

**TOWNSHIP OF HAMPTON
ORDINANCE NO. 2021-12**

**AN ORDINANCE VESTING POWERS OF THE HAMPTON TOWNSHIP ZONING
BOARD OF ADJUSTMENT IN THE HAMPTON TOWNSHIP PLANNING BOARD**

WHEREAS, N.J.S.A. 40:55D-25c authorizes a municipality to choose to exercise all of the powers of a Zoning Board of Adjustment through its Planning Board; and

WHEREAS, the Governing Body of the Township of Hampton has determined that elimination of the Hampton Township Zoning Board of Adjustment and consolidation of all of its powers pursuant to the Municipal Land Use Law within the Hampton Township Planning Board would result in benefits and efficiencies to the applicants, municipal staff and community at large;

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Hampton as follows:

SECTION 1. Section 15-1, entitled "Establishment; composition", of Article I, entitled "Planning Board", of Chapter 15, entitled "Land Use Procedures", of the Revised General Ordinances of the Township of Hampton is amended to read as follows:

Section 15-1 Establishment; composition.

A. There is hereby established pursuant to P.L. 1975, c. 291, in the Township of Hampton a Planning Board of nine members, consisting of the following four classes:

(1) Class I: the Mayor.

(2) Class II: one of the officials of the municipality other than a member of the governing body, to be appointed by the Mayor, provided that, if there is 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 deemed to be the Class II Planning Board member if there is a member of the Board of Education among the Class IV members.

(3) Class III: a member of the governing body, to be appointed by it.

(4) Class IV: six other citizens of the township, to be appointed by the Mayor. The members of Class IV shall hold no other municipal office, except that one may be a member of the Board of Education. A member of the Environmental Commission who is also a member of the Planning Board as required by N.J.S.A. 40:56A-1 shall be a Class IV member unless there shall be among the Class IV members a member of the Board of Education, in which case, the member of the Environmental Commission shall be deemed to be a Class II member. 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 as holding a municipal office.

B. Alternate members.

(1) There may also be not more than four alternate members appointed to the Planning Board in the same manner as Class IV members, who shall be designated by the Mayor as "Alternate No. 1", "Alternate No. 2.", "Alternate No. 3" and "Alternate No. 4."

(2) Alternate members may participate in discussion 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 be chosen first, followed in turn by Alternate No. 2, then Alternate No. 3 and then Alternate No. 4, if necessary.

SECTION 2. Paragraph B of Section 15-2, entitled "Terms", of Article I, entitled "Planning Board", of Chapter 15, entitled "Land Use Procedures", of the Revised General Ordinances of the Township of Hampton is amended to read as follows:

B. The term of a Class IV member who is also a member of the Board of Education shall terminate whenever he/she is no longer a member of such body or at the completion of his/her Class IV term, whichever occurs first.

SECTION 3. Paragraph D of Section 15-2, entitled "Terms", of Article I, entitled "Planning Board", of Chapter 15, entitled "Land Use Procedures", of the Revised General Ordinances of the Township of Hampton is amended to read as follows:

D. Effective January 1, 2022 to stagger appointment expiration dates, Alternate No. 1 and Alternate No. 3 shall be appointed for a term of two years each; and Alternate No. 2 and Alternate No. 4 shall be appointed for a term of one year each. Said term of each alternate shall run from January 1 of the year in which the appointment is made. Thereafter, all appointments shall be made for terms of two years.

SECTION 4. Paragraph H of Section 15-7, entitled "Powers and duties generally.", of Article I, entitled "Planning Board", of Chapter 15, entitled "Land Use Procedures", of the Revised General Ordinances of the Township of Hampton is amended to read as follows:

H. Pursuant to N.J.S.A. 40:55D-25(c), to exercise, to the same extent and subject to the same restrictions, all powers of a Zoning Board of Adjustment as listed and provided under the Municipal Land Use Law including but not limited to the powers to:

(i) Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of the Zoning Chapter.

