

**BY-LAWS AND RULES OF PROCEDURE OF THE PLANNING BOARD OF
BOROUGH OF FLEMINGTON,
NEW JERSEY**

**ARTICLE I
General and Membership Provisions**

- Section 1:** These rules are supplementary to the provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. and to Chapter 26 of the Code of the Borough of Flemington, County of Hunterdon, State of New Jersey as they relate to the procedures and powers of the combined Zoning Board of Adjustment and Planning Board.
- Section 2:** **Term Definition.** The term "Board" or "Planning Board" as used herein means the Planning Board of the Borough of Flemington.
- Section 3:** **Membership.** The Board shall be known as the "Flemington Planning Board" (hereafter referred to as the "Board") and consist of nine (9) members with six (6) Class IV members; a Class I member, a Class II member and a Class III member, and four (4) alternate members, which are further described below. Membership shall be in accordance with the provisions of the Borough Code and the Municipal Land Use Law, N.J.S.A. 40:55D-23, et seq. and no more than nine (9) members of the Board shall vote on any particular matter, including the election of officers. In addition, in matters and applications pursuant to N.J.S.A. 40:55D-70(d), Class I and Class III members shall not participate and for those purposes, the Board membership shall be reduced to seven (7) members. At no time shall the Class I and/or Class III members vote on such matters and no more than seven (7) members of the Board shall vote on the same. Alternates shall be permitted to participate in any matter and/or application but shall be permitted to vote only to the extent required to achieve nine (9) members or seven (7) members of the Board as the circumstances may require.

A description of the Members are as follows:

Class I - The Mayor or the Mayor's designee in the absence of the Mayor.

Class II - One of the officials of the municipality, other than a member of the governing body, to be appointed by the Mayor, provided that any member of the Environmental Commission who is also a member of the Planning Board as required by N.J.S.A. 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 regular or alternate members.

Class III - A member of the governing body to be appointed by it.

Class IV - Regular Members. Six other resident 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 such member may be a member of the Historic Preservation Commission. No member of the Board of Education may be a Class IV member of the Planning Board, except that in the case of a nine-member board, one Class IV member may be a member of the Board of Education. If there be an Environmental Commission, the member of the Environmental

Commission who is also a member of the Planning Board, as required by N.J.S.A. 40:56A-1, shall be a Class IV Planning Board member, unless there be among the Class IV or alternate members of the Planning Board both a member of the Zoning Board or the Historic Preservation Commission and a member of the Board of Education, in which case the member common to the Planning Board and Environmental Commission shall be deemed a Class II member of the Planning Board.

Class IV - Alternate Members. Four other resident citizens of the Borough to be appointed by the Mayor that shall meet the qualifications of Class IV Members.

The alternate members shall be designated as Alternate #1, #2, #3 and #4 as and if appointed and not all alternate members need be appointed. The alternate members shall fill in for regular members who are absent or have been excused from hearing a case in the order of their numerical designation (i.e., Alternate #1 shall fill the first regular vacancy that occurs and thereafter, Alternate #2 shall become Alternate # 1 and so forth.)

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

Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member, nor shall any vote be delayed in order that a regular member may vote instead of an alternate member. (See also Article V Sections 25 and 28.)

Section 4: Organization Meeting. The Board shall convene a meeting during January in each year or on a date otherwise designated subject to proper public notice being provided in accordance with the Municipal Land Use Law and Open Public Meetings Act for the purpose of organizing the affairs of the Board for the calendar year.

Section 5: Determination of Vacancy for Excessive absences. The position of any member or alternate member shall be deemed vacant whenever the member, without being excused by a majority of the authorized members of the Board, fails to attend and participate at meetings of the Board for a period of three (3) consecutive meetings (both regular and work sessions), at the conclusion of such period, provided that the Board shall notify the appointing authority in writing of such determination.

In the event a member's position is deemed vacant, that member is subject to removal in accordance with the applicable procedures under New Jersey Statute and the Ordinances of the Borough of Flemington. In the event that a Board member is not present at a meeting, the Board shall entertain a motion and a second and shall take a vote memorializing the excused or unexcused absence of such Board member.

Section 6: Board Offices. The office of the Board is located at Borough Hall, Borough of Flemington, 38 Park Avenue, Flemington, New Jersey. All records of the Board shall be available for public inspection in the office of the Planning Board/Borough Clerk between the hours of 9:00 A.M. and 4:00 P.M. Monday through Friday, except for legal holidays.

ARTICLE II

Officer and Duties

Section 1: Officers. The officers of the Board shall be a Chairperson, a Vice-Chairperson and a Secretary.

Section 2: Officers and Secretary. In accordance with N.J.S.A. 40:55D-24, the Board shall elect the Chairperson and Vice-Chairperson and appoint a Secretary who may or may not be a member or alternate member of the Board or a municipal employee. . These elections and appointment shall be completed at a reorganization meeting held during the month of January of each year. All members of the Board, including alternates, may participate in the discussion regarding these elections and appointment; however, under no circumstances may more than nine (9) Board members vote at any time.

A candidate receiving a majority vote of the membership of the Planning Board present shall be deemed elected to the office for which the vote was taken and shall serve for one year until he or she is re-elected or his or her successor shall take office. In the event that an office shall become vacant, the office shall be filled as soon as possible by a same election procedure and the terms of such office shall be the unexpired term of the predecessor.

In furtherance of the above, the Board shall entertain nominations for individuals to serve as the same. In the event of multiple nominations for a position which have been appropriately seconded, each Board member shall cast a vote for one (1) of the nominees via private ballot. The voting shall continue with the individual receiving the least number of votes being excluded from the next private vote until such time as one (1) individual for each position has received a majority vote of the Board members present.

Section 3: Chairperson Duties. The Chairperson shall supervise the affairs of the Board. He/she shall preside at all meetings, shall appoint such committees and subcommittees as may be necessary to carry out the purposes of the board, shall provide for the oath to be administered to all witnesses in cases before the Board and shall provide for the issuance of subpoenas to compel the attendance of witnesses and the production of relevant evidence unless such duties are otherwise designated to the Board's legal counsel. The Chairperson shall be an ex officio member of all committees and subcommittees so appointed. Where

required by statute, ordinance or rule to do so, he/she, along with the Administrative Secretary sign all documents. An alternate Board member shall not be permitted to serve as the Chairperson.

Section 4: Vice Chairperson Duties. The Vice-Chairperson, in the absence or disqualification of the Chairperson, shall perform all of the duties and exercise all of the powers of the Chairperson. The Secretary in the absence or disability of the Chairperson and the Vice-Chairperson, shall perform all of the duties and exercise all of the powers of the Chairperson. An alternate Board member shall not be permitted to serve as the Vice-Chairperson.

Section 5: Acting Chairperson. In the absence or disqualification of all officers of the Board, an Acting Chairperson shall be designated by a majority of the Board present. Such Acting Chairperson shall have all the powers of the Chairperson while acting in such capacity.

ARTICLE III

Board Committees

Section 1: Appointment of Committee. The Chairperson or Acting Chairperson may appoint standing or *ad hoc* committees for various purposes of the Board. In the event a member of the Board seeks to challenge the decision of the Chairperson or Acting Chairperson, such Board member may make a motion to overrule the decision of the Chairperson which shall require a second and a majority vote of the Board members present in order to succeed in accordance with Roberts' Rules of Order.

Section 2: Committee Membership. Each committee shall be appointed for a period not to exceed beyond one calendar year and shall consist of three (3) members of the Board, only one of which may be a member of the Mayor and Council. Vacancies shall be filled immediately by the Chairperson.

ARTICLE IV

Board Employees

Section 1: Legal Counsel. The Board shall engage the services of an Attorney of its own choosing to provide legal counsel. The Attorney will attend all public meetings of the Board and shall be required in a timely fashion to draw up legally binding written resolutions that memorialize certain Board actions that warrant such formalization. The Board Attorney shall prosecute and defend litigation and appeals on behalf of the Board.

Section 2: Professional Engineer. The Board shall engage the services of a licensed professional engineer of its own choosing to provide engineering review and opinion and attend meetings of the Board at the pleasure of the Board.

Section 3: Professional Planner. The Board may engage the services of a licensed professional planner of its own choosing to provide planning review and opinion and attend meetings of the Board at the pleasure of the Board.

Section 4: Administrative Secretary. At the annual reorganization meeting, the Board shall elect an Administrative Secretary who need not be a member of the Board. The Administrative Recording Secretary shall serve for a period of one year. The Administrative Recording Secretary shall be primarily responsible for reviewing each appeal application documentation package submitted to the Board, reviewing it for completeness and certifying the status of notice to the Chairperson at the beginning of the hearing.

The duties of the Administrative/Recording Secretary shall also include; a) providing each Board member with a copy of an agenda and a copy of each applicant's Application package prior to the scheduled hearing meeting, b) providing the Board with a copy of minutes or a transcribed record of all business meetings, c) handling all necessary Board correspondence, and d) at all public meetings of the Board: calling the membership roll at the opening of the meeting and during the meeting at the direction of the Chairperson, call the hearing panel membership roll for all appeal/application votes, tally those votes and announce the results of that vote immediately thereafter.

The Administrative/ Recording Secretary shall operate the recording device during each meeting and shall maintain all audio recordings of the Board's meetings within the Board's files in accordance with all applicable laws.

The Administrative/Recording Secretary shall be responsible for delivering the signed and dispositioned application document packages to the Zoning Officer/Construction Code Official's office after the close of each meeting.

The Recording Secretary shall be compensated upon agreement and in accordance with the Ordinances and/or determinations of the Planning Board and the Governing Body of the Borough of Flemington.

Section 5: Other Professionals. The Board shall engage any other necessary employees/professionals as may be required from time to time.

ARTICLE V

Meetings / Procedures

Section 1: Regular Meeting. Regular meetings shall be held as scheduled and posted at the annual organization meeting or other such time. A copy of the regular meeting schedule shall be annually provided to the news media designated by the municipal governing body for publication and shall be posted in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq. Public meetings shall be called to order at 7:00 P.M. The Board shall not commence any new matters after 10:30 p.m. and shall terminate at the conclusion of business or no later than 11:00 P.M. or as

close to this time as reasonably possible. The curfew hour may be extended by the Chairperson.

- Section 2: Parliamentary Procedure.** Roberts Rules of Order, latest edition, shall be followed whenever a particular procedure or practice is not contemplated by these Rules or the Municipal Land Use Law.
- Section 3: Cancellation of Meetings.** Regular meetings may be canceled by the Chairperson when there are not matters pending or for other such good cause.
- Section 4: Special Meetings.** Special public and executive meetings may be called by the Chairperson at his/her discretion, or upon the request of two or more members, provided that forty-eight hours' notice is given each member and provided to the official newspaper(s) of the Borough of Flemington as designated by the Mayor and Council and to the public in accordance with the Open Public Meetings Act.
- Section 5: Public Meetings.** All meetings shall be open to the public, except for selected matters that are covered as special cases in accordance with provisions and requirements of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. and 40:55D-9b. All such selected cases shall be conducted in meetings closed to the public. A synopsis of the closed meeting shall be disclosed to the public after the topic(s) of the meeting are no longer of a sensitive nature.
- Section 6: Quorum.** A quorum consisting of at least five (5) members of the Board shall be present at all public hearings and for the transaction of any business. In the absence of a quorum the members present may convene a meeting only for the purpose of adjourning the same to another date. For the purposes of applications pursuant N.J.S.A. 40:55D-70(d), Class I and Class III members shall not be counted towards a quorum. No hearing may proceed without a qualified quorum of the Board.
- Section 7: Public Participation.** Accept as otherwise provided in these Rules and Regulations, the meetings of the Board shall be open to the public at all times. Nothing herein shall be construed to limit the discretion of the Board to permit, prohibit or regulate the active participation of the public at any meeting. The Board may exclude the public only from those portions of a meeting at which the Board discusses matters within the exclusion provided under the New Jersey Municipal Land Use Law and/or the New Jersey Open Public Meetings Act.
- Section 8: Order of Business.** Unless modified by a majority vote of the Board, the order of business at all meetings shall be:
- a) Statement of "Open Public Meeting Act" compliance
 - b) Flag Salute
 - c) Roll Call
 - d) Public Comments (15 minutes, which may be amended as necessary at the Chairperson's discretion)
 - e) Mayor Comments
 - f) Council Comments
 - g) HPC Comments
 - h) Approval of minutes of previous meeting

- i) Motions for adjournment of any scheduled hearing/matters
- j) Resolutions
- k) Informal Discussions
- l) Review of Ordinances
- m) Completeness Determinations
- n) Continuation of Matters
- o) New Hearings
- p) Chair Items (which shall include any open items for Board discussion)
- q) Bills
- r) Professional Reports: Attorney, Engineer, Planner, Traffic Engineer
- s) Executive Session (As Needed)
- t) Adjournment

Section 9: Applications. Applications for development shall be considered by the Board in accordance with the Ordinance of the Borough of Flemington. Upon receipt of an application by the Board Secretary, the application shall be assigned a docket number which shall thereafter appear on all subsequent papers filed in the case. The original copy of the application, together with a copy of all other documents filed with the application, shall be filed in the permanent case docket of the Board. The Board or its designees shall determine the completeness of the application in accordance with the Ordinance of the Borough of Flemington. Upon a determination of completeness, the Board Secretary shall so notify the applicant, and the application shall be determined to be complete as of the day it was so certified by the Secretary for purposes of commencement of the time period within which the Board must act upon an application.

Section 10: Scheduling of Hearings. Upon a determination of completeness in accordance with these rules and regulations, the application shall be assigned a hearing date upon notice. Applications shall be scheduled so as to comply with statutory and ordinance limitations in time. Scheduling of matters for work session, regular session or subcommittee review shall be at the discretion of the Board or its designee(s).

Section 11: Filing of Amendments/Supplements to Application Documents. At least ten (10) calendar days prior to the time appointed for the hearing and any adjourned date thereof, the applicant must place any amendments or supplements to the application documents on file with the Board Secretary and forward copies to the Board professionals as may be required by the Borough ordinance and/or checklist. Although not required, the Board recommends that any exhibits to be utilized in connection with testimony at a hearing be filed at least five (5) calendar days prior to any initial or adjourned hearing in order to afford the Board and its' professionals an opportunity to review the same prior thereto.

Section 12: Applicant Representation. At the time of the hearing on an application, the applicant, or in the case of an appearance by a non-applicant party, such party, shall appear in person, or such person may appear by Attorney-At-Law admitted to practice in the State of New Jersey. No corporation shall be heard except through counsel.

Section 13: Order of Presentation. Each application shall be considered in accordance with the following order of presentation: (a) The applicant shall enter an appearance on the record and be duly sworn. If the applicant is represented by counsel, the attorney shall enter his or her appearance, identifying the name and location of his or her firm, identifying the client who is represented, and shall then proceed to make opening remarks. (b) The applicant shall then present testimony and such other evidence, depicted, documentary or otherwise, upon which the applicant intends to rely in order to establish a basis for the relief sought. (c) At the conclusion of a witness's testimony, the Chair shall allow the members and, at the discretion of the Chair, any interested parties to ask questions of such witness, and may permit reasonable cross-examination by counsel representing an objector or interested party. An attorney representing a group of objectors or interested parties shall submit to the Board a written list of persons represented by such attorney and shall submit a copy of the same to the applicant or the attorney for the applicant. Such persons shall participate in the proceedings only through their attorney. (d) Upon the conclusion of the presentation of the application, any objector(s) wishing to present a case in objection to the relief sought may do so in such order as may be recognized by the Chair and may call any witnesses for testimony and introduce any documentary or other evidence upon which he or she will rely. Any witness and objector shall be subject to reasonable cross-examination by the applicant or his or her attorney and the Board, and the Chair shall allow a reasonable opportunity for interested parties to ask questions of such witnesses. The Chair shall first recognize presentations of counsel for objectors and those presentations involving expert testimony in the order that the Chair shall determine upon the exercise of reasonable discretion. Such presentations shall be subject generally to the procedure set forth in the above subparagraphs, affording the attorney for the applicant, an applicant pro se and any experts for the applicant a reasonable opportunity for cross-examination and commentary. (f) The Board shall thereafter recognize public commentary by interested parties appearing pro se, and each such interested party shall be subject to cross-examination. The Chair shall have the right to cause any interested party appearing before the Board to be first duly sworn and shall do so whenever an interested party will offer facts on which the Board would be expected to rely. All rebuttal testimony or evidence shall be considered in such order as the Chair shall designate. Only relevant objections shall be considered by the Board. The Board shall not consider unreasonable, repetitive or disorderly objections. The Board shall have the power to limit objections to those expressed by interested parties as the term is defined in the Municipal Land Use Law and construed by the courts of this State. (g) Any member of the Board may place evidence before the Board as to any relevant matter of which he or she has personal or official knowledge for the purpose of amplifying the record, including facts ascertained from a viewing of the premises in question subject to these rules. (h) The Board shall have the right to rely upon the expertise of its legal, engineering and other consultants. The Board may also call, as witnesses, other municipal officials such as police officers, municipal engineers, the tax assessor, municipal employees, etc., to testify as to particular facts pertinent to the application. The Board shall also have the power to acquire additional evidence consistent with these rules.

Section 14: Reports from Officers, Boards or Agencies. The Board may refer an application to another person or agency for a report provided that such reference shall not extend the time within which the Board must act. Such reports from other persons or agencies shall be made available to the applicant and to other interested parties for examination and refutation. The applicant and interested parties shall have the right to subpoena the officer making the report for purposes of cross-examination as to its contents and the basis for conclusions. The Board shall either obtain such reports prior to the hearing, giving all interested parties the right to examine the same, or the hearing may be adjourned to a specific time and place for the purpose of receiving the reports and recommendations of public officials or agencies involved.

Section 15: Testimony from Board-Employed and Other Expert Witnesses. The Board may require expert witnesses and reports. Experts shall be qualified to the satisfaction of the Board. In addition to experts for the applicant or others, the Board shall have the power to engage its own independent experts to either corroborate or refute the testimony of experts produced by an applicant or other party. The Board shall not be bound to accept the testimony of any expert. Where there is conflicting testimony of experts, the Board shall decide which to accept. These rules shall not be construed as requiring expert testimony in all instances to sustain a Board finding. The Board may require its consultants to confer with the experts of the applicant and, where appropriate, with experts hired by objectors or the Board in order to expedite consideration of the application.

Section 16: Evidence; Exhibits. The formal rules of evidence adopted by the courts of the State of New Jersey shall not be enforced in the proceedings before the Planning Board. However, no decision shall be based upon any facts not proved or on matters which are not on the record unless they be such items of which the Board is entitled to take judicial notice. When any documents or exhibits are admitted into evidence during or for purposes of a hearing, they shall be marked and shall be retained by the Board as part of the permanent file. After the Board has rendered its decision and the time for filing an appeal has expired, the Board Secretary may return any such exhibits or documents to the person who offered them upon request. The Board may limit irrelevant, immaterial or redundant testimony.

Section 17: Letters and Petitions in Objection. Letters of objection and petitions shall not be admissible, though the writer of a letter or the signer of a petition may appear and testify.

Section 18: Burden of Proof. The burden of proof is upon the applicant, and it is the applicant's responsibility to supply competent and credible evidence in order that the Board might determine the nature and degree of the relief sought by the applicant. The applicant must establish, to the Board's satisfaction, that pursuant to statutory and ordinance criteria, the applicant is entitled to the relief sought.

Section 19: Continuation of Hearings. All hearings may be continued to another date certain, which shall be the next regularly scheduled Board meeting unless otherwise determined by the Board. The Chair shall announce to all those present the date, time and place to which the hearing on the matter is continued and no further notice need be given by the applicant, subject to the consent of the Board. However, if the matter is continued to a special meeting, notice required under the Open Public Meetings Act shall be given. The Board reserves the right to continue a hearing on its own motion for purposes of further consideration, subject to limitations of time as provided in the Flemington Ordinances and the Municipal Land Use Law. The Board may also grant reasonable requests of interested parties to continue a matter in order to afford such parties sufficient time to prepare, engage counsel, obtain witnesses or for other good cause. However, the Board shall do so only to the extent that the applicant's interests are not unduly compromised or prejudiced with respect to the applicant's protected interests pursuant to prevailing law. Where adjournment for a continuance would extend the statutory period within which the Board is required to act, the consent of the applicant shall be evidenced in writing or shall be made on the record.

Section 20: Testimony. All testimony before the Board at its public hearings is to be taken under oath. Any a witness appearing via Zoom shall be visible to the Board while testifying.

Section 21: Recording of Meetings. An electronic recording of all meetings of the Board shall be maintained in accordance with applicable state law. Such records shall not be transcribed unless a transcript is ordered by the Presiding Officer or Applicant or interested party. In the event that any Appellant or interested party shall order a transcript of any proceedings taken before the Board, the cost of any transcript ordered by or furnished to an Applicant or interested party shall be borne by the Applicant or interested party in accordance with the Public Records Act and other applicable statutes/ordinances.

Section 22: Public Deliberations. The Board shall conduct its deliberations and vote on all matters during public session in accordance with the Open Public Meetings Act and Municipal Land Use Law.

Section 23: Voting Margin and Effect. An affirmative concurring vote of a majority of a quorum of the Board shall be necessary to reverse any order, requirement, decision or determination of the Construction Code Official, to issue an interpretation, to issue decisions on special questions, to grant a variance under N.J.S.A. 40:55D70c. or to grant an applicant other relief pursuant to the provisions of N.J.S.A. 40:55D-76a. and b as well as the other provisions of the Municipal Land Use Law, including but not limited to subdivision and site plan approvals. Notwithstanding the above, a variance under N.J.S.A. 40:55D-70d. may only be granted by at least a two-thirds vote of the fully qualified Membership of the Board (5 members). Class I and Class III members of the

Board shall not be qualified to vote on any matter governed by N.J.S.A. 40:55D-70(d) and may not be replaced with alternate Board members. No more than seven (7) Board members may vote on any matter governed by N.J.S.A. 40:55D-70(d); however, an applicant is not entitled by the provisions of the Municipal Land Use Law to have seven (7) Board members present in order for the Board to vote on any such matter. If a motion to approve an application for development fails to receive the number of required votes, such failure shall be deemed an action denying the application.

Section 24: Alternate Members. Inactive alternate member(s) of the Board may sit with the Board hearing panel and participate in the questioning of applicants, appellant, and objectors and discussion, but may not vote on the decision.

Section 25: Voting Eligibility; Review of Record. When any hearing before the Board has been continued, a member of the Board who was absent for one or more hearing sessions shall be eligible to vote on the matter upon which the hearing is conducted notwithstanding the member's prior absence provided that such member certifies in writing to the Board that he or she has read a transcript or listened to a recording of the entire session for which he or she was absent. This rule shall not be construed as authorizing any hearing to be held whenever less than a quorum of the Board is present. If all seven (7) or nine (9) regular Board members, as the circumstances permit, are available to vote on a matter via attendance at all hearings or by viewing/listening to videos or recordings, an alternate Board member shall be precluded from voting notwithstanding the fact that such alternate Board member was present at and/or participated in the hearings.

Section 26: Voting Procedure. All decisions shall be by motion made and seconded, and by the Administrative Secretary polling the membership by roll call vote.

Section 27: Abstentions. Abstentions are disfavored except for good cause. Under common law, an abstention shall be regarded as an assent to the vote of the majority. Thus, if the majority of those voting would affirm a measure, abstentions would be counted toward affirmance; if the majority would defeat a measure, abstentions will be counted toward defeat. Notwithstanding, in cases where the affirmative vote of a certain number of Board members is required in order to affirm, pass or approve a measure (ie: in the case of variances pursuant to N.J.S.A. 40:55D-70(d) requiring the affirmative vote of at least five (5) members to approve), such an abstention is not counted towards affirmance. A disqualified member shall not be counted as an abstention and shall, instead, remove himself or herself from the panel and not be involved in the consideration of the application. Disqualified and/or voluntarily recused Board members shall remove themselves from the deis and vacate the meeting room unless the Board member is disqualified due to owning property within 200' of the subject property. In such cases, the Board member is permitted to remain in the meeting room and participate as a member of the public in the manner permitted by the Municipal Land Use Law. If the Board is evenly split in its decision, no majority exists with whom an abstaining member can be said to vote

and accordingly abstentions shall not be assigned to either block. A tie vote shall defeat an application, and abstentions shall not be construed to approve an application: nor shall abstentions be used to create a tie.

Section 28: Continued Hearing Voting. In the event of a continued hearing, if a member of the original hearing panel cannot attend the continued hearing the next eligible Alternate member shall take the place of the absent member and may remain on the case until its conclusion participating in the voting on the appeal or application provided that the member of the original hearing panel is not otherwise qualified to vote pursuant to Article VI Section 25 above.

Section 29: Dismissal Without Prejudice. The Board, on its own motion, may dismiss any action without prejudice if neither the applicant nor anyone on his or her behalf appears at the time set for the hearing of said application. Further, the Board, on its own motion, may dismiss, without prejudice, any application for failure to comply with these rules. Any applicant may, at any time before the commencement of the hearing, voluntarily withdraw his or her application, in which case, the application shall be dismissed without prejudice. The Board reserves the power to impose reasonable terms and conditions on the dismissal of any application.

Section 30: Memorializing Resolution. After a decision has been reached by the Board as to whether the relief requested by the applicant is to be granted or denied and upon what terms, the Board's findings of fact and conclusions of law must be embodied in the form of a written resolution. When the Board votes to adopt a resolution, the findings and conclusions set forth in the resolution become the findings and conclusions of the Board. It shall be immaterial that at the time of voting certain Board members may have given other reasons or discussed matters not addressed in the resolution; nor shall it be necessary that Board members articulate particular reasons for reaching a decision at all, it being sufficient that the application be either approved or disapproved by a voice vote and that -- thereafter a memorializing resolution is adopted. The Board Attorney shall prepare the resolution in such a way as to give the greatest possible support to the decision which has been made by the Board. Only members who voted for the action taken may vote on the memorializing resolution. A vote of the majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution. Once the resolution has been prepared and has been voted on favorably by the members of the Board, it shall become a memorializing resolution of the decision of the Board.

Section 31: Publication of Resolution. The Administrative/Recording Secretary shall direct each applicant to arrange to have a brief notice of the decision published in the official newspaper of the municipality.

Section 32: Time of Decision. If, during the pendency of any application, an ordinance amendment is adopted which affects the application, such amendment shall control the decision of the Board.

Section 33: Res Judicata. If the same parties seek the same relief in the same factual setting, the case may be dismissed on the ground that it has already been decided. However, if the first case was not a decision on the merits, there shall be no bar to the second application. If a second application seeks relief which is entirely different or is of lesser proportions than in the first application, the second application shall not be barred. An applicant shall also be given a fair opportunity to show that circumstances have changed significantly or that other good cause exists for reconsideration. This rule shall not be construed to disallow an application for modification or enlargement of an approval or for the lifting or relaxation of conditions previously imposed in connection with an approval upon a proper showing of changed circumstances or other good cause warranting a reconsideration.

ARTICLE X

Board Records

Section 1: A file of materials, decisions and resolutions relating to each case shall be maintained by the Administrative/Recording Secretary in accordance with applicable state law.

ARTICLE XI

Master Plan

Section 1: Adoption of Master Plan. The Board shall prepare and adopt a Master Plan pursuant to the provisions of the Municipal Land Use Law. The Board shall perform a reexamination of the Master Plan at least once every ten (10) years from the previous reexamination in accordance with the provisions of the Municipal Land Use Law, specifically N.J.S.A. 40:55D-89 and shall prepare a report of its findings relative thereto.

Section 2: Master Plan Hearings. Public hearings shall be held on each application for development or adoption or revision or amendment of the Master Plan in accordance with the Municipal Land Use Law, Chapter 291, Section 40:55-10 and the Borough of Flemington Municipal Zoning Ordinances.

Section 3: Hiring of Professionals. The Board may engage any employees/professionals it deems necessary to assist with the preparation of and adoption of the Master Plan or amendments thereto. Any documents prepared by such employees/professionals in furtherance of this Article shall be forwarded to the Board members by the Secretary as soon as possible upon receipt.

ARTICLE XII
Annual Report to the Governing Body

Section 1: Annual Report. Since this Board acts as both a Planning and Zoning Board, the Board shall, at least once a calendar year, review its decisions on applications and appeals for variances and prepare and adopt a resolution incorporating a report of its findings on zoning ordinance provisions which were subject of variance requests and its recommendations for zoning ordinance amendments and/or revisions, if any. The Board shall send copies of the reports and resolutions to the Governing Body and Clerk of the Borough of Flemington in accordance with the provisions of N.J.S.A. 40:55D-70. 1.

ARTICLE XIII
Miscellaneous Provisions

Section 1: Miscellaneous Provisions Relaxation of Rules. For good cause shown, or where the strict application of any rule would work surprise or injustice, the Board may relax the requirement of such rule, except where the provisions of the rule are also statutory requirements.

Section 2: Application Fees. No application shall be considered which is not accompanied by an application fee in accordance with the schedule of administrative fees for development applications, as amended and in effect at the time application is made under the Ordinances of the Borough of Flemington .

Section 3: Escrow Deposits for Professional Services. No application shall be considered with respect to which an applicant has failed to comply with the Borough Ordinance or statutory requirements for the payment of escrow deposits toward anticipated expenses for professional services, to be based upon a schedule established by resolution.

Section 4: Special Meeting Costs. In the event that a special meeting is scheduled and convened for the benefit of an applicant, any special or unc customary disbursements, expenses, fees or costs incurred by the Board and the Municipality for the rendering of special services, arrangements or accommodations for the benefit of the applicant shall be reimbursed entirely by the applicant. The Board may require a reasonable antecedent escrow deposit to protect against an applicant's failure to comply with this section.

Section 5: Payment of Taxes by Applicant. The applicant, at the time of filing the application for development, shall file with the Board a certification of the Tax Collector that municipal taxes and/or assessments have been paid. Any action taken by the Board shall be subject to the payment of taxes and/or assessments and the Board may suspend post-approval execution and other action until such time as taxes and assessments are paid, subject to prevailing rules of law and Borough Ordinance.

ARTICLE XIV
Amendments of the By-Laws

Section 1: **Amendments of Rules.** The within rules may only be amended, amended and restated and/or new rules may be adopted by a two-thirds majority based upon the nine full members of the Board.

Any proposed amendment, amendment and restatement and/or new rules must be presented in writing to each member at a regular or special meeting preceding the meeting at which the vote is taken.

The foregoing rules and regulations are hereby adopted by the Borough of Flemington Planning Board on this the 25th day of April, 2023.

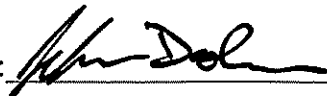
Moved by: Engelhart

Seconded by: Giffen


	<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Absent</u>	<u>Not Qualified</u>
Marcia A. Karrow, Mayor	X				
Michael Campion	X				
Susan Engelhardt, Councilwoman	X				
Todd Cook	X				
Jeffrey Doshna	X				
Karen Giffen	X				
James Hill	X				
Trent Levitt	X				
Hannah Weitzman	X				
Bryan Ciminio Alt #1					X
Don Eckel Alt #2					X
James Weintraub Alt #3					X
Dennis Schoeb Alt #4					X

Dated: April 25, 2023

FLEMINGTON PLANNING BOARD

By: _____
Jeffrey Doshna, Chairman

CERTIFIED TO BE A TRUE COPY

By: _____
Eileen Parks, Secretary to the Planning Board