PART I. ORGANIZATION AND ADMINISTRATION.

Rule 1:1. Annual Organization; Elections; Meetings.

1:1-1. Organization Meeting. The Board shall hold a meeting in the first week of January each year for the purpose of organizing the affairs of the Board for the calendar year. If the regular meeting falls on a legal holiday, such meeting shall be held on the next succeeding non-holiday day. Such meeting shall be conducted in the presence of the Board Attorney who was appointed for and who served through the preceding calendar year, and who shall serve pro tem until reappointment or replacement.

1:1-2. Election of Officers. At the organization meeting, the Board shall elect, in ballot form from its Class IV members a Chair and Vice-Chair.

1:1-3. Board Attorney. The Board shall annually appoint or reappoint an Attorney-At-Law of the State of New Jersey having recognized competence in the law of local governments, land use and zoning. The

Board Attorney shall be compensated pursuant to agreement and shall be the legal advisor and representative of the Land Use Board. The Board Attorney shall prosecute and defend litigation and appeals on behalf of the Board.

1:1-4. Board Engineer. The Board shall annually appoint or reappoint a licensed professional engineer in the State of New Jersey who shall review and report on the applications and other matters pending before the Board at the direction of the Board, and who shall attend the meetings of the Board unless otherwise instructed. The Board Engineer shall be compensated pursuant to an Agreement for Professional Engineering Services.

1:1-5. Planner. The Board shall annually appoint or engage a licensed professional planner in the State of New Jersey who shall review applications and land use matters, prepare Master Plan and reexamination reports and attend meetings at the pleasure of the Board. The Board Planner shall be compensated pursuant to an Agreement for Professional Planning Services.

1:1-6. Other Assistance. The Board may also appoint such other officers and/or assistants and engage such additional experts or staff as it may be necessary from time to time. Such persons shall be compensated pursuant to an Agreement for Services.

Rule 1:2. Terms of Land Use Board Members.

1:2-1. Terms.

Class I. The term of the member composing Class I shall correspond to the Mayor's official tenure or, if the member is the Mayor's designee in the absence of the Mayor, the designee shall serve at the pleasure of the Mayor during the Mayor's official tenure.

Class II. The term of the member composing Class II shall be for one year or terminate at the completion of that member's term of office, whichever occurs first.

Class III. The term of the member composing Class III shall be for one year or terminate at the completion of that member's respective term of office, whichever occurs first.

Class IV. The terms of the members of Class IV shall be four years. The term of a Class IV member who is also a member of the Board of Education shall terminate whenever that member is no longer a member of such other body or at the completion of the Class IV term, whichever occurs first. The terms of all Class IV members first appointed shall be so determined that to the greatest practicable extent the expiration of such terms shall be distributed evenly over the first four years after the appointments.

Alternates. The terms of the alternate members shall be for two years, except that the terms of the alternate members shall be such that the term of not more than two alternate members shall expire in any one year. In no instance shall the terms of the alternate members first appointed exceed two years.

1:2-2. Chair. The Chair 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 shall perform all the duties normally appertaining to his or her office, as required by law, ordinance, these rules or prevailing parliamentary practice. With the advice of the Board's Attorney when needed.

1:2-3. Vice-Chair. The Vice-Chair shall preside at all Board meetings and hearings in the absence or upon the disqualification of the Chair, and shall have all of the powers of the Chair under such circumstances.

1:2-4. Pro Hoc Chair. In the event the Chairperson and the Vice Chairperson are not available, the Board shall elect at such meeting a Class IV member to serve as the Chair Pro Hoc.

1:2-5. Secretary. The Secretary shall generally perform the secretarial work of the Board, including, but not limited to the following:

(a) conduct all official correspondence, compile all required records, keep and maintain all necessary files and indexes with respect to the operation of the Board, cause all notices of meetings required to be given pursuant to the Open Public Meetings Act, the Municipal Land Use Law or any other applicable law or ordinance;

(b) attend all meetings of the Board, take and have custody of all records, documents, maps, plans and evidence, and provide for the care and custody of items for which no other provision is made by statute or these rules; take or direct the taking of roll call votes, and insure the recordation of affirmative and negative votes as well as abstentions;

(c) make 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 (including work sessions) held by the Board and enter therein such resolutions and orders as are adopted by the Board;

(d) cause to be mailed or otherwise delivered or made available to each member of the Board and the professional consultants to the Board true copies of the minutes and all other documents and materials pertaining to the business of the Board;

(e) perform such other duties as normally appertain to the office of Secretary of the Planning Board, and assign such parts of such duties as may be appropriate to an assistant or designee.

Rule 1:3. Meetings.

1:3-1. Regular Meetings. Meetings of the Land Use Board shall be held on the third Thursday of every month at 6:30 p.m. If the regular meeting falls on a legal holiday, such meeting shall be held on the next succeeding secular day or such other day as the Board may select. Whenever there are no matters to be considered at any regular meeting other than the organization meeting, the Chair may dispense with such meeting by directing the Secretary to provide notice of cancellation to each member of the Board by reasonable means, ten days prior to the next scheduled meeting and as soon as possible in advance of the time set for such meeting and by giving notice in accordance with the Open Public Meetings Act or otherwise posting the cancellation for the convenience and interests of the public.

