

ORDINANCE 2011-40

**ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF SOUTH RIVER,
CHAPTER 50 ENTITLED "LAND USE PROCEDURES", ARTICLE I: PLANNING
BOARD**

BE IT ORDAINED by the Mayor and Borough Council of the borough of South River,
that Chapter 50 of the Code of the Borough of South River entitled "Land Use Procedures",
Article I: Planning Board be amended as follows:

Section 1.

§50-1 Establishment

There is hereby established, pursuant to N.J.S.A. C.40:55D-23 in the Borough of South River, a Planning Board of nine (9) members consisting of the following four (4) classes.

- A. Class I: The Mayor, or Mayor's designee in the absence of the Mayor (§40-55D-23a).
- B. Class II: One (1) of the officials of the Borough other than a member of the governing body to be appointed by the Mayor; provided that if there is an Environmental Commission, the member of the Environmental Commission who is also a member of the Planning Board as required by C.40:56A-1 shall be deemed to be the Class II Planning Board member if there is both a member of the Zoning Board of Adjustment and a member of the Board of Education among the Class IV members or alternate members.
- C. Class III. A member of the governing body, to be appointed by it.
- D. Class IV: Six (6) other citizens of the Borough, to be appointed by the Mayor. The members of Class IV shall hold no other municipal office, position or employment, except that one (1) member may be a member of the Zoning Board of Adjustment. A member of the Environmental Commission who is also a member of the Planning Board as required by C.40:56A-1 shall be a Class IV Planning Board member, unless they are among the Class IV, or alternate members, both a member of the Zoning Board of Adjustment and a member of the Board of Education, in which case the member of the Environmental Commission shall be deemed to be the Class II member of the Planning Board. For the purpose of this section, membership on a municipal board of commission whose function is advisory in nature, and the establishment of which is discretionary and not required by statute, shall not be considered the holding of municipal office.

§50-2 Terms of Members

- A. The term of the member composing Class I shall correspond with the Mayor's official tenure, or if the member is the Mayor's designee, the designee shall server at the pleasure of the Mayor during the Mayor's official tenure.
- B. The term of the members composing Class II and Class III shall be for one (1) year or terminate at the completion of their respective terms of office whichever comes first, except for a Class II member who is also a member of the Environmental Commission.
- C. The term of a Class II or Class IV member who is also a member of the Environmental Commission shall be for three (3) years or terminate at the completion of his term in office as a member of the Environmental Commission, whichever comes first.
- D. The term of a Class IV member who is also a member of the Board of Adjustment or the Board of Education shall terminate whenever he is no longer a member of such other body or at completion of his Class IV term whichever comes first.

- E. The terms of all class IV members first appointed pursuant to this chapter shall be so determined that, to the greater practicable extent, the expiration of such terms shall be evenly distributed over the first four (4) years after their appointment as determined by resolution of the governing body, provided, however, that no term of any member shall exceed four (4) years, and further provided that nothing herein shall affect the term of any present member of the Planning Board, all of whom shall continue in office until the completion of the term for which they were appointed. Thereafter all Class IV members shall be appointed for terms of four (4) years except as otherwise provided herein.
- F. All terms shall run from January 1 of the year in which the appointment was made, except as otherwise specified herein.
- G. No member of the Planning Board shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest.
- H. Any member other than a Class I member, after a public hearing if he requests one, may be removed by the governing body for cause.

§50-3 Alternate Members

- A. There shall be two alternate members of the Planning Board who shall be appointed by the Mayor and shall meet the qualifications of Class IV members of the Planning Board. Said alternates shall be designated at the time of their appointment as "Alternate No. 1" and "Alternate No. 2". The terms of the alternate members shall be for two (2) years except that the terms of the alternate members shall be such that the term of not more than one (1) alternate member shall expire in any one (1) year; provided, however, that in no instance shall the terms of the alternate members first appointed exceed two (2) years. A vacancy occurring otherwise than by expiration of term shall be filled by the approving authority for the unexpired term only.
- B. No alternate member shall be permitted to act on any matter on which he has either directly or indirectly any personal or financial interest. An alternate member may, after public hearing if he requests one, be removed by the governing body for cause. Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

§50-4 Vacancies

If a vacancy of any class shall occur otherwise than by expiration of term, it shall be filled by appointment as above provided for the unexpired term.

§50-5 Basic Course in Land Use Law and Planning

All regular and alternate members of the Planning Board shall be required to successfully complete a course in land use law and planning which has been authorized by the NJ Commissioner of Community Affairs and/or New Jersey Planning Officials within eighteen (18) months of assuming Board membership. No new member of the Planning Board shall be seated as a first-term member or alternate member of the Planning Board unless the person agrees to complete the basic course required and complete that course within eighteen (18) months of assuming Board membership. The Mayor or Class I member, a member of the Governing Body serving as a Class III member, and any person licensed as professional planner shall be exempt from this requirement.

§50-6 Organization of Board

The Planning Board shall elect a Chairman and Vice Chairman from the members of Class IV, select a Secretary who may either be a member of the Planning Board or a municipal employee, and create and fill such other offices as established by ordinance.

