

Borough of Rocky Hill
Planning Board
Minutes of the Regular Meeting
February 16, 2017

The regular meeting of the Planning Board of the Borough of Rocky Hill was called to order by Chair Michael Goldman at 7:30 PM followed by the salute to the flag.

PLEDGE OF ALLEGIANCE

NOTICE OF COMPLIANCE WITH OPEN PUBLIC MEETINGS ACT

ROLL CALL

Attendee Name	Title	Status	Arrived
Robert Ashbaugh	Councilman	Present	
Jeff Donahue	Mayor	Absent	
Michael Goldman	Chair	Present	
Linda Goldman	Class IV	Present	
Irene Battaglia	Class IV	Present	
Brian Nolan	Class IV	Present	
Michael Giambra	Mayor's Alternate	Absent	
Dan Kluchinski	Alternate 2	Absent	
Tim Corlis	Alternate 1	Absent	
Robert Ayrey	Class IV	Present	
Raymond Whitlock	Class IV	Absent	
Mark Blasch	Zoning Officer	Present	

Also present: Planning Board Attorney Jolanta Maziarz and Planning Board Recording Secretary Christine Witt.

CHAIRMAN'S COMMENTS

APPROVAL OF THE MINUTES

1. Planning Board - Reorg Meeting - Jan 19, 2017 7:30 PM

RESULT:	ACCEPTED AS AMENDED [UNANIMOUS]
MOVER:	Linda Goldman, Class IV
SECONDER:	Brian Nolan, Class IV
AYES:	Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Brian Nolan, Robert Ayrey, Mark Blasch
ABSENT:	Jeff Donahue, Michael Giambra, Dan Kluchinski, Tim Corlis, Raymond Whitlock

Exec Session Minutes

1. Motion to Accept Executive Session Minutes

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Linda Goldman, Class IV
SECONDER:	Mark Blasch, Zoning Officer
AYES:	Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Brian Nolan, Robert Ayrey, Mark Blasch
ABSENT:	Jeff Donahue, Michael Giambra, Dan Kluchinski, Tim Corlis, Raymond Whitlock

OPEN PUBLIC COMMENT

No public was present.

APPLICATIONS

None.

UNFINISHED BUSINESS

1. Revised Bylaws

All previous comments have been incorporated by Linda and Michael Goldman. Ms. Goldman informed the Board that she researched the issue of abstentions and found case law stating that a quorum must vote on an application and that abstentions do not count towards a quorum. A typo under Payment of Taxes will be corrected.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mark Blasch, Zoning Officer
SECONDER:	Linda Goldman, Class IV
AYES:	Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Brian Nolan, Robert Ayrey, Mark Blasch
ABSENT:	Jeff Donahue, Michael Giambra, Dan Kluchinski, Tim Corlis, Raymond Whitlock

2. Revised Application Form

Skillman Avenue will be added to the list of roads in the Historic District, and Historic Subcommittee will be replace language in the 6th paragraph on page 2. A hyperlink to the National Register Nomination Form will be added.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Brian Nolan, Class IV
SECONDER:	Irene Battaglia, Class IV
AYES:	Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Brian Nolan, Robert Ayrey, Mark Blasch
ABSENT:	Jeff Donahue, Michael Giambra, Dan Kluchinski, Tim Corlis, Raymond Whitlock

NEW BUSINESS

Ms. Goldman discussed the need for a clean up ordinance to fix errors noted when the land use ordinance was codified by General Code. Ms. Goldman suggested that the Planning Board may

request that the Council adopt other changes, as well, such as increasing escrow fees and requiring e-submissions.

FINAL OPEN PUBLIC COMMENT

No public was present.

EXECUTIVE SESSION

No Executive Session was needed.

RESULTS OF EXECUTIVE SESSION (IF ANY)

ADJOURNMENT

Mr. Nolan moved to adjourn at 8:07 PM, Mr. Ashbaugh seconded, and motion carried on voice vote.

Borough of Rocky Hill
 Planning Board
 Minutes of the Regular Meeting
 January 19, 2017

The regular meeting of the Planning Board of the Borough of Rocky Hill was called to order by Chair Michael Goldman at 7:30 PM followed by the salute to the flag.

PLEDGE OF ALLEGIANCE

NOTICE OF COMPLIANCE WITH OPEN PUBLIC MEETINGS ACT

OATH OF OFFICE/APPOINTED MEMBERS

1. Oath of Office Robert Ashbaugh
2. Oath of Office Irene Battaglia
3. Oath of Office Mark Blasch
4. Oath of Office Tim Corlis
5. Oath of Office Michael Giambra
6. Oath of Office Michael Goldman

ROLL CALL

Attendee Name	Title	Status	Arrived
Robert Ashbaugh	Councilman	Present	
Jeff Donahue	Mayor	Absent	
Michael Goldman	Chair	Present	
Linda Goldman	Class IV	Present	
Irene Battaglia	Class IV	Present	
Brian Nolan	Class IV	Present	
Michael Giambra	Mayor's Alternate	Present	
Dan Kluchinski	Alternate 2	Present	
Tim Corlis	Alternate 1	Present	
Robert Ayrey	Class IV	Absent	
Raymond Whitlock	Class IV	Present	
Mark Blasch	Zoning Officer	Present	

Also present: Planning Board Recording Secretary Christine Witt. Attorney Jolanta Maziarz, and Planner Tamara Lee.

NOMINATIONS/APPOINTMENTS

1. Nomination of Planning Board Chair

Mr. Goldman was nominated as Planning Board Chair.

Minutes Acceptance: Minutes of Jan 19, 2017 7:30 PM (APPROVAL OF THE MINUTES)

RESULT: ADOPTED [UNANIMOUS]
MOVER: Raymond Whitlock, Class IV
SECONDER: Brian Nolan, Class IV
AYES: Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Brian Nolan, Michael Giambra, Dan Kluchinski, Tim Corlis, Raymond Whitlock, Mark Blasch
ABSENT: Jeff Donahue, Robert Ayrey

2. Nomination of Planning Board Vice Chair

Mr. Nolan was nominated as Planning Board Vice Chair.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Raymond Whitlock, Class IV
SECONDER: Robert Ashbaugh, Councilman
AYES: Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Brian Nolan, Michael Giambra, Dan Kluchinski, Tim Corlis, Raymond Whitlock, Mark Blasch
ABSENT: Jeff Donahue, Robert Ayrey

3. Nomination of Planning Board Secretary

Ms. Battaglia was nominated as Planning Board Secretary.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Linda Goldman, Class IV
SECONDER: Raymond Whitlock, Class IV
AYES: Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Brian Nolan, Michael Giambra, Dan Kluchinski, Tim Corlis, Raymond Whitlock, Mark Blasch
ABSENT: Jeff Donahue, Robert Ayrey

4. Appointment of Planning Board Recording Secretary

Ms. Witt was appointed Planning Board Recording Secretary by Chair Goldman.

RESULT: ADOPTED [UNANIMOUS]
AYES: Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Brian Nolan, Michael Giambra, Dan Kluchinski, Tim Corlis, Raymond Whitlock, Mark Blasch
ABSENT: Jeff Donahue, Robert Ayrey

5. Appointment of Subcommittees

Mr. Goldman appointed Mr. Kluchinski, Mr. Nolan, Zoning Official Mark Blasch, and himself to the Historic Preservation Subcommittee.

RESULT: ADOPTED [UNANIMOUS]
AYES: Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Brian Nolan, Michael Giambra, Dan Kluchinski, Tim Corlis, Raymond Whitlock, Mark Blasch
ABSENT: Jeff Donahue, Robert Ayrey

REORGANIZATION RESOLUTIONS

1. 2017 Meeting Schedule

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Raymond Whitlock, Class IV
SECONDER:	Michael Goldman, Chair
AYES:	Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Brian Nolan, Michael Giambra, Dan Kluchinski, Tim Corlis, Raymond Whitlock, Mark Blasch
ABSENT:	Jeff Donahue, Robert Ayrey

2. Designation of Official Newspaper

The Courier News and Somerset County Spectator were designated the official newspapers.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Linda Goldman, Class IV
SECONDER:	Brian Nolan, Class IV
AYES:	Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Brian Nolan, Michael Giambra, Dan Kluchinski, Tim Corlis, Raymond Whitlock, Mark Blasch
ABSENT:	Jeff Donahue, Robert Ayrey

3. Appointment of Board Attorney

Woolson Anderson Maziarz PC was appointed as the Planning Board law firm.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Linda Goldman, Class IV
SECONDER:	Raymond Whitlock, Class IV
AYES:	Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Brian Nolan, Michael Giambra, Dan Kluchinski, Tim Corlis, Raymond Whitlock, Mark Blasch
ABSENT:	Jeff Donahue, Robert Ayrey

4. Appointment of Board Engineer

Van Cleef Engineering Associates was appointed as the Planning Board engineering firm.

