

Borough of Monmouth Beach

22 Beach Road Monmouth Beach, NJ 07750

Borough of Monmouth Beach Planning Board Process

Dear Residents:

October 18, 2013

As residents continue with their recovery from Superstorm Sandy, some residents have expressed frustration with the Planning Board process. In an effort to educate the residents, we have prepared the following brief outline of the general steps in the Planning Board process. Please note that each application is slightly different and, as such, some applications may require additional step(s). This document is meant to provide guidance. Residents are encouraged to seek the advice of appropriate professionals. These instructions are derived from the Municipal Land Use Law; and Borough Ordinances governing these procedures. The provisions of those statutes, and the applicable ordinances, control.

The process of applying for a variance, subdivision and/or site plan approval is a very technical, legal function. It is recommended that you either retain an attorney to handle your application or follow the instructions very carefully. The Board cannot hear your application unless all of the proper forms and procedures have been adhered to. This is mandated by State Law. Although the Borough Staff is available to assist you and answer general questions, the Staff cannot directly advise you. The burden of providing a complete and validity supported application is on the applicant. Please note that non-individual applicants (i.e., corporate applicants, limited liability company applicants, etc.) must be represented by an attorney.

OUTLINE OF GENERAL PLANNING BOARD PROCESS

- I. **Application Submitted** – Once an application is submitted it will be forwarded to the Board Engineer for review and for a completeness determination. (The items required for a complete application set forth in the Borough’s Zoning Ordinance Sub-sections 30-6.5 through 30-6.13.) If the application is incomplete, the Board Engineer forwards a letter to the Board that is copied to the applicant listing the items that must be addressed prior to the application being deemed “complete.” The Municipal Land Use Law establishes a 45 day time frame for the determination of completeness.

- II. **Application Deemed Complete** – Once an application is deemed complete, the Planning Board Secretary will schedule the matter for a public hearing; the complete application must be on file a minimum of 10 days prior to the hearing date, per the Municipal Land Use Law; no exceptions are permitted to this statutory requirement.

Also, once the Application is deemed complete and a hearing date is established, the Planning Board Secretary forwards to the Applicant an outline of the statutorily-required notice requirements; as well as a list of the property owners within 200 feet. Although the Borough endeavors to schedule applications as quickly as possible, the Municipal Land Use Law affords the Board 120 days from the date an application is deemed complete to hear an application requiring variance relief.

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III. **Notice - The Municipal Land Use Law requires that Notice must be given prior to the hearing on the Application; proper Notice is a statutory requirement; if Notice is not timely and proper, the Board will not have jurisdiction to hear the Application, and the application will likely be “carried” to a future hearing date, to afford the Applicant an opportunity to give proper notice. The Notice must contain the following information regarding the application, and it must be given in two ways - (1) by service upon owners of property located within 200 feet of the premises at issue, and (2) by publication in the newspaper.**

A. **Contents of Notice.** The Notice shall include:

- a) Date, time and place of hearing
- b) Nature of matters to be considered and relief required/requested.
- c) Identification of the property by street address as well as block and lot numbers as shown on the current Monmouth Beach Tax Map.
- d) The location and times when maps and documents for which the approval is being sought can be seen.

B. **Service of Notice Upon Owners of Property within 200 Feet.** No less than ten (10) days prior to the date of the hearing (the date of the hearing is not counted) the applicant must give statutorily-required notice as set forth in NJSA 40:55D-12 as follows:

- a) To all property owners within two hundred feet (200’) of the property affected as set forth on the Certified List obtained from the Borough. A Certified List of the property owners within two hundred feet (200’) of the subject property may be obtained from the Borough office. If the property is also within 200 feet of one or more municipal boundaries, the Applicant must obtain a similar 200 foot list from each of the adjacent municipalities at issue.
- b) To the Clerk of any adjoining municipality within two hundred feet (200’) of the property, if any.
- c) To the Monmouth County Planning Board, Hall of Records Annex, East Main Street, 2nd Floor, Freehold, NJ 07728, in the event the property fronts on an existing or proposed County road or adjoins other County land, or is situated within two hundred feet (200’) of a municipal boundary
- d) To the Commissioner of Transportation of the State of New Jersey, 1035 Parkway Avenue, Trenton, NJ 08625, if the property is adjacent to a State Highway,

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- e) To the State Planning Commission, if the application concerns development of property in excess of one hundred fifty (150) acres or five hundred (500) dwelling units, including plans and documents filed with the Township.

