

## **CHAPTER XXVII**

### **LAND USE PROCEDURES**

#### **27-1 TITLE.**

This chapter shall be known and may be cited as the Land Use Procedure Regulations of the Borough of Surf City. (Ord. No. 76-7 § 6F)

#### **27-2 PLANNING BOARD.**

##### **27-2.1 Establishment; Membership.**

There is hereby established pursuant to N.J.S.A. 40:55D-1 et seq., a Borough Planning Board consisting of nine (9) members. Pursuant to law all members of the Planning Board, except for the Class II members set forth below, shall be municipal residents. The membership shall consist of the following four (4) classes:

- a. *Class I.* The Mayor or the Mayor's designee in the absence of the Mayor.
- b. *Class II.* One (1) of the officials of the Borough other than a member of the Borough Council to be appointed by the Mayor.
- c. *Class III.* A member of the Borough Council to be appointed by a majority of the same.
- d. *Class IV.* Six (6) other citizens of the Borough to be appointed by the Mayor. In addition, two (2) alternate members, who meet the same qualifications as do the regular members, may be appointed by the same appointing authority. Such alternate members shall

serve for terms of two (2) years, respectively. Such alternate members shall be designated at the time of appointment by the Mayor as "Alternate No. 1" and "Alternate No. 2". The terms of the alternate members shall be for two (2) years, except that the terms of the alternate members shall be such that the term of not more than one (1) alternate member shall expire in any one year; and provided further that in no instance shall the terms of the alternate members first appointed exceed two (2) years. A vacancy occurring otherwise than by expiration of term shall be filled by the appointing authority for the unexpired term only. Alternate members may participate in all matters but may not vote except in the absence or disqualification of a regular member of any class. Participation of alternate members shall not be deemed to increase the size of the Planning Board established. 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.

The members of Class IV shall hold no other municipal office, position or employment, except one such 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.

(Ord. No. 79-2 § 1; Ord. No. 2000-11 § I; Ord. No. 2003-16 § 2)

**27-2.2 Terms.** The term of the member composing Class I shall correspond to his official tenure. The terms of the members composing Classes II and III respectively shall be for one (1) year or terminate at the completion of their 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 term of office as a member of the Environmental Commission, whichever occurs first. The terms of all Class IV members first appointed shall be so determined that to the greatest practicable extent the expiration of such terms shall be distributed evenly over the first four (4) years after their appointments; provided that the initial Class IV term of no member shall exceed four (4) years. Thereafter, the Class IV term of each such member shall be four (4) years. If a vacancy in any class shall occur otherwise than by expiration of the Planning Board term, it shall be filled by appointment, as above provided, for the unexpired term. The term of a Class IV member shall run from January 1 of the year in which the appointment was made for a period of four (4) years. (Ord. No. 76-7 § 2B; Ord. No. 2003-16 § 3)

**27-2.3 Vacancies.** If any vacancy in any class shall occur otherwise than by the expiration of the term, it shall be filled by appointment for the unexpired term in the same

manner and by the same appointing authority as the original appointment. (Ord. No. 76-7 § 2C)

**27-2.4 Organization of the Board.** The Planning Board shall elect a Chairman and Vice Chairman from the members of Class Four. The Planning Board shall also select a Secretary who may or may not be a member of the Planning Board or a Borough employee and fill such other offices as established by ordinance.

The Chairman shall assume and carry out all duties and responsibilities so delegated to the Chairman by the Borough ordinances and N.J.S.A. 40:55D-24. In the event the Chairman is absent or unable to fulfill the duties of the position, the Vice Chairman shall be authorized to perform the duties in the Chairman's stead and also execute any and all documents in fulfillment of those duties. (Ord. No. 76-7 § 2D; Ord. No. 90-17 § 1)

