

## ARTICLE IV AGENCY ESTABLISHMENT & RULES

### **SECTION 401. ESTABLISHMENT OF THE PLANNING BOARD.**

- A. Classes of Membership. A Planning Board is hereby established consisting of nine regular and two alternate members of the following four classes, in accordance with *N.J.S.A. 40:55D-23*:
1. Class I: Mayor. The mayor or the mayor's designee in the absence of the mayor.
  2. Class II: Municipal Official. One of the officials of the municipality, other than a member of the governing body, to be appointed by the mayor, provided that any member of the Environmental Commission (if created by ordinance) who is also a member of the Planning Board as required by *N.J.S.A. 40:56A-1*, shall be deemed to be the Class II Planning Board member if there is both a member of the Zoning Board of Adjustment and a member of the Board of Education among the Class IV regular or alternate members.
  3. Class III: Council Member. A member of the governing body, Township Council, appointed by Council.
  4. Class IV: Regular Members. Six other citizens of the municipality to be appointed by the Mayor. The following shall apply, consistent with *N.J.S.A. 40:55D-23(a)*:
    - a. The members of Class IV shall hold no other municipal office, position, or employment except that one such member may be a member of the Zoning Board of Adjustment, Historic Preservation Commission, or Board of Education.
    - b. If there is an Environmental Commission, the member of the Environmental Commission who is also a member of the Planning Board (as required by *C.40:56A-1*) shall be a Class IV Planning Board member.
    - c. If among the Class IV members of the Planning Board, a member of the Zoning Board of Adjustment or Historic Preservation Commission, or Board of Education exist, the member common to the Planning Board and Environmental Commission shall be deemed a Class II member of the Planning Board.
    - d. For the purpose of this section, membership on a municipal board or commission whose function is advisory in nature, and the establishment of which is discretionary and not required by statute, shall not be considered the holding of a municipal office.
  5. Class IV: Alternate Members. Two other residents of the municipality to be appointed by the governing body. Alternate members shall meet the qualifications of Class IV regular members and shall be designated by the governing body at the time of their appointment as "Alternate No. 1" and "Alternate No. 2." The above conditions of §401.A.4. shall apply.
  6. The adoption of this Ordinance shall not be construed to affect any standing member of the Planning Board.
- B. Terms of Membership.
1. The terms of the member composing Class I shall correspond with his or her official tenure. Designee shall serve at the pleasure of the mayor during such official tenure.
  2. The terms of the members composing Class II and Class III shall be for one year or shall terminate at the completion of their respective terms of office, whichever occurs first, except for a Class II member who is also a member of the Environmental Commission (if created by ordinance).
  3. The term of a Class II or Class IV member who is also a member of the Environmental Commission shall be for three years or terminate at the completion of term as a member of the Environmental Commission, whichever occurs first.

## ARTICLE IV

4. The terms of Class IV members who is also a member of the Zoning Board of Adjustment or the Board of Education shall terminate whenever he or she is no longer a member of such other body or at the completion of his or her Class IV term, whichever occurs first.
5. The terms of each Class IV regular members shall be four years.
6. The terms of the Class IV alternate members shall be two years, except that the terms of the alternate members shall be such that the term of not more than one alternate member shall expire in any one year.
7. Transition terms with adoption of this Zoning Ordinance affect the following:
  - a. Class I: No Change.
  - b. Class II: No Change.
  - c. Class III: No Change.
  - d. Class IV: Terms expiring June 30, 2010 shall expire December 31, 2010.  
Terms expiring June 30, 2011 shall expire December 31, 2011.  
Terms expiring June 30, 2012 shall expire December 31, 2012.
  - e. Class IV Alternates: Terms expiring June 30, 2010 shall expire December 31, 2010.  
Terms expiring June 30, 2011 shall expire December 31, 2011.
- C. Role of Alternate Members. Alternate members may participate in all matters, but may not vote except in the absence or disqualification of a regular member of any Class. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, "Alternate No. 1" shall vote.
- D. Length of Service. Terms shall commence from the first day of January and end on December 31<sup>st</sup>.
- E. Vacancies. If a vacancy of any Class shall occur otherwise than by expiration of term, it shall be filled for the unexpired term, only. All other municipal ordinances governing board appointments shall apply.
- F. Compensation. Members of the Planning Board shall serve without compensation, except that reimbursement of reasonable expenses in the execution of official duties may be made by the municipality.
- G. Removal. Any member, other than a Class I member, may be removed by the governing body for cause, but only after public hearing and other due process proceedings according to *Cherry Hill Township Planning Board Bylaws*.
- H. Conflict. No member or alternate member of the Planning Board shall be permitted to act on any matter in which he or she has either directly or indirectly any personal or financial interest, in compliance with the Municipal Land Use Law and the *Transparency Reform Act* (Ordinance 2008-9). A member who is so disqualified may not act on such matter, or be permitted to participate in any discussion or decision of such matter.
- I. Substitute Members. If the Planning Board lacks a quorum because any of its regular or alternate members are prohibited from serving either by reason of vacancy or conflict of interest; regular members of the Zoning Board of Adjustment shall be called upon to serve, for that matter only, as temporary members of the Planning Board. Such temporary members shall be selected in order of seniority of continuous service to the Zoning Board of Adjustment until the required minimum number of members necessary to constitute a quorum has been reached. The Chair of the Zoning Board of Adjustment shall determine which member serves in the event there are members of equal seniority.
- J. Reorganization. Annually, the Planning Board shall organize by selecting from among its Class IV regular members a Chair and a Vice-chair. The annual re-organization meeting shall be held on the first Monday in January (unless that Monday is a holiday). The Board shall also select a secretary who may or may not be a member of the Board or a municipal employee. The Board shall also

