

**Borough of Highlands  
Planning Board  
By-Laws**

**RULE 1 OFFICERS, EMPLOYEES, ANNUAL MEETING**

1.1 Annual Meeting Election of Officers.

At the Board's first meeting following January 1<sup>st</sup> of each year, the Board shall elect from its members a chair and vice chair for a term of one calendar year and until their successors have been elected.

1.2 Appointment of Secretary and Board Attorney

At the annual meeting, the Board shall appoint a secretary and an attorney who shall receive remuneration set by the Board and agreeable to such persons. Both the attorney and secretary shall serve for the calendar year and until their successors are appointed.

1.3 Appointment of Officers, Staff and Experts

The Board may appoint such other officers and employ such experts as it may deem necessary.

1.4 Alternate Members

The two alternate members of the Board appointed by Mayor shall be designated by the appointing body as "alternate no. 1" and "alternate no. 2" respectively, and each alternate shall retain said designation during the term for which he was appointed. Such alternate members shall participate in the Board affairs subject to N.J.S.A. 40: 55D-23.1 and the following provision:

- (a) Alternate members may participate in discussions of any Board business or hearings, but may not vote except as designated by the chair to serve in the place of a regular member who is absent or disqualified.
- (b) Alternate members are subject to all laws, regulations, ordinances, administrative rules, etc. which apply to regular members. Alternate members may not vote, except that a vote shall not be delayed in order that a regular member may vote instead of an alternate member. No alternate member may serve as chair or vice-chair.

1.5 Application Review

The Board Engineer shall review each application and make a recommendation to the Board as to whether or not the application should be deemed "complete" as that term is defined in the Municipal Land Use Act. Thereafter the Board shall review and decide whether or not the application is "complete" as that term is defined by the MLUL, at a public hearing of the Board. If the Board determines that the application is "complete", a public hearing date will be established for the application.

### 1.6 Conflict of Interest

In the event any interested person or Board member shall advise the Chairman that a possible conflict of interest may exist for any Board member or employee, the chairman shall publicly make all relevant inquiries including opinion of the Board Attorney, the Applicant's attorney and Board members. In the event the individual (s) with the alleged conflict elects not to stand down, the Board by majority vote shall make a decision whether or not to exclude said individual from participating in the case.

## **RULE 2 DUTIES**

### 2.1 Chair.

The Chairman shall preside at all meetings and hearings of the Board, decide all points of order and matters of procedure governing said meetings or hearings, shall swear all witnesses giving testimony before the Board or his designee, and perform all duties of the office as required by law, ordinance and these rules.

### 2.2 Vice-Chair

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

### 2.3 Secretary

The secretary shall generally perform the secretarial work for the Board, including but not necessarily limited to, the preparation of official correspondence, compiling of required records, maintenance of necessary files, giving notice of all meetings, recording such proceedings, providing for the care and custody of items for which no other provision is made by statute, and performing such other usual duties as may be necessary.

## **RULE 3 Meetings**

### 3.1 Regular Meetings

The regular meetings of the Board shall be held at Borough Hall at 7:30 p.m. The first regular meeting after January 1<sup>st</sup> of each year shall constitute the annual organizational meeting of the Board. The regular meetings of the Board for the year shall be scheduled and adopted by resolution of the Board at the annual organization meeting of the Board. Whenever there are no matters to be considered at any regular meeting, other than the organizational meeting, the Chairman may dispense with such meeting by notifying each member of the Board at least forty-eight (48) hours in advance of the time set for such meeting and by giving notice in accordance with the Open Public Meetings Act.

### 3.2 Special Meetings

Special meetings and work sessions, as permitted by law, may be called by the Chairman or, in his absence, by the Vice Chairman, at any time or upon the written request of two members, provided that notice thereof be mailed or given to each member of the Board prior thereto and to the public as required by law.

### 3.3 Quorum

At all meetings of the Board, a quorum for the conducting of any business shall consist of five (5) members. No action shall be taken without a quorum being present.

### 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, other than those referred to in subparagraph (b) below, and on any matters as required by law, any action may be authorized by a majority vote of the members present at the meeting.
- (b) When voting on an application to permit a building or structure in the bed of any street, public drainage way, flood control basin or public area reserved on an official map, at least a majority of the full authorized membership of the Board must vote in favor of the relief sought.
- (c) If a motion to approve an application for development does not receive the number of required votes as hereinbefore set forth, such failure shall be deemed an action denying the application.

