

**MONTGOMERY TOWNSHIP BOARD OF ADJUSTMENT
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PART I. ORGANIZATION AND ADMINISTRATION.

Rule 1:1. Membership; Office; Annual Reorganization; Elections; Appointments.

1:1-1. Membership. The Board shall consist of seven (7) regular members and up to four (4) alternate members, all of whom are appointed in accordance the provisions of N.J.S.A. 40:55D-69 and 69.1.1. Alternate members may participate in discussions of proceedings but may not vote on a matter except in the absence or disqualification of a regular member. In the event a choice must be made as to which alternate member shall vote, Alternate No. 1, Alternate No. 2, Alternate No. #3, and Alternate No. 4 shall vote, in that order.

1:1-2. Attendance. If a regular member or alternate member of the Board (“member”) cannot attend a Board meeting and the member wishes to have his or her absence excused, the member or alternate shall contact the Chair prior to the meeting to advise that he or she will be absent from the meeting and the member can ask the Chair to excuse the absence. If a member attends a Board meeting but leaves prior to the conclusion of the meeting, or arrives more than 15 minutes late for a Board meeting, the situation shall be treated as if the member was absent from the meeting and the member can ask the Chair to excuse the absence at that meeting. It is the responsibility of each Board member to ask for an excused absence from the Chair. Upon a member’s request, the Chair shall excuse the absence if the absence was caused by legitimate illness, disqualification, or if the Chair believes that the absence should otherwise be excused. If a member or alternate member fails to attend or participate in three (3) consecutive meetings or five (5) meetings in a year, without being excused as set forth above, the Board Secretary shall notify the governing body of that fact.

1:1-3. Board Office. The office of the Board shall be located in the Municipal Building located at 100 Community Drive, Skillman, New Jersey 08558. All records of the Board concerning pending applications shall be kept at this location and shall be available for public inspection at this location between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except for legal holidays.

1:1-4. Reorganization Meeting. In January of each year, the Board shall select a date and place in January of the next year on which to convene a meeting for the purpose of reorganizing the affairs of the Board for the upcoming calendar year. If the Board should fail to select such a January date the preceding January, the reorganization meeting shall take place on the fourth Tuesday of January at 7:00 p.m in the Municipal Building located at 100 Community Drive, Skillman, New Jersey 08558

1:1-5. Officers and Staff. At the reorganization meeting, the Board shall elect from its regular members the following officers: Chair, Vice-Chair and Chair Pro Temp. The Board shall appoint from the Township Planning Department the following staff: Secretary and Assistant Secretary(ies) . The Officers shall serve without compensation. The Secretary and Assistant Secretary(ies) shall be compensated pursuant to agreements between them and the Township. A candidate for an Officer position receiving the majority vote of the 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. In the event that an office shall become vacant in some factual manner or by 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. A candidate for a Staff position receiving the majority vote of the Board shall be deemed appointed to the staff position for which the vote was taken and shall serve until he or she is re-elected or his or her successor shall take office. In the event that a Staff position shall become vacant in some factual manner or by operation of law, the position shall be filled as soon as possible by the same election procedure and subject to the same term provisions.

1:1-6. Board Attorney(s). The Board shall annually appoint or reappoint an Attorney(s)-at-Law of the State of New Jersey having recognized competence in the law of local governments, land use

and zoning. The Board Attorney(s) shall be compensated pursuant to agreement between the attorney and the Township. The Board Attorney(s) shall attend the meetings of the Board as directed by the Chair and shall prosecute and defend litigation and appeals on behalf of the Board unless the Board chooses another attorney to defend and/or prosecute particular litigation or unless the Board chooses not to defend and/or prosecute a particular litigation.

1:1-7. Board Engineer(s). The Board shall appoint or reappoint a licensed professional engineer(s) of the State of New Jersey who shall review and report on the applications and other matters pending before the Board at the direction of the Chair, and who shall attend the meetings of the Board and committees of the Board as instructed by the Chair. The Board Engineer shall be compensated pursuant to agreement between the engineer and the Township.

1:1-8. Planner(s). The Board shall appoint or engage a licensed professional planner(s) of the State of New Jersey who shall review applications and land use matters, and who shall attend the meetings of the Board and committees of the Board as instructed by the Chair. The Board Planner shall be compensated pursuant to agreement between the planner and the Township.

1:1-9. Other Assistance. The Board may also elect such other officers and/or appoint such other staff and/or assistants and/or engage such additional experts as it may deem necessary from time to time.

1:1-10 Committees. Board Committees may be created upon majority vote of the Board. Membership on Board Committees shall be limited to no more than three (3) Board members.

Rule 1:2. Duties of Officers and Staff.

1:2-1. 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, decide issues of expert qualifications and admission of evidence, appoint committees, and shall perform all the duties normally appertaining to his or her office, as required by law, ordinance, these rules or prevailing parliamentary practice. Unless overruled by a majority vote of members, the Chair's decisions on the aforementioned issues shall be deemed the decision of the Board as a whole.

1:2-2. Vice-Chair. The Vice-Chair shall preside at all Board meetings and hearings in the absence or upon the disqualification of the Chair, and shall have all of the powers of the Chair under such circumstances.

1:2-3. Chair Pro Temp. The Chair Pro Temp shall preside at all Board meetings and hearings in the absence or upon the disqualification of the Chair and Vice-Chair, and shall have all of the powers of the Chair under such circumstances. In the event that the Chair, Vice-Chair and Chair Pro Temp are all absent from a meeting or are all disqualified from participating in any portion of a meeting, the Board at such meeting shall elect an acting Chair Pro Temp from among any of its members who are present at the meeting and the acting Chair Pro Temp shall have all of the powers of the Chair under such circumstances for the duration of the meeting or that portion of the meeting at which the Chair, Vice-Chair and Chair Pro Temp are absent and/or disqualified.

1:2-4. Secretary and Assistant Secretary(ies). The Secretary and Assistant Secretary(ies) shall generally perform the secretarial work of the Board, including, but not limited to the following:

- (a) Conduct all official correspondence, compile all required records, keep and maintain all necessary files and indexes with respect to the operation of the Board, cause 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 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) Make a recording of the proceedings of each hearing of the Board in accordance with these rules, keep minutes of the proceedings of each meeting (including work sessions) held by the

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- Board and file them in a book, and sign the resolutions and orders adopted by the Board and file them in a book;
- (d) Cause to be mailed or otherwise delivered or made available to each member of the Board and professional consultants to the Board true copies of the minutes and all other documents and materials pertaining to the business of the Board.
 - (e) Perform such other duties as normally pertain to the office of Secretary of the Board of Adjustment, or as directed by the Chair.

