

**BY-LAWS OF  
THE ZONING BOARD OF ADJUSTMENT  
OF THE BOROUGH OF SOUTH PLAINFIELD**

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**Table of Contents**

ARTICLE I ANNUAL REORGANIZATION MEETING; SELECTION OF OFFICERS;  
ORDER OF VOTING ..... 2

ARTICLE II DUTIES OF BOARD OFFICERS AND PERSONNEL ..... 3

MEETINGS ..... 4

HEARINGS ..... 6

ARTICLE V CONDUCT OF THE HEARING ..... 10

DECISIONS ..... 13

FEES ..... 16

ARTICLE VIII MISCELLANEOUS PROVISIONS..... 17

## ARTICLE I

### **ANNUAL REORGANIZATION MEETING; SELECTION OF OFFICERS; ORDER OF VOTING**

1.01. The title of the Board shall be the “Zoning Board of Adjustment of the Borough of South Plainfield.” All references to “Board” in these bylaws are to Zoning Board of Adjustment of the Borough of South Plainfield, and all references to “Borough” in these bylaws are to the Borough of South Plainfield.

1.01. The first regular meeting during the month of January each year that is after the annual reorganization meeting of the Borough’s governing body, shall constitute the annual reorganizational meeting of the Board. At the reorganizational meeting the Board shall elect, from among its members, a Chairperson and Vice-Chairperson. These officers shall serve for the calendar year and until their successors have been duly elected.

1.02. At the reorganizational meeting, the Board shall also appoint a Secretary, who shall be either an employee of the municipality or other resident of the municipality who is familiar with zoning matters. Such Secretary shall receive compensation for his or her services as determined by the Borough of South Plainfield governing body and shall serve for the calendar year and until a successor has been appointed.

1.03. At the reorganizational 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 and will pay the attorney a salary or other form of compensation agreed upon between the Board and such person. The attorney shall serve for the calendar year and until his successor has been appointed.

1.04. The Board may also appoint such other officers and/or assistants and employ such experts or staff as it may deem necessary. Such experts and staff may include a professional engineer and planner.

1.05. At the first meeting, the Board shall select from among its members and professionals those persons who shall serve on the subcommittees of the Board as established under Article Three, section 3.10 of these Rules.

## ARTICLE II

### **DUTIES OF BOARD OFFICERS AND PERSONNEL**

2.01. The Chairperson shall preside at all meetings and hearings of the Board; shall decide all points of order and matters of procedure governing said meetings or hearings, and perform all the duties normally appertaining to the office and as required by law, ordinance, or these by-laws. The Chairperson or designee shall swear all witnesses giving testimony before the Board.

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

2.03. The Secretary shall, under the direction of the Chairperson, generally perform the secretarial work of the Board including the following:

- A. Take roll call votes and note the vote of each member as he or she votes. Note any abstentions and the reasons therefor. Roll call votes shall be in alphabetical order, except that the Vice Chairman shall vote second to last and the Chairman shall vote last.
  
- B. Arrange to make a recording as a record of the proceedings of each hearing of the Board in accordance with these by-laws and keep minutes of the proceedings of each meeting and hearing held by the Board and to enter therein, with other proceedings, such resolutions and orders as are adopted by the Board. As a supplement to tape recording, any other transcribing method may be used.
  
- C. Perform such other duties as usually pertain to this office.
  
- D. 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.
  
- E. Attend all meetings of the Board; have custody and take care of all records, documents, maps, plans and papers of the Board; provide for the care and custody of items for which no other provision is made by statute.
  
- F. Cause to be mailed to each member of the Board, at his/her residence address and to the Board's attorney, within ten days after each meeting, a true copy of the minutes of that meeting.

G. Prepare an agenda and distribute same to the Board and the public.

### **ARTICLE III**

#### **MEETINGS**

3.01. The regular meetings of the Zoning Board shall be held at the Borough Hall Courtroom, South Plainfield, New Jersey at 7:00 p.m., on the first and third Tuesday of each month. If the regular meeting falls on a legal holiday, the meeting shall be held on a day selected by the Board. Whenever there are no matters to be considered at any regular meeting, other than the organizational meeting, the Chairperson may dispense with such meeting by notifying each member of the Board at least twentyfour hours in advance of the time set for such meeting, and posting notice of the cancellation at the Municipal Complex and giving any other required notice in accordance with the Open Public Meetings Act. The Secretary shall annually furnish a copy of the regular meeting dates for the year to the news media designated by the municipal governing body in accordance with the Open Public Meetings Act and the Municipal Land Use Law.

