

ARTICLE 3**ORGANIZATION AND ESTABLISHMENT OF
PLANNING BOARD, BOARD OF ADJUSTMENT,
BOARD OF ARCHITECTURAL REVIEW AND
OFFICE OF ZONING OFFICER****§ 3.01. ESTABLISHMENT OF PLANNING BOARD.**

There is hereby established in the Town of Westfield a Planning Board of nine (9) members and two (2) alternates, pursuant to the Municipal Land Use Law.

§ 3.02. PLANNING BOARD MEMBERSHIP; APPOINTMENT.

The Planning Board shall consist of four (4) classes of members, plus alternates, as follows:

- A. **Class I:** The Mayor of the Town, or the Mayor's designee in the absence of the Mayor.
- B. **Class II:** One (1) of the officials of the Town other than a member of the Town Council, to be appointed by the Mayor.
- C. **Class III:** A member of the Town Council to be appointed by the Town Council.
- D. **Class IV:** Six (6) citizens of the Town of Westfield to be appointed by the Mayor. The members of Class IV shall hold no other municipal office, position or employment, except that one (1) such member may be a member of the Zoning Board of Adjustment or Historic Preservation Commission, and one (1) such member may be a member of the Board of Education. For the purpose of this qualification, membership on a municipal board or 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.
- E. **Alternates.** There shall be two (2) alternate members of the Planning Board, appointed by the Mayor. Alternate members shall meet the qualifications of Class IV members of the Planning Board. Alternate members shall be designated at the time of appointment by the Mayor as "Alternate No. 1" and "Alternate No. 2".

§ 3.03. TERMS OF OFFICE FOR PLANNING BOARD MEMBERS.

The terms of office for Planning Board members shall be as follows:

- A. The term of the Class I member shall correspond to the Mayor's official tenure. In the case of 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.
- B. The term of the Class II and Class III members shall be for one (1) year or terminate at the completion of their respective terms of office, whichever occurs first.
- C. The term of a Class IV member who is also a member of the Zoning Board of Adjustment, Historic Preservation Commission or Board of Education shall terminate when he is no longer a member of such other body or at the completion of his Class IV term, whichever occurs first.
- D. The term of all Class IV members shall be for four (4) years, except as provided otherwise herein.
- E. The term of alternate members shall be for two (2) years.
- F. All terms shall run from January 1 of the year in which the appointment is made.
- G. Nothing contained herein shall affect the terms of any present members of the Planning Board, all of whom shall continue as members until the completion of the terms for which they were appointed.

§ 3.04. PLANNING BOARD COMMITTEES.

The Planning Board Chairman may appoint from among the members of the Board a Subdivision and Site Plan Committee to review, report and make recommendations to the full Board regarding subdivision and site plan applications pending before the Board. The Planning Board Chairman may also appoint from among the members of the Board such other committees as the Chairman may deem advisable in carrying out the functions of the Planning Board.

§ 3.05. CITIZENS ADVISORY COMMITTEE.

The Mayor may appoint one (1) or more persons as a citizens' advisory committee to assist or collaborate with the Planning Board in its duties. Such person(s) shall have no power to vote or take other action required of the Planning Board. Such person(s) shall serve at the pleasure of the Mayor.

§ 3.06. POWERS AND DUTIES OF THE PLANNING BOARD.

The Planning Board shall follow the provisions of the Municipal Land Use Law and this chapter, and accordingly shall have authority to:

- A. Prepare, adopt, and amend a master plan or component part thereof;
- B. Exercise informal review of conceptual development plans;
- C. Make recommendations to the Town Council concerning adoption or amendment of development regulations and an Official Map;
- D. Exercise control over and review and approval or disapproval, in whole or in part, of subdivisions, site plans and conditional uses, provided that the Planning Board shall not have the power to review and approve site plans, subdivisions or conditional uses when such applications involve a "D" variance.
- E. Exercise control over and review and approval or disapproval of variances when the development which is the subject of such variance(s) requires subdivision, site plan or conditional use approval, provided that the Planning Board shall have no authority in relation to "D" variances;
- F. Direct the issuance of building permits for buildings or structures in certain areas shown on an Official Map, when the development which is the subject of such building permit requires subdivision, site plan or conditional use approval;
- G. Direct the issuance of building permits for buildings or structures on a lot not related to a street, when the development which is the subject of such building permit requires subdivision, site plan or conditional use approval;
- H. Make recommendations to the Town Council and/or any housing, parking, highway, special district or other authority, redevelopment agency, school board or other similar public agency, State, county or municipal, concerning the relationship of capital projects to the Master Plan pursuant to N.J.S.A. 40:55D-31;
- I. Prepare a capital improvements program, if authorized by the Town Council.
- J. Participate in the preparation and review of programs or plans required by State or Federal law or regulation;
- K. Assemble data on a continuing basis as part of a continuous planning process; and

- L. Perform such other advisory duties as are assigned to it by ordinance or resolution of the Town Council for the aid and assistance of the Town Council or other agencies or officers.

