

**ARTICLE 4**

**HEARINGS**

**§ 4.01. WHEN REQUIRED.**

Public hearings shall be required for the following:

- A. The Planning Board or Zoning Board of Adjustment, as applicable, shall hold a hearing on each application for development, except when such application is specifically exempted from public hearing by this ordinance.
- B. The Planning Board shall hold a hearing on any adoption, revision or amendment of the Master Plan.
- C. The Zoning Board of Adjustment shall hold a hearing on appeal from the action of the Zoning Official or other administrative appeal within its jurisdiction.
- D. The Town Council shall hold a hearing on any adoption, revision, or amendment of this ordinance or of any development regulation.
- E. The Planning Board or Town Council, as applicable, shall hold a hearing on any adoption, revision or amendment of a capital improvement program.
- F. The Board of Adjustment shall hold a hearing on an application for an interpretation of the zoning regulations pursuant to § 7.02C, or an application for certification of a nonconforming use or structure pursuant to § 19.06.
- G. The Historic Preservation Commission shall hold a hearing on each major or minor application for a certificate of appropriateness, when such hearings are required by the commission pursuant to the Historic Designation and Preservation Ordinance.

**§ 4.02. RULES; HEARING DATES.**

The agency holding the hearing shall make the rules governing such hearings. Upon the determination that an appeal or application is complete pursuant to Article 9, the appropriate agency shall schedule a hearing date in accordance with its rules.

**§ 4.03. NOTICE OF HEARING; WHEN REQUIRED.**

Public notice as specified herein shall be given for all hearings involving the following:

- A. Any application for development which involves a request for a variance;
- B. An application for interpretation of the zoning regulations; provided, however, that such notice shall be both published and served as set forth in S 4.04B and S 404B.1 if the application involves a specific property, and further provided, that such notice shall be limited to publication as set forth in the first paragraph of S 4.04B if the application does not involve a specific property.
- C. An application for preliminary major site plan approval;
- D. An application for preliminary major subdivision approval;
- E. An application for a certificate of appropriateness pursuant to the Historic Designation and Preservation Ordinance;
- F. An application for certification of a nonconforming use or structure;
- G. The adoption, revision or amendment of the Master Plan;
- H. The adoption, revision or amendment of this ordinance or any other development regulation; and
- I. The adoption, revision or amendment of a capital improvement program.

**§ 4.04. NOTICE OF HEARINGS FOR DEVELOPMENT APPLICATIONS.**

The following provisions shall apply to public notice of hearings for development applications:

- A. **Content.** Public notice of hearings for development applications, including variance applications, shall state the following:
  - 1. The date, time and place of the hearing, and which Board is to hear the application;
  - 2. The nature of the matters to be considered, provided that when conditional use approval, variance relief or direction for the issuance of a permit pursuant to this ordinance is requested, the notice shall include reference to the request for conditional use approval, variance or direction for issuance of a permit, as the case may be;
  - 3. An identification of the property proposed for development by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the Town Assessor's office; and

4. The location and times at which any maps and documents for which approval is sought are available for inspection in the office of the Board Secretary.

B. **Service of notice; parties entitled to notice.** Public notice shall be given by the applicant. Notice shall be given at least ten (10) days prior to the date of the hearing. The date of the hearing shall not count as one of the ten (10) days. Public notice shall be given by publication in the official newspaper of the Town, if there be one, or in a newspaper of general circulation in the Town. Notice shall also be given to members of the public as follows:

1. Notice of hearing shall be given to the owners, as shown on the current tax duplicates, of all real property located within the State and within two hundred (200) feet in all directions of the property which is the subject of such hearing. This requirement shall be deemed satisfied by notice to the 1) condominium association, in the case of any unit owner whose unit has a unit above or below it, or 2) horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it. Notice shall be given as follows:

a. Notice shall be given by 1) serving a copy thereof on the property owner as shown on the said current tax duplicate, or his agent in charge of the property, or by 2) mailing a copy thereof by certified mail to the property owner at his address as shown on the said current tax duplicate.

b. Notice to a partnership owner may be made by service upon any partner.

c. Notice to a corporate owner, including cooperatives, may be made by 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.

d. Notice to a condominium association, because of its ownership of common elements or areas located within two hundred (200) feet of the property which is the subject of the hearing, may be made in the same manner as to a corporation without further notice to unit owners, co-owners or homeowners on account of such common elements or areas.