§50-7 Planning Board Attorney

There is hereby created the position of Planning Board Attorney. The Planning Board shall annually appoint and fix the compensation of the Planning Board Attorney for all legal service including, but not limited to: regular and special meetings of the Board, litigation, and such other legal services as may be deemed necessary by the Board. The Board Attorney shall be an attorney other than the Municipal Attorney or Zoning Board of Adjustment Attorney. The Board shall not, however, exceed, exclusive of gifts or grants, the amount appropriated by the governing body for its use.

§50-8 Expert Staff

The Planning Board may also employ or contract for services of Planning and/or Engineering Consultants and their staff and other services as it may deem necessary. The Board shall not, however, exceed, exclusive of gifts or grants, the amount appropriated by the governing body for its use. The Planning Board may also employ or contract for services of a Board Secretary. The Board shall not exceed the amount appropriated by the Governing Body for its use.

§50-9 Rules and Regulations

The Board shall adopt bylaws governing its procedural operation and such rules and regulations as may be necessary to carry into effect the provisions and purpose of this chapter. In the issuance of subpoenas, administration of oaths and taking of testimony, the provisions of the County and Municipal Investigation Law of 1953 (N.J.S.A. 2a:67a-1 et. seq.) shall apply.

§50-10 Powers of the Planning Board

The Planning Board shall have such powers as are granted by law:

- A. To make and adopt, and from time to time, amend a Master Plan for the physical development of the municipality, including in its consideration areas outside its boundaries which in the Board's judgment bear essential relation to the planning of the municipality, in accordance with the provisions of C.40:55D-1 et. seq.
- B. To administer the provisions of the Land Development Ordinance of the municipality in accordance with the provisions of said ordinances and with C.40:55D-1 et. seq.,
- C. To participate in the preparation and review of programs or plans required by state or federal law or regulations.
- D. To assemble data on a continuing basis as part of a continuing planning process.
- E. To annually prepare a program of municipal capital improvements and projects projected over a term of six (6) years, and amendments thereto, and recommend same to the governing body.
- F. To consider and make report to the governing body within thirty-five (35) days after referral as to any proposed development regulations submitted to it pursuant to the provisions of C.40:55d-26b.
- G. The Planning Board when reviewing applications for approval of subdivision plans, site plans or conditional uses shall have the power to grant to the same extent and subject to the same restrictions as the Board of Adjustment, provided no variance under N.J.S.A. 40:55D-70d is required:
 - (1) Grant variances, pursuant to Subsection 57C of Chapter 291 of the Laws of New Jersey, 1975 (C.40:55D-70C), from lot area, lot dimension, setback and yard requirements, etc.

- (2) Direction, pursuant to Section 25 (C.40:55D-34), for issuance of a permit for a building or structure in the bed of a mapped street or public drainageway, flood control basin or public area reserved pursuant to Section 23 (C.40:55D-32).
 - (3) Direction, pursuant to Section 27 (C.40:55D-36), for issuance of a permit for a building or structure not related to a street.
 - (4) Whenever relief is requested pursuant to this subsection, notice of a hearing on the application for development shall include references to the request for a variance or direction for issuance of a permit, as the case may be.
- H. The Planning Board shall perform such other advisory duties as are assigned to it by ordinance or resolution of the governing body for the aid and assistance of the governing body or other municipal agencies or offices.
 - I. To hold hearings on any application to establish any residential housing facilities under the pursuant to Senate Bill No. 210, for the developmentally disabled, and to approve any such application by resolution, setting forth the terms and conditions of the approved.
 - J. Hear and decide requests for interpretation of all Borough Ordinances related to the powers, functions and duties generally performed by the Planning Board, other than the Zoning Ordinance.

§50-11 Environmental/Shade Tree Commission Review

Whenever the Environmental Commission has prepared and submitted to the Planning Board an index of the natural resources of the municipality, the Planning Board shall make available to the Environmental Commission an informational copy of every application for development to the Planning Board. Failure of the Planning Board to make such an informational copy available to the Environmental Commission shall not invalidate any hearing or proceeding.

§50-12 Time Limits

- A. Minor subdivision and minor site plans - Minor subdivision and minor site plan approvals shall be granted or denied within forty-five (45) days of the date of submission of a complete application to the Planning Board or within such further time as may be consented to by the applicant. Failure of the Planning Board to act within the prescribed forty-five (45) day period shall constitute minor subdivision. Minor subdivisions shall expire one hundred ninety (190) days from the date of Planning Board approval unless within such period a plat in conformity with such approval and the provisions of the Map Filing Law (N.J.S.A. 46:23-9.9 et. seq.), or a deed clearly describing the approved minor subdivision, is filed by the developer with the County Recording Officer, the Borough Engineer and the Borough Tax Assessor. Any such plat or deed must be signed by the Chairman and Secretary of the Planning Board before it will be accepted for filing by the County Recording Officer.
 - (1) The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor subdivision approval was granted shall not be changed for a period of 2 years after the date on which the resolution of minor subdivision approval is adopted; provided that the approved minor subdivision shall have been duly recorded as provided in this subsection.
 - (2) The Planning Board may extend the 190-day period for filing a minor subdivision plat or deed pursuant to Section 204-3L1 if the developer proves to the reasonable satisfaction of the Planning Board that: (1) the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities, and (2) the developer applied promptly for the diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the

Planning Board. The developer may apply for the extension either before or after what would otherwise be expiration date.