§ 3.07. ESTABLISHMENT OF ZONING BOARD OF ADJUSTMENT.

There is hereby established in the Town of Westfield a Zoning Board of Adjustment of seven (7) members and two (2) alternates, pursuant to the Municipal Land Use Law.

§ 3.08. BOARD OF ADJUSTMENT MEMBERSHIP; APPOINTMENT.

Qualifications for and appointment as members of the Zoning Board of Adjustment shall be as follows:

- A. No member may hold any elective office or position under the municipality.
- B. All members shall be citizens of the Town of Westfield.
- C. All members shall be appointed by the Town Council.
- D. Alternate members shall be designated as "Alternate No. 1" and "Alternate No. 2" by the Town Council at the time of appointment and shall have the same qualifications as regular members.

§ 3.09. TERMS OF OFFICE FOR BOARD OF ADJUSTMENT MEMBERS.

The terms of office for Zoning Board of Adjustment members shall be as follows:

- A. The term of regular members shall be for four (4) years.
- B. The term of alternate members shall be for two (2) years.
- C. All terms shall run from January 1 of the year in which the appointment is made.
- D. Nothing contained herein shall affect the terms of any present members of the Zoning Board of Adjustment, all of whom shall continue as members until the completion of the terms for which they were appointed.

§ 3.10. POWERS AND DUTIES OF THE ZONING BOARD OF ADJUSTMENT.

The Zoning Board of Adjustment shall follow the provisions of the Municipal Land Use Law and this chapter, and accordingly shall have authority to:

- A. Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, or refusal made by the Zoning Officer based on or made in the enforcement or application of the zoning regulations;
- B. Hear and decide requests for interpretation of the Zoning Map or zoning regulations or for decisions upon other special questions upon which the board is authorized to pass by any zoning regulation or official map regulation, in accordance with this ordinance and the Municipal Land Use Law;
- C. Hear and decide requests for variances, provided that the Zoning Board of Adjustment shall not have the power to hear and decide variances if the development which is the subject of the variance request also requires subdivision, site plan or conditional use approval, unless the application involves a "D" variance request as defined in Article 2.
- D. Exercise control over and review and approval or disapproval, in whole or in part, of subdivisions, site plans, and conditional uses, only when the development which is the subject of such applications is related to a "D" variance request as defined in Article 2.
- E. Direct the issuance of building permits for buildings or structures in certain areas shown on an Official Map, unless the development which is the subject of such building permits also requires subdivision, site plan or conditional use approval;
- F. Direct the issuance of building permits for buildings or structures on a lot not related to a street, unless the development which is the subject of such building permits also requires subdivision, site plan or conditional use approval; and
- G. Prepare at least once a year, a report for the Town Council and Planning Board, based upon its review of its decisions on applications and appeals for variances since any previous report. The report shall be adopted by resolution of the Zoning Board of Adjustment, and shall comment on the zoning regulations which were the subject of variance requests, and shall make recommendations for any amendments to the zoning regulations that the Board may deem appropriate based upon prior variance applications.

§ 3.11. PROVISIONS APPLICABLE TO BOTH THE PLANNING BOARD AND THE ZONING BOARD OF ADJUSTMENT.

The following provisions shall apply to both the Planning Board and the Zoning Board of Adjustment:

- A. **Vacancies.** A vacancy in any membership position, including alternate members, occurring otherwise than by expiration of term shall be filled for the unexpired term only. Appointment of members to fill vacant positions shall be as above provided for full term appointments.
- B. **Removal of members.** Any member or alternate member, other than the Class I member of the Planning Board, after a public hearing if requested by the member, may be removed by the Town Council for cause.
- C. **Selection of officers.** Each board shall elect a chairperson and vice-chairperson from their members, provided that in the case of the Planning Board, only Class IV members may hold such positions. Each board shall select a secretary, who may either be a member of the board or a municipal employee.
- D. **Attorney, other experts and staff.** There is hereby created the positions of Attorney for the Planning Board and Attorney for the Zoning Board of Adjustment. Each board may employ, or contract for, and fix the compensation of legal counsel to fill such positions, provided such compensation shall not exceed the amount appropriated by the Town Council for use by the Board for such purpose. The Town Attorney shall not serve as the attorney for either Board, nor shall the same person serve as attorney for both boards; provided, however, that nothing herein shall be deemed to prohibit either Board from retaining the Attorney for the other Board to represent it on a case-by-case basis in the event the regular Attorney for the Board is unable to represent it for any reason. Each board may also employ, or contract for, and fix the compensation of a licensed professional planning consultant or such other additional experts, staff and services as it may deem necessary, not exceeding, exclusive of gifts or grants, the amount appropriated by the Town Council for the Board's use. **[Amended 10-02-01 by Ord. 1789]**
- E. **Funding of expenses.** The Town Council shall make provisions in its budget and appropriate funds for the expenses of the Planning Board and the Zoning Board of Adjustment as it shall deem appropriate.
- F. **Rules and regulations.** Each board shall adopt, and may amend reasonable rules and regulations, not inconsistent with this ordinance, the Municipal Land Use Law or with any applicable ordinance, for the administration of its functions, powers and duties. A copy of the rules shall be maintained in the office of the Secretary of the Board, and shall be furnished to any person upon request. A reasonable fee may be charged for provision of a copy of the rules.