1:3-2. Special Meetings. Special meetings may be called by the Chair or, in his or her absence, by the Vice-Chair, at any time, provided that notice thereof be emailed or given to each member of the Board and to the public as required or allowed by law. An applicant may request but shall not be entitled to a special meeting. Special meetings at the request of an applicant may be scheduled at the pleasure of the Board provided the public interest is fairly and reasonably served. The applicant shall be responsible for all fees and costs related thereto.

1:3-3. Quorum. At all meetings of the Board, a quorum to conduct any business of the Board shall consist of five (5) qualified members. In the absence of a quorum, the members present may convene a meeting only for the purpose of adjourning the same to another date. No hearing may proceed without a qualified quorum of the Board for that particular hearing.

1:3-4. Electronic Attendance. Two-way telephonic communication equipment will be sufficient for a board member to participate in routine administrative matters such as a board's reorganization or a determination of meeting schedules. A member will be able to participate without being physically present in a reorganization meeting, or the portion of a regular or special meeting devoted to matters other than hearings on applications, by way of two-way communication equipment, such as telephone or computer. The communication equipment in the meeting room, however, should have a "speaker phone" or be otherwise audible to all board members and members of the public physically present. Participation in a hearing for an application for development, however, should require more sophisticated equipment, including audio and video components, because visual contact with witnesses and exhibits is necessary. For a member to be deemed "present" in order to participate in a hearing on an application for development the communication equipment should have audio capabilities consisting of a "speaker phone" or be otherwise audible to all board members, the applicant and members of the pubic physically present at the hearing. Additionally, the equipment should have video capabilities that allow the member to see all exhibits and everyone who speaks, testifies or asks questions during the hearing. Thus, a fixed view camera would not be sufficient. Instead, multiple cameras or a videographer would likely be necessary. If the video equipment does not allow the member to see the exhibits under consideration and the speakers, as well as hear the entirety of the hearing, the member should not be deemed "present" within the meaning of the MLUL and the OPMA for purposes of participating. A member or alternate member shall not use electronic attendance for more than (2) two consecutive meetings. This attendance is subject to consent of Applicant and/or Attorney.

1:3-5. Open Meetings. Except as otherwise provided in these rules and regulations, the meetings of the Board shall be open to the public at all times. Nothing herein shall be construed to limit the discretion of the Board to permit, prohibit or regulate the active participation of the public at any meeting. The Board

may exclude the public only from those portions of a meeting at which the Board discusses matters within the exclusions provided under N.J.S. 10:4-12b and/or N.J.S. 40:55D-9b, Sunshine Law.

1:3-6. Order of Business. Subject to the discretion of the Chair to the contrary, the order of business for all regular sessions of the Board shall be as follows:

(a) call to order;

(b) statement of compliance with Open Public Meetings Act;

(c) roll call;

(d) approval of minutes of previous meetings;

(e) approval of bills

(f) adoption of resolutions;

(g) motions for adjournments of any scheduled cases and any other

motions;

(h) old business (continued hearings);

(i) new business (new hearings);

(j) other discussion;

(k) closed session;

(l) adjournment.

1:3-7. Time Limitations. The Board shall be under no obligation to consider new matters after 9:30 p.m., and will take no new testimony beyond 10:00 p.m. This rule may be waived by an affirmative vote by a majority of the Board members then present and qualified.

PART II. PROCEDURES.

Rule 2:1. Applications and Hearings.

2:1-1. Administration of Applications; Completeness. Applications for development shall be considered by the Board in accordance with the Land Use Ordinance. Upon receipt of an application by the Board

Secretary, the application shall be assigned a docket number which shall thereafter appear on all subsequent papers filed in the case. The original copy of the application, together with a copy of all other documents filed with the application, shall be filed in the permanent case docket of the Board. The Board or its designees shall determine the completeness of the application in accordance with the Land Use Ordinance. Upon a determination of completeness, the Board Secretary shall so notify the

applicant, and the application shall be determined to be complete as of the day it was so certified by the Secretary for purposes of commencement of the time period within which the Board must act upon an application.

2:1-2. Scheduling; Transmittals. Upon a determination of completeness in accordance with these rules and regulations, the application shall be assigned a hearing date upon notice, where required. The Board Secretary shall forward copies of all application materials, documents to the Board Attorney, the Board Engineer and, where appropriate, the Board's planning consultant. Applications shall be scheduled so as to comply with statutory and ordinance limitations in time. Scheduling of matters for work session, regular session or subcommittee review shall be at the discretion of the Board or its designee(s).

2:1-3. Subsequent Submissions. Any new submissions must be filed with the Board Secretary at least ten (10) days prior to the date appointed for the hearing in order to afford the Board and its professionals and the public an opportunity to review the same prior to the hearing.

Rule 2:2. Hearing Procedure.

2:2-1. Appearance by Parties. At the time of the hearing on an application, the applicant, or in the case of an appearance by a nonapplicant party, such party, shall appear in person, or such person may appear by Attorney-At-Law admitted to practice in the State of New Jersey. No corporation shall be heard except through counsel.

2:2-2. Testimony Under Oath. All persons giving testimony at a hearing shall be duly sworn by the Board Attorney or, in the absence of the Board Attorney, the Chair or his or her designee.