- (3) The Planning Board shall grant an extension of minor subdivision approval for a period determined by the Board but not exceeding one year from what would otherwise be the expiration date, if the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for an diligently pursued the required approvals. A developer shall apply for the extension before: (1) what would otherwise be the expiration date of minor subdivision approval, or (2) the 91st day after the developer receives the last legally required approval from the other government entities, whichever occurs later.
- B. Preliminary approval of major subdivisions and major site plans - Upon submission of a complete application for a subdivision of ten (10) acres of land or less and ten (10) dwelling units or less, the Planning Board shall grant or deny preliminary approval within forty-five (45) days of the date of such submission or within such further time as may be consented to by the developer. Upon submission of a complete application for a subdivision of more than ten (10) acres or more than ten (10) dwelling units, the Planning Board shall grant or deny preliminary approval within ninety-five (95) days of such submission or within such further time as may be consented to by the developer. Otherwise, the Planning Board shall be deemed to have granted preliminary approval for either size subdivision or site plan.
- C. Ancillary Powers - Whenever the Planning Board is called upon to exercise its ancillary powers before the granting of a variance as set forth in Section 50-10(g), the Planning Board shall grant or deny approval of the application within ninety five (95) days after submission by the developer of a complete application or within such further time as may be consented to by the applicant. Failure of the Planning Board to act within the period described shall constitute approval of the application and a certificate of the administrative officer, as to the failure of the Planning Board to act, shall be issued on the request of the applicant.
- D. Final Approval
- (1) Application for final subdivision approval or site plan approval shall be granted or denied within forty-five (45) days of submission of a complete application or within such further time as may be consented to by the applicant. Failure of the Planning Board to act within the period prescribed shall constitute final approval.
 - (2) Final approval of a major subdivision shall expire ninety-five (95) days from the date of signing of the plat unless within such period the plat shall have been duly filed by the developer with the County recording officer. The Planning Board may, for good cause shown, extend the period for recording for an additional period not to exceed one hundred ninety (190) days from the date of signing of the plat.
 - (3) The Planning Board may extend the 95 days or 190 day period if the developer proves to the reasonable satisfaction of the Planning Board that: (1) the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities, and (2) the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the Planning Board. The developer may apply for the extension either before or after what would otherwise be the expiration date.

ARTICLE II: ZONING BOARD OF ADJUSTMENT

§50-13 Establishment and Terms of Members

- A. A Zoning Board of Adjustment is hereby established pursuant to N.J.S.A. C.40:55D-69 et. seq. consisting of seven (7) residents of the Borough of South River appointed by the Governing Body to serve for a term of four (4) years from January 1 of the year of their appointment. Nothing in this chapter shall, however, be construed to affect the term of any present member of the Zoning Board of Adjustment, all of whom shall continue in office until the completion of the term for which they were appointed.
- B. No member of the Zoning Board of Adjustment may hold any elective office or position under the Borough.
- C. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term only.
- D. No member of the Zoning Board of Adjustment shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest.
- E. A member may, after a public hearing if he requests it, be removed by the governing body for cause.

§50-14 Alternate Members

- A. There shall be two (2) alternate members of the Board of Adjustment appointed by the Governing Body. The alternate members shall be designated at the time of appointment by the governing body as "Alternate No. 1" and Alternate No. 2". The terms of the alternate members shall be such that the term of not more than one (1) alternate member shall expire in any one (1) year; provided, however, that in no instance shall the terms of the alternate members first appointed exceed two (2) years.
- B. The alternate member may participate in discussion of the proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.
- C. No alternate member of the Board of Adjustment shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest.
- D. An alternate member may, after a public hearing if he requests one, be removed by the governing body for cause.

§50-15 Officers

The Board of Adjustment shall elect a Chairman and Vice Chairman from its members and shall also select a Secretary, who may be either a Board Member or another municipal employee.

§50-16 Board of Adjustment Attorney

There is hereby created the position of Attorney to the Zoning Board of Adjustment, appointed by the Zoning Board of Adjustment. The Zoning Board of Adjustment shall annually appoint and fix the compensation of the Zoning Board of Adjustment Attorney for all legal services including but not limited to: regular and special meetings of the Board, litigation and such other legal services as may be deemed necessary by the Board. The Board of Adjustment Attorney shall be an attorney other than the Municipal Attorney or Planning Board Attorney. The Board shall not, however, exclusive of gifts or grants, exceed the amount appropriated by the governing body for its use.

§50-17 Other Expert Staff

The Zoning Board of Adjustment may also employ or contract for the services of Planning and/or Engineering Consultants and their staff and other services as it may deem necessary. The Board shall not, however, exceed, exclusive of gifts or grants, the amount appropriated by the governing body for its use.

§50-18 Rules and Regulations

The Board shall adopt bylaws governing its procedural operation and such rules/regulations as may be necessary to carry into effect the provisions and purposes of this chapter. In the issuance of subpoenas, administration of oaths and taking of testimony, the provisions of the County and Municipal Investigations Law of 1953 (N.J.S.A.2A :67A-1 et. seq.) shall apply.

