

Rules and Procedures of the Planning Board

Of the Village of South Orange

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 determined by the Village Governing Body. The attorney shall serve for the calendar year and until a 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.

1.05 **Meeting Dates.** By no later than the first meeting in January, the Board shall also determine the dates on which the regular meetings of the Board shall be held.

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 as required by law, ordinance, or these Rules of 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 with the Chairperson's approval.

- c. Take roll call votes and note the yea or nay of each member as he/she votes and also note any abstentions and the reasons therefore.
- d. Work with the Village technology consultant regarding the conduct of virtual or hybrid meetings.
- 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.
- h. Compile minutes of meetings for adoption by the Board.

2.04 **All Members.** Any Board member or professional representing the Board shall disqualify him/herself from proceedings involving any application in which he/she, 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. 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 Village of South 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.

2.05 **Determination of Vacancy for Excessive Absences.** The position of any member or alternate member shall be deemed vacant whenever the individual fails to attend and participate at meetings of the Board for a period of four consecutive regular meetings, unless excused by the Chairperson. The position shall be deemed vacant at the conclusion of such four-meeting period. The Board shall notify the Mayor and Council in writing of such determination. In the event of such notice, the approving authority shall forthwith fill the vacancy for the unexpired term in a manner prescribed by law.

ARTICLE III. MEETINGS.

3.01 **Regular Meetings.** The regular meetings of the Board shall be held on the dates adopted and published by the Board at its annual reorganization meeting and at a location and format designated by the Board. Regular meeting dates may be changed upon a vote of a majority of the Board and provided the proper notice required by law is given.

3.02 **Special Meetings.** A special hearing, devoted exclusively to the consideration of a specific application, may be requested by an applicant. This request shall be made in writing and shall specify the reason for the request. Such a hearing shall only be scheduled at the discretion of the Board Chairperson or his/her designee after consulting with the Board. The fees for such a meeting, as set forth in the fee ordinances of the Village of South Orange, shall be paid by the applicant prior to the commencement of such a hearing.

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. If, in the course of any meeting that opened with a quorum, the absence of a quorum is noted, the Chairperson shall immediately adjourn the meeting to another date.

3.04 **Alternate Members.** Each Alternate Member shall participate in the business and affairs of the Board subject to the following provisions:

- (a) An Alternate Member may participate in any hearing or business conducted, except that an Alternate Member may not vote in any matter or on any question or issue other than in the place of a Member who was disqualified or otherwise absent or ineligible to participate.
- (b) No vote by the Board shall be delayed for the purpose of enabling an Absent Member to appear and vote if an Alternate Member is available and otherwise eligible to vote in that person's place.
- (c) In the event that both Alternate Members are present but only one Member is absent or disqualified, Alternate No. 1 shall vote if qualified.
- (d) Except as to the restrictions upon voting by an Alternate Member, each Alternate Member shall have all of the rights and privileges, and shall be subject to all of the duties pertaining to Members other than the right to serve as Chairperson or Vice Chairperson.

3.05 **Temporary Members.** If the Board lacks a quorum to hear and act upon a matter because any of the Members or Alternate Members are prohibited from acting due to disqualification, members of the Zoning Board of Adjustment shall be called upon to serve as temporary members of the Board, for that matter only, in order of seniority of continuous service to the Board of Adjustment and subject to availability.

3.06 **Voting.** When voting on any matters, the following number of votes is required, so long as a quorum is present:

- a. In all matters, any action may be authorized by a majority vote of the members present at the meeting.

- b. 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.
- c. A resolution of memorialization of action previously taken shall require the affirmative voice vote of a majority of the Members present who voted in favor of that previous action. However, if only one such Member is present the resolution of memorialization may be adopted by the voice vote of that Member. No Member who was not a voter in favor at the time of the previous action may vote upon such a resolution.
- d. A Member who abstains from a vote is still counted toward a quorum. An abstention should be regarded as an abstention and not a vote for or against the application.
- e. 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.

3.07 **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/her 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.

3.08 **Conclusion of Meetings.** No testimony by a applicant witness will commence after 10 p.m., unless this rule is waived by the Board.

3.09 **Open Meetings.** All meetings, hearings and any action by the Board, except executive sessions pursuant to statute, shall be open to the public. Nothing herein shall be construed to limit the discretion of the Board to lawfully regulate, permit, or otherwise control, the participation of members of the public at any meeting.

3.10 **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. The applicant will be requested to confirm that the adjournment will not constitute a violation of the Board's obligation to make a decision pursuant to N.J.S.A. 40:55D-73.

3.11 **Committees.** The Board may establish committees which will report to the Board on matters assigned to them.

ARTICLE IV. BOARD PROCEDURES/PRE-HEARING PROCEDURES.

4.01 **Filing.** An application for any relief over which the Planning Board has jurisdiction shall be commenced by filing an application in accordance with the “Instructions of the Planning Board” and complying with all check-list requirements.

4.02 **Filing Requirements.** The failure of the applicant to comply with 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 upon a finding that a complete application has been filed.

4.03 **Complete and Incomplete Applications.** The Secretary and Technical Review Committee (“TRC”) shall review the application for completeness and any requests for submission waivers, in accordance with the definition of a “complete application” as contained in N.J.S.A. 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. Failure to notify the applicant, in writing, within 45 days that the application is incomplete will result in the application being deemed complete. If the application is deemed incomplete, the applicant will be notified of the deficiencies in the application. When the applicant submits the deficient items, they shall be forwarded to the TRC, which shall, within 45 days of the date of the submission of the deficient items, act and inform the applicant in writing that the application is complete or incomplete. If the application is still deemed to be incomplete, the process set forth herein shall be repeated. Nothing herein shall prevent the Board having jurisdiction of the matter from requesting additional information pursuant to N.J.S.A.40: 55D-10.3.

