

BOROUGH OF FORT LEE, NEW JERSEY

RULES OF THE PLANNING BOARD

Preamble: The purpose, work, formalities and requirements imposed upon this Board arise from the Municipal Land Use Law of the State of New Jersey and, where appropriate, from its predecessors and common law. Additionally, the Board is governed by the Ordinances of the Borough of Fort Lee, including its land use ordinance/ regulations, as amended, Chapter 410, et seq.

The following Rules of the Planning Board are intended to supplement - but not supplant or otherwise contradict - State Law and Fort Lee's Ordinances. Wherever a conflict occurs between the following Rules and State Law/Borough Ordinance, the latter shall control.

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PART I RULES GOVERNING INTERNAL AFFAIRS

Rule 1:1 Officers, Employees, Annual Meeting

1:1-1 Annual Meeting; Election of Officers. At the Board's first meeting following January 1st of each year, the Board shall elect from its members a chairperson and vice-chairperson. These officers shall serve for the calendar year and until their successors have been duly elected.

1:1-2 Appointment of Secretary. At the first meeting of any given year, the Board shall also appoint a secretary. The secretary shall serve for the calendar year and until a successor has been appointed.

1:1-3 Appointment of Board Attorney. At the first meeting, the Board shall also appoint a member of the New Jersey bar, who is familiar with zoning and planning matters, as attorney for the Board. The attorney shall serve for the calendar year and until a successor has been appointed.

1:1-4 Appointment of Planner. The Board may also appoint a Planner. The Planner shall serve for the calendar year and until successor has been appointed.

1:1-5 Appointment of Engineer. The Board may also appoint an Engineer. The Engineer shall serve for the calendar year and until a successor has been appointed.

Rule 1:2 Duties

1:2-1 Chairperson. The chairperson 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 perform all the duties normally appertaining to the office, as required by law, ordinance, these rules or the Board.

1:2-2 Vice-Chairperson. The vice-chairperson shall preside at all Board meetings and hearings in the absence of or disqualification of the chairperson.

1:2-3 Secretary. The secretary, under the direction of the chair, shall generally perform the secretarial work of the Board, including, but not limited to the following:

(a) Conduct all official correspondence, compile the required records, keep and maintain, in order, the necessary files and indices with respect to the operation of the Board, give all notices of meetings required to be given by the Open Public Meetings Act, the Municipal Land Use Law or any other applicable law or ordinance.

(b) Attend all meetings of the Board, have custody and take care of all records, documents, maps, plans and papers of the Board, and provide for the care and custody of items for which no other provision is made by statute; take roll call votes, and note the ye or any of each member as they vote.

(c) Make or provide for a transcription record of the proceedings of each hearing of the Board in accordance with these rules and keep minutes of the proceedings of each meeting and hearing held by the Board.

(d) Cause to be mailed to each member of the Board, at their residence address, and to the Board's attorney, a true copy of the minutes of meetings.

(e) Perform such other duties as usually appertain to this office.

Rule 1:3 Meetings

1:3-1 Regular Meetings. The work sessions and regular meetings of the Board shall be held in the Council Chambers of the Municipal Building at 6:00 p.m. and 7:30 p.m., on Mondays, twice per month (except on holidays; during July and August, meetings are held once per month). The first regular meeting after January 1st of each year shall constitute the annual organizational meeting of the Board. The time and place of all meetings may be changed, if necessary by direction of the Chair, or by vote of the Board subject to all other applicable laws of the State with regard to the Open Public Meetings Act requirements.

1:3-2 Special Meetings. Special meetings, as permitted by law, may be called by the chair or, in his/her absence, by the vice-chairperson, at any time or upon the written request of two members, provided that notice thereof be given to the public as required by law.

1:3-3 Quorum. At all meetings of the Board, a quorum for the conducting of any business shall consist of five (5) members. In the absence of a quorum, the members present may adjourn the meeting, and the hearing on any motion or petition, to another date.

1:3-4 Voting. When voting on any matters, except on a motion for adjournment where a quorum is not present, the following number of votes are required, so long as a quorum is present:

(a) in all matters, any action may be authorized by a majority of the members present at the meeting.

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

1:3-5 Absent Members. When any hearing before the Board shall carry over one or more meetings, a member of the Board who was absent for one or more of the meetings, shall be eligible to vote on the matter upon which the hearing is conducted, notwithstanding their absence, provided that said Board member certifies, in writing, to the Board, that they have read the transcript or listened to a recording of the entire meeting for which they were absent. This rule shall not be construed as authorizing any hearing to be held whenever less than a quorum of the Board is present.