§50-19 Powers of the Zoning Board of Adjustment

A. The Board of Adjustment shall have such powers as are granted by law to:

- (1) Hear and decide appeals where it is alleged by the applicant that there is an error in any order, requirement, decision or refusal made by an Administrative Official based on or made in the enforcement of the Zoning Ordinance, pursuant to N.J.S.A. 40:55d-70a. In exercising the above-mentioned power, the Board of Adjustment may, in conformity with the provisions of R.S. 40:55D-1 et. seq. or amendments thereto or subsequent statutes applying, reverse or affirm wholly or partly or may modify the order, requirement, decision, or determination appealed from, and make such other requirement, decision or determination as ought to be made, and, to that end, have all the powers of the administrative officer from whom the appeal was taken.
- (2) Hear and decide requests for interpretation of the Zoning Map or Zoning Ordinance or for decisions upon other special questions upon which such Board is authorized to pass by the Zoning Ordinance, pursuant to N.J.S.A. 40:55d-70b.
- (3) (a) Where: (1) by reason of exceptional narrowness, shallowness, or shape of a specific piece of property, or (2) by reason of exceptional topographical conditions or physical features uniquely affecting a specific piece of property, or (3) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to the Zoning Ordinance, would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal, a variance from such strict application of such regulation so as to relieve such difficulties or hardship; (b) Where, in an application or appeal relating to a specific piece of property, the purpose of this act or the Educational Facilities Construction and Financing Act would be advanced by a deviation from the zoning ordinance requirements and the benefits or the deviation would substantially outweigh any detriment, grant a variance to allow departure from regulations pursuant to Zoning Ordinance; provided, however, that no variance from those departures enumerated in Subsection 4 of this section shall be granted under this subsection; and provided further that the proposed development does not require approval by the Planning Board of a subdivision, site plan or conditional use, in conjunction with which the Planning Board has power to review a request for a variance.
- (4) In particular cases and for special reasons, grant a variance to allow departure restricted against such (a) use or principal structure not permitted; (b) an expansion of a nonconforming use; (c) deviation from a specification or standard pursuant to N.J.S.A. 40:55D-67 pertaining solely to a conditional use; (d) an increase in the permitted floor area ratio as defined in N.J.S.A. 40:55D-4; (e) an increase in the permitted density as defined in C.40:55D-4, except as applied to the required lot area for a lot or lots for detached one or two dwelling unit buildings, which lot or lots are either an isolated undersized lot or lots

resulting from a minor subdivision; or (f) a height of a principal structure which exceeds by ten (10) feet or 10% of the maximum height permitted in the district for a principal structure. A variance under this subsection shall be granted only by affirmative vote of at least five (5) members. No variance or other relief may be granted under the provisions 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 the purpose of the zone plan and Zoning Ordinance. Any application under this section may be referred to any appropriate person or agency, for its report, provided that such reference shall not extend the period of time within which the Zoning Board of Adjustment shall act.

§50-20 Additional Duties

- A. In addition, the Zoning Board of Adjustment shall have power given by law to:
- (1) Direct issuance of a permit pursuant to N.J.S.A. 40:55d-34 for a building or structure in the bed of a mapped street or public drainage-way, flood control basin or public area reserved on the Official Map.
 - (2) Direct issuance of a permit pursuant to N.J.S.A. 40:55D-36 for a building or structure not related to a street.
 - (3) The Board of Adjustment shall have the power to grant, to the same extent and subject to the same restrictions as the Planning Board, subdivision or site plan approval pursuant to N.J.S.A. 40:55D-67 whenever the Board is reviewing an application for approval of a use variance pursuant to N.J.S.A. 40:55D-70d.
 - (4) The developer may elect to submit a separate application requesting approval of the variance and a subsequent application for any required approval of subdivision, site plan or conditional use. The separate approval of the variance shall be conditioned upon the grant of all required subsequent approvals by the Zoning Board of Adjustment, consistent with N.J.S.A. 40:55-76.

§50-21 Appeals and Application

- A. Appeals to the Board of Adjustment may be taken by any interested party affected by any decision of the Zoning Officer of the municipality based on or made in the enforcement of the Zoning Ordinance or Official Map. Such appeal shall be taken within twenty (20) days by filing a notice of appeal and eight (8) copies with the office from whom the appeal is taken specifying the grounds of such appeal. The official from whom the appeal is taken shall immediately transmit to the Board all the papers constituting the record upon which the action appealed was taken.
- B. A developer may file an application for development with the Board of Adjustment for action under any of its powers without prior application to an Administrative Officer. Eight (8) copies of the application shall be filed. At the time of filing the appeal or application, but in no event less than ten (10) days prior to the date set for hearing, the applicant shall also file all plot plans, maps or other papers required by virtue of any provision of this ordinance or any rule of the Board of Adjustment. The applicant shall obtain all necessary forms from the Secretary of the Zoning Board of Adjustment. The Secretary of the Board shall inform the applicant of the steps to be taken to initiate proceedings and of the regular meeting dates of the Board.