### 3.5 Absent Members

When any hearing shall carry over one or more meetings, a member of the Board who was absent for one or more of the meetings, shall be eligible to vote on the matter upon which the hearing is conducted, notwithstanding his absence, provided that said member certifies, in writing, that he has read the transcript or listened to a recording of the entire meeting for which he was absent. Said certification shall be prepared by the secretary. This rule shall not be construed as authorizing any hearing to be held whenever less than a quorum of the Board is present.

### 3.6 Order of Business, Agenda

The order of business of all regular meetings of the Board shall be as follows:

- (a) Call to order
- (b) Statement of Compliance with Open Public Meetings Act/Pledge
- (c) Roll Call
- (d) Approval of minutes-of previous meetings
- (e) Approval of Resolutions
- (f) Motions for adjournments of any scheduled cases and any other motions
- (g) Unfinished or adjourned hearings
- (h) Hearings on New Business
- (i) Action on any other business
- (j) Communications and Vouchers
- (k) Adjournment

The Agenda is a good faith effort to set forth the business of the Board, however, the Board retains the discretion to add or delete such items as may be necessary in its judgment. Nothing herein shall be construed as relieving the applicant of any notices required by Statute or Rule herein.

### 3.7 Open Meetings

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

## **RULE 4 COMMENCEMENT OF ACTION**

### 4.1 Filing

An application for subdivision approval, site plan review, conditional use approval or any other relied over which the Planning Board has jurisdiction, shall be commenced by filing an original and 15 copies of an application, filed in accordance with the "Instructions of the Planning Board" and complying with all check-list requirements.

### 4.2 Filing Requirements

The applicant shall file his application in accordance with "Subdivision Ordinance." "Site Plan Ordinance," as may be appropriate, and in accordance with the checklist requirements of the ordinance. The failure of the applicant to follow the "instructions" and the checklist requirements of the appropriate ordinance will result in the application being deemed incomplete and will delay the hearing of same. All statutory time periods for action by the Planning Board commence to run only upon the filing of a complete application as required by the appropriate ordinances which shall be certified as complete by the Board's Engineer. Application forms shall be provided by the Board and shall be completely filed in, and shall supply any and all other information and data they may be required for the relief sought by the applicant. A checklist of required submissions shall be furnished to each applicant. All applications shall be filed on the forms provided by the Board.

#### 4.3 Assignment of Docket Numbers; Complete and Incomplete Applications

Upon receipt of an application by the Board secretary, the application shall be assigned a docket number, which shall, thereafter, appear on all subsequent papers filed in the case. The original copy of the application, together with a copy of all other documents filed with the application, shall be filed in the permanent case docket of the Board. Thereafter the Planning Board Engineer shall then review the application for completeness, in accordance with the definition of a “complete application” as contained in N.J.S. 40:55D-3 and make a recommendation to the Board. Thereafter the Board shall make the final determination whether or not the application is deemed complete pursuant to the statute. 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. Such notification shall be in writing and shall set forth the reasons that the application has been found to be incomplete. Upon failure to notify the applicant, in writing, that his application is incomplete, within the forty-five (45) day period, the application shall be deemed to be complete. If the application is found to be complete, the Board secretary shall thereafter notify the applicant that the application is complete and the application shall be determined to be complete as of the day it was so certified, for the purposes of commencement of the time periods for action by the board.

#### 4.4 Informal Review

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

#### 4.5 Assignment of Hearing Date; Notice

As soon as any complete application is filed with the Board in accordance with the appropriate ordinances, these rules and the Board’s “Instructions,” the case shall be assigned a hearing date by the Board pursuant to section 1.5 above. The applicant shall comply with the notice requirements of the Municipal Land Use Act. In the event the public notice given, as required by statute, is deemed inadequate at the time of the hearing, the application will not be heard and will be given a new date and the applicant will be required to re-notice pursuant to the provisions of the MLUL. The time frame established in the MLUL within which the Board must decide the application will be extended to allow for the loss of time due to the improper notice by the applicant.

The property owners list supplied to the applicant pursuant to the Municipal Land Use Act shall be valid for a period of ninety (90) days from the date of issuance by the Borough Tax Assessor.

#### 4.6 Notification of Board Attorney

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

## **RULE 5 PROCEDURES FOR HEARING APPLICATION**

### 5.1 Appearance

At the time of the hearing, the applicant, or any other party, shall appear in person, or such applicant may be represented by an attorney. Every corporation shall be represented by an attorney.