RESULT:	ADOPTED [9 TO 0]
MOVER:	Raymond Whitlock, Class IV
SECONDER:	Irene Battaglia, Class IV
AYES:	Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Brian Nolan, Michael Giambra, Tim Corlis, Raymond Whitlock, Mark Blasch
ABSTAIN:	Dan Kluchinski
ABSENT:	Jeff Donahue, Robert Ayrey

5. Appointment of Board Planner

Tamara Lee Consulting was appointed as the Planning Board planner.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mark Blasch, Zoning Officer
SECONDER:	Robert Ashbaugh, Councilman
AYES:	Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Brian Nolan, Michael Giambra, Dan Kluchinski, Tim Corlis, Raymond Whitlock, Mark Blasch
ABSENT:	Jeff Donahue, Robert Ayrey

CHAIRMAN'S COMMENTS

None.

APPROVAL OF THE MINUTES

1. Planning Board - Regular Meeting - Dec 15, 2016 7:30 PM
2. Motion to Approve Minutes of December 15, 2016

RESULT:	ADOPTED [7 TO 0]
MOVER:	Linda Goldman, Class IV
SECONDER:	Irene Battaglia, Class IV
AYES:	Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Michael Giambra, Dan Kluchinski, Mark Blasch
ABSTAIN:	Brian Nolan, Tim Corlis, Raymond Whitlock
ABSENT:	Jeff Donahue, Robert Ayrey

OPEN PUBLIC COMMENT

The floor was open to public comment, hearing none, the floor was immediately closed.

APPLICATIONS (NONE PENDING)

None.

UNFINISHED BUSINESS

None.

NEW BUSINESS

1. Discussion of Bylaws

The Board resumed its discussion of the bylaws. Mr. Ashbaugh suggested that the language regarding the effect of abstentions be changed to reflect the language in Robert's Rules of Order. The Board discussed the section on multiple disqualifications and found that is in accordance with the law. The Board acknowledged that a development committee may deem an application complete and that such a committee is permitted, not required. A Master Plan review committee will be appointed next year. Mr. Whitlock suggested that applicants

provide proof of payment of taxes at the time of application and at the time of decision since some applications are heard of an extended period of time.

2. Application Form Review

The Board compared two forms of the amended application, one in the traditional format and one in a Frequently Asked Questions (FAQ) format. The majority of the Board favored the FAQ format. Comments will be incorporated into the draft FAQ version of the application form and presented again at the next meeting.

FINAL OPEN PUBLIC COMMENT

The floor was open to public comment, hearing none, the floor was immediately closed.

EXECUTIVE SESSION (IF NEEDED)

1. Motion to retire into Executive Session (8:42 PM)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Brian Nolan, Class IV
SECONDER:	Raymond Whitlock, Class IV
AYES:	Robert Ashbaugh, Michael Goldman, Linda Goldman, Irene Battaglia, Brian Nolan, Michael Giambra, Dan Kluchinski, Tim Corlis, Raymond Whitlock, Mark Blasch
ABSENT:	Jeff Donahue, Robert Ayrey

2. Resolution to Retire into Executive Session to Discuss Affordable Housing Litigation

RESULTS OF EXECUTIVE SESSION (IF ANY)

ADJOURNMENT

Mr. Nolan moved to adjourn the meeting at 9:10 PM, Mr. Whitlock seconded, and motion carried on voice vote.

MEETING TOPICS

Minutes Acceptance: Minutes of Jan 19, 2017 7:30 PM (APPROVAL OF THE MINUTES)

BOROUGH OF ROCKY HILL

JOINT PLANNING AND ZONING BOARD BY-LAWS

APPROVED: MAY 10, 2005
AMENDED: February 2017

BOROUGH OF ROCKY HILL
15 Montgomery Avenue
P.O. Box 188
Rocky Hill, NJ 08553
(609) 924-7445

Attachment: PB_bylaws_proposed Feb_2017 (DOC-2017-30 : Revised Bylaws)

**BOROUGH OF ROCKY HILL
JOINT PLANNING AND ZONING BOARD BY-LAWS**

PART I. ORGANIZATION AND ADMINISTRATION.

Rule 1:1. Annual Organization; Elections; Meetings.

- 1:1-1. Organization Meeting.
- 1:1-2. Election of Officers.
- 1:1-3. Board Attorney.
- 1:1-4. Board Engineer.
- 1:1-5. Board Planner.
- 1:1-6. Other Consultants.
- 1:1-7. Committees and Subcommittees.

Rule 1:2. Elections to Office and Duties.

- 1:2-1. Vote to Elect; Term.
- 1:2-2. Chair.
- 1:2-3. Vice-Chair.
- 1:2-4. Secretary.
- 1:2-5. Recording Secretary

Rule 1:3. Meetings.

- 1:3-1. Regular Meetings.
- 1:3-2. Special Meetings.
- 1:3-3. Quorum.
- 1:3-4. Open Meetings.
- 1:3-5. Order of Business.
- 1:3-6. Time Limitations.
- 1:3-7. Parliamentary Procedure.

PART II. PROCEDURES

Rule 2:1. Applications and Hearings.

- 2:1-1A. Administration of Applications to be heard by the Planning Board; Completeness.
- 2:1-1B. Administration of Minor Preservation Applications to be heard by the Historic Review Subcommittee; Completeness, Determination, Findings, and Appeal.
- 2:1-2. Scheduling; Transmittals.
- 2:1-3. Filing of Maps and Documents.

Rule 2:2. Hearing Procedure.

Attachment: PB_bylaws_proposed Feb_2017 (DOC-2017-30 : Revised Bylaws)

- 2:2-1. Appearance by Parties.
- 2:2-2. Testimony Under Oath.
- 2:2-3. Order of Presentation.
- 2:2-4. Reports from Officers, Boards or Agencies.
- 2:2-5. Continuances.
- 2:2-6. Refusal to Consent to Continuance.
- 2:2-7. Testimony from Board-Employed and Other Expert.
- 2:2-8. Viewing by Board; Personal Knowledge of Board Members; Interaction with Interested Parties.
- 2:2-9. Evidence; Exhibits.
- 2:2-10. Effect of Covenants, Judgments and Other Regulations Affecting Land Use.
- 2:2-11. Letters and Petitions in Objection.
- 2:2-12. Burden of Proof.

Rule 2:3. Voting.

- 2:3-1. Voting Procedure.
- 2:3-2. Voting Margin and Effect.
- 2:3-3. Abstentions.
- 2:3-4. Voting Eligibility; Review of Record.
- 2:3-5. Voting Eligibility: N.J.S.A. 40:55D-70(d) applications.

Rule 2:4. Other Hearing Requirements and Procedures.

- 2:4-1. Record of Proceedings.
- 2:4-2. Transcripts.
- 2:4-3. Inability to Make *Verbatim* Record.
- 2:4-4. Subpoenas; Contempt.
- 2:4-5. Perjury.
- 2:4-6. Judicial Notice.
- 2:4-7. Dismissal Without Prejudice.
- 2:4-8. Amended Applications.
- 2:4-9. Time of Decision Rule.
- 2:4-10. Conditions.

PART III. TAKING ACTION ON APPLICATIONS.

Rule 3:1. Decisions.

- 3:1-1. Decision Based on Evidence.
- 3:1-2. Alternative Relief.
- 3:1-3. Reservation of Decision.
- 3:1-4. Memorializing Resolution.
- 3:1-5. Contents of Resolution; Publication.

- 3:1-6. Nature of Resolution Drafts.
- 3:1-7. Time.
- 3:1-8. Publication of Notices of Decisions.

Rule 3:2. Rehearing; Modification.

- 3:2-1. Misrepresentation, Fraud, Mistake.
- 3:2-2. Rehearing.
- 3:2-3. Appeal of the Historic Review Subcommittee Decision regarding a Minor Preservation Plan.

PART IV. AVAILABILITY AND ELIGIBILITY OF MEMBERS.

Rule 4:1. Alternate Members.

- 4:1-1. Designation.
- 4:1-2. Appointment of Alternate to Serve on Case.
- 4:1-3. Alternate to Serve Until Final Disposition.
- 4:1-4. Alternate No.1 to Vote.
- 4:1-5. Alternate Not to Serve at Adjourned or Continued Hearing Unless Present at Prior Hearings.
- 4:1-6. Rights and Privileges.
- 4:1-7. Participation in Discussions; Voting.

Rule 4:2. Disqualification for Interest.

- 4:2-1. Disqualification Generally.
- 4:2-2. Local Government Ethics Law.
- 4:2-3. Examples of Disqualification for Interest.
- 4:2-4. Removal From Panel.
- 4:2-5. Disclosure of Possible Conflicts; Waiver by Parties.
- 4:2-6. Remedy.
- 4:2-7. Disclosure of Reason for Disqualification.
- 4:2-8. Multiple Disqualifications.

Rule 4:3. Attendance.

- 4:3-1. Determination of Vacancy for Excessive Absences.

Rule 4:4. Certification.

- 4:4-1. Mandatory Training

PART V. MISCELLANEOUS MATTERS.**Rule 5:1. Fees.**

- 5:1-1. Application Fees.
- 5:1-2. Escrow Deposits for Professional Services.
- 5:1-3. Special Meeting Costs.