§50-22 Modification on Appeal

The Board of Adjustment may reverse or affirm, wholly or in part, or may modify the action, order, requirement, decision, interpretation or determination appealed from and to that end have all the powers of the administrative officer from whom the appeal is taken.

§50-23 Stay of Proceedings by Appeal

An appeal to the Board of Adjustment shall stay all proceeding in the appealed matter unless the Officer from whose action the appeal is taken certifies to the Board of Adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by an order of the Superior Court upon notice of the officer from whom the appeal is taken and on due cause shown.

§50-24 Environmental Commission Review

Whenever the Environmental Commission has prepared and submitted to the Zoning Board an index of the natural resources of the municipality, the Zoning Board shall make available to the Environmental Commission an informational copy of every application for development to the Zoning Board. Failure of the Zoning to make such an informational copy available to the Environmental Commission shall not invalidate any hearing or proceeding.

§50-25 Time for Decision

The Board of Adjustment shall render its decision not later than one hundred twenty (120) days after the date an appeal is taken from the decision of an administrative officer or after the submission of a complete application for development to the Board pursuant to the provisions of N.J.S.A. C.40:55D-72b, or within such further time as may be consented to by the applicant. Failure of the Board to render a decision within such period shall constitute a decision favorable to the applicant. In the event the developer submits separate consecutive applications, the aforesaid time period shall apply to the application for approval of the variance. The period for granting or denying any subsequent approval shall be as otherwise provided in this Ordinance. Failure of the Board to render a decision within the prescribed period shall constitute a decision favorable to the applicant.

§50-26 Expiration of Variance

Any variance from the items of this chapter hereafter granted by the Board of Adjustment, permitting the erection or alteration of any structure or structures or permitting a specified use of any premises, shall expire by limitation within one (1) year from the date of entry of the judgment or deterioration of the Board of Adjustment, or in the case where a variance was granted in conjunction with the approval of a development application for a minor subdivision or site plan, the protection period for the variance shall run concurrently with the protection period for the respective development application, unless the applicable construction permits have been obtained or the permitted use has actually been commenced by that date; except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the Board of Adjustment to the court of competent jurisdiction until the termination in any manner of such appeal or proceeding.

§ 50-27 Lack of quorum

If the Board of Adjustment lacks a quorum because any of its regular or alternate members is prohibited by N.J.S.A. 40:55D-69 from acting on a matter due to the member's personal or financial interest therein, Class IV members of the Planning Board shall be called upon to serve, for that matter only, as temporary members of the Board of Adjustment. The Class IV members of the Planning Board shall be called upon to serve in order of seniority of continuous service to the Planning Board until there are 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 Class IV members of equal seniority, the Chair of the Planning Board shall make the choice.

ARTICLE III: PROVISIONS APPLICABLE TO BOTH PLANNING BOARD AND ZONING BOARD OF ADJUSTMENT

§50-27 Conflicts of Interest

No member of the Planning Board or Zoning Board of Adjustment shall act on any matter in which he has, either directly or indirectly, any personal or financial interest. Whenever any such member shall disqualify himself from acting on a particular matter, he shall not continue to sit with the Board on the hearing of such matter nor participate in any discussion or decision relating thereto.

§50-28 Application Procedure

- A. All applications for development shall be filed with the Administrative Officer. At the time of filing of application, the applicant shall also file the fee, a completed checklist (as set forth in the schedule of forms attached to and made a part of this chapter), any request for waiver and any and all maps required by this section. The applicant shall file, at least fourteen (14) days before the date of the monthly meeting of the Board, eight (8) copies of a sketch plat, eight (8) copies of an application for minor subdivision approval, eight (8) copies of an application for site plan review, conditional use approval or planned development. At the time of filing the application, but in no event less than ten (10) days prior to the date set for hearing, the applicant shall also file all plot plans, maps or other papers required by virtue of any provision of this chapter or any rule of the Planning Board. The applicant shall obtain all necessary forms from the Secretary of the Board. The Secretary of the Board shall inform the applicant of the steps to be taken to initiate applications and of the regular meeting dates of the Board.
- B. Upon receipt of an application for development, the Administrative Officer shall review the application and certify it as complete if all requirements for completeness have been met.
- C. Within forty-five (45) days from the filing as required above the Administrative Officer shall review and certify the application to be complete or incomplete in writing.
 - (1) If incomplete, the Administrative Officer shall certify in writing the deficiencies in the application on a checklist as specified in the schedule of forms attached to and made part of this chapter.
 - (2) The application shall be deemed complete within forty-five (45) days of the date of its submission if the Administrative Office does not certify the application to be complete.
- D. The applicant may request relief from one (1) or more of the submissions required in above. The request must be in writing stating the reason thereof. The Administrative Officer shall grant or deny the request within forty-five (45) days of the request.
- E. The Administrative Officer shall assign a hearing date and notify the applicant of the same after the application has been deemed complete. Notice to the applicant shall be in writing by regular mail. Upon receipt of a date of hearing, the applicant shall proceed to give proper notice of the hearing and comply with all other provisions of this chapter and the Municipal Land Use Law.