2. Notice of 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.
3. Notice shall be given by personal service or certified mail to the County Planning Board of hearings on applications for development involving property adjacent to an existing county road or proposed road shown on the official county map or on the County Master Plan, adjoining other county land or situated within two hundred (200) feet of a municipal boundary.
4. Notice shall be given by personal service or certified mail to the Commissioner of Transportation of a hearing on an application for development involving property adjacent to a State highway.
5. 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 or five hundred (500) dwelling units. The notice shall include a copy of any maps or documents required to be on file with the Board Secretary pursuant to Article 9.
6. Notice of hearings on an application for development involving a major subdivision or preliminary site plan, excluding minor site plans, shall be given to a public utility, cable television company or local utility which possesses a right-of-way or easement within the Town and which has registered with the Town in accordance with the Municipal Land Use Law, by: 1) serving a copy of the notice on the person whose name appears on the registration form on behalf of the public utility, cable television company or local utility, or 2) mailing a copy thereof by certified mail to the person whose name appears on the registration form at the address shown on that form.

- C. **Request for certified list of property owners within 200 feet.** Upon written request of an applicant, the Tax Assessor shall make and certify, within seven (7) days, a list from the current tax duplicates of the names and addresses of owners to whom the applicant is required to give notice. In addition, the Tax Assessor shall include on the list the names, addresses and positions of those persons who, not less than seven (7) days prior to the date on which the applicant requested the list, have registered to receive notice as a public utility, cable television company or local utility. The applicant shall be entitled to rely upon the information contained in such list, and

failure to give notice to any owner or to any public utility, cable television company or local utility not on the list shall not invalidate any hearing or proceeding.

- D. **Effect of mailing notice.** Any notice made by certified mail as stipulated above shall be deemed complete upon mailing.
- E. **Proof of service of notice.** The applicant for development shall file an affidavit of proof of service with the Planning Board or the Zoning Board of Adjustment, as appropriate.

**§ 4.05. NOTICE OF HEARINGS FOR THE MASTER PLAN.**

The following provisions shall apply to public notice of hearings for adoption, revision or amendment of the Master Plan:

- A. **Content.** Public notice of hearings for adoption, revision or amendment of the Master Plan shall state the following:
  - 1. The date, time and place of the hearing;
  - 2. The nature of the matters to be considered; and
  - 3. The location and times at which any maps and documents which are the subject of said adoption, revision or amendment are available for inspection in the office of the Board Secretary.
- B. **Service of notice; parties entitled to notice.** Notice shall be given by the Planning Board at least ten (10) days prior to the date of the hearing. The date of the hearing shall not count as one of the ten (10) days. Public notice shall be given by publication in the official newspaper of the Town, if there be one, or in a newspaper of general circulation in the Town. Notice shall also be given to the following parties as specified below:
  - 1. Notice shall be given by personal service or certified mail to the clerk of an adjoining municipality of all hearings on adoption, revision or amendment of a master plan involving property situated within two hundred (200) feet of such adjoining municipality.
  - 2. Notice shall be given by personal service or certified mail to the County Planning Board of all hearings on the adoption, revision or amendment of the Town Master Plan. Such notice shall include a copy of any such proposed Master Plan, or any revision or amendment thereto.

3. Notice shall be given by personal service or certified mail to the County Planning Board of the adoption, revision or amendment of the Town Master Plan. Such notice shall be given not more than thirty (30) days after the date of such adoption, revision or amendment and shall include a copy of the Master Plan, or revision or amendment thereto.

C. **Effect of mailing notice.** Any notice made by certified mail as stipulated above shall be deemed complete upon mailing.

**§ 4.06. NOTICE OF HEARINGS FOR DEVELOPMENT REGULATIONS OR CAPITAL IMPROVEMENT PROGRAMS.**

The following provisions shall apply to public notice of hearings for adoption, revision or amendment of this chapter, other development regulations or the capital improvement program:

A. **Content.** Public notice of hearings for adoption, revision or amendment of this chapter, other development regulation, or the capital improvement program shall provide the following:

1. A statement of the date, time and place of the hearing;
2. A statement of the nature of the matters to be considered; and
3. The location and times at which any maps and documents which are the subject of said adoption, revision or amendment are available for inspection in the office of the Town Clerk.
4. In the case of zone district classification or boundary changes with enhanced notice requirements pursuant to § 4.06B.3, the notice shall also provide an identification of the affected zoning districts and proposed boundary changes, if any, by street names, common names or other identifiable landmarks, and by reference to lot and block numbers as shown on the current tax duplicates in the Town Tax Assessor's office.
5. In the case of notice to the County Planning Board, a copy of the proposed or adopted development regulation, official map, capital improvement program, or any proposed or adopted revision or amendment thereto, as the case may be, shall be included with the notice.

B. **Service of notice; parties entitled to notice.** Notice shall be given by the Town Council at least ten (10) days prior to the date of the hearing. The date of the hearing shall not count as one of the ten (10) days. Notice shall be given to the following parties as specified below:

1. Notice shall be given by personal service or certified mail to the clerk of an adjoining municipality of all hearings on adoption, revision or amendment of any development regulation involving property situated within two hundred (200) feet of such adjoining municipality.
2. Notice shall be given by personal service or certified mail to the County Planning Board of all hearings on the adoption, revision or amendment of any development regulation.
3. Notice of a hearing on an amendment to the zoning regulations, which amendment proposes a change to the classification or boundaries of a zoning district, exclusive of classification or boundary changes recommended in a periodic general reexamination of the master plan by the Planning Board pursuant to N.J.S.A. 40:55D-89, shall be given in the following manner:
  - a. Notice shall be given by 1) serving a copy thereof on the property owner as shown on the said current tax duplicate, or his agent in charge of the property, or by 2) mailing a copy thereof by certified mail and regular mail to the property owner at his address as shown on the said current tax duplicate.
  - b. Notice to a partnership owner may be made by service upon any partner.
  - c. Notice to a corporate owner, including cooperatives, may be made by 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.
  - d. Notice to a condominium association, horizontal property regime, community trust or homeowner's association, because of its ownership of common elements or areas located within two hundred (200) feet of the boundaries of the district which is the subject of the hearing, may be made in the same manner as to a corporation in addition to notice to unit owners, co-owners or homeowners on account of such common elements or areas.
  - e. The Town Clerk shall execute affidavits of proof of service of the notices required herein for the hearings on zoning district classification or boundary changes, and shall keep the affidavits on file along with the proof of publication of the notice of the required public hearing on the proposed zoning

regulation change. Costs of the notice provision shall be the responsibility of the proponent of the amendment.

4. Notice shall be given by personal service or certified mail to the County Planning Board of the adoption, revision or amendment of the Town capital improvement program or official map. Such notice shall be given not more than thirty (30) days after the date of such adoption, revision or amendment.

- C. **Effect of mailing notice.** Any notice made by certified mail as stipulated above shall be deemed complete upon mailing.

**§ 4.07. FILING OF MAPS AND DOCUMENTS; DEADLINE.**

Any maps and documents for which approval is sought at a hearing shall be on file and available for public inspection at least ten (10) days before the date of the hearing, during normal business hours in the office of the Board Secretary. The applicant may produce other documents, records, or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.

**§ 4.08. WITNESSES; EVIDENCE.**

The following provisions shall govern the testimony of witnesses and production of evidence at hearings conducted pursuant to this chapter:

- A. The officer presiding at the hearing or such person as he may designate 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 shall apply.
- B. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer. 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 as to time and number of witnesses.
- C. Technical rules of evidence shall not be applicable to the hearing, but the agency may exclude irrelevant, immaterial or unduly repetitious evidence.

**§ 4.09. VOTING PROCEDURES.**

The following voting procedures shall apply for public hearings held pursuant to this chapter. Nothing herein shall be construed to contravene any act providing for procedures for governing bodies.

- A. All actions shall be taken by a majority vote of the members present at the hearing, except as otherwise provided by this chapter and the Municipal Land Use Law.
- B. A member of the Town agency who was absent for one (1) or more of the meetings at which a hearing was held shall be eligible to vote on the matter upon which the hearing was conducted, if such member has available to him the transcript or recording of all of the hearing from which he was absent, and certifies in writing to the agency that he has read such transcript or listened to such recording.
- C. Failure of a motion to receive the number of votes required to approve an application for development shall be deemed an action denying the application.

**§ 4.10. RECORD OF DECISIONS.**

The municipal agency shall include findings of fact and conclusions based thereon in each decision on any application for development and shall reduce the decision to writing. The municipal agency shall provide the findings and conclusions through either: 1) a resolution adopted at a meeting held within the time period provided in the act for action by the municipal agency on the application for development, or 2) a memorialization resolution adopted at a meeting held not later than forty-five (45) days after the date of the meeting at which the municipal agency voted to grant or deny approval. The following provisions shall apply to memorialization resolutions:

- A. Only the members of the municipal agency who voted for the action taken may vote on the memorialization resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution.
- B. An action to deny resulting from the failure of a motion to approve an application shall be memorialized by resolution as provided above, with those members voting against the motion for approval being the members eligible to vote on the memorializing resolution.
- C. The vote on any memorialization resolution shall be deemed to be a memorialization of the action of the municipal agency and not to be an action of the municipal agency; however, the date of the

adoption of the resolution shall constitute the date of the decision for purposes of the mailings, filings and publications required by § 4.11.

- D. If the municipal agency fails to adopt a resolution or memorializing resolution as hereinabove specified, any interested party may apply to the Superior Court in a summary manner for an order compelling the municipal agency to reduce its findings and conclusions to writing within a stated time, and the cost of the application to Superior Court, including attorney's fees, shall be assessed against the Town.

**§ 4.11. MAILING, FILING AND PUBLICATION OF DECISIONS.**

Following adoption of a resolution on a development application by the Town agency, the resolution shall be mailed, filed and published as follows:

- A. 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, 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.
- B. A copy of the decision shall also be filed in the office of the Town 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 established for copies of other public documents in the municipality.
- C. A brief notice of every final decision shall be published in the official newspaper of the municipality. Such publication shall be arranged by the Secretary of the Board without separate charge to the applicant, provided that nothing contained herein shall be construed as preventing the applicant from arranging such publication if he so desires. Said notice shall be sent to the official newspaper for publication within ten (10) days of the date of any such decision.

**§ 4.12. RECORD OF HEARINGS.**

The Board conducting a hearing shall provide for the verbatim recording of the proceedings by 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. Any such transcript shall be certified in writing by the transcriber to be accurate. The following shall apply:

- A. No transcript of the hearing shall be reduced to typewritten form unless requested. The cost of producing the transcript to typewritten form shall be borne by the party or entity requesting same and shall be ordered directly from the court reporter and the cost paid directly to the court reporter.
- B. No electric recording of the hearing shall be reduced to typewritten form unless requested. The cost of reducing the recording to typewritten form shall be borne by the party or entity requesting same and shall be ordered directly from the certified transcriber and the cost paid directly to the certified transcriber.