(ii) Hear and decide requests for interpretation of the Map or Zoning Chapter or for decisions upon other special questions upon which the Board is authorized to pass by provisions in the Zoning Chapter.

(iii) Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property or 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 the Zoning Chapter 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 the strict application of such regulation so as to relieve such difficulties or hardship; or 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 such regulations of the Zoning Chapter; provided, however, that no variance from those departures enumerated in N.J.S.A. 40:55D-70d shall be granted under this subsection.

(iv) In particular cases and for special reasons, grant a variance to allow departure from regulations set forth in the Zoning Chapter to permit a use or principal structure in a district restricted against such use or principal structure; an expansion of a nonconforming use; deviation from a specification or standard pursuant to N.J.S.A. 40:55D-67 pertaining solely to a conditional use; an increase in the permitted floor area ratio as defined in N.J.S.A. 40:55D-4; or 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-unit buildings which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision, in which event applications would be made pursuant to Subsection H(iii) above. A variance under this subsection shall be granted only by affirmative vote of at least five members of the Board.

No variance or other relief may be granted under the provisions 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 Zoning Chapter. In respect of any airport hazard areas delineated under the Air Safety and Hazardous Zoning Act of 1983, N.J.S.A. 6:1-80 et seq., no variance or other relief may be granted under the terms of this section permitting the creation or establishment of a nonconforming use which would be prohibited under the standards promulgated pursuant to that act, except upon issuance of a permit by the Commissioner of Transportation. An application under this section may be referred to any appropriate person or agency for its report, provided that such reference shall not extend the period of time within which the Board shall act.

In the event an application requires relief under N.J.S.A. 40:55D-70(d), the Class I and Class III members of the Planning Board shall not participate in the consideration thereof and said application shall be considered by no more than seven members/alternates.

SECTION 5. Section 15-7, entitled "Powers and duties generally.", of Article I, entitled "Planning Board", of Chapter 15, entitled "Land Use Procedures", of the Revised General Ordinances of the Township of Hampton is amended to add paragraphs L and M which shall read as follows:

L. Direct issuance of a permit pursuant to N.J.S.A. 40:55D-34 for a building or structure in the bed of a mapped street or public drainageway, flood control basin or public area reserved on the Official Map.

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

SECTION 6. Paragraph C of Section 15-8, entitled "Time Limits" of Article I, entitled "Planning Board", of Chapter 15, entitled "Land Use Procedures", of the Revised General Ordinances of the Township of Hampton is amended to read as follows:

C. The Board shall render its decision on variances not later than 120 days after an application has been determined to be complete pursuant to section 15-30.1, unless an earlier deadline is required by law. The Board shall render its decision on an appeal from the decision of an administrative officer not later than 120 days after the date the appeal is filed with the Board. The failure of the Board to render a decision within the applicable time period (120 days for variance applications

and specified time periods as provided otherwise for other subsequent applications), or within such further time as may be consented to by the applicant, shall constitute a decision favorable to the applicant, and the applicant shall comply with the provisions of § 15-34.4.

SECTION 7. Section 15-8, "Time Limits" of Article I, entitled "Planning Board", of Chapter 15, entitled "Land Use Procedures", of the Revised General Ordinances of the Township of Hampton is amended to add new Paragraph F which shall read as follows:

F. In the event that the developer elects to submit separate consecutive applications for a use variance, and then site plan approval, subdivision approval or conditional use approval, respectively, the 120-day provision shall apply to the application for approval of the variance, but the period for granting or denying any subsequent approval shall be as otherwise provided in this chapter.

SECTION 8. Section 15-12.2, "(Reserved)" of Article I, entitled "Planning Board", of Chapter 15, entitled "Land Use Procedures", of the Revised General Ordinances of the Township of Hampton is retitled "Annual review of certain decisions." which shall read as follows:

Section 15-12.2 Annual review of certain decisions.