2:2-3. Order of Presentation. Each application shall be considered in accordance with the following order of presentation:

(a) The applicant shall enter an appearance on the record and be duly sworn. If the applicant is represented by counsel, the attorney shall enter his or her appearance, identifying the name and location of his or her firm, identifying the client who is represented, and shall then proceed to make opening remarks.

(b) The applicant shall then present testimony and such other evidence, depicted, documentary or otherwise, upon which the applicant intends to rely in order to establish a basis for the relief sought.

(c) At the conclusion of a witness's testimony, the Chair shall allow the members and, at the discretion of the Chair, any interested parties to ask questions of such witness, and may permit reasonable cross-examination by counsel representing an objector or interested party.

(d) Upon the conclusion of the presentation of the application, any objector(s) wishing to present a case in objection to the relief sought may do so in such order as may be recognized by the Chair, and may call any witnesses for testimony and introduce any documentary or other evidence upon which he or she will rely. Any witness and objector shall be subject to reasonable cross-examination by the applicant or his or her attorney and the Board, and the Chair shall allow a reasonable opportunity for interested parties to ask questions of such witnesses. The Chair shall first recognize presentations of counsel for objectors and those presentations involving expert testimony in the order that the Chair shall determine upon the exercise of reasonable discretion. Such presentations shall be subject generally, to the procedure set forth in the above subparagraphs, affording the attorney for the applicant, an applicant pro se and any experts for the applicant a reasonable opportunity for cross-examination and commentary.

(f) The Board shall thereafter recognize public commentary by interested parties appearing pro se, and each such interested party shall be subject to cross-examination. The Chair shall have the right to cause any interested party appearing before the Board to be first duly sworn and shall do so whenever an interested party will proffer facts on which the Board would be expected to rely. All rebuttal testimony or evidence shall be considered in such order as the Chair shall designate. Only relevant objections shall be considered by the Board. The Board shall not consider unreasonable, repetitive or disorderly objections. The Board shall have the power to limit objections to those expressed by interested parties as the term is defined in the Municipal Land Use Law and construed by the courts of this State.

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

(h) The Board shall have the right to rely upon the expertise of its legal, engineering and planning consultants. The Board may also call, as witnesses, other municipal officials such as police officers, municipal engineers, the tax assessor, municipal employees managing municipal utilities, etc., to testify as to particular facts pertinent to the application. The Board shall also have the power to acquire additional evidence consistent with these rules.

2:2-4. Reports from Officers, Boards or Agencies. The Board may refer an application to another person or agency for a report provided that such reference shall not extend the time within which the Board must act. Such reports from other persons or agencies shall be made available to the applicant and to other interested parties for examination and refutation.

The applicant and interested parties shall have the right to subpoena the officer making the report for purposes of cross-examination as to its contents and the basis for conclusions. The Board shall either obtain such reports prior to the hearing, giving all interested parties the right to examine the same, or the hearing may be adjourned to a specific time and place for the purpose of receiving the reports and recommendations of public officials or agencies involved.

2:2-5. Continuances. All cases may be continued to another date certain, which shall be the next regularly scheduled Board meeting unless otherwise determined by the Board. The Chair shall announce to all those present the date, time and place to which the hearing on the matter is continued. No further notice need be given by the applicant in that event. However, if the matter is continued to a special meeting, notice required under the Open Public Meetings Act shall be given. The Board reserves the right to continue a hearing on its own motion for purposes of further consideration, subject to limitations of time as provided in the Land Use Ordinance and the Municipal Land Use Law. The Board may also grant reasonable requests of interested parties to continue a matter in order to afford such parties sufficient time to prepare, engage counsel, obtain witnesses or for other good cause. However, the Board shall do so only to the extent that the applicant's interests are not unduly compromised or prejudiced with respect to the applicant's protected interests pursuant to prevailing law. Where adjournment for a continuance would extend the statutory period within which the Board is required to act, the consent of the applicant shall be evidenced in writing or shall be made on the record.

2:2-6. Refusal to Consent to Continuance. Where an applicant has taken a substantial period of time to present his or her case and then refuses to consent to a continuance so that objectors can be heard or the Board has insufficient opportunity to consider the matter, such refusal by the applicant may be

deemed arbitrary and unreasonable by the Board. Should the applicant move for the Board to decide the matter without affording such opportunity, the applicant shall be at risk of a denial of the application for failure to sustain the burden of proof and failure to afford the Board an opportunity to reach an informed decision.

2:2-7. Testimony from Board-Employed and Other Expert Witnesses. The Board may require expert witnesses and reports. Experts shall be qualified to the satisfaction of the Board. In addition to experts for the applicant or others, the Board shall have the power to engage its own independent experts to either corroborate or refute the testimony of experts produced by an applicant or other party. The Board shall not be bound to accept the testimony of any expert. Where there is conflicting testimony of experts, the Board shall decide which to accept. These rules shall not be construed as requiring expert testimony in all instances to sustain a Board finding. The Board may require its consultants to confer with the experts of the applicant and, where appropriate, with experts hired by objectors or the Board in order to expedite consideration of the application. Informal communications between the Board's consultants or experts and those for the applicant shall be permitted outside the context of public meetings. The applicant shall reimburse the municipality for the expenses incurred by the municipality in having Board professionals and experts participate in such communications.

