the Municipal Land Use Law (hereinafter referred to as "MLUL"), it is the Board's policy to request that the Applicant provide notice by regular mail to all persons within 200 feet of the development. Moreover, if the matter is continued to a special meeting not on the regular Board calendar, notice required under the Open Public Meetings Act shall be given. The Board reserves the right to continue a hearing on its own motion for purposes of further consideration, subject to limitations of time as provided in

the MLUL. The Board may also grant reasonable requests of interested parties to continue a matter in order to afford such parties sufficient time to prepare, engage counsel, obtain witnesses or for other good cause. However, the Board shall do so only to the extent that the applicant's interests are not unduly compromised or prejudiced pursuant to prevailing law. Where adjournment for a continuance would extend the statutory period within which the Board is required to act, the consent of the applicant shall be evidenced in writing or shall be set forth on the record.

2:2-10. Refusal to Consent to Continuance.

Where an applicant has taken a substantial period of time to present his or her case and then refuses to consent to a continuance so that objectors can be heard or if 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 the Board 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. In such an event, the Board may at its discretion deny the application without prejudice thereby affording the applicant the opportunity to reinstate the application.

2:2-11. Effect of Covenants, Judgments and Other Regulations Affecting Land Use.

The Planning Board is established for the sole purpose of exercising the powers conferred upon by the Municipal Land Use Law. The Board is authorized by the Land Use and Development Ordinance (hereinafter referred to as "LUDO") only to hear matters within the purview of that ordinance. A restrictive covenant shall be construed as being in the nature of a

private contract which may be enforceable either by a grantor or other protected party. Such a covenant shall not affect the jurisdiction of the Board, and the grant of relief by this Board shall not affect the validity of any restrictive covenant. The existence of a covenant shall generally have no bearing on the Board's determination, unless a restrictive covenant was imposed as a condition of prior relief to the benefit of the public.

2:2-12. Letters and Petitions in Objection.

Letters of objection and petitions shall not be admissible. However, if the writer of the letter or the signers of a petition testify and are subject to cross-examination, the document may be admitted into evidence.

2:2-13. Burden of Proof.

The burden of proof is on the applicant, and it is the applicant's responsibility to supply competent and credible evidence in support of the nature and degree of the relief sought. The applicant must establish, to the Board's satisfaction, that pursuant to statutory and ordinance criteria, the applicant is entitled to the relief sought.

Rule 2:3. Voting.

2:3-1. Voting Procedure.

All motions shall require a second. The Chair shall allow discussion on any motion made and duly seconded. All votes shall be taken by roll call, and the vote and name of the member casting the vote shall be recorded in the minutes. Unless otherwise provided by these rules or under prevailing law, a majority vote of the qualified members present at such meeting is sufficient to take action.

2:3-2. Voting Margin and Effect.

If a motion to approve an application for development fails to receive the number of required votes, such failure shall be deemed an action denying the application.

2:3-3. Abstentions.

Abstentions are disfavored except for good cause. An abstention shall be regarded as an assent to the vote of the majority. Thus, if the majority of those voting would affirm a measure, abstentions would be counted toward affirmance; if the majority would defeat a measure, abstentions will be counted towards defeat. A disqualified member shall not be counted as an abstention and shall, instead, remove himself or herself from the panel and not be involved in the consideration of the application. If the Board is evenly split in its decision, no majority exists with whom an abstaining member can be said to vote and accordingly abstentions shall not be assigned to either block. A tie vote shall defeat an application, and abstentions shall not be construed to approve an application or to create a tie.

2:3-4. Voting Eligibility; Review of Record.

When any hearing before the Board has been continued, a member of the Board who was absent for one or more hearing sessions shall be eligible to vote on the matter upon which the hearing is conducted notwithstanding the member's prior absence provided that such member certifies in writing to the Board that he or she has read a transcript or listened to a recording of the entire session for which he or she was absent. This rule shall not be construed as authorizing any hearing to be held whenever less than a voting quorum of the Board is present.

Rule 2:4. Other Hearing Requirements and Procedures.

2: 4-1. Record of the Proceedings.

The record shall mean the application form, any exhibits or other documents submitted to the Board in support thereof, maps, proper submissions by interested parties, and the verbatim record of the hearings. The notes of the planning Board secretary shall also be part of the record, and the minutes of the meeting shall be considered both a summary of the record and part thereof.

2: 4-2. Transcripts.

The Board shall furnish a transcript of the hearing or duplicate recording in lieu thereof to any interested party at his or her expense. The option to furnish a duplicate recording or a transcript lies entirely with the Board.

2:4-3. Inability to Make Verbatim Records.