3.02. Special meetings, work sessions and executive sessions as permitted by law, may be called by the Chairperson or, in his or her absence, by the Vice-Chairperson 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 at least three days prior thereto and to the public, as required by law.

3.03. At all meetings of the Zoning Board, a quorum for conducting business shall consist of four members. In the absence of a quorum, the members present shall adjourn the meeting and the hearing on any motion or petition to another date.

3.04. Unless a board member is disqualified from hearing and/or voting on a specific motion, every member shall be expected to cast a yes or no vote on any motion before the Board. If any member of the Board feels constrained to abstain from casting a vote, the reason for such abstention shall be clearly set forth on the record and the Secretary shall note in the minutes the reasons given for such abstention.

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

3.06. The order of business of all regular meetings of the Board shall be, subject to the Chairperson's discretion to modify, as follows:

- A. Call to Order.
- B. Roll Call.
- C. Statement of Compliance with Open Public Meetings Act.
- D. Approval of minutes of previous meetings.
- E. Memorialization of resolutions.
- F. Motions for adjournments of any scheduled cases and any other motions.
- I. Hearing of cases.
- J. Informal hearings.
- J. Old business
- K. New Business
- K. Correspondence and reports.
- L. Executive Session
- M. Adjournment.

3.07. All meetings, hearings and actions taken by the Board, except executive sessions pursuant to statute, shall be open to the public.

3.08. No new case will be heard by the Board after 10:00 p.m. and no new additional testimony will be taken after 10:30 p.m. The Chairperson, in the exercise of discretion, may modify these time limits.

3.09. Alternate Members

The two alternate members of the Board appointed by the governing body shall be designated by the appointing authority as either "Alternate No. 1" or "Alternate No. 2." Each alternate shall retain this designation during the term for which he or she was appointed. Alternate members shall participate in Board affairs subject to the following provisions:

- A. An alternate member may sit with the Board and participate in discussions of any Board business or hearings being held by the Board, but may not vote except as designated by the Chairman to serve in the place of a regular member who is absent or disqualified.

- B. A vote on any matter shall not be delayed by the Board so that a regular member may vote instead of an alternate member, provided that where the alternate member is designated to serve in place of a regular member who is disqualified from participating in the hearing of a particular case, the alternate member shall be designated to serve only with respect to such case.
- C. An alternate member who has been designated to sit in place of a regular member due to the disqualification of such regular member and who has participated in any hearing or matter coming before the Board shall continue to act in the place of such regular member until the final disposition of that matter by the Board.
- D. If a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.
- E. Any alternate member who has been designated to serve in the place of an absent or disqualified regular member shall, during the period of his service, enjoy all of the rights and privileges and shall be subject to all of the duties and disabilities pertaining to regular members, but no alternate member shall be eligible to serve as chairperson or vice chairperson of the Board.

3.10. The Board may establish sub-committees that report to the Board on matters directed to them for review. All committees established pursuant to this section shall meet on a monthly basis if they have applications or matters to consider. Such committees shall review all applications referred to them and make recommendations to the applicant and/or to the entire Board for further action. Members of such sub-committees shall serve for one-year terms and be selected by the Chairperson at the reorganization meeting of the Board. Members of such sub-committees may be chosen from among the Board's members, alternate members, and professionals, and staff.

## **ARTICLE IV**

### **HEARINGS**

#### 4.01 Pre-Hearing Procedures

##### A. Applications

1. An application for a variance or for issuance of a permit pursuant to N.J.S.A. 40:55D-34 or N.J.S.A. 40:55D-36, or for any other relief over which the Board has jurisdiction, shall be commenced 1.) by the filing of an original and ten copies of the application form, 2.) by filing the appropriate application checklist as required by ordinance, and 3.) by paying the appropriate application fees and escrow fees. The application shall not deemed filed until all three steps are completed.

2. Appeals to the Zoning Board alleging that there is error in any order, requirement, decision or refusal made by the building inspector, zoning officer, or other official based on or made in the enforcement of the zoning ordinance, shall be commenced by the filing of the appropriate number of copies of a notice of appeal within 20 days from the date of the order, decision or refusal appealed from. The notice of appeal shall be filed with the officer from whom the appeal is taken and shall specify the grounds of such appeal. The officer shall immediately transmit to the Board Secretary all papers constituting the record upon which the action appealed from was taken.