2:2-8. Viewing by Board; Personal Knowledge of Board Members. Viewing the property that is the subject of the application shall be permitted upon reasonable notice to and consent of the parties. In that event, or in the event that one or more members of the Board are well acquainted with the subject property, knowledge thereby acquired of any particular fact or facts may be used in making a decision if such member or members establishes such facts as the record at the time of the hearing. The applicant, any objector, or any interested party shall have an opportunity to refute such facts. However, in the event that Board members visit the subject property or have historical or other knowledge of the subject property and no reference is made to the same on the record, it will be presumed that such facts were not necessary to reach an informed decision and merely helped such members to understand the evidence presented to them at the hearing. The absence of references to site visits and impressions shall not vitiate any decision otherwise reached on adequate grounds.

2:2-9. Evidence; Exhibits. The formal rules of evidence adopted by the courts of the State of New Jersey shall not be enforced in the proceedings before the Land Use Board. However, no decision shall be based upon any facts not proved or on matters which are not on 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 or for purposes of 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 filing an appeal has expired, the Board 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 for the purpose of the hearing(s), which are not questioned or controverted by any other party or by any member of the Board, may be deemed to be true by the Board for purposes of its decision. The Board may limit irrelevant, immaterial or redundant testimony.

2:2-10. Effect of Covenants, Judgments and Other Regulations Affecting Land Use. The Planning Board is established for the sole purpose of exercising the powers conferred upon it by the Municipal Land Use Law. The Board is authorized by local ordinance only to hear matters within the purview of that ordinance. A restrictive covenant shall be construed as being in the nature of a private contract which

may be enforceable either by a Grantor or other protected party. Such a covenant shall not affect the jurisdiction of the Board, and the grant of relief by this Board shall not affect the validity of any restrictive covenant. The existence of a covenant shall generally have no bearing on the Board's determination, unless a restrictive covenant was imposed as a condition of prior relief to the benefit of the public.

2:2-11. Letters and Petitions in Objection. Letters of objection and petitions shall not be admissible, though the writer of a letter or the signer of a petition may appear and testify.

2:2-12. Burden of Proof. The burden of proof is upon 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 pursuant to statutory and ordinance criteria, the applicant is entitled to the relief sought.

Rule 2:3. Voting.

2:3-1. Voting Procedure. All motions shall require a second. The Chair shall allow discussion on any motion made and duly seconded. All votes shall be taken by roll call, and the vote and name of the member casting the vote shall be recorded in the minutes. Unless otherwise provided herein or under prevailing law, any action may be authorized by a majority vote of the members present at such meeting.

2:3-2. Voting Margin and Effect. If a motion to approve an application for development fails to receive the number of required votes, such failure shall be deemed an action denying the application.

2:3-3. Abstentions. Abstentions are disfavored. An abstention shall be regarded as an assent to the vote of the majority. Thus, if the majority of those voting would affirm a measure, abstentions would be counted toward affirmance; if the majority would defeat a measure, abstentions will be counted toward defeat. A disqualified member shall not be counted as an abstention and shall, instead, remove himself or herself from the panel and not be involved in the consideration of the application. An Alternate Member, pursuant to Municipal Land Use Law will then vote on the Application. If the Board is evenly split in its decision, no majority exists with whom an abstaining member can be said to vote and accordingly, abstentions shall not be assigned to either bloc. A tie vote shall defeat an application, and abstentions shall not be construed to approve an application; nor shall abstentions be used to create a tie.

2:3-4. Voting Eligibility; Review of Record. When any hearing before the Board has been continued, a member of the Board who was absent for one or more hearing sessions shall be eligible to vote on the matter upon which the hearing is conducted notwithstanding the member's prior absence provided that such member certifies in writing to the Board that he or she has read a transcript or listened to a recording of the entire session 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.

Rule 2:4. Other Hearing Requirements and Procedures.

2:4-1. Record of Proceedings. The record shall mean the application form, any exhibits or other documents submitted to the Board in support thereof, maps, proper submissions by interested parties, and the verbatim record of the hearings. The notes of the planning Board secretary shall also be part of the record, and the minutes of the meeting shall be considered both a summary of the record and part thereof.

2:4-2. Recordings. The Board shall furnish a recording of the hearing to any interested party at his or her expense. Interested parties shall not be charged more than the maximum permitted in N.J.S. 2A:11-15.

2:4-3. Inability to Make Verbatim Record. If, at the time set for hearing, a verbatim record cannot be made for good reason, as where recording equipment is inoperable, the Board shall, if time is not a factor, continue the hearing to another date.

2:4-4. Subpoenas; Contempt. The Chair and the Board Attorney shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties. The provisions of the county and municipal investigations law, N.J.S. 2A:67A-1 et seq. shall apply. Any person under subpoena who refuses or fails to appear or refuses to be examined or answer any proper questions or to produce any books, papers, documents or tangible things in accordance with the subpoena, shall be subject to the proceedings in the Superior Court for an Order to compel him or her to do so. If a person subject to subpoena shall engage in contemptuous conduct at any hearing, the Board may apply to the court to compel such person to refrain therefrom, and may seek costs and fees in connection therewith.