### 5.2 Swearing of persons Giving Testimony

Since minor subdivision applications (without variances or waivers) are exempt 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 unless his presence is requested by the Planning Board.

All persons giving testimony at the hearing shall be sworn by the Chairman or the Board's attorney.

### 5.3 Order of Presentation

When a case is called by the Chairman, the following shall be the order of presentation: OATH ALL TESTIMONY SHALL BE UNDER.

(a) The applicant shall present himself and be sworn. He shall then indicate the relief he is seeking. If represented by an attorney, the attorney for the applicant shall identify himself and the office which he represents, identify his client and then proceed with his opening remarks, if any.

(b) The applicant or his attorney shall the present his testimony and the testimony of his witnesses. He shall also submit such documentary evidence or exhibits upon which he intends to rely in order to establish his right to the relief sought in the application.

(c) Prior to opening the meeting to the public, and at the end of the testimony of each witness in support of the applicant the chairman shall allow board members and other interested parties to ask questions of the witness having just testified and may permit reasonable cross-examination by any attorney representing an objector. The chairman, at his option, shall have the authority to (1) allow the public to question each witness after said witnesses direct testimony or (2) allow the public to question the witnesses after the applicant has presented his case in chief.

(d) Where a group of interested parties are represented by an attorney, the attorney shall present to the Board chairman a list of the persons he represents.

- (e) At the time the applicant has submitted all of his evidence in support of his application, the attorney for any objector may then put in his case in support of his client, calling any witnesses and introducing any documentary evidence upon which his client will rely in his objection to the appeal. Each such witness may be subject to reasonable cross examination by the applicant or his attorney, and the chairman shall allow any members of the public to ask questions of such witnesses.
- (f) After all the evidence has been presented, the chairman shall open the meeting to the public. All members of the public wishing to make a statement shall give their address and be under oath.
- (g) Rebuttal testimony or evidence may then be admitted.
- (h) All witnesses may be cross examined by any member of the Board, the Board attorney or any interested person. The chairman shall preside during the questioning of witnesses in accordance with Rule 2:2-1.
- (i) Any member of the Board or the Board's Engineer or other consultants may place evidence before the Board as to any relevant matter of which he has personal or official knowledge.

#### 5.4 Closing of Hearing: Continuances

When the applicant and all interested persons have had an opportunity to be heard, the chairman 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 may either grant or deny their request. In cases where the Board feels that testimony or other evidence should be received in the public interest, the Board may, on its own motion, continue the hearing to another day for such purposes. In the absence of any request to continue the hearing, the chairman shall declare the hearing to be closed and, thereafter, no further evidence will be received in the action, unless the matter is reopened in accordance with Rule 7.5. In considering a request to continue any hearing, the chairman should consider the effect of the time limits for decision as set forth in Rule 6.1.

#### 5.5 Meeting

No new witnesses after 10:00 P.M. All meetings shall adjourn no later than 11:00 P.M., unless the Board, by unanimous vote, decides to extend hearing.

## 5.6 Evidence

The formal rules of evidence are not strictly applicable to the Planning Board, but the chairman may exclude irrelevant, immaterial, unduly, repetitious or improper evidence. When any documents or exhibits are admitted into evidence during a hearing, they shall be marked. Any evidence 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.

## 5.7 Burden of Proof

The burden of proof is on the applicant, and it is the applicant's responsibility to supply competent and credible evidence in order that the Board might determine the nature and degree of the relief sought by the applicant.

## 5.8 Dismissal

The Board, on its own motion, may dismiss any action, without prejudice, if neither the applicant, nor anyone on his behalf, appears at the time set for the hearing of said application. Any applicant may, at any time before the commencement of the hearing, voluntarily withdraw his application: in which case, the application shall be dismissed without prejudice.

## 5.9 Request of Agency Reports

The Board, on its own motion, may at any time, request a written report on any particular matter from any officer, board or agency in connection with the pending case; provided, however, that a copy of any such report shall be made available to the applicant, who shall, if he 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 meeting so the applicant may arrange to be present, if he 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.

# **RULE 6 POST HEARING PROCEDURES**

## 6.1 Resolution: Time for Adoption

Decisions rendered by the Planning Board shall be in the form of a resolution. The written decision may be provided at the meeting at which the Board takes its action (a motion to prepare such favorable resolution having been earlier made) or by a "resolution of memorialization." 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. The memorialization shall be moved and seconded by the same persons who made the motion to prepare the resolution. In the event either person is not present for the memorialization, another Board member, who voted for the original motion, may move**



or second the memorializing resolution. If the resolution of memorialization is not adopted within forty-five(45) days of the Board's action, the application for development shall be deemed to have been approved, notwithstanding any prior action taken thereon. Municipal action is deemed to have taken place at the original meeting and not 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 decision to the applicant and for the placing of a publication of the Board's decision in the official newspaper of the municipality. The decisions of the Board shall be made pursuant to those time periods required by the Municipal Land Use Law (N.J.S.A.4:55D-1 et seq.)