select a recording secretary who may or may not be a member of the Board or a municipal employee. Township Council must first reorganize before the Planning Board can reorganize.

- K. Funding. Pursuant to *N.J.S.A. 40:55D-24*, Township Council shall make provisions in its budget and appropriate funds for the expenses of the Planning Board, including the cost of the required basic course in land use law (per *N.J.S.A. 40:55D-23.3*).
- L. Board Attorney. The position of Planning Board Attorney is hereby created. The Planning Board may annually appoint to such position, contract for, and fix compensation of an attorney-at-law of New Jersey other than the municipal attorney. The adoption of this Ordinance shall not be construed to affect any existing appointment.
- M. Staff. The Planning Board may also employ or contract for and fix compensation of such experts and other staff and services, as it may deem necessary. The Board, however, shall not authorize expenditures that exceed, exclusive of gifts or grants, the amounts appropriated by the Township Council for its use.

**SECTION 402. POWERS & JURISDICTION OF THE PLANNING BOARD.**

The Planning Board shall have the powers listed below, in addition to other powers established by Municipal Land Use Law, *N.J.S.A. 40:55D-25 - 61*:

- A. Master Plan. Make, adopt, and occasionally amend the master plan for the physical development of the municipality, including any areas outside its boundaries that, in the Board's judgment, bear essential relation to the planning of the municipality;
- B. Reexamination. Prepare, at least every six (6) years, a periodic reexamination of the Master Plan;
- C. Subdivision Control & Site Plan Review. Consider and make report to the Township Council within thirty five (35) days after referral as to any proposed development regulation submitted to it and also pass upon other matters specifically referred to the Planning Board by the Township Council;
- D. Capital Improvement Plan. If requested by Township Council, annually prepare a program of municipal capital improvements projects projected over a term of six (6) years and amendments thereto and recommend same to the Township Council;
- E. Participate in the preparation and review of programs or plans required by state or federal law or regulation;
- F. Assemble data on a continuing basis as part of a continuous planning process;
- G. Development Review. The Planning Board shall have such other powers, including, but not limited to, the power to grant the following variances, to the same extent and subject to the same restrictions as the Zoning Board of Adjustment, when the Planning Board is reviewing applications for approval of subdivision plans, site plans or conditional uses:
  - 1. Variances pursuant to *N.J.S.A. 40:55D-70a-c*;
  - 2. Direction pursuant to *N.J.S.A. 40:55D-34* for issuance of a permit for a building or structure in the bed of a mapped street or public drainage way, flood control basin or public area; and
  - 3. Direction pursuant to *N.J.S.A. 40:55D-35* for issuance of a permit for a building or structure on a lot not abutting a street.

**SECTION 403. ESTABLISHMENT OF THE ZONING BOARD OF ADJUSTMENT.**

- A. Membership. A Zoning Board of Adjustment is hereby created consisting of seven regular members and two alternate members, each of whom shall be municipal residents appointed by Township Council, in accordance with *N.J.S.A. 40:55D-69*.

## ARTICLE IV

- B. Terms of Members.
1. The terms of each regular member shall be four years and the terms of each alternate member shall be two years.
  2. Alternate members shall be designated at the time of their appointment as "Alternate No. 1" and "Alternate No. 2."
  3. The adoption of this Ordinance shall not be construed to affect any standing member of the Zoning Board of Adjustment.
- C. Role of Alternate Members. Alternate members may participate in all matters, but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, "Alternate No. 1" shall vote.
- D. Additional Memberships. No member of the Zoning Board of Adjustment shall hold an elective office or position under the municipality.
- E. Length of Service. Terms shall commence from the first day of January and end on December 31<sup>st</sup>.
- F. Vacancies. If a vacancy shall occur otherwise than by expiration of term, it shall be filled for the unexpired term, only. All other municipal ordinances governing board appointments shall apply.
- G. Compensation. Members of the Zoning Board of Adjustment shall serve without compensation, except that reimbursement of reasonable expenses in the execution of official duties may be made by the municipality.
- H. Removal. Any member may be removed by the governing body for cause, but only after public hearing and other due process proceedings according to *Cherry Hill Township Zoning Board Bylaws*.
- I. Conflict. No member or alternate member of the Zoning Board of Adjustment shall be permitted to act on any matter in which he or she has either directly or indirectly any personal or financial interest, in compliance with the Municipal Land Use Law and the *Transparency Reform Act* (Ordinance 2008-9). No member who is so disqualified may act on that particular matter, shall not continue to sit with the Board on the hearing of such matter, nor shall participate in any discussion or decision.
- J. Substitute Members. If the Zoning Board of Adjustment lacks a quorum of its regular or alternate members are prohibited either by reason of vacancy or conflict of interest, Class IV members of the Planning Board shall be called upon to serve, for that matter only, as temporary members of the Zoning Board. Such temporary members shall be selected in order of seniority of continuous service to the Planning Board until the required minimum number of members necessary to constitute a quorum has been reached. The Chair of the Planning Board shall determine which member serves in the event there are members of equal seniority.
- K. Reorganization. Annually, the Zoning Board of Adjustment shall organize by selecting from among its regular members a Chair and a Vice-Chair. The annual re-organization meeting shall be held on the first Thursday in January (unless it is a holiday). The Board shall also select a secretary who may or may not be a member of the Board or a municipal employee. The Board may also select a recording secretary who may or may not be a member of the Board or a municipal employee. Township Council must first reorganize before the Zoning Board can reorganize.
- L. Funding. Township Council shall make provisions in its budget and appropriate funds for the expenses of the Zoning Board of Adjustment, including the cost of the required basic course in land use law (per *N.J.S.A. 40:55D-23.3*).
- M. Board Attorney. The position of Zoning Board of Adjustment Attorney is hereby created. The Zoning Board of Adjustment may annually appoint to such position, contract for, and fix compensation of an

attorney-at-law of New Jersey other than the municipal attorney. The adoption of this Ordinance shall not be construed to affect any existing appointment.

- N. Staff. The Zoning Board of Adjustment may also employ or contract for and fix the compensation of such experts and other staff and services, as it may deem necessary. The Board, however, shall not authorize expenditures which exceed, exclusive of gifts or grants, the amount appropriated by the Township Council for its use.

#### **SECTION 404. POWERS OF THE ZONING BOARD OF ADJUSTMENT.**

The Zoning Board of Adjustment shall have the powers listed below, per the Municipal Land Use Law, *N.J.S.A. 40:55D-70* through *-76*:

- A. Appeals. Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, or refusal made by the Administrative Officer based on or made in enforcement of the Zoning Ordinance.
- B. Interpretations. Hear and decide requests for interpretation of the Zoning Map, Zoning Ordinance, or for decisions upon other special questions upon which the Zoning Board is authorized to pass on any Zoning or Official Map ordinance;
- C. Development Review. The Zoning Board of Adjustment shall have such other powers (including, but not limited to), the power to review applications for approval of subdivision plans, site plans or conditional uses and grant variances, pursuant to *N.J.S.A. 40:55D-70*;
1. Use (d) Variance. Pursuant to *N.J.S.A. 40:55D-70d*, a use (d) variance to allow a departure from the zoning regulations, in particular cases and for special reasons to permit:
    - a. A use or principal structure in a zone restricted against such use or principal structure, per *N.J.S.A. 40:55D-70*;
    - b. An expansion of a non-conforming use;
    - c. Deviation from a specification or standard pertaining solely to a conditional use;
    - d. An increase in the permitted floor area ratio;
    - e. An increase in the permitted density, except as applied to the required lot area for a lot or lots for detached one or two dwelling unit buildings, which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision; or
    - f. A height of a principal structure that exceeds by ten (10') feet or ten (10%) percent of the maximum height permitted in the zone for a principal structure.
    - g. A variance under this subsection shall be granted only by the affirmative vote of at least five (5) members.
    - h. No variance or other relief may be granted under the terms of this section, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Master Plan and Zoning Ordinance.
  2. Bulk (c) Variance. Pursuant to *N.J.S.A. 40:55D-70c*, a bulk (c) variance may be granted from the strict application of a regulation, upon an application or an appeal, so as to relieve hardships, where the Zoning Board properly has assumed jurisdiction:
    - a. Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property; or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property; or by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any zoning regulation would result in peculiar and

exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property; or

- b. Where in an application or appeal relating to a specific piece of property, the purposes of this Ordinance set forth in §103 would be advanced by deviation from the Zoning Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow the departure from zoning regulations; provided, however, that no variance from those departures enumerated in §404.C.1 herein above, shall be granted under this section; and provided, further, that the proposed development does not require approval by the Planning Board of a subdivision, site plan, or conditional use in conjunction with which the Planning Board has power to review a request for a variance pursuant to §401-A.A.2.

- D. Annual Report. The Zoning Board of Adjustment shall, at least once a year, review its decisions on applications and appeals for variances and prepare and adopt by resolution a report of its findings on Zoning Ordinance provisions, amendments, or revisions, if any. The Zoning Board of Adjustment shall send copies of the report and resolution to the Township Council and Planning Board.