

CITY OF OCEAN CITY PLANNING BOARD RULES AND REGULATIONS

Adopted: 4/2/25
Planning Board of Ocean City

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PART I. ORGANIZATION AND ADMINISTRATION

Rule 1:1 Annual Organization; Elections; Meetings

1:1-1. Organization Meeting

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

1:1-2. Election of Officers

At the organization meeting, the Board shall elect from its Class IV members a Chair and Vice-Chair. The Board shall also elect a Secretary from the administrative staff of the City.

1:1-3. Board Attorney

The Board shall annually appoint an Attorney-At-Law of the State of New Jersey having recognized competence in the law of local government, land use and zoning. The Board Attorney shall be compensated pursuant to a professional services agreement and shall be legal advisor and representative of the Planning Board. The Board Attorney shall attend the regular meetings of the Board and any additional meeting authorized by the Chair. The Attorney shall participate in the review of applications for development and administrative affairs as authorized by the Board. The Attorney shall be responsible for advising the Board on all legal matters, preparing resolutions and prosecuting and defending litigation and appeals on behalf of the Board.

1:1-4. Board Engineer

The Board shall appoint a licensed professional engineer in the State of New Jersey who shall review and report on the applications and the other matters pending before the Board at the direction of the Board. The Board Engineer shall attend the meetings of the Board unless otherwise instructed.

1:1-5. Board Planner

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

1:1-6. Other Consultants

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

Rule 1:2. Elections to Office and Duties

1:2-1. Vote to Elect; Term

A candidate receiving the majority vote of the entire membership of the Planning Board shall be deemed elected to the office for which the vote was taken and shall serve for one year or until she/she is re-elected or his/her successor shall take office. In the event that an office shall become vacant because of resignation, death or other reason or by the operation of law, the office shall be filled as soon as possible by the same election procedure and the term of such office shall be the unexpired term of the predecessor.

1:2-2. Chair

The Chair shall preside at all meetings and hearings of the Board, decide all points of order and matters of procedure governing said meetings or hearings, and shall perform all the duties normally appertaining to his/her office, as required by law, ordinance, these rules or prevailing parliamentary practice. This shall include the prerogative to relax or modify any portions of sections 1:3-5 or 2:2-3 of these rules and regulations.

1:2-3. Vice-Chair

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

1:2-4. Secretary

The Secretary shall generally perform the secretarial work for the Board, including, but not limited to the following:

- (a) make a verbatim record of the proceedings of each hearing of the Board in accordance with these rules and keep minutes of the proceedings of each meeting (including work sessions) held by the Board and enter therein such resolutions and orders as are adopted by the Board;
- (b) sign the plans and resolutions;
- (c) perform such other duties as normally appertain to the office of the Secretary of the Planning Board;

- (d) cause to be mailed to, otherwise delivered or made available to each member of the Board and the professional consultants to the Board, true copies of the minutes and all other documents and materials pertaining to the business of the Board;
- (e) conduct all official correspondence, compile all required records, keep and maintain all necessary files and indexes with respect to the operation of the Board, provide all notices of meetings required to be given pursuant to the Open Public Meetings Act, the Municipal Land Use Law or any other applicable law or ordinance;
- (f) attend all meetings of the Board take and have custody of all records, documents, maps, plans, evidence, and provide for the care and custody of items for which no other provision is made by the statute or these rules; take or direct the taking of roll call votes, and insure the recordation of affirmative and negative votes as well as abstentions.

Rule 1:3. Meetings

1:3-1. Regular Meetings

Regular meeting of the Planning Board shall be held at the municipal building at 6:00 p.m. on the first and second Wednesdays of each month or at such other meetings scheduled at the annual reorganization meeting. If the regular meeting falls on a legal holiday, such meetings shall be held on such other day as the Board may select. Whenever there are no matters to be considered at any regular meeting other than the organization meeting, the Chair may dispense with such meeting by directing the Secretary to provide notice of cancellation to each member of the Board by reasonable means and as soon as possible in advance if the time set for such meeting. In addition, the Secretary will give notice of the cancellation in accordance with the Open Public Meetings Act or will otherwise post cancellation for the convenience and information of the public.