**27-2.5 Planning Board Attorney; Experts and Staff.** The Planning Board may employ or contract for and fix compensation of legal counsel, who shall be an attorney other than the Borough Attorney, and such other experts and staff as it may deem necessary. The Board shall not authorize expenditures which exceed, exclusive of gifts or grants, the amount appropriated by the Borough for its use. The appointments of all staff members, including that of the Planning Board Attorney and Planning Board Engineer, shall be made at the organization meeting of the Planning Board and shall continue for one (1) year until the next organization meeting of the Planning Board at which time such appointments shall expire. (Ord. No. 76-7 § 2E)

**27-2.6 Powers and Duties Generally.** The Planning Board is authorized to adopt bylaws governing its procedural operation which shall be consistent with statute and other ordinances of this Borough. It shall also have the following powers and duties:



- a. To prepare, adopt and revise or amend a Master Plan, or component parts thereof, for the physical development of the municipality in accordance with the provisions of N.J.S.A. 40:55D-28.
- b. To administer the provisions of the development regulations of the Borough in accordance with the provisions of those regulations and the Municipal Land Use Law of 1975, N.J.S.A. 40:55D-1 et seq. In the event that any such regulation is inconsistent with the terms of any portion of N.J.S.A. 40:55D-1 et seq., such regulation is hereby repealed to the extent of such inconsistency but the remainder of such regulation shall remain in full force and effect as if more fully set forth herein.
- c. To participate in the preparation and review of programs or plans required by State or Federal law or regulations.
- d. To assemble data on a continuing basis as part of a continuous planning process.
- e. To consider and make reports to the Borough Council within thirty-five (35) days after the referral to the Planning Board of any proposed development regulation or revision or amendment thereto, pursuant to the provisions of N.J.S.A. 40:55D-26(a), and also to pass upon other matters specifically referred to the Planning Board by the Borough Council pursuant to the provisions of N.J.S.A. 40:55D-26(b).
- f. When reviewing applications for approval of subdivisions, plats, site plans or conditional uses to grant to the extent and subject to the same restrictions as the Zoning Board of Adjustment:
  - 1. Variances pursuant to N.J.S.A. 40:55D-70(c) from lot area, lot dimensional, setback and yard requirements, provided that such relief from lot

area requirements shall not be granted for more than one (1) lot.

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 drainageway, flood control basin or public area reserved pursuant to N.J.S.A. 40:55D-32.
3. Direction pursuant to N.J.S.A. 40:55D-36 for issuance of a permit for building or structure not related to a street.

Whenever relief is requested pursuant to this subsection notice of a 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.

- g. To perform such other advisory duties as are assigned to it by ordinance or resolution of the Borough Council for the aid and assistance of the Borough Council or other agencies or officers not inconsistent with the purposes and intent of N.J.S.A. 40:55D-1 et seq., and such other applicable general law.  
(Ord. No. 76-7 § 2F)

**27-2.7 Procedure for Submission of Matters for Consideration by the Planning Board.**

- a. *Minor Subdivision.* Minor subdivision approval shall be granted or denied within forty-five (45) days of the date of submission of a complete application to the Planning Board or within such further time as may be consented to by the applicant. Approvals of a minor subdivision shall expire one hundred ninety (190) days from the date of the Planning Board approval unless within such period a plat in conformity with such approval and the provisions of the Map Filing Law, N.J.S.A. 46:23-9.9 et seq., or a deed clearly describing the approved minor subdivision is filed by the

developer with the County Recording Officer, the Borough Engineer and the Borough Tax Assessor. Any such plat or deed shall be signed by the Chairman and Secretary of the Planning Board before it will be accepted for filing.

Whenever review or approval of the application by the County Planning Board is required by other law, the Planning Board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required time period of that statute.

- b. *Preliminary Approval of Major Subdivisions.* The developer shall submit to the administrative officer a plat and such other information as is required in Chapter XXIX Land Subdivision of this Code. If the application for development is found to be incomplete, the developer shall be notified thereof within forty-five (45) days of its submission of such application or it shall be deemed to be properly submitted. If the Planning Board requires any substantial amendment in the layout of improvements proposed by the developer that have been subject of a hearing, an amended application shall be submitted and proceeded upon as in the case of the original application for development. The Planning Board shall, if the proposed subdivision complies with Chapter XXIX Land Subdivision and statute, grant preliminary approval to the subdivision.

