

ORDINANCE NO. 2024-46

**AN ORDINANCE OF THE BOROUGH OF SOUTH RIVER, COUNTY OF MIDDLESEX, STATE OF NEW JERSEY,
AMENDING THE BOROUGH CODE OF THE BOROUGH OF SOUTH RIVER SO AS TO AMEND CHAPTER
50 ENTITLED LAND USE PROCEDURES**

WHEREAS, the Municipal Land Use Law provides that any municipality with a population in excess of 15,000 may establish a consolidated land use board by voter referendum; and

WHEREAS, the Borough of South River caused a referendum question to be placed on the ballot during the general election on November 5, 2024; and

WHEREAS, the voters passed a referendum to have the Borough of South River establish a consolidated land use board; and

WHEREAS, the Mayor and Council of the Borough of South River have determined that it would be in the public interest to establish a consolidated Land Use Board.

BE IT ORDAINED by the Mayor and Borough Council of the Borough of South River, County of Middlesex, and State of New Jersey, as follows:

SECTION 1. As of January 1, 2025, the Zoning Board of Adjustment of the Borough of South River is hereby abolished except that any applications then pending before said Zoning Board of Adjustment will continue to be heard in accordance with N.J.S.A. 40:55D-72.1.

SECTION 2. Chapter 50 of the Borough Code of the Borough of South River entitled Land User Procedures is hereby amended so as to delete Article II, Zoning Board of Adjustment in its entirety.

SECTION 3. As of January 1, 2025, the Planning Board of the Borough of South River is hereby abolished except that any applications then pending before said Planning Board will continue to be heard.

SECTION 4. Chapter 50 of the Borough Code of the Borough of South River entitled Land Use Procedures is hereby amended so as to amend Article I entitled Planning Board in its entirety as follows:

Article I South River Land Use Board.

§50-1 Establishment.

In accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., the Borough of South River has instituted a nine (9) member Land Use Board to exercise, to the same extent and subject to the same restrictions, all the powers of a Planning Board and Board of Adjustment.

§50-2 Establishment.

A. Establishment. The South River Land Use Board shall consist of nine (9) members which for convenience in designating the manner of appointment, shall have the four (4) following classes:

1. Class I – The Mayor of the Borough of South River, or the Mayor's designee in the absence of the Mayor;
2. Class II – One of the officials of the municipality other than a member of the Borough Council, to be appointed by the Mayor
3. Class III – A member of the Borough Council, to be appointed by it; and

4. Class IV – Six (6) other citizens of the Borough of South River, to be appointed by the Mayor. A member of the Environmental Commission who is also a member of the Land Use Board as required by N.J.S.A. 40:56A-1 shall be a Class IV Planning Board member. For the purpose of this section, membership on a municipal board or commission whose function is advisory in nature, and the establishment of which is discretionary and not required by statute, shall not be considered the holding of municipal office.
5. All members of the Land Use Board shall be municipal residents.

B. Terms.

1. The term of the member composing Class I shall correspond with his or her official tenure. The terms of the members composing Class II and Class III shall be for one (1) year or terminate at the completion of their respective terms of office, whichever occurs first.
2. The term of a Class II or Class IV member who is also a member of the environmental commission shall be for three years or terminate at the completion of his term of office as a member of the environmental commission, whichever occurs first. The term of a Class IV member who is also a member of the board of education shall terminate whenever he is no longer a member of such other body or at the completion of his Class IV term, whichever occurs first. The term of each Class IV member shall be four years.
3. Alternate Members. Alternate members of the Land Use Board shall be appointed by the Mayor and shall meet the qualifications for Class IV members of nine (9) member Planning Boards. The Mayor may, in the exercise of his or her discretion, appoint up to four (4) alternate members of the Board. Alternate members shall be designated at the time of appointment by the Mayor as "Alternate No. 1", "Alternate No. 2", etc. The terms of the alternate members shall be for two (2) years, except that the terms of the alternate members shall be such that the term of not more than one (1) alternate member shall expire in any one (1) year; provided, however, that in no instance shall the terms of the alternate members first appointed exceed two (2) years. Alternate members of the Land Use Board of the Borough of South River shall be municipal residents.
4. Pursuant to NJSA 40:55D-25(c), Class I and Class III members may not participate in the consideration of any applications of development which involve relief pursuant to subsection (d) of N.J.S.A. 40:55D-70.

