

BOROUGH OF ALLENDALE

PUBLIC NOTICE

ORDINANCE 18-03 – AN ORDINANCE TO AMEND, SUPPLEMENT AND REVISE THE CODE OF THE BOROUGH OF ALLENDALE, LAND USE PROCEDURES, CHAPTER 40

was introduced at a regular meeting of the Mayor and Council of the Borough of Allendale, in the County of Bergen, New Jersey, held on Thursday, January 11, 2018 and will be further considered for final passage after public hearing at a regular meeting of the Mayor and Council to be held in the Council Chambers, Allendale Municipal Building, 500 West Crescent Avenue, Allendale, New Jersey on Thursday, January 25, 2018 at 8:00 P.M. prevailing time, or as soon thereafter as the matter can be heard.

A clear and concise statement of this ordinance is to amend Chapter 40 entitled Land Use Procedures of the Borough Code so as abolish the Allendale Planning Board and Allendale Zoning Board of Adjustment and to establish, in lieu thereof, the Allendale Land Use Board, and to further modify the Code of the Borough of Allendale to effectuate such purpose.

A copy of this ordinance may be obtained without cost between the hours of 9:00 a.m. and 4:30 p.m. at the Office of the Municipal Clerk, 500 West Crescent Avenue, Allendale, New Jersey.

Anne Dodd, RMC
Municipal Clerk

**BOROUGH OF ALLENDALE
COUNTY OF BERGEN
STATE OF NEW JERSEY**

ORDINANCE 18-03

**AN ORDINANCE TO AMEND, SUPPLEMENT AND REVISE
THE CODE OF THE BOROUGH OF ALLENDALE,
LAND USE PROCEDURES, CHAPTER 40**

BE IT ORDAINED by the Mayor and Council of the Borough of Allendale, County of Bergen, State of New Jersey that Chapter 40 of the Code of the Borough of Allendale, entitled “Land Use Procedures”, be and hereby is amended, supplemented and revised in its entirety to read as follows:

Article I
Land Use Board

§ 40-1 Establishment; composition.

There is hereby established, pursuant to P.L. 1975, c. 291, in the Borough of Allendale a Land Use Board of nine members, and up to and including four (4) alternate members, consisting of the following four classes:

Commented [1]: Editor's Note: See N.J.S.A. 40:55D-1 et seq.

- A. Class I: the Mayor or his or her designee in the absence of the Mayor.
- B. Class II: one of the officials of the Borough, other than a member of the Governing Body, to be appointed by the Mayor.
- C. Class III: a member of the Governing Body to be appointed by it by the Mayor.
- D. Class IV: six other citizens of the Borough to be appointed by the Mayor and four alternates to be appointed by the Mayor. The members of Class IV shall hold no other municipal office, except that one member may be a member of the Board of Education.
- E. Alternates may participate in discussions of the proceedings, but may not vote except in the absence or disqualification of a regular member of any class. Where the application for development involves relief pursuant to Subsection d of N.J.S.A. 40:55D-70 (a “d” variance), alternate members shall not participate in place of the legislatively excluded Class I and Class III members. This reduction in voting membership preserves the statutory scheme of N.J.S.A. 40:55D-70 requiring the affirmative vote of five members of the statutory seven-member board to grant a “d” variance.

§ 40-2 Terms.

- A. The term of the member composing Class I shall correspond with his or her official tenure; or, if the member is the Mayor’s designee, the designee shall serve at the pleasure of the Mayor during the Mayor’s tenure. The terms of the members composing Class II and Class III shall be for one year or terminate at the completion of their respective terms of office, whichever occurs first.
- B. The term of a Class IV member who is also a member of the Board of Education shall terminate whenever he or she is no longer a member of the Board of Education or at the completion of his Class IV term, whichever occurs first.
- C. The terms of all Class IV members first appointed pursuant to this chapter shall be so determined that, to the greatest practicable extent, the expiration of such terms shall be evenly distributed over the first four years after their appointment, as determined by resolution of the Governing Body; provided, however, that no term of any member shall exceed four years. Thereafter, all Class IV members shall be appointed for terms of four years, except as otherwise herein provided. All terms shall run from January 1 of the year in which the appointment was made. The alternates shall be appointed for a term of two years from January 1 of the year of their appointment, except that the

term of two of the alternates first appointed shall be for one year only and thereafter for two years, so that the term of not more than two alternates shall thereafter expire in any one year. Alternate members shall be designated at the time of appointment by the Mayor as "Alternate No. 1", "Alternate No. 2", "Alternate No. 3", and "Alternate No. 4."

- D. **Removal for cause.** Any member or alternate member, other than a Class I member, after a public hearing, if so requested, may be removed by the Borough Council for cause.
- E. **Meeting carryover.** When any hearing before the Land Use Board shall carry over two or more meetings, a member of the Land Use Board who was absent for one or more of the meetings shall be eligible to vote on the matter upon which the hearing was conducted, notwithstanding his or her absence from one or more of the meetings; provided, however, that such Land Use Board member has available to him or her a transcript or recording of the meeting and has certified in writing that the transcript was read or recording listened to.
- F. **Absenteeism.** Any Class IV Land Use Board member may be removed by the Land Use Board if he/she misses three regular meetings in a calendar year.
- G. **Service without compensation.** Members of the Land Use Board shall serve without salary but may be paid expenses incurred in the performance of duties.
- H. **Conflict of interest.** No member shall be permitted to act on any matter in which he or she has, directly or indirectly, any personal or financial interest.