#### 6.2 Contents of Resolution; Publication

A copy of the Board's resolution shall be furnished to the applicant or his attorney within ten days from the date of the Board's decision. The secretary shall cause notice to be published in the official newspaper of the municipality. 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 upon 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 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 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 requested in the appeal or application.

#### 6.3 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 6.1, or within such other time as may be consented to, wither in writing, or on the record at the hearing of the Board, by the applicant, may constitute a favorable action in accordance with law and the applicant shall request an appropriate certificate.

#### 6.4 Effectiveness of Decisions; Additional Filings.

It shall be the applicant's 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 has granted a variance to the applicant, that variance shall be valid and subsisting in accordance with the "Rules and Regulations of the Zoning Board of Adjustment."

### **RULE 7 FEES, RECORD OF PROCEEDING 7 MISCELLANEOUS MATTERS**

#### 7.1 Fees; General.

The applicant, at the time of filing an application, shall pay fees for the purpose of defraying expenses incidental to the proceedings described in these rules and regulations. In the case of an application for a variance to the Planning Board in connection with its Ancillary Powers, applicant shall file the form of application approved by the Zoning Board of Adjustment and pay the fee established by the ordinance.

#### 7.2 Fees; Special Service

Should any application require or necessitate any special expenses incurred by the Board for the rendering of special services by its planning consultant, engineer, attorney or any other expert, the applicant shall reimburse the Borough for the cost of such services.

#### 7.3 Record of Proceeding

The Board shall make a verbatim recording of all hearings by either a stenographer or by mechanical or electronic means. A transcript or duplicate recording, in lieu thereof, shall be furnished to any interested party at his expense.

#### 7.4 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 shall, in addition to the fees hereinbefore provided, pay any costs incurred by the Board in connection with the holding of such special meeting.

#### 7.5 Rehearing, Vacation or Modification

Any applicant or other interested person may within sixty days after the entry of a decision by the Board, request that the Board rehear the matter by filing an application, in the form of a letter addressed to the Board, containing a brief statement of the grounds relied on. At any time, any person having an interest in any decision rendered by the Board may move the Board for an order vacating or modifying any term or condition of said decision by filing with the Board an application in the form of a letter setting forth the reasons for the request and the grounds relied upon. If the request for such rehearing or vacation or modification of relief is granted by the Board the Board shall fix a date for hearing and the person requesting such hearing shall give notice of this action in the same form and in the same manner as required by the "Instructions of the Planning Board: for any application made to the Board. The Board on its own motion may reopen any matter

for just cause upon notice to all interested parties. In any request for relief under this section, if not made by the applicant, said party shall notice the applicant of the request.

#### 7.6 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. 2A:67-1 et seq.), be guilty of perjury.

#### 7.7 Transfer Between Boards

Whenever an application is filed with the Planning Board which, pursuant to the provisions of the Municipal Land Use Law, ought to have been filed with the Zoning Board, the Planning Board may, by resolution, cause said application to be transferred to the Zoning Board.

#### 7.8 Tax Payments

The applicant, at the time of filing the application for development, pursuant to the requirements of the Procedures Ordinance and the Board's Instructions, shall file with the Board a certification of the Tax Collector that the 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 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 delinquent 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 not be signed by the chairman and secretary of the Planning Board if delinquent taxes are unpaid.
- (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 applicant's attorney shall, forthwith, return the map, plat and/or deed was signed.
- (e) Upon Payment of taxes and/or assessments as aforesaid, the action of the Planning Board shall become effective and final as of the date of 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.

7.9 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.

7.10 Disorderly Conduct

7.11

The Chairman, in his discretion, shall have the right to have unruly or disorderly person(s) removed during the proceedings according to law.

7.12 All Board members, alternates and employees agree to be bound by these rules.

Duly adopted pursuant to N.J.S.A. 40:55D-10(b) this 10<sup>th</sup> day of May 2007.

\_\_\_\_\_  
Carolyn Cummins, Board Secretary

\_\_\_\_\_  
Andrew Stockton, Board Chairman