Rule 1:3. Meetings.

1:3-1 Regular Meetings. Regular meetings of the Board shall be held on the fourth Tuesday of each month at 7:00 p.m., with the fourth Thursday of each month to be utilized as a meeting date but only as may be necessary for special circumstances. If a regular meeting falls on a legal holiday, such meeting shall be held on the next succeeding secular day or such other day as the Board may select. Whenever there are no matters to be considered at any regular meeting other than the reorganization meeting or the Chair becomes aware that there will not be a quorum of members present other than at the reorganization meeting, the Chair may dispense with such meeting by directing the 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 and by giving notice in accordance with the Open Public Meetings Act or otherwise posting the cancellation for the convenience and interests of the public. Board meetings and hearings on applications shall take place in the Municipal Building located at 100 Community Drive, Skillman, New Jersey 08558 except if a meeting room is not available in the municipal building for the Board to meet or if it is anticipated that the number of people attending the meeting or hearing will exceed the number of people legally permitted to occupy the meeting room at the municipal building, in which cases the Secretary shall make arrangements for the Board to meet in another location and in which cases the Secretary shall provide for notice in accordance with the Open Public Meetings Act. In the event of a Public Health Emergency, Board meetings may be held and conducted virtually by webcast and may also be simulcast over cable or other channel as the Board may determine and subject to rules that the Board may adopt governing public participation. Notice of whether a meeting will be held in-person or virtually will be listed on the meeting agenda and posted to the Montgomery Township website six days prior to the meeting.

1:3-2. Special Meetings. Pursuant to N.J.S.A. 40:55D-9a, special meetings may be called at any time by the Chair or, in his absence, by the Vice-Chair, or upon the written request of two Board members, provided that notice thereof is mailed or given to each member of the Board at least two days prior thereto, and to the public as required by the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

1:3.3. Quorum. At all meetings of the Board, a quorum to conduct any business of the Board shall consist of four (4) qualified members. 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 hearing may proceed without a qualified quorum of the Board for that particular hearing. In the event that the Chair becomes aware that the Board will be unable to provide a quorum for a particular meeting, the Chair may dispense with such meeting by directing the 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 and by giving notice in accordance with the Open Public Meetings Act or otherwise posting the cancellation for the convenience and interest of the public.

1:3-4. 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 and/or N.J.S.A. 40:55D-9b.

1:3.5. Order of Business. Subject to review and approval by the Chair, the order of business for all regular sessions of the Board shall be set by the Secretary.

1:3-6. Time Limitations. The Board shall be under no obligation to consider any old and/or new business after 10:00 p.m. The Board shall take no new testimony beyond 10:30 p.m. This rule may be

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waived, however, by a majority of the Board members then present and qualified. The Board shall be entitled to adjourn and continue any hearing in progress at 10:00 pm to a future date even in the middle of testimony or cross-examination.

1:3-7. 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. Application to Board. Applications for development and for any other relief shall be commenced by filing the original and the requisite number of copies of the latest form of application with the Secretary of the Board together with the fee and/or escrow account deposit required by ordinance and all other documents and/or items required by the requisite checklist(s) established by ordinance. Upon receipt of the application, the Secretary of the Board shall assign it a case number.

2:1-2. Scheduling; Transmittals. Upon a determination of completeness in accordance with the MLUL and the Township Land Development ordinance, the application shall be assigned a hearing date by the Board unless delegated to the Board Secretary by the Board and the Board Secretary shall forward copies of all application materials and documents to the Board Attorney, the Board Engineer, the Board's planning expert, and any other Board expert(s) whose input is sought. The application materials and documents shall also be forwarded to all Board members prior to the scheduled hearing session. To the extent practicable, applications shall be scheduled for hearing in the order in which they are declared complete except that an application may be advanced so as to comply with statutory and ordinance limitations of time but shall otherwise be at the discretion of the Board.

2:1-3. Filing of Maps and Documents. At least 21 days prior to the date scheduled for the hearing, the applicant shall file with the Board Secretary the maps, plans, plats and/or documents for which approval is sought and/or which the Board required to be filed. This 21-day time requirement shall apply to the initial hearing session as well as all subsequent hearing sessions. (The Board has imposed this 21-day filing period in order for its experts and staff to have sufficient time to prepare reports so that they can be filed prior to the date for the hearing, rather than on the date of the hearing, with the goal that the Board's experts and staff will file their reports at least 10 days prior to the hearing. The Board recognizes that the N.J.S.A. 40:55D-10b establishes 10-days as the statutory minimum number of days plans and documents for which approval is sought shall be on file with the Board and that the 10-day requirement has been established so that interested parties receiving 10-day notice of the hearing can then review the application file before the hearing. The Board notes that the 21-day filing rule it has established is intended to provide members of the public as well as Board members with the ability to not only review the plans and other documents filed by an applicant for which approval is sought but also the Board expert reports 10-days prior to the hearing and the only way to do that is to require that the plans and other documents for which approval is sought be filed 21-days prior to the hearing.)

2:1-4. Notice of Hearing. Prior to a hearing commencing on an application, the applicant must have given notice of the hearing at least ten (10) days prior to the date set for the hearing in accordance with all requirements of the MLUL and case law and must file with the Board an affidavit of proof of service of the notice together with stamped certified proof of mailings (if service was by mail) and an affidavit of publication of notice in the newspaper. As to the requirement in N.J.S.A. 40:55D-12 that notice of a hearing be given to the owners of all real property as shown on the current tax duplicates, the applicant must send notice to all property owners on a list prepared by the Township Tax Assessor which is no more than four (4) months old at the time of service of the notices.

2:1-5. Special Procedures for Commencing an Appeal. An appeal from any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of the land use ordinance(s) may be filed with the Board by any person or entity aggrieved by the action appealed from. The appeal shall be submitted on the form and with all accompanying documents as required by ordinance and the applicable completeness checklist. The Board shall consider such an appeal only if it has been filed within 20 days of the date of the action appealed from. The officer from whom the

appeal is taken shall immediately transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal to the Board shall stay all proceedings in furtherance of the action appealed from unless the officer from whose action the appeal is taken certifies to the Board that, by reason of facts stated in the certification, a stay would, in his opinion, cause imminent peril to life or property. In such a case, proceedings shall not be stayed other than by an order of the Superior Court upon notice to the officer from whom the appeal is taken and on due cause shown.

Rule 2:2. Hearing Procedure.

2:2-1. Appearance by Parties. Individuals may either appear on their own behalf before the Board at the time of the hearing or be represented by an attorney authorized to practice law in New Jersey. Pursuant to New Jersey Court Rule 1:21-1(c), no business entity (whether a corporation, partnership or any other form), with the sole exception being a sole proprietorship, shall appear before the Board at the time of the hearing except through an attorney authorized to practice law in New Jersey.