Upon the submission to the administrative office of a complete application for a subdivision of ten (10) or fewer lots, the Planning Board shall grant or deny preliminary approval within forty-five (45) days of such submission or within such further time as may be consented to by the developer. Upon the submission of a complete application for a subdivision of more than ten (10) lots, the Planning Board shall grant or deny preliminary approval within ninety-five (95) days of

the date of such complete submission or within such further time as may be consented to by the developer.

- c. *Preliminary Approval of Site Plans.* The developer shall submit to the administrative officer a site plan and such other information as is required in the Site Plan Ordinance, Chapter XXVIII of this Borough if the application for development is found to be incomplete, the developer shall be notified thereof within forty-five (45) days of its submission of such application or it shall be deemed to be properly submitted. If the Planning Board requires any substantial amendment in the layout of improvements proposed by the developer that have been subject of a hearing, an amended application shall be submitted and proceeded upon as in the case of the original application for development. The Planning Board shall, if the proposed development complies with the Site Plan Ordinance, Chapter XXVIII and statute, grant preliminary site plan approval.

Upon submission to the administrative officer of a complete application for a site plan of ten (10) acres of land or less, the Planning Board shall grant or deny preliminary approval within forty-five (45) days of such submission or within such further time as may be consented to by the developer. Upon the submission of a complete application for a site plan of more than ten (10) acres, the Planning Board shall grant or deny preliminary approval within ninety-five (95) days of the date of such complete submission, or within such further time as may be consented to by the developer.

- d. *Final Approval of Site Plans and Major Subdivisions.*
1. The Planning Board shall grant final approval if the detailed drawings, specifications and estimates of the application for final approval conform to the standards established by ordinance for final approval, the conditions of preliminary approval and, in the case of a major subdivision,



the standards prescribed by the Map Filing Law, N.J.S.A. 46:23-9.9, et seq. Application for final site plan or subdivision approval shall be granted or denied within forty-five (45) days of submission of a complete application or within such further time as may be consented to by the applicant.

2. Final approval of a major subdivision shall expire ninety-five (95) days from the date of signing of the plat, unless within such period the plat shall have been duly filed by the developer with the County Recording Officer. The Planning Board may, for good cause shown, extend the period for recording for an additional period not to exceed one hundred ninety (190) days from the date of the signing of the plat.
  3. Wherever review or approval of the application by the County Planning Board is required by other law, the Planning Board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required time period of that statute.
- e. *Ancillary Powers.* Whenever the Planning Board is called upon to exercise its ancillary powers for the granting of relief as set forth in subsection 27-2.6 of this chapter, the Planning Board shall grant or deny approval of the application within ninety-five (95) days after submission by the developer of a complete application, or within such further time as may be consented to by the applicant. Failure of the Planning Board to act within the period prescribed shall constitute approval of the application in question and a certificate from the Secretary of the Planning Board as to the failure of the Planning Board to act shall be issued on the request of the applicant.

Wherever review or approval of the application by the County Planning Board is required by other law, the Planning Board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required period of that statute.

(Ord. No. 76-7 § 2H)

**27-2.8 Rules and Regulations.** The Planning Board shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this chapter. (Ord. No. 76-7 § 2I)

**27-2.9 Single Board.** In addition to its Planning Board powers, the Planning Board shall exercise to the same extent and subject to the same restrictions, all the powers of the Board of Adjustment pursuant to N.J.S.A. 40:55D-70, et seq., but the Class I and Class III members shall not participate in the consideration of applications for development which involve relief pursuant to N.J.S.A. 40:55D-70(d). (Ord. No. 2003-16 § 4)