2:4-5. Perjury. Any person who shall willfully give false testimony under oath in the course of any hearing held before this Board shall, in accordance with the provisions of the County and Municipal Investigations Law (N.J.S. 2A:67A-1 et seq.), be guilty of perjury.

2:4-6. Judicial Notice. The Board may take judicial notice of such matters as are so notorious as not to be the subject of reasonable dispute, including matters of common knowledge, and provisions of the Municipal Land Use Law and the Borough of Harvey Cedars Land Use Ordinance.

2:4-7. Dismissal Without Prejudice. 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 the hearing of said application. Further, the Board, on its own motion, may dismiss, without prejudice, any application for failure to comply with these rules. Any applicant may, at any time before the commencement of the hearing, voluntarily withdraw his or her application, in which case, the application shall be dismissed without prejudice. The Board reserves the power to impose reasonable terms and conditions on the dismissal of any application.

2:4-8. Amended Applications. An applicant may, prior to the commencement of a hearing, amend his or her application without leave of the Board and in all such cases new notice shall be given as in the case of the original application. After commencement of a hearing, an application may be amended only with leave of the Board. If the amendment after commencement of hearing is for the purpose of reducing the nature or extent of the variance sought, no new notice will be required. Otherwise, new notice shall be given.

2:4-9. Conditions. The Board shall have plenary power and discretion to impose conditions. The conditions shall be development-specific and predominantly aimed at mitigating specific concerns

arising in connection with the proposed project. Such conditions shall not be deemed exclusive, and the applicant shall be subject to terms and conditions of approval that are expressed and implied at law, including those imposed pursuant to ordinance as applied uniformly to every development application. If a term or condition of approval is imposed by ordinance or law and the Land Use Board is not expressly granted the power to waive, enlarge or relax such term or condition, the Board shall not have such discretion or power. The right to impose conditions is an inherent power of the Board that exists regardless of whether the ordinance grants such a right to the Board. To be enforceable, a condition must be part of the record. Conditions must not offend against any provisions of the Land Use Ordinance, must be in the public interest, must be reasonably calculated to achieve a legitimate objective of the ordinance and shall not be unnecessarily burdensome to the applicant and/or owner. The Board shall have the power to require that conditions be fulfilled within a stated period of time. The Board may require that some or all conditions of approval, or the resolution itself, be recorded with the County Clerk along with any maps for filing.

PART III. TAKING ACTION ON APPLICATIONS.

Rule 3:1. Decisions.

3:1-1. Decision Based on Evidence. Each case shall be decided strictly on the basis of the facts adduced at the hearing viewed in light of the statutory and ordinance requirements. The Board is a quasi-judicial body whose function is to apply the facts adduced at the hearing to the legal requirements of the tatute and ordinance and to decide whether the requested relief can be legally granted or not. The number of opponents or objectors present, or even the fact that no objections are heard, shall be only of secondary importance unless the Board finds that the absence of objection is evidence that relief can be granted without substantial detriment of the public good. The facts adduced at the hearing, all testimony and all evidence on which the Board makes its decision must be part of the record and the Board's decision must include findings of the facts from the record on which it made its decision and conclusions on the points of law raised. The Board's decision must be made at a public meeting and the Board's vote on the making of its decision and the adoption of its resolution must be taken at a public meeting.

3:1-2. Alternative Relief. The Board shall have the discretionary power to grant relief other than the precise relief or portion thereof sought by the applicant provided that interested parties shall have received reasonable notice of the fact that such relief might be granted.

3:1-3. Reservation of Decision. The Board may decide to reserve decision on a matter after the hearing is completed and may make its decision at the next meeting provided that the period within which to decide the application will not expire prior to the next succeeding meeting. The Board may also authorize the Board Attorney to prepare a resolution for consideration at the next meeting provided prevailing time limitation will not expire prior to such meeting. The making of a motion to have a resolution prepared for consideration shall not be construed as the making of a decision, but shall be only an indication of an intention to act upon an application in a certain manner. The Board shall not be bound by such measure.

3:1-4. Memorializing Resolution. After a decision has been reached by the Board as to whether the relief requested by the applicant is to be granted or denied and upon what terms, the Board's findings of

fact and conclusions of law must be embodied in the form of a written resolution. When the Board votes to adopt a resolution, the findings and conclusions set forth in the resolution become the findings and conclusions of the Board. It shall be immaterial that at the time of voting certain Board members may have given other reasons or discussed matters not addressed in the resolution; nor shall it be necessary that Board members articulate particular reasons for reaching a decision at all, it being sufficient that the application be either approved or disapproved by a voice vote and that thereafter a memorializing resolution is adopted. The Board Attorney shall prepare the resolution in such a way as to give the greatest possible support to the decision which has been made by the Board. Once the resolution has been prepared and has been voted on favorably by the members of the Board, it shall become a memorializing resolution of the decision of the Board.