G. **Meetings.** The following provisions shall apply to the meetings of the Planning Board and the Zoning Board of Adjustment:

1. Schedule of meetings; special meetings. Each board shall by its rules fix the time and place for holding its regular meetings. Regular meetings of each board shall be scheduled not less than once a month and shall be held as scheduled unless canceled for lack of applications for development to process. The schedule of meetings shall be filed with the Town Clerk, posted upon the Town bulletin board, and sent to two (2) newspapers with circulation in the Town, one (1) of which shall be the official newspaper of the Town. Each board may provide for special meetings, at the call of the Chairman, or on the request of any two (2) of its members.
2. Meetings open to public; executive sessions. All regular meetings and special meetings shall be open to the public except to the extent that the public may be excluded from any such meeting or portion thereof in accordance with requirements of the Open Public Meetings Act. Meetings shall be held on notice to the board members and the public in accordance with this chapter and the Open Public Meetings Act. An executive session for the purpose of discussing and studying any matters to come before the agency shall not be deemed a regular or special meeting within the meaning of this Article and shall be open to the public.
3. Quorum; conflict of interest; appointment of additional members. No action shall be taken at any meeting without a quorum being present. No regular, alternate or temporary member shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest.
 - a. If the Planning Board lacks a quorum because any of its regular or alternate members is prohibited from acting on a matter due to a conflict of interest, regular members of the Zoning Board of Adjustment shall be called upon to serve, for that matter only, as temporary members of the Planning Board. Regular members of the Zoning Board of Adjustment shall be called in order of seniority of continuous service to the Zoning Board of Adjustment. If a choice has to be made between regular members of equal seniority, the Chairman of the Zoning Board of Adjustment shall make the choice. There shall be called only the minimum number of members of the Zoning Board of Adjustment as are necessary to establish a quorum of the Planning Board to act on the matter.

- b. If the Zoning Board of Adjustment lacks a quorum because any of its regular or alternate members is prohibited from acting on a matter due to a conflict of interest, Class IV members of the Planning Board shall be called upon to serve, for that matter only, as temporary members of the Zoning Board of Adjustment. Class IV members of the Planning Board shall be called in order of seniority of continuous service to the Planning Board. If a choice has to be made between Class IV members of equal seniority, the Chairman of the Planning Board shall make the choice. There shall be called only the minimum number of Class IV members of the Planning Board as are necessary to establish a quorum of the Zoning Board of Adjustment to act on the matter.
4. Majority vote required. All actions shall be taken by a majority vote of the members of the board present at the meeting, except as otherwise provided by this ordinance and the Municipal Land Use Law for actions requiring an enhanced vote.
5. Participation of alternate members. Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of regular members. 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.
6. 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 there for. The minutes of any meeting shall also include a formal written resolution for each action taken by the Board. The minutes shall thereafter be available for public inspection during normal business hours at the office of the Board Secretary after their approval by the Board. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceedings concerning the subject matter of such minutes. Such interested party may be charged a reasonable fee for reproduction of the minutes for his use.

§ 3.12. EXCLUSIVE AUTHORITY OF BOARDS.

Any power expressly authorized by this ordinance or the Municipal Land Use Law to the Planning Board or the Zoning Board of Adjustment shall not be exercised by any other body, except as otherwise provided by the Municipal Land Use Law.

§ 3.13. ESTABLISHMENT OF BOARD OF ARCHITECTURAL REVIEW; PURPOSE.