2:2-2. Testimony Under Oath. The Board attorney or the Board Chair or the Chair's designee shall duly swear all persons giving testimony and/or making comments during a hearing.

2:2-3. Order of Presentation. Generally, each application shall be considered in accordance with the following order of presentation:

- (a) The applicant or, if the applicant is represented by an attorney, the attorney shall enter an appearance on the record. If counsel represents the applicant, the attorney shall enter his or her appearance, identifying the name and location of his or her firm, identifying the client who is represented.
- (b) All of the applicant's witnesses shall then be sworn, as well as any Board experts who have filed reports concerning the application and/or who have not filed reports but may provide input on the application during the hearing.
- (c) The applicant or, if the applicant is represented by an attorney, the applicant's attorney shall then proceed to make opening remarks, if any, present testimony and any other evidence, documentary or otherwise, upon which the applicant intends to rely in order to establish a basis for the relief sought.
- (d) At the commencement of a witness' testimony and/or at the introduction of other evidence, the Chair shall rule on qualifications and admissibility. At the conclusion of a witness's testimony, the Chair shall allow Board members, Board experts, objectors and interested parties to ask questions of such witness, and shall permit reasonable cross-examination by counsel representing an objector or interested party. An attorney representing a group of objectors or interested parties shall submit to the Board a written list of persons represented by such attorney and shall submit a copy of the same to the applicant or the attorney for the applicant. Such persons shall participate in the proceedings only through their attorney.
- (e) Upon the conclusion of the presentation of the application, any objector(s) wishing to present a case in objection to the relief sought may do so in such order as may be recognized by the Chair. The objector(s) may call witnesses for relevant testimony and introduce any relevant documentary or other relevant evidence subject to reasonable cross-examination by the applicant or his or her attorney and the Board, and the Chair shall allow a reasonable opportunity for interested parties to ask questions of such witnesses. The Chair shall first recognize presentations of counsel for objectors and those presentations involving expert testimony in the order that the Chair shall determine upon the exercise of reasonable discretion. Such presentations shall be subject generally to the procedure set forth in the above subparagraphs, affording the attorney for the applicant and an applicant pro se a reasonable opportunity for cross-examination and questions. The applicant may thereafter present rebuttal evidence subject generally to the procedure set forth in the above subparagraphs.
- (f) The Board shall thereafter recognize public commentary by any people appearing pro se, provided that those giving commentary are sworn and subject to cross-examination and questioning. All rebuttal testimony or evidence shall be considered in such order as the Chair shall designate. The Board shall consider only

relevant objections. The Board shall not consider unreasonable, repetitive or disorderly testimony or 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.

- (g) 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 subject to these rules. See, Rule 2:2-8 as to the procedures to be followed in this regard.
- (h) The Board shall have the right to rely upon the expertise of its attorneys as well as the expertise of its engineering and planning experts and any and all other Board experts that have testified during the hearing. The Board may also call, as witnesses, other municipal officials such as police officers, municipal engineers, the tax assessor, municipal employees managing municipal utilities, etc., to testify as to particular facts pertinent to the application. The Board shall also have the power to acquire additional evidence consistent with these rules.

2:2-4. Reports from Officers or Agencies. The Board may refer an application to another person or agency for a report provided that such reference shall not extend the time within which the Board must act. Such reports from other persons or agencies shall be made available to the applicant and to other interested parties for examination and refutation. 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 the basis for 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.

2:2-5. Continuances. All cases may be continued to another date certain, which shall be the next regularly scheduled Board meeting unless otherwise determined 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. The applicant need give no further notice in that event. However, if the matter is continued to a special meeting, 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 Township Ordinances and the Municipal Land Use Law. 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 with respect to the applicant's protected interests 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 made on the record.

2:2-6. Refusal to Consent to Continuance. Where an applicant refuses to consent to a continuance so that objectors can be heard or the Board has insufficient opportunity to consider the matter, such refusal by the applicant may be deemed arbitrary and unreasonable by the Board. Should the applicant move the Board to decide the matter without granting a continuance under those circumstances, the applicant shall be at risk of a denial of the application for failure to sustain the burden of proof and/or failure to afford the Board an opportunity to make an informed decision.

2:2-7. Testimony from Board Employed and Other Expert Witnesses. The Board may require expert witnesses and/or reports from applicants if the Board believes same is/are necessary in order to make an informed decision on an application. Experts shall be qualified to the satisfaction of the Board. In addition to experts for the applicant, the Board shall have the power to engage its own independent experts to provide their opinions on issues raised in the application and/or on the testimony of experts produced by an applicant or other party. The Board shall not be bound to accept 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 to sustain a Board finding. The Board may permit its experts to confer with the experts of the applicant where appropriate and, where appropriate, with experts hired by objectors or the Board in order to expedite consideration of the application. Informal communications between the Board's experts and those for the applicant shall be permitted outside the

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context of public meetings but any information as a result of those communications that any party wishes the Board to rely upon or that the Board wishes to rely upon shall be made part of the record. The applicant shall pay through its escrow account for the fees incurred by having Board professionals and experts participate in such communications.

2:2-8. Site Visits by Board Members; Personal Knowledge of Board Members. The Board may make a group site visit(s) of the property that is subject of an application upon reasonable notice to the parties and subject to the Open Public Meetings Act and prevailing case law. In that event, or in the event that individual Board members visit the subject property on their own or are well acquainted with the subject property, knowledge acquired of any particular fact or facts by way of a site visit or personal knowledge of the site may be used in making a decision if such member or members expresses such facts as the record at the time of the hearing. The applicant, any objector, or any interested party shall have an opportunity to refute such facts. 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 by the Board.

2:2-9. Evidence; Exhibits. The formal rules of evidence adopted by the courts of the State of New Jersey may be used as a guide but shall not strictly apply in the proceedings before the Planning Board. However, no decision shall be based upon any facts not proved or on matters which are not part of the record unless they are 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 unless the applicant agrees to take responsibility for safe keeping of such items. 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, may keep them in the permanent file or may discard them. Any evidence presented, whether by testimony or by documents and exhibits presented for the purpose of 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 evidence. As set forth in the rules above, the Chair shall decide all issues of admission of evidence and, unless overruled by a majority vote of Board members, the Chair's decision shall be deemed the decision of the Board as a whole.