**27-2.10 Expiration of Variance.** Any variance from the terms of this chapter granted by the Zoning Board of Adjustment or Planning Board shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by such variance or unless such permitted use has actually been commenced within nine (9) months from the date of entry of the determination of the Board of Adjustment or the Planning Board except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the Board of Adjustment to the Borough Council or to a court of competent jurisdiction until the termination in any manner of such appeal or proceeding. (Ord. No. 2003-16 § 5)

**27-2.11 Prohibited Uses.** All uses not expressly permitted by the development regulations of this Borough are hereby expressly prohibited. (Ord. No. 2003-16 § 7)

**27-2.12 Vacating a Street or Other Public Way.** Where a street or public way serves as the zoning district line and it is lawfully vacated, the former centerline shall be considered the zoning district line. (Ord. No. 2003-16 § 7)

**27-2.13 Conflicts of Interest.** No member or alternate member of the Planning Board shall act on any matter in which he has either directly or indirectly any personal or financial interest. Whenever any such member shall disqualify himself from acting on a particular matter, he shall not continue to sit with the Board on the hearing of such matter nor may he participate in any discussion or decision relating thereto. (Ord. No. 2003-16 § 7)

**27-2.14 Meetings.**

- a. *Regular.* Regular meetings of the Planning Board shall be scheduled no less than once a month and any meeting so scheduled shall be held as scheduled unless canceled for lack of applications for development to process. Further, all meetings shall conform with the Open Public Meeting Act of the State of New Jersey, N.J.S.A. 10:4-6 et seq.
- b. *Special.* Special meetings may be provided for at the call of the Chairman or on the request of any two (2) Board members. Such meeting shall be held on notice to its members and the public in accordance with all applicable legal requirements.
- c. *Quorum Required.* No action shall be taken at any meeting without a quorum being present.

- d. *Open to the Public.* All regular meetings and all special meetings shall be open to the public except as authorized as by the provisions of the Open Public Meeting Act, N.J.S.A. 10:4-6 et seq.  
(Ord. No. 2003-16 § 7)

**27-2.15 Minutes.** Minutes of every regular or special meeting of the Planning Board shall be kept and shall include the names of the persons appearing and addressing the Board and of the persons appearing by attorney, the action taken by the Board, the findings, if any, made by it and reasons therefor.  
(Ord. No. 2003-16 § 7)

**27-2.16 Transcripts.** A verbatim transcript or recording shall be made of all hearings before the Planning Board. (Ord. No. 2003-16 § 7)

**27-2.17 Records.** The minutes and transcripts of all proceedings shall thereafter be made available for public inspection during the normal business hours at the office of the Planning Board. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceeding concerning the subject matter of such minutes. Such interested party may be charged a fee for reproduction of the minutes for his or her use as provided for in the rules of the Board concerning same. (Ord. No. 2003-16 § 7)

**27-2.18 Fees.** Fees for applications or for the rendering of any service by the Planning Board or of any special service rendered by the administrative staff may be provided for by ordinance. Copies of such ordinance shall be available to the public upon request.

Fees for different types of applications before the Planning Board shall be payable upon submission of the application and may not be waived by the Board. Such fees shall be as follows:



- a. Applications to hear and decide appeals from decisions from administrative officials: one hundred (\$100.00) dollars.
- b. The hearing and deciding of applications with respect to special exceptions and interpretations of maps: fifty (\$50.00) dollars.
- c. Application for a hardship variance: one hundred (\$100.00) dollars.
- d. Application for a special reasons variance: one hundred (\$100.00) dollars.
- e. Application for a resolution of a problem whereby the building permit request is in conflict with the official map: twenty-five (\$25.00) dollars.
- f. If any matter before the Board is of such scope and complexity as to require additional hearings beyond that which is normally provided for applications of this type, the Planning Board may require the applicant to pay an additional sum not to exceed seventy-five (\$75.00) dollars for each such additional hearing as a condition precedent to further action by the Planning Board.
- g. Where the Board requires expert or technical consultation in the proper exercise of its function, the reasonable costs of same shall be borne by the applicant, upon prior notice to the applicant of the retention of such expert.
- h. If an applicant desires a certified court reporter, the cost of taking testimony and transcribing and providing a copy of the transcript to each member of the Planning Board shall be at the expense of the applicant, who shall also arrange for the reporter's attendance.  
(Ord. No. 2003-16 § 7)