#### B. Checklist Requirements

1. Applications shall meet the requirements of the Development Review Ordinance (Ord. 762, as amended) and the completion checklist ordinance. The failure of the applicant to comply with the checklist requirements and all appropriate ordinance requirements may result in a dismissal of the application or a delay in its being heard. All statutory time periods for actions by the Board begin to run only upon the filing of a complete application as required by the completion checklist ordinance, all other appropriate ordinances, and these rules. Application forms shall be available on the Borough of South Plainfield's website and shall be filled in completely. The applicant shall supply any other information and data that may be required to assist the Board with respect to the relief sought by the applicant, whether or not such information is specifically requested by the form. All applications shall be filed on the forms provided by the Board. A checklist of required submissions shall be furnished to each applicant upon request and shall be posted on the Borough of South Plainfield website.

2. An applicant seeking a variance under N.J.S.A. 40:55D-70d and also seeking site plan or subdivision approval may elect to bifurcate the application and have the Board consider the variance request before consideration of the site plan or subdivision application. This election shall be made at the time of application. If the applicant seeks to bifurcate the application after filing its application, it must seek permission of the Board.

#### C. Initial Review of Applications

Upon receipt of a filed application by the Administrative Officer, which shall include each of the required by Section 4.01A.1, a docket number shall be assigned. The docket number shall appear on all papers filed and on copies of all other documents filed with the application and all such documents shall be filed in the permanent case docket of the Board.

The Board's designee shall then review the application for its completeness in accordance with the Municipal Land Use Law and the ordinances of the Borough of South Plainfield. The applicant shall be notified within 45 days of the filing of an application as to whether the application is

deemed complete. Notification shall be in writing, and if the application is found to be deficient, shall set forth the response. Failure to notify the applicant in writing within the 45-day period that the application is incomplete shall result in the application being deemed complete.

If the application is found to be complete, the Board's designee shall immediately issue a letter to the applicant that the application is complete as of the day it was so certified for the purposes of commencement of time periods for action by the Board. If the application includes any requests for waivers, the Administrative Officer's certification of completeness shall be considered conditioned upon the Board's grant of the requested waiver. If the Board denies the waiver request, the application shall be considered incomplete as of the date of filing.

#### D. Hearing Dates

1. As soon as an application is deemed complete, the case shall be assigned a hearing date, with public notice if so required in accordance with N.J.S.A. 40:55D-12 and any applicable Borough ordinances. If the public notice given, as required by statute and ordinance, is deemed inadequate at the time of the hearing, the application shall be considered to be incomplete, notwithstanding any earlier certification of completeness, and adjourned for lack of jurisdiction.

2. Where a municipal official has furnished the applicant with a list of the property owners entitled to notice pursuant to the provisions of N.J.S.A. 40:55D-12(c), a copy of the official certification and list shall be attached to applicant's proof of service.

3. The service and publication of notice is a jurisdictional requirement, and proof of the service and publication of all required notices in accordance with these rules shall be made by affidavit of the person or persons who actually served or mailed the notices as required by law and by the authorized official of the newspaper that published the notice. All affidavits shall be submitted before the start of the hearing.

#### E. Professional Review

1. Before the scheduled hearing of an application, the Board's engineer, planner, and any other municipal agency or official required to review the application shall submit a written report to the Board, with a copy to the applicant, setting forth the results of the review conducted and any recommendations regarding the application.

2. Any application submitted to the Board pursuant to N.J.S.A. 40:55D-76, may be referred by the Board to any appropriate person or agency for its report. Any referrals made by the Board

pursuant to this section shall not extend the time within which the Board is required to act on the application.

F. Any applicant may request a special meeting with the Board's engineer, planner and attorney. The special meeting may also include the applicant's professionals. The special meeting may only be arranged at the discretion of the Board Chairperson or Board attorney. If the applicant's request is directed to the Board's attorney, the attorney shall notify the Chairperson of the time and place of the scheduled meeting. The applicant shall be responsible for any professional or other costs incurred as a result of the meeting, which shall be paid in accordance with the Borough of South Plainfield ordinance establishing escrow accounts for professional services for review of subdivision, site-plan and variance applications.

#### G. Payment of Taxes

1. The applicant, at the time of filing the application for development, pursuant to the requirements of all applicable Borough of South Plainfield ordinances, shall file with the Board an affidavit that taxes and sewer assessments are currently paid and up-to-date or an application for a municipal determination of the tax and sewer assessment status of the property, along with an affidavit certifying that any delinquent taxes and sewer assessments shall be paid upon grant of approval by the Board and that such payment shall be made a condition of the final approval granted by the Board.

