

Resolution
Township of West Orange
Planning Board
Decided on May 5, 2021
Memorialized on June 2, 2021
Revision of Planning Board Rules and Regulations

WHEREAS, the Township of West Orange Planning Board (the “Board”) has determined that amending its Rules and Regulations in the following manner would be beneficial to the Board, the Township, Applicants, and the General Public; and

WHEREAS, a publicly noticed hearing was conducted on May 5, 2021; and

WHEREAS, the Board reviewed and considered the following proposed suggested “Pro-Forma” Conditions of Development Application approval: 1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local, state and federal approvals and/or permits. Without limitation of the foregoing, prior to the signing of the approved site plans, and prior to the commencement of any land disturbance or construction, the Applicant shall submit to this Board, with a copy to the Board Engineer, proof that it has obtained all required governmental approvals. 2. If another governmental entity or agency grants a waiver or variance affecting the plans and/or exhibits submitted by the Applicant, this approval or the conditions attached to it, then the Applicant shall re-apply to this Board respecting the same and this Board shall have the right to view that issue as it relates to this approval and these conditions and modify and amend same, if appropriate. 3. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successors or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval. 4. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution. 5. The Applicant shall pay all outstanding taxes, tax liens, application fees and technical review fees, as well as any inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of notification or this approval shall be deemed withdrawn. 6. All notes included in the approved plans, including notes required by this Resolution, shall be deemed conditions of approval having the same force and effect as conditions expressly set forth in this Resolution. 7. All conditions of approval shall be listed on the final site plan; and

WHEREAS, the Board’s professionals had a chance to review and approve of the above mentioned proposed pro-forma conditions; and

WHEREAS, Members of the Board were given an opportunity to review the proposed conditions and to discuss them at the public meeting; and

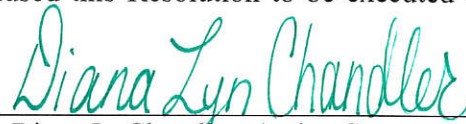
NOW THEREFORE, the Board makes the following findings of fact, based upon the evidence presented at the public hearing, at which a record was made.

1. The proposed pro-forma suggested conditions would be applicable to the extent that they do not conflict with the New Jersey Municipal Land Use Law (MLUL) or any other applicable laws.
2. The Board's Rules and Regulations will be amended to include the proposed pro-forma conditions as suggested conditions that the Applicant will be invited to stipulate to either prior to or during the public hearing on the application.
3. None of these conditions are to be considered a waiver of any already applicable laws or regulations applicable to land use applications to the Board.
4. Many of the proposed suggested conditions are already applicable.

NOW THEREFORE be it resolved by the Planning Board of the Township of West Orange:

1. The Board's Rules and Regulations shall be amended by the Board's Secretary to reflect the changes made and highlighted in Exhibit A starting on page 4 of this document.

IN WITNESS WHEREOF, the Board has caused this Resolution to be executed by its Secretary on the 2ND OF June 2021.


Diana L. Chandler, Acting Secretary

Vote on Action Taken by the Board on May 5, 2021:

BOARD MEMBER	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Bagoff (Ch.)	x		x			
Guarino		x	x			
Johnson					x	
Trenk					x	
Smeraldo			x			
Klein			x			
McCartney			x			
McNair			x			
Wilkes (V.Ch)			x			

Vote on Memorialization on June 2, 2021:

BOARD MEMBER	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Bagoff (Ch.)	x		x			
Guarino			x			
Johnson						x
Trenk						x
Smeraldo			x			
Klein			x			
McCartney		x	x			
McNair			x			
Wilkes (V.Ch)						x