The Planning Board shall, at least once a year, review its decisions on applications and appeals for variances and prepare and adopt by resolution a report on its findings on Zoning Ordinance provisions which are the subject of variance requests and its recommendations for Zoning Ordinance amendment or revision, if any. The Planning Board shall send copies of the report and resolution to the governing body.

SECTION 9. Article II, entitled "Zoning Board of Adjustment", of Chapter 15, entitled "Land Use Procedures", of the Revised General Ordinances of the Township of Hampton is deleted in its entirety.

SECTION 10. Article III, entitled "Provisions Applicable to Both Planning Board and Zoning Board of Adjustment", is retitled "Provisions Applicable to Planning Board"; and all sections therein shall be amended so as to strike any reference to "Zoning Board of Adjustment" and any conjunctive words linking "Planning Board" with "Zoning Board of Adjustment", such as "and" or "or" or "both" or "either"; and shall be further amended to add new Section 15.34.5 entitled "Expiration of variance" which shall read as follows:

Section 15-34.5 Expiration of variance.

- A. Any variance from the terms of this chapter hereafter granted by the Planning Board permitting the erection or alteration of any structure or structures or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance or unless such permitted use has actually been commenced within one year after the adoption of the resolution memorializing the Board's decision; 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 Planning Board to the governing body or to a court of competent jurisdiction until the termination in any manner of such appeal or proceeding.
- B. Notwithstanding the one-year limitation set forth in paragraph A of this section, any variance granted in conjunction with approval of an application for subdivision or site plan shall only

Planning Board or by the Superior Court of New Jersey on application or notice to the officer from whom the appeal is taken and on due cause shown.

D. Certification of completeness of application. Applications for development within the jurisdiction of the Planning Board shall be reviewed for completeness in accordance with the provisions of § 15-30.1 of this chapter.

Section 15-37. Power to reverse or modify decisions.

In exercising the above-mentioned power, the Planning Board may, in conformity with the provisions of c. 291, P.L. 1975,[1] or amendments thereto or subsequent statutes applying, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from and make such other requirement, decision or determination as ought to be made and to that end have all the powers of the administrative officer from whom the appeal is taken.

SECTION 12. Section 17-2, entitled "Membership", of Chapter 17, entitled "Open Space Committee"; of the Revised General Ordinances of the Township of Hampton, is amended to read as follows:

Section 17-2 Membership.

The Open Space Committee shall be comprised of the following persons:

- A. One member of the Township Committee of the Township of Hampton appointed by the Township Committee.
- B. Three Planning Board members of the township appointed by the Township Committee.
- C. Three residents of the township appointed by the Township Committee.

SECTION 13: Sections 91-3, entitled "Administration", of Chapter 91, entitled "Subdivision of Land", of the Revised General Ordinances of the Township of Hampton, is amended to read as follows:

Section 91-3 Administration.

The provisions of the chapter shall be administered by the Township of Hampton Planning Board in accordance with all applicable provisions of N.J.S.A. 40:55D-1 et seq.

SECTION 14. The following sections and/or subsections of the Revised General Ordinances of the Township of Hampton, shall be amended so as to strike any reference to "Zoning Board of Adjustment" or "Board of Adjustment" and any conjunctive words linking "Planning Board" with "Zoning Board of Adjustment" or "Board of Adjustment", such as "and" or "or" or "both" or "either": Section 35-14, entitled "Kennels, pet shops, shelters and pounds", of Chapter 35, entitled "Animal Control, Domestic"; Paragraph A of Section 44-6, entitled "New development of multifamily residential units or commercial, institutional, or industrial properties" of Chapter 44, entitled "Recycling"; Sections 48-2, entitled "Definitions", 48-5, entitled "Procedures and submission requirements for geotechnical investigations in Carbonate Area District", 48-8, entitled "On-site investigation protocol", 48-10, entitled "Township review of geotechnical investigation report", and 48-13, entitled "Application and escrow review fees" of Chapter 48 entitled "Carbonate Area Development"; Paragraph E of Section 56-4, entitled "Other fees; general regulations" and Paragraph D, entitled "Completeness of application; escrow fees" of Section 56-6, entitled "Professional review and expert witness fees incurred by township; reimbursement by applicant to township" of Chapter 56, entitled "Development and Application Fees"; Paragraph B of Section 58-1, entitled "Permits required, exemptions", of Chapter 58, entitled "Excavations"; Sections 85-1.1, entitled

