

BOROUGH OF NEW MILFORD, NEW JERSEY

RULES OF THE PLANNING BOARD

ADOPTED SEPTEMBER 16, 2008

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

_____The following Rules of the Planning Board of the Borough of New Milford (the "Board") are intended to supplement – but not supplant or otherwise contradict – State law and New Milford's Ordinances. Wherever a conflict occurs between the following Rules and State law/Borough ordinance, the latter shall control.

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PART I
RULES GOVERNING INTERNAL AFFAIRS

Rule 1:1 Officers, Employees, Annual Meeting

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

1:1-2 Appointment of Recording Secretary. At the first meeting of any given year, the Board shall also select and appoint a Recording Secretary. The Recording Secretary may or may not be a member or alternate member of the Board or a municipal employee. The Recording Secretary shall serve for the calendar year and until a successor has been appointed.

1:1-3 Appointment of Board Attorney. At the first meeting of any given year, the Board shall also appoint and fix compensation (within the amount prescribed by the Governing Body) a member of the New Jersey bar, who is familiar with zoning and planning matters, as Attorney for the Board. The Board Attorney shall serve for the calendar year and until a successor has been appointed.

1:1-4 Appointment of Planner. The Board may also appoint and fix compensation (within the amount prescribed by the Governing Body) for a Planner. The Planner shall serve for the calendar year and until successor has been appointed.

1:1-5 Appointment of Engineer. The Board may also appoint and fix compensation (within the amount prescribed by the Governing Body) for an Engineer. The Engineer shall serve for the calendar year and until a successor has been appointed.

Rule 1:2 Duties

1:2-1 Chairperson. The Chairperson shall preside at all meetings and hearings of the Board, decide all points of order and matters of procedure governing said meetings or hearings, and perform all the duties normally appertaining to the office, as required by law, ordinance, these Rules or by the Board. No alternate member of the Board shall serve as Chairperson.

1:2-2 Vice-chairperson. The Vice-chairperson shall preside at all Board meetings and hearings in the absence or disqualification of the Chairperson. No alternate member of the Board shall serve as Vice-chairperson.

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

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

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

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

(d) Cause to be mailed to each member of the Board, at his/her residence address, and to the Board Attorney, a true copy of the minutes of meetings.

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

Rule 1:3 Meetings

1:3-1 Regular Meetings/Work Sessions. The regular meetings of the Board shall be held in the Council Chambers of the Municipal Building at 7:30 p.m. on the third Tuesday of each month. The first regular meeting after January 1st of each year shall constitute the annual organizational meeting of the Board. Work sessions will take place on the fourth Tuesday of each month and will be held in the Council Chambers at 7:30 p.m. The time and place of all meetings may be changed, if necessary, by direction of the Chairperson, or by vote of the Board, subject to all other applicable laws of the State with regard to the Open Public Meetings Act requirements. The Board will not generally hear a new application, additional witnesses, nor conduct new business after 10:30 p.m.

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

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

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

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

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

1:3-5 Absent Members. When any hearing before the Board shall carry over more than one meeting, 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/her absence, provided that said Board member certifies, in writing, to the Board, that he/she has read the transcript or listened to a recording of the entire meeting for which he/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.

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

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

1:3-7 Open Meetings. All meetings, hearings and any action by the Board, except executive sessions conducted pursuant to statute, shall be open to the public. At work sessions, the Chairperson may recognize a member of the public; however, as the applicant may or may not be present, no member of the public shall be permitted to discuss a particular application, or the particulars of any application at a work session of the Board. Testimony shall not be taken at work sessions.

PART II
APPLICATION AND HEARINGS

Rule 2:1 Commencement of Action

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

2:1-2 Filing Requirements: Informal Reviews.

(a) The applicant shall file the application with the Recording Secretary in accordance with the "Subdivision Ordinance," "Site Plan Ordinance," as may be appropriate, and in accordance with the check-list requirements of the Zoning Ordinance. The failure of the applicant to follow the "instructions" and the check-list requirements of the appropriate ordinance will result in the application being deemed incomplete by the Recording Secretary. All statutory time periods for action by the Board commence to run only upon the filing of a declared, complete application. Application forms shall be provided by the Recording Secretary and shall be completely filled in, and shall supply any and all other information and data that may be required for the relief sought by the applicant. A check-list of required submissions shall be furnished to each applicant. All applications shall be filed on the forms provided by the Recording Secretary.

(b) At the request of an applicant, the Board may grant an informal review of a conceptual plan for development. The applicant shall not be required to submit any fees for such an informal review and no party shall be bound by the results of or any discussion in regard to such a review.

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

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

2:1-4 Assignment of Hearing Date; Notice. As soon as any complete application is filed with the Recording Secretary in accordance with the appropriate ordinances, the case shall be assigned a hearing date, with public notice, if required, in

accordance with N.J.S.A. 40:55D-12, and the applicant shall be notified. The applicant shall be responsible to advertise and notify the property owners within 200' if notification is required. If public notice is given, as required by statute, and is deemed inadequate at the time of the hearing, the application will be considered incomplete, notwithstanding an earlier certification of completeness, until the applicant has given proper statutory notice.