Notice may be given by personal service or Certified Mail, Return Receipt Requested, as set forth in NJSA 40:55D-12. Applicants generally give such notice via Certified Mail, Return Receipt Requested, so that they have proof of mailing. The Notice must be sent no less than 10 days prior to the hearing as referenced above; the stamped white receipts provided by the Post Office serve as proof of such mailing; A copy of the **NOTICE** must be presented to the Board and the Zoning Officer. If the notice is sent by Certified Mail, the white receipts (proof of mailing) must also be presented; although the green card receipts (showing proof of delivery) are not necessarily required, they can be helpful in the event of a question arises regarding notice, and any green card receipts received prior to the hearing should also be presented to the Board Secretary prior to the hearing date.

- C. **Publication of Notice.** No less than ten (10) days prior to the hearing, the Applicant must also publish a Notice of Hearing in the Asbury Park Press. Please keep in mind that the Asbury Park Press has specific deadlines for publication of the Notice. The Notice should contain the same information noted in “A” above.

The Applicant is responsible for payment of this notice, and will be given an Affidavit of Publication by the Asbury Park Press to present to the Board at or prior to the hearing.

- IV. **Proof of Service of Notice** – (A) Prior to the hearing, the applicant must prepare and submit an Affidavit of Service of Notice, regarding the Notice served upon owners of property located within 200 feet of the premises. This Affidavit shall indicate who was served and how they were served, and be presented to the Secretary of the Board prior to the hearing; attached to the Affidavit must be: a copy of the Notice which was served; the original list of property owners within 200 feet; and the white certified mail receipts (stamped by the Post Office showing mailing) for each of those to whom notice was sent. (B) The Affidavit of Publication provided to the Applicant by the newspaper (showing publication of the Notice in the newspaper) must also be submitted to the Board Secretary prior to the hearing (although not required, if the Applicant does not receive the Affidavit of Publication prior to the hearing, the Applicant may wish to bring to the hearing an entire ORIGINAL page from the newspaper showing the Notice as published).
- V. **Planning Board Hearing** – It is expected that the applicant or their attorney will present their case to the Board at the hearing. The zoning laws can be technical. It is suggested that you retain the services of an attorney. Although the Borough endeavors to schedule applications as quickly as possible, as noted above, the Municipal Land Use Law states that the Board has 120 days from the date an application is deemed complete to hear an application involving variance relief.

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- a. Until Borough Hall is repaired, the regular meetings of the Board generally are held at the Cultural Center, 128 Ocean Avenue, Monmouth Beach, New Jersey at 7:30 p.m., on the fourth Tuesday of each month, and/or at such other time(s) or location as the Board shall otherwise determine. (Applicant's should confirm the location of the meeting so the notice is proper.) If the regular meeting falls on a legal holiday, the meeting shall be held on such other day as the Board may select. Whenever a meeting is canceled due to inclement weather, the Chair may re-schedule the meeting by notifying each Board Member of the new meeting date, arranging for the posting of notice on the Meeting Room doors, and publishing a notice in the *Asbury Park Press* of the re-scheduled meeting. Applicants and interested members of the public are encouraged to call Borough Hall the day before the meeting to confirm such re-scheduling.
- b. Prior to the meeting the Board Secretary will prepare an agenda for the meeting that is posted in Borough Hall.
- c. Subject to the Chair's discretion, the order of business of all public hearings of the Board shall be as follows:
 1. Call to order
 2. Statement of compliance with Open Public Meetings Act
 3. Roll call in the order as previously specified by the Chair
 4. Agenda and calendar review
 5. Approval of minutes of previous meetings
 6. Motions for adjournments of any scheduled applications and other motions
 7. Unfinished or adjourned hearings
 8. Hearings
 9. Action on any other business
 10. Correspondence and reports
 11. Memorialization of Resolutions
 12. Adjournment
- d. Typically no new case will be heard by the Board after 10:00 p.m., and no additional testimony will be taken after 10:30 p.m. However, the Chair, in the exercise of his/her discretion, may modify these time limits.
- e. At the commencement of a hearing on a particular Application, the Applicant and all interested members of the public shall be requested to identify any potential conflict of interest of which they may be aware. The Board Members shall similarly be asked to identify any potential conflicts of interest of which they may be aware.
- f. The burden of proof is on the Applicant and it is the Applicant's responsibility to supply competent and credible evidence in order for the Board to determine whether the Applicant is entitled to the relief sought (or in the case of an objector, whether an