Rule 5:2. Committees and Subcommittees.

- 5:2-1. Standing Committees and Subcommittees.
- 5:2-2. Committee and Subcommittee Composition.
- 5:2-3. Special Committees and Subcommittees.

Rule 5:3. Payment of Taxes.

- 5:3-1. Proof of Payment; Alternative Agreement.

Rule 5:4. Amendments.

- 5:4-1. Amendments to the Rules

PREFACE

The Rocky Hill Borough Board (hereinafter "Board" or "Planning Board") is a joint Planning and Zoning Board pursuant to *N.J.S.A. 40:55D-25c*. Further, pursuant to *N.J.S.A. 40:55D-27(d)*, the Rocky Hill Planning Board shall exercise the powers of the Historic Preservation Commission.

PART I. ORGANIZATION AND ADMINISTRATION.

Rule 1:1. Annual Organization; Elections; Meetings.

1:1-1. Organization Meeting. The Board shall convene a meeting on the third Thursday, or as otherwise scheduled and noticed, in January in each year at 7:30 p.m. for the purpose of organizing the affairs of the Board for the calendar year.

1:1-2. Election of Officers. At the organization meeting, the Board shall elect from its Class IV members a Chair, a Vice-Chair, and a Secretary. The Board shall appoint a Recording Secretary. The Recording Secretary shall be compensated upon agreement and in accordance with the ordinances and/or determinations of the Planning Board and Governing Body of the Borough of Rocky Hill.

1:1-3. Board Attorney. The Board shall annually appoint or reappoint an Attorney-At-Law of the State of New Jersey having recognized competence in the law of local governments, land use and zoning. The Board Attorney shall be compensated pursuant to an agreement and shall be the legal advisor and representative of the Planning Board. The Board Attorney shall prosecute and defend litigation and appeals on behalf of the Board.

1:1-4. Board Engineer. The Board shall annually appoint or reappoint a licensed professional engineer in the State of New Jersey. The Board Engineer shall be compensated pursuant to an agreement. At the direction of the Board, the Engineer shall review and report on the applications and other matters pending before the Board and attend meetings of the Board as directed.

1:1-5. Board Planner. The Board shall annually appoint or reappoint a licensed professional planner in the State of New Jersey. The Board Planner shall be compensated pursuant to an agreement. At the direction of the Board, the Board Planner ~~who~~ shall review and report on applications and land use matters, prepare the Master Plan and reexamination reports as well as attend meetings as directed.

1:1-6. Other Consultants. The Board may also appoint such other officers and/or assistants and engage such additional experts or staff as it may be necessary.

1:1-7. Committees and Subcommittees. The Board shall appoint annually the members of the Historic Review Subcommittee to act on Minor Preservation Plans as specified in **§80-40C** of the *Code of the Borough of Rocky Hill*. Other committees and subcommittees shall be appointed as needed.

Rule 1:2. Elections to Office and Duties.

1:2-1. Vote to Elect; Term. The Planning Board shall elect a Chair, a Vice-Chair and a Secretary annually. A candidate receiving the majority vote of the members of the Planning Board present shall be deemed elected to the office for which the vote was taken and shall serve until he or she is re-elected or his or her successor shall take office.

1:2-2. Chair. The Chair shall preside at all meetings and hearings of the Board, decide all points of order and matters of procedure governing said meetings or hearings, and shall perform all the duties normally appertaining to his or her office, as required by law, ordinance, these rules or prevailing parliamentary practice.

1:2-3. Vice-Chair. The Vice-Chair shall preside at all Board meetings and hearings in the absence or upon the disqualification of the Chair, and shall have all of the powers of the Chair under such circumstances.

1:2-4. Secretary. The Secretary shall preside at all Board meetings and hearings in the absence or upon the disqualification of the Chair and Vice-Chair, and shall have all of the powers of the Chair under such circumstances.

1:2-5. Recording Secretary. The Recording Secretary shall perform the secretarial work of the Board, including, but not limited to the following:

- (a) receive and/or issue all official correspondence, compile all required records, keep and maintain all necessary files and indexes with respect to the operation of the Board, cause all notices of meetings required to be given by the Board pursuant to the Open Public Meetings Act, the Municipal Land Use Law or any other applicable law or ordinance;
- (b) attend all meetings of the Board, take and have custody of all records, documents, maps, plans and evidence, and provide for the care and custody of items for which no other provision is made by statute or these rules; take or direct the taking of roll call votes, and insure the recordation of affirmative and negative votes as well as abstentions;
- (c) make a transcription record of the proceedings of each hearing of the Board in accordance with these rules and keep minutes of the proceedings of each meeting (including work sessions) held by the Board and enter therein such resolutions and orders as are adopted by the Board;
- (d) cause to be mailed or otherwise delivered or made available to each member of the Board and the professional consultants to the Board true copies of the minutes and all other documents and materials pertaining to the business of the Board;

- (e) perform such other duties as normally appertain to the office of Recording Secretary of the Planning Board, and assign such parts of such duties as may be appropriate to an assistant or designee.

Rule 1:3. Meetings.

1:3-1. Regular Meetings. Meetings of the Planning Board shall be held at the Borough municipal building at 7:30 p.m. on the third Thursday of each month. If the regular meeting falls on a legal holiday, such meeting shall be held on the next succeeding secular day or such other day as the Board may select. Whenever there are no matters to be considered at any regular meeting other than the organization meeting, the Chair may dispense with such meeting by directing the Recording Secretary to provide notice of cancellation to each member of the Board by reasonable means and as soon as possible in advance of the time set for such meeting and by giving notice in accordance with the Open Public Meetings Act or otherwise posting the cancellation for the convenience and interests of the public.

1:3-2. Special Meetings. Special Meetings may be called by the Chair or, in his or her absence, by the Vice-Chair, at any time or upon the request of two (2) or more members of the Board, provided that the Special Meeting is discussed at a regular Planning Board meeting and thereafter noticed as required by law. An applicant may request but shall not be entitled to a special meeting. Special Meetings at the request of an applicant may be scheduled at the pleasure of the Board provided the public interest is fairly and reasonably served. The applicant shall be responsible for all fees and costs related thereto.

1:3-3. Quorum. At all meetings of the Board, a quorum to conduct any business of the Board shall consist of five (5) qualified members. In the absence of a quorum, the members present may convene a meeting only for the purpose of adjourning the same to another date. No hearing may proceed without a qualified quorum of the Board for that particular hearing. In the consideration of applications for development which involve relief pursuant to subsection d. of section 57 of P.L. 1975, c. 291 (*N.J.S.A. 40:55D-70*), the Class I and Class III members shall not participate in the hearing nor be counted for quorum purposes.

1:3-4. Open Meetings. Except as otherwise provided in these rules and regulations, the meetings of the Board shall be open to the public at all times. Nothing herein shall be construed to limit the discretion of the Board to permit, prohibit or regulate the active participation of the public at any meeting. The Board may exclude the public only from those portions of a meeting at which the Board discusses matters within the exclusions provided under *N.J.S.A. 10:4-12b* and/or *N.J.S.A. 40:55D-9b*.

1:3-5. Order of Business. Subject to the discretion of the Chair to the contrary, the order of business for all regular sessions of the Board shall be as follows:

- (a) call to order;
- (b) pledge of allegiance;
- (c) notice of compliance with Open Public Meetings Act;
- (d) roll call;

- (e) Chair's comments;
- (f) approval of minutes of previous meetings;
- (g) open public comments;
- (h) applications;
- (i) unfinished business;
- (j) new business
- (k) final open public comment;
- (l) executive session, if any;
- (m) results of executive session, if any;
- (n) adjournment.

1:3-6. Time Limitations. The Board shall be under no obligation to consider new matters after 10:00 p.m., and will take no new testimony beyond 10:15 p.m. This rule may be waived by an affirmative vote by a majority of the Board members then present and qualified.

1:3-7. Parliamentary Procedure. Robert's Rules of Order, latest edition shall be followed whenever a particular procedure or practice is not contemplated by these rules.

PART II. PROCEDURES.

Rule 2:1. Applications and Hearings.

All applications for permits pursuant to Chapter 80, Development Regulations, of the *Code of the Borough of Rocky Hill*, shall be reviewed by the Administrative Officer to classify such applications as matters for review by the Planning Board or by the Zoning Board and in consultation with the Board professionals determine a listing of the specific requests for relief. Further, the Administrative Officer shall classify an application for preservation plan approval as either a major or a minor preservation plan in accordance with the definitions of major and minor preservation plans as articulated in §80-3 of the *Code of the Borough of Rocky Hill*.

2:1-1A. Administration of Applications to be heard by the Planning Board; Completeness.