3:1-5. Contents of Resolution; Publication. A copy of the Board's resolution shall be furnished to the applicant and his or her attorney within ten (10) days from the date of the Board's decision. The Board's Secretary shall cause notice of the Board's action to be published, once, in the official newspaper of the municipality, in accordance with the provisions of the MLUL. The resolution of the Board shall contain:

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

(b) where the Board has determined to impose conditions on the relief granted, such conditions shall be clearly set forth in the resolution. The Board may, when it is deemed necessary to protect the public interest, specifically provide in its resolution for the retention of jurisdiction over the matter before the Board for a reasonable time. Such time may be specifically set forth or may be conditioned on the happening of a certain event. The purpose of such retention of jurisdiction shall be to enable the Board without limitation 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 action with respect to its other powers, as granted to the Board by statute and/or ordinance. However, nothing herein contained shall be construed to limit the Board's inherent power to modify a decision for good cause shown, irrespective of whether the Board has expressly retained jurisdiction;

(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.

3:1-6. Nature of Resolution Drafts. A resolution prepared by the Board Attorney and transmitted to the Board for consideration at its next meeting shall be considered a privileged document between the Attorney and the Land Use Board and shall not become a matter of public record until such time as it is determined by the Board and its Attorney that the Resolution properly memorializes and reflects the decision of the Board. The Board and the Attorney may consent to a waiver of this requirement for good cause shown and expressed by the applicant or interested parties at or before the time of decision.

3:1-7. Time. The resolution of memorialization shall be adopted within forty-five (45) days of the decision. Such resolution of memorialization shall be adopted by a majority vote of the members of the Planning Board who voted in favor of the action previously taken. No other member shall vote thereon. If the resolution of memorialization is not adopted within forty-five (45) days of the Board's action, any

interested party may apply to the Superior Court for an Order compelling the Board to reduce its findings and conclusions to writing within a stated time, and the cost of the application, including attorney's fees, shall be assessed against the municipality pursuant to the provisions of N.J.S. 40:55D-10(g)(2). Municipal action shall be deemed to have been taken at the original meeting and not the date at which the resolution or memorialization is adopted, except that the date on which the resolution of memorialization is adopted shall constitute the date of decision for the required mailing of a copy of the decision to the applicant and for the publication of the Board's decision in the official newspaper of the municipality as required by subsections (h) and (i) of N.J.S. 40:55D-10.

3:1-8. Publication of Notices of Decisions. A copy of the decision shall be mailed within ten (10) days of the date of the decision to the applicant or his or her attorney without charge, and to all who request a copy of the decision for a reasonable fee. A copy of the resolution shall be filed in the office of the Administrative Officer and shall be available to the public upon adoption. A brief notice of the decision shall be published in the official newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality. Such publication shall be arranged by the applicant unless a particular municipal officer is so designated by ordinance. Nothing herein contained shall be construed as preventing the applicant from arranging such publication if so desired. The municipality may make a reasonable charge for its publication. The period of time in which an appeal of the decision may be made shall run from the first publication of the decision, whether arranged by the municipality or the applicant. The date of adoption of the memorializing resolution shall constitute the date of decision for the purpose of mailings, filings and publications.

Rule 3:2. Rehearing; Modification.

3:2-1. Misrepresentation, Fraud, Mistake. The Board may presume that all material statements of fact are true. The Board may also presume that all exhibits, maps and other documents submitted are true and accurate representations of all facts which such materials have been introduced to substantiate. In the event that it later appears to the Board on reasonable grounds that an applicant or witness has not been truthful, or that a mistake has been made, and such circumstances bear on facts which are essential in the granting of the relief sought by the applicant and were relied upon the Board in taking such action, then, upon discovery of such misrepresentation, fraud or mistake, the Board may rehear the matter either upon application of an interested party or on its own motion when unusual circumstances so require in the interest of justice. In such event, the Board may, upon notice directed to the applicant and all other interested parties, require the applicant to appear before it for the purpose of explaining the testimony previously given at the hearing. At such subsequent hearing it may be determined whether or not the testimony as given at the original hearing was in fact false. Mistake or fraud in proceedings, left uncured, shall constitute grounds for rescission.

3:2-2. Rehearing. An applicant or other interested party may, by right, within forty-five (45) days after the publication of notice of the decision, move the Board for a rehearing of the matter or a portion thereof for the reasons provided in Rule 3:2-1 by filing an application in the form of a letter addressed to the Board containing a brief statement of the grounds relied upon. If the motion is granted by the Board, it shall fix a date for rehearing and shall require the moving party to give notice to all persons who participated in the original hearing or hearings, upon such terms as the Board may deem adequate. The Board may order a rehearing on its own motion when unusual circumstances so require in the

interest of justice. Any motions to rehear an application or portion thereof made after forty-five (45) days following the publication of decision shall be considered strictly by leave and discretion of the Board in consideration of the protected interests of the applicant as balanced against the public interest.

3:2-3. Vacation or Modification. At any time after the adoption of a resolution of memorialization any person having an interest in such decision may move the Board for an order vacating or modifying any term or condition of said decision by filing with the Board a petition in the form of a letter setting forth the reasons therefor and the grounds relied upon. If the petition is granted, the Board shall fix a date for hearing and the movant shall give notice of such hearing in the same form and manner as otherwise required in the case of original applications. The Board, on its own motion, may, in a proper case, similarly order all parties in interest to show cause at a time and place fixed in the notice why the terms or provisions of any variance ought not to be vacated or modified.