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Application should be denied). The Board assumes no obligation to seek independent verification of any testimony granted; therefore, adequate sworn testimony and exhibits are required where appropriate.

- g. All witnesses for the Applicant or the public giving testimony at the hearing shall be sworn before giving any testimony.
- h. The order of proceedings shall be at the discretion of the Chair. Unless varied by the Chair, the order for each Application shall be as follows:
 - 1. Entry of appearance by all counsel (Applicant and objectors)
 - 2. Evidence of proper notice by the Applicant or counsel
 - 3. Discussion of potential conflicts, if any
 - 4. Opening statement by the Applicant's counsel
 - 5. Consideration of completeness waivers, if not already granted
 - 6. Direct examination of Applicant's witness by Applicant's counsel
 - 7. Questioning of the Applicant's witness by the Board
 - 8. Cross examination of the Applicant's witness by the public

(1 through 8 are then repeated for each of Applicant's witnesses, provided, however, that at the discretion of the Chair, the Applicant may be requested to allow for questions by the public at the conclusion of certain portions of the witness's testimony or to complete the presentation of its entire case prior to cross-examination by the public.)

- 9. Opening statement by objector's counsel, if any
- 10. Direct examination of objector's witness
- 11. Questioning of the objector's witness by the Board
- 12. Cross examination of the objector's witness by the Applicant and the public

(9 through 12 are then repeated for each of objector's witnesses)

- 13. Closing statement by objector's counsel
- 14. Comments by public
- 15. Closing statement by Applicant's counsel
- i. Prior to being recognized as counsel to an objector or group of objectors, the attorney shall present to the Chair a list of the parties he/she represents and such parties shall participate in the proceeding only through counsel.
- j. Any member of the Board may place evidence into the record as to any relevant matter of which he/she has personal or official knowledge, including facts ascertained from a viewing of the premises in question and the general area.

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- k. When the Applicant and all interested persons have had an opportunity to be heard, the Chair shall determine whether to close the public hearing. The Applicant or any other interested party may request from the Board a continuance of the hearing for the purpose of presenting further relevant evidence. The Board, acting in its discretion, may either grant or deny such a request. In cases where the Board believes that testimony or other evidence should be received in the public interest from any municipal, county or state official or from any other persons in order to assist the Board in rendering a just decision, the Board may, on its own motion, continue the hearing. In the absence of any request to continue the hearing, the Chair shall declare the hearing to be closed and thereafter no further evidence will be received in the action unless the matter is re-opened in accordance with these general procedures.
- l. The Board, on its own motion at any time, may request a report on any particular matter from any officer, board or agency, or any expert employed or retained by it in connection with the pending Application; provided, however, that a copy of any such report shall be made available to the Applicant if he/she so requests, and the Applicant shall have the right to insist on the attendance at the hearing of the person making the report (or if an agency, a representative of the agency) for purposes of cross-examination. The Board shall not be obligated to honor such request unless the Applicant consents to an extension of time within which it must take action on the Application for at least forty-five (45) days in order to allow the Board time to arrange such attendance. (As a general rule, the Board will only request that its engineer attend the hearings, though reports may be received from a variety of sources. If an Applicant anticipates objecting to the Board's consideration of a report unless the Applicant is given the right to cross-examine the preparer, notice should be served on the Board at least five [5] business days prior to the hearing.)
- m. While formal rules of evidence are not observed, no decision shall be based upon any facts not proved or on matters not in the record, unless they are such items of which the Board is entitled to take judicial notice. Documents or exhibits admitted into evidence during a hearing shall be marked and 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's Secretary may return any such exhibits or documents to the person who offered them, upon his/her request. Any evidence presented, whether by testimony or by documents and exhibits presented at the hearing, which are not questioned or controverted by any other person appearing or by any member of the Board, may, but need not be, deemed to be true by the Board in its decision-making process and findings of fact.
- n. At all hearings for final approval, the Board's Engineer shall provide a report to the Board on the Applicant's compliance with the preliminary resolution of approval.
- o. The Board is compelled to act on an application based upon the *findings of fact* and the *proofs according to law* that are presented during the public hearing. The Board