(1) Applications for development, variances, major preservation plan permits, and minor preservation plan permits associated with a development application shall be considered by the Board in accordance with Chapter 80 of the *Code of the Borough of Rocky Hill*. Upon receipt of an application by the Administrative Officer, the application shall be assigned a docket number which shall thereafter appear on all subsequent papers filed in the case. The docket number should start with the calendar year and contain the block and lot(s) of the property. The original copy of the application, together with a copy of all other documents filed with the application, shall be filed in the permanent case docket of the Board.

(2) Completeness Review

(a) An application shall not be accepted for filing unless accompanied by all appropriate documentation as well as any required application and escrow fees. Where required, the applicant must provide a certification from the Tax Collector that all taxes on the subject property are paid up to the date of the application. Where public noticing is required, the applicant must provide a draft of the notice to be given to the owners of the neighboring properties and to be published in Borough's official newspaper for review by the Administrative Officer.

(b) When an application has been filed, the Administrative Officer shall review the application to assure that all documents required by Chapter 80 of *the Code of the Borough of Rocky Hill* have been received. The Recording Secretary shall immediately forward the application to the Planning Board Engineer, the Planner and the Attorney for completeness review pursuant to their respective areas and advise them of the filing date of the application.

(c) The Planning Board Engineer, the Planner and the Attorney shall review the application for completeness and email the Administrative Officer and the Recording Secretary with the determination of whether the application is complete or incomplete. If incomplete, the email shall state the information that is lacking with regard to the Borough's Development Regulations.

(d) Within forty-five days of the submission of the application, the Administrative Officer, after receiving the determinations of the Planning Board Engineer, Planner, and Attorney, shall notify the applicant in writing or by email that the application is complete or incomplete.

(e) If the application is deemed incomplete, then a specific list of the deficiencies must be provided to the applicant in writing or by email. The applicant may submit the missing material or request a submission waiver. If the Planning Board Engineer, Planner or Attorney noted the application deficiency, then any additional material submitted or any submission waiver request must be reviewed by said respective Board Professional in concert with the Administrative Officer in order to determine that the cited deficiency has been addressed and the application can then be deemed complete.

(3) Determination of Completeness: establishing the 45-day review period.

Upon a determination of completeness, the Administrative Officer shall so notify in writing or by email the applicant, and the application shall be determined to be complete as the date of the letter or the email for purposes of commencement of the time period within which the Board must act upon an application. The Recording Secretary shall immediately

forward a copy of the letter or email to the Board and its Professionals so that they are noticed of the commencement of the application review period.

2:1-1B. Administration of Minor Preservation Plan Applications to be heard by the Historic Review Subcommittee; Completeness, Determination, Findings, and Appeal.

(1) Applications for minor preservation plan permits shall be considered by the Board in accordance with Chapter 80 of *the Code of the Borough of Rocky Hill*. Upon receipt of an application by the Administrative Officer, the application shall be assigned a docket number which shall thereafter appear on all subsequent papers filed in the case. The docket number should start with the calendar year and contain the block and lot(s) of the property. The original copy of the application, together with a copy of all other documents filed with the application, shall be filed in the permanent case docket of the Board.

(2) Completeness Review

(a) An application shall not be accepted for filing unless accompanied by all appropriate documentation as well as any required application and escrow fees

(b) When an application has been filed, the Administrative Officer shall review the application to assure that all documents required by Chapter 80 of *the Code of the Borough of Rocky Hill* have been received. The Administrative Officer shall email a copy of the application and its supporting documentation to the members of the Historic Review Subcommittee (HRS).

(c) The members of the HRS shall review the application for completeness and confirm or deny that the application meets the definition of a Minor Preservation Plan as in Chapter 80-3 of the *Code of the Borough of Rocky Hill*. If the HRS finds that the minor preservation plan does not conform to the definition of a Minor Preservation Plan, the application shall be resubmitted as a Major Preservation Plan subject to full Planning Board review.

(d) After conferring with the members of the HRS, the Chair of the HRS shall email the Administrative Officer with the determination of whether the application is complete or incomplete. If incomplete, the email shall state which information is lacking with regard to the Borough's Development Regulations.

(e) Within forty-five days of the submission of the application, the Administrative Officer, after receiving the determination from the Chair of the HRS shall notify the applicant in writing or by email that the

application is complete or incomplete or if the application needs to be resubmitted as a Major Preservation Plan.

(f) If the application is deemed incomplete, then a specific list of the deficiencies must be provided to the applicant in writing or by email. The applicant may submit the missing material or request a submission waiver. If the HRS noted the application deficiency, then any additional material submitted or any submission waiver request must be reviewed by HRS Chair in concert with the Administrative Officer in order to determine that the cited deficiency has been addressed and the application can then be deemed complete.

(3) Determination of Completeness: establishing the 45-day review period.

Upon a determination of completeness, the Administrative Officer shall so notify by email the applicant. The application shall be determined to be complete as of the date of the email for purposes of commencement of the time period within the Board must act upon an application.

(4) Minor Preservation Plan Review, Determination and Finding

(a) All minor preservation plan applications shall be referred to and reviewed by the Historic Review Subcommittee (HRS). A minor preservation plan shall be approved only when the HRS is satisfied that the minor preservation plan conforms to the criteria articulated in Chapter 80-95 of *the Code of the Borough of Rocky Hill*.

(b) The HRS shall give the applicant an opportunity to be heard during the review of the minor preservation plan. The HRS shall approve or disapprove the minor preservation plan and memorialize its decision together with its findings and recommendations in writing.

(c) The decision of the HRS shall be conveyed to the Administrative Officer via email with a copy to the Recording Secretary. The Administrative Officer will issue the preservation permit or deny it in accordance with the HRS memorandum. The Recording Secretary will forward the HRS decision to the full Planning Board and its professionals.

(d) The applicant may appeal the decision of the Historic Review Subcommittee to the full Planning Board.

2:1-2. Scheduling; Transmittals.

- (1) Upon a determination of completeness in accordance with these rules and regulations, the application shall be placed on the agenda of the next available hearing date. No application can be scheduled less than 21 days prior to the meeting date to allow for noticing and professional review

reports. Applications shall be scheduled so as to comply with statutory and ordinance limitations in time, unless content for extension has been received by the applicant. Scheduling of matters shall be at the discretion of the Chair or as authorized by the Chair.

- (2) The Recording Secretary shall forward copies of all application materials and documents to the Board members, the Board Attorney, and, where appropriate, the Board Engineer, the Board's Planner or other consultant.

2:1-3. Filing of Plans, Maps and Documents.

- (1) At least ten (10) days prior to the date of the hearing, the applicant must file the required plans, maps and documents for approval with the Administrative Officer who shall make them available to the public during Borough office hours. Where a number of hearings are held, any revised plans, maps and supplemental documents shall be filed ten (10) days prior to such continued hearing, unless waived by the Board. This filing requirement is necessary in order to afford the Board, its professionals, and the public an opportunity to review the revisions prior to each hearing.
- (2) If required, prior to the date of the hearing, the applicant must file proof of timely service and publication. Such proof shall include a copy of the notice, a copy of the newspaper notice, the parties notified, the post office receipts of mailing, and an affidavit of proof of service certifying that all parties were notified at least 10 days prior to the hearing. Such proof of service will be forwarded by the Recording Secretary to the Board Attorney for review prior to the hearing,

Rule 2:2. Hearing Procedure.

2:2-1. Appearance by Parties. At the time of the hearing on an application, the applicant shall appear in person. If the applicant is an entity not an individual, the applicant must be represented by an Attorney-At-Law admitted to practice in the State of New Jersey. No corporation shall be heard except through counsel. Under extenuating circumstances, the Board may consent to hear an application without the applicant being present as long as the application is presented by the applicant's attorney.

2:2-2. Testimony Under Oath. All persons giving testimony at a hearing shall be duly sworn by the Board Attorney or, in the absence of the Board Attorney, the Chair or his or her designee.

2:2-3. Order of Presentation. Each application shall be considered in accordance with the following order of presentation:

- (1) The applicant shall enter an appearance on the record and be duly sworn. If the applicant is represented by counsel, the attorney shall enter his or her appearance, identifying the name and location of his or her firm, identifying

the client who is represented, and shall then proceed to make opening remarks.