3:2-4. Res Judicata. If the same parties or their privies seek the same relief in the same factual setting, the case may be dismissed on the ground that it has already been decided. However, if the first case was not a decision on the merits, there shall be no bar to the second application. If a second application seeks relief which is entirely different or is of lesser proportions than in the first application, the second application shall not be barred. An applicant shall also be given a fair opportunity to show that circumstances have changed significantly or that other good cause exists for reconsideration. This rule shall not be construed to disallow an application for modification or enlargement of an approval or for the lifting or relaxation of conditions previously imposed in connection with an approval upon a proper showing of changed circumstances or other good cause warranting a reconsideration.

PART IV. AVAILABILITY AND ELLIGIBILITY OF MEMBERS.

Rule 4:1. Alternate Members.

4:1-1. Designation. There shall be four (4) alternate members of the Land Use Board who shall be designated by the appointing authority as "Alternate No. 1," "Alternate No. 2," "Alternate No. 3," and "Alternate No. 4," respectively, and each alternate shall retain said designation during the term for which he or she was appointed.

4:1-2. Appointment of Alternate to Serve on Case. During the absence or disqualification of any regular member, the Chair shall recognize one of the alternate members to serve in the place of said regular member; provided, however, 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 unless otherwise needed to fill an absence of a member.

4:1-3. Alternate to Serve Until Final Disposition. In the event of disqualification of a regular member for any hearing or matter, an alternate member who has been designated to sit in place of a regular member and who has participated in such hearing or matter coming before the Board shall continue to act in the place of such regular member until the final disposition of said matter by the Board.

4:1-4. Alternate No. 1 to Vote. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote. Thereafter, if Alternate No. 1 is not available, Alternate No. 2 shall

vote, If Alternate No. 2 is not available, Alternate No. 3 shall vote. If Alternate No. 3 is not available, Alternate No. 4 shall vote.

4:1-5. Alternate Not to Serve at Adjourned or Continued Hearing Unless Present at Prior Hearings. When a member has been present and has participated in the first hearing on any matter, no alternate member shall be designated to serve during the absence of such member during any adjourned or continued hearing or hearings on the same matter unless said alternate member was present at such first hearing or any prior adjourned or continued hearing on such matter.

4:1-6. Rights and Privileges. An alternate member who has been designated to serve in the place of an absent or disqualified member shall, during the period of service, enjoy all of the rights and privileges and shall be subject to all of the duties and disabilities pertaining to members if the alternate member is eligible in all pertinent respects, provided, however, that no alternate member shall be eligible to serve as Chair or Vice-Chair of the Board.

4:1-7. Participation in Discussions; Voting. Alternate members may participate in discussions of the proceedings, but may not vote except in the absence or disqualification of a regular member, nor shall any vote be delayed in order that a regular member may vote instead of an alternate member.

Rule 4:2. Rule of Necessity.

4:2-1. Appointment of Additional Members. If the Board lacks a quorum because any of its regular or alternate members is prohibited from acting on a matter due to the member's personal or financial interests therein as regulated under Rule 4:3 or prevailing law, regular members of the Board shall be called upon to serve, for that matter only, as temporary members of the Board in order of seniority of continuous service to the Board until there is the minimum number of members necessary to constitute a quorum to act upon the matter without any personal or financial interest therein, whether direct or indirect. If a choice has to be made between regular members of equal seniority, the Chair of the Board shall make the choice. This procedure shall be invoked only when the direct and proximate cause of a lack of quorum is the disqualification and not the mere absence of one or more members of the Board.

Rule 4:3. Disqualification for Interest.

4:3.1. Disqualification Generally. No member of the Board shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. No member of the Board shall participate in proceedings in which such member has a conflicting interest that may interfere with the impartial performance of his or her duties as a member of the Board. The decision as to whether a particular interest is sufficient to disqualify shall depend on the facts and circumstances of the particular case. The test shall be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the Board member to depart from his or her sworn public duty.

4:3-2. Local Government Ethics Law. The members of the Board shall comply with and be bound by the provisions of the Local Government Ethics Law, N.J.S. 40A:9-22.1, et seq. and shall annually file a statement as prepared by the local Finance Board and the Division of Local Government Services,

Department of Community Affairs. Pursuant to such law, no Board member shall act in his or her official capacity in any matter where he or she, a member of his or her immediate family or a business organization in which he or she has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his or her objectivity or independence of judgment. To the extent that the word "involvement" as cited hereinabove extends the reach of the law beyond interest," the same may be considered a source of disqualification and shall be closely examined by the Board. Any interest or involvement of the Board member that is not shared in common with other members of the public shall be examined to determine eligibility.

4:3-3. Examples of Disqualification for Interest. Any member of the Board shall disqualify himself or herself from sitting on the hearing of any matter in which he or she has a disqualifying interest, such as, but not limited to, the following situations:

(a) where the member owns property located within two hundred (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) where the applicant or his or her attorney is the employer, employee, or partner of the member, or is a corporation in which the member is a shareholder or has other financial interest;

(d) where the member has any other personal or pecuniary interest in the proceeding.