§ 40-3 Vacancies.

If a vacancy of any class shall occur otherwise than by expiration of term, it shall be filled by appointment as above provided for the unexpired term.

§ 40-4 Organization.

The Land Use Board shall elect by a majority vote a Chairman, Vice Chairman, and Secretary from its Class IV members. The Chairperson shall be responsible for the running of public hearings.

§ 40-5 Attorney.

There is hereby created the office of Land Use Board Attorney. The Land Use Board may annually appoint and fix the compensation of or agree upon the rate of compensation of the Land Use Board Attorney, who shall be an attorney other than the Borough Attorney.

§ 40-6 Experts and staff.

The Land Use Board may also employ or contract for the services of such experts and services as it may deem necessary. The Land Use Board shall not exceed, however, exclusive of gifts or grants, the amount appropriated by the Governing Body for its use. The Borough shall designate a municipal employee to provide administrative services to the Board.

§ 40-7 Powers and duties generally.

The Land Use Board shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this chapter. In the issuance of subpoenas, administration of oaths and taking of testimony, the provisions of the County and Municipal Investigations Law of 1953 (N.J.S.A. 2A:67A-1 et seq.) shall apply. It shall also have the following powers and duties:

- A. To make and adopt and, from time to time, to amend a Master Plan for the physical development of the Borough, including any areas outside its boundaries which, in the Land Use Board's judgment, bear essential relation to the planning of the Borough, in accordance with the provisions of N.J.S.A. 40:55D-28.
- B. To administer the provisions of the Land Subdivision Ordinance and Site Plan Review Ordinance of the Board in accordance with the provisions of said ordinances and the Municipal Land Use Law, c.

291, P.L. 1975 (N.J.S.A. 40:55D-1 et seq.).

- C. To approve conditional use applications in accordance with the provisions of the Zoning Ordinance, pursuant to N.J.S.A. 40:55D-67.
- D. To participate in the preparation and review of programs or plans required by state or federal law or regulations.
- E. To assemble data on a continuing basis as part of a continuous planning process.
- F. To prepare a program of municipal capital improvement projects projected over a term of six years, and amendments thereto, and recommend same to the Governing Body.
- G. To consider and make report to the Governing Body within 35 days after referral as to any proposed development regulation submitted to it, pursuant to the provisions of N.J.S.A. 40:55D-26a, and also to pass upon other matters specifically referred to the Land Use Board by the Governing Body, pursuant to the provisions of N.J.S.A. 40:55D-26b.
- H. Approval of a subdivision, site plan or conditional use.
 - (1) When reviewing applications for approval of subdivision plats, site plans or conditional uses, to grant to the same extent and subject to the same restrictions as the Zoning Board of Adjustment:
 - (a) Variances pursuant to N.J.S.A. 40:55D-70c and d
 - (b) Direction, pursuant to N.J.S.A. 40:550-34, for issuance of a permit for a building or structure in the bed of a mapped street or public drainage way, flood control basin or public area reserved pursuant to N.J.S.A. 40:55D-32c direction, pursuant to N.J.S.A. 40:550-36 for issuance of a permit for a building or structure not related to a street.
 - (2) Whenever relief is requested pursuant to this subsection, notice of a hearing on the application for development shall include reference to the request for a variance or direction for issuance of a permit, as the case may be.
 - (3) The developer may elect to submit a separate application requesting approval of the variance or direction of the issuance of a permit and a subsequent application for any required approval for a subdivision, site plan or conditional use. The separate approval of the variance or direction of the issuance of a permit shall be conditioned upon grant of all required subsequent approvals by the Land Use Board. No such subsequent approval shall be granted unless the approval can be granted without substantial detriment to the public good and without substantial impairment of the intent or purpose of the zone plan and Zoning Ordinance.
- I. To perform such other advisory duties as are assigned to it by ordinance or resolution of the Governing Body for the aid and assistance of the Governing Body or other agencies or officers.

§ 40-8 **Time limits.**

- A. Minor subdivisions. Minor subdivision approval shall be granted or denied within 45 days of the date of submission of a complete application to the Land Use Board or within such further time as may be consented to by the applicant. Approval of a minor subdivision shall expire 190 days from the date of Land Use Board approval unless, within such period, a plat in conformity with such approval and the provisions of the Map Filing Law or a deed clearly describing the approved minor subdivision is filed by the developer with the county recording officer, the Borough Engineer and the Borough Tax Assessor. Any such plat or deed must be signed by the Chairman and Secretary of the Land Use Board before it will be accepted for filing by the county recording officer.
- B. Preliminary approval of major subdivisions. Upon submission of a complete application for a

subdivision of 10 or fewer lots, the Land Use Board shall grant or deny preliminary approval within 45 days of the date of such submission or within such further time as may be consented to by the developer. Upon submission of a complete application for a subdivision of more than 10 lots, the Land Use Board shall grant or deny preliminary approval within 95 days of the date of such submission or within such further time as may be consented to by the developer. Otherwise, the Land Use Board shall be deemed to have granted preliminary approval for the subdivision.