- C. Participation of Alternate Members. Alternate members may participate in all matters but may not vote except in the absence or disqualification of a regular member of any class. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate

member is to vote, Alternate No. 1 shall vote. Participation of alternate members shall not be deemed to increase the size of the Planning Board.

- D. All terms shall run from January 1 of the year in which the appointment was made, except as otherwise specified herein.
- E. Conflicts. No member of the Land Use Board shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. In the event that the Land use shall lack a quorum of members eligible to act upon an application because of either direct or indirect personal or financial interest therein, alternate members of the Land Use Board will be called upon according to number.
- F. Vacancies. If a vacancy of any class shall occur in a manner other than by expiration of term, it shall be filled by appointment for the unexpired term.
- G. Removal. Any member other than a Class I member, after a public hearing if he or she requests one, may be removed by the Borough Council for cause.
- H. All regular and alternate members of the Land Use Board shall be required to successfully complete a course in land use law and planning which has been authorized by the New Jersey Commissioner of Community Affairs and/or New Jersey planning officials within 18 months of assuming Board membership. No new member of the Land Use Board shall be seated as a first-term member or alternate member of the Land Use Board unless the person agrees to complete the basic course required and complete that course within 18 months of assuming Board membership. The Mayor or Class I member, a member of the governing body serving as a Class III member, and any person licensed as professional planner shall be exempt from this requirement

§50-3 Organization of the Land Use Board.

The Land Use Board shall elect a Chairman and Vice-Chairman from the members of Class IV and shall elect a Secretary who is either a member or alternate member of the Planning Board or a municipal employee designated by it. An alternate member of the Land Use Board shall not serve as Chairman or Vice-Chairman of the Land Use Board. The Land Use Board may employ, or contract for, and fix the compensation of legal counsel (other than the Municipal Attorney), experts, and other staff, including but not limited to a Board Secretary, and services utilizing funds appropriated by the Borough Council for its use. The costs of such counsel, experts and other assistance shall not exceed the amounts appropriated to the Land Use Board by the Borough Council, unless reimbursable by an applicant. The Borough Council shall make provision in its budget and shall appropriate funds for the expenses of the Land Use Board.

§50-4 Adoption of Rules and Regulations.

The Board shall adopt bylaws governing its procedural operation and such rules and regulations as maybe necessary to carry into effect the provisions and purpose 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.

§50-5 Planning Board Powers of the Consolidated Land Use Board.

A. The Consolidated Land Use Board shall have the following powers and duties:

1. To make and adopt and, from time to time, amend a Master Plan for the physical development of the municipality, including any areas outside its boundaries which, in the Board's judgment, bear essential relation to the planning of the municipality, in accordance with the provisions of N.J.S.A. 40:55D-28.
2. To administer site plan and land subdivision review in accordance with the provisions of this chapter and N.J.S.A. 40:55D-37 through 40:55D-59.
3. To grant exceptions from certain requirements for subdivision and site plan approval pursuant to N.J.S.A. 40:55D-51.
4. Informal Review. At the request of an applicant, the Planning Board may grant an informal review of a concept plan for a development for which the applicant intends to prepare and submit an application for development. The amount of any fees for such an informal review shall be a credit toward fees for review of the application for development. The applicant shall not be bound by any concept plan for which review is requested, and the Planning Board shall not be bound by any such review.
5. To consider and report to the Borough Council within thirty-five (35) days after referral to the Board as to any proposed development regulation submitted to it pursuant to the provisions of N.J.S.A. 40:55D-26(a) and also to pass upon other matters specifically referred to the Planning Board by the Borough Council pursuant to the provisions of N.J.S.A. 40:55D-26(b).
6. To participate in the preparation and review of programs or plans required by State or Federal law or regulations.
7. To assemble data on a continuing basis as part of a continuing planning process.
8. To perform such other advisory duties as are assigned to it by ordinance or resolution of the Borough Council for the aid and assistance of the Borough Council or for other agencies or officers, including, but not limited to, preparation of a capital improvements program pursuant to N.J.S.A. 40:55D-29.
9. To exercise the powers of a Zoning Board of Adjustment,

B. Meetings.

1. Meetings of the Land Use Board shall be scheduled no less often than once a month, and any meeting so scheduled shall be heard as scheduled unless canceled for lack of applications for development to process.