1:3-6 Order of Business. The order of business of all regular meetings of the Board shall be as follows:

- (a) Call to order
- (b) Salute to the Flag.
- (c) Roll call
- (d) Statement of compliance with Open Public Meeting Act
- (e) Approval of minutes of previous meetings
- (f) Old Business
 - 1. Cases which were held and decisions need to be rendered.
 - 2. Memorialization of resolutions
- (g) New Business
 - 1. Hearing of new cases
- (h) Action on any other business
- (i) Communications
- (j) Comments and Adjournment

1:3-7 Open Meetings. All meetings, hearings and any action by the Board, except executive sessions conducted pursuant to statute, shall be open to the public.

PART II APPLICATION AND HEARINGS

Rule 2:1 Commencement of Action

2:1-1 Filing. An application for subdivision approval, site plan review, conditional use approval or any other relief over which the Planning Board has jurisdiction, shall be commenced by filing an original application, filed in accordance with the check-list requirements. These documents shall be filed with the Administrative Officer.

2:1-2 Filing Requirements: Informal Review. (a) The applicant shall file the application with the Administrative Officer in accordance with the "Subdivision Ordinance," "Site Plan Ordinance," as may be appropriate, and in accordance with the check-list requirements of the Zoning Ordinance. The failure of the applicant to follow the "instructions" and the check-list requirements of the appropriate ordinance will result in the application being deemed incomplete by the Administrative Officer. All

statutory time periods for action by the Planning Board commence to run only upon the filing of a complete application as required by the appropriate ordinances. Application forms shall be provided by the Administrative Officer and shall be completely filled in, and shall supply any and all other information and data that may be required for the relief sought by the applicant. A check-list of required submissions shall be furnished to each applicant. All applications shall be filed on the forms provided by the Administrative Officer.

(b) At the request of an applicant, the Planning Board shall grant an informal review of a conceptual plan for development. The applicant shall not be required to submit any fees for such an informal review and neither party shall be bound by the results of such a review.

2:1-3 Assignment of Numbers; Complete and Incomplete Applications.

Upon receipt of an application by the Administrative Officer, the application shall be assigned a number, which shall thereafter appear on all subsequent papers filed in the case. The Administrative Officer and the Engineer shall then review the application for its completeness, in accordance with the definition of a "complete application" as contained in N.J.S.A. 40:55D-10.3. In the event the application is found to be incomplete, the applicant shall be notified within forty-five (45) days of the filing of such application by the Administrative Officer. Such notification shall be in writing and shall set forth the reasons that the application has been found to be incomplete. Upon failure to notify the applicant in writing, that the application is incomplete, within the forty-five (45) day period, the application shall be deemed to be complete.

2:1-4 Assignment of Hearing Date; Notice. As soon as any complete application is filed with the Administrative Officer in accordance with the appropriate ordinances, the case shall be assigned a hearing date, with public notice, if required, in accordance with N.J.S.A. 40:55D-12 and the applicant shall be notified. The applicant shall be responsible to advertise and notify the property owners within 200' if notification is required. If public notice is given, as required by statute, and is deemed inadequate at the time of the hearing, the application will be considered incomplete, notwithstanding an earlier certification of completeness, until the applicant has given proper statutory notice.

Rule 2:2 Procedure for Hearing Applications

2:2-1 Appearance By Parties. At the time of the hearing on the application, the applicant, or any other party, shall appear in person; or such person may be represented by an attorney at law admitted to practice in the State of New Jersey. Every corporation shall be represented by an attorney at law admitted to the practice of law in the State of New Jersey.

2:2-2 Subdivision Committee Reports on Minor Subdivision Applications.

Since minor subdivision applications are exempted from the requirement of notice, as required by N.J.S.A. 40:55D-12, the Subdivision Committee, based on its review of the application, shall make its report to the Planning Board. If there are no questions from the Board, the Planning Board shall act on the report of the Committee. If there are any questions on the application by members of the Subdivision Committee or by other Planning Board members, the question shall be referred to the subdivider, attorney, or engineer, as the case may be. The subdivider need not be present but the

Planning Board shall have the right to require any applicant for a minor subdivision to appear in person before the Board if the Planning Board has any questions concerning this application.

2:2-3 Swearing of Persons Giving Testimony. All persons giving testimony at the hearing shall be sworn by the Board attorney before giving any testimony.

2:2-4 Order of Presentation. When a case is called by the Chair, the following shall be the order of presentation. **ALL TESTIMONY SHALL BE UNDER OATH.**

(a) The applicant shall present themselves, shall identify themselves and be sworn. The applicant shall then indicate the relief it is seeking from the Planning Board. If the applicant is represented by an attorney, the attorney shall identify him/herself and the law office, identify their client and then proceed with their opening remarks.