- C. Ancillary powers. Whenever the Land Use Board is called upon to exercise its ancillary powers before the granting of a variance as set forth in § 40-7H of this chapter, the Land Use Board shall grant or deny approval of the application within 120 days after submission by the developer of a complete application or within such further time as may be consented to by the applicant. Failure of the Land Use Board to act within the period prescribed shall constitute approval of the application, and a certificate of the administrative officer as to the failure of the Land Use Board to act shall be issued on request of the applicant.
- D. Final approval.
- (1) Application for final subdivision approval shall be granted or denied within 45 days of submission of a complete application or within such further time as may be consented to by the applicant.
 - (2) Final approval of a major subdivision shall expire 95 days from the date of signing of the plat unless within such period the plat shall have been duly filed by the developer with the county recording officer. The Land Use Board may, for good cause shown, extend the period for recording for an additional period not to exceed 190 days from the date of signing of the plat.

§ 40-9 Procedure for filing applications.

Applications for development within the jurisdiction of the Land Use Board, pursuant to the provisions of P.L. 1975, c. 291, shall be filed with the Borough Clerk. The applicant shall file, at least 10 days before the date of the monthly meeting of the Land Use Board, three copies of a sketch plat, three copies of an application for minor subdivision approval, three copies of an application for major subdivision approval or three copies of an application for site plan review, conditional use approval or planned development. At the time of filing the application, but in no event less than 10 days prior to the date set for the hearing, the applicant shall also file all plot plans, maps or other papers required by virtue of any provision of this chapter or any rule of the Land Use Board. The applicant shall obtain all necessary forms from the Secretary of the Land Use Board. The Secretary of the Land Use Board shall inform the applicant of the steps to be taken to initiate applications and of the regular meeting dates of the Board.

§ 40-10 Environmental Commission.

The Environmental Commission is hereby abolished. All references to same in the Borough Code are hereby deleted and all provisions in the Borough Code inconsistent with such abolishment are hereby repealed.

Article II. Land Use Board Acting as Board of Adjustment

§ 40-11. Establishment.

The Land Use Board shall exercise, to the same extent and subject to the same restrictions, all the powers of a Board of Adjustment, pursuant to N.J.S.A. 40:55D-25(C).

§ 40-12. Rules and Regulations.

The Land Use Board shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this article. In the issuance of subpoenas, administration of oaths and taking of testimony, the provisions of the County and Municipal Investigations Law of 1953 (N.J.S.A. 2A:67A-1, et seq.) shall apply.

§ 40-13. Excluded members.

Where the application for development involves relief pursuant to Subsection d of N.J.S.A. 40:55D-70 (a “d” variance), the Class I and Class III members shall be legislatively excluded from participation and voting. An alternate member shall not sit for the aforementioned Class I and Class III members whenever the Board considers relief pursuant to Subsection d of N.J.S.A. 40:55D-70. This reduction in voting membership preserves the statutory scheme of N.J.S.A. 40:55D-70 requiring the affirmative vote of five members of the statutory seven-member Board to grant a “d” variance.

§ 40-14 Powers of Land Use Board Acting as Zoning Board of Adjustment.

- A. The powers of the Land Use Board acting as a Zoning Board of Adjustment shall be in accordance with N.J.S.A. 40:55D-69 and 70 et seq., and amendments and supplements thereto, and with the provisions of this chapter.
- B. It is further the intent of this chapter to confer upon the Land Use Board acting as a Zoning Board of Adjustment as full and complete powers as may lawfully be conferred upon such Land Use Board, including, but not by way of limitation, the authority, in connection with any case, action or proceeding before the Land Use Board, to interpret and construe the provisions of this chapter or any term, clause, sentence or word hereof and the Zoning Map, in accordance with the general rules of construction applicable to legislative enactments.
- C. The Land Use Board acting as the Zoning Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, grant variances from the terms of the Zoning Ordinance in accordance with the general or specific rules contained herein and with the general rules hereby laid down that equity shall be done in cases where the strict construction of the provisions of this chapter would work undue hardship. The powers and duties of the Land Use Board having been delegated to and imposed upon it by statute, the Land Use Board shall in all cases follow the provisions applicable to it in said P.L. 1975, c. 291, or subsequent statutes in such case made and provided, and it shall from time to time furnish to any person requesting the same a copy of its rules and information as to how appeals or applications may properly be filed with the Land Use Board for its decision thereon.

§ 40-15 Appeals and applications.

- A. Appeals to the Land Use Board acting as Zoning Board of Adjustment may be taken by any interested party. Each appeal shall be taken within the 20 days prescribed by the statute by filing a notice of appeal with the officer from whom the appeal was taken, together with three copies of said notice with the Secretary of the Land Use Board. Said notice of appeal shall specify the grounds for said appeal. The officer from whom the appeal is taken shall forthwith transmit to the Land Use Board all the papers constituting the record upon which the action appealed from was taken.
- B. Applications addressed to the original jurisdiction of the Land Use Board acting as a Zoning Board of Adjustment without prior application to an administrative officer shall be filed with the Secretary of the Land Use Board. Three copies of the application shall be filed. At the time of filing the appeal or application, but in no event less than 10 days prior to the date set for the hearing, the applicant shall also file all plot plans, maps or other papers required by virtue of any provisions of this chapter or any rule of the Land Use Board acting as a Zoning Board of Adjustment. The applicant shall obtain all necessary forms from the Secretary of the Land Use Board. The Secretary of the Land Use Board shall inform the applicant of the steps to be taken to initiate proceedings and of the regular meeting dates of the Land Use Board. The filing deadlines for use variances and bulk variances (“c”) for nonresidential properties shall be as provided in Article I, §40-9 hereof. Applications for bulk variances for residential properties involving additions to an existing residential dwelling shall be submitted to the Secretary of the Land Use Board no later than 30 days prior to the requested hearing date. In addition to the required copies of the application, the applicants shall also submit the required number of copies of the plot plan showing the proposed work, the proper fee and escrow and any other supporting documents. The applicant shall also provide the statutory notice as set forth in Article III, §40-26.