Rule 2:2 Procedure for Hearing Applications

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

2:2-2 Swearing of Persons Giving Testimony. All persons, including proposed experts, giving testimony at the hearing shall be sworn by the Board Attorney before giving any testimony.

2:2-3 Order of Presentation. 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 and identify herself/himself/itself and be sworn. The applicant shall then indicate the relief it is seeking from the Board. If the applicant is represented by an attorney, the attorney shall identify himself/herself, the law office, identify his/her client and they then proceed with opening remarks, if desired.

(b) The applicant or its attorney shall then present the testimony of its witnesses. Experts shall be qualified as such through the presentation and acceptance of their credentials. Documentary evidence or exhibits upon which the applicant intends to rely in order to establish the right to the relief sought in the application shall be presented and may be marked for identification.

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

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

(e) At the time the applicant has submitted all evidence or support for the application, the attorney for any objector may then put in the documentary or other

evidence upon which his/her client will rely in objection. Each such witness may be subject to reasonable cross-examination by the applicant or its attorney, and the Chairperson shall allow any members of the public to ask questions of such witnesses.

(f) After all of the evidence has been presented to the Board in support of or in opposition to the relief sought by the applicant, the Chairperson shall then open the floor to the public (subject to the provisions of 2:2-4(d)), to allow any member of the public to make any statement relative to the application before the Board. Such member of the public shall identify himself/herself by providing name and residence address. Rebuttal testimony or evidence shall then be admitted in such order as the Chairperson shall designate.

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

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

2:2-4 Closing of Hearing; Continuances. When the applicant and all interested persons have had a reasonable opportunity to be heard, the Chairperson shall determine if the hearing shall be closed. The applicant, or any other interested person, may request from the Board a continuance of the hearing for the purpose of presenting further relevant evidence. The Board, acting in its sound discretion, may either grant or deny that request. In cases where the Board feels that testimony or other evidence should be received in the public interest from any municipal, county, or state official or from any other persons in order to assist the Board in rendering a just decision, the Board may, on its own motion, continue the hearing to another day certain for such purposes. In the absence of any request to continue the hearing, the Chairperson shall declare the hearing to be closed and, therefore, no further evidence will be received in the matter. In considering a request to continue any hearing, the Chairperson should consider the effect of the time limits for decision.

2:2-5 Evidence. Formal rules of evidence are not enforced before the Board. However, no decision shall be based upon any facts not proved or on matters which are not in the record, unless they be such items of which the Board is entitled to take judicial notice.* When any documents or exhibits are admitted into evidence during a hearing,

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

Facts which may be judicially noticed include (1) such specific facts and propositions of generalized knowledge as are so universally known that they cannot reasonably be the subject of dispute, (2) such facts as are so

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they shall be marked and shall be retained by the Board as part of the permanent file. After the Board has rendered its decision and the time for the filing of any appeal has expired, the Board's Recording Secretary may return any such exhibits or documents to the person who offered them upon his/her written request, provided the same are not essential for or material to the resolution. Any evidence presented, whether by testimony or by documents and exhibits presented at the hearing, which are not questioned or controverted by any other person appearing or by any member of the Board, may be deemed to be true by the Board in its decision-making process and findings of fact.

2:2-6 Burden of Proof. The burden of proof is on the applicant, and it is the applicant's responsibility to supply competent and credible evidence in order that the Board might determine the nature and degree of the relief sought by the applicant. The applicant must establish to the Board's satisfaction that it is, pursuant to statutory provisions, entitled to the relief being sought. Further, the applicant must establish that the relief to be granted will not adversely affect the Borough's Master Plan and scheme nor be inconsistent with the purposes of the Zoning Ordinance, in cases where the applicant is seeking a variance.

2:2-7 Dismissal Without Prejudice. The Board on its own motion may dismiss any matter, without prejudice, if neither the applicant, nor anyone on its behalf, appears at the time set for the hearing of the application. Further, the Board, on its own motion, may dismiss, without prejudice, any application for failure to comply with the provisions of the appropriate ordinance. Any applicant, at any time before the commencement of the hearing, may voluntarily withdraw its application, in which case, the application shall be dismissed, without prejudice

2:2-8 Reports from Departments. The Board, on its own motion, may at any time request a written report on any particular matter from any department within the Borough in connection with the pending case; provided, however, that a copy of such report shall be made available to the applicant, who shall, if it so requests, have an opportunity to question the maker of such report as to any fact or conclusion contained therein. The Board may also refer any application to any appropriate agency for its review and report; provided, however, that the applicant shall be notified of such action

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

and shall be informed of when such agency holds its meetings so the applicant may arrange to be present, if it so desires. Should the Board request such a report or make such a referral, such action shall not extend the period of time within which the Board shall act, unless consent for an extension of time has been granted by the applicant.

2:2-9 Testimony From Board-Employed Expert Witnesses. The Board, on its own motion, may arrange to take the testimony of any expert witness employed by it.