2. The Board's approval shall be conditioned upon the payment of all delinquent taxes and/or water/sewer assessments and such condition shall be set forth in the Board's resolution of approval and shall require that the taxes and/or water/sewer assessments be paid prior to the issuance of a building permit by the Administrative Officer.

3. Failure to pay taxes or sewer assessments as described above shall be deemed a denial of the application.

#### 4.02. Adjournments

A. An applicant may request an adjournment of a hearing date by letter to the Board secretary, with a copy to the Board attorney. The request must be received by the Board secretary by noon at least five calendar days before the hearing. For example, if the hearing is scheduled for a Tuesday, the request must be received by noon the Thursday before. The letter shall indicate the reason for the adjournment request and contain a waiver of the time requirements imposed by the MLUL.

B. The decision to grant or deny a timely request shall be made by the Chairman or Chairman's designee. An applicant may appeal a decision to deny an adjournment request to the full Board by appearing the night of the scheduled hearing and requesting the adjournment once again.

C. Adjournment requests not received by noon at least five days before the hearing will not be considered by the Chairman or the Chairman's designee absent an emergency or other extenuating circumstance, as determined by the Chairman or the Chairman's designee.

D. An applicant who fails to submit an adjournment request within the time provided by this section may appear at the hearing and request an adjournment at that time from the Board.

## **ARTICLE V**

### **CONDUCT OF THE HEARING**

5.01. At the time of the hearing, the applicant and any other party shall appear in person; or any such person may be represented by an attorney admitted to practice in the State of New Jersey. Every corporation or business entity other than a sole proprietorship shall be represented by an attorney admitted to practice in the State of New Jersey.

5.02. Any Board member or professional representing the Board shall disqualify him or herself from proceedings involving any application in which he or she has any personal, financial or other disqualifying interest as such interest is defined under N.J.S.A. 40:55D-23 and N.J.S.A. 40:55D-23.1. Such a disqualifying interest may include, but not be limited to, the following situations:

- A. When the person owns property located within 200 feet of the property affected by the action.
- B. Where the applicant is related within the third degree of consanguinity to the member by blood or is the husband or wife of any person so related.
- C. When the applicant or his attorney is the employer, employee, or partner of the Board member or is a corporation in which the Board member is a shareholder or has some other financial interest in the business.
- D. When the Board member has any other personal or pecuniary interest in the proceeding.

Any disqualification or statement of interest shall be made on the record at the start of the hearing. When a Board member is in doubt concerning a potential conflict, advice of the Board's attorney should be sought.

5.03. A special hearing, devoted exclusively to the consideration of a specific application, may be requested by an applicant. Such a hearing shall only be scheduled at the discretion of the Board Chairperson or his or her designee: The fees for the meeting, as set forth in the fee ordinances of the Borough of South Plainfield, shall be paid by the applicant before the start of the hearing. The hearing may exceed three hours only upon the agreement and consensus of the Board. Fees for any agreed upon time extension shall be paid promptly after the meeting.

5.04. The Board, on its own motion, may dismiss any action without prejudice if neither the applicant nor anyone on his or her behalf appears at the time set for any hearing. Further, the Board, on its own motion, may dismiss without prejudice any application for failure to comply with the provisions of the appropriate ordinances or these rules. Any applicant may, at any time before the start of the hearing, voluntarily withdraw his or her application, in which event the application shall be dismissed without prejudice.

5.05. The burden of proof is on the applicant and it is the applicant's responsibility to supply competent and credible evidence so that the Board might determine the nature and degree of the relief sought. The applicant must establish to the Board's satisfaction that he or she is, pursuant to statutory provisions, entitled to the relief being sought.

5.06. All persons giving testimony at the hearing shall be sworn by the Chairperson or his or her designee before giving any testimony.

5.07. When a case is called by the Chairperson, the following shall be the order of presentation:

**ALL TESTIMONY SHALL BE UNDER OATH.**

A. The applicant shall present him or herself, shall identify him or herself and be sworn. He or she shall then indicate the relief sought. If the applicant is represented by an attorney, the attorney shall identify himself or herself and the office which he or she represents, identify his or her client and then proceed with opening remarks.

B. The applicant or attorney shall then present his or her testimony and the testimony of any witnesses. Witnesses shall also submit any documentary evidence or exhibits upon which the applicant intends to rely.