- (2) The applicant shall then present testimony and such other evidence, depicted, documentary or otherwise, upon which the applicant intends to rely in order to establish a basis for the relief sought.
- (3) At the conclusion of a witness's testimony, the Chair shall allow the Board members and Board professionals and, at the discretion of the Chair, any interested parties to ask questions of such witness, and may permit reasonable cross-examination by counsel representing an objector or interested party. An attorney representing a group of objectors or interested parties shall submit to the Board a written list of persons represented by such attorney and shall submit a copy of the same to the applicant or the attorney for the applicant. Such persons shall participate in the proceedings only through their attorney.
- (4) Upon the conclusion of the presentation of the application, any objector(s) wishing to present a case in objection to the relief sought may do so in such order as may be recognized by the Chair, and may call any witnesses for testimony and introduce any documentary or other evidence upon which he or she will rely. Any witness and objector shall be subject to reasonable cross-examination by the applicant or his or her attorney and the Board, and the Chair shall allow a reasonable opportunity for interested parties to ask questions of such witnesses. The Chair shall first recognize presentations of counsel for objectors and those presentations involving expert testimony in the order that the Chair shall determine upon the exercise of reasonable discretion. Such presentations shall be subject generally to the procedure set forth in the above subparagraphs, affording the attorney for the applicant, an applicant *pro se* and any experts for the applicant a reasonable opportunity for cross-examination and commentary.
- (5) The Board shall thereafter recognize public commentary by interested parties appearing *pro se*, and each such interested party shall be subject to cross-examination. The Chair shall have the right to cause any interested party appearing before the Board to be first duly sworn and shall do so whenever an interested party will proffer facts on which the Board would be expected to rely. All rebuttal testimony or evidence shall be considered in such order as the Chair shall designate. The Board may elect to limit repetitive or disorderly objections.
- (6) If any member of the Board has personal or official knowledge that will influence their consideration of the application, then they should place that information into evidence before the Board for the purpose of disclosing their personal knowledge and amplifying the record. Such information may include facts ascertained from a viewing of the premises in question subject to these rules.

- (7) The Board shall have the right to rely upon the expertise of its legal, engineering and planning consultants. The Board may also call, as witnesses, other municipal officials such as police officers, municipal engineers, the tax assessor, municipal employees managing municipal utilities, etc., to testify as to particular facts pertinent to the application. The Board may engage additional expert witnesses as necessary and any fees associated with those experts shall be reimbursed from the applicant's escrow account. The Board shall also have the power to acquire additional evidence consistent with these rules.

2:2-4. Reports from Officers, Boards or Agencies. The Board may refer an application to another person or agency for a report provided that such reference shall not extend the time within which the Board must act. Such reports from other persons or agencies shall be made available to the applicant and to other interested parties for examination and refutation. The applicant and interested parties shall have the right to cross-examine the officer making the report as to its contents and the basis for conclusions. The Board shall either obtain such reports prior to the hearing, giving all interested parties the right to examine the same, or the hearing may be adjourned to a specific time and place for the purpose of receiving the reports and recommendations of public officials or agencies involved.

2:2-5. Continuances. All cases may be continued to another date certain, which shall be the next available regularly scheduled Board meeting unless otherwise determined by the Board. The Chair shall announce to all those present the date, time and place to which the hearing on the matter is continued. No further notice need be given by the applicant in that event. However, if the matter is continued to a special meeting, notice required under the Open Public Meetings Act shall be given. The Board reserves the right to continue a hearing on its own motion for purposes of further consideration, subject to limitations of time as provided in the Chapter 80 of the *Code of the Borough of Rocky Hill* and the Municipal Land Use Law. The Board may also grant reasonable requests of interested parties to continue a matter in order to afford such parties sufficient time to prepare, engage counsel, obtain witnesses or for other good cause. However, the Board shall do so only to the extent that the applicant's interests are not unduly compromised or prejudiced with respect to the applicant's protected interests pursuant to prevailing law. Where adjournment for a continuance would extend the statutory period within which the Board is required to act, the consent of the applicant shall be evidenced in writing or shall be made on the record.

2:2-6. Refusal to Consent to Continuance. Where an applicant has taken a substantial period of time to present his or her case and then refuses to consent to a continuance so that objectors can be heard or the Board has insufficient opportunity to consider the matter, such refusal by the applicant may be deemed arbitrary and unreasonable by the Board. Should the applicant move the Board to decide the matter without affording such opportunity, the applicant shall be at risk of a denial of the application for failure to sustain the burden of proof and failure to afford the Board an opportunity to reach an informed decision. In such event, the Board may at its discretion deny the application thereby affording the applicant the opportunity to reinstate the application.

2:2-7. Testimony from Board-Employed and Other Expert Witnesses.

Experts shall be qualified to the satisfaction of the Board. In addition to experts for the applicant or others, the Board shall have the power to engage its own independent experts to either corroborate or refute the testimony of experts produced by an applicant or other party. These rules shall not be construed as requiring expert testimony in all instances to sustain a Board finding. The Board may require its consultants to confer with the experts of the applicant and, where appropriate, with experts hired by objectors or the Board in order to expedite consideration of the application. Informal communications between the Board's consultants or experts and those for the applicant shall be permitted outside the context of public meetings. Expenses incurred by the municipality for having Board professionals and experts participate in such communications shall be reimbursed to the municipality from the applicant's escrow account.

2:2-8. Viewing by the Board; Personal Knowledge of Board Members; Interaction with Interested Parties.

- (1) Viewing the property that is the subject of the application shall be permitted upon reasonable notice to and consent of the parties. In that event, or in the event that one or more members of the Board are well acquainted with the subject property, knowledge thereby acquired of any particular fact or facts may be used in making a decision if such member or members establishes such facts on the record at the time of the hearing. The applicant, any objector, or any interested party shall have an opportunity to refute such facts. However, in the event that Board members visit the subject property or have historical or other knowledge of the subject property and no reference is made to the same on the record, it will be presumed that such facts were not necessary to reach an informed decision and merely helped such members to understand the evidence presented to them at the hearing. The absence of references to site visits and impressions shall not vitiate any decision otherwise reached on adequate grounds.
- (2) Board Members recognize that their positions on the Board are *quasi-judicial* in nature. Therefore, Board Members will not have *ex parte* communications with applicants or their representatives as well as interested members of the public. In the event that *ex parte* communications are unavoidable, Board Members shall relay any information which they may have obtained to the entire Board at a regular meeting of the Board.
- (3) In the event that Board Members are conducting a site inspection, and the applicant insists on being present, the Board member shall first request the opportunity to inspect the property without the applicant being present. The Board Member shall also advise the applicant or any representatives that communications during the site inspection are not permitted.

2:2-9. Evidence; Exhibits. The formal rules of evidence adopted by the courts of the State of New Jersey shall not be enforced in the proceedings before the Planning Board. However, no decision shall be based upon any facts not proved or on matters which are not on the record unless they be such items of which the Board is entitled to take judicial notice. When any documents or exhibits are admitted into evidence during or for purposes of a hearing, they shall be marked and shall be retained by the Board as part of the permanent file. Any evidence presented, whether by testimony or by documents and exhibits presented for the purpose of the hearing(s), which are not questioned or contradicted by any other party or by any member of the Board, may be deemed to be true by the Board for purposes of its decision. The Board may limit irrelevant, immaterial or redundant testimony.

2:2-10. Effect of Covenants, Judgments and Other Regulations Affecting Land Use. The Planning Board is established for the sole purpose of exercising the powers conferred upon it by the Municipal Land Use Law. The Board is authorized by local ordinance only to hear matters within the purview of that ordinance. A restrictive covenant shall be construed as being in the nature of a private contract which may be enforceable either by a Grantor or other protected party. Such a covenant shall not affect the jurisdiction of the Board, and the grant of relief by this Board shall not affect the validity of any restrictive covenant. The existence of a covenant shall generally have no bearing on the Board's determination, unless a restrictive covenant was imposed as a condition of prior relief to the benefit of the public.

2:2-11. Letters and Petitions in Objection. Letters of objection and petitions shall not be admissible unless the author(s) of the letter or all signers of the petition are present and available for cross-examination.

2:2-12. Burden of Proof. The burden of proof is upon the applicant, and it is the applicant's responsibility to supply competent and credible evidence in order that the Board might determine the nature, degree, and justification for the relief sought by the applicant. The applicant must establish, to the Board's satisfaction, that pursuant to statutory and ordinance criteria, the applicant is entitled to the relief sought.

Rule 2:3. Voting.

2:3-1. Voting Procedure. All motions shall require a second. The Chair shall allow discussion on any motion made and duly seconded. All votes shall be taken by roll call, and the vote and name of the member casting the vote shall be recorded in the minutes.

2:3-2. Voting Margin and Effect. No decision on an application can be made without a quorum of the full authorized membership of the Board voting, in accordance with law, exclusive of abstentions. See section 2:3-5 below.

2:3-3. Abstentions. Abstentions shall be recorded, but not as a "yes" or "no" vote, nor shall they affect the voting result.

2:3-4. Voting Eligibility; Review of Record. When any hearing before the Board has been continued, a member of the Board who was absent for one or more hearing sessions shall be eligible to vote on the matter upon which the hearing is conducted notwithstanding the member's prior absence provided that such member certifies in writing to the Board that he or she has read a *verbatim* transcript or listened to a recording of the entire session for which he or she was absent. This rule shall not be construed as authorizing any hearing to be held whenever less than a quorum of the Board is present.

2:3-5. Voting Eligibility: N.J.S.A. 40:55D-70(d) applications. For those applications filed pursuant to *N.J.S.A. 40:55D-70(d)*, a variance shall be granted only by affirmative vote of at least five (5) members. Class I and Class III members shall not participate in the consideration of an application which involves relief pursuant to *N.J.S.A. 40:55D-70(d)*.

Rule 2:4. Other Hearing Requirements and Procedures.