2:2-10. Digital Visual Aids. All applicants are required to provide all application materials, including any exhibits, in "pdf" file format, which are to be posted on the Township website and projected onto the large screen in the meeting room during the hearing on the application; this is required for all applications. To the extent practicable, the PDF files should include a colored rendition of the site plan or subdivision, a colored rendition of the landscape plan, a colored rendition of the elevation of any proposed building, photographs and any other relevant graphics and images. The applicant shall also be required to submit to the Board secretary five (5) paper copies.

2:2-11. Effect of Restrictive Covenants and Deed Restrictions. The Board is established for the sole purpose of exercising the powers conferred upon it by the Municipal Land Use Law. The Board is authorized by local ordinance only to hear matters within the purview of the ordinance. A restrictive covenant or deed restriction shall be construed as being in the nature of a private contract which may be enforceable either by a Grantor or other protected party by a proceeding in the Superior Court of New Jersey. Such a restriction shall not affect the jurisdiction of the Board, and the grant of relief by the Board shall not affect the validity of any restrictive covenant or deed restriction. The existence of a restriction shall generally have no bearing on the Board's determination, unless the Planning Board, the Board of Adjustment or the Township Committee imposed the restriction as a condition of prior approval.

2:2-12. Letters and Petitions of Objection or Support. Letters and/or petitions objecting to or supporting an application for development shall not be distributed to Board members and, if submitted to the Board Secretary, shall be returned by the Secretary to the author or sender with a cover letter citing this rule and advising the sender that he or she can appear before the Board to testify regarding the application for development but cannot submit a letter or petition relating to the application. This rule shall not bar the author of a letter or the signer of a petition from appearing before the Board during the hearing and reading

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a prepared statement provided, however, that the person reading the statement has been placed under oath and is subject to cross-examination and questioning.

2:2-13. Burden of Proof. The burden of proof is upon 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 sought by the applicant. The applicant must establish, to the Board's satisfaction, that pursuant to statutory and ordinance criteria, the applicant is entitled to the relief sought. If a Board member does not believe he or she has sufficient information with which to make an informed decision on whether the requirements for approval of the application have been met, that member should vote "no" on the application as the applicant has the burden of proof and shall be deemed to have not met that burden if a member does not believe he or she has sufficient information to vote "yes" on the application.

Rule 2:3. Voting.

2:3-1. Voting Procedure. The Board shall vote on all applications and matters by motion(s) made by qualified member(s). All motions shall require a second. In the absence of a second, the motion shall be deemed defeated. The Chair shall allow discussion on any motion made and duly seconded. The Board shall have the right, but not the obligation, to conduct a deliberation on any application or matter prior to any motion being made. All votes on substantive matters shall be taken by roll call, and the vote and name of the member casting the vote shall be recorded in the minutes. Failure of a motion to receive the number of votes required to approve an application for development shall be deemed an action denying the application for development.

2:3-2. Voting Margin and Effect. Once a quorum of the Board is present (which is at least four (4) members pursuant to Rule 1:3-2 above), an affirmative vote of a majority of up to seven (7) members present is required for any decision, determination or official action of the Board except that applications for variances under N.J.S.A. 40:55D-70d must be approved by an affirmative vote of two-thirds of the full membership of the Board (which means at least five (5) affirmative votes); and applications for a permit under N.J.S.A. 40:55D-34 must be approved by a majority of the full membership of the Board (which means at least four (4) affirmative votes). 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. Abstaining from a vote on an application for development should be avoided. If a member does not believe he or she has sufficient information with which to make an informed decision on whether the requirements for approval of the application have been met, that member should vote "no" on the application as the applicant has the burden of proof and shall be deemed to have not met that burden if a member does not believe he or she has sufficient information to vote "yes" on the application. The only time a member should abstain from voting is when voting on approving minutes of a meeting at which the member has not attended and has not listened to a recording of the meeting or read a transcript of the meeting. An abstention shall be regarded as an assent to the vote of the majority, except for a "d" variance. 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 toward defeat. However, an abstention shall not be regarded as an assent to the grant of a "d" variance. 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; nor shall abstentions be used 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 quorum of the Board is present.

Rule 2:4. Other Hearing Requirements and Procedures.

2:4-1. The Record. The record shall mean the application form, any plans, plats or maps submitted by the applicant, any other documents submitted by the applicant, an objector, an interested party and/or any Board expert(s), any exhibits submitted during the hearing, the verbatim recording of the hearing by stenographic, tape and or other electronic means, the resolutions adopted by the Board containing the Board's decision on the application, all Township ordinance provisions as well as all provisions of the Master Plan, any and all prior Planning Board, Board of Adjustment or Township Council resolutions relevant to the application and/or to the property, and any and all other matters or documents of which the Board may take "judicial notice". The minutes of the meeting shall be considered both a summary of the record and part thereof but only a transcript of a hearing session or a recording of a hearing session shall constitute a verbatim record of the hearing session.

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 as to whether to furnish a duplicate recording or a transcript lies entirely with the Board. Interested parties shall not be charged more than the maximum permitted in N.J.S.A. 2A:11-15.

2:4-3. Inability to Make Verbatim Record. If, at the time set for hearing, a verbatim record cannot be made for good reason, as where recording equipment is inoperable and no certified stenographer is present, the Board shall, if time is not a factor, continue the hearing to another date. However, if time is a factor, and if all interested parties present agree, the Board may proceed with the hearing on the understanding that in the event of an appeal or further review, an agreed statement of facts will be supplied to the reviewing body. In the absence of such agreement, where time is a factor and the applicant refuses to consent to extend the time within which the Board has to make a decision, the Board shall be entitled to deny the relief sought in order to prevent statutory automatic approval by reason of the Board's failure to make a decision within the required time.

2:4-4. Oaths; Subpoenas; Contempt. The Chair shall have power to provide for oaths to be administered to all witnesses in cases before the Board and may designate individual(s) to actually administer oaths. The Chair shall also have the power to 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.A. 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 therefrom, and may seek costs and fees in connection therewith.

2:4-5. Perjury. Any person who shall knowingly or 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.A. 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, provisions of law, provisions of the Township Ordinances, resolutions adopted by the Planning Board, Board of Adjustment and Township Council, and the contents of municipal, county, state and federal government documents and publications (including internet published documents).

2:4-7. Dismissal of Applications. 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. The Board may also dismiss any action without prejudice if neither the applicant nor anyone on his or her behalf actively prosecutes the application. Further, the Board, on its own motion, may dismiss any action, without prejudice, for failure to comply with these rules. 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. After commencement of a hearing, a voluntary dismissal may be had only with the approval of the Board, in which case the Board shall dismiss the action with or without prejudice depending on the circumstances of the particular case. The Board reserves the power to impose reasonable terms and conditions on the dismissal of any

application where the request for the dismissal is made after the commencement of the hearing on the 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 all such cases new notice shall be given as in the case of the original application and the amended application shall be subject to a completeness determination as is the case with the original application. After commencement of a hearing, an application may be amended only by leave of the Board. If the amendment after commencement of hearing is for the purpose of reducing the nature or extent of the relief sought, no new notice will be required. Otherwise, new notice shall be given. In either event, the time within which the Board has to act on the amended application shall be deemed to start to run from the day the amended application is determined to be or deemed to be complete.