EXHIBIT A

RULES OF PROCEDURES OF THE PLANNING BOARD OF THE TOWNSHIP OF WEST ORANGE, NEW JERSEY

Revised August 29, 2005

Revised October 6, 2005

Revised July 2, 2014

Revised March 2, 2016

Revised June 2, 2021

Adopted June 2, 2021

Diana L. Chandler, Acting Secretary
Township of West Orange Planning Board



**RULES AND PROCEDURES OF THE PLANNING BOARD
OF THE TOWNSHIP OF WEST ORANGE**

Table of Contents

Article I.	The Annual Reorganization Meeting; Selection of Officers; Order of Voting.
Article II.	Description of the Duties of Board Officers and Personnel.
Article III.	Meetings. 1. Regular Meetings. 2. Special Meetings. 3. The Requirements of a Quorum. 4. Voting. 5. Absent Members. 6. Order of Business. 7. Open Meetings. 8. Incomplete Hearings. 9. Sub-committees.
Article IV.	Board Procedures/Pre-Hearing Procedures. 1. The Filing of an Application. 2. Filing Requirements. 3. Removed. 4. Assignment of Docket Numbers; Complete and Incomplete Applications. 5. Assignment of Hearing Date; Notice. 6. Meeting with Board Professionals. 7. Filing of Certification Re: Taxes and Assessments. 8. Notification of Board Attorney. 9. Exemptions.
Article V.	Hearing Procedures. 1. Appearance by Parties. 2. Dismissal Without Prejudice. 3. Swearing of Persons Giving Testimony. 4. Order of Presentation. 5. Closing of Hearing; Continuances. 6. Evidence. 7. Burden of Proof. 8. Reports from Officers, Boards or Agencies. 9. Testimony from Board's Expert Witnesses. 10. Policy on Use of Recording Devices.

11. Suggested “Pro-forma” Conditions of Approval to be Stipulated to
by Applicant

Article VI. Communications.

Article VII. Final Disposition of Cases.

Article VIII. Removed.

Article IX. Amendments.

ARTICLE I. THE ANNUAL REORGANIZATION MEETING; SELECTION OF OFFICERS; ORDER OF VOTING

1.01 **Annual Meeting; Election of Officers.** At the first meeting of the Planning Board during the month of January, the Board shall elect, from among its members, a Chairperson and Vice-Chairperson. These officers shall serve for the calendar year and until their successors have been duly elected.

1.02 **Appointment of Secretary.** At said first meeting, the Board shall also appoint a Secretary, who shall be an employee of the municipality who is familiar with Planning Board matters. Such secretary shall receive compensation for his/her services and shall serve for the calendar year and until a successor has been appointed.

1.03 **Appointment of Board Attorney.** At the first meeting, the Board shall also appoint a member of the New Jersey Bar who is familiar with zoning and planning matters as attorney for the Board and will pay such attorney a salary agreed upon between the Board, the Township Governing Body and such person. The attorney shall serve for the calendar year and until his/her successor has been appointed.

1.04 **Appointment of Officers, Staff and Experts.** The Board may also appoint such other officers and/or assistants and employ such experts or staff as it may deem necessary. Such experts and staff may include, but not be limited to, a professional engineer and planner. The Township shall appoint an administrative officer.

1.05 **Appointment of Committee Members.** At the first meeting, the Board shall select from among its members and professionals those persons who shall serve on the Committees of the Board as established under Article Three (3) section 3.9 of these Rules. A chairperson shall be appointed for each Committee of the Board.

1.06 **Determination of Roll Call.** The Board may also determine the order of roll call vote for the year either by random lot or by alphabetical order of last names, except for the Chairperson, who shall always vote last.

1.07 **Meeting Dates.** By no later than the first meeting in January, the Board shall also determine the day(s) of the month on which the regular meetings of the Board shall be held and which days of the month shall be set aside for agenda meetings and work sessions. The Board may also decide which day of the month shall be tentatively set aside for possible special meetings.

ARTICLE II. DESCRIPTION OF THE DUTIES OF BOARD OFFICERS, MEMBERS AND PERSONNEL.

2.01 **Chairperson.** The Chairperson shall preside at all meetings and hearings of the Board; shall decide all points of order and matters of procedure governing said meetings or hearings, and perform all the duties normally pertaining to his/her office and as required by law, ordinance, or these Rules of the Board. The Chairperson or his/her designee shall swear all witnesses giving testimony before the Board.

2.02 **Vice-Chairperson.** The Vice-Chairperson shall preside at all Board meetings and hearings in the absence of or disqualification of the Chairperson.