§50-29 Meetings

- A. Meetings of both the Planning Board and Zoning Board of Adjustment shall be scheduled as on an adopted calendar, and any meeting scheduled shall be held as scheduled unless canceled for lack of applications for development to process.
- B. Special meetings may be provided for at the call of the Chairman or on the request of any two (2) Board members, which shall be held on notice to its members and the public in accordance with all applicable legal requirements.
- C. No action shall be taken at any meeting without a quorum being present.
- D. All actions shall be taken by majority vote of a quorum except as otherwise required by any provisions of Chapter 291 of the Laws of 1975 (see N.J.S.A. 40:55D-9 et. seq.).

- E. All regular meetings and all special meetings shall be open to the public. Notice of all such meetings shall be given in accordance with the requirements of the Open Public Meetings Act, Chapter 231 of the Laws of 1975 (see N.J.S.A. 10:4-6 et. seq.). An executive session for the purpose of discussing and studying any matters to come before either Board shall not be deemed a regular or special meeting in accordance with the provisions of N.J.S.A. 40:55d-9.

§50-29 Minutes

Minutes of every regular or special meeting shall be kept and shall include the names of the persons appearing and addressing the Board and of the persons appearing by attorney; the action taken by the Board, the findings, if any, made by it and reasons therefor. The minutes shall thereafter be made available for public inspection during normal business hours at the office of the Borough Clerk. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceeding concerning the subject matter of such minutes. Such interested party may be charged a reasonable fee as indicated in the Fee Ordinance for reproduction of the minutes for his use as provided for in the rules of the Board.

§50-30 Documents and Fees

Forms and any other required documents for applications or for the rendering of any service by the Planning Board or Zoning Board of Adjustment or any member of their administrative staffs which are not otherwise provided for by Ordinance may be provided for and adopted as part of the rules of the Board. Copies of said rules or of the separate fee and submission schedule shall be made available to the public. A schedule of fees is detailed in Section 204-4 of this chapter.

§50-31 Hearings

- A. Rules - The Planning Board and Zoning Board of Adjustment may make rules governing the conduct of hearings before such bodies, which rules shall be consistent with the provisions of N.J.S.A. 40:55D-1 et. seq. or of this chapter.
- B. Oaths - The officer presiding at the hearing, or such person as he may designate, shall have the power to administer oaths and issue subpoena to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, as well as the provisions of the County and Municipal Investigations Law, P.L. 1953, C.38 (N.J.S.A. 2A:67A-1 et. seq.), shall apply.
- C. Testimony - The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer and the right of cross-examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations to time and number of witnesses.
- D. Evidence - Technical rules of evidence shall not be applicable to the hearing, but the Board may exclude irrelevant, immaterial or unduly repetitious evidence.
- E. Records - Each Board shall provide for the verbatim recording of the proceedings of either stenographer, mechanical or electronic means. The Board shall furnish a transcript or duplicate recording in lieu thereof on request to any interested party at his expense.
- F. Absent Member - When any hearing before either the Planning Board or Zoning Board of Adjustment shall carry over two (2) or more meetings, a member of the Board who was absent for one (1) or more the meetings shall be eligible to vote on the matter upon which the hearing was conducted, notwithstanding his absence from one (1) or more of the meetings; provided, however, that such Board Member has available to him a transcript or recording of the meeting from which he was absent and certifies in writing to the Board from which he was absent that he has read such transcript or listened to such recording.

§50-32 Notice Requirements for Hearings

- A. Whenever a hearing is required on an application for development, except for minor subdivisions, minor site plans, final site plans and final subdivisions, pursuant to N.J.S.A. 40:55D-1 et. seq., the applicant shall give notice thereof as follows:
- (1) Public notice shall be given by publication in the official newspaper of the municipality at least ten (10) days prior to the date of the hearing.
 - (2) Notice shall be given to the owners of all real property, as shown on the current tax duplicates, located within two hundred (200) feet in all directions of the property which is the subject of such hearing and whether located within or without the municipality in which applicant's land is locate. Such notice shall be given by serving a copy thereof on the owner as show on the said current tax duplicate or his agent in charge of the property or by mailing a copy thereof by certified mail to the property owner at his address as shown on the said current tax duplicate. A return receipt is not required. Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made be service upon its president, a vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation.
 - (3) Notice of all hearings on applications for development involving property located within two hundred (200) feet of an adjoining municipality shall be given by personal service or certified mail to the Clerk of such municipality, which notice shall be in addition to the notice required to be given to the owners of lands in such adjoining municipality which are located within two hundred (200) feet of the subject premises.
 - (4) Notice shall be given by personal service or certified mail to the Middlesex County Planning Board of a hearing on an application for development of property adjacent to an existing county road or proposed road shown on the Official County map or the Middlesex County Master Plan, adjoining other county land or situated within two hundred (200) feet of a municipality boundary.
 - (5) Notice shall be given by personal service or certified mail to the New Jersey Commissioner of Transportation of a hearing on an application for development of property adjacent to a state highway.
 - (6) Notice shall be given by personal service or certified mail to the State Planning Commission of a hearing on an application for development of property which exceeds one hundred and fifty (150) acres of five hundred (500) dwelling units. Such notice shall include a copy of any maps or documents required to be on file with the Municipal Clerk pursuant to Section 6b of Chapter 291 of the Laws of 1975 (see N.J.S.A. 40:55D-10).
 - (7) Minor Applications
 - (a) Notice of hearings on applications for approval of minor subdivision or a site plan not defined as a minor site plan requiring public notice pursuant to subsection (a) of this section shall be given by personal service or certified mail to the corporate secretary of all public utilities and the general manager of all cable television companies that own land on any facility or that possess a right-of-way or easement within 200 feet in all directions of the property which is the subject of this hearing.
 - (b) In addition to any notification requirement otherwise imposed under this act, an applicant seeking approval of a development which does not require notice as provided in paragraph (a) of this subsection, shall be required to provide notice, by personal service or certified mail, to the corporate secretary of any public utility and the general manager of any cable television company that possesses a right-of-way or easement situated within the property limits of the property which is the subject of the application for development approval under this paragraph.