- C. An appeal stays all proceedings in furtherance of the action in respect to which the decision appealed from was made, unless the officer from whom the appeal is taken certifies to the Land Use Board acting as the Zoning Board of Adjustment after the notice of appeal shall have been filed with him that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Land Use Board acting as the Zoning Board of Adjustment 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.

§ 40-16 Power to reverse or modify decisions.

In exercising the above-mentioned power, the Land Use Board acting as the Zoning Board of Adjustment may, in conformity with the provisions of P.L. 1975, c. 291, or amendments thereto or subsequent statutes applying, reverse or affirm, wholly or partly, or may 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 was taken.

§ 40-17 Expiration of variance.

Any variance from the terms of this chapter hereafter granted by the Land Use Board acting as the Zoning Board of Adjustment 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 from the date of publication of the notice of the judgment or determination of the Land Use Board acting as the Zoning Board of Adjustment; 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 Land Use Board acting as the Zoning Board of Adjustment to the Governing Body or to a court of competent jurisdiction, until the termination in any manner of such appeal or proceeding.

§ 40-18 Powers granted by law.

- A. The Land Use Board acting as a Board of Adjustment shall have such powers as are granted by law to:
- (1) 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 official or agency based on or made in the enforcement of the Zoning Ordinance.
 - (2) Hear and decide requests for interpretation of the Zoning Map or Zoning Ordinance or for decisions upon other special questions upon which such Land Use Board acting as the Zoning Board of Adjustment is authorized by the Zoning Ordinance to pass.
 - (3) 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 in the Zoning Ordinance 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 such strict application of such regulation so as to relieve such difficulties or hardship; and where, in an application or appeal relating to a specific piece of property, the purposes of the Municipal Land Use Law 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 the regulations of the Zoning Ordinance; provided, however, that no variance from those departures enumerated in Subsection **A(4)** of this section shall be granted under this subsection, and provided further that the proposed development does not require approval by the Land Use Board of a subdivision, site plan or conditional use in conjunction with which the Planning Board has power to review a request for a variance pursuant to **§ 40-7H** of this chapter and Section 47a of the Municipal Land Use Law

(N.J.S.A. 40:55D-60.).

- (4) Variance to allow departure from the regulations of the Zoning Ordinance.
 - (a) In particular cases and for special reasons, grant a variance to allow departure from the regulations of the Zoning Ordinance to permit:
 - [1] A use or principal structure in a district restricted against such use or principal structure.
 - [2] An expansion of a nonconforming use.
 - [3] Deviation from a specification or standard pursuant to Section 54 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-67) pertaining solely to a conditional use.
 - [4] An increase in the permitted floor area ratio as defined in Section 3.1 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-4).
 - [5] An increase in the permitted density as defined in Section 3.1 of P.L. 1975, c. 291 (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.
 - (b) A variance under this subsection shall be granted only by affirmative vote of at least two-thirds of the full authorized membership of the Board.
- B. 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 Ordinance. Any application under any subsection of 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 Land Use Board shall act.

§ 40-19 **Additional powers.**

- A. The Land Use Board acting as the Zoning Board of Adjustment shall, in addition to the powers specified in § **40-18** of this article, have the power given by law to:
 - (1) 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 drainage way, flood-control basin or public area reserved on the Official Map.
 - (2) Direct issuance of a permit pursuant to N.J.S.A. 40:55D-36 for a building or structure not related to a street.
- B. The Land Use Board acting as the Zoning Board of Adjustment shall have the power to grant, to the same extent and subject to the same restrictions as the Land Use Board subdivision or site plan approval pursuant to Article 6 of P.L. 1975, c. 291, or conditional use approval pursuant to N.J.S.A. 40:55D-67, whenever the proposed development requires approval by the Land Use Board acting as the Zoning Board of Adjustment of a variance pursuant to § **40-18A(4)** of this chapter. The developer may elect to submit a separate application requesting approval of the variance and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate approval of the variance shall be conditioned upon grant of all required subsequent approvals by the Land Use Board acting as the Zoning Board of Adjustment. No such subsequent approval shall be granted unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and Zoning Ordinance. The number of votes of Land Use Board members required to grant any such subsequent approval shall be as otherwise provided in this chapter for the approval in question, and

the special vote pursuant to § **40-18A(4)** shall not be required.

§ 40-20 **Time limit for decision.**

- A. The Land Use Board acting as the Zoning Board of Adjustment shall render its decision not later than 120 days after the date an appeal is taken from the decision of an administrative officer or the submission of a complete application for development to the Board pursuant to the provisions of N.J.S.A. 40:55D-72.
- B. Failure of the Land Use Board acting as the Zoning Board of Adjustment to render a decision within such one-hundred-twenty-day period or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant.