2.03 **Secretary.** The Secretary shall, under the direction of the Chairperson generally perform the secretarial work of the Board including, but not limited to the following:

- a. Attend all meetings of the Board, and shall have the care and custody of all records, documents, maps, plans and papers of the Board.
- b. Conduct all official correspondence, and shall notify the appropriate municipal employees of all meetings of the Board and when their attendance is desired. All official correspondence shall have the Chairperson's approval.
- c. Take roll call votes and note the ye or nay of each member as he/she votes and also note any abstentions and the reasons therefore.
- d. Arrange to make a tape recording as a 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 meetings) and hearings held by the Board and to enter therein, with other proceedings, such resolutions and orders as are adopted by the Board. As a substitute to tape recording, any other transcribing method may be used.
- e. Give all notices of meetings required to be given by the Open Public Meetings Act, the Municipal Land Use Law and any other applicable law or ordinance.
- f. Prior to each meeting, mail and/or email to each member, all information that is required for that meeting, including the agenda, reports, correspondence, minutes, resolutions, application, etc.
- g. Prior to each meeting, examine all papers and forms filed, including the list of property owners and proof of service, and determine whether proper notice was given, if needed, in accordance with the Municipal Land Use Law.

2.04 **Administrative Officer.** The municipal official designated by the Township to act as Administrative Officer shall generally perform the following duties for the Board:

- a. Attend all meetings of the Board.
- b. Certify to the Board the correctness of application as to form, content and completeness.
- c. Conduct all official correspondence.

2.05 **All Members.** Any Board member or professional representing the Board shall disqualify him/herself from proceedings involving any application in which he/she has, either directly or indirectly, has any personal, financial or other disqualifying interest as such interest is defined under N.J.S.A. 40:55D-23 and N.J.S.A. 40:55D-23.1. A member may disqualify him/herself from hearing any matter on which he/she believes he/she cannot give an impartial decision based solely on the evidence. Such member shall disqualify him/herself as soon as it becomes evident that he/she cannot participate, but in no event shall such member participate in the discussion prior to a decision. Such disqualifying interest may include, but not be limited to, the following situations:

- a. When the person owns property located within 200 feet of the property affected by the action, whether or not such property is located in the Township of West Orange.
- 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. When the applicant or his/her attorney is the employer, employee, or partner of the Board person, or is a corporation in which the Board person is a shareholder or has other financial interest.
- d. When the Board person has any other personal or pecuniary interest in the proceeding.

Any such disqualification or statement of interest shall be made on the record at the commencement of the hearing. When a Board member is in doubt concerning a potential conflict, advice of the Board's attorney should be sought before the hearing starts. In the event the Board attorney determines that a Board member has a conflict of interest, but the Board member disagrees and refuses to recuse himself, then the Board member may be disqualified from serving by a majority vote of the Board.

2.06 **New Members.** All members appointed to the Board shall make themselves available prior to the first scheduled meeting after their appointment, to the Board Attorney and members of the Board designated by the Chairperson for a briefing session to cover:

- a. Review of West Orange Zoning Ordinance, Municipal Land Use Law, Chapter 291 and related documents, which will be provided to them.
- b. Board rules and procedures, which will be provided to them.
- c. Board's responsibilities and limitations.
- d. Legal aspects of planning.
- e. Conflicts of interest.

All new members shall also attend the training course as required by MLUL §23.3.

ARTICLE III. MEETINGS.

3.01 **Regular Meetings.** The regular meetings of the Board shall be held on the first Wednesday of each month, at 7:30 p.m., at the Municipal

Building/Council Chambers, 66 Main Street, West Orange, provided there is a matter to be reviewed, unless such day shall fall on a holiday, in which case the meeting shall be on the next available date. Regular meetings may be changed for special reasons upon a vote of a 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 hearing, devoted exclusively to the consideration of a specific application, may be requested by an applicant. Such a hearing shall only be scheduled at the discretion of the Board Chairperson or his/her designee: The fees for such a meeting, as set forth in the fee ordinances of the Township of West Orange, shall be paid by the applicant prior to the commencement of such a hearing. Such a hearing may exceed three (3) hours duration only upon the agreement and consensus of the Board. Fees for any agreed upon extended time of the meeting shall be paid promptly after such meeting. Evidence of such additional payments shall be placed in the docket file of the application.

Special meetings may be called by the Chairperson, or in his/her absence, by the Vice-Chairperson, at any time, or upon the written request of two members, providing notice thereof be mailed or given to each Member of the Board at least seven (7) days prior thereto, and public notice given in accordance with the Open Public Meetings Act.

