

RULES OF PROCEDURE
ZONING BOARD OF APPEALS OF THE VILLAGE OF PORT CHESTER, NEW YORK



Adopted: September 15, 2022
By the Port Chester Zoning Board of Appeals

A. Preamble

Pursuant to Section 120-2 of the Village Code, the Zoning Board of Appeals (“Board”) hereby adopts these Rules of Procedure, and any amendments later adopted, for its procedure and government. A copy of these Rules and any amendments thereto shall be filed with the Village Clerk and provided to all Applicants upon the filing of an Application.

B. Definitions

1. “Village” means and refers to the Village of Port Chester.
2. “Board of Trustees” means and refers to the Board of Trustees of the Village of Port Chester.
3. “Board” means and refers to the Zoning Board of Appeals of the Village of Port Chester.
4. “Member(s)” means and refers to any or all members of the Board.
5. “Secretary” means and refers to the then secretary to the Board, who may be an employee of the Village.
6. “Chairperson” means and refers to the then sitting or appointed chairperson of the Board. When the context requires, it means and refers to any member of the Board who is at any particular time the Acting Chairperson.
7. “Open Meetings Law” means and refers to Article 7 of the Public Officers Law of the State of New York and the various provisions thereof.
8. “Village Clerk” means and refers to the person then holding the office of Village Clerk of the Village of Port Chester, unless otherwise stated in the context.
9. “Application” means and refers to a matter submitted to the Board for determination.
10. “Applicant” means and refers to the person or entity submitting an Application.
11. “Agenda” means and refers to the official published order of business prepared for a meeting of the Board.
12. “Meeting” means and refers to either a regular meeting or special meeting of the Board, depending on the context.
13. “Findings” means and refers to the decision and a written determination of the Board after closing the public hearing on an Application. A resolution of the Board may, if appropriate in a particular instance or context, also be drafted as a Finding.
14. “Counsel” means and refers to the Village Attorney or special counsel retained by the Board.
15. “Rules” means and refers to these Rules of Procedure of the Zoning Board of Appeals of the Village of Port Chester.
16. “Code” means and refers to the Village Code of the Village of Port Chester.
17. “Planning Office” means and refers to the Office of Planning and Economic Development of the Village of Port Chester, or its successor.

Section 1: General Rules

- 1.1 Members shall be familiar with the following statutes and laws:
 - a) Chapter 345 of the Code (Zoning Code);
 - b) Chapter 32 of the Code (Ethics Code);
 - c) Article 7 of the New York State Village Law (Zoning);
 - d) Article 18 of the New York State General Municipal Law (Conflict of Interest, Municipal Officers and Employees)
 - e) Article 7 of the New York State Public Officers Law (Open Meetings)

1.2 Members shall be familiar with the community vision, goals, objectives and policies as expressed in the Village Comprehensive Plan.

1.3 Members are encouraged to seek guidance from the Board of Ethics for an advisory opinion to guide their service on the Board.

1.4 The Board is a quasi-judicial agency. As such, Members shall not interact with an Applicant, witnesses or the general public outside of a Meeting. Should a Member be the subject of an outside, or *ex parte*, communication, he/she/they shall disclose on the record the nature and extent of such communication at the next Meeting when the Application is heard.

Section 2: Officers and Duties

2.1 The Chairperson shall be designated by the Village Board of Trustees. The Chairperson shall perform all duties required by law, ordinance and these Rules. The Chairperson shall preside at all Meetings of the Board and shall decide on all points of order and procedure subject to these Rules, unless directed otherwise by a majority of the Board. The Chairperson may appoint any committees found necessary to carry out the business of the Board. The Chairperson may administer oaths and compel the attendance of witnesses as necessary to carry out the business of the Board.

2.2 The Secretary, subject to the provisions of these Rules and all other applicable laws and at the direction of the Board or the Chair, shall conduct the correspondence of the Board; keep calendars of all Meetings and maintain all official records of the Board; prepare Minutes of all official proceedings of the Board; file with the Village Clerk all papers and records as required by law; and shall perform such other functions as directed by the Board or required by law. The Chairperson's signature shall be the official signature of the Board and shall appear on all decisions.

2.3 The Acting Chairperson shall serve in place and stead of the Chairperson in the event of his/her /their absence, disability, or disqualification at a Meeting.

Section 3: Staff

The Building Inspector or his/her/their designee, the Director of Planning and Economic Development or his/her/their designee and the Village Attorney have been assigned by the Village Manager as staff to the Board. Additional or different staff may be assigned or changed from time to time as determined by the Village Manager.