4:3-4. Removal from Panel. Any member having been deemed or having deemed himself or herself disqualified in any matter shall not sit with the Board to participate in the consideration of such matter. The nature of any such disqualification shall be disclosed at the time of recusal unless doing so would constitute an unwarranted invasion of individual privacy or could adversely affect the public interest. Such member may be heard at the appropriate time as an interested party or applicant, but whenever such member appears before the Board on his or her own behalf or by legal representative, it shall be disclosed that the member's comments are made solely to exercise or protect private rights and are not expressed as a member of the Board. Every effort shall be made by such member to avoid the possible influence of fellow Board members and the appearance of impropriety from the point of view of the general public.

4:3-5. Disclosure of Possible Conflicts; Waiver by Parties. Where conflict is only possible and not actual by virtue of involving, either directly or indirectly, any personal or financial interest, such conflict needs not necessarily result in a disqualification but should be disclosed. For purposes of illustration, prior dealings and friendships should be disclosed so that disqualification can be considered on an informed basis. Disclosure of interest is necessary in order to judge whether a particular interest is sufficient to disqualify or is remote and speculative. Concern for the impartial exercise of authority, in appearance as well as in fact, requires that where a member of the Board must disqualify himself or herself in a matter because of a conflict of interest, the disqualification is absolute and cannot be waived. However, if a conflict is only potential and is disclosed, the Board may reasonably find that a particular interest is too remote or speculative to cause a disqualification. The Board Attorney shall be consulted in each such case. Whenever the Board is called upon to waive a potential conflict, the affected Board member shall

disclose the nature of the relationship and shall satisfy the Board that the relationship would not in any way influence his or her decision.

4:3-6. Remedy. When a member fails to disqualify himself or herself where the circumstances require disqualification, any interested party may move the Board for an order or determination that such member is or was disqualified to act and may, even after decision, seek the vacation of the decision and a rehearing or other appropriate relief. The motion shall contain a statement of the facts upon which it is based, and the Board may thereupon hold a hearing on the matter or take whatever action it may deem appropriate.

4:3-7. Disclosure of Reason for Disqualification. Wherever possible, the reason for disqualification shall be stated unless legitimate private rights would be compromised without justification in respect of the public interest.

Rule 4:4. Attendance.

4:4-1. Determination of Vacancy for Excessive absences. The position of any member or alternate member shall be deemed vacant whenever the member, fails to attend and participate at meetings of the Board for a period of three (3) consecutive meetings without just cause. At the conclusion of such period, provided that the Board shall notify the appointing authority in writing of such determination, and provided further that the Board may refuse to excuse only those absences which are not due to legitimate circumstances outside a members control. In the event of such notice, the approving authority shall forthwith fill the vacancy for the unexpired term in a manner prescribed by law. This rule shall be automatically amended by operation of law in the event that the above standards are made stricter pursuant to amendment henceforth of N.J.S. 40A:9-12. l or other relevant prevailing enactment, in which event the language of this rule shall be deemed substituted by the language of such enactment.

PART V. MISCELLANEOUS MATTERS.

Rule 5:1. Fees.

5:1-1. Application Fees. No application shall be considered which is not accompanied by an application fee in accordance with the schedule of administrative fees for development applications, as amended and in effect at the time application is made.

5:1-2. Escrow Deposits for Professional Services. No application shall be considered with respect to which an applicant has failed to comply with the prevailing local ordinance or statutory requirements for the payment of escrow deposits toward anticipated municipal expenses for professional services, to be based upon a schedule established by resolution. The amount of the initial deposit shall be established by ordinance. The applicant and the Board shall be bound by the provisions of N.J.S. 40:55D-53.2 and/or prevailing ordinance requirements as to their respective interests and duties.

5:1-3. Special Meeting Costs. In the event that a special meeting is scheduled and convened for the benefit of an applicant pursuant to Rule 1:3-3, any special or uncustomary disbursements, expenses,

fees or costs incurred by the Board and the Municipality for the rendering of special services, arrangements or accommodations for the benefit of the applicant shall be reimbursed entirely by the applicant. The Board may require a reasonable antecedent escrow deposit to protect against an applicant's failure to comply with this section.

5:2-3. Special Committee. Special committees may be established by a vote of the majority of the full membership of the Board. The Chair shall appoint the members of such committee, who shall serve for a term to be determined by the Board when it acts to establish such committee.

Rule 5:3. Payment of Taxes.

5:3-1. Proof of Payment; Alternative Agreement. The applicant, at the time of filing the application for development, shall file with the Board a certification of the Tax Collector that municipal taxes and/or assessments have been paid. In the event that taxes and/or assessments on the property affected by the application for development are unpaid, the applicant shall submit, in lieu of the certificate of payment of taxes and/or assessments, a written request that the Board take action, which request shall include a stipulation that any approval shall be subject to the payment of taxes and/or assessments and the Board may suspend post-approval execution and other action until such time as taxes and assessments are paid, subject to prevailing rules of law and ordinance.

Rule 5:4. Amendments.

5:4-1. Amendments to the Rules. The Land Use Board may, from time to time, by a two-thirds (2/3) margin, amend any part or parts of these rules and regulations at any regular meeting, provided notice of the consideration of any such amendment has been given in writing to each member of the Board at least three (3) 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 interested parties.

Rule 5:5. Waivers.

5:5-1. Waiver. Not withstanding anything herein to the contrary to the Board, upon majority vote and at its discretion may waive any of the rules contained herein.