C. At the end of the testimony of each witness in support of the applicant, the Chairperson shall allow members of the public to ask questions relating to the testimony of that witness and shall permit reasonable cross-examination by any attorney representing an objector.

D. Where a group of interested parties are represented by an attorney, the attorney shall present to the Board Chairperson a list of the persons he or she represents and persons named on the list shall participate in the proceeding only through their attorney.

E. At the time the applicant has submitted all of his or her evidence in support of the application, the attorney for any objector may then put in his or her case in support of his or her client, calling any witnesses and introducing any documentary evidence upon which the client will rely in objecting to the application. Each witness shall be subject to reasonable cross-examination by the applicant or the applicant's attorney, and the Chairperson shall allow any members of the public to ask questions relating to the testimony 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 Chairperson shall then open the meeting to the public to allow the public to testify on the application. Members of the public choosing to give testimony shall identify themselves, shall give their testimony under oath, and shall be subject to cross-examination by the applicant, or if applicant is represented by an attorney, the applicant's attorney.

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

H. All witnesses may be cross-examined by any member of the Board, the Board attorney or any interested party.

I. Any member of the Board may place evidence before the Board as to any relevant matter which he or she has personal or official knowledge, strictly for the purpose of amplifying the record, including facts ascertained from viewing the premises in question and the general area.

J. The Board may also take the testimony of any expert witness employed by it and such expert shall be subject to cross-examination by the applicant or its attorney.

5.08. When the applicant and all interested persons have had an opportunity to be heard, the Chairperson shall determine if the hearing shall be closed. The applicant or any other interested party 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 such a request. In cases where the

Board believes 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 for this purpose. In the absence of any request to continue the hearing the Chairperson shall declare the hearing, to be closed and thereafter no further evidence will be received in the action unless the matter is re-opened in accordance with these rules. In considering a request to continue any hearing, the Chairperson should consider the effect of the time limits for decision.

5.09. 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 application, provided however, that a copy of any such report shall be made available to the applicant who shall, if he or she so requests, have an opportunity to question the maker of such report as to any fact or conclusion contained in the report. 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 that the applicant may arrange to be present if he or she 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 Board shall act, unless the applicant consents, in writing or on the record, to an extension of time.

5.10. The formal rules of evidence do not apply to the Board's hearings. However, no decision shall be based upon facts not proved or on matters which are not in the record, unless they are facts to 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 an appeal has expired, the Board's secretary may return any such exhibits or documents to the person who offered them, upon 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.

## **ARTICLE VI**

### **DECISIONS**

6.01. Upon the submission of a complete application, the Board shall render its decision within the following time periods unless the applicant agrees on the record to an extension of the Board's time for review.

A. For variance applications, 120 days;

B. For appeals pursuant to N.J.S.A. 40:55D-72, 120 days;

C. For bifurcated applications, the separate variance portion of the application shall be decided within 120 days; for the subdivision or site plan portions of the application, a decision shall be made within the time frames set forth in the Municipal Land Use Law for the particular type of application.

6.02. When the Board votes on any matters, except on a motion for adjournment where a quorum is not present, the following number of votes is required:

A. On all variance applications submitted pursuant to N.J.S.A. 40:55D-70d, the affirmative vote of at least five members shall be required for grant of the variance.

B. On all applications 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, the affirmative vote of a majority of the full authorized membership of the Board shall be required to grant the permit.

C. On all other applications and matters over which the Board has jurisdiction, a majority vote of those present at a meeting shall be required to grant the requested relief.

D. If a motion to approve an application for development does not receive the number of required votes, the application shall be deemed denied.

E. Abstentions are not encouraged, but if a Board member feels compelled to abstain, the reasons for such abstention shall be specifically stated on the record.

6.03. Decisions rendered by the Board shall be in a resolution, as required by N.J.S.A. 40:55D-10g, including occasions where an application is denied because a motion to approve the application did not receive the required number of votes. The written decision may be provided at the meeting at which the Board takes its action, or by a resolution memorializing the decision. The resolution memorializing the decision shall be adopted within 45 days of the meeting deciding the application. Resolutions memorializing a decision shall be adopted by a majority vote of the members of the Board who voted in favor of the action previously taken. No other member shall vote on the resolution. Municipal action is deemed to have taken place at the original meeting and not the date on which the resolution of memorialization is adopted, except that the date of the memorialization 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 as required by the Municipal Land Use Law.

6.04. A copy of the Board's resolution shall be furnished to the applicant or his attorney within ten days of the date of the Board's memorialization. The Board's secretary shall cause notice of the Board's action to be published in the official newspaper of the municipality in accordance with statutory provisions. 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 the Board deems appropriate.
  