1:3-2. Special Meetings

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

1:3-3. Quorum

At all meetings of the Board, a quorum to conduct business if the Board shall consist of five (5) members who do not have a conflict of interest. In the event that a decision is rendered on an application, then a voting quorum of five (5) members who are qualified to vote is required. A member shall be qualified to vote on an application for development if the member attended all meetings or certifies in writing that he/she listened to the tapes or read a transcript of the meeting(s). In the absence of a quorum, the members present may convene a meeting only for the purpose of adjourning the same to another date. No application may be decided without a qualified voting quorum of the Board for the particular at which the application is to be decided.

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.

1:3-5. Order of Business

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

- (a) call to order;
- (b) statement of compliance with Open Public Meetings Act;
- (c) roll call;
- (d) approval of minutes of previous meetings;
- (e) motions for adjournments of any scheduled cases and any other motions;
- (f) adoption of resolutions;
- (g) old business (continued hearings);
- (h) new business (new hearings);
- (i) other discussion;
- (j) closed sessions;
- (k) adjournment.

1:3-6. Time Limitations

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

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.

1:3-8 Videorecording, photographing, recording

Members of the public have a general right to videotape portions of an open public meeting, excluding closed or executive sessions. To minimize the possibility to disrupting the public meeting, any member of the public (a "citizen") who wishes to videotape, photograph, or record portions or in its entirety must do so in accordance with the following guidelines:

- (a) The citizen is encouraged to provide the Board Secretary or such designees, at least 24 hours prior to hearing, of their intention to exercise their right to videotape or photograph the meeting.
- (b) The citizen must complete their setup of equipment no less than 10 minutes prior to the official start of the hearing. As to location, the same recording equipment may only be setup by the citizen in the rear of the meeting room and as to not block or impede any form of egress, the aisle(s) and/or row(s) and allow for free flow for all other public that may be in attendance.
- (c) The recording equipment must be battery operated, compact, quiet and generally unobtrusive. No more than one videotape recorder or still camera setup per citizen. No added lighting may be used. No citizen is permitted to use any equipment that makes any beeping sounds or other noises or flashes of light. Should beeping sounds, other sounds or flashes of light emanate from the equipment at any time during the public meeting the citizen shall be required to cease videotaping, recording, and/or taking photographs immediately.
- (d) The citizen may not disrupt the public meeting with the equipment. The citizen shall not set up or use videotape or recording equipment in such a way to block or obstruct view of other members of the public. The citizen may not continually exit and re-enter the meeting room or continuously move around within the room during the meeting. The citizen must remain within close proximity of the recording equipment at all times except if the citizen is making a comment during the public comment portion of the hearing. The citizen may not "narrate" the proceeding or speak into any videotape recorder or microphone. The citizen may not engage in any verbal conversation or discourse or comment unless the citizen is making a formal comment in their turn during any public comment portion of the public meeting.
- (e) If the citizen chooses to cease video/audio recording or taking photographs at any time during the public meeting they may do so provided the equipment shall not be removed and/or disassembled, except for hand held equipment, until there is a break of at least five minutes or until the public meeting has concluded.
- (f) The chairperson or such designee may direct that the videotaping, photography, or audio recording cease or be brought into compliance with the regulations at any time they determine the equipment or operator is distracting or disrupting the proceedings or is otherwise in violation of the regulations set forth herein.
- (g) The videotape recording(s) or audio recording taken by any member of the public shall not be represented as an official transcript on any manner and/or for any purpose. The video and/or audio recording taken by the citizen does not constitute an official recording of the hearing/meeting.

PART II. PROCEDURES

2:1. Applications and Hearings

2:1-1. Administration of Applications; Completeness

Applications for development shall be considered by the Board in accordance with the Zoning and Land Development Ordinance, commonly referred to as Volume II of the Revised General Ordinances of the City of Ocean City. Upon receipt of an application by the Board Secretary, the application shall be assigned a number which shall thereafter appear on all subsequent papers filed in the case as well as the Block and Lot number. The original copy of the application, together with a copy of all other documents filed with the application, shall be filed in the Planning Office and shall be kept in accordance with the retention rules of the State of New Jersey.