3.03 Quorum. A quorum for the conducting of business shall consist of at least five (5) Members. In the absence of a quorum, the members present shall adjourn the meeting and the hearing on any motion or petition to another date. In the event a full Board is not present at any hearing, the applicant 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 any matters, except on a motion for adjournment where is not present, the following number of votes is required, so long as a quorum is present:

- a. In all matters, other than those referred to in subparagraph b, below, any action may be authorized by a majority vote of the members present at the meeting.
- b. When voting on an application to permit a building or structure in the bed of any street, public drainage ways, flood control basin or public area reserved on an official map, at least a majority of the full-authorized membership of the Board must vote in favor of the relief sought.

c. If a motion to approve an application for development does not receive the number of required votes, as hereinbefore set forth, such failure shall be deemed an action denying the application.

Unless a Board member is disqualified from hearing and/or voting on a specific motion, every member shall be expected to cast a yea or nay vote on any motion before the Board. If any member of the Board feels constrained to abstain from casting a vote, the reason for such abstention shall be clearly set forth on the record and the Secretary shall note in the minutes the reasons given for such abstention. **No member who participates in the hearing of a case may abstain.**

3.05 **Absent Members.** When any hearing before the Board shall carry over one or more meetings, a member of the Board 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 absence, provided that said Board member certifies, in writing, to the Board, that he/she has read the transcript or listened to a recording of the meeting for which he/she was absent. 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 of all regular meetings of the Board shall be, subject to the Chairpersons discretion to modify, as follows:

- a. Call to order.
- b. Roll call.
- c. Statement of compliance with Open Public Meetings Act.
- d. Approval of minutes of prior meeting.
- e. Memorialization of resolutions.
- f. Motions for adjournments of any scheduled cases and any other motions.
- g. Unfinished or adjourned hearings.
- h. Hearing of new cases.*
- i. Action on any other business.
- j. Correspondence and reports.
- k. Adjournment.

* No application shall be begin after 10:30 p.m., unless this rule is waived by the Board.

3.07 **Open Meetings.** All meetings, hearings and any action by the Board, except executive sessions pursuant to statute, shall be open to the public.

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

3.09 **Sub-committees.** The Board may establish Committees, which will report to the Board on all matters directed to them for review. Such Committees may include, but not be limited to, a Subdivision Committee and a Master Plan Advisory Review Committee. All committees established pursuant to this section shall meet on a monthly basis if they have applications or matters to consider. Such Committees shall review all applications referred to them and make recommendations to the applicant and/or to the entire Board for further action. Members of such Committees shall serve for one year terms and be selected on an annual basis by the Chairperson at the reorganization meeting of the Board. Members of such Committees shall be chosen from among the Board's members and/or the Board's professional advisers or staff.

Since minor subdivision applications and applications that fall under Ordinance #991-89 are exempted from the requirements of notice, as required by N.J.S. 40:55D-12, the Subdivision Committee, based on its review of the application, shall make its report to the Planning Board. If there are no questions from the Board, the Planning Board shall act on the findings of the Committee. If there are any questions, the Planning Board shall address the issues and vote on the matter.

ARTICLE IV. BOARD PROCEDURES/PRE-HEARING PROCEDURES

4.01 **Filing.** An application for subdivision approval, site plan review, conditional use approval or any other relief over which the Planning Board has jurisdiction, shall be commenced by filing an original and 19 copies of an application, filed in accordance with the "Instructions of the Planning Board" and complying with all checklist requirements.

4.02 **Filing Requirements.** The applicant shall file his/her application in accordance with the Land Use Regulations of the Township of West Orange and in accordance with the checklist requirements of the ordinance. The failure of the applicant to follow the "instructions" and the checklist requirements of the appropriate ordinance will result in the application being deemed incomplete and will delay the hearing of the same. All statutory time periods for action by the Planning Board commence to run only upon the filing of a complete application as required by the appropriate ordinances. Application forms shall be provided by the Board designee and shall be completely filled in, and shall supply any and all other information and data that may be required for the relief sought by the applicant. A checklist of required submissions shall be furnished to each applicant. All applications shall be filed on the forms provided by the Board.

