

Chapter 17.28 PLANNING BOARD AND ZONING BOARD OF ADJUSTMENT

17.28.010 Planning board staff and consultant experts.

- A. The planning board may hire staff members and contract for experts within its budget and allowance.
(Ord. 89-8 § 11.2)

17.28.020 Power and responsibility of the planning board.

- A. The planning board shall adopt rules governing the body's procedural operation.
- B. The planning board shall have the following powers and responsibilities:
1. Adopt and amend the master plan;
 2. Review and participate in the state and federal programs;
 3. Administer site plan and subdivision ordinances;
 4. Assemble data on a continued basis;
 5. Prepare the six-year capital improvements program;
 6. Report to the municipal governing body on proposed development regulations submitted to the board by the governing body within thirty-five (35) days after submission to the board; and
 7. To exercise authority regarding the preservation of historic resources and issue certificates of appropriateness, as set forth in Section 17.20.150.

(Ord. 89-8 § 11.3)

17.28.030 Filing procedures.

Development applications shall be filed with the secretary of the planning board at least twenty-one (21) days prior to the regularly scheduled monthly meeting. Applications shall be filed in accordance with the requirements of the subdivision or site plan ordinance. All applications for variance shall include a site plan drawing as required for site plan submission under the subdivision and site plan ordinance. The secretary of the planning board shall transmit a copy of all development applications to the township environmental commission for review and comment.

(Ord. 89-8 § 11.4)

17.28.040 Zoning board of adjustment—Staff and consulting experts.

The zoning board of adjustment may hire staff members and contract for experts within its budgetary allowance.

(Ord. 89-8 § 12.2)

17.28.050 Rules and regulations.

The board may adopt rules and regulations necessary to carry out the purpose and provisions of this title.
(Ord. 89-8 § 12.3)

17.28.060 Powers of the zoning board of adjustment.

- A. The board has power to interpret provisions of this title in proceedings before the board and to interpret any terms, clause, or word in the title. Such interpretative powers also applies to the zoning map.
- B. The zoning board of adjustment may grant variances from undue hardship when by reason of exceptional narrowness, shallowness, or shape of a specific piece of property or due to exceptional topographic conditions, or by reason or other extraordinary and exceptional situation or conditions, or by reason or other extraordinary and exceptional situation or condition of such property, the strict application of any regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the developer of such property. The board may grant upon application or appeal a variance from strict application of such regulation to relieve such difficulties or hardship. However, no variance shall be granted allowing a structure or use in a district restricted against such structure or use except as provided in subsection C of this section. A proposed development shall not require approval by the planning board of a subdivision, site plan, or conditional use where the board of adjustment has under review a request for a variance pursuant to Subsection 47(a) of the Municipal Land Use Law (C.40:53D-70(c)); but rather such a matter shall be considered by the board of adjustment in accordance with the subdivision and site plan ordinance, and in conjunction with the variance application.
- C. 1. The zoning board of adjustment may grant a variance to allow a structure or use in a district restricted against such structure or use in particular cases and for special reasons, but only by affirmative vote of at least two-thirds of the full authorized membership of the board.
 - 2. No variance or other relief may be granted under the terms of this section unless 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 zone plan and zoning ordinance.
- D. 1. The board may hear appeals of any person aggrieved or an office, department, bureau, or municipal board affected by a decision of the administrative officer as defined in C.40:55D-3.
 - 2. The appeal shall be taken within sixty-five (63) days by filing three copies with the secretary of the board of adjustment. Appeals stay all proceedings upon which the appeal is based unless the officer from whom the appeal is taken certifies in writing to the board that in his or her opinion such a stay would be detrimental to the health and welfare of the municipality, when such a certification is made, a restraining order may be issued by the Superior Court of New Jersey.
- E. The board may reverse, affirm, or modify any order, decision or requirement from which an appeal is taken and have all powers of the administrative officer from whom the appeal was taken.
- F. Any use variance granted by the board of adjustment for erection or alteration of any structure or permitting a specific use of any premises shall expire by limitation unless work has begun on all structures or unless the permitted use has begun, within nine months from judgment or determination of the board. However, an appeal tolls the running of the time period from the dates the appeal is filed from the board to the governing body or a court of competent jurisdiction.
- G. Any municipal variance approval which grants relief from the density or lot area requirements set forth in the schedule of district regulations for a residential or principal nonresidential use in the VR or VC zones shall

require that Pinelands Development Credits be used for all dwelling units or lots in excess of that permitted without the variance.