2:1-2. Completeness Review

- (a) An application for development shall not be accepted for filing unless accompanied by all required application(s) and fee(s).
- (b) When an application has been filed, the Board Secretary shall review the application for administrative completeness items, such as corporate disclosure statements. The Board Secretary shall immediately forward an application to the engineers, planner and attorney for completeness review under their respective checklists and advise them of a due date for the completeness reports.
- (c) The engineer, planner and attorney shall review the application for completeness and shall prepare reports as to whether the application is complete or incomplete. If incomplete, the report shall state which information indicated on the checklist is lacking. These reports shall be submitted to the Board Secretary for forwarding to the applicant by the due date.
- (d) Within 45 days of submission of the application, the Board Secretary shall notify the applicant in writing that the application is complete or that there are deficiencies in meeting the checklist requirements.
- (e) If the application is declared incomplete, the applicant may submit the missing information or request submission waivers.

2:1-3. Amendment to the Application

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

1. Any change or revision which results in an increase or decrease in a bulk dimension or design standard dimension by more than five percent (5%);
2. Any change or revision in use;
3. Any revision in site access, road layout, division or subdivision of property or phasing;
4. Any change in the method of wastewater disposal;
5. Tree removal; Any changes which, cumulatively, require a re-evaluation of the plans by any of the Board's professional consultants.

2:1-4. Scheduling; Transmittals

Upon a determination of completeness in accordance with these rules and regulations, the application shall be assigned a hearing date. Prior to the meeting at which the application is to be heard, the Board Secretary shall forward copies of all application materials and documents to the Board members and professional staff. Applications shall be scheduled so as to comply with statutory and ordinance limitations in time. Scheduling of matters shall be at the discretion of the Chair or as authorized by the Chair.

2:1-5. Filing of Maps and Documents

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

2:1-6. Adjournments

Any applicant may request an adjournment from being heard at a specified hearing by contacting the Board Secretary in writing in sufficient time to permit a notice to be prepared and posted at the meeting place of such request. Said request must be acknowledged by the Board Secretary to be deemed received. The request must include a waiver of the statutory time period for a decision by the Board. AN announcement of said adjournment will be made at the specified meeting. If no date is certain in the request or if the new meeting date is more than two regular meetings hence, new notice will be required.

Rule 2:2. Hearing Procedure

2:2-1. Appearance by Parties

At the time of the hearing in an application, the applicant, or in the case of an appearance by a non-applicant party, such party shall appear in person, or such person may appear by Attorney-At-Law admitted to practice in the State of New Jersey. No corporation shall be heard except through counsel.

2:2-2. Testimony Under Oath

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

2:2-3. Order of Presentation

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

- (a) At the beginning of each hearing, the Chair or Board Attorney will summarize the procedures to be followed for the hearing.
- (b) The Board Attorney will make a statement of jurisdiction and acceptance of the notices.
- (c) The applicant shall present his/her case.
- (d) The Planning Board professionals shall present an analysis of the application based upon their reports to the Board.
- (e) The applicant will have the opportunity to respond to any issues.
- (f) The public portion of the meeting shall commence with the opportunity to address any representative of the applicant of any Board member through the Chair.
- (g) After all evidence has been presented, the Chair shall call for a motion to close the public portion of the hearing.
- (h) The Board shall then begin its deliberation on the application.
- (i) The Board may reopen the public hearing to permit Board members to question the applicant and professional staff in order to resolve any open items regarding conditions or revisions to the plans.
- (j) The Board Attorney and/or other Board professionals shall summarize the issues.
- (k) The Chair shall call for a motion on the application. After the motion has been seconded, there may be additional discussion and a roll call vote.
- (l) The following temporal guidelines shall be followed as closely as possible but may be suspended by a majority vote of the Board:
 - (1) Applicant's witnesses- fifteen (15) minutes each;
 - (2) Total applicant presentation- one (1) hour;
 - (3) Expert witnesses in opposition- fifteen (15) minutes each;
 - (4) Public comments- five (5) minutes each (all members of the public shall be afforded an opportunity to comment prior to anyone being given an additional opportunity).