4.03 Removed.

4.04 **Assignment of Docket Numbers; Complete and Incomplete Applications.** Upon receipt of an application by the Board secretary, the application shall be assigned a docket number, which shall, thereafter, appear on all subsequent papers filed in the case. The original copy of the application shall

be filed in the permanent case docket of the Board. The Secretary and Board Professional staff shall then review the application for its completeness, in accordance with the definition of a "complete application" as contained in N.J.S. 40:55D-3. In the event the application is found to be incomplete, the applicant shall be notified within 45 days of the filing of such application. Such notification shall be in writing and shall set forth the reasons that the application has been found to be incomplete. Upon failure to notify the applicant, in writing, that his/her application is incomplete, within the 45-day period, the applications shall be deemed complete. If the application is found to be complete, the Board secretary shall immediately issue a certificate to the developer that the application is complete, and the application shall be determined to be complete as of the day it was certified, for the purposes of commencement of time periods for action by the Board. If the application includes any requests for waivers, the 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 filing.

4.05 Assignment of Hearing Date; Notice. As soon as any application is deemed complete by the administrative officer in accordance with the appropriate ordinances, these rules and the Board's "Instructions," the case shall be assigned a hearing date, with public notice, if required, in accordance with N.J.S.A. 40:55D-12, and the applicant shall be notified as set forth in paragraph 3 of the Board's "Instructions."

- a. Where a municipal official has furnished, for a fee, 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 applicant's proof of service.
- b. The service and publication of notices as hereinabove provided is a jurisdictional requirement, and proof of the service and publication of all required notices in accordance with these rules shall be made by affidavit of the person or persons who actually served or mailed said notices as required by law, and by the authorized official of the newspaper which published same. Such affidavit shall be submitted prior to or at the commencement of the hearing.

Prior to the scheduled hearing of an application, the Board's engineer and planner, the Site Plan Review Advisory Board and any other municipal agency or official required to review the application shall submit a written report to the Board with a copy to the applicant setting forth the results of the review conducted and any recommendations regarding the application.

Prior to the scheduled hearing of an application, Board members shall make every effort to visit the site involved in such application.

If the Board's agenda is full and cannot hear the application in the statutory time requirement, the Secretary of the Board may ask the applicant to sign a Consent to Continuance Form. If the applicant refuses to sign the form, the Board may deny, without prejudice, the application.

4.06 **Meeting of the Professionals.** Any applicant may request that a meeting be scheduled between the Board's and the applicant's professionals or experts. The applicant shall pay the fee, as outlined in the fee ordinances of the Township of West Orange, for such a meeting prior to or at the commencement of the meeting. Proof of such payment shall be included in the application's docket file.

4.07 **Proof of Payment of Taxes.** The applicant at the time of filing the application for development, pursuant to the requirements of all applicable ordinances of the Township of West Orange, shall file with the Board an affidavit that taxes and water and sewer assessments are currently paid and up-to-date or an application for a municipal determination of the tax and water and sewer assessment status of the property along with an affidavit certifying that any delinquent taxes and/or water and sewer assessments shall be paid upon grant of approval by the Board and that such payment shall be made a condition of the final approval granted by the Board.

- a. The Board's approval shall be conditioned upon the payment of all delinquent taxes and/or water/sewer assessments and such condition shall be set forth in the Board's resolution of approval and shall require that the taxes and/or water/sewer assessments be paid prior to the issuance of a building permit.
- b. Upon payment of the taxes and/or water/sewer assessments as aforesaid, the action of the Planning Board shall become effective and final as of the date the map, plat and/or deed was signed.
- c. Failure to pay such taxes and/or water/sewer assessments as aforesaid shall be deemed a denial of said application.

4.08 **Notification of Board Attorney.** When a hearing date has been assigned, the Board's secretary shall forward a copy of every application to the Board's attorney. The secretary shall also give notice to the Board's attorney of the time set for the hearing on said application.

4.09 **Exemptions.** Informal concept plan review applications shall be exempt from the formal requirements of application submissions and Board hearings. At the request of an applicant and upon payment of the required fees for formal application, the Planning Board shall grant an informal review of a conceptual plan for development for which the applicant intends to prepare and submit an application for development. The fees paid for such a review shall be credited toward the fees for review of the future proposed application. Neither party shall be bound by the results of such a review in that the applicant shall not be bound by the concept plan and the Board shall not be bound by its review.

ARTICLE V. HEARING PROCEDURES

5.1 **Appearance by Parties.** 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 shall be represented by an Attorney-At-Law admitted to practice in the State of New Jersey.