Article III
Provisions of Combined Board

§ 40-21 **Conflicts of interest.**

No member of the Land Use Board shall act on any matter in which he has, either directly or indirectly, any personal or financial interest. Whenever any such member shall disqualify himself from acting on a particular matter, he shall not continue to sit with the Land Use Board on the hearing of such matter nor participate in any discussion or decision relating thereto.

§ 40-22 **Meetings.**

- A. Meetings of the Land Use Board shall be scheduled no less often than once a month, and any meeting so scheduled shall be held as scheduled unless canceled for lack of applications for development to process.
- B. Special meetings may be provided for at the call of the Chairman or on the request of any two Board members, which meetings shall be held on notice to its members and the public in accordance with all applicable legal requirements.
- C. No action shall be taken at any meeting without a quorum being present.
- D. All actions shall be taken by majority vote of the members present at the meeting, except as otherwise required by any provision of P.L. 1975, c. 291. Failure of a motion to receive the number of votes required to approve an application for development pursuant to § **40-18A(4)** or N.J.S.A. 40:55D-34 shall be deemed an action denying the application.

§ 40-23 **Minutes.**

Minutes of every regular or special meeting shall be kept and shall include the names of the persons appearing and addressing the Land Use Board and of the persons appearing by attorney, the action taken by the Land Use Board and the findings, if any, made by it and reasons therefor. The minutes shall thereafter be made available for public inspection during normal business hours at the office of the Borough Clerk. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceeding concerning the subject matter of such minutes. Such interested party may be charged a fee for reproduction of the minutes for his use as provided for in the rules of the Land Use Board.

§ 40-24 **Fees.**

- A. Fees for applications for rendering any service by the Land Use Board or any member of their administrative staffs shall be set by the Borough Council by ordinance and copies of said fee schedules shall be available to the public.
- B. Fees for applications to the Land Use Board acting as the Zoning Board of Adjustment shall be as follows:

- (1) Applications for use variances under N.J.S.A. 40:55D-70d: \$500.
 - (2) Applications for hardship variances under N.J.S.A. 40:55D-70c and all other types of applications to the Land Use Board acting as the Zoning Board of Adjustment: \$500.
 - (3) Fees for site plan and subdivision approvals: as set forth in Land Use Board fee schedules.
- C. Fees for applications to the Land Use Board shall be as follows:
- (1) Minor subdivision: \$150 plus \$50 per lot.
 - (2) Major subdivision:
 - (a) Sketch plat: \$50.
 - (b) Preliminary plat: \$350 plus \$50 per lot.
 - (c) Final plat: \$150.
 - (3) Minor site plan under 1/2 acre: \$150.
 - (4) Major site plan over 1/2 acre: \$250.
 - (5) Use permit: \$25.
- D. In addition to the fees noted in subsections (A), (B) and (C) of this §40-24, an applicant with a pending application or appeal before the Land Use Board shall place in an escrow account with the Treasurer of the Borough of Allendale a \$600 fee in order to cover legal fees of the attorney for the Land Use Board, engineering fees of the Borough Engineer, publication fees, and resolution fees incurred by the Borough in the processing of the application, and such other fees and costs for other professional consultants as the Land Use Board may from time to time reasonably and within its sole discretion determine are necessary for a proper review of the application and to supplement the applicant in support thereof.
- E. In making a determination as to what professional consultants shall be required, if any, except for the services and fees of the attorney for the Land Use Board and the Borough Engineer, the Land Use Board shall review the application and consider the nature and extent of the application, and any professionals which may be required, including whether any environmental or other conditions may exist.
- F. When the Land Use Board makes a determination that a professional consultant's services are required (other than those of the attorney for the Land Use Board or the Borough Engineer), it shall estimate the fees and costs therefor. Notice of such fees and costs shall be conveyed to the applicant, who shall forthwith deposit such funds, in addition to those set forth in §40-24(D) hereinabove, in an escrow account with the Treasurer of the Borough of Allendale. Any funds contained within the escrow account not required for such legal, engineering or other professional consultants shall be returned to the applicant upon completion of the application or proceeding. In the event of a failure by an applicant to comply with these regulations or to deposit the escrow funds determined by ordinance or by the appropriate board as set forth herein, the Land Use Board may, in its discretion, suspend or dismiss proceedings before it or suspend or revoke such municipal permits or approvals as may have been issued with regard to said application.
- G. If an escrow account or deposit contains insufficient funds to enable the municipality or Land Use Board to perform required application review or processing, including but not limited to the payment for services performed by professional consultants for the municipality or the Land Use Board, the Chief Financial Officer shall provide the applicant with a notice of the insufficient escrow or deposit

balance. In order for work to continue on the application, the applicant shall, within a reasonable time period, post a deposit to the account in an amount to be agreed upon by the Borough or Land Use Board.

H. Payment procedure when a professional consultant's services are required

- (1) The Chief Financial Officer of the Borough shall make all of the payments required for legal, engineering, publication, and resolution preparation, and to professionals for services rendered to the Borough and/or Land Use Board for reviewing an application. In addition to fees, the Chief Financial Officer shall pay all costs associated with the above. The only costs that shall be added to any such charges shall be actual out-of-pocket expenses of the Borough or the Land Use Board, or professionals or consultants. No applicant shall be charged for any Borough, clerical or administrative functions, overhead expenses, meeting room charges or any of the Borough costs and expenses except as provided for specifically by statute, nor shall a Borough professional add any such charge to his or her bill.
- (2) Scope of reimbursed services. The Borough shall be entitled to be reimbursed for the review of applications, both as to completeness and as to content, and for the review and preparation of documents such as, but not limited to drafting resolutions, agreements and necessary correspondence with the applicant or applicant's professionals.
- (3) Deposit of escrow funds; refunds. Deposits received from any applicant in excess of \$5,000 shall be held by the Chief Financial Officer in a special interest-bearing deposit account, and upon receipt of bills from professionals and approval of said bills as hereinafter provided for, the Chief Financial Officer may use such funds to pay the bills submitted by such professionals or experts. The Borough shall not be required to refund an amount of interest paid on a deposit which does not exceed \$100 for the year. If the amount of interest exceeds \$100, the entire amount shall belong to the applicant and shall be refunded to him by the Borough annually or at the time the deposit is repaid or applied for the purposes for which it was deposited, as the case may be, except that the Borough may retain for administrative expenses a sum equivalent to no more than 33 1/3% of that entire amount, which shall be in lieu of all other administrative and custodial expenses. All sums not actually so expended shall be refunded to the applicant within 90 days after the final decision by the appropriate Borough agency with respect to such application, upon certification by the Land Use Board Secretary that such application has been finally decided.
- (4) Payments.
 - (a) Each payment charged by a professional shall be pursuant to a voucher from the professional, which voucher shall identify the personnel performing the service and each date the services were performed, the hours spent to one-quarter-hour increments, the hourly rate and the expenses incurred. All professionals shall submit vouchers to the Chief Financial Officer of the Borough on a monthly basis in accordance with the schedules and procedures established by the Chief Financial Officer. The professional shall send an informational copy of all vouchers or statements submitted to the Chief Financial Officer of the Borough simultaneously to the applicant and the Borough agency for whom said services were performed.
 - (b) The Chief Financial Officer shall prepare and send to the applicant a statement which shall include an accounting of funds listing all deposits, interest earnings, disbursements and the cumulative balance of the escrow account. This information shall be provided on a quarterly basis if monthly charges are \$1,000 or less, or on a monthly basis if monthly charges exceed \$1,000.
 - (c) Payments required prior to issuance of permits. No certificates of occupancy or permits of any kind may be issued with respect to any approved application until all bills for reimbursable services have been received by the Borough from professional personnel rendering services in connection with such application and payment has been made.

- (5) Closeout procedures.
- (a) The following closeout procedures shall apply to all deposits and escrow accounts established under this §40-24.
- (b) The applicant shall send written notice by certified mail to the Chief Financial Officer of the Borough and the approving authority and to the relevant Borough professional, that the application, as the case may be, are completed. After receipt of such notice, the professional shall render a final bill to the Chief Financial Officer of the Borough within 30 days and shall send a copy simultaneously to the applicant. The Chief Financial Officer of the Borough shall render a written final accounting to the applicant on the uses to which the deposit was put within 45 days of receipt of the final bill. Any balances remaining in the deposit or escrow account, including interest, shall be refunded along with the final accounting.
- (6) Substitution of professionals. If the Borough retains a different professional or consultant in the place of a professional originally responsible for application review, the Borough or approving authority shall be responsible for all time and expenses of the new professional to become familiar with the application or the project, and the Borough or approving authority shall not bill the applicant or charge to the deposit or the escrow account for any such services.

§ 40-25 Hearings.

- A. Rules. The Land Use Board shall make rules governing the conduct of hearings before such bodies, which rules shall not be inconsistent with the provisions of N.J.S.A. 40:55D-1 et seq. or of this chapter.
- B. Oaths. The officer presiding at the hearing or such person as he may designate 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, and the provisions of the County and Municipal Investigations Law, c. 38, P.L. 1953 (N.J.S.A. 2A:67A-1 et seq.), shall apply.
- C. Testimony. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer, and the right of cross-examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.
- D. Evidence. Technical rules of evidence shall not be applicable to the hearing, but the Land Use Board may exclude irrelevant, immaterial or unduly repetitious evidence.
- E. Records. The Land Use Board shall provide for the verbatim recording of the proceedings by either stenographic, mechanical or electronic means. The Land Use Board shall furnish a transcript or duplicate recording in lieu thereof on request to any interested party at his expense.

§ 40-26 Notice requirements for hearings.

Whenever a hearing is required on an application for development pursuant to N.J.S.A. 40:55D-1 et seq. or pursuant to the determination of the municipal agency in question, the applicant shall give notice thereof as follows:

- A. Public notice shall be given by publication in the official newspaper of the municipality at least 10 days prior to the date of the hearing.
- B. Notice shall be given to the owners of all real property as shown on the current tax duplicate, located in the state and within 200 feet in all directions of the property which is the subject of such hearing,

provided that this requirement shall be deemed satisfied by notice to the condominium association, in the case of any unit owner whose unit has a unit above or below it; or horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it. Notice shall be given by serving a copy thereof on the property owner as shown on said current tax duplicate, or his agent in charge of the property, or by mailing a copy thereof, by certified mail, to the property owner at his address as shown on said current tax duplicate. Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, a vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within 200 feet of the property which is the subject of the hearing, may be made in the same manner as to a corporation without further notice to unit owners, co-owners or homeowners on account of such common elements or areas.

