

Revised 11/13/09

Ord. #26-09

AN ORDINANCE OF THE TOWNSHIP OF MOUNT OLIVE TO DISSOLVE THE ZONING BOARD OF ADJUSTMENT AND VEST POWERS INTO THE PLANNING BOARD

WHEREAS, the Township of Mount Olive currently has a separate Planning Board and a separate Zoning Board of Adjustment, pursuant to Township Code Section 400-24 and Section 400-9, respectively, and

WHEREAS, 400-24A provides that the Township of Mount Olive Planning Board shall have nine members; and

WHEREAS, pursuant to N.J.S.A. 40:55D-25(c)(2), any municipality which has a nine member planning board may, subject to voter referendum, grant authority to such planning board to exercise, to the same extent and with the same restrictions, all the powers of a board of adjustment, provided that the Class I and Class III members of the planning board shall not participate in applications for development which involve relief pursuant to subsection d. of N.J.S.A. 40:55D-70; and

WHEREAS, in an effort to improve government efficiency and reduce costs to Mount Olive taxpayers approximately \$30,000+, the Township Council desires that the Township of Mount Olive Planning Board shall exercise all those powers currently exercised by the Township of Mount Olive Zoning Board of Adjustment, subject to voter referendum as provided for pursuant to N.J.S.A. 40:55D-25(c)(2).

NOW, THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Mount Olive, County of Morris, and State of New Jersey, as follows:

Section 1. Section 400-9 Board of Adjustment of the Township of Mount Olive is hereby repealed and the Township of Mount Olive Zoning Board of Adjustment is hereby dissolved.

Section 2. The Township of Mount Olive Planning Board shall continue to exercise all powers granted to it as a planning board pursuant to New Jersey statutes and the Township of Mount Olive Code.

Section 3. In addition to those powers specified in Section 2 of this Ordinance, the Planning Board shall exercise, to the same extent and with the same restrictions, all the powers of the Township of Mount Olive Zoning Board of Adjustment, provided that the Class I and Class III members of the Planning Board shall not participate in applications for development which involve relief pursuant to subsection d. of N.J.S.A. 40:55D-70.

Section 4. In accordance with Section 2 of this Ordinance, Section 400-24 of Township of Mount Olive Code is hereby amended to read as follows:

ARTICLE III Planning Board

Section 400-24.1 Continuation of Planning Board

The Planning Board, as heretofore established, shall be and is hereby continued with all powers and duties as described herein.

Section 400-24.2 Planning Board membership; terms.

- A. There shall be a nine member Planning Board, the membership of which shall consist of the following four classes:
- (1) Class I: the Mayor or the Mayor's designee in the absence of the Mayor;
 - (2) Class II: one of the officials of the Township other than a member of the governing body, to be appointed by the Mayor; provided that if there be an Environmental Commission, the member of the Environmental Commission who is also a member of the Planning Board as required by N.J.S.A. 40:56A-1 shall be deemed to be the Class II Planning Board member for purposes of this section in the event that there be among the Class IV or alternate members of the Planning Board a member of the Board of Education. [Amended 12-27-1999 by Ord. No. 99-31].
 - (3) Class III: a member of the governing body to be appointed by it.
 - (4) Class IV: other citizens of the Township, to be appointed by the Mayor [Amended 12-27-1999 by Ord. No. 99-31].
 - (a) The members of Class IV shall hold no other municipal office, position or employment except that one such member may be a member of the Historic Preservation Commission. Not more than one member of the Board of Education may be a Class IV member of the Planning Board. If and while there is an Environmental Commission, the member of the Environmental Commission who is also a member of the Planning Board as required by N.J.S.A. 40:56A-1 shall be a Class IV Planning Board member, unless there be among the Class IV or alternate members of the Planning Board a member of the Historic Preservation Commission and a member of the Board of Education, in which case the member common to the Planning Board and Environmental Commission shall be deemed a Class II member of the Planning Board. For the purpose of this section, membership on a Township 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.
- B. The term of the member composing Class I shall correspond to such member's official tenure. If such member is the Mayor's designee in the absence of the Mayor, the designee shall serve at the pleasure of the Mayor during the Mayor's official 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, except for a Class II member who is also a member of the Environmental Commission. 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. To the greatest practicable extent, the expiration of the terms of all Class IV members shall be distributed so that concurrent term expirations are avoided, provided that the initial Class IV term for no member shall exceed four years. After the establishment of the Board's membership as aforesaid, the Class IV term of each member shall be four years. If a vacancy in any class shall occur otherwise than by expiration of the Planning Board term, it shall be filled by appointment, as above provided for the unexpired term.