5.2 Dismissal Without Prejudice. The Board, on its own motion, may dismiss any action, 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 ordinance, these rules or for failure to comply with the "Instructions of the Planning Board." Any applicant may, at any time before the commencement of the hearing, voluntarily withdraw his/her application; in which case, the application shall be dismissed without prejudice.

5.3 Swearing of Persons Giving Testimony. All persons giving testimony at the hearing shall be sworn by the chairperson, or his designee, before giving any testimony.

5.4 Order of Presentation. When a case is called by the chairperson, the following shall be the order of presentation:

ALL TESTIMONY SHALL BE UNDER OATH

- a. The applicant shall present him/her, shall identify him/herself and be sworn. He/she shall then indicate the relief he/she is seeking from the Planning Board. If the applicant is represented by an attorney, the attorney shall identify him/herself and the office which he/she represents, identify his/her client and then proceed with his/her opening remarks.
- b. The applicant or his/her attorney shall then present his/her testimony and the testimony of his/her witnesses. He/she shall also submit such documentary evidence or exhibits upon which he/she intends to rely in order to establish his/her right to the relief sought in the application.
- c. Prior to opening the floor to the public, and at the end of the testimony of each witness in support of the applicant, the chairman shall allow the board members and other interested parties to ask questions of the witness having just testified and may permit reasonable cross-examination by an attorney representing an objector.
- d. Where a group of interested parties is represented by an attorney, the attorney shall present to the Board chairperson a list of the persons he/she represents, and such persons shall participate in the proceedings only through their attorney, except that such persons may address the Board during public comment.
- e. At the time the applicant has submitted all of his/her evidence in support of his/her application, the attorney for any objector may then put in his/her case in support of his/her client, calling any witnesses and introducing any documentary evidence upon which his/her client will rely in his/her objection to the appeal. Each witness shall be subject to reasonable cross-examination by the applicant or his/her attorney, and the chairperson shall 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 floor to the public subject

to the provisions of Rule 2:2-4(d), to allow any member of the public to make any statement relative to the application before the board. Such member of the public shall be first sworn after identifying him/herself **and shall be subject to cross-examination by the applicant or if applicant is represented by an attorney, applicant's counsel.**

g. Rebuttal testimony or evidence shall then 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 attorney or any interested person.

i. Any member of the Board may place evidence before the Board as to any relevant matter of which he/she has personal or official knowledge, strictly for the purpose of amplifying the record, including facts ascertained from a viewing of the premises in question and the general area.

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 applicant's attorney.

5.5 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 their request. In cases where the Board feels that testimony or other evidence should be received in the public interest from any municipal, county, or state official or from any other persons, in order to assist the Board in rendering a just decision, the Board may, on its own motion, continue the hearing to another day certain 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 in the action, 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.

5.6 Evidence. The formal rules of evidence are not enforced before Planning Boards. However, no decision shall be based upon any facts not proved or on matters which are not in the record, unless they be such items of which the Board is entitled to take judicial notice. When any documents or exhibits are admitted into evidence during a hearing, they shall be marked and shall be retained by the Board as part of the permanent file. After the Board has rendered its decision and the time for the filing of any appeal has expired, the Board's secretary may return any such exhibits or documents to the person who offered them upon his/her request.

5.7 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 order that the Board might determine the nature and degree of the relief if any to be granted to the applicant. The applicant must establish, to the Board's satisfaction, that he/she is, pursuant to statutory provisions, entitled to the relief being sought. Further, the applicant must establish that the relief granted will not adversely affect

the zone plan and scheme nor be inconsistent with the purposes of the Zoning Ordinance, in cases where the applicant is seeking a variance or conditional use.

5.8 Reports From Officers, Boards or Agencies. The 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 so requests, have an opportunity to question the maker of such report as to any fact or conclusion contained therein. 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 that the applicant may arrange to be present, if he/she 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 Planning Board shall act, **unless the applicant consents to an extension of time.**

5.9 Testimony From Board's Expert Witnesses. The Board may, on its own motion, arrange to take the testimony of any expert witness engaged by it.

Any interested party may contact the appointed recording service to obtain a transcript of any proceedings, at their own expense.