2. Special meetings may be provided for at the call of the Chairman or on the request of any two (2) Board members, which meetings shall be held on notice to the Board's members and to the public in accordance with all applicable legal requirements.
 3. No action shall be taken at any meeting without a quorum being present.
 4. All actions shall be taken by majority vote of a quorum except as otherwise required by any provision of N.J.S.A. 40:55D-1 et seq.
 5. All regular meetings and all special meetings shall be open to the public. Notice of all such meetings shall be given in accordance with the requirements of the Open Public Meetings Law, N.J.S.A. 10:4-6 et seq. An executive session for the purpose of discussing and studying any matters to come before the Planning Board shall not be deemed a regular or special meeting.
- C. Minutes. The Secretary appointed by the Planning Board shall keep minutes of every regular or special meeting which shall include the names of the persons appearing and addressing the Board and of the persons appearing by attorney; the action taken by the Board; and the findings, if any, and reasons therefor made by the Board.
- D. Hearings.
1. Rules. Unless permitted to waive notice and public hearing by the provisions of this chapter or other applicable law, the Planning Board shall hold a hearing on each application for development submitted for its consideration and shall make rules governing conduct of applicants and others before the Planning Board.
 2. Filing of Documents. Any maps and documents for which approval is sought at a hearing shall be on file at the Zoning Office in the Borough Hall and available for public inspection during regular business hours.
 3. Oaths. The officer presiding at the hearing or such person as he or she may designate shall have the power to administer oaths and to 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, N.J.S.A. 2A:67A-1 et seq., shall apply.
 4. 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.
 5. Evidence. Technical rules of evidence shall not be applicable to the hearing, but the Board may exclude irrelevant, immaterial or unduly repetitious evidence.

6. Records. The Planning Board shall provide for the verbatim recording of the proceedings by either stenographic, mechanical or electronic means. The Planning Board shall furnish a transcript or duplicate recording in lieu thereof on request to any interested party at his or her expense. The fee charged shall not exceed the actual cost of preparing the transcript or recording. Transcripts shall be certified in writing by the transcriber to be accurate
- E. Notice of Hearings. Notice shall be required for all site plan and subdivision applications. Whenever public notice of a hearing is required on an application for development, the applicant shall give notice thereof at least ten (10) days prior to the date of the hearing in accordance with the following requirements:
 1. Public notice of a hearing on an application for development shall be given for all of the following:
 - a) Appeal of the determination of the Zoning Officer;
 - b) Variance;
 - c) Directive for issuance of a building permit; or
 - d) Preliminary or final subdivision plats or site plan approval or extension of such approval or extension of statutory guarantee;
 - e) Extension of approvals for five (5) or more years under N.J.S.A. 40:55D-49 and N.J.S.A. 40:55D-52;
 - f) Modification or elimination of a significant condition or conditions in a memorializing resolution in any situation wherein the application for development for which the memorializing resolution is proposed for adoption required public notice; or
 - g) Requests for interpretation of the zoning map or ordinance or for decisions upon other special questions upon which the Planning Board is authorized to pass.
 2. Public notice shall be given by publication in the official newspaper of the Borough, if there is one, or in a newspaper of general circulation in the Borough and shall conform with N.J.S.A. 40:55D-11 as to content.
 3. Notice of hearing requiring public notice pursuant to this chapter shall be given by certified mail to the current owners of the tax lot or lots, located within two hundred (200) feet in all directions of the property which is the subject of such hearing and whether located within or without the municipality in which applicant's land is located.