(b) The applicant or its attorney shall then present the testimony of its witnesses. Documentary evidence or exhibits upon which the applicant intends to rely in order to establish the right to the relief sought in the application shall be presented.

(c) The Chair shall direct the order of all questioning of witnesses including the cross-examination of any witness produced by the applicant. The Chair shall allow Board members and other interested parties to ask questions of the witnesses having testified, and may permit reasonable cross-examination by any attorney representing an objector. The order of testimony and the order of cross-examination shall be directed by the Chair. The public shall have the right to cross-examine any and all witnesses, and the applicant shall have the right to cross examine any witnesses in opposition to the application.

(d) Where a group of interested parties is represented by an attorney, the attorney shall present to the Chair a list of the persons represented, and such persons shall participate in the proceedings only through their attorney.

(e) At the time the applicant has submitted all of his evidence or support for his application, the attorney for any objector may then put in the documentary evidence upon which his client will rely in their objection. Each such witness may be subject to reasonable cross-examination by the applicant or its attorney, and the Chair shall allow any members of the public to ask questions of such witnesses.

(f) After all of the evidence has been presented to the Board in support of or in opposition to the relief sought by the applicant, the Chair shall then open the floor to the public (subject to the provisions of 2:2-4(d)), to allow any member of the public to make any statement relative to the application before the Board. Such member of the public shall identify themselves as to name and residence address.

Rebuttal testimony or evidence shall then be admitted in such order as the Chair shall designate.

(g) All witnesses may be cross-examined by any member of the Board, the Board attorney or any interested person.

(h) Any member of the Board may place evidence before the Board as to any relevant matter of which they have personal or official knowledge, for the purpose of amplifying the record, including facts ascertained from a viewing of the premises in question and the general area.

2:2-5 Closing of Hearing; Continuances. When the applicant and all interested persons have had a reasonable opportunity to be heard, the Chair shall determine if the hearing shall be closed. The applicant, or any other interested person, may request from the Board a continuance of the hearing for the purpose of presenting further relevant evidence. The Board, acting in its sound discretion, may either grant or deny that request. In cases where the Board feels that testimony or other evidence should be received in the public interest from any municipal, county, or state official or from any other persons in order to assist the Board in rendering a just decision, the Board may, on its own motion, continue the hearing to another day certain for such purposes. In the absence of any request to continue the hearing, the Chair shall declare the hearing to be closed and, therefore, no further evidence will be received in the matter. In considering a request to continue any hearing, the Chair should consider the effect of the time limits for decision.

2:2-6 Evidence. Formal rules of evidence are not enforced before the Planning Board. However, no decision shall be based upon any facts not proved or on matters which are not in the record, unless they be such items of which the Board is entitled to take judicial notice.* When any documents or exhibits are admitted into evidence during a hearing, they shall be marked and shall be retained by the Board as part of the permanent file. After the Board has rendered its decision and the time for the filing of any appeal has expired, the Board's secretary may return any such exhibits or documents to the person who offered them upon their request. Any evidence presented, whether by testimony or by documents and exhibits presented at the hearing, which are not questioned or controverted by any other person appearing or by any member of the Board, may be deemed to be true by the Board in its decision making process and findings of fact.

2:2-7 Burden of Proof. The burden of proof is on the applicant, and it is the applicant's responsibility to supply competent and credible evidence in order that the Board might determine the nature and degree of the relief sought by the applicant. The applicant must establish, to the Board's satisfaction, that it is, pursuant to statutory provisions, entitled to the relief being sought. Further, the applicant must establish that the relief to be granted will not adversely affect the zone plan and

* In its entirety, N.J. Rule of Evidence 201(b) states as follows:

Facts which may be judicially noticed include (1) such specific facts and propositions of generalized knowledge as are so universally known that they cannot reasonably be the subject of dispute, (2) such facts as are so generally known or are of such common notoriety within the area pertinent to the event that they cannot reasonably be the subject of dispute, (3) specific facts and propositions of generalized knowledge which are capable of immediate determination by resort to sources whose accuracy cannot reasonably be questioned, and (4) records of the court in which the action is pending and of any other court of this state or federal court sitting for this state.

scheme nor be inconsistent with the purposes of the Zoning Ordinance, in cases where the applicant is seeking a variance.