- C. No member of the Planning Board shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. Any member other than a Class I member, after a public hearing if requested, may be removed by the governing body for cause.
- D. The terms of appointment of any current Planning Board shall continue and new members shall be appointed to expired terms.
- E. The Mayor may appoint a designee to serve at his pleasure, provided a letter of appointment is filed with the Township Clerk. Any person appointed shall serve until a letter of appointment of another person is filed with the Township Clerk.
- F. All members of the Board, except the Class II member, shall be municipal residents.

Section 400-24.3 Alternate members.

- A. There shall be two alternate members of the Planning Board, both of whom shall be municipal residents. Alternate members shall be appointed by the appointing authority for Class IV members and shall meet the qualifications of Class IV members. Alternate members shall be designated at the time of appointment as "Alternate No. 1" and "Alternate No. 2". The terms of the alternate members shall be for two years, except that the terms of the alternate members shall be such that the term of not more than one alternate member shall expire in any one year; provided, however, that in no instance shall the terms of the alternate members first appointed exceed two years. A vacancy occurring otherwise than by expiration of term shall be filled by the appointing authority for the unexpired term only.
- B. No alternate member shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. An alternate member may, after public hearing if requested, be removed by the governing body for cause.
- C. 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.

Section 400-24.4 Lack of quorum, substitute members.

If the Planning Board lacks a quorum because any of its regular or alternate members is prohibited from acting on a matter due to the member's personal or financial interest therein, the Chairman of the Planning Board shall appoint such persons to serve as substitute members as may be necessary to constitute a quorum for that matter only. Any such substitute member shall have the same qualifications as a Class IV member of the Board including completion of required educational courses.

Section 400-24.5 Organization of Planning Board; offices; expenses.

The Planning Board shall elect a Chairman and Vice Chairman from the members of Class IV, and select a Secretary who may or may not be a member of the Planning Board or a municipal employee, and create and fill such other offices as established by ordinance. An alternate member shall not serve as Chairman or Vice Chairman of the Planning Board. The Board shall have legal counsel pursuant to contract at a fixed rate of compensation, who shall be an attorney at law of the State of New Jersey, other than the Municipal Attorney, and who shall be qualified to serve the Planning Board pursuant to Section 1:1-3 of the Rules and Regulations of the Planning Board adopted pursuant to N.J.S.A. 40:55D-8, as amended. The Board may also appoint a licensed professional engineer in the State of New Jersey in accordance with Section 1:104 of the Rules and Regulations of the Planning Board, who need not be the Township Engineer. The Board may also appoint or engage a licensed professional planner in the State of New Jersey pursuant to Section 1:1-5 of the Rules. The Board may also employ, contract for and fix the compensation of other staff and services as it may deem necessary, not exceeding, exclusive of gifts or grants, the amount appropriated by the governing body for its use. The governing body shall make provision in its budget and appropriate funds for the expenses of the Planning Board.

Section 400-24-6 Powers.

A. The Planning Board shall follow the provisions of this Code and the Municipal Land Use Law, and shall accordingly exercise its powers in regard to:

- (1) The Master Plan;
- (2) Subdivision control and site plan review;
- (3) The Official Map, if there be one;
- (4) The Zoning Ordinance;
- (5) Conditional uses;
- (6) Capital improvements program;
- (7) Variances and certain building permits in conjunction with subdivision, site plan and conditional use approval.

B. The Planning Board shall also have the following powers formerly exercised by the Zoning Board of Adjustment:

- (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 officer based on, or made in the enforcement of, the Zoning Ordinance.