2:4-1. Record of Proceedings. The record shall mean the application form, any exhibits or other documents submitted to the Board in support thereof, maps, plans, reports, proper submissions by interested parties, and the *verbatim* record of the hearings. The notes of the Recording Secretary and the reports of the Board's professionals shall also be part of the record, and the minutes of the meeting shall be considered both a summary of the record and part thereof.

2:4-2. Transcripts. The Board shall furnish a transcript of the hearing or duplicate recording in lieu thereof to any interested party at his or her expense. Interested parties shall not be charged more than the maximum permitted by State statutes and pursuant to Chapter 92 of the *Code of the Borough of Rocky Hill*.

2:4-3. Inability to Make Verbatim Record. If, at the time set for hearing, a *verbatim* record cannot be made for good reason, as where recording equipment is inoperable, the Board shall continue the hearing to another date. If the applicant does not agree to a continuation, then the Board will deny the application.

2:4-4. Subpoenas; Contempt. The Chair and the Board Attorney shall have 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. The provisions of the County and Municipal Investigations Law, *N.J.S.A. 2A:67A-1 et seq.* shall apply. Any person under subpoena who refuses or fails to appear or refuses to be examined or answer any proper questions or to produce any books, papers, documents or tangible things in accordance with the subpoena, shall be subject to the proceedings in the Superior Court for an Order to compel him or her to do so. If a person subject to subpoena shall engage in contemptuous conduct at any hearing, the Board may apply to the court to compel such person to refrain therefrom, and may seek costs and fees in connection therewith.

2:4-5. Perjury. Any person who shall willfully give false testimony under oath in the course of any hearing held before this Board shall, in accordance with the provisions of the County and Municipal Investigations Law (*N.J.S.A. 2A:67A-1 et seq.*), be guilty of perjury.

2:4-6. Judicial Notice. The Board may take judicial notice of such matters as are so notorious as not to be the subject of reasonable dispute, including matters of common knowledge, and provisions of the Municipal Land Use Law and Chapter 80 of the *Code of the Borough of Rocky Hill*.

2:4-7. Dismissal Without Prejudice. The Board, on its own motion, may dismiss any action without prejudice if neither the applicant nor anyone on his or her behalf appears at the time set for the hearing of said application. Further, the Board, on its own motion, may dismiss, without prejudice, any application for failure to comply with these rules. Any applicant may, at any time before the commencement of the hearing, voluntarily withdraw his or her application, in which case, the application shall be dismissed without prejudice. The Board reserves the power to impose reasonable terms and conditions on the dismissal of any application.

2:4-8. Amended Applications. An applicant may, prior to the commencement of a hearing, amend his or her application without leave of the Board and in all such cases new notice shall be given as in the case of the original application. After commencement of a hearing, an application may be amended at any time before the Board makes a decision.

2:4-9. Time of Decision Rule. Once an application is deemed complete, any amendments to any provision of the Borough's ordinances, except those relating to health and public safety, shall not be applicable to that application.

2:4-10. Conditions. The Board shall have plenary power and discretion to impose conditions. The conditions shall be development-specific and predominantly aimed at mitigating specific concerns arising in connection with the proposed project. Such conditions shall not be deemed exclusive, and the applicant shall be subject to terms and conditions of approval that are expressed and implied at law, including those imposed pursuant to ordinance as applied uniformly to every development application.

If a term or condition of approval is imposed by ordinance or law and the Planning Board is not expressly granted the power to waive, enlarge or relax such term or condition, the Board shall not have such discretion or power. The right to impose conditions is an inherent power of the Board that exists regardless of whether the ordinance grants such a right to the Board. To be enforceable, a condition must be part of the record.

Conditions must not offend against any provisions of the Land Use Ordinance, must be in the public interest, must be reasonably calculated to achieve a legitimate objective of the ordinance, must be enforceable, and shall not be unnecessarily burdensome to the applicant and/or owner. The Board shall have the power to require that conditions be fulfilled within a stated period of time. The Board may require that some or all conditions of approval, or the resolution itself, be recorded with the County Clerk along with any maps for filing.

PART III. TAKING ACTION ON APPLICATIONS.

Rule 3:1. Decisions.

3:1-1. Decision Based on Evidence. Each case shall be decided strictly on the basis of the facts adduced at the hearing viewed in light of the statutory and ordinance requirements. The Board is a *quasi*-judicial body whose function is to apply the facts adduced at the hearing to the legal requirements of the statute and ordinance and to decide whether the requested relief, if justified based on the evidence before the Board, can be legally granted or not. The number of opponents or objectors present, or even the fact that no objections are heard, has no special significance. Testimony presented by objectors shall be considered by the Board. The facts adduced at the hearing, all testimony and all evidence on which the Board makes its decision must be part of the record and the Board's decision must include findings of the facts from the record on which it made its decision and conclusions on the points of law raised. The Board's decision must be made at a public meeting and the Board's vote on the making of its decision and the adoption of its resolution must be taken at a public meeting.

3:1-2. Alternative Relief. The Board shall have the discretionary power to grant relief other than the precise relief or portion thereof sought by the applicant provided that interested parties shall have received reasonable notice of the fact that such relief might be granted.

3:1-3. Reservation of Decision. The Board may decide to reserve decision on a matter after the hearing is completed and may make its decision at the next meeting provided that the period within which to decide the application will not expire prior to the next succeeding meeting

3:1-4. Memorializing Resolution. After a decision has been reached by the Board as to whether the relief requested by the applicant is to be granted or denied and upon what terms, the Board's findings of fact and conclusions of law must be embodied in the form of a written resolution. When the Board votes to adopt a resolution, the findings and conclusions set forth in the resolution become the findings and conclusions of the Board. It shall be immaterial that at the time of voting certain Board members may have given other reasons or discussed matters not addressed in the resolution. The application shall be either approved or disapproved by a ~~voice~~ roll call vote and ~~that~~ thereafter a memorializing resolution shall be drafted and adopted. Once the resolution has been prepared and has been voted on favorably by the members of the Board, it shall become a memorializing resolution of the decision of the Board.

3:1-5. Contents of Resolution; Publication. A copy of the Board's resolution shall be furnished to the applicant and his or her attorney within ten (10) days from the date of the Board's decision. The Board's Recording Secretary shall cause notice of the Board's action to be published, once, in the official newspaper of the municipality, in accordance with the provisions of the MLUL. The resolution of the Board shall contain:

- (1) a statement of the Board's findings of fact and its conclusions of law, the Board's decision, any conditions imposed upon the relief granted, or other provisions as the Board may deem appropriate and necessary;
- (2) where the Board has determined to impose conditions on the relief granted, such conditions shall be clearly set forth in the resolution.

3:1-6. Nature of Resolution Drafts. A resolution prepared by the Board Attorney and transmitted to the Board for consideration at its next meeting shall be considered a privileged document between the Attorney and the Planning Board and shall not become a matter of public record until such time as it is determined by the Board and its Attorney that the Resolution properly memorializes and reflects the decision of the Board. The Board and the Attorney may consent to a waiver of this requirement for good cause shown and expressed by the applicant or interested parties at or before the time of decision.

3:1-7. Time. Municipal action shall be deemed to have been taken at the original meeting and not the date at which the resolution or memorialization is adopted, except that the date on which the resolution of memorialization is adopted shall constitute the date of decision for the required mailing of a copy of the decision to the applicant and for the publication of the Board's decision in the official newspaper of the municipality as required by subsections (h) and (i) of *N.J.S.A. 40:55D-10*. Moreover, the time to appeal the Board's decision runs from the date that the resolution was adopted.

3:1-8. Publication of Notices of Decisions. A copy of the decision shall be mailed within ten (10) days of the date of the decision to the applicant or his or her attorney without charge, and to all who request a copy of the decision for a reasonable fee. A copy of the resolution shall be filed in the office of the Planning Board and shall be available to the public upon adoption. A brief notice of the decision shall be published in the official newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality. Such publication shall be arranged by the Recording Secretary unless a particular municipal officer is so designated by ordinance. Nothing herein contained shall be construed as preventing the applicant from arranging such publication if so desired. The municipality may make a reasonable charge for its publication. The date of adoption of the memorializing resolution shall constitute the date of decision for the purpose of mailings, filings and publications.

Rule 3:2. Rehearing; Modification.

3:2-1. Misrepresentation, Fraud, Mistake. The Board may presume that all material statements of fact are true. The Board may also presume that all exhibits, maps, plans and other documents submitted are true and accurate representations of all facts which such materials have been introduced to substantiate. In the event that it later appears to the Board on reasonable grounds that an applicant or witness has not been truthful, or that a mistake has been made, and such circumstances bear on facts which are essential in the granting of the relief sought by the applicant and were relied upon the Board in taking such action, then, upon discovery of such misrepresentation, fraud or mistake, the Board may rehear the matter either upon application of an interested party or

on its own motion when unusual circumstances so require in the interest of justice. In such event, the Board may, upon notice directed to the applicant and all other interested parties, require the applicant to appear before it for the purpose of explaining the testimony previously given at the hearing. At such subsequent hearing, it may be determined whether or not the testimony as given at the original hearing was in fact false. Mistake or fraud in proceedings, left uncured, shall constitute grounds for rescission.