2:2-8 Dismissal Without Prejudice. The Board on its own motion, may dismiss any matter, without prejudice, if neither the applicant, nor anyone on its behalf, appears at the time set for the hearing of the application. Further, the Board, on its own motion, may dismiss, without prejudice, any application for failure to comply with the provisions of the appropriate ordinance. Any applicant, at any time before the commencement of the hearing, may voluntarily withdraw its application, in which case, the application shall be dismissed, without prejudice

2:2-9 Reports from Departments. The Board, on its own motion, may at any time, request a written report on any particular matter from any department within the Borough in connection with the pending case; provided, however, that a copy of such report shall be made available to the applicant, who shall, if it so requests, have an opportunity to question the maker of such report as to any fact or conclusion contained therein. The Board may also refer any application to any appropriate agency for its review and report; provided, however, that the applicant shall be notified of such action and shall be informed of when such agency holds its meetings so the applicant may arrange to be present, if it so desires. Should the Board request such a report or make such a referral, such action shall not extend the period of time within which the Planning Board shall act, unless a consent for extension of time has been granted by the applicant

2:2-10 Testimony From Board-Employed Expert Witnesses. The Board, on its own motion, may arrange to take the testimony of any expert witness employed by it.

PART III DECISION MAKING

Rule 3:1 Post Hearing Procedures

3:1-1 Decision Making; Resolution: Time. Decisions rendered by the Planning Board shall be adopted in the form of a motion duly seconded and adopted by a quorum of the Board, as required by N.J.S.A. 40:55D-10(g), including occasions where an application is denied because a motion to approve the application did not receive the required number of votes (Rule 1:3-4(b)). The Resolution of memorialization shall be adopted within forty-five (45) days of that meeting. Such Resolution of memorialization shall be adopted by a majority vote of the members of the Planning Board who voted in favor of the action previously taken. **NO OTHER MEMBER SHALL VOTE THEREON.** If the Resolution of memorialization is not adopted within forty-five (45) days of the Board's action, any interested party may apply to the Superior Court in summary manner to compel the Board to reduce its findings and conclusions to a writing within a stated time and the cost of such application, including attorney's fees, shall be assessed against the Borough pursuant to the provisions of N.J.S.A. 40:55D-

10(g)(2). Municipal action is deemed to have taken place at the original meeting where the vote was actually taken and not on the date at which the resolution of memorialization is adopted, except that the date of the adoption shall constitute the date of decision for the required mailing of a copy of the Board's decision to the applicant and for the placing of a publication of the Board's decision in the official newspaper of the Borough. The Board shall advise the applicant to publish this decision on all matters being approved by the Board and all denials shall be published by the Borough. The decisions of the Board, upon submission of a complete application, shall be made as follows:

- (a) For preliminary site plan approval:
 - (1) For a minor site plan, or for a site plan involving ten (10) acres of land or less, or ten (10) dwelling units or less - forty-five (45) days.
 - (2) For more than ten (10) acres, or more than ten (10) dwelling units, ninety-five (95) days.
- (b) For preliminary major subdivisions:
 - (1) For ten lots or fewer - forty-five (45) days
 - (2) For more than ten lots - ninety-five (95) days
- (c) For final approval of a site plan and major subdivision - forty-five (45) days
- (d) For minor subdivision approval - forty-five (45) days
- (e) For conditional use applications – forty-five (45) days
- (f) For combined application:
 - (1) Those meeting the requirements of N.J.S.A. 40:55D-51(c), the longest time period applicable (Simultaneous review of subdivision, site plan, conditional use)
 - (2) For those applications meeting the requirements of N.J.S.A. 40:55D-67 - ninety-five (95) days (Conditional Use and Site Plan)
 - (3) For those applications meeting the requirements of N.J.S.A. 40:55D-61 - ninety-five (95) days (Variance)

3:1-2 Contents of Resolution: Publication. A copy of the Board's resolution shall be furnished to the applicant and his attorney within ten (10) days from the date of Board's decision. The resolution of the Board shall contain:

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

(b) Where the Board has determined to impose conditions on the relief granted, such conditions shall be clearly set forth in the resolution. The Board, when it is deemed necessary to protect the public interest, may specifically provide in its resolution for the retention of jurisdiction over the matter for a reasonable time. Such time may be specifically set forth or may be conditioned on the happening of a certain event. The purpose of such retention of jurisdiction shall be to enable the Board to vary the terms of any conditions therein imposed or to impose additional conditions, in the public

interest, in light of the then-existing circumstances; or to permit the Board to finalize its actions with respect to its "other powers" as granted to the Board by State statute.

(c) The resolution shall set forth, with specificity, the relief granted to the applicant. The Board may grant such relief as it deems appropriate and in keeping with the intent and purpose of the appropriate ordinance, as the case may be, although the relief granted may be different in kind or degree from that required in the appeal or application.