- (2) Hear and decide requests for interpretation of the Zoning Map or Ordinance, or for decisions upon other special questions upon which the Board is authorized to pass by any Zoning or Official Map Ordinance in accordance with this chapter and the Municipal Land Use Law.
- (3) Variances
 - (a) 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 zoning regulation 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;
 - (b) Where, in an application or appeal relating to a specific piece of property, the purposes of zoning would be advanced by a deviation from the Zoning Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from such regulations; provided, however, that no variance from those departures enumerated in N.J.S.A. 40:55D-70(d) of this section shall be granted under this subsection; and provided further that the proposed development does not require approval by the Planning 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 N.J.S.A. 40:55D-60a.
- (4) In particular cases and for special reasons, grant of a variance to allow departure from zoning regulations to permit a use or principal structure in a district restricted against such use or principal structure; an expansion of a nonconforming use; deviation from a specification or standard pursuant to N.J.S.A. 40:55D-67 pertaining solely to a conditional use; an increase in the permitted floor area ratio as defined in N.J.S.A. 40:55D-4; an increase in the permitted density as defined in N.J.S.A. 40:55D-4, except as applied to the required lot area for a lot or lots for detached one- or two-dwelling-unit buildings, which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision; or a height of a principal structure which exceeds by 10 feet or 10% the maximum height permitted in the district for a principal structure. A variance under the subsection shall be granted only by affirmative vote of at least five members.
- (5) If an application for development requests one or more variances, but not a variance for a purpose enumerated in Subsection D of this section, the decision on the requested variance or variances shall be rendered under Subsection C of this section.
- (6) No variance or other relief may be granted under the terms 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 the purpose of the zone plan and Zoning Ordinance.
- (7) Direct issuance of a permit pursuant to N.J.S.A. 40:55D-34 for a building or structure in the bed of a mapped street or public drainageway, flood control basin or public area reserved pursuant to N.J.S.A. 40:55D-32.
- (8) Direct issuance of a permit pursuant to N.J.S.A. 40:55D-36 for a building or structure not related to a street.

- (9) Hear appeals taken by any interested party affected by any decision of an administrative officer of the Township based on or made in the enforcement of the Zoning Ordinance or Official Map; provided, however, that nothing herein contained shall be construed as to require a developer to file an application for development with the Planning Board for action under any of its powers without prior application to an administrative officer.
- (10) Hear appeals, pursuant to N.J.S.A. 40:55D-70a, concerning the question of error in any order, requirement, decision or refusal made by the administrative officer pursuant to a report submitted by the Historic Preservation Commission in accordance with Article X.
- (11) Grant, to the same extent and subject to the same restrictions as the Planning Board, subdivision or site plan approval or conditional use approval whenever the proposed development requires approval by the Planning Board of the variance pursuant to Subsection d of N.J.S.A. 40:55D-70.
- (12) The Planning Board shall, at least once a year, review its decisions on applications and appeals for variances and prepare and adopt by resolution a report of its findings on Zoning Ordinance provisions which were the subject of variance requests and its recommendations for Zoning Ordinance amendment or revision, if any. The Board shall send copies of the report and resolution to the governing body.

C. The Planning Board may:

- (1) Participate in the review of programs or plans required by state or federal law or regulation;
- (2) Assemble data on a continuing basis as part of a continuous planning process; and
- (3) 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.

D. Whenever the proposed development requires approval of a subdivision, site plan or conditional use, but not a variance pursuant to Subsection d of N.J.S.A. 40:55D-70, the Planning Board shall have the power to grant to the same extent and subject to the same restrictions as the Board of Adjustment:

- (1) Variances pursuant to N.J.S.A. 40:55D-70c;
- (2) Direction pursuant to N.J.S.A. 40:55D-34 for issuance of a permit for a building or a structure in the bed of a mapped street or a public drainageway, flood control basin or public area reserved pursuant to N.J.S.A. 40:55D-32; and
- (3) Direction pursuant to N.J.S.A. 40:55D-36 for issuance of a permit for a building or structure not related to a street.

E. Whenever relief is requested pursuant to this section, notice of the 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. 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 of 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 Planning Board. No such subsequent approval shall be granted unless the approval can be granted without substantial detriment to the public good and without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and Zoning Ordinance.

- F. The Planning Board shall have referral power whenever a development regulation, revision or amendment thereto is proposed. Prior to the adoption of any such regulation, revision or amendment, the Planning Board shall receive a true copy of the same as introduced by the governing body, and shall make and transmit to the governing body, within 35 days after referral, a report including identification of any provisions in the proposed regulation, revision or amendment which are inconsistent with the Master Plan, and any recommendations concerning these inconsistencies and any other matters as the Board deems appropriate. The governing body, when considering the adoption of such regulation, revision or amendment, shall review the report of the Planning Board and may disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following such recommendations. The failure of the Planning Board to transmit its report within the thirty-five day period provided herein shall relieve the governing body from the requirements of this subsection. Nothing in this subsection shall be construed as diminishing the application of the provisions of N.J.S.A. 40:55D-32 if there be an Official Map, or Subsection of N.J.S.A. 40:55D-62 to any zoning ordinance or any amendment or revision thereto.
- G. The governing body may by ordinance provide for the reference of any matter or class of matters to the Planning Board before final action thereon by the governing body or municipal officer having final authority thereon except for any matter under the jurisdiction of the Board of Adjustment. Whenever the Planning Board shall have made a recommendation regarding a matter authorized by this subsection to another municipal body, such recommendation may be rejected only by a majority of the full authorized membership of such other body.