2:4-9. Conditions. The Board shall have plenary power and discretion to impose conditions. 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. 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 ordinance as applied uniformly to every development application. 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. Unless the Board determines otherwise on a case-by-case basis and/or lists a condition in a resolution as “intentionally omitted,” the Board shall impose the following conditions as a minimum, which the Board deems as its “standard” conditions, and in the event the Board neglects to include any of the following conditions in a resolution approving an application for development the following conditions shall be deemed to have been imposed by the Board:

1. **Revisions to Plans/Plats.** The applicant shall be required to make revisions to the plan(s) and/or the plat(s) in accordance with Board’s experts’ reports and testimony to the satisfaction of the Board expert(s) who filed the report or testified as well as to the satisfaction of the Township Engineer and Township Planner. The Board shall impose as a further condition a time within which to make the revisions which shall be six (6) months unless the Board determines another time period is more appropriate depending on the circumstances of the case before it. And, the condition shall also provide that, in the event that the applicant fails to revise the plans as required and/or fails to obtain signatures on the plan as required, all within said time period, or extension thereof as granted by the Board, the approvals shall expire and become automatically null and void. (The Board notes that, in the absence of the within time limitation condition, it would decline to grant conditional approvals and, instead, would continue the hearing on an application for no more than a six month period to provide the applicant with the opportunity to revise the plat, plans and documents and, failure by the applicant to resubmit same to the Board within that period or submission within that period but failure of the applicant to make all the required revisions, would result in denial of the application.)

2. **Design, Construction and location of Improvements.** The applicant shall be required to design, construct and locate the proposed development in substantial conformity with the plans and the plats approved and signed by, and conditions imposed by, the Board as well as in substantial conformity with any architectural drawings and/or exhibits submitted into evidence during the hearing.

3. **Landscaping.** All landscaping, as installed, shall conform to and be in accordance with the plan approved and/or signed by the Board, and which plan shall include any and all of the landscaping changes required by condition #1 above. Any deviation from the approved plans must be approved by the Township Engineer or Township Landscape Architect prior to said deviation being implemented. Deviations deemed inconsistent with the terms of the approvals may necessitate Board approval.

Prior to the issuance of a zoning and/or construction permit, a performance guarantee shall be required as a condition of Board approval. The required landscaping shall be installed before consideration of a Certificate of Occupancy (CO) or Certificate of Approval (CA), whether temporary or unconditional. Seeding and planting provisions may be relaxed in consideration of a Temporary CO/CA where the Applicant is able to demonstrate to the reasonable satisfaction of the Township Engineer or Township Landscape Architect that the seeding and planting cannot be effectively implemented because of

seasonal or weather conditions, adequate measures have been put in place to assure future seeding and planting, and the Township Engineer finds that the health, safety, and welfare of the public will not be jeopardized by any such delay.

All performance and subsequent maintenance guarantees posted with the Township shall be in a form acceptable to the Township Attorney, in an amount acceptable to the Township Engineer, all in accordance with ordinance section 16-5.6d.10 and ordinance section 16-9.2 as well as in accordance with N.J.S.A. 40:55D-53.

The applicant shall have a continuing obligation to maintain all landscaping for its intended purpose (i.e., for screening if planted for buffering purposes or for aesthetics if planted for enhancement purposes), which shall include but not be limited to repairing and/or replanting to the satisfaction of the Township Planning / Engineering Department any and all landscaping that becomes damaged and/or dies. (This continuing maintenance obligation is in addition to, and notwithstanding, the fact that a maintenance guarantee may or may not be required in any particular application.) In the event that Township Planning / Engineering Department personnel determine that utilization of an outside expert (e.g. Board landscape architectural expert) is necessary to fulfill the intent of this section, all costs and expenses of such outside experts shall be reimbursed to the Township by the applicant. The Board shall impose a legal mechanism to ensure the continuing maintenance obligation.

4. **Enforcement and Maintenance of Parking.** The applicant shall strictly monitor and enforce parking as permitted and reflected on the signed site plan and/or plat. This means that parking shall be permitted only in those areas and in those spaces designated on the site plan and/or plat for same. The owner of the property shall include provisions to this effect in any and all leases. The applicant shall identify on the site through pavement markings and signage (as approved by the Township Engineer) all parking spaces and fire lanes/zones. The applicant shall have a continuing obligation to maintain all parking areas, which shall include but not be limited to repairing and repaving the pavement and repainting parking stalls and reinstalling signage for all required spaces to the satisfaction of the Township Planning / Engineering Department. (This continuing maintenance obligation is in addition to, and notwithstanding, the fact that a maintenance guarantee may or may not be required in any particular application.) In the event that Township Planning / Engineering Department personnel determine that utilization of an outside expert (e.g. Board engineering expert) is necessary to fulfill the intent of this section, all costs and expenses of such outside experts shall be reimbursed to the Township by the applicant.

5. **Lighting and Night-Light Test.** All lighting, as installed, shall conform to and be in accordance with the plan approved and/or signed by the Board, and which plan shall include any and all of the lighting changes required by condition #1 above. There shall be a night-light test conducted by the Board engineering expert prior to the issuance of a certificate of occupancy, compliance or completion (whichever is applicable) and the applicant shall correct any lighting problems which are exposed as a result of the test prior to the issuance of said certificate. The purpose of the night-light test is to assure adequate lighting throughout the site for safety purposes while safeguarding neighboring property owners and the traveling public from glare, unnecessary brightness and glow. The applicant shall have a continuing obligation to maintain all lighting for its intended purpose as approved, which shall include but not be limited to repairing and/or replacing and/or re-aiming fixtures to the satisfaction of the Township Planning / Engineering Department. (This continuing maintenance obligation is in addition to, and notwithstanding, the fact that a maintenance guarantee may or may not be required in any particular application.) In the event that Township Planning / Engineering Department personnel determine that utilization of an outside expert (e.g. Board planning expert and/or a lighting expert) is necessary to fulfill the intent of this section, all costs and expenses of such outside experts shall be reimbursed to the Township by the applicant.

6. **Escrow Fees.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 30 days of the adoption of a resolution, within 10 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable). Failure to abide by this condition shall result in the relief granted, as well as any and all underlying relief for the property, automatically terminating and

becoming null and void. Finally, independent of and in addition to the above, the applicant shall deposit an \$800 escrow with the Township to cover field inspections by the Board landscape architectural expert.

7. **Easements, Dedications, Deed Restricted Areas and Conveyances.** Any and all easements, dedications, deed restricted areas and/or conveyances running to and in favor of the Township which are proposed on the site plan and/or subdivision plat and/or required as a condition of the approval resolution shall, in addition to being identified on the applicant's plans, maps and/or plats, be contained in separate documents to be prepared by the applicant and approved by either the Township Attorney or Board Attorney after the metes and bounds descriptions of the easement, dedication, deed restricted and/or conveyance areas have been reviewed and approved by the Township Engineer or Board engineering expert. Said documents shall specifically outline the grant of the easement, dedication and/or conveyance and its purpose and shall contain a metes and bounds description of the easement, dedication and/or conveyance area. All such documents shall then be recorded and, upon completion of the recording process, be transmitted to the Township Clerk for maintenance with other title documents of the Township, with a copy transmitted to the Planning / Engineering Department.

8. **Reserve Septic System Field and Easement.** If the Board of Health requires a reserve septic field for an application that does not include such reserve septic system field on the plan or plat, a condition shall be imposed on any approval of the application requiring that a reserve septic system field be added to the plan or plat in accordance with Board of Health Ordinance Section 7:9A-7.1(d). All applications for development that are approved by the Board shall be conditioned on the applicant not only including a reserve septic system field easement on the plan or plat but also recording (after review and approval by the appropriate Board of Health representative(s)) a reserve septic system field easement, which easement shall include metes and bounds / legal descriptions that have been reviewed and approved by the Township Engineer or Board engineering expert.

9. **Grading Plan.** In cases where the Board grants site plan and / or subdivision approval, a condition shall be imposed requiring submission of a grading plan in accordance with Township ordinance section 16-5.2z for review and approval by the Township Engineer, Board engineering expert, or Board landscape architectural expert as a condition precedent to the applicant obtaining zoning and construction permits and commencing site work. In the event that an application meets the definition of "major development" for stormwater management in accordance with Township ordinance section 16-5.2, the plans shall meet the grading requirements of Township ordinance section 16-5.2z even in the absence of a site plan and/or subdivision approval.

10. **Stormwater Management Facilities and Easement.** In the event that an application includes stormwater management facilities or, in the event that an application does not include stormwater management facilities but the Board requires the provision of stormwater management facilities as a condition of approval, any approval of an application for development shall be conditioned on the applicant not only including a stormwater management facilities easement on the plan or plat but also recording (after review and approval by the Board Attorney or Township attorney and the Township Engineer or Board engineering expert) a stormwater management facilities easement, which easement shall include metes and bounds / legal descriptions that have been reviewed and approved by the Township Engineer or Board engineering expert. The easement shall permit (but not require) the Township and Township employees and contractors on the property to maintain the facilities in the event the applicant fails to maintain them and/or fails to maintain them to the standards required by the Township. The applicant shall have a continuing obligation to maintain all stormwater management facilities for their intended purpose as approved, which shall include but not be limited to repairing and/or replacing such facilities to the satisfaction of the Township Planning / Engineering Department. (This continuing maintenance obligation is in addition to, and notwithstanding, the fact that a maintenance guarantee may or may not required be in any particular application.) In the event that Township Planning / Engineering Department personnel determine that utilization of an outside expert (e.g. Board engineering expert) is necessary to fulfill the intent of this section and/or in the event that the Township and/or its employees and/or contractors enter the property to maintain the facilities in the event that the applicant fails to maintain them and/or fails to maintain them to the standards required by the Township, all costs and expenses of such outside experts and/or maintenance shall be reimbursed to the Township by the applicant.

11. **Affordable Housing Obligation.** The applicant shall pay the required affordable housing development fee for the increase in the equalized assessed value of the property resulting from the construction of the proposed development pursuant to the Township ordinance requirements.

12. **Time to Obtain Site Plan and/or Subdivision Approval as well as Construction Permits and Certificates of Occupancy.**

a. In cases where the Board grants “c” variance(s), or statutory “planning” variance(s), without site plan or subdivision approval, the Board shall impose a time limitation within which to obtain construction permits, commence construction and complete construction. Unless the Board determines that some other time periods are more appropriate, based upon the unique circumstances of the case before it, the standard time limitation condition shall be as follows: “The applicant shall apply for and obtain a construction permit within two (2) years of the date the resolution granting final site plan and/or subdivision approval and/or a “c” variance or a statutory “planning” variance is adopted. If during said two (2) year period, or extension thereof as granted by the Board, the applicant fails to obtain a construction permit, the within approval and all relief granted herein, as well as any and all underlying variance relief, shall automatically expire and become null and void. The applicant shall have two (2) years from the date of issuance of the construction permit to commence and complete construction and obtain a permanent certificate of occupancy. If during said two (2) year period, or extension thereof as granted by the Board, work is not commenced and completed and/or a permanent certificate of occupancy is not obtained, the within approval and all relief granted herein, as well as any and all underlying variance relief, shall automatically expire and become null and void. Any and all extension requests made in accordance with the within condition must be made prior to the expiration of the approvals.”

b. In cases where the Board grants any “d” variance, the Board shall impose a time limitation within which the applicant shall be required to obtain site plan and/or subdivision approval. Unless the Board determines that some other time periods are more appropriate, based upon the unique circumstances of the case before it, the standard time limitation condition shall be as follows: “The applicant shall obtain preliminary site plan and/or preliminary subdivision approval within one (1) year of the date of the adoption of the resolution. If during said one (1) year period, or extension thereof as granted by the Board, the applicant fails to obtain preliminary site plan and/or subdivision approval, the within approval and all relief granted herein, as well as the underlying “d” variance relief, shall automatically expire and become null and void. In the event that the applicant obtains preliminary site plan and/or subdivision approval, the applicant shall obtain final site plan and/or subdivision approval within three (3) year of the date of the adoption of a resolution granting preliminary approval. If final site plan and/or subdivision approval is not obtained within said three (3) year period, or extension thereof as granted by the Board, the within approval and all relief granted herein, as well as the underlying “d” variance, shall automatically expire and become null and void.”

c. In cases where the Board grants preliminary site plan and/or preliminary subdivision approval, the Board shall impose a time limitation within which to obtain final approval. Unless the Board determines that some other time periods are more appropriate based upon the unique circumstances of the case before it, the standard time limitation conditions shall be as follows: If the only relief granted is preliminary site plan and/or subdivision approval, the condition shall be as follows: “The applicant shall obtain final site plan and/or subdivision approval within three (3) years of the date of the adoption of the resolution granting preliminary approval. If final site plan and/or final subdivision approval is not obtained within said three (3) year period, or extension thereof as granted by the Board, the within preliminary approval and all additional relief granted herein shall automatically expire and become null and void.”

d. In cases where the Board grants final site plan and/or subdivision approval, the Board shall impose a time limitation within which to obtain construction permits, commence construction and complete construction. Unless the Board determines that some other time periods are more appropriate, based upon the unique circumstances of the case before it, the standard time limitation condition in cases involving final site plan and/or subdivision without any other relief shall be as follows: “The applicant shall apply for and obtain a construction permit within two (2) years of the date the resolution granting final site plan and/or subdivision approval is adopted. If during said two (2) year

period, or extension thereof as granted by the Board, the applicant fails to obtain a construction permit, the within final approval as well as all other relief granted herein, as well as any and all other relief granted with preliminary approval such as a variance or an exception, shall automatically expire and become null and void. The applicant shall have two (2) years from the date of issuance of the construction permit to commence and complete construction and obtain a permanent certificate of occupancy. If during said two (2) year period, or extension thereof as granted by the Board, work is not commenced and completed and/or a permanent certificate of occupancy is not obtained, the within final approval as well as all other relief granted herein and the preliminary approval along with all other relief granted with the preliminary approval shall automatically expire and become null and void.”

13. **Specific Approvals and Permits.** The approval shall be conditioned upon the applicant obtaining permits and/or approvals from all applicable agencies and/or departments including (if applicable) but not necessarily limited to the following municipal, county and/or state agencies and/or departments:

- a. Township Board of Health approval of any aspect of the development within its jurisdiction;
- b. Somerset County Planning Board approval of any aspect of the development within its jurisdiction,
- b. Somerset - Union County Soil Conservation District certification of the soil erosion and sediment control plan,
- c. Delaware and Raritan Canal Commission approval of any aspect of the proposed development within its jurisdiction,
- d. NJDOT highway access permit if the proposed development is on a road within NJDOT’s jurisdiction, and
- e. NJDEP approval of any aspect of the proposed development within its jurisdiction.

14. **Subject to Other Laws and Approvals.** All resolutions shall contain the following “catch-all” condition: “The within approval and the use of all property subject to the within approval are conditioned upon and made subject to any and all laws, ordinances, requirements, and/or regulations of and/or by any and all municipal, county, state and/or federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of all property subject to the within approval are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, state and/or federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or the use of the property. In the event of any inconsistency(ies) between the terms and/or conditions of the within approval and any approval(s) required by the above, the terms and conditions of the within approval shall prevail unless and until changed by the Board upon proper application.”

PART III. TAKING ACTION ON APPLICATIONS.

Rule 3:1. Decisions; Resolution of the Board.

3:1-1. Time of Decision. Unless the applicant has consented in writing or on the record to an extension of time, the Board shall render a decision on an application for development not later than within the following time periods:

- a. 120 days after the date an appeal from a decision of the administrative officer is filed;
- b. 120 days after the date a request for an interpretation and/or request for an answer to a special question is filed;
- c. 120 days after the date of completeness of an application to the Board involving “c” and/or “d” variance(s);
- d. 45 days after the date of completeness of a bifurcated application for minor site plan approval;
- e. 45 days after the date of completeness of an application for a bifurcated preliminary site plan approval involving ten (10) acre of land or less and ten (10) dwelling units or less;
- f. 95 days after the date of completeness of a bifurcated application for preliminary site plan approval involving more than ten (10) acre of land or more than ten (10) dwelling units;
- g. 45 days after the date of completeness of a bifurcated application for minor subdivision approval;

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- h. 45 days after the date of completeness of a bifurcated application for a preliminary major subdivision approval involving ten (10) or fewer lots; and
- i. 95 days after the date of completeness of a bifurcated application for conditional use approval.

3:1-2. Failure to Decide within Prescribed Time. Failure of the Board to render a decision within the period prescribed or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant but only if the Board intentionally fails to render the decision within said time periods and acts in bad faith.

3:1-3. Form of Decision – Written Resolution. All decisions of the Board shall be in the form of a written resolution containing findings and conclusions and conditions, which resolution shall be adopted either on the date of the meeting at which the Board grants or denies approval, or, within 45 days of such meeting by the adoption of a resolution of memorialization setting forth the decision, findings, conclusions and conditions of the Board. An action resulting from failure of a motion to approve an application shall likewise be memorialized by resolution regardless of the time at which such action occurs within the time period for rendering a decision. Whenever a resolution of memorialization is adopted in accordance with the provisions of N.J.S.A. 40:55D-10, the date of such adoption shall constitute the date of the decision for purposes of the mailings, filings and publications required by statute. An original signed copy of the Board's resolution shall be furnished to the applicant or his attorney within 10 days from the date of adoption thereof (unless there are inadequate funds in the applicant's escrow account in which case the resolution shall not be released to the applicant and his attorney until the escrow account is replenished to the amount required by ordinance). A copy of the resolution shall be made available to any member of the public who has requested it and has paid the fee established therefor.

3:1-4. Effect of Resolution. Once the Board votes to adopt a resolution, the findings of fact, conclusions of law and conditions contained in the resolution become the findings, conclusions and conditions of the Board in the matter. 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 resolution (of memorialization or otherwise) is adopted. The resolution shall be drafted in such a way as to give the greatest possible support to the decision that has been made by the Board. Once the resolution has been voted on favorably by the requisite number of Board members and is signed by the Board Secretary, it shall become the resolution of the decision of the Board regardless of who drafted it.

3:1-5. Nature of Resolution Drafts. A draft or proposed form of resolution, regardless of who prepared it (i.e., a Board member or the Board Attorney), which is transmitted to individual Board members, the Board Secretary and/or Board experts for review, comment and/or consideration shall be considered a privileged document and shall not become a matter of public record unless the Board attorney or Board Secretary intentionally transmits the draft or proposed form of resolution to a third party. Only the form of resolution that is ultimately adopted by the Board shall be a matter of public record unless the Board attorney or Board Secretary intentionally transmits a draft or proposed form of resolution to a third party and, in such case, only the draft or proposed form of resolution that is so transmitted shall be a matter of public record. Only the form of the resolution that has been voted on favorably by the requisite number of Board members and signed by the Board Secretary shall constitute the decision of the Board.

3:1-6. Relief Granted. With respect to relief requested by an applicant, the Board may grant or deny such relief depending upon whether the applicant has proved entitlement to the relief. Additionally, however, the Board may also grant relief which may be different in kind or degree from that requested in the application, again depending upon the applicant's proofs, as the Board shall have the discretionary power to grant relief other than the precise relief or portion thereof sought by the applicant.

3:1-7. Retention of Jurisdiction. The Board may, when deemed necessary to satisfy a Township ordinance requirement and/or to satisfy the positive and/or negative criteria when dealing with relief involving a variance or exception, specifically provide in its resolution for the retention of jurisdiction over the matter or certain aspects of the matter for a reasonable time, as therein specified, for the purposes of enabling it to vary the terms of any condition therein imposed, or for the purpose of

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imposing additional conditions deemed necessary to satisfy the ordinance requirement and/or positive and/or negative criteria, as the case may be, in the light of then existing circumstances.

3:1-8. Publishing Notice; Service of Copy of Resolutions. The Board Secretary shall cause notice of the Board's decisions on applications to be published once in an official newspaper of the Township in accordance with N.J.S.A. 40:55D-10i and shall also cause to be served on the applicant and/or his/her/its attorney, and to all who have requested copies, signed copies of the resolution that the Board has adopted deciding the application in accordance with N.J.S.A. 40:55D-10h.

Rule 3:2. Rehearing / Reconsideration.

3:2-1. Rehearing / Reconsideration. An applicant or other interested party may, within 20 days after the publication of notice of the decision, move the Board for a rehearing / reconsideration of the matter or a portion thereof 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 Board grants the motion, 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 grant a rehearing / reconsideration on its own motion when unusual circumstances so require in the interest of justice.

PART IV. AVAILABILITY AND ELIGIBILITY OF MEMBERS.

Rule 4:1. Alternate Members.

4:1-1. Designation. There shall be up to four (4) alternate members of the Board as determined and appointed by the Township who shall be designated by the appointing authority as "Alternate No. 1," "Alternate No. 2," "Alternate No. 3," and "Alternate No. 4," respectively, and each alternate shall retain said designation during the term for which he 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 the final disposition of said matter by the Board.

4:1-4. Alternates to Vote. In the event that a choice must be made as to which alternate member is to vote, the order of alternate members that can vote shall be: Alternate No. 1, first; Alternate No. 2, second; Alternate No. 3, third; and Alternate No. 4, fourth.

4:1-5. Alternate Not to Serve at Adjourned or Continued Hearing Unless Present at Prior Hearings and/or Reviewed Transcript or Recording. When a regular member has been present and has participated in the first hearing session on any matter, no alternate member shall be designated to serve during the absence of such member during any adjourned or continued hearing sessions on the same matter unless said alternate member was present at such first hearing session or any prior adjourned or continued hearing sessions on such matter or, if absent, said alternate member certifies in writing to the Board that he or she has read a transcript or listened to a recording of the entire hearing session(s) for which he or 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.

4:1-6. 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 and no alternate member shall serve if the requisite number of members are present at the hearing session at which the vote on the application takes place and all such members have attended all hearing sessions or certified in writing to the Board that they have read transcript(s) or listened to recording(s) of all hearing sessions at which they were absent.

4:1-7. Participation in Discussions; Voting. Alternate members may participate in discussions of the proceedings, but may not vote except in the absence or disqualification of a regular member, nor shall any vote be delayed in order that a regular member may vote instead of an alternate member.

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 are prohibited from acting on a matter due to the member's personal or financial interests therein, whether direct or indirect, or other applicable law, Class IV members of the Planning Board shall be called upon to serve, for that matter only, as temporary members of the Board in order of seniority of continuous service to the Planning Board 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 Class IV members of equal seniority, the Chair of the Planning Board 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.

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 by a member of the public to show that they had the likely capacity to tempt the Board member to depart from his or her 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.A. 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. 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 beneficially owns more than 10% of the outstanding shares thereof or has other financial interest;
- (d) where the member has any other personal or pecuniary interest in the proceeding.

4:3-4 Removal From Panel. Any member having deemed himself or herself disqualified in any matter or having deemed by a majority vote of the Board as having a disqualifying interest shall not sit with the Board and shall not participate in the consideration of such matter. The nature of any such

disqualification shall be disclosed at the time of recusal unless doing so would constitute an unwarranted invasion of individual privacy or could adversely 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. While not required, any member subject to disqualification is encouraged to leave the hearing room during the pendency of the application and, if the member wishes to exercise his or her right to appear as an interested party, while not required, the member is encouraged to engage counsel and appear through such counsel.

4:3-5. Disclosure of Possible Conflicts; Waiver by Parties. Where conflict is only possible and not actual by virtue of involving, either directly or indirectly, any personal or financial interest, such conflict need not necessarily result in 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 such case. Whenever the Board is called upon to determine that a potential conflict should not result in disqualification, 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 or any other Board member 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.

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 applicable local ordinance 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.

Rule 5:2. Payment of Taxes.

5:2-1. Proof of Payment; Alternative Agreement. The applicant, at the time of filing the application for 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, 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

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Board may suspend post-approval execution and other action until such time as taxes and assessments are paid, subject to applicable law and ordinance.

Rule 5:3. Purpose and Source of Authority.

5:3-1. Purpose and Source of Authority of Rules and Regulations. The within rules and regulations are supplementary to the provisions of the Township ordinances as they may relate to the Board and are adopted pursuant to N.J.S.A. 40:55D-8a, which provides that the Board shall adopt and may amend reasonable rules and regulations not inconsistent with the MLUL or with any applicable ordinances for the administration or its functions, powers and duties and N.J.S.A. 40:55D-10b, which provides that the Board shall make rules governing hearings.

Rule 5:4. Amendments.

5:4-1. Amendments to the Rules. The Board may, from time to time, , 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.

Rule 5:5. Relaxation of Rules.

5:5-1. Where Rules May Be Relaxed. For good cause shown, or where the strict application of any rule would cause injustice, the Board may relax the requirement of any rule, except where the provision(s) of the rule at issue are non-waivable statutory requirements.

Rule 5:6. Objections.

5:6-1. Objections to Rule Violations. Anyone and/or any entity who/which objects to any action taken and/or not taken by the Board on the basis of violation of any part or parts of these rules and regulations must present the objection(s) to the Board prior to the Board taking action on the application. Failure to present the objection(s) prior to the Board taking action on the application shall be deemed a waiver of said objection(s).

Rule 5:7. Severability.

5:7-1. Severability. The various parts, sections, sentences and clauses of these rules and regulations are hereby declared to be severable. If any part, section, sentences and/or clause is adjudged to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder of the rules and regulations shall not be affected thereby and shall remain in full force and effect.