**27-2.19 Hearings.** The Planning Board shall make rules governing the conduct of hearings before such bodies which

rules shall not be inconsistent with the provision of N.J.S.A. 40:55D-2 et seq. or of this chapter or any amendments thereto. (Ord. No. 2003-16 § 7)

**27-2.20 Oaths, Subpoenas for Witnesses.** The presiding official at the hearing 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.1938, N.J.S.A. 2A:67A-1 et seq., shall apply. (Ord. No. 2003-16 § 7)

**27-2.21 Testimony.** Testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer 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 to reasonable limitations as to time and number of witnesses. (Ord. No. 2003-16 § 7)

**27-2.22 Appearance by Corporation.** In accordance with law, no corporation shall appear before the Planning Board without being represented by an attorney authorized to practice law in the State of New Jersey. (Ord. No. 2003-16 § 7)

**27-2.23 Notice Requirements for Hearing.** Whenever a hearing is required on an application for development pursuant to N.J.S.A. 40:55D-1 et seq., the applicant shall give notice thereof as follows:

- a. *Public Notice.* Public notice shall be given by publication in the official newspaper of the Borough at least ten (10) days prior to the date of the hearing.
- b. *Notice to Adjacent Property Owners.* Notice shall be given to the owners of all real property as shown on the current tax duplicate or duplicate or duplicates located

within two hundred (200') feet in all directions of the property which is the subject of such hearing and whether located within or without the municipality in which the applicant's land is located. Such notice shall be given by serving a copy thereof on the owner as shown on the current tax duplicate or his agent in charge of the property, or mailing a copy thereof by certified mail to the property owner at his address as shown on the current tax duplicate. A return receipt shall not be required. Notice to a corporate owner may be made by services upon its President, its Vice President, Secretary or other person authorized by appointment or by law to accept service on behalf of the corporation.

- c. *Notice to Adjoining Municipality.* Notice of all hearings on applications for development involving property located within two hundred (200') feet of an adjoining Municipality shall be given by personal service, or certified mail, to the clerk of such Municipality. Such notice shall be in addition to the notice required to be given to the owners of lands in such adjoining Municipality which are located within two (200') feet of the subject premises.
- d. *Notice to the County Planning Board.* Notice shall be given by personal service or certified mail to the County Planning Board of a hearing on an application for development of property adjacent to an existing County road or proposed County road shown on the official County Map or on the County Master Plan adjoining other County land or situated within two hundred (200') feet of a municipal boundary or where the construction of a bridge is contemplated.
- e. *Notice to the Commissioner of Transportation.* Notice shall be given by personal service or certified mail to the Commissioner of Transportation of a hearing on an

application for development of a property adjacent to a State highway or where drainage waters shall be deposited into a State highway.

- f. *Notice to the Director of the Division of State and Regional Planning.* Notice shall be given by personal service or certified mail to the Director of the Division of State and Regional Planning in the Department of Community Affairs of a hearing on an application for development of property which exceeds one hundred fifty (150) acres or five hundred (500) dwelling units. Such notice shall include a copy of any maps or documents required to be on file with the Borough Clerk pursuant to this chapter or under the terms of statute.
- g. *Proof of Service.* All notices hereinabove specified in this section shall be given at least ten (10) days prior to the date fixed for hearing and the applicant shall file an affidavit of proof of service with the attorney for the Board holding the hearing on the application for development.
- h. *Completion by Certified Mail.* Any notice made by certified mail as hereinabove required shall be deemed to be complete upon mailing in accordance with the provisions of N.J.S.A. 40:55D-14.
- i. *Form of Notice.* All notices required to be given pursuant to the terms of this chapter shall state:
  - 1. The date, time and place of the hearing.
  - 2. The nature of the matters to be considered.
  - 3. The 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 Borough Tax Assessor's office.