If, at the time set for hearing, a verbatim record cannot be made for good reason, as where recording equipment is inoperable, the Board shall continue the hearing to another date. If the time within which the Board must act will expire before another hearing can be scheduled, and the Applicant refuses to extend the time to act, the Board shall be entitled to deny the relief sought in order to prevent a statutory approval by reason of the Board's failure to make a decision.

2:4-4. Subpoenas; Contempt.

The Chair and the Board Attorney shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties. The provisions of the county and municipal investigations law, N.J.S. 2A:67A-1 et seq. shall apply. Any person under subpoena

who refuses or fails to appear or refuses to be examined or answer any proper questions or to produce any books, papers, documents or tangible things in accordance with the subpoena, shall be subject to the proceedings in the Superior Court for an Order to compel him or her to do so. If a person subject to subpoena shall engage in contemptuous conduct at any hearing, the Board may apply to the court to compel such person to refrain there from, and may seek costs and fees in connection therewith.

2:4-5. Perjury.

Any person who shall willfully give false testimony under oath in the course of any hearing held before the Board shall, in accordance with the provisions of the County and Municipal Investigations Law (N.J.S. 2A:67A-1 et seq.), be guilty of perjury.

2:4-6. Judicial Notice.

The Board may take judicial notice of such matters as are so notorious as not to be the subject of reasonable dispute, including matters of common knowledge, and provisions of the Municipal Land Use Law and the Hopewell Township Land Use Ordinance.

2:4-7. Dismissal Without Prejudice.

The Board, on its own motion may dismiss any action without prejudice if neither the applicant nor anyone on his or 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 these rules. In addition, if the Applicant does not consent to a continuance to allow testimony to be completed, the Board may dismiss the application without prejudice. Any applicant may, at any time before the commencement of the hearing, voluntarily withdraw his or her application, in which case, the application shall be dismissed

without prejudice. The Board reserves the powers to impose reasonable terms and conditions on the dismissal of an application.

2:4-8. Amended Applications.

An applicant may, prior to the commencement of a hearing, amend his or her application without leave of the Board and in cases where the amendments are substantial as defined in these rules, new notice shall be given as in the case of the original application. If substantial amendments are submitted, the application shall be considered a new application for purposes of applying the time limitations within which the Board must act. If the amendment after commencement of hearing is for the purpose of reducing the nature or extent of the variance sought, no new notice will be required. Otherwise, new notice shall be given.

2:4-9. Development Regulations that Govern Review of Applications.

Pursuant to N.J.S.A. 40:550-10.5 [P.L. 2010, c.9, 1, effective May 5, 2011], except for ordinances relating to health and public safety, those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development.

2:4-10. Conditions.

The Board shall have plenary power and discretion to impose conditions. The conditions shall be specific to the development and predominantly aimed at mitigating specific concerns arising in connection with the proposed project and assuring compliance with the LUDO. Such conditions shall not be deemed exclusive, and the applicant shall be subject to terms and conditions of approval that are expressed and implied at law, including those imposed pursuant

to ordinances applied uniformly to every development. If a term or condition of approval is imposed by ordinance or law and the Planning Board is not expressly granted the power to waive, enlarge or relax such term or condition, the Board shall not have such discretion or power. The right to impose conditions is an inherent power of the Board that exists regardless of whether the ordinance grants such a right to the Board. To be enforceable, a condition must be part of the record. Conditions must not offend against any provisions of the Land Use Ordinance, must be in the public interest, must be reasonably calculated to achieve a legitimate objective of the ordinance and shall not be unnecessarily burdensome to the applicant and/or owner. The Board shall have the power to require that conditions be fulfilled within a stated period of time. The Board may require that some or all conditions of approval, or the resolution itself, be recorded with the County Clerk along with any maps for filing.

2:4-11 Final Approval Requirements.

Applications for final subdivision and final site plan approval shall not be approved until the following conditions have been met:

1. All plan revisions have been reviewed and approved by the Board professional and incorporated in the final plans;
2. All governmental approvals, other than the Mercer County Planning Board, shall be received and the plans revised to incorporate any revisions required by the other governmental agency;
3. All requirements of the LUDO are satisfied, including provisions, now in effect or as hereafter amended.

PART III. TAKING ACTION ON APPLICATIONS.

Rule 3:1. Decisions.

3:1-1. Decision Based on Evidence.