- C. Notice of all hearings on applications for development involving property located within 200 feet of an adjoining municipality shall be given by personal service or certified mail to the Clerk of such municipality, which notice shall be in addition to the notice required to be given pursuant to § **40-26B** of this article to the owners of lands in such adjoining municipality which are located within 200 feet of the subject premises.
- D. Notice shall be given by personal service or certified mail to the County Planning Board of a hearing on an application for development of property adjacent to an existing county road or proposed road shown on the Official County Map or on the County Master Plan, adjoining other county land or situate within 200 feet of a municipal boundary.
- E. Notice shall be given by personal service or certified mail to the Commissioner of Transportation of a hearing on an application for development of property adjacent to a state highway.
- F. Notice shall be given by personal service or certified mail to the Director of the Division of State and Regional Planning in the Department of Community Affairs of a hearing on an application for development of property which exceeds 150 acres or 500 dwelling units. Such notice shall include a copy of any maps or documents required to be on file with the Borough Clerk pursuant to Section 6b of P.L. 1975, c. 291.
- G. All notices hereinabove specified in this section shall be given at least 10 days prior to the date fixed for the hearing, and the applicant shall file an affidavit of proof of service with the Land Use Board.
- H. Any notice made by certified mail as hereinabove required shall be deemed to be complete upon mailing in accordance with the provisions of N.J.S.A. 40:55D-14.
- I. Form of notice. All notices required to be given pursuant to the terms of this chapter shall state the date, time and place of the hearing; the nature of the matters to be considered and identification of the property proposed for development by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the Borough's Tax Assessor's office; and the location and times at which any maps and documents for which approval is sought are available as required by law.

§ 40-27 **List of property owners furnished.**

Pursuant to the provisions of N.J.S.A. 40:55D-12c, the administrative officer of the Borough shall, within seven days after receipt of a request therefor make and certify a list from the current tax duplicate of names and addresses of owners to whom the applicant is required to give notice pursuant to Article **III**, § **40-26B**, of this chapter.

§ 40-28 Decisions.

- A. The Land Use Board shall include findings of fact and conclusions based thereon in each decision on any application for development and shall reduce the decision to writing. The Land Use Board shall provide the findings and conclusions through:
- (1) A resolution adopted at a meeting held within the time period provided in the Municipal Land Use Law for action by the Land Use Board on the application for development; or
 - (2) A memorializing resolution adopted at a meeting held not later than 45 days after the date of the meeting at which the Land Use Board voted to grant or deny approval. Only the members of the Land Use Board who voted for the action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution. An action pursuant to N.J.S.A. 40:55D-9, resulting from the failure of a motion to approve an application, shall be memorialized by resolution as provided above, with those members voting against the motion for approval being the members eligible to vote on the memorializing resolution. The vote on any such resolution shall be deemed to be a memorialization of the action of the Land Use Board and not to be an action of the Board; however, the date of the adoption of the resolution shall constitute the date of the decision for purposes of the mailings, filings and publications required by N.J.S.A. 40:55D-10(h) and (i). If the Land Use Board fails to adopt a resolution or memorializing resolution as hereinabove specified, any interested party may apply to the Superior Court in a summary manner for an order compelling the Land Use Board to reduce its findings and conclusions to writing within a stated time, and the cost of the application, including attorney's fees, shall be assessed against the Borough.
- B. A copy of the decision shall be mailed by the Land Use Board within 10 days of the date of decision to the applicant, or, if represented, then to his attorney, without separate charge. A copy of the decision shall also be mailed to all persons who have requested it and who have paid the fee prescribed by the Land Use Board for such service. A copy of the decision shall also be filed in the office of the Municipal Clerk, who shall make a copy of such filed decision available to any interested party upon payment of a fee calculated in the same manner as those established for copies of other public documents in the municipality.

§ 40-29 Publication of decisions.

A brief notice of every final decision shall be published in the official newspaper of the municipality. Such publication shall be arranged by the Secretary of the Land Use Board, without separate charge to the applicant. Said notice shall be sent to the official newspaper for publication within 10 days of the date of any such decision.

§ 40-30 Payment of taxes.

Pursuant to the provisions of N.J.S.A. 40:55D-39 and 40:55D-65, every application for development submitted to the Land Use Board shall be accompanied by proof that no taxes or assessments for local improvements are due or delinquent on the property which is the subject of such application; or, if it is shown that taxes or assessments are delinquent on said property, any approvals or other relief granted by the Land Use Board shall be conditioned upon either the prompt payment of such taxes or assessments or the making of adequate provision for the payment thereof in such manner that the Borough will be adequately protected.

§ 40-31 Determination of completeness of application.