Section 4: Applications, Agendas and Procedures

4.1. Regular Meetings. Regular Meetings of the Board shall be held on the third (3rd) Thursday of each month, except that if such Thursday is a holiday, or if from time to time the Board should determine that a different day of the week would be advisable, the Meeting shall be held on another day determined by the Chairperson on no less than two weeks' notice to the other Members. Meetings shall be called to order at 7:00 PM unless otherwise previously decided and noticed by the Secretary.

4.2. Special Meetings. Special Meetings may be called by either the Chairperson or at the request of at least two (2) other Members. The special Meeting shall be noticed in accordance with the Open Meetings Law and the order of business will conform as clearly as practicable to the order of business at a regular Meeting (See Section 4.7 below).

4.3. Notice of Meetings. Notice of meetings shall be provided by the Secretary in accordance with the Open Meetings Law.

4.4. Closed and Executive Sessions. The Board may hold closed sessions which are not open to the public for the purpose of confidential consultation with Counsel and are outside the requirements of the Open Meetings Law. The Board may hold executive sessions on stated grounds permissible under the Open Meetings Law.

4.5 Submissions For and Setting the Agenda.

4.5.1 The Agenda submission deadline for Applicants submitting a new Application for a regularly scheduled Meeting is the date established by Village Planning Office on its calendar for submissions each year, prior to the scheduled Meeting. The supplemental submission deadline for Applicants with existing or carried over Applications is 5:00 PM on the Monday prior to the next scheduled Meeting. Any submission received by the Planning Office after these dates will not be considered by the Board at the upcoming Meeting. If the Application is adjourned or continued to a next or any future Meeting date, the late submissions will be considered at that time. Submissions provided to the Board at a Meeting may be considered by the Board at that Meeting or at a future Meeting, in the Board's sole discretion.

4.5.2 An Application for a use variance, an area variance, appeal of decision or zoning interpretation received by Secretary to the Board by the submission deadline with the applicable submission requirements shall be placed on the Board Agenda.

4.5.3 Electronically submitted Application materials must be legible, whether provided by an Applicant or its representative(s), Village staff, Village consultants, or a member of the public. If a document is available in an electronic format (e.g. a PDF of a plat), the submitted document must derive from that original electronic document, not a scanned printout, in all instances where possible. Illegible documents and materials will not be considered by the Board.

4.5.4 Setting the Agenda. The Secretary to the Board shall prepare the Agenda for each Meeting of the Board, which shall list the matters to be considered at such Meeting. The matters to be listed in the Agenda are subject to review by the Chairperson and Counsel. The Chairperson may from time to time call items on the Agenda out of order in the Chairperson's sole discretion or by the affirmative vote of the majority of the Members present.

4.6 Public Notice of Applications. Public notice of Applications shall be undertaken in accordance with the requirements of the Village Code.

4.7 Order of Business. The order of business at regular Meetings of the Board shall be as follows:

4.7.1 Items on the Agenda, Generally:

(i) Each Application shall be introduced by the Chairperson and a synopsis shall be read or stated.

(ii) The representative of each Applicant shall be introduced at the commencement of each Application and shall state his/her/their relationship to the Applicant and shall state to the Board the Applicant's standing to bring the Application. The Board may require that written or other proof of standing be submitted.

(iii) Roll call which may be made viva voce or written attendance sheet, as determined by the Chairperson.

4.7.2 Determination of a previously completed Application at which the public hearing had been closed at a prior Meeting, and announcement and reading or stated synopsis of the Findings from a prior Meeting.

4.7.3 Public hearings shall be conducted on items carried over from prior Meetings and on new items on the Agenda.

4.7.4 Deliberation by the Board after each public hearing is closed.

4.7.5 Determination by the Members for resolution, reserve decision or to adjourn the Application.

4.7.6 New Business.

4.7.7 Review of Minutes, if determined by the Chairperson.

4.8 Conduct of Public Hearings.

4.8.1 At any time prior to or after convening a Meeting the Board may recess or adjourn that Meeting and schedule its continuance on another date and time. A motion for continuance may be made by any Member on the Member's own initiative or by request of the Applicant.

4.8.2 A public hearing may be adjourned for the purpose of conducting a site visit of the property which is the subject of an Application as determined by the Chairperson, or to give the Members an opportunity to visit a property individually. A site visit is an opportunity for the Members to physically view the property which is the subject of an Application and for no other purpose, and shall not be utilized to discuss the merits of such Application. A site visit by the Members is not considered a Meeting under the Open Meetings Law.

4.8.3 Public hearings and the deliberation period will generally proceed as follows:

- (i) Introduction by the Chairperson;
- (ii) Applicant presentation (personally, and/or by its representatives and consultants);
- (iii) Comments by experts, staff and other personnel employed or retained by the Village;
- (iv) Comments by members of the public, which shall be limited to no more than five minutes each;
- (v) Comments and discussion by the Members; and
- (vi) Voting on resolutions, adjournment, close public hearing, deliberation or reserve decision.