Each case shall be decided strictly on the basis of the facts adduced at the-hearing viewed in light of the statutory and ordinance requirements. The Board is a quasi-judicial body whose function is to apply the facts adduced at the hearing to the legal requirements of the statute and ordinance and to decide whether the requested relief can be legally granted or not. The number of opponents or objectors present, or even the fact that objections are heard, shall be only of secondary importance unless the Board finds that the absence of objection is evidence that relief can be granted without substantial detriment of the public good. The facts adduced at the hearing, all testimony and all evidence on which the Board makes its decision must be part of the record and the Board's decision must include findings of the facts from the record on which it made its decision and conclusions on the points of law raised. The Board's decision must be made at a public meeting and the Board's vote on the making of the decision and the adoption of its resolution must be taken at a public meeting.

3:1-2. Alternative Relief.

The Board shall have the discretionary power to grant relief other than the precise relief or portion thereof sought by the applicant provided that interested parties shall have received reasonable notice of the fact that such relief might be granted.

3:1-3. Reservation of Decision.

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 or that an extension of time is granted by the applicant. The Board may also authorize the Board Attorney to prepare a resolution for consideration at the next meeting. The making of a motion to have 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. The Board shall not be bound by such a measure.

3:1-4. Memorializing Resolution.

(a) After a decision has been reached by the Board as to whether the relief requested by the applicant is to be granted or denied and the conditions have been stated, the Board's findings of fact and conclusions of law must be embodied in the form of a written resolution. When the Board votes to adopt a resolution, the findings and conclusions set forth in the resolution become the findings and conclusions of the Board. It shall be immaterial that at the time of voting certain Board members may have given other reasons or discussed matters not addressed in the resolution; nor shall it be necessary that Board members articulate particular reasons for reaching a decision at all, it being sufficient that the application be either approved or disapproved by a voice vote and that thereafter a memorializing resolution is adopted.

(b) The Board Attorney shall prepare the resolution in such a way as to give the greatest possible support to the decision which has been made by the Board. The resolution will enumerate the conditions of approval applicable to the decision.

(c) The Board Attorney shall distribute the resolution for review by the Board's professionals and the attorney for the applicant. The draft resolution will be distributed to the Planning Board in advance of the meeting at which the resolution is to be adopted. Board

members are encouraged to communicate with the Board attorney regarding any revisions, questions or changes to the resolution prior to the meeting.

(d) Once the resolution has been prepared and has been voted on favorably by the members of the Board, it shall become a memorializing resolution of the decision of the Board.

(e) The resolution of the Board shall contain:

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

(2) where the Board has determined to impose conditions on the relief granted, such conditions shall be clearly set forth in the resolution;

(f) 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. The purpose of such retention of jurisdiction shall be to enable the Board without limitation to vary the terms of any conditions therein imposed to impose additional conditions, in the public interest, in light of the circumstances; or to permit the Board to finalize its action with respect to its other powers, as granted to the Board by statute and/or ordinance. However, nothing herein contained shall be construed to limit the Board's inherent power to modify a decision for good cause shown, irrespective of whether the Board has expressly retained jurisdiction;

(g) The resolution shall set forth, with specificity, the relief granted to the applicant. The Board may grant such relief as it deems appropriate and 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 of degree form that requested in the application.

3:1-5. Time.

The resolution of memorialization shall be adopted within forty-five (45) days of the decision. Such resolution of memorialization shall be adopted by a majority vote of the members of the Planning Board who voted in favor of the action previously taken. No other member shall vote thereon. If the resolution of memorialization is not adopted within forty-five (45) days of the Board's action, any interested party may apply to the Superior Court for an order compelling the Board to reduce its findings and conclusions to writing within a stated time, and the cost of the application, including attorneys fees, shall be assessed against the municipality pursuant to the provisions of N.J.S.A. 40:550-10(g) (2).

Municipal action shall be deemed to have been taken at the original meeting and not the date at which the resolution of memorialization is adopted, except that the date on which the resolution of memorialization is adopted shall constitute that date of decision for the required mailing of a copy of the decision to the applicant and for the publication of the Board's decision in the official newspaper of the municipality as required by subsections (h) and (i) of N.J.S.A. 40:550-10.

3:1-6. Transmittal of Decision and Publication of Notice.

A copy of the decision shall be mailed within ten (10) days of the date of the decision to the applicant or his or her attorney without charge, and to all who request a copy of the decision for a reasonable fee. A copy of the resolution shall be filed in the office of the Secretary and shall be available to the public upon adoption. A brief notice of the decision shall be published in the official newspaper of the municipality, if there be one, or in a newspaper of general

circulation in the municipality. Such publication shall be arranged by the Planning Board Secretary or Assistant Secretary and the municipality may make a reasonable charge for its publication.

The period of time in which an appeal of the decision may be made shall run from the date of publication of the decision as effected by the Board Secretary or Assistant Secretary. The date of adoption of the memorializing resolution shall constitute the date of decision for the purposes of mailings, filings and publications.