3:2-2. Rehearing. An applicant or other interested party may, by right, within forty-five (45) days after the publication of notice of the decision, move the Board for a rehearing of the matter or a portion thereof for the reasons provided in Rule 3:2-1 by filing an application in the form of a letter addressed to the Board containing a brief statement of the grounds relied upon. If the motion is granted by the Board, it shall fix a date for rehearing and shall require the moving party to give notice to all persons who participated in the original hearing or hearings, upon such terms as the Board may deem adequate. The Board may order a rehearing on its own motion when unusual circumstances so require in the interest of justice. Any motions to rehear an application or portion thereof made after forty-five (45) days following the publication of decision shall be considered strictly by leave and discretion of the Board in consideration of the protected interests of the applicant as balanced against the public interest.

3:2-3. Appeal of the Historic Review Subcommittee Decision regarding a Minor Preservation Plan. Any Minor Preservation Plan application that was denied by the Historic Preservation Subcommittee may be appealed to the full Planning Board by resubmitting the application using the procedures and requirements of a Major Preservation Plan application.

PART IV. AVAILABILITY AND ELIGIBILITY OF MEMBERS.

Rule 4:1. Alternate Members.

4:1-1. Designation. There shall be two alternate members of the Board who shall be designated by the appointing authority in accordance with law as "Alternate No. 1" and "Alternate No. 2," respectively, and each alternate shall retain said designation during the term for which he or she was appointed.

4:1-2. Appointment of Alternate to Serve on Case. During the absence or disqualification of any regular member, the Chair shall recognize the first alternate and then, if necessary, the second alternate ~~members~~ to serve in the place of said regular member.

4:1-3. Alternative to Serve Until Final Disposition. In the event of disqualification of a regular member for any hearing on an application, an alternate member who has been designated to sit in place of a regular member and who has participated in such hearing coming before the Board shall continue to act in the place of such regular member until the final disposition of the application by the Board.

4:1-4. Alternate No. 1 to Vote. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

4:1-5. Alternate Not to Serve at Adjourned or Continued Hearing Unless Present at Prior Hearings. When a member has been present and has participated in the first hearing on any matter, no alternate member shall be designated to serve during the absence of such member during any adjourned or continued hearing or hearings on the same matter unless said alternate member was present at such first hearing or any prior adjourned or continued hearing on such matter or listened to the recordings of any missed sessions or read *verbatim* transcripts of such sessions.

4:1-6. Rights and Privileges No alternate member shall be eligible to serve as Chair or Vice-Chair or Secretary of the Board.

4:1-7. Participation in Discussions; Voting. Alternate members may participate in discussions of the proceedings, but may not vote except in the absence or disqualification of a regular member, nor shall any vote be delayed in order that a regular member may vote instead of an alternate member.

Rule 4:2. Disqualification for Interest.

4:2-1. Disqualification Generally. No member of the Board shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. No member of the Board shall participate in proceedings in which such member has a conflicting interest that may interfere with the impartial performance of his or her duties as a member of the Board. The decision as to whether a particular interest is sufficient to disqualify shall depend on the facts and circumstances of the particular case. The test shall be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the Board member to depart from his or her sworn public duty.

4:2-2. Local Government Ethics Law. The members of the Board shall comply with and be bound by the provisions of the Local Government Ethics Law, *N.J.S.A. 40A:9-22.1, et seq.*, and shall annually file a statement as prepared by the local Finance Board and the Division of Local Government Services, Department of Community Affairs. Pursuant to such law, no Board member shall act in his or her official capacity in any matter where he or she, a member of his or her immediate family or a business organization in which he or she has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his or her objectivity or independence of judgment.

4:2-3. Examples of Disqualification for Interest. Any member of the Board shall disqualify himself or herself from sitting on the hearing of any matter in which he or she has a disqualifying interest, such as, but not limited to, the following situations:

- (1) where the member owns property located within two hundred (200) feet of the property affecting the action;

- (2) where the applicant is related within the third degree of consanguinity to the member by blood or is the husband or wife of any person so related;
- (3) where the applicant or his or her attorney is the employer, employee, or partner of the member, or someone in the member's immediate family or is a corporation in which the member or his or her attorney is the employer, employee, or partner of the member, or someone in the member's immediate family is a shareholder or has other financial interest;
- (4) where the member has any other personal or pecuniary interest in the proceeding.

4:2-4. Removal from Panel. Any member having been deemed or having deemed himself or herself disqualified in any matter shall not sit with the Board to participate in the consideration of such matter. The nature of any such disqualification shall be disclosed at the time of recusal unless doing so would constitute an unwarranted invasion of individual privacy or could adversely affect the public interest. Such member may be heard at the appropriate time as an interested party or applicant, but whenever such member appears before the Board on his or her own behalf or by legal representative, it shall be disclosed that the member's comments are made solely to exercise or protect private rights and are not expressed as a member of the Board. Every effort shall be made by such member to avoid the possible influence of fellow Board members and the appearance of impropriety from the point of view of the general public.

4:2-5. Disclosure of Possible Conflicts; Waiver by Parties. Where conflict is only possible and not actual by virtue of involving, either directly or indirectly, any personal or financial interest, such conflict need not necessarily result in a disqualification but should be disclosed. The Board Attorney shall be consulted in each case. Whenever the Board is called upon to waive a potential conflict, the affected Board member shall disclose the nature of the relationship and shall satisfy the Board that the relationship would not in any way influence his or her decision.

4:2-6. Remedy. When a member fails to disqualify himself or herself where the circumstances require disqualification, any interested party may move the Board for an order or determination that such member is ~~or was~~ disqualified to act.

4:2-7. Disclosure of Reason for Disqualification. Wherever possible, the reason for disqualification shall be stated unless legitimate private rights would be compromised without justification in respect of the public interest.

4:2-8. Multiple Disqualifications. In the event that multiple Board members have conflicts of interest on the same application and consequently the Board lacks sufficient members to constitute a quorum, additional members shall be appointed as allowed by law. The Planning Board shall pull only as many members as may be required to constitute a quorum, not a full Board. Such supplemental members shall only participate on the applications for which the Board lacks a quorum.

Rule 4:3. Attendance.

4:3-1. Determination of Vacancy for Excessive Absences. The position of any member or alternate member shall be deemed vacant whenever the member, without being excused by the Chair, Vice-Chair, or a majority of the authorized members of the Board, fails to attend and participate at meetings of the Board for four (4) consecutive meetings, at the conclusion of such period, provided that the Board shall notify the appointing authority in writing of such determination, and provided further that the Board may refuse to excuse only those absences which are not due to legitimate illness. In the event of such notice, the approving authority shall forthwith fill the vacancy for the unexpired term in a manner prescribed by law. This rule shall be automatically amended by operation of law in the event that the above standards are made more strict pursuant to amendment henceforth of *N.J.S.A. 40A:9-12.1* or other relevant prevailing enactment, in which event the language of this rule shall be deemed substituted by the language of such enactment.

Rule 4:4. Certification.

4:4-1 Mandatory Training. All Class II and Class IV Board members must complete the training required pursuant to *N.J.S.A. 40:55D-23.3* within 18 months of appointment in order to retain membership. A board member who fails to satisfy the required training within the prescribed 18-month period shall be deemed ineligible to continue to serve as a board member. The Planning Board Attorney shall notify the Borough Attorney that a specific member has failed to fulfill the State eligibility requirement.

Pursuant to State statute, any board member deemed ineligible for failure to complete the required training course shall be removed as a member of the Board by the Governing Body of Rocky Hill at its first regular public meeting following the expiration of the prescribed 18-month period. Any board member removed under this provision shall not be eligible for subsequent appointment to any board (as defined in *N.J.A.C. 5:87-1.5*) without first successfully completing the required training. See *N.J.A.C 5:87-1.8(c)*.

PART VI. MISCELLANEOUS MATTERS.**Rule 5:1. Fees.**

5:1-1. Application Fees. No application shall be considered which is not accompanied by an application fee in accordance with the schedule of administrative fees for development applications, as amended and in effect at the time application is made.

5:1-2. Escrow Deposits for Professional Services. No application shall be considered with respect to which an applicant has failed to comply with the prevailing local ordinance or statutory requirements for the payment of escrow deposits toward anticipated municipal expenses for professional services, to be based upon a schedule established by ordinance. The amount of the initial deposit shall be established by ordinance. The applicant and the Board shall be bound by the provisions of *N.J.S.A. 40:55D-53.2* and/or prevailing ordinance requirements as to their respective interests and duties.

If the initial escrow deposit contains insufficient funds to enable the Borough to perform the required application review, the Borough shall provide the applicant with a notice of insufficient escrow. In order for work to continue on the application, the applicant shall within a reasonable time post an additional deposit to the escrow account in the amount required by the Borough to pay for professional services necessary for the processing of the application. If at the time of decision, the applicant is in default of any required escrow payments or fees, the Planning Board shall deny the application.