- A. **Establishment.** There is hereby created a Board of Architectural Review, which shall be an advisory board to the Planning Board and the Board of Adjustment, and which shall consist of five (5) members.
- B. **Purpose.** The establishment of the Architectural Review Board has the following purposes:
1. The exterior architectural design and the proposed plan of the structures within the Town of Westfield, when erected should not be so incongruous with those structures already constructed, or in the course of construction, in the immediate neighborhood as to cause a substantial depreciation of the property values of said neighborhood.
 2. Excessive uniformity or dissimilarity in architectural design produces degeneration of property values with attendant deterioration of conditions affecting health, safety, and welfare of the inhabitants thereof, and destroys a proper relationship between the taxable value of real property in such areas and the cost of municipal improvements and services provided therefor.
 3. The establishment of the Architectural Review Board, and procedures and standards pertaining thereto, is intended to prevent these and other harmful effects of such exterior appearance of buildings and thus to promote and protect the health, safety, and general welfare of the community.

§ 3.14. BOARD OF ARCHITECTURAL REVIEW MEMBERSHIP; APPOINTMENT; TERMS; OFFICERS.

Qualifications for and appointment as members of the Board of Architectural Review shall be as follows:

- A. All members shall be appointed by the Mayor with approval of the Council.
- B. All members shall be residents of the Town of Westfield.

- C. Insofar as practical, the membership of the Board shall be comprised of persons specially qualified by reason of training and experience in architecture, law, land development, planning, real estate, landscape architecture or other relevant business, profession, training or experience.
- D. The Mayor with the approval of the Council shall also have the authority to appoint one (1) alternate member having the same qualifications as a regular member and who shall have the authority to act only in the absence of a regular member.
- E. All members shall serve without compensation.
- F. The term of office of each member shall be three (3) years, except that for the initial establishment of the Board, appointments of two (2) members shall be for one (1) year, of two (2) members shall be for two (2) years, and of one (1) member shall be for three (3) years. Nothing contained herein shall affect the terms of any present members of the Board of Architectural Review, all of whom shall continue as members until the completion of the terms for which they were appointed.
- G. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term only. Appointment of members to fill vacant positions shall be as above provided for full term appointments.
- H. The Town Council shall have the power to remove any member for cause after public hearing.
- I. A Chairman and Vice-Chairman shall be elected from and by the Board.
- J. The Chairman shall select one (1) Board member to serve as Secretary of the Board.

§ 3.15. MEETINGS, PROCEDURES AND REGULATIONS OF BOARD OF ARCHITECTURAL REVIEW.

- A. Meetings of the Board of Architectural Review shall be held at the call of the Chairman and at such other times as the Board may determine, but shall be held within fifteen (15) days of the date of receipt of any application for a building permit, variance or preliminary site plan approval as provided for in Articles 6, 7 and 8 hereof, respectively, or within such shorter time as may be necessary to give timely advice and recommendation to the Planning Board or Board of Adjustment in its consideration of any plan for development.

- B. The Chairman, or in his or her absence, the Vice-Chairman, may administer oaths and compel the attendance of witnesses.
- C. A majority of said Board shall constitute a quorum for the transaction of business.
- D. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
- E. The Board shall have the power to adopt, amend and repeal rules and regulations governing the Board's procedures and operations which are not consistent with law or this chapter. **[Amended 09/29/09 by Ord. No. 1942]**
- F. Every regulation or amendment thereof, and every determination of the Board shall be filed promptly with the Town Clerk and the Secretary of the Board and shall be a public record.

§ 3.16. ZONING OFFICER; DUTIES.

There is hereby established the office of the Zoning Officer. The duties of the Zoning Officer shall be as follows:

- A. to provide advise and counsel regarding the procedures and standards in the Land Use Ordinance to: 1) applicants for approvals required pursuant to this ordinance, 2) the Planning Board and Zoning Board of Adjustment, 3) other agencies of the Town of Westfield, and 4) other interested parties, as may be requested by said applicants, Boards, agencies or parties;
- B. to review applications for construction permits, demolition permits, zoning approvals, certificates of occupancy, subdivisions, site plans and variances for compliance with the provisions of the Land Use Ordinance and, in appropriate circumstances as specified by this ordinance, to issue or deny zoning approvals;
- C. to coordinate the processing of development applications for the Planning Board and Zoning Board of Adjustment;
- D. to investigate any alleged violation of this ordinance coming to his attention, including but not limited to the express provisions of the Land Use Ordinance and any terms and conditions of approval granted pursuant to the Land Use Ordinance by the Planning Board or Zoning Board of Adjustment, whether knowledge of such alleged violation is by complaint of third persons or from his own personal knowledge or observation;

- E. to proceed with the enforcement of this ordinance and the penalties provided for in Article 21. The Zoning Officer may also pursue such other statutory method or methods, heretofore or hereafter provided, as may be open to him; and
- F. to maintain the official records of his office.