Rule 3:2. Rehearing; Modification.

3:2-1. Misrepresentation, Fraud, Mistake.

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 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 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 discovery of such misrepresentation, fraud or mistake, the Board may rehear the matter either upon 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 directed 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 as given at the original hearing was in fact false. Mistake or fraud in proceedings, left uncured, shall constitute grounds for rescission.

3:2-2. Rehearing.

An applicant or other interested party may, by right, within forty-five (45) days after the publication of notice of the decision, move the Board for a rehearing of the matter or a portion thereof for the reasons provided in Rule 3:2-1 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 may deem adequate. The Board may order a rehearing on its own motion when 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.

3:2-3. Vacation or Modification.

At any time after the adoption of a resolution of memorization, 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 therefor 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 a proper case, similarly order all parties in interest to show cause at a time and place fixed in the notice why the terms or provisions of any variance ought not to be vacated or modified.

3:2-4. Res Judicata.

If the same parties or their privies seek the same relief in the same factual setting, the case may be dismissed on the grounds that it has already been 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 which is entirely different or is of lesser proportions than in the first application, the second application shall **not** be barred. An applicant shall also be given a fair opportunity to show that circumstances have changed significantly or that other good cause exists for reconsideration. This rule shall not be construed to disallow an application for modification or enlargement of an approval or for the lifting or relaxation of conditions previously imposed in connection with an approval upon a proper showing of changed circumstances or other good cause warranting a reconsideration.

PART IV. AVAILABLE AND ELIGIBILITY OF MEMBERS.

Rule 4:1. Alternate Members.

4:1-1. Designation.

There shall be two alternate members of the Board who shall be designated by the approving authority as "Alternate No. 1" and "Alternate No. 2," respectively, and each alternate shall retain said designation during the term for which he or she was appointed.

4:1-2. Appointment of Alternate to Serve on Case.

During the absence or disqualification of any regular member, the Chair shall recognize one of the alternate members to serve in the place of said regular member; provided, however, 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, the alternate member shall be

designated to serve only with respect to such case unless otherwise needed to fill an absence of a member.

4:1-3. Alternate to Serve Until Final Disposition.

In the event of disqualification of a regular member for any hearing or matter, an alternate member who has been designated to sit in place of a regular member and who has participated in such hearing or matter coming before the Board shall continue to act in the place of such regular member until final disposition of said matter by the Board.

4:1-4. Alternate No. 1 to Vote.

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

4:1-5. Rights and Privileges.

An alternate member who has been designated to serve in the place of an absent or disqualified member shall, during the period of service, enjoy all of the rights and privileges and shall be subject to all of the duties and disabilities pertaining to members if the alternate member is eligible in all pertinent respects, provided, however, that no alternate member shall be eligible to serve as Chair or Vice-Chair of the Board.

4:1-6. Participation in Discussions; Voting.

Alternate members may participate in all matters and may make motions and second motions, but may not vote except in the absence or disqualification of a regular member. Participation by alternate members shall not be deemed to increase the size of the Planning Board beyond nine qualified members. A vote shall not be delayed in order that a regular

member may vote instead of an alternate member.

4:1-7. Training Requirements.

Unless exempted pursuant to N.J.S.A. 40:55D-23.4, all Board members and alternates shall participate in an educational program covering land use issues and/or the operation of land use boards. The course must be successfully completed within the time-frames specified in N.J.S.A. 40:55D-23.3.

Except for good cause shown, failure to attend such a training course shall result in the disqualification of said member or alternate.

Rule 4:2. Rule of Necessity.

4:2-1. Appointment of Additional Members.

If the Board lacks a quorum because any of its regular or alternate members is prohibited from acting on a matter due to the member's personal or financial interests therein as regulated under Rule 4:3 or prevailing law, regular members of the Board of Adjustment shall be called upon to serve, for that matter only, as temporary members of the Planning Board in order of seniority of continuous service to the Board of Adjustment until there are the minimum number of members necessary to constitute a quorum to act upon the matter without any personal or financial interest therein, whether direct or indirect. If a choice has to be made between regular members of equal seniority, the Chair of the Board of Adjustment shall make the choice. This procedure shall be invoked only when the direct and proximate cause of a lack of quorum is the disqualification and not the mere absence of one or more members of the Board.

Rule 4:3. Disqualification for Interest.