"Definitions", 85-2, entitled "Site plan review and approval required", Paragraph A of 85-5, entitled "Time limit for determination of application as incomplete or complete; time limit for preliminary approval; amendment procedure", 85-8, entitled "Site plan details for preliminary approval", and 85-9.3 entitled "Final site plan details", of Chapter 85, entitled "Site Plan Review"; Sections 91-4, entitled "Terms defined", 91-6, entitled "Submission of preliminary plat of major subdivision for preliminary approval", 91-8, entitled "Submission of final plat of major subdivision", 91-10, entitled "Preliminary plat", 91-17, entitled "Lots" of Chapter 91, entitled "Subdivision of Land"; and Paragraph E(5)[a] of Section 108-12 entitled "R-3 Single-Family Residential District", Paragraph E(5)[a] of Section 108-12.1, entitled "R-2 Single-Family Residential District", and Sections 108-15, entitled "HC Highway Commercial District", 108-23, entitled "Lighting", 108-30.10, entitled "Signs at automobile sales, service and vehicle rental establishments", and 108-52, entitled "Outdoor sales" of Chapter 108, entitled "Zoning".

SECTION 15. The following sections and/or articles of the Revised General Ordinances of the Township of Hampton, shall be amended so as to replace the words "Zoning Board of Adjustment" or "Board of Adjustment" with the words "Planning Board": Sections 62-11, entitled "Variance procedure" of Chapter 62, entitled "Flood Damage Prevention"; 87-3, entitled "Definitions", 87-4, entitled "Permit required", 87-7, entitled "Factors considered in approving permits" of Chapter 87, entitled "Soil Removal and Importation"; and Sections 108-10, entitled "Interpretation of boundaries", 108-25, entitled "Nonconforming uses, structures and lots" and 108-48, entitled "Permits required", of Chapter 108, entitled "Zoning".

SECTION 16. Applications pending before the Zoning Board of Adjustment on the effective date of this Ordinance shall be transferred to the Planning Board for continuation of the application process before the Planning Board.

SECTION 17. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this Ordinance shall not be affected thereby but shall remain in full force and effect.


SECTION 18. All ordinances or parts of ordinances inconsistent with or contrary to the provisions of this Ordinance are hereby repealed to the extent of such inconsistency or contrariness.

SECTION 19. This Ordinance shall take effect on January 1, 2022.

CERTIFICATION

I hereby certify that Ordinance #2021-12 was adopted by the Hampton Township Committee at their regular meeting held on October 26, 2021 at the Hampton Township Municipal Building, Baleville, Sussex County, New Jersey.

Date: 10/26/21


Kathleen Armstrong, RMC
Township Clerk

NOTICE

NOTICE IS HEREBY GIVEN that the attached Ordinance #2021-12 was introduced at a regular meeting of the Township Committee of the Township of Hampton, Sussex County, New Jersey, held on the 28th day of September, 2021 and passed on first reading, and that such Ordinance will be further considered for final passage and adoption at the regular meeting of the Township Committee to be held on the 26th day of October, 2021 at the Municipal Building, One Rumsey Way, in the Township of Hampton, at 7:00 p.m., and that at such time and place all persons interested be given an opportunity to be heard concerning said Ordinance.

**HAMPTON TOWNSHIP
NOTICE
ORDINANCE 2021-12**

NOTICE IS HEREBY GIVEN that the foregoing Ordinance #2021-12 was adopted at Final Reading at the regular meeting of the Township Committee of the Township of Hampton, County of Sussex held on Tuesday, October 26, 2021, at the Hampton Township Municipal Building, Baleville, N.J.