- (c) The applicant shall file an affidavit of proof of service with the municipal agency holding the hearing on the application for development in the event that the applicant is required to give notice pursuant to this section.
- (d) All notices hereinabove specified in this section shall be given at least ten (10) days prior to the date fixed for hearing and the applicant shall file an affidavit of proof of service with the Board holding the hearing on the application for development.
- (e) Any notice made by certified mail as hereinabove required shall be deemed to be complete upon mailing in accordance with the provisions of N.J.S.A. 40:55D-14.
- (f) Form of Notice - All notices required to be given pursuant to the terms of this chapter shall state the date, time and place of the hearing; the nature of the matters to be considered; and identification the property proposed for development by street address, and, or by reference to lot and block numbers as shown on the current tax duplicate in the Municipal Tax Assessor's Office; and the location and times at which any maps and documents for which approval is sought are available as required by law.

§50-33 List of Property Owners

Pursuant to the provisions of N.J.S.A. 40:55D-12c, the administrative officer of the municipality, the Municipal Tax Collector, shall, within seven days after receipt of a request therefor and upon receipt of payment of a fee as provided in Chapter 155, Fees, make and certify a list from the current tax duplicate of names and addresses of owners to whom the applicant is required to give notice pursuant to Article III, § 50-33B, of this chapter.

§50-34 Decisions

- A. Each decision on any application for development shall be set forth in writing as a resolution of the Board, which shall include findings of fact and legal conclusions based thereon, and shall be memorialized by resolution. Said adoption shall not occur later than forty-five (45) days after the date of meeting at which the reviewing agency voted to grant or deny approval. Only members of the Board who voted for the action taken may vote on the memorialization resolution.
- B. A copy of the decision shall be mailed by the Board within ten (10) days of the date of decision to the applicant, or if represented, then to his attorney, without separate charge. A copy of the decision shall also be mailed to all persons who have requested it and who have paid the fee prescribed by the Board for such service. A copy of the decision shall also be filed in the office of the Municipal Clerk, who shall make a copy of such filed decision available to any interested party upon payment of a fee calculated in the same manner as those fees established for copies of other public documents in the municipality.

§50-35 Publication of Decisions

A brief notice of every final decision shall be published in the official newspaper of the municipality. Such publication shall be arranged by the applicant and said notice shall be sent to the official newspaper for publication within ten (10) days of the date of any such decision.

§50-36 Payment of Taxes

Pursuant to the provisions of N.J.S.A. 40:55D-39 and 40:55D-65, the requirement that every application for development submitted to the Planning Board or to the Zoning Board of Adjustment shall be accompanied by proof that no taxes or any other outstanding fees owed to the Borough are due or delinquent on the property which is the subject of such application may be waived at the discretion of the Reviewing Board. No zoning permits, building permits, certificates of occupancy or other permits shall be issued unless proof is submitted by the

applicant that no taxes or any other outstanding fees owed to the Borough are due or delinquent on the property which is the subject of such application.

ARTICLE IV: APPEALS

§50-37 Appeal to the Zoning Board of Adjustment

An appeal to the Zoning Board of Adjustment may be taken by any interested party affected by any decision of the Construction Official of the Borough based on, or made in, the enforcement of the Zoning Ordinance or Official map. Such appeal shall be taken within twenty (20) days by filing a notice of appeal in the manner set forth in herein and in accordance with the provisions of C.40:55D-72 of the Municipal Land Use Law of 1975.

§50-38 Appeal from Decision of Planning Board

Any interested party shall appeal a final decision of the Planning Board by commencing an action in lieu of prerogative writ in the Superior Court of New Jersey pursuant to the applicable Rules of Court.

§50-39 Appeal from Decision of Zoning Board of Adjustment

Any interested party may appeal to the governing body any final decision of the Zoning Board of Adjustment approving an application for development. Such appeal shall be made pursuant to N.J.S.A. 40:55D-17 et. seq.

E. Miscellaneous Provisions

§50-40 Pending Applications

All applications for development filed prior to the effective date of this chapter may be continued, but any appeals arising out of decisions made on any such applications shall be governed by the provisions of Article III of this chapter.