§50-6 Environmental/Shade Tree Commission review.

Whenever the Environmental Commission has prepared and submitted to the Land Use Board an index of the natural resources of the municipality, the Land Use shall make available to the Environmental Commission an informational copy of every application for development to the Land Use Board. Failure of the Land Use Board to make such an informational copy available to the Environmental Commission shall not invalidate any hearing or proceeding.

§50-7 Time Limits.

- A. Minor subdivision and minor site plans. Minor subdivision and minor site plan approvals 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. Failure of the Land Use Board to act within the prescribed forty-five-day period shall constitute minor subdivision. Minor subdivisions 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 (N.J.S.A. 46:23-9.9 et seq.), or a deed clearly describing the approved minor subdivision, is filed by the developer with the County Recording Officer, the Borough Engineer and the Borough Tax Assessor. Any such plat or deed 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.
- (1) The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor subdivision approval was granted shall not be changed for a period of two years after the date on which the resolution of minor subdivision approval is adopted, provided that the approved minor subdivision shall have been duly recorded as provided in this subsection.
 - (2) The Land Use Board may extend the one-hundred-ninety-day period for filing a minor subdivision plat or deed pursuant to § 295-24 and/or § 295-27 if the developer proves to the reasonable satisfaction of the Land Use Board that 1) the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities, and 2) the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the Land Use Board. The developer may apply for the extension either before or after what would otherwise be the expiration date.
 - (3) The Land Use Board shall grant an extension of minor subdivision approval for a period determined by the Board but not exceeding one year from what would otherwise be the expiration date, if the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued the required approvals. A developer shall apply for the extension before what would otherwise be the expiration date of minor subdivision approval or the 91st day after the developer receives the last legally required approval from the other government entities, whichever occurs later.
- B. Preliminary approval of major subdivisions and major site plans. Upon submission of a complete application for a subdivision of 10 acres of land or less and 10 dwelling units or less, 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 acres or more than 10 dwelling units, the Land Use Board shall grant or deny preliminary approval within 95 days 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 either size subdivision or site plan.
- 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 § 50-10G, the Land Use Board shall grant or deny approval of the application within 95 days after submission by the developer of a complete application or within such further time as may be consented to by the applicant. Failure of the Planning Board to act within the period described shall constitute approval of the application, and a certificate of the administrative officer, as to the failure of the Planning Board to act, shall be issued on the request of the applicant.
- D. Final approval.
- (1) Application for final subdivision approval or site plan 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. Failure of the Planning Board to act within the period prescribed shall constitute final approval.
 - (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 Planning 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.

- (3) The Planning Board may extend the 95 days or the one-hundred-ninety-day period if the developer proves to the reasonable satisfaction of the Planning Board that (1) the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities, and (2) the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the Planning Board. The developer may apply for the extension either before or after what would otherwise be the expiration date.

§50-8 Zoning Powers of the Land Use Board.

- A. The Land Use Board shall hereby exert all the powers of a Zoning Board of Adjustment and shall have the power to:
1. Hear and decide appeals where the appellant alleges that there is error in any order, requirement, decision or refusal made by the Zoning Officer based on or made in the enforcement of this chapter.
 - a) Appeals to the Land Use Board may be taken by any interested party. Each appeal shall be taken within the twenty (20) day period prescribed by N.J.S.A. 40:55D-72 by filing with the Land Use Board Secretary a notice of appeal together with fifteen (15) copies of the notice. The notice of appeal shall specify the grounds for the appeal. The officer from whom the appeal is taken shall immediately transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
 - b) The Land Use Board shall render a decision on the appeal not later than one hundred twenty (120) days after the date of the appeal from the decision of the Zoning Officer. Failure of the Land Use Board to render a decision within the one hundred twenty (120) day period shall constitute approval of the appeal.
 - c) An appeal shall stay all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Land Use Board, after the notice of appeal has been filed, that by reason of facts stated in the certificate a stay would, in his or her 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 Superior Court of New Jersey, on application or notice to the officer from whom the appeal is taken and to the Borough Council, and on good cause shown.
 - d) The Land Use Board may, in conformity with the provisions of N.J.S.A. 40:55D-1 et seq., reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination of the

administrative order as ought to be made, and to that end the Land Use Board shall have all the powers of the Zoning Officer from whom the appeal was taken.