4.9 Public Comments

4.9.1 Public Speakers

(i) All public comments are to be limited to the Application at hand. Persons whose comments are deemed by the Chairperson to be outside the scope of the Application may be ruled out of order by the Chairperson. Speakers are limited to five minutes for public comment. Speakers may

not yield their time to another person or seek to speak again after they have already spoken on the Application at a particular Meeting.

(ii) Public speakers shall step to the dais or lectern at the front of the audience area and speak into the microphone. Speakers are required to sign in and introduce themselves before speaking.

(iii) Public speakers shall observe generally accepted rules and norms of courtesy, good order, dignity and decorum. Speakers shall not engage in profanity, display unacceptable behavior, advocate violence or crime, or be disruptive of the proceedings. The Chairperson may require or cause anyone attending a Meeting who is unruly or excessively out of order to be removed from the hearing room and the premises.

(iv) Public comment is intended to assist the Board in its deliberations. As such, remarks must be directed to the Board. There shall be no discussion or colloquy between public speakers and the Applicant or to the public.

4.9.2 Written comments and correspondence to the Board or Village staff.

(i) Written comments, including all forms of electronic communication, from members of the public shall be submitted to the Secretary prior to the close of the public hearing for consideration by the Board. Any communication received by the Secretary after 12:00 PM on the day of the Meeting is not guaranteed to be considered by the Board. A copy of these written comments shall also be furnished to the Applicant by the Secretary. No written comments from the public will be accepted or considered after the close of the public hearing. All written comments properly and timely submitted in compliance with this procedure shall be made part of the public record. It shall not be required that public or Applicant correspondence or other written public comments be read into the record at Meetings.

(ii) Written comments from the public regarding an Application shall be directed to the Secretary and shall not be emailed or otherwise transmitted or directed to the individual Members of the Zoning Board, Counsel, or other Village staff or professionals or consultants retained by the Village. The Secretary shall cause all comments received, and if so requested, to be forwarded or otherwise provided to the Members and made a part of the public record. Any direction from a member of the public to the Secretary may be disregarded in the discretion of the Board.

4.9.3 Members shall not interact with the public or any Applicant outside of Meetings of the Board on the subject of pending or proposed Applications, neither personally nor electronically, except to the extent appropriate to conduct an individual site visit. A Member subjected to *ex parte* communication from any Applicant or representative of an Applicant shall disclose such communication to the other Board Members and the Chairperson shall note such disclosure at the relevant public Meeting.

4.10 Voting.

4.10.1 Each Member shall have one vote. A majority of the total Members of the Board is necessary to pass any matter.

4.10.2 A tie vote or vote to grant an Application by a lesser number than the required majority shall be considered to be a rejection of the Application.

4.10.3 Every Member present at any Meeting when a vote occurs, shall vote for (Aye or Yes) or against (Nay or No), unless excused from voting by the Chairperson. Roll call votes shall be called

in alphabetical order of the last name of the Member, with the Chairperson being the last Member to cast a vote.

4.10.4 A Member shall recuse him/her/themself in cases of conflict of interest or an appearance of impropriety, in which event such permitted recusal shall be recorded as “Excused.” Members are encouraged to seek the guidance of the Village Ethics Board in the discharge of their duties.

4.10.5 All resolutions and Findings to memorialize any action of the Board shall be in writing and signed by the Chairperson when in final form and authorized by the Board.

4.10.6 All decisions of the Board shall be duly filed with the Village Clerk within five (5) business days therefrom and a copy provided to the Applicant.

4.10.7 A copy of the decision shall also be forwarded to the applicable zoning administrative officer.

4.11 Excessive Agenda for any Board Meeting. If matters listed on a Board Agenda which are not reached for hearing by 10:00 PM on the date of the regular Meeting for which they have been scheduled shall be adjourned to the next regular Meeting, unless a majority of the Members present shall approve the extension of the current meeting past 10:00 PM.

Section 5: Proceedings, Generally

5.1 Conflict with Laws. These Rules are not intended to modify the provisions of the Village Code or any New York State or Federal law and all conflicts with these Rules and Procedures are to be resolved in favor of the Village Code, laws of the State of New York and laws of the United States.

5.2 These Rules may be changed, amended, or repealed at any time by a vote of a majority of the Members.

5.3 A copy of these Rules shall be given to each Applicant upon the filing of an Application for relief or appeal; shall be available on the Village website generally and at the tab for “Zoning” for review by the general public; and copies shall be made available at the public hearings.