4. The location and times at which any maps and documents for which approval is sought are available for public inspection as required by N.J.S.A. 40:55D-10(b).

The Planning Board may prepare form and require applicants to utilize such form in accordance with the terms of this subsection.

- j. *List of Property Owners Furnished.* Pursuant to the provisions of N.J.S.A. 40:55D-12c, the Tax Assessor shall, within seven (7) days after receipt of request therefor and upon receipt of a payment of a fee of ten (\$10.00) dollars make and certify a list from the current tax duplicate of names and addresses of owners to whom the applicant is required to give notice pursuant to paragraph b. above.  
(Ord. No. 2003-16 § 7)

#### **27-2.24 Decisions.**

- a. *Written as Board Resolution.* Each decision of the Planning Board on any application for development shall be set forth in writing as a resolution of the Board which shall include findings of fact and legal conclusions based thereon in accordance with the terms of this chapter and appropriate statutory and case law.
- b. *Copies of Decisions.*
  1. A copy of a certified resolution which shall include the decision of the Board shall be mailed by the Board within ten (10) days of the date of the decision to the applicant or, if represented by an attorney, then to his attorney without separate charge.
  2. A copy of the decision shall be mailed to all persons who have requested it and paid the fee prescribed by the Board for such service.

3. A copy of the decision shall also be filed in the office of the Borough Clerk who shall make a copy of such filed decision available to any interested party upon payment of the fee for the reproduction of the copy as set forth in the general fee schedule of the Borough concerning such service.  
(Ord. No. 2003-16 § 7)

**27-2.25 Publication of Decision.** A brief notice of every final decision shall be published in the official newspaper of the Borough. Such publication shall be arranged by the Secretary of the Planning Board without separate charge to the applicant. Such notice shall be sent to the official newspaper for publication within ten (10) days of the date of any such decision. (Ord. No. 2003-16 § 7)

**27-2.26 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 shall be accompanied by a certification from the Tax Collector that no taxes or assessments for local improvements are due or delinquent on the property which is the subject to such application. If such taxes are due, or in the alternative, if no certification is presented, the Planning Board shall not consider such application for processing and the application shall not be deemed to be complete. (Ord. No. 2003-16 § 7)

**27-2.27 Conditional Approvals.**

- a. *Legal Barrier.* Pursuant to the provision of N.J.S.A. 40:55D-22, an application for development proposing a development that is barred or prevented, directly or indirectly, by a legal action instituted by any State agency, political subdivision or other party to protect the public health and welfare or by a directive or order issued by any State agency, public subdivision or court of competent jurisdiction, shall be processed in accordance with N.J.S.A. 40:55D-1 et seq. and this

chapter, and if such application for development complies with the development regulations of this Borough, or the Planning Board shall approve such application conditioned on removal of such legal barrier to development. In that event, the requirement that construction actually commence on the project nine (9) months subsequent to the final approval by the Borough agency shall be tolled until the removal of such legal barrier to development.

- b. *Approval by Other Governmental Agency.* In the event the development proposed by an application for development requires approval by a governmental agency other than the Borough Planning Board, the Board shall, in appropriate instances, condition its approval upon the subsequent approval of such governmental agency; provided that the Borough Board shall make its decision on any application for development within the time periods provided in this chapter, or within an extension of such period as has been agreed upon by the applicant and the Borough Board. However, the Borough Planning Board shall have the right to withhold signature on the final plat or map to be filed until such time as all other governmental agencies have approved the application.  
(Ord. No. 2003-16 § 7)

**27-3 RESERVED.\***

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\***Editor's Note:** Former Section 27-3, Zoning Board of Adjustment, previously codified herein and containing portions of Ordinance No. 76-7 was repealed by Ordinance No. 2003-16 which combined the Planning Board and Zoning Board of Adjustment into a single Board. (See subsection 27-2.9)