5:1-3. Special Meeting Costs. In the event that a special meeting is scheduled and convened for the benefit of an applicant pursuant to Rule 1:3-3, any special or uncustomary disbursements, expenses, fees or costs incurred by the Board and the Municipality for the rendering of special services, arrangements or accommodations for the benefit of the applicant shall be reimbursed entirely by the applicant. The Board may require a reasonable antecedent escrow deposit to protect against an applicant's failure to comply with this section.

Rule 5:2. Committees and Subcommittees.

5:2-1. Standing Committees and Subcommittees. There may be the following standing committees or subcommittees of the Board, or others as designated by the Board, at the discretion of the Board:

(1) Development Committee;

A committee of at least three members of the Board, appointed by the Chair of the Board with the approval of the majority of the Board for the purpose of reviewing subdivision and site plan applications prior to action by the entire Board to determine whether such applications comply with all chapter provisions and to make recommendations to the Board for classification and action. In the event that no development committee has been created, the functions delegated to it shall be performed by the Board.

(2) Master Plan Review Committee;

(3) Historic Review Subcommittee.

A subcommittee appointed annually by the Chair of the Board with the approval of the majority of the Board charged with specific duties related to historic preservation plans as articulated in § 80-40 of the Code of Rocky Hill. The subcommittee shall consist of the Chair of the Board, the Borough Zoning Officer, and one or two other members of the Board.

5:2-2. Committee and Subcommittee Composition. The standing committees and subcommittees, unless otherwise defined in State statute or Borough ordinance, shall comprise not less than three (3) members but less than an effective majority of the Board. The Chair shall annually, or as needed, appoint the members of each committee for a one

(1) year term. Vacancies shall be filled at or by the next regular session of the Board. Not more than one alternate member may serve on any standing committee.

5:2-3. Special Committees and Subcommittees. Special committees and subcommittees may be established by a vote of the majority of the full membership of the Board. The Chair shall appoint the members of such committee, who shall serve for a term to be determined by the Board when it acts to establish such committee.

Rule 5:3. Payment of Taxes.

5:3-1. Proof of Payment; Alternative Agreement. The applicant, at the time of filing the application for development, shall file with the Board a certification of the Tax Collector that municipal taxes and/or assessments have been paid. In the event that taxes and/or assessments on the property affected by the application for development are unpaid, the applicant shall submit, in lieu of the certificate of payment of taxes and/or assessments, a written request that the Board take action, which request shall include a stipulation that any approval shall be subject to the payment of taxes and/or assessments and the Board may suspend post-approval execution and other action until such time as taxes and assessments are paid, subject to prevailing rules of law and ordinance.

Rule 5:4. Amendments.

5:4-1. Amendments to the Rules. The Planning Board may, from time to time, by a two-thirds (2/3) vote, amend any part or parts of these rules and regulations at any regular meeting, provided notice of the consideration of any such amendment has been placed on the agenda and provided to each member of the Board prior to the meeting at which the amendment will be considered. In no case, however, shall any rule, as amended, be applicable to any action commenced prior to the adoption of such amendment, where the application thereof would result in surprise, hardship or injustice to the applicant or any interested parties.

FOR OFFICE USE ONLY:
Fees paid on:
Appl. Fee:
Other Fee:
Escrow:
Block/Lot:

PRESERVATION PLAN APPLICATION

**Planning Board
Borough of Rocky Hill
Somerset County, New Jersey**

FOR OFFICE USE ONLY:
Application No.:
Date Received:
Date Deemed Complete:
Date Action Required:

Introduction: Rocky Hill’s Historic Preservation District was registered in the National Park Service’s National Register of Historic Places in 1982. The Historic District includes most of the properties along Washington Street, some on Montgomery and Princeton Avenues, and all on Grove Street, Park Avenue, and Reeve Road. Please consult the map of the Historic District, which is located on the Borough website at rockyhill-nj.gov under “About Rocky Hill,” and which also may be accessed at historicrockyhill.net.

Historic District Ordinances: Rocky Hill ordinances prescribe certain limits intended to preserve the character of our historic places and set forth a process to obtain approval (a “permit”) for proposed alterations to structures or sites within the District. The ordinances are found in Chapter 80 of the Code of the Borough of Rocky Hill, accessible on the Borough website (rockyhill-nj.gov) under “Government,” then “Ordinances.” These ordinances require an application for and approval of a permit before covered work can begin.

When is a Permit Required? An application for a permit must be submitted to the Rocky Hill Planning Board and approval obtained from the Board before certain exterior work may be performed on properties within the Historic District. Generally, to determine whether these requirements apply, consider the following criteria:

- Is the property located within the Historic District? (See map discussed above.)
- Will the proposed work involve the exterior of the property and be visible from a public or private street?
- Will the work involve constructing, altering, restoring, or demolishing all or part of a structure or site improvement on the property?
- Does the work involve more than ordinary maintenance or painting?

Consult Rocky Hill Ordinance §80-22 for the exact criteria, but, if the answers to the four questions were all in the affirmative, it is highly probable that an application for approval is required. Within the historic district, “ordinary maintenance” requires that the repair occur without “any change in the visible materials and finishes used” and that replacement elements and materials, such as windows and siding, must be “in-kind” to that which is being replaced; a departure may require a permit. See the definition in Ordinance §80-3.

Attachment: Preservation application rev. draft 2.12.17 (DOC-2017-31 : Revised Application Form)

How and Where to File: Preservation Plan Applications are available from the Zoning Officer during Borough office hours (3:30 to 6:00 pm on Wednesdays) at the Borough Hall, 15 Montgomery Ave., Rocky Hill, NJ. (609) 924-7445. This form is also available for download from the Rocky Hill website under “Forms.” See, http://www.rockyhill-nj.gov/filestorage/5681/His_pres_application.pdf.

It is recommended that the applicant discuss the project with the Zoning Officer for Rocky Hill, who is the Administrative Officer of the Planning Board, before filing an application and before any filing fee or escrow deposit would be required. This conversation is non-binding but intended to assist the applicant in understanding the permit process and anticipating the expenses, requirements, and possible complexities of the permit process. For major preservation permits, it also is recommended, but not required, that the applicant appear before the Planning Board for an informal concept review before filing a formal application. (Note: major and minor plans are defined in Ordinance §80-3; the filing requirements are set forth in Ordinance §80-40.)

The completed form, payment of fees and any initial escrow deposit, supporting documentation, and required copies should be delivered to the Borough Office at the above address or mailed to the Borough at PO Box 188, Rocky Hill, NJ 08553. If the applicant is a corporation, partnership, or LLC, the applicant must have an attorney and the attorney’s name must included in the application, although the application is not required to be filed by an attorney.

Fees and Costs: The schedule of fees is set forth in Ordinance §80-7F. In addition to the application fee, an initial escrow deposit will be required to cover the costs of professional services, such as engineering, legal, planning, and any other expenses incurred in the Board’s review. The escrow deposit must be replenished to cover additional and ongoing expenses as the review proceeds. A failure to do so will result in a denial of the application. Please review carefully the Ordinance §80-7 in its entirety and the certification on the application must be signed (appended below).

Due Dates: The Planning Board meets and hears applications on the third Thursday of each month. Applications must be filed at least three weeks prior to the Board hearing to allow time for review; supplemental material, if requested, is due 10 days before the hearing. In addition, major preservation plan applications require proof that all property owners within 200 feet of the property that is the subject of the hearing were notified at least 10 days prior to the hearing of the date, time, place of the hearing and of the work being proposed. A failure to meet these due dates may delay a hearing on the application until the following month.

Hearings: The Planning Board hears and adjudicates applications for major preservation plan permits and preservation plan permits filed in conjunction with a development plan. Applications for minor preservation plan permits in most cases will be reviewed by a four-member sub-committee designated by the Board.

PRESERVATION PLAN APPLICATION

Name of Applicant: _____

Address of Applicant: _____

Mailing Address, if different from above: _____

Telephone Number(s): _____

Fax Number: _____ E-Mail _____

Name, Address and Contact Information of Applicant's Attorney

Owner of Property, if different from above: _____

Property Address: _____

Block & Lot Number: _____

Zoning District: _____

If the project involves an existing building, was it built before January 1, 1930?
Yes [] No []

Does the project also require site plan or subdivision review?
Yes [] No []

Does the project involve partial or total demolition of existing structures?
Yes [] No []

A checklist of items that must be filed for this application to be deemed complete appears on the next page of this form.

Please provide a brief description of the project below. If more space is needed, please use an additional sheet. State whether the project is restoration, i.e., returning the building to its prior appearance, alteration, addition, demolition or entirely new construction.

DESCRIPTION OF PROJECT: Additional pages may be filed if necessary.

Attachment: Preservation application rev. draft 2.12.17 (DOC-2017-31 : Revised Application Form)