(d) The Secretary of the Board shall direct the applicant and its attorney, to publish a statement that the resolution of approval was memorialized in the official newspaper of the Borough. The Secretary shall publish such statement that the resolution of denial was memorialized in the official newspaper of the Borough.

3:1-3 Failure to Render Decision Within Statutory Time Limit. The failure of the Board to render a decision within the time period set forth in Rule 3:1-1, or within such other time as may be consented to either in writing or on the record at the hearing of the Board by the applicant, shall constitute a favorable action and the applicant shall request an appropriate certificate pursuant to the appropriate statutory requirement.

3:1-4 Effectiveness of Decisions; Additional Filings. The actions taken by the Board and the decisions made by it shall be effective pursuant to appropriate ordinance and statutory provisions; where required, it shall be the applicants duty to make the filings with the County Recording Officer as may be required by appropriate statutory provisions. In the case where the Planning Board in the exercise of its ancillary powers has granted a variance to the applicant, that variance shall be valid and subsisting in accordance with these Planning Board Rules.

PART IV MISCELLANEOUS

Rule 4:1 Fees, Record of Proceeding and Miscellaneous Matters

4:1-1 Transcript of Proceedings. In accordance with the provisions of the Municipal Land Use Law, the Board shall provide a verbatim recording of all public hearings by electronic means. A duplicate recording shall be furnished to any interested party at his expense. Requests for copies of such verbatim record shall be made to the Board's secretary not later than ten days after the date on which the hearing was held. The interested party will be responsible to have duplicating equipment to produce the copy of the tape, There will be no charge made to the interested party by the Township for the copying process.

4:1-2 Costs for Special Meetings. Should an applicant request that the Planning Board consider his application at other than a regular meeting of the Board, the applicant, in addition to any fees provided, shall pay the fees as specified by Borough Ordinance for holding such a special meeting requested by the applicant.

4:1-3 Subpoena. The Chair of the Planning Board or its designee, if permitted by Borough Ordinance, may issue subpoenas to compel the attendance of witnesses and the production of relevant evidence. Upon failure of a person under such subpoena to comply with its requirements, the Board may apply to the Superior Court for an order to compel them to do so.

4:1-4 Perjury. Any person who shall willfully give false testimony under oath in the course of any hearing held before this Board shall, in accordance with the provisions of the County and Municipal Investigations Law (N.J.S.A. 2A:67A-1 et seq), but guilty of perjury.

4:1-5 Payment of Taxes. The applicant, at the time of filing the application for development, shall file with the Board a certificate of the Tax Collector that the taxes and/or assessments against the property 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 request that the Board take action and shall agree, in writing, to be bound by the following procedure:

(a) The Board's approval shall be subject to the payment of taxes and/or assessments

(b) The taxes and/or assessments must be paid on or before the due date of the following quarter's taxes.

(c) The map, plat and/or deed shall be signed by the Chair and secretary of the Planning Board, to be delivered through the Board's attorney to the attorney for the applicant, in escrow. The Board's attorney shall prepare a sufficient escrow letter setting forth that the action of the Board is subject to the payment of outstanding taxes and/or assessments, setting forth the specific sum due and remaining unpaid, and indicating that the map, plat and/or deed shall be released from the escrow only upon the payment of said specific sum.

(d) If the funds are not available to pay the taxes and/or assessments before the due date of the next quarterly installment of taxes as assessed, then the application is deemed to have been denied and the applicant's attorney shall forthwith return the map, plat and/or deed to the attorney for the Planning Board.

(e) Upon payment of the taxes and/or assessments, as aforesaid, the action of the Planning Board shall become effective and final as of the date the map, plat and/or deed was signed.

(f) In the event that the application is for a minor subdivision, only the deed will be forwarded to applicant's attorney, in escrow. The maps will be held by the Board's secretary, although signed, to be dated and delivered upon the payment of taxes and/or assessments.

(g) Resolutions setting forth the Board's action shall contain, as a condition, the payment of taxes and/or assessments; and shall set forth the date on or before which such payments shall be made. Failure to pay such taxes and/or assessments, as aforesaid, shall be deemed a denial of said application.

4:1-6 Partners/Shareholders 10% Interest. The Board reiterates the requirements that the names and addresses of all partners or shareholders owning 10% or more interest in applicant be set forth on the application as required by N.J.S.A. 40:55D-48.1 and N.J.S.A. 40:55D-48.2. The statute provides that no application shall be approved which does not comply with this requirement.

Rule 4:2 Amendments

4:2-1 Amendments. The Planning Board may, from time to time, amend any part or parts of these rules and regulations at any regular meeting, provided notice of such amendment has been given in writing to each member of the Board at least three 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 other interested persons.