4:3-1. Disqualification 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 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 his or her own 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 situations:

- (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 the 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 disqualification shall be disclosed at the time of recusal unless doing so would constitute an unwarranted invasion of individual privacy or could adversely affect 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 the 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 a 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 remote and speculative. Concern for the impartial exercise of authority, in appearance as well as in fact, requires that where a member of the Board must disqualify himself or herself in a matter because of a conflict of interest, the disqualification is absolute and cannot be waived. However, if a conflict is only potential and is disclosed, the Board may reasonably find that a particular interest is too remote or speculative to cause a disqualification. The Board Attorney shall be consulted in each 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. Remedy.

When a member fails to disqualify himself or herself where the circumstances require disqualification, any interested party may move 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 it is based, and the Board may thereupon hold a hearing on the matter or take

whatever action it may deem appropriate.

4:3-7. Disclosure of Reason for Disqualification.

Wherever possible, the reason for disqualification shall be stated unless legitimate private rights would be compromised without justification in respect of the public interest.

Rule 4:4. Attendance.

4:4-1. Determination of Vacancy for Excessive Absences.

The position of any member or alternate member shall be deemed vacant whenever the member, without being excused by a majority of the authorized members of the Board, fails to attend and participate at meetings of the Board for a period of eight(8)consecutive weeks or for four (4) consecutive meetings(both regular and work sessions) whichever shall be of longer duration, if, at the conclusion of such period, the Board notifies the appointing authority in writing of such determination, and provide further that the Board may refuse to excuse only those absences which are not due to legitimate illness. In the event of such notice, the approving authority shall forthwith fill the vacancy of the unexpired term in a manner prescribed by law. This rule shall be automatically amended by operation of law in the event that the above standards are made more strict pursuant to amendment henceforth of N.J.S.A. 40A:9-12.1 or other relevant prevailing enactment, in which the event the language of this rule shall be deemed substituted by the language of such enactment.

PART V. MISCELLANEOUS MATTERS.

Rule 5:1. Fees.

5:1-1. Application Fees.

No application shall be considered which is not accompanied by an application fee in

accordance with the schedule of administrative fees for development applications, as amended and in effect at the time application is made.

5:1-2. Escrow Deposits for Professional Services.

No application shall be considered with respect to which an applicant has failed to comply with the LUDO or statutory requirements for the payment of escrow deposits toward anticipated municipal expenses for professional services, to be based upon a schedule established by resolution. The amount of the initial deposit shall be established by ordinance. The applicant and the Board shall be bound by the provisions of N.J.S.A. 40:550-53.2 and/or prevailing ordinance requirements as to their respective interests and duties.

5:1-3. Special Meeting Costs.

In the event .that a special meeting is scheduled and convened for the benefit of an applicant pursuant to Rule 1:3-3, any special or uncustomary disbursements, expenses, fees or costs incurred by the Board and the Township for the rendering of special services, arrangements or accommodations for the benefit of the applicant shall be reimbursed entirely by the applicant. The Board may require a reasonable antecedent escrow deposit to protect against an applicant's failure to comply with this section.

Rule 5:2. Payment of Taxes.

5:2-1. Proof of Payment; Alternative Agreement.

The applicant, at the time of filing the application for the development, shall file with the Board a certification of the Tax Collector that municipal taxes and/or assessments have been paid. In the event that taxes and/or assessments on the property affected by the application for development are unpaid, and applicant cannot comply with Section 17-191 of the LUDO, the

applicant shall submit, in lieu of the certificate of payment of taxes and/or assessments, a written request that the Board take action, which request shall include a stipulation that any approval shall be subject to the payment of taxes and/or assessments and the Board may suspend post-approval execution and other action until such time as taxes and assessments are paid, subject to prevailing rules of law and ordinance.

Rule 5:3. Committees.

5:3-1. Standing Committees.

There shall be the following standing committee of the Board:

- (a) Application Review Committee;

5:3-2. Committee Composition.

The standing committee shall comprise not less than three (3) nor more than five members of the Board. The Chair shall annually appoint the members of the committee for a one (1) year term. Vacancies shall be filled at or by the next regular session of the Board. Not more than one alternate member may serve on the standing committee.

5:3-3. Special Committees.

Special committees may be established by a vote of the majority of the full membership of the Board. The Chair shall appoint the members of such committee, who shall serve for a term to be determined by the Board when it acts to establish such committee.

Rule 5:4. Amendments.

5:4-1. Amendments to the Rules.

The Planning Board may, from time to time, by a two-thirds (2/3) margin, amend any

part or parts of these rules and regulations at any regular meeting, provided notice of the consideration of any such amendment has been given in writing to each member of the Board at least three (3) days prior to such meeting. In no case, however, shall any rule, as amended, be applicable to any action commenced prior to the adoption of such amendment, where the application thereof would result in surprise, hardship or injustice to the applicant or any interested parties.