2. Hear and decide requests for interpretation of the Zoning Map or this chapter, in accordance with N.J.S.A. 40:55D-1 et seq.
3. Hear and decide requests for general variances ["C" Variances] as follows:
 - a) "(C)(1) Variance." Where, by reason of exceptional narrowness, shallowness or shape of a specific property; or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property; or by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to this chapter or N.J.S.A. 40:55D-1 et seq. would result in peculiar and exceptional and undue hardship upon the applicant for development of such property, grant, upon an application or an appeal relating to such property, a variance from strict application of such regulation so as to relieve such difficulties or hardship.
 - b) "(C)(2) Variance." Where, in an application or appeal relating to a specific piece of property, the purposes of this chapter and N.J.S.A. 40:55D-1 et seq., would be advanced by a deviation from this chapter's requirements and the benefit of the deviation would substantially outweigh any detriment, grant a variance to allow departure from regulations pursuant to this chapter and N.J.S.A. 40:55D-1 et seq.
4. Special Variance ["D" Variance]. In particular cases and for special reasons, the Land Use Board may grant a variance to allow departure from regulations pursuant to N.J.S.A. 40:55D-62 et seq. to permit
 - a) a use or principal structure in a zone restricted against such use or principal structure,
 - b) an expansion of a nonconforming use,
 - c) deviation from a specification or standard pursuant to N.J.S.A. 40:55D-67 pertaining solely to a conditional use,
 - d) an increase in the permitted floor area ratio as defined in N.J.S.A. 40:55D-4, or
 - e) a height of a principal structure which exceeds by ten (10) feet or ten (10%) percent the maximum height permitted in the zone for a principal structure.
5. The Land Use Board shall, at least once a year, review its decisions on applications and appeals for variances and shall prepare and adopt by resolution a report on its findings on zoning ordinance provisions which were

the subject of variance requests, together with its recommendations for zoning ordinance amendment or revision, if any. The report shall be filed with the Borough Clerk.

- B. Expiration of Variances. Any variance from the items of this chapter hereafter granted by the Land Use Board pursuant to its Zoning powers, permitting the erection or alteration of any structure or structures or permitting a specified use of any premises, shall expire by limitation within one year from the date of entry of the judgment or determination of the Land Use Board, or in the case where a variance was granted in conjunction with the approval of a development application for a minor subdivision or site plan, the protection period for the variance shall run concurrently with the protection period for the respective development application, unless the applicable construction permits have been obtained or the permitted use has actually been commenced by that date; 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 to the court of competent jurisdiction until the termination in any manner of such appeal or proceeding.

SECTION 5. That a copy of this ordinance shall be filed with the Clerk of the Middlesex County.

SECTION 6. This ordinance shall take effect after second reading and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed on first reading at a regular meeting of the Borough Council of the Borough of South River, in the County of Middlesex, State of New Jersey, held on November 18th, 2024, and will be considered for second reading and final passage at the regular meeting of said Governing Body to be held on the 9th day of December, 2024, at 7:00 p.m., or as soon thereafter as this matter can be reached, at the Council Chamber of the Criminal Justice Building located at 61 Main Street, South River, New Jersey, and/or virtually via Zoom meeting code 826 6082 9597: password: 000000 at which time all persons interested shall be given an opportunity to be heard concerning this ordinance.

Introduced 11-18-24

COUNCIL	MOTION	2ND	AYES	NAYS	ABSTAIN	ABSENT
<i>Councilwoman Balazs</i>		X	X			
<i>Councilman Ciulla</i>	X		X			
<i>Councilman DeSantis</i>			X			
<i>Councilman Dziemian</i>			X			
<i>Councilman Gurchensky</i>			X			
<i>Council President Krenzel</i>						X

ALYSSA HAGER, RMC
BOROUGH CLERK