If the Secretary and TRC preliminarily determine that the application is complete, the Board Secretary shall notify the Board members that the application has been deemed complete and the submission waivers, if any, have been recommended. Within 48 hours of such notice, any Board member may notify the Secretary that they object to a completeness determination and/or waiver recommended. If a Board member provides that notification, the applicant will appear before the Board so that the Board can determine completeness and waivers. If no Board member notification is received within 48 hours of notice, the Board Secretary shall notify the applicant that the application is complete for the purposes of commencement of time periods for action by the Board.

The Board Secretary shall provide a copy of the application package to those governmental bodies authorized by Ordinance to comment upon pending applications, including but not limited to the Historic Preservation Commission.

4.04 **Assignment of Hearing Date; Notice.** When an application is deemed complete the application shall be assigned a hearing date. Public notice of the hearing date shall be provided in accordance with N.J.S.A. 40:55D-12 and applicable ordinances and instructions. 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 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 the commencement of the hearing.

Prior to the scheduled hearing of an application, the Board's engineer and planner, and any other municipal agency or official required or requested 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.

If the Board cannot hear the application in the statutory time requirement, the Board may ask the applicant to sign a consent to extension. If the applicant refuses to consent, the Board may deny the application without prejudice.

4.05 Technical Review Committee. The Technical Review Committee, established pursuant to Ordinance section 185-27 and 28, shall review all applications for development. The Technical Review Committee shall review the submissions by the applicant and determine whether the application is complete and whether any submission waivers requested by the applicant should be granted, subject to review by Board members pursuant to section 4.03 of these Rules. In addition, any applicant may request that a meeting be scheduled between the Board's and the applicant's professionals or experts. The applicant shall pay any fee for same, as outlined in the fee ordinances of the Village.

4.06 Proof of Payment of Taxes. At the time of filing the application for development, the applicant shall file an affidavit that taxes and water and sewer assessment have been paid or the Board's approval shall be conditioned upon the payment of all delinquent taxes and/or water/sewer assessments. 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.

4.07 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 fees established by Ordinance, 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. Neither party shall be bound by the submissions for results of such a review.

ARTICLE V. HEARING PROCEDURES.

5.01 Appearance by Parties. At the time of the hearing on the application, the applicant shall appear to present its case. Every corporation or limited liability company shall be represented by an attorney admitted to practice in the State of New Jersey.

5.02 Dismissal Without Prejudice. The Board, on its own motion, may dismiss any action, without prejudice, if (1) neither the applicant, nor anyone on his/her behalf, appears at the time set for the hearing of said application or (2) the applicant fails to diligently advance the application, resulting in multiple adjournments. Any applicant may, at any time before the commencement of the hearing, voluntarily withdraw its application; in which case, the application shall be dismissed without prejudice.

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

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

- a. The applicant or its attorney shall present the testimony of its witnesses. It shall also submit such documentary evidence or exhibits upon which it intends to rely in order to establish the right to the relief sought in the application. Expert witnesses shall be qualified.
- b. At the end of the testimony of each witness in support of the applicant, the chairman shall allow the board members and board professionals to ask questions of the witness having just testified and may permit reasonable cross-examination by an attorney representing an objector. Then members of the public may ask questions of that witness based on the testimony provided by that witness.
- c. Where a group of interested parties is represented by an attorney, the attorney shall present to the Board chairperson a list of the persons represented, and such persons shall participate in the proceedings only through their attorney, except that such persons may address the Board during public comment.
- d. At the time the applicant has submitted all of its evidence in support of the application, the attorney for any objector may then put in its case, calling any witnesses and introducing any documentary evidence upon which the objector will rely in objection to the application. Each witness shall be subject to reasonable cross-examination by the applicant or its attorney, and the chairperson shall allow any members of the public to ask questions relating to the testimony of such witness.
- e. 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 to allow any member of the public to make any statement relative to the application before the Board. A statement by a member of the public shall not exceed five minutes in length, subject to extension at the discretion of the Chairperson. 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.
- f. 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.
- g. The chairperson may rule unreasonable, repetitive, or disorderly questions or comments out of order.

5.05 **Evidence.** The formal rules of evidence are not enforced before Planning Boards. However, no decision shall be based upon any evidence which is not in the record, unless it consists of items of which the Board is entitled to take judicial notice. Petitions or similar documents will not be accepted. 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.

5.06 **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 it is entitled to the relief being sought, pursuant to applicable law.

5.07 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 it 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 it 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.

In the event that multiple meetings are required, any supplemental submissions by the applicant must be provided to the Board secretary at least ten days prior to the meeting at which the application is to be considered.

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 Village employees and consultants such as the Engineer, Planner, Police and Fire Departments, shall not be deemed to be communications as are contemplated in the preceding paragraph.
3. All communications and submissions to the Board shall be delivered to the Secretary for distribution to the Board.

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. Board Resolutions shall include findings of act and conclusions based thereon. The appointed Attorney of the Board shall prepare and submit a resolution for each decision the Board has made.
3. A copy of the decision shall be provided by the Board secretary within 10 days of the date of decision to the applicant.
4. A notice of decision shall be published in the official newspaper of the municipality by the Board Secretary, provided that nothing contained herein shall be construed as preventing the applicant from arranging such publication if it so desires. The period of time in which an appeal of the decision must be filed will run from the date of publication of the notice of decision.