PART III DECISION MAKING

Rule 3:1 Post Hearing Procedures

3:1-1 Decision Making; Resolution: Time. Decisions rendered by the Board shall be adopted in the form of a motion duly seconded and adopted by a quorum of the Board, as required by N.J.S.A. 40:55D-10(g), including occasions where an application is denied because a motion to approve the application did not receive the required number of votes (Rule 1:3-4(b)). The memorializing Resolution shall be adopted within forty-five (45) days of that meeting. The memorializing Resolution 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 THEREON.** If the memorializing Resolution is not adopted within forty-five (45) days of the Board's action, any interested party may apply to the Superior Court in summary manner to compel the Board to reduce its findings and conclusions to a writing within a stated time and the cost of such application, including attorney's fees, shall be assessed against the Borough pursuant to the provisions of N.J.S.A. 40:55D-10(g)(2). Municipal action is deemed to have taken place at the original meeting where the vote was actually taken and not on the date at which the memorializing Resolution is adopted, except that the date of the adoption shall constitute the date of decision for the required mailing of a copy of the Board's decision to the applicant and for the placing of a publication of the Board's decision with the official newspaper of the Borough. The Board will publish the decision of all matters or may direct the applicant to do so. The decisions of the Board, upon submission of a complete application, shall be made as follows:

- (a) For preliminary site plan approval:
 - (1) For a minor site plan, or for a site plan involving ten (10) acres of land or less, or ten (10) dwelling units or less – forty-five (45) days.
 - (2) For more than ten (10) acres, or more than ten (10) dwelling units – ninety-five (95) days.
- (b) For preliminary major subdivisions:
 - (1) For ten lots or fewer – forty-five (45) days
 - (2) For more than ten lots – ninety-five (95) days
- (c) For final approval of a site plan and major subdivision –
forty-five (45) days

- (d) For minor subdivision approval – forty-five (45) days
- (e) For conditional use applications – forty-five (45) days
- (f) For combined application:
 - (1) Those meeting the requirements of N.J.S.A. 40:55D-51(c), the longest time period applicable (i.e., simultaneous review of subdivision, site plan, conditional use)
 - (2) For those applications meeting the requirements of N.J.S.A. 40:55D-67 – ninety-five (95) days (conditional use and site plan)
 - (3) For those applications meeting the requirements of N.J.S.A. 40:55D-61 – ninety-five (95) days (variance)

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

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

(b) Where the Board has determined to impose conditions on the relief granted, such conditions shall be clearly set forth in the Resolution. The Board, when it is deemed necessary to protect the public interest, may specifically provide in its Resolution for the retention of jurisdiction over the matter for a reasonable time. Such time may be specifically set forth or may be conditioned on the happening of a certain event. The purpose of such retention of jurisdiction shall be to enable the Board to vary the terms of any conditions therein imposed or to impose additional conditions, in the public interest, in light of the then-existing circumstances; or to permit the Board to finalize its actions with respect to its "other powers" as granted to the Board by State statute.

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

(d) The Recording Secretary of the Board may direct the applicant or its attorney to publish a statement that the Resolution was memorialized in the official newspaper(s) of the Borough. The Recording Secretary shall cause publication of a statement that a resolution of denial was memorialized in the official newspaper of the Borough.

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

3:1-4 Effectiveness of Decisions; Additional Filings. The actions taken by the Board and the decisions made by it shall be effective pursuant to appropriate ordinance

and statutory provisions. Where required by appropriate statutory provisions, it shall be the applicant's duty to make the filings with the County Recording Officer. In the case where the Board in the exercise of its ancillary powers has granted a variance to the applicant, that variance shall be valid and subsisting in accordance with these Rules.

PART IV MISCELLANEOUS

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

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

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

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

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

4:1-5 Payment of Taxes. The applicant, at the time of filing the application for development, shall file with the Board a certificate of the Tax Collector that the taxes and/or assessments against the property in question have been paid. In the event that taxes and/or assessments on the property affected by the application for development are unpaid, the applicant shall submit, in lieu of the certificate of payment of taxes and/or assessments, a request that the Board take action and shall agree, in writing, to be bound by the following procedure:

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

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

(c) Assuming an approval, the map, plat and/or deed will be signed by the Chairperson and Recording Secretary of the Board, to be delivered through the Board's Attorney to the attorney for the applicant, in escrow. The Board's Attorney shall prepare a sufficient escrow agreement setting forth that the action of the Board is subject to the payment of outstanding taxes and/or assessments, setting forth the specific sum due and remaining unpaid, and indicating that the map, plat and/or deed shall be released from the escrow only upon the payment of said specific sum. The applicant's attorney shall forthwith return the signed escrow agreement to the Board Attorney.

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

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

(f) In the event that the application is for a minor subdivision, only the deed will be forwarded to applicant's attorney, in escrow. The maps will be held by the Board's Recording 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 the application.

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

Rule 4:2 Amendments

4:2-1 Amendments. The Board may, from time to time, amend any part or parts of these Rules 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.