**27-4 RESERVED.\*****27-5 APPEALS FROM THE ZONING BOARD OF  
ADJUSTMENT TO THE BOROUGH COUNCIL.**

An appeal may be taken to the Borough Council from any final decision of the Board of Adjustment approving a variance pursuant to N.J.S.A. 40:55D-70(d), et seq., provided any such appeal shall be filed within ten (10) days of the date of publication of such final decision of the Board. Such appeal shall be made in accordance with the provisions of N.J.S.A. 40:55D-17, et seq. (Ord. No. 76-7 § 5; Ord. No. 77-10 § 1; New)

**27-6 MISCELLANEOUS PROVISIONS.****27-6.1 Definition of Terms.**

- a. Whenever a term used in this chapter is defined in N.J.S.A. 40:55D-1, et seq., such term is intended to

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\***Editor's Note:** Former Section 27-4, Provisions Pertaining to the Planning Board and Zoning Board of Adjustment; the Interrelationship Between the Boards, previously codified herein and containing portions of Ordinance No. 76-7 was repealed in its entirety by Ordinance No. 2003-16 which combined the two Boards into one Board. See subsection 27-2.9 et seq.



have the meaning set forth in the definition of such term in that statute, unless a contrary intention is clearly and explicitly expressed from the context of this chapter.

- b. For the purpose of this chapter, the term *administrative officer* shall mean the Secretary or Clerk of the appropriate approving authority exercising jurisdiction under this chapter.
- c. Subsection 27-4.14 of this Revision shall remain in full force and effect and the Tax Assessor shall certify a list of names and addresses of owners to whom the applicant is required to give notice, pursuant to subsection 27-4.14b of this chapter.
- d. Certificates as to approval of subdivision of land shall continue to be issued by the Borough Clerk, as per subsection 29-5.4 of this Revision.  
(Ord. No. 76-7 § 6A; Ord. No. 79-12 §§ 1, 2)

**27-6.2 Ordinances Continued.** The substantive provisions of the existing Land Subdivision Chapter, the Zoning Chapter and Site Plan Chapter of the Borough shall continue in full force and effect for a period of one (1) year, unless extended by further amendments to this chapter for a longer period as permitted by law. The purpose of this interim provision is to provide a reasonable period of time for the adoption of a new or substantially revised Master Plan and a new or substantially revised series of development regulations.  
(Ord. No. 76-7 § 6C)

**27-6.3 Pending Applications.** All applications for development filed prior to the effective date of this chapter may be continued in accordance with pre-existing ordinances, but any appeals arising out of decisions made on any such application shall be governed by the provisions of this chapter.  
(Ord. No. 76-7 § 6E)

**27-6.4 Effective Date.** This chapter shall take effect upon its adoption and publication, as provided by law, but shall be effective no later than February 1, 1977. (Ord. No. 76-7 § 6G)

**27-6.5 Copy to Be Filed With County Planning Board.** Immediately upon the adoption of this chapter, the Borough Clerk shall file a copy of same with the County Planning Board, as required by law. The Clerk shall also file with the County Planning Board copies of all other ordinances of the Borough relating to land use, including but not limited to the Subdivision Ordinance, Zoning Ordinance and Site Plan Review Ordinance, and any revision or amendment thereto. (Ord. No. 76-7 § 6L)

**27-6.6 Payment of Professional Services by Applicant.**

- a. An applicant making application to any Board or Agency within the Borough of Surf City shall be responsible to reimburse the municipality for the following:
  1. All expenses of professional personnel incurred in connection with an application, and paid by it, necessary to process an application for development before a municipal board or agency, such as, but not by way of limitation:
    - (a) Charges for reviews by professional personnel of applications and accompanying documents.
    - (b) Issuance of reports by professional personnel to the municipal agency setting forth recommendations resulting from the review of any documents submitted by applicant.
    - (c) Charges for any telephone conference or meeting requested or initiated by applicant, his attorney or any of his experts.