§50-41 Notice of Applications

Any other provisions of the ordinances of the Borough of South River to the contrary notwithstanding, public notice and notice with respect to all applications for development with the exception of applications for final approval pursuant to N.J.S.A. 40:55D-50 shall be given in accordance with the provisions of N.J.S.A. 40:55D-12.

§50-42 Informal Review

At the request of the developer, the Reviewing Board shall grant an informal review of a concept plan for development for which the developer intends to prepare and submit an applications for development. The amount of any fees for such an informal review shall be a credited towards the application fees for review for the application for development. The developer shall not be bound by any concept plan for which review is requested, and the Reviewing Board shall not be bound by any such review.

§50-43 Electronic files required.

- A. In addition to the current required submittals set forth above, all drawings associated with the preliminary and final application of major site plans, minor subdivisions, and major subdivisions and their applicable reports shall be submitted in Adobe Portable Document Format (PDF) at 400 by 400 dpi. All other documents such as but not limited to application, escrow sheet, completion checklist, environmental impact study, traffic study, storm water report, sewer and water report, reforestation or woodland management plan, and permits associated with the application shall be submitted in Adobe Portable Document Format (PDF) at 300 by 300 dpi. All revisions and resubmissions shall also be submitted in these formats.

- B. All filed maps and required final as-built plans shall be submitted in one of the following formats: Autocad Drawing File (dwg), ESRI Shape File (shp), Drawing Exchange Format File (dxf) or Microstation drawing file (dgn) and contain coordinate values for at least three identifiable boundary corners (preferably in the 1983 New Jersey State Plane Coordinate System). Exceptions may be granted by the approving board for circumstances where production of a CAD file presents an undue hardship.

§50-44 Conditional approvals; expiration of variance.

A. Conditions precedent.

- (1) Whenever any application for development is approved subject to specified conditions intended to be fulfilled before the approval becomes effective, said conditional approval shall lapse and become null and void unless all specified conditions, other than those contemplated by N.J.S.A. 40:55D-22b, are fulfilled within 180 days of the date of conditional approval.
- (2) Proof that applications have been filed with all other agencies having jurisdiction over any aspect of the application for development shall be filed with the municipal agency.
- (3) The fulfillment of all conditions precedent shall be reported in writing to the municipal agency, which may cause such reports to be verified in an appropriate manner. Only upon fulfillment of all conditions shall any subdivision map or site plan be signed or any required building permit, occupancy permit or zoning permit be issued.
- (4) When all conditions have been fulfilled with respect to any minor or major subdivision, the applicant shall, within 45 days of the fulfillment of all such conditions, submit his deed or map for signature in accordance with N.J.S.A. 40:55D-47 or 40:55D-54 or any such approval shall lapse and be of no force and effect; provided, however, that the applicant may, for good cause shown, obtain an extension either before or after the lapse of said twenty-five-day period within a reasonable exercise of the Board's judgment.

B. Conditions subsequent.

- (1) Whenever any application for development is approved subject to conditions, which by their terms are incapable of being fulfilled, or are not required to be fulfilled prior to the final approval of the application, the performance of which are not guaranteed by bonds or securities of any type, failure to fulfill any such conditions within 180 days from the date of final approval of the application for development shall be grounds for the issuance of a stop-work order by the enforcing official and the withholding of any zoning permit, certificate of occupancy or any other approval until such condition or conditions are fulfilled.
- (2) Nothing herein contained shall be construed as preventing the municipal agency from specifying a longer period of time within which any specific condition must be fulfilled or from granting upon an ex parte application an extension of time for good cause shown.
- (3) The fulfillment of all conditions shall be reported in writing to the municipal agency which may cause such reports to be verified in an appropriate manner.
- (4) For purposes of calculating the time period in which conditions must be fulfilled, such time period shall commence from the date on which the resolution memorializing an approval was adopted.

- C. Any variance from the terms of this chapter hereafter granted by the Planning Board or Board of Adjustment permitting the erection or alteration on any structure or structures or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance, or unless such permitted use has actually been commenced, within nine months from the date of entry of the judgment or determination of the Board of Adjustment; except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal

from the decision of the Board of Adjustment to the governing body, or to a court of competent jurisdiction until the determination in any manner of such appeal or proceeding.

§50-45 Basic Course in Land Use Law and Planning

All regular and alternate members of the Planning Board and Zoning Board of Adjustment shall be required to successfully complete a course in land use law and planning which has been authorized by the NJ Commissioner of Community Affairs and/or New Jersey Planning Officials within eighteen (18) months of assuming Board membership. No new member of the Planning Board/Zoning Board of Adjustment shall be seated as a first-term member or alternate member of the Board unless the person agrees to complete the basic course required and complete that course within eighteen (18) months of assuming Board membership. The Mayor or Class I member, a member of the Governing Body serving as a Class III member, and any person licensed as professional planner shall be exempt from this requirement.

SECTION 2. If any section, paragraph, subdivision, clause of provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause, or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

SECTION 3. All Ordinances or parts of Ordinances inconsistent with or in conflict with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 4. This Ordinance shall take effect after final passage, adoption, and publication according to law.

Dated:

ATTEST:

RAYMOND T. EPPINGER, Mayor

PATRICIA O'CONNOR, Registered Municipal Clerk