(Ord. 1997-4, § 33; Ord. 93-5 § 2(M); Ord. 89-8 § 12.4)

17.28.070 Legal powers of the zoning board of adjustment.

A. The following powers are granted by law to the board:

1. To hear appeals on zoning ordinance from decisions of administrative officials or agencies; (2) Interpret zoning ordinances and the official map; (3) Grant hardship variances when the owner would suffer unequitable economic harm due to unusual topographical conditions; (4) Grant a use variance for a structure in a district normally restricted for such structures by an affirmative vote of two-thirds of the full membership; (5) No variance may be issued which will impair the public good, or substantially impair the purpose or intent of the zoning plan or ordinance; (6) Issue permits under C.40:55D-34; (7) Issue permits for structures not related to streets; and (8) The zoning board of adjustment shall have the power to grant (with the same limitations as the planning board) subdivision, site plan or conditional use approval pursuant to Article II, Section 10(d) of the Municipal Land Use Law.

(Ord. 89-8 § 12.5)

17.28.080 Time period for decisions.

The board shall reach a decision no later than one hundred twenty (120) days after an appeal is taken from an administrative officer or a completed development application is presented to the board. Failure of the board to act within one hundred twenty (120) days is deemed a decision in favor of the applicant. In the Pinelands area, notwithstanding the provisions of this section, local approvals granted as a result of the approving authority's failure to act within the prescribed time period shall not become effective until the requirements of Sections 17.32.070(C) and 17.32.080 are met.

(Ord. 89-8 § 12.6)

17.28.090 Procedural provisions which apply to both the planning board and zoning board of adjustment.

A meeting shall be held at least once a month unless there are no development applications to process. Special meetings may be convened by the chairman or two members on notice to the boards and the public. A quorum must be present and all action must be taken by a majority vote unless otherwise specified in the Municipal Land Use Law. All meetings shall be open to the public, unless it is an executive session to discuss litigation, personnel, land acquisition, or other matters exempted by N.J.S.A. 10:4-6 et seq. Minutes of any regular meeting shall be kept and made available to the public. Any party may request production of the minutes of regular and special public meetings, the cost of copying to be paid by the applicant.

(Ord. 89-8 § 13.1)

17.28.100 Hearing requirements.

- A. Each board shall make its own rules governing hearings consistent with the provisions of C. 40:55D-1 et seq.
- B. Oaths shall be administered and subpoenas issued to compel witnesses to attend or to produce evidence. Testimony of witnesses relating to development applications shall be taken under oath by the presiding

officer and the attorneys of interested parties shall have the right to cross examine. The technical rules of evidence shall not apply and verbatim record of each proceeding shall be kept by stenographic record or electronic means.

(Ord. 89-8 § 13.2)

17.28.110 Notice requirement for hearings.

- A. Public notice shall be given in the official municipal newspaper ten (10) days prior to a hearing. Property owners within two hundred (200) feet in all directions of the property in question shall be given notice whether in or outside of the municipality by certified mail or personal service. Notice shall be given to the county planning board when the property in question is adjacent to a county road or other county land or land within two hundred (200) feet of the municipal boundary. Notice shall be given to the commission of transportation on a hearing or application for property development adjacent to a state highway. Notice shall be given to the Division of State and Regional Planning when the proposed development exceeds one hundred fifty (150) acres or five hundred (500) dwelling units. Notice shall also be given to an adjoining municipality on an application when the land in question is within two hundred (200) feet of the boundary line of the adjacent municipality. Notice shall also be given to the Pinelands Commission for all development in the Pinelands area, except for those types listed in Section 17.32.070(A). All parties listed above may be served personally or by certified mail. (The giving of all notice shall be the responsibility of the applicant).
- B. All notice shall be given at least ten (10) days prior to the hearing date and the applicant shall file an affidavit of proof of service with the board. All notices shall state the day, time and place of the hearing, the matters to be considered and identification of the property by street and building lot number and tax map identification.
- C. The administrative officer shall within seven days after a request and upon payment of ten dollars (\$10.00) fee make and certify a list from the current tax duplicate of all property owners to whom the applicant must provide notice.

(Ord. 89-8 § 13.3)

17.28.120 Decisions.

- A. All decisions on any application for development shall be in writing as a resolution of the board and include finding of facts and conclusion of law.
- B. The board shall mail to the applicant a copy of the decision within ten (10) days after the decision has been reached. Copies shall be mailed to all interested persons who request such decisions and a copy shall be filed with the office of the municipal clerk. Notice of every final decision shall be published in the official newspaper and sent to the newspaper within ten (10) days after the decision has been reached.
- C. The applicant shall notify the Pinelands Commission of any final decision of the board in accord with Section 17.32.100(A) including those granted because of failure of the board to act in the prescribed time period.

(Ord. 89-8 § 13.4)

17.28.130 Tax payments.

All applications submitted to either board shall include proof that no taxes or assessments for local improvements or licensing fees of any kind are due or delinquent on such property. If moneys are due on the

property, the applicant must pay such amounts or provide for payment in a manner suitable to the municipality before either board can take action upon the application.

(Ord. 89-8 § 13.5)