2:2-4. Testimony from the Board's Expert Witness(es) and Consultant(s)

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

2:2-5. Interaction with Interested Parties

Board Members recognize that their position on the Board is quasi-judicial in nature. Therefore, Board members will not have ex parte communications with applicants and interested members of the public. In the event that ex parte communications are unavoidable, Board members shall relay any information which they have obtained to the entire Board at a regular meeting of the Board.

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

2:2-6. Continuances

All cases may be continued to another date certain, as scheduled by the Board. The Chair shall announce to all those present the date, time and place to which the hearing on the matter is continued. Moreover, if the matter is continued to a special meeting not on the regular Board calendar, notice required under the Open Public Meetings Act shall be given. The Board reserves the right to continue a hearing on its own motion for the purposes of further consideration, subject to limitations of time as provided in the MLUL.

2:2-7. Letters and Petitions in Objection

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

Rule 2:3. Voting

2:3-1. Voting Procedure

All motions shall require a second. The Chair shall allow discussion on any motion made and duly seconded. All votes on applications shall be taken by roll call and the vote and name of the member casting the vote shall be recorded in the minutes.

2:3-2. Abstentions

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

2:3-3. 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 the hearing is conducted notwithstanding the members prior absence provided that such member certifies in writing to the Board that he/she has read the transcript or listened to a recording of the entire session for which he/she was absent. This rule shall not be construed as authorizing any hearing to be held whenever less than a voting quorum of the Board is present.

Rule 2:4. Other Hearing Requirements and Procedures

2:4-1. Record of the Proceedings

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

2:4-2. Transcripts

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

2:4-3. Inability to Make Verbatim Records

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

2:4-4. Dismissal Without Prejudice

The Board, on its own motion may dismiss any action without prejudice if neither the applicant nor anyone on his/her behalf appears at the time set for the hearing of said application. Further, the Board, on its own motion, may dismiss, without prejudice, any application for failure to comply with these rules. In addition, if the application does not consent to a continuance to allow testimony to be completed, the Board may dismiss the application without prejudice. Any applicant may, at any time before commencement of the hearing, voluntarily withdraw his/her application, in which case, the application shall be dismissed without prejudice. The Board reserves the powers to impose reasonable terms and conditions on the dismissal of an application.

2:4-5. Amended Applications

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

2:4-6. Conditions

The Board shall have plenary power and discretion to impose conditions. The conditions shall be specific to the development and predominantly aimed at mitigating specific concerns arising in connection with the proposed project and assuring compliance with the Land Use and Zoning Ordinance. Such conditions shall not be deemed exclusive and the applicant shall be subject to terms and conditions of approval that are expressed and implied at law, including those imposed pursuant to ordinances applied uniformly to every development. The Board shall have the power to require that conditions be fulfilled within a stated period of time.

2:4-7. Final Approval Requirements

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

1. All plan revisions have been reviewed and approved by the Board professionals and incorporated in the final plans;
2. All governmental approvals shall be received and the plans revised to incorporate any revisions as may be required by the other governmental agencies;
3. All requirements of the Land Use and Zoning Ordinance are satisfied.

PART III. TAKING ACTION ON APPLICATIONS

Rule 3:1 Decisions

3:1-1. Decision Based on Evidence

Each case shall be decided strictly on the basis of the facts adduced at the hearing viewed in light of the statutory and ordinance requirements. The Board is a quasi-judicial body whose function is to apply the facts adduced at the hearing to the legal requirements of the statute and ordinance and to decide whether the requested relief can be legally granted or not. The number of opponents or objectors present, or even the fact that objections are heard, shall be only of secondary importance. The facts adduced at the hearing, all testimony and all evidence on which the Board makes its decision must be part of the record and the Board's decision must include findings of facts from the record on which it made its decision and conclusions on the points of laws raised. The Board's decision must be made at a public meeting and the Board's vote on the making of the decision and the adoption of its resolution must be taken at a public meeting.