- (d) Review of additional documents submitted by applicant and issuance of reports relating thereto.
  - (e) Review or preparation of easements, developer's agreements, deeds, resolutions or the like.
  - (f) Preparation for and attendance at special meetings.
  - (g) Pre- and post-site inspections, review of location and related expenditures.
2. The cost of expert advice or testimony obtained by the municipal board or agency for the purpose of corroborating testimony of applicant's experts; provided that the municipal agency gives prior notice to applicant of its intention to obtain such additional expert advice or testimony and affords applicant an opportunity to be heard as to the necessity for such additional advice or testimony and definition of the limitations on the nature and extent thereof.
- b. Applicant shall be responsible to pay for attendance by the municipality's professional personnel at any regularly scheduled, or special meeting of the municipal board or agency in which said professional personnel were called to attend that meeting specifically for that application. The applicant shall also pay for attendance of the municipality's professional personnel at special meetings of a municipal board or agency which were requested to be called by the applicant for the applicant's convenience.
  - c. The term "professional personnel" or "professional services" as used herein shall include the services of a duly licensed engineer, surveyor, planner, attorney, realtor, appraiser, or other expert who would provide

professional services to insure an application meets performance standards set forth in this chapter and other experts whose testimony is in an area in which the applicant has presented expert testimony.

- d. The applicant, upon filing an application, shall pay an escrow fee to the Borough in the amount of one thousand five hundred (\$1,500.00) dollars by cash, bank money order or certified check to cover the expenses as listed above. Should said escrow fall below the amount of two hundred (\$200.00) dollars an additional amount of not less than five hundred (\$500.00) dollars shall be required to replenish the escrow account. If the amount of the deposit exceeds the actual cost as approved for payment by the governing body, the developer shall be entitled to a return of the excess deposit, together with such as allowed by N.J.S.A. 40:55D-53.1, but if the charges submitted and approved by the governing body exceed the amount of the deposit, the developer shall be liable for payment of such deficiency. Said escrow fee(s) shall be made separately and in addition to any application fee required.
- e. No plat or site plan shall be signed, nor shall any zoning permits, building permits, certificates of occupancy or any other types of permits be issued with respect to any approved application for development until all bills for services billable from escrow, have been received by the municipality from professional personnel rendering services in connection with such application and payment has been approved by the governing body.
- f. No professional personnel submitting charges to the municipality for any of the services referred to in paragraph a.1. of this subsection shall charge for any of the services contemplated by that paragraph at any higher rate or in any different manner than would normally be charged the municipality for similar work as ascertained by the professional's contract of employment with the municipality or by provisions of



the municipal salary resolution and/or ordinance. Payment of any bill rendered by a professional to the municipality with respect to any services for which the municipality is entitled to pay for the applicant's escrow account under this subsection shall in no way be contingent upon receipt of reimbursement by a developer, nor shall any payment to a professional be delayed pending reimbursement from a developer.

- g. Deposits received from any developer pursuant to paragraph d. shall be deposited in a banking institution or savings and loan association in this State insured by an agency of the Federal government, or in any other fund or depository approved for such deposits by the State, in an escrow account bearing interest at the minimum rate currently paid by the institution or depository on time or savings deposits. The municipality shall notify the applicant in writing of the name and address of the institution or depository in which the deposit is made and the amount of the deposit. The municipality shall not be required to refund an amount of interest paid on a deposit which does not exceed one hundred (\$100.00) dollars for the year. If the amount of interest exceeds one hundred (\$100.00) dollars that entire amount shall belong to the applicant and shall be refunded to him by the municipality annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be; except that the municipality may retain for administrative expenses a sum equivalent to no more than thirty-three and one-third (33 1/3%) percent of that entire amount, which shall be in lieu of all other administrative and custodial expenses.

(Ord. No. 94-3; Ord. No. 99-4 § I)