***5.10 Policy on the Use of Recording Devices.** The recording of any meeting through the use of any recording devices including audio recorders, still or video cameras, and cellular devices with audio/photo/video capabilities is subject to approval of the Chairperson based upon the following restrictions:

1. No devices shall interfere with the meeting.
2. No devices shall interfere with the Board's normal recording or transcription mechanisms.
3. No devices shall block or interfere with any member of the Board or all attendees' ability to hear

and see all testimony and exhibits or any evidence. Toward this goal, all devices shall be in the third row or further back in the audience. An exception will be granted for an applicant presenting their application and who has hired a stenographer. In this case he/she may be seated in the front row during testimony.

4. No devices shall be placed on any podium or on any other surface where the Board is or may deliberate.
5. The Township, all boards and all members thereof shall not be responsible for any damage or malfunction to the equipment or devices.
6. No device shall block any aisle or other method of egress.
7. No devices shall be left unattended at any time.
8. The operator of such device(s) shall not interfere with the meeting proceedings.
9. These recordings will not be considered as the official transcript of the meeting.

* Adopted on October 5, 2005.

****5.11 Suggested “Pro-forma” Conditions of Approval to be Stipulated to by Applicant.**

1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local, state and federal approvals and/or permits. Without limitation of the foregoing, prior to the signing of the approved site plans, and prior to the commencement of any land disturbance or construction, the Applicant shall submit to this Board, with a copy to the Board Engineer, proof that it has obtained all required governmental approvals. 2. If another governmental entity or agency grants a waiver or variance affecting the plans and/or exhibits submitted by the Applicant, this approval or the conditions attached to it, then the Applicant shall re-apply to this Board respecting the same and this Board shall have the right to view that issue as it relates to this approval and these conditions and modify and amend same, if appropriate. 3. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successors or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval. 4. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution. 5. The Applicant shall pay all outstanding taxes, tax liens, application fees and technical review fees, as well as any inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of notification or this approval shall be deemed withdrawn. 6. All notes included in the approved plans, including notes required by this Resolution, shall be deemed conditions of approval having the same force and effect as conditions expressly set forth in this Resolution. 7. All conditions of approval shall be listed on the final site plan.

****Adopted on June 2, 2021**

ARTICLE VI. COMMUNICATIONS

1. Communications to the Board in favor of or in opposition to an application will not be considered as testimony unless persons sending the communication are present to testify.
2. Reports requested by the Board from appropriate Town employees such as the Town Engineer, Town Planner, Police and Fire Departments, shall not be deemed such communications as are contemplated in the preceding paragraph.

ARTICLE VII. FINAL DISPOSITION OF CASES

1. Every decision of the Board on any case shall be a formal motion and reflected in a resolution.

2. Any applicant may withdraw his application at any time prior to action thereon, but the applicant shall forfeit the filing fee.
3. In the event that an application requires more than one hearing, any member of the Board who is not present for any hearing may still participate in the decision provided that the applicant, at his expense, provides a transcript of such hearing to such absent member and provided such member reads such transcript.
4. In the event an adjourned meeting is necessary for the purpose of deliberation and future rendering of decision, the applicant will be informed by the Board secretary of the date of the meeting.
5. The Board shall exercise its powers, perform its duties, and render its decisions in conformity to the requirements of the Law of the State of New Jersey Anything in these rules to the contrary notwithstanding.
6. Each decision on any application for development shall be in writing and shall include findings of facts and conclusions based thereon. The appointed Attorney of the Board shall prepare and submit a resolution for each decision the Board has made. The resolution shall be submitted to the Board Secretary prior to the hearing that the adoption of the resolution has been scheduled.
7. A copy of the decision shall be mailed by the municipal agency within 10 days of the date of decision to the applicant, or if represented then to his attorney, without separate charge, and to all who request a copy of the decision for a fee of .50 cents per page. A copy of the decision shall also be filed by the Board in the office of the administrative officer who shall make a copy of same available to any interested party for the same fee as set forth above and for public inspection in his office during reasonable hours.
8. A brief notice 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 Board secretary; provided that nothing contained herein shall be construed as preventing the applicant from arranging such publication if he so desires. The period of time in which an appeal of the decision, whether arranged by the municipality or the applicant.

ARTICLE VIII. Removed.

ARTICLE IX. AMENDMENTS

1. These Rules of Procedure are subject to change and may be amended at any time by the proposal of any member which is adopted by an affirmative vote of at least four members. A failure by the Board to follow these Rules shall not be grounds for an appeal from the decision of the Board.