

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
ORDINANCE**

**ORDINANCE NO. 008-2025**

**ORDINANCE AMENDING CHAPTERS 19 AND 20 OF THE UPPER TOWNSHIP MUNICIPAL  
CODE TO ABOLISH THE UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT AND TO  
GRANT THE UPPER TOWNSHIP PLANNING BOARD THE POWERS FORMERLY HELD BY  
THE UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT PURSUANT TO THE NEW  
JERSEY MUNICIPAL LAND USE LAW**

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**WHEREAS**, the Municipal Land Use Law of the State of New Jersey, set forth at N.J.S.A. 40:55D-1, *et seq.*, specifically permits municipalities with a population of 15,000 residents or less to grant the powers of a zoning board of adjustment to the municipal planning board by ordinance; and

**WHEREAS**, the Township of Upper has a total resident population of less than 15,000 residents, as confirmed by the most recent federal census; and

**WHEREAS**, pursuant to Chapter 20-7.2 of the Municipal Code of the Township of Upper, a Zoning Board of Adjustment presently exercises the powers afforded to it pursuant to the Upper Township Municipal Code and the New Jersey Municipal Land Use Law; and

**WHEREAS**, pursuant to Chapter 20-7.1 of the Municipal Code of the Township of Upper, a Planning Board presently exercises the powers afforded to it pursuant to the Upper Township Municipal Code and the New Jersey Municipal Land Use Law; and

**WHEREAS