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does not decide on the basis of public support or opposition to an application. It also cannot make decisions based exclusively upon “ratables”, tax revenues or other financial considerations.

- p. Anyone wishing to speak or testify at a hearing must appear in person to allow all parties their right to cross-examination. All speakers must identify themselves.
 - q. Petitions, letters written by those not in attendance at a public hearing, and the like are not admissible into evidence.
 - r. Letters, with the exception of certain reports of public entities, are only admissible if the author is present to be cross-examined.
- VI. **Email and Informal Discussions** - The Boards and Board Members have the legal obligation to follow the Municipal Land Use Law (MLUL) and the Open Public Meetings Act (OPMA) and all discussions, presentations of evidence, questions, and comments with regard to a pending application must be done on the record and at the public hearing. Therefore, neither applicants, nor members of the public, should send letters, e-mail messages or communicate with Board Members about an application outside of the public hearing
- VII. **Fees** -No action will be taken on any Application if the escrow balance established therefore is below the minimum required by Ordinance, other than the consideration of a motion to dismiss the Application without prejudice.
- VIII. **Approval/Denial of an Application by the Board** – At the end of the hearing, the Planning Board may approve the application, deny the application, approve/deny it in part, and attach conditions to any approval. The Board’s decision is then memorialized in a Resolution generally adopted within 45 days of the date that the Board voted on the application. This resolution sets forth the Board’s finding of facts and conclusions of law, as well as the Specific Conditions and General Conditions of the Board Approval.
- IX. **Resolution Compliance** – Once the Boards Resolution is adopted (or memorialized) the Variance approval is not in effect until all of the conditions set forth in the resolution have been addressed, and all outside agency permits have been addressed. So that applications are not delayed, the Board strongly recommends that you begin the process of revising the plans to address the comments set forth in the Board Engineer’s review letter, any revisions requested by the Board. Additionally, it is the applicant’s responsibility to obtain approval or exempt letters from all applicable outside agencies, including but not limited to, the Freehold Soil Conservation District, Two Rivers Water Reclamation Authority, Monmouth County Planning Board, NJDOT and NJDEP.
- X. **Zoning Permit/Land Disturbance Permit Approval** – Once all of the conditions of the Planning Boards Resolution of Approval have been addressed, the Board Engineer will

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issue a letter stating that all conditions precedent have been addressed. At that point, you will need to submit to a new Zoning Permit Application along with four (4) copies of your final architectural plans, for (4) copies of the survey and four (4) copies of the plot plan/grading plans.

- XI. **Building Permits** – Once the Zoning Permit and/or Land Disturbance Permits have been approval, they will be emailed to the Construction Official. A copy of the email will be sent to the applicant’s email addresses that are provided on the Zoning Permit. Applicant should print a copy of the emailed “approved” zoning permit and include same in their construction permit folder for submission to the Construction Department. Two (2) complete sets of the plan noted in Step XI above will be stamped as “Zoning Approved” forwarded to the Construction Department for inclusion in your building permit applications.

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