An application for development shall be complete for purposes of commencing the applicable time period for action by the Borough Engineer when so certified by the Borough agency or its authorized committee or designee. In the event that the agency, committee or designee does not certify the application to be complete within 45 days of the date of its submission, the application shall be deemed complete upon the expiration of the forty-five-day period for purposes of commencing the applicable time period, unless the application lacks the information indicated on the checklist attached to and made a part of this chapter, a

copy of which shall have been provided to the applicant; or the Borough agency or its authorized committee or designee has notified the applicant, in writing, of the deficiencies in the application within 45 days of submission of the application. The applicant may request that one or more of the submission requirements be waived, in which event the agency or its authorized committee shall grant or deny the request within 45 days. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that he is entitled to approval of the application. The Borough agency may subsequently require correction of any information found to be in error and submission of additional information not specified in the chapter or any revisions in the accompanying documents as are reasonably necessary to make an informed decision as to whether the requirements necessary for the approval of the application for development have been met. The application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents so required by the agency.

§ 40-32 Approval of Land Use Board application and checklist.

The application for development for the Borough of Allendale Land Use Board and Schedule A, Checklist for Submissions of Development Applications, on file with the Secretary of the Allendale Land Use Board, be and the same is hereby authorized and adopted for use by the Land Use Board.

§ 40-33 Approval of Land Use Board acting as Zoning Board of Adjustment checklist.

The required materials and checklist for the Borough of Allendale Land Use Board acting as the Zoning Board of Adjustment hearings now on file with the Land Use Board be and the same is hereby authorized and adopted for use by the Land Use Board acting as the Zoning Board of Adjustment.

Article IV Appeals

§40-34. Appeals to Land Use Board acting as Zoning Board of Adjustment.

An appeal to the Land Use Board acting as a Zoning Board of Adjustment may be taken by any interested party affected by any decision of the administrative officer of the Borough based on or made in the enforcement of the Zoning Ordinance or Official Map. Such appeal shall be taken within 20 days by filing a notice of appeal in the manner set forth in Article II, §40-15, of this article, and in accordance with the provisions of Article 40:55D-1 et seq.

§40-35. Appeals from Land Use Board. All appeals from decisions of the Land Use Board shall be to the Superior Court and not to the Borough Council.

§ 40-36 Appeal to Governing Body from Land Use Board acting as a Zoning Board of Adjustment.

An appeal from any decision of the Land Use Board acting as the Zoning Board of Adjustment granting a use variance pursuant to the provisions of N.J.S.A. 40:55D-17d may be taken to the Superior Court.

Article V Miscellaneous Provisions

§ 40-37 Definitions.

A. Whenever a term is used in this chapter which is defined in P.L. 1975, c. 291, such term is intended to have the meaning set forth in the definition of such term found in said statute, unless a contrary intention is clearly expressed from the context of this chapter. The provisions of the definitions sections of P.L. 1975, c. 291 (N.J.S.A. 40:55D-3 through 40:55D-7, inclusive), are incorporated by reference thereto.

B. Wherever the term "Zoning Board," "Zoning Board of Adjustment" or "Board of Adjustment" shall

appear in any other ordinance, application for, checklist, etc., of the Borough of Allendale, said term shall be replaced with the term "Land Use Board acting as a Zoning Board of Adjustment," and all references thereto shall be read as applying only to the Land Use Board acting as the Zoning Board of Adjustment.

§ 40-38 Repealer.

All sections of the Land Subdivision Ordinance, Zoning Ordinance, Site Plan Review Ordinance or any other ordinance of the Borough of Allendale which contain provisions contrary to the provisions of this chapter shall be and are hereby repealed to the extent of such inconsistency.

§ 40-39 Provisions continued.

Pursuant to the provisions of P.L. 1975, c. 291, Section 81, the substantive provisions of the following ordinances shall continue in full force and effect and shall be read in pari materia with this chapter:

- A. Chapter 32 of the Code of the Borough of Allendale, known as the "Revised Land Subdivision Ordinance," and specifically the following provisions thereof: Article I, Article II, § 10 of Article III, Article IV, Article V and Article VI.
- B. Chapter 77 of the Code of the Borough of Allendale, known as the "Zoning Ordinance - 1958," and specifically the following provisions thereof: Article I, Article II, Article IV, Article V, Article VI, Article VII, Article VIII, Article IX, Article X, Article XI, Article XII, Article XIII (except the provisions of § 77-63.1D and E, insofar as these provisions require the approval by the Governing Body which is hereby eliminated except as to those uses involving a substantial change of use), Article XIV, Article XV, Article XVII and Article XVIII.

Commented [2]: Editor's Note: See now Ch. 147, Land Subdivision and Site Plan Review.

Commented [3]: Editor's Note: See now Ch. 270, Zoning.

§ 40-40 Pending applications.

All applications for development filed prior to the effective date of this chapter may be continued, but any appeals arising out of decisions made on any such application shall be governed by the provisions of Article IV of this chapter.

§ 40-41 Title.

This chapter shall be known and may be cited as the "Land Use Procedures Ordinance of the Borough of Allendale."

§ 40-42 Filing of copies.

Immediately upon adoption of this chapter, the Borough Clerk shall file a copy of this chapter with the Bergen County Planning Board as required by law. The Clerk shall also file with said County Planning Board copies of all other ordinances of the municipality relating to land use, such as the Subdivision, Zoning and Site Plan Review Ordinances.

§40-43. Interim Zoning Ordinance.

The existing Zoning Ordinance is hereby saved from repeal.

§ 40-44 Effective date.

This chapter shall take effect on upon passage and publication as provided by law.