- B. 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, although the relief granted may be different in kind or degree from that requested in the appeal or application.
  
- C. 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 for a reasonable time. Such time may be specifically set forth or may be conditioned upon the happening of an event. The purpose retaining jurisdiction shall be to allow the Board to vary the terms of any conditions 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 by statute.
  
- D. Where the Board has determined to impose conditions on the relief granted, such conditions shall be clearly set forth in the resolution. When appropriate, the Board may condition its approval on receipt by the applicant of approval of other governmental entities. If review and approval of other governmental entities is required as a condition of approval, the applicant shall submit evidence that the application has been submitted for such review. The Board shall not await the determination of any other governmental agency, but shall render its decision conditioned upon receipt by the applicant of any other requested approvals.
  
- E. The Board may also require as a condition of approval that an applicant post a performance bond, a maintenance bond, or both, to assure the installation and maintenance of improvements which have been approved as part of the application. Such required performance bonds must be posted and accepted in accordance with the ordinances of the Borough of South Plainfield that were adopted pursuant to N.J.S.A. 40:55D-53 or other statutory authority.
  
- F. If there is a conflict between an area of property proposed for development and an area designated as "wetlands" on the National Wildlife Inventory Maps, the Board may condition any approval upon resolution of such conflict.

6.05. The failure of the Board to render a decision within the time periods set forth above, or within such other time as may be consented to by the applicant either in writing or on the record at the hearing before the Board, shall constitute a favorable action and the applicant shall request an appropriate certificate so stating, pursuant to the Municipal Land Use Law. The Administrative Officer shall determine when the time period for Board review of any application shall expire and such date shall be made known to the Board at the start of the hearing of the application.

6.06. The actions taken by the Board and the decisions made by it shall be effective pursuant to appropriate ordinance and statutory provisions, and where statutorily required, it shall be the applicant's duty to make the filings with the County Recording Officer.

6.07. At least once a year, the Board shall review its decisions on applications and appeals and prepare and adopt by resolution a report of its findings on zoning ordinance provisions which were the subject of variance requests. Such a report shall also include any recommendations for amendments or revisions to the zoning ordinance. Copies of the Board's report shall be forwarded to the Borough Council and the Planning Board.

## **ARTICLE VII**

### **FEES**

7.01. When filing an application, the applicant shall pay all fees required by any ordinance adopted by the Borough of South Plainfield. Failure to do so shall be cause to deem the application incomplete.

7.02. In accordance with the provisions of the Municipal Land Use Law, the Board shall provide a verbatim record of all hearings, either by a stenographer or by mechanical or electronic means. A transcript, or duplicate recording in lieu a transcript, shall be furnished to any interested party at his or her expense. When furnishing a transcript of the proceedings to an interested party, the Board shall not charge more than the maximum permitted under N.J.S.A. 2A:11-15. The transcript shall be certified, in writing, by the transcriber to be accurate. The actual cost of the reproduction of a tape shall be paid by the party requesting the tape. An amount estimated by the Board Secretary shall be deposited immediately after the request for a copy of the verbatim record is made. Any excess shall be returned to the applicant, and any balance owed shall be paid by the applicant at the time of delivery.

7.03. If an applicant requests that the Board consider an application at other than a regular meeting, the applicant shall, in addition to the fees provided for elsewhere, pay all costs incurred by the Board in connection with the holding of such special meeting pursuant to the applicable fee ordinance provisions of the Borough of South Plainfield.

## **ARTICLE VIII MISCELLANEOUS PROVISIONS**

8.01. The Chairperson of the Board, or his or her designee, 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 compliance.

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

8.03. Whenever an application is filed with the Board that, pursuant to the Municipal Land Use Law, should have been filed with the Planning Board, the Board may, by resolution, transfer the application to the Planning Board.

8.04. The Board may from time to time amend any part or parts of these by-laws at any regular meeting, provided notice of such amendment has been given, in writing, to each member of the Board at least three days before the meeting. In no case, however, shall any rule, as amended, be applied to any action started before the adoption of such amendment if applying it would result in surprise, hardship or injustice to the applicant or any other interested persons.

8.05. The Board may relax any rule in these by-laws for good cause shown when strict application of the rule would work an injustice. The Board, however, may not relax any rule where the rule is also a statutory requirement under New Jersey law or where the rule is required by South Plainfield ordinance.

Adopted:

Revised: