

Chapter 300

Zoning Board of Adjustment & Planning Board

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

301-303 RESERVED

Note: Former Section 301 Establishment Of The Zoning Board of Adjustment, Section 302 Powers And Jurisdiction Of The Zoning Board Of Adjustment, and Section 303 Appeals And Applications To The Zoning Board Of Adjustment were repealed by Ordinance 946-12.

304 ESTABLISHMENT OF A PLANNING BOARD

- A. In accordance with the provisions of N.J.S.A. 40:55D-23, N.J.S.A. 40:55D-25c and as otherwise authorized by the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., the Planning Board heretofore created is continued consisting of nine (9) regular and four (4) alternate members of the following four classes:

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

Class II One of the officials of the City other than a member of the governing body, to be appointed by the Mayor; provided that if there be an Environmental Commission, the member of the environmental commission who is also a member of the planning board as required by section 1 of P.L.1968, c.245 (C.40:56A-1 et. seq.), shall be deemed to be the Class II planning board member for purposes of this Ordinance in the event that there be among the Class IV or alternate members of the planning board both a member of the Zoning Board of Adjustment and a member of the Board of Education.

Class III One member of the Governing Body to be appointed by it.

Class IV
Regular
Members Six (6) other citizens of the municipality to be appointed by the Mayor. The members of Class IV shall hold no other municipal office, position, or employment, except that 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 the Class IV Planning Board Member.

Class IV
Alternate
Members Two (2) other citizens of the municipality to be appointed by the Mayor. Alternate members shall meet the qualifications of Class IV regular members and shall be designated by the Mayor at the time of their appointment as "Alternate No. 1" and "Alternate No. 2". In the event that a choice must be made as to which Alternate Member is to vote, Alternate No. 1 shall vote.

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

- B. The term of the member composing Class I shall correspond to the mayor's official tenure or if the member is the mayor's designee in the absence of the mayor, the designee shall serve at the pleasure of the mayor during the mayor's official tenure. The terms of the member composing Class II and Class III shall be for one (1) year or terminate at the completion of his/her respective terms of office, whichever occurs first. The term of a 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/her term as a member of the Environmental Commission, whichever comes first. The terms of each Alternate Member shall be two years, except that the first term of office shall be so set to insure that only one such alternate member's term shall expire in any one year. A vacancy occurring otherwise than by expiration of the term shall be filled for the unexpired term only.
- C. The members of Class IV shall hold no other municipal office, position or employment, except that in the case of nine-member boards, one such member may be a member of the zoning board of adjustment or 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 a municipal environmental commission, the member of the environmental commission who is also a member of the planning board, as required by Section 1 of P.L.1968, c.245 (C.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 of adjustment or historic preservation commission and a member of the board of education, in which case the member common to the planning board and municipal environmental commission shall be deemed a Class II member of the planning board. For the purpose of this section, 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.
- D. All present Class IV members of the Planning Board shall continue in office until the completion of the terms for which they were appointed. The term of a Class IV member who is also a member of the Board of Adjustment or Board of Education shall terminate whenever he is no longer a member of such other body or at the completion of his/her Class IV term, whichever occurs first.
- E. The terms of all Class IV members first appointed under this act shall be so determined that to the greatest practicable extent the expiration of such terms shall be distributed evenly over the first four years after their appointments; provided that the initial Class IV term of no member shall exceed four years. Thereafter, the Class IV term of each such member shall be four years. If a vacancy in any class shall occur otherwise than by expiration of the planning board term, it shall be filled

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

by appointment, as above provided, for the unexpired term. 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. Any member other than a Class I member, after a public hearing, may be removed by the governing body for cause.

- F. The terms of the Class IV alternate members shall be two (2) years, except that the terms of the alternate members shall be such that the term of not more than one alternate member shall expire any one (1) year; provided, however, that in no instance shall the terms of the alternate members first appointed exceed two (2) years. All terms shall run from January 1 of the year in which the appointment is made.
- G. Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member of any class. 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.
- H. No alternate member shall be permitted to act on any matter in which he has either directly or indirectly any personal or financial interest. An alternate member may, after public hearing, be removed by the governing body for cause.
- I. 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. Any member other than a Class I member may be removed by the governing body for cause but only after public hearing, if requested, and other requested procedural due process protection.
- J. Yearly, the Planning Board shall organize by selecting from among its Class IV regular members a Chairman and a Vice-Chairman. Nomination of officers shall be made from the floor at the annual organization. A candidate receiving a majority vote of the members of the Planning Board present (a quorum being present) shall be declared elected and shall serve for one (1) year or until his successor shall take office. Vacancies in offices shall be filled immediately by the regular election procedure.
- K. The Board shall also select a Secretary. The Secretary shall keep the minutes and records of the Board, prepare the agenda of regular and special meetings with the Chairperson, provide notice of meetings to Board members, arrange proper and legal notice of meetings, attend to correspondence of the Board and perform such other duties as are normally carried out by a Secretary. The Secretary need not be a member of the Board. The Board may employ or dismiss a Secretary.

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

- L. The governing body, after giving due consideration to budget requests that may be submitted by the Planning Board, shall make provisions in its budget and appropriate funds for the expenses of the Planning Board.
- M. The office of Planning Board Attorney is hereby created. The Planning Board may appoint to such office and fix compensation or rate of compensation of an attorney at law of New Jersey other than the City Attorney.
- N. The Planning Board may also employ or contract for and fix the compensation of such experts and other staff and services as it may deem necessary. The Board, however, shall not authorize expenditures which exceed, exclusive of gifts or grants, the amount appropriated by the governing body for its use.
- O. If the planning board lacks a quorum because any of its regular or alternate members is prohibited by NJSA 40:55D-23 or NJSA 40:55D-23.1 from acting on a matter due to the member's personal or financial interests therein, regular members of the board of adjustment shall be called upon to serve, for that matter only, as temporary members of the planning board in order of seniority of continuous service to the board of adjustment 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 regular members of equal seniority, the chairman of the board of adjustment shall make the choice.

305 PLANING BOARD MEETINGS

- A. The Planning Board will, at its meetings, conduct hearings and review applications and Committee reports. The applicant or applicant's representative will be advised in writing of the meeting location, date, and time. The applicant or applicant's representative and his attorney must be present at the hearing to present the application and answer questions relating thereto.
- B. In addition to those required by law, the Board may, at its discretion, hold public hearings when it decides that such hearings will be in the public interest. Notice of such hearings shall be published in the official newspaper of the Borough at least ten (10) days before the time of public hearings. Such other notices as shall be required by law shall also be provided. A record shall be kept of those speaking before the Board.
- C. Meetings will be held every month when applications have been submitted for review and hearing.
- D. A majority of the membership of the Board of nine (9) shall constitute a quorum and the number of votes necessary to transact business shall be a majority

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

vote of the members of the Planning Board present (a quorum being present). Voting shall be by roll call. A record of the roll call vote shall be kept as part of the minutes.

- E. Special meetings may be called by the Chairperson. The Chairperson shall also call such special meetings when requested to do so in writing by two (2) or more members of the Board. The notice of such a meeting shall specify the purposes of such a meeting and no other business may be considered except by unanimous consent of the Board. The Secretary shall notify all members of the Board in writing not less than five (5) days in advance of such special meetings.

The following subcommittees shall be appointed by the Chairperson:

1. Master Plan Committee

The Master Plan Committee shall consist of three (3) members. Vacancies shall be filled immediately by the Chairperson of the Planning Board.

The Master Plan Committee shall be appointed and meet as necessary during any update or reexamination of the Master Plan. If deemed necessary by the Chairperson the Master Plan Committee shall also meet to confer on any proposed development regulation that has been referred to the Planning Board by the City Commissioners

2. Development Review Committee

The Development Review Committee shall consist of three (3) members of the Planning Board, Professionals working for the Planning Board, and City Officials.

The Development Review Committee meets prior to the regularly scheduled monthly meeting of the Planning Board. Unless advised to the contrary, the applicant and/or the applicant's representative should be present.

Both committees shall be appointed for one (1) year and shall consist of three (3) members. Other special committees may be appointed by the Chairperson for purposes and terms which the Board approves.

306 POWERS AND JURISDICTION OF THE PLANNING BOARD

The Planning Board shall have the powers listed below in addition to other powers established by law:

- A. Make, adopt and, from time to time, amend a Master Plan for the physical development of the City, including any areas outside its boundaries which, in the Board's judgment, bear essential relationship to the planning of the City.
- B. Administer the Subdivision and Site Plan Review provisions of the Land Development Ordinance in accordance with the applicable provisions of said Ordinance and the provisions of the New Jersey Municipal Land Use Law, Chapter 291, P.L. 1975, N.J.S.A. 40:55D-1 et seq.
- C. Hear and decide applications for conditional uses in accordance with the applicable provisions of this Ordinance pursuant to N.J.S.A. 40:55D-67.
- D. Participate in the preparation and review of programs or plans required by state or federal law or regulation.
- E. Assemble data on a continuing basis as part of a continuous planning process.
- F. Annually, at the request of the City Commissioners, prepare a program of municipal capital improvements projects projected over a term of six (6) years and recommend same to the City Commissioners.
- G. Consider and report to the City Commissioners within 35 days after referral as to any proposed development regulation submitted to it pursuant to the provisions of N.J.S.A. 40:55D-26a, and also pass upon other matters specifically referred to the Planning Board by the City Commissioners pursuant to N.J.S.A 40-55D26b.
- H. To perform such other advisory duties as are assigned to it by ordinance or resolution of the City Commission for the aid and assistance of the City Commission or other agencies or officers.
- I. Whenever the proposed development requires approval of a subdivision, site plan or conditional use, but not a variance pursuant to N.J.S.A. 40:55D-70d, to grant to the same- extent and subject to the same restrictions as the Zoning Board of Adjustment:

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

1. Variances pursuant to N.J.S.A. 40:55D-70c, as amended and/or supplemented from time to time.
2. Direction pursuant to N.J.S.A. 40:55D-34 for issuance of a permit for a building or structure in the bed of a mapped street or public drainage way, flood control basin or public area reserved pursuant to NJSA 40:55D-32.
3. Direction pursuant N.J.S.A. 40:55D-36 for issuance of a permit for a building or structure not abutting a street.

Whenever relief is requested pursuant to this section, notice of the hearing on the application for development shall include reference to the request for a variance, or direction for issuance of a permit, as the case may be.

The developer may elect to submit a separate application requesting approval of the variance or direction of the issuance of a permit, and a subsequent application for any required approval for a subdivision, site plan, or conditional use. The separate approval of the variance or direction of the issuance of a permit, shall be conditioned upon grant of all required subsequent approvals by the Planning Board. No such subsequent approval shall be granted unless the approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and the zoning provisions of this Ordinance.

Pursuant to N.J.S.A 40-55D-25 the Planning Board shall also exercise the following powers of a Zoning Board of Adjustment:

- J. 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 a City official based on or made in the enforcement of the zoning provisions of this Ordinance.
- K. Hear and decide requests for interpretation of the zoning map or the zoning provisions of this Ordinance or for decisions upon other special questions upon which the Board is authorized to pass by any zoning or official map ordinance.
- L. Hear and decide requests for general bulk variances:

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

1. Where by (a.) reason of exceptional narrowness, shallowness or shape of a specific piece or property, or (b.) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c.) 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 N.J.S.A. 40:55D-62 et seq. of the Municipal Land Use Law 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 relating to such property, a variance from such strict application of such regulation, so as to relieve such difficulties or hardship;
 2. Where in an application or appeal relating to a specific piece of property the purposes of this act would be advanced by a deviation from the Zoning Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from regulations pursuant to Article 8 of the Municipal Land Use Law; provided, however, that the fact that a proposed use is an inherently beneficial use shall not be dispositive of a decision on a variance under this subsection and provided that no variance from those departures enumerated in N.J.S.A. 40:55D-70d 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 pursuant to 40:55D-60 of the Municipal Land Use Law.
- M. In particular cases and for special reasons, grant a variance to allow departure from the zoning provisions of this Ordinance to permit: (1) a use or principal structure in a district restricted against such use or principal structure; (2) an expansion of a nonconforming use; (3) deviation from a particular specification or standard set forth in this Ordinance as pertaining solely to a conditional use; (4) an increase in the permitted floor area ratio as defined in this Ordinance and in N.J.S.A. 40:55D-4; (5) an increase in the permitted density as defined in N.J.S.A. 40:55D-4, except as applied to the required lot area for a lot or lots for detached one or two dwelling units, which lot or lots are either an isolated undersize lot or lots resulting from a minor subdivision; (6) a height of a principal structure which exceeds by 10 feet or 10% 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 members of the Board. The Class I and the Class III members of the Board shall not participate in the consideration

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

of applications for development which involve relief pursuant to the paragraph or pursuant to N.J.S.A. 50:55D-70d.

N. General Provisions:

1. No variance or other relief may be granted under the terms 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 purpose of the zone plan and the zoning provisions of this chapter.
2. No variance or other relief may be granted under the terms of this section unless such variance or other relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning plan and other provisions of this Ordinance. An application under this section may be referred to any appropriate person or agency, including the Planning Board, pursuant to N.J.S.A. 40:55D-26, for its report; provided that such reference shall not extend the period of time within which the Zoning Board of Adjustment shall act.
3. The Board, in granting any variance which by law it is authorized to grant, may impose such conditions, in addition to those required in this chapter, as are necessary to assure that the general purposes and intent of this chapter are met.
4. Unless otherwise specified by the Board, a variance granted by the Board shall expire and become null and void two years from the granting by the Board unless within said two-year period the applicant obtains a construction permit or otherwise avails himself of said approval. The Planning Board, upon application and within said two-year period, may extend said period for one year, but not to exceed three such extensions. The application for extension of use variance shall be made prior to the expiration of the time limit sought to be extended.

O. The Board shall have such other powers as prescribed by law, including but not limited to the following:

1. Direct issuance of a construction 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 pursuant to N.J.S.A. 40:55D-32.

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

2. Direct issuance of a construction permit pursuant to N.J.S.A. 40:55D-36 for the construction of a building or structure not related to a street.

Whenever relief is requested pursuant to this section, notice of the hearing on the application for development shall include reference to the request for a variance, or direction for issuance of a permit, as the case may be.

The developer may elect to submit a separate application requesting approval of the variance or direction of the issuance of a permit, and a subsequent application for any required approval for a subdivision, site plan, or conditional use. The separate approval of the variance or direction of the issuance of a permit, shall be conditioned upon grant of all required subsequent approvals by the Planning Board. No such subsequent approval shall be granted unless the approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and the zoning provisions of this Ordinance.

- P. Hear and decide requests for variances as well as appeals where it is alleged by the applicant that there is an error in any order, requirement, decision or refusal made by a City official based on or made in the enforcement of the Flood Damage Prevention Ordinance of the City of Wildwood, Ordinance No. 1087-17. In deciding and passing upon such applications, the Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, as well as the criteria set forth in sections 4.4-1 and 4.4-2 of the Flood Damage Prevention Ordinance of the City of Wildwood, Ordinance No. 1087-17.

307 PROVISIONS APPLICABLE TO BOTH THE PLANNING BOARD AND THE ZONING BOARD OF ADJUSTMENT

- A. Conflicts of Interest

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

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

B. Vacancies and Removal From Office

1. If a vacancy in any class shall occur otherwise than by expiration of the Zoning Board of Adjustment or Planning Board term, it shall be filled by appointment, as above provided, for the unexpired term.
2. No member of either Board shall be permitted to act on any matter in which he/she has, either directly or indirectly, any personal or financial interest.
3. Any member other than a Class I member, after a public hearing if he/she request one, may be removed by the governing body for cause.

C. Experts and Staff

The Zoning Board of Adjustment or Planning Board may employ or contract for and fix compensation of a Zoning Board of Adjustment or Planning Board Attorney, other than the City Attorney, and experts, staff personnel and other services as it may deem necessary, not exceeding, exclusive of gifts or grants, the amount appropriated by the governing body for its use.

D. Citizens Advisory Committee.

The Mayor may appoint one or more persons as a Citizen's Advisory Committee to assist or collaborate with the Zoning Board of Adjustment or Planning Board in its duties, but such person or persons shall have no power to vote or take other action required of the Board. Such person or persons shall serve at the pleasure of the Mayor and shall be a citizen or citizens of the City of Wildwood.

E. Environmental Commission

At such time that an Environmental Commission is established and appointed in accordance with the provisions of NJSA 40:56-1, et seq., and said Environmental Commission has prepared and submitted to the Zoning Board of Adjustment and/or Planning Board an index of the natural resources of the City of Wildwood, the Zoning Board of Adjustment and/or Planning Board shall make available to the Environmental Commission an informational copy of every application for development to the Zoning Board of Adjustment and/or Planning Board. Failure of the Zoning Board of Adjustment and/or Planning Board to make such informational copy available to the Environmental Commission shall not invalidate any hearing or proceeding.

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

F. Rules and Regulations

The Zoning Board of Adjustment and/or Planning Board shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this Ordinance. In the issuance of subpoenas, administration of oaths and taking of testimony, the provisions of the County and Municipal Investigation Law (NJSA 2A:67A-1, et seq.) shall apply.

G. Minutes.

Minutes of every regular or special meeting shall be kept and shall include the names of the persons appearing and addressing the Zoning Board of Adjustment and/or Planning Board and of the persons appearing by attorney, the action taken by the Zoning Board of Adjustment and/or Planning Board, the findings, if any, made by it and reasons therefore. The minutes shall thereafter be made available for public inspection during normal business hours at the office of the Administrative Officer. 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 or her use.

H. Fees for Services

Fees for services to provide copies of the minutes or other documents or for the renderings of any service by the Zoning Board of Adjustment and/or Planning Board, or any member of its administrative staff, which are not otherwise provided by ordinance, may be provided for and adopted as part of the rules of the Zoning Board of Adjustment and/or Planning Board, and copies of said rules or of the separate fee schedule shall be available to the public.

J. Meetings

1. Meetings of both the Planning Board and the Zoning Board of Adjustment shall be scheduled no less than once a month and any meeting so scheduled shall be held as scheduled unless cancelled for lack of applications for development to process.
2. Special meetings may be provided for at the call of the Chairman or on the request of any two (2) Board members, which meetings shall

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

be held on notice to its members and the public in accordance with all applicable legal requirements.

3. No action shall be taken at any meeting without a quorum being present, said quorum to be the majority of the full authorized membership of the Board.
4. All actions shall be taken by majority vote of the members of the Board present at the meeting except as otherwise required by a provision of NJSA 40:55D-1 et seq. A member of the Board who was absent for one or more of the meetings at which a hearing was held shall be eligible to vote on a matter upon which the hearing was conducted, notwithstanding his/her absence from one or more of the meetings; provided, however, that such Board member has available to him/her the transcript or recording of all of the hearing from which he/she was absent, and certifies in writing to the Board that he/she has read such transcript or listened to such recording.
5. All regular meetings and all special meetings shall be open to the public, except as provided in the Open Public Meeting Law C.231, Laws of New Jersey, 1975. Notice of all such meetings shall be given in accordance with the requirements of the Open Public Meeting Law C.231, Laws of New Jersey, 1975.

K. Public Hearings

1. The Planning Board or the Zoning Board of Adjustment, as the case may be, shall hold a hearing on each application for development, or for any adoption, revision, or amendment of the Master Plan. Each Board shall make rules governing such hearings.
2. 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 Administrative Officer. The applicant may produce any documents, records or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.
3. The officer presiding at the hearings, or such person as he/she may designate, shall have the 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, and the provisions of the "County and Municipal Investigations Law", P.L.1953, C.38

*SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD*

(C.2A:67A-l et seq.) shall apply.

4. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer, or such other person as he/she may designate, 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 reasonable limitations as to time and number of witnesses.
5. Technical rules of evidence shall not be applicable to the hearing, but the Board may exclude irrelevant, immaterial or unduly repetitious evidence. The Chairperson shall rule on all questions relating to the admissibility of evidence, which may be overruled by a majority of the Board.

L. Public Notice of a Hearing

1. Public notice of a hearing shall be given for the following applications for development:
 - a. Any request for a variance;
 - b. Any request for conditional use approval;
 - c. Any request for issuance of a permit to build within the bed of a mapped street or public drainage way or on a lot not abutting a street (see Sections 306(I)(1) and 306(O)(2);
 - d. Any request for site plan and/or subdivision approval involving one or more of the aforesaid elements;
 - e. Any request for approval of a preliminary major subdivision and/or minor or preliminary major site plan; and,
 - f. Any request for approval of a planned development.
2. The Secretary of the Planning Board or the Zoning Board of Adjustment, as the case may be, shall notify the applicant at least two (2) weeks prior to the public hearing at which the application will be discussed. Notice of a hearing requiring public notice shall be given by the **applicant** at least ten (10) days prior to the date of the hearing in the following manner:

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

- a. By publication in an official newspaper of the City, if there is one, or in a newspaper of general circulation in the City in the absence of an official newspaper.
- b. By notification by personal service or certified mail to the following. An affidavit of proof of the giving of the required notice shall be filed by the applicant with the municipal agency at, or prior to, the hearing. It is not required that a return receipt is obtained; notice is deemed complete upon mailing (NJSA 40:55D-14).
 - 1) To all owners of real property as shown on the current tax duplicate, located in the State and within (200') feet in all directions of the property which is the subject of the hearing; provided that 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.
 - a) Notice to a partnership owner may be made by service upon any partner.
 - b) Notice to a corporate owner 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.
 - c) Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within 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.

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

- 2) To the Clerk of any adjoining municipality or municipalities when the property involved is located within 200 feet of said adjoining municipality or municipalities.
 - 3) To the Cape May County Planning Board and Cape May Board of Chosen Freeholders when the application for development involves property adjacent to an existing county road or proposed road as shown on the County Official Map or County Master Plan, adjoining other county land or situated within 200 feet of a municipality boundary.
 - 4) To the Commissioner of Transportation of the State of New Jersey when the property abuts a state highway.
 - 5) To the Director of the Office of Smart Growth in the Department of Community Affairs when the hearing involves an application for the development of property which exceeds 150 acres or 500 dwelling units, in which case the notice shall include a copy of any maps or documents required to be filed with the City.
3. Upon the written request of an applicant, the City Tax Assessor shall, within seven (7) days, make and certify a list from current tax duplicates of names and addresses of owners within the City to whom the applicant is required to give notice. The applicant shall be charged in accordance with the City's Fee Schedule for said list and shall be entitled to rely upon the information contained in such list, and failure to give notice to any lot owner not on the list shall not invalidate any hearing or proceeding. Additionally, the applicant shall be responsible for giving proper notice to all property owners pursuant to Section 307(L)(2)(b) above who do not reside within the City.
 4. The notice shall state the date, time and place of the hearing and the nature of the matters to be discussed, and an identification of the property proposed for development by street address, if any, and by reference to lot and block numbers as shown on the current tax duplicate in the City Tax Assessor's office, and the location and times at which any maps or documents for which approval is sought are available for inspection.

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

M. Records

1. Minutes of every regular or special meeting shall be kept and shall include the names and addresses of the persons appearing and addressing the Planning Board or the Zoning Board of Adjustment, and of any persons appearing by attorney, the action taken by the Planning or Zoning Board, the findings, if any, made by it and the reasons therefore. The minutes shall thereafter be made available, after approval by the Board, for public inspection during the normal business hours at the office of the Administrative Officer. 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 shall be charged a reasonable fee for the reproduction of the minutes, as provided for in the Open Public Records Act (NJSA 47:1A1 et. seq.).
2. A verbatim recording shall be made of every hearing. The recording of the proceedings shall be made either by stenographer, mechanical or electrical means. The municipality shall furnish a transcript or duplicate recording in lieu thereof on request to any interested party at his/her expense, provided that the charge for a transcript shall not exceed the maximum amount permitted in NJSA 2A:II-15. Each transcript shall be certified in writing by the transcriber to be accurate. Any transcript transposed at any meeting by private stenographer hired by the applicant for development shall provide a copy of the transcript to the City at no cost and within four (4) weeks of the hearing.

N. Decisions

1. Each decision on any application for development shall be reduced to writing by the Board and shall include findings of facts and conclusions based thereon.
2. The Board shall provide the findings and conclusions through:
 - (a) A resolution adopted at a meeting held within the time period provided in this Ordinance for action by the Board on the application for development; or
 - (b) A memorializing resolution adopted at a meeting no later than forty-five (45) days after the date of the meeting at which the Board voted to grant or deny approval. Only the members of the Board who voted for the action taken may vote on the

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

memorializing 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. An action pursuant to NJSA.40:55D-9 (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.

3. The vote on any memorializing resolution shall be deemed to be a memorialization of the action of the Board and not to be an action of the Board; 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 in Section 306 of this Ordinance.
4. If the Board 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 Board to reduce its findings and conclusions to writing within a stated time and the cost of the application, including attorney's fees, shall be assessed against the municipality.

308 NOTICE OF DECISIONS

Any decision of the Planning Board or the Zoning Board of Adjustment when acting upon an application for development and any decision of the City Commissioners when acting upon an appeal shall be given notice in the following manner:

- A. A copy of the decision shall be mailed by the appropriate City authority within ten (10) days of the date of decision to the applicant or appellant, or, if represented, then to his/her attorney, without separate charge. A copy of the decision shall also be mailed within ten (10) days to any interested party who has requested it and who has paid the fee prescribed by the City authority for such service.
- B. The Secretary of the Planning Board or the Zoning Board of Adjustment, as the case may be, shall cause a brief notice of every decision of the Planning Board or Zoning Board of Adjustment, as the case may be, to be published in the official newspaper of the City of Wildwood. Such notice shall be sent to the official newspaper within ten (10) days of the date of the decision.

SECTION 300
ZONING BOARD of ADJUSTMENT and
PLANNING BOARD

- C. A copy of the decision shall also be filed in the office of the Secretary of the Planning Board or the Zoning Board of Adjustment, as the case may be, 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 City.

309 APPEALS OF DECISIONS

Any interested party may appeal to the Superior Court any final decision of the Zoning Board of Adjustment or Planning Board. There shall be no appeal to the Governing Body.

310 PAYMENT OF TAXES

Pursuant to the provisions of N.J.S.A. 40:55D-39 and 40:55D-65, 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 assessments for local improvements are due or delinquent on the property which is the subject of such application.

311 SEVERABILITY

If the provisions of any section, subsection, paragraph, subdivision, or clause of this Ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this Ordinance.