Section 400-24.8 Citizen Advisory Committee; copies of applications for Environmental Commission.

- A. The Planning Board may be assisted in its duties by a Citizens' Advisory Committee, which shall have no power to vote or take other action required of the Board, and which shall be appointed and serve at the pleasure of the Mayor.
- B. If the Environmental Commission has prepared and submitted to the Planning Board an index of the natural resources of the Township of Mount Olive, the Planning Board shall make available to the Environmental Commission an informational copy of every application for development submitted to the Board. Failure of the Planning Board to make such informational copy available to the Environmental Commission shall not invalidate any hearing or proceeding.

Section 400-24.9 Capital improvement program.

- A. The Planning Board may be authorized by the governing body from time to time to prepare a program of municipal capital improvement projects projected over a term of at least six years, and amendments thereto. Such program may encompass major projects being currently undertaken or future projects to be undertaken, with federal, state, county and other public funds or under federal, state or county supervision. The first year of such programs shall, upon adoption by the governing body, constitute the capital budget as required by N.J.S.A. 40A:4-43 et seq. The program

shall classify projects in regard to the urgency and need for realization, and shall recommend a time sequence for implementation. The program may also contain the estimate cost of each project and indicate probable operating and maintenance costs and probable revenues, if any, as well as existing sources of funds or the need for additional sources of funds for the implementation and operation of each project. The program shall, as far as possible, be based on existing information in the possession of the departments and agencies of the Township and shall take into account public facility needs indicated by the perspective development shown in the Master Plan or as permitted by other land use controls contained in this Code.

- (1) In preparing such program, the Planning Board shall confer, in a manner deemed appropriate by the Board, with the Mayor, the Chief Financial Officer, and other Township officials and agencies as well as the school board.
 - (2) Any such programs shall include an estimate of the displacement of persons and establishments caused by each recommended project.
- B. In addition to any of the requirements in Subsection A of this section, whenever the Planning Board is authorized and directed to prepare a capital improvements program, every Township department, authority or agency shall, upon request of the Planning Board, transmit to the Board a statement of all capital projects proposed to be undertaken by such department, authority or agency, during the term of the program, for study, advice and recommendation by the Planning Board.
- C. Whenever the Planning Board has prepared a capital improvement program as aforesaid, it shall recommend such program to the governing body which may adopt such program with any modification approved by affirmative vote of a majority of the full authorized membership of the governing body and with the reasons for said modification recorded in its minutes.
- D. Whenever the Planning Board shall have adopted any portion of the Master Plan, the governing body or other public agency having jurisdiction over the subject matter, before taking action necessitating the expenditure of any public funds, incidental to the location, character or extent of such project, shall refer the action involving such specific project to the Planning Board for review and recommendation in conjunction with such Master Plan and shall not act thereon, without such recommendation or until 45 days have elapsed after such reference without receiving such recommendation. This requirement shall apply to action by a housing, parking, highway, special district, or other authority, redevelopment agency, school board or other similar public agency, state, county or municipal.

Section 5. All prior ordinances or resolutions or portions thereof the Township Council of the Township of Mount Olive inconsistent herewith be and are hereby repealed. To the extent that any prior ordinance or resolution refers to the "Planning Board" or "Zoning Board" or "Zoning Board of Adjustment", such ordinance or resolution shall be deemed to apply to the Planning Board.

Section 6. Subject to an affirmative vote of the public in the November 2009 general election, such vote having been certified by the Clerk of Morris County, New Jersey, this Ordinance shall take effect January 1, 2010, or as soon thereafter as such affirmative vote may be certified by the Clerk of Morris County, New Jersey.

Section 7. The Board of Adjustment of the Township of Mount Olive, created pursuant to Section 400-9 entitled Board of Adjustment is hereby dissolved.

Section 8. If any clause, section or provision of this ordinance is declared invalid by Court of competent jurisdiction, such provision shall be deemed separate, distinct and independent provision and shall not affect the validity of the remaining portion hereof.

ATTEST: 12-8-09

Lisa M. Lashway

Lisa M. Lashway
Township Clerk

Steven W. Rattner
Steven W. Rattner
Township Council President