3:1-2. Alternative Relief

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

3:1-3. Reservation of Decision

The Board may decide to reserve decision on a matter after the hearing is completed and may its decision at the next meeting provided that the period within which to decide the application will not expire prior to the next succeeding meeting or that an extension of time is granted by the applicant. The Board may also authorize the Board Attorney to prepare a resolution for consideration at the next meeting. The making of a motion to have a resolution prepared for consideration shall not be construed as the making of a decision, but shall be only an indication of an intention to act upon an application in a certain manner. The Board shall not be bound by such a measure.

3:1-4. Memorializing Resolution

After a decision has been reached by the Board as to whether the relief requested by the applicant is to be granted or denied and the conditions have been stated, the Board's findings of fact and conclusions of law must be embodied in the form of a written resolution. When the Board votes to adopt a resolution, the findings and conclusions set forth in the resolution become the findings and conclusions of the Board.

The Board may, when it is deemed necessary to protect the public interest, specifically provide in its resolution for the retention of jurisdiction over the matter before the Board for a reasonable time. Such time may be specifically set forth or may be conditioned on a certain event. The purpose of such retention of jurisdiction shall be to enable the Board without limitation to vary the terms of any conditions therein imposed to impose additional conditions, in the public interest, in light of the circumstances; or to permit the Board to finalize its action with respect to its other powers, as granted to the Board by statute and/or ordinance.

PART IV. AVAILABILITY AND ELIGIBILITY OF MEMBERS

4:1. Rule of Necessity

4:1-1. Appointment of Additional Members

If the Board lacks a quorum because any of its regular or alternate members is prohibited from acting on a matter due to the member's personal or financial interest therein as regulated under Rule 4:2 or prevailing law, regular members of the Board of Adjustment shall be called upon to serve, for that matter only, as temporary members of the Planning Board in order of seniority of continuance service to the Board of Adjustment until there are the minimum number of members necessary to constitute a quorum to act upon the matter without any personal or financial interest therein, whether direct

or indirect. If a choice has to be made between regular members of equal seniority the Chair of the Board of Adjustment shall make the choice. This procedure shall be invoked only when the direct and proximate cause of a lack of quorum is the disqualification and not the mere absence of one or more members of the Board.

Rule 4:2. Disqualification for Interest

4:2-1. Disqualification Generally

No member of the Board shall be permitted to act on any matter in which he/she has either directly or indirectly, any personal or financial interest. No member if 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 reasonable be interpreted to show that they had the likely capacity to tempt the Board member to depart from his/her own sworn public duty.

4:2-2. Examples of Disqualification for Interest

Any member of the Board shall disqualify himself/herself from sitting on the hearing of any matter in which he/she has a disqualifying interest, such as, but not limited to , the following situations:

- (a) where the member owns property located within 200 feet of the property affects 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/her attorney is the employer, employee or partner of the members, or is a corporation in which the member is a shareholder or has other financial interest;
- (d) where the member has any other personal or pecuniary interest in the proceeding.

4:2-3. Removal from the panel

Any member having been deemed or having deemed themselves disqualified in any matter shall not sit with the Board to participate in the consideration of such matter. The nature of any disqualification shall be disclosed at the time of recusal unless doing so would constitute an unwarranted invasion of individual privacy or could adversely affect the public interest. Such member may be heard at the appropriate time as an interested party or applicant, but whenever such member appears before the Board on his/her own behalf or by legal representative, it shall be disclosed that the member's comments are made solely by such member to avoid the possible influence of fellow Board members and the appearance of impropriety from the point of view of the general public.

4:2-4. Disclosure of Possible Conflicts; Waiver by Parties

Where the conflict is only possible and not actual by virtue of involving, either directly or indirectly any personal or financial interest, such conflict need not necessarily result in a disqualification but should be disclosed. For purposes of illustration, prior dealings and friendships should be disclosed so that disqualification can be considered on an informed basis. Disclosure of interest is necessary in order to judge whether a particular interest is sufficient to disqualify or is remote and speculative. Concern for impartial exercise of authority, in appearance as well as in fact, requires that where a member if the Board must disqualify themselves in a matter because of conflict of interest, the disqualification is absolute and cannot be waived. However, if a conflict is only potential and is disclosed, the Board may reasonably find that a particular interest is too remote or speculative to cause a disqualification. The Board Attorney shall be consulted in each case. Whenever the Board is called upon to waive a potential conflict, the affected Board member shall disclose the nature of the relationship and shall satisfy the Board that the relationship would not in any way influence his/her decision.

4:2-5. Remedy

When a member fails to disqualify themselves where the circumstances require disqualification, any interested party may move the Board for an order or determination that such member is or was disqualified to act and may, even after decision, seek the vacation of the decision and a rehearing or other appropriate relief. The motion shall contain a statement of the facts upon which it is based and the Board may thereupon hold a hearing on the matter or take whatever action it may deem appropriate.

4:2-6. Disclosure of Reason for Disqualification

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

Rule 4:3 Attendance

4:3-1. Determination of Vacancy for Excessive Absences

The position of any member shall be deemed vacant whenever the member, without being excused by a majority of the authorized members of the Board, fails to attends and participate at meetings of the Board for a period of four (4) consecutive meetings or 40% of the regular meetings in a calendar year. At the conclusion of such period, the Board shall notify the appointing authority in writing of such determination and provide further that the Board may refuse to excuse

those absences which are not legitimate in nature. In the event of such notice, the approving authority shall forthwith fill the vacancy of the unexpired term in a manner prescribed by law. This law shall be automatically amended by operation of law in the event that the above standards are made more strict pursuant to amendment henceforth of N.J.S.A. 40A:9-12.1 or other relevant prevailing enactment, in which event the language of this rule shall be deemed substituted by the language of such enactment.

PART V. MISCELLANEOUS MATTERS

Rule 5:1. Fees

5:1-1. Application Fees

No application shall be considered which is not accompanied by an application fee in accordance with the schedule of administrative fees for development applications, as amended and in effect at the time application is made.

5:1-2. Escrow Deposits for Professional Services

No application shall be considered if an applicant has failed to comply with the Zoning and Land Development 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. The applicant and the Board shall be bound by the provisions of N.J.S.A. 40:55D-53.2 and/or prevailing ordinance requirements as to their respective interests and duties.

5:1-3. Special Meeting Costs

In the event that a special meeting is scheduled and convened for the benefit of an applicant pursuant to Rule 1:3-2, any special or uncustomary disbursements, expenses, fees or costs incurred by the Board and the City for the rendering of special services, arrangements or accommodations for the benefit of the applicant shall be reimbursed entirely by the applicant. The Board may require a reasonable antecedent escrow deposit to protect against an applicant's failure to comply with this section.

Rule 5:2. Payment of Taxes

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

The applicant, as a completeness requirement at the time of filing the application for development, shall file with the Board a certification of the Tax Collector that all municipal taxes and/or assessments owed by the applicant and/or property owner have been paid up to date.

Rule 5:3. Completeness

5:3-1. Standing Committees

There shall be the following subcommittee of the Board:

- (a) Residential Subcommittee;
- (b) Commercial Subcommittee;
- (c) Site Plan Review Subcommittee

5:3-2. Committee Composition

The standing committees shall comprise not less than three (3) nor more than four (4) members of the Board. The Chair shall annually appoint members of each committee for a one (1) year term. Vacancies shall be filled at or by the next regular session of the Board. Not more than one alternate member may serve on any standing committee.

5:3-3. Special Committees

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

Rule 5:4. Amendments

5:4-1. Amendments to the Rules

The Planning Board may, from time to time, by a 2/3 margin, amend any part or parts of these rules and regulations at any regular meeting, provided notice of the consideration of any such amendment has been given in writing to each member of the Board at least three (3) days prior to such meeting. In no case, however, shall any rule, as amended, be applicable to any action commenced prior to the adoption of such amendment, where the application thereof would result in surprise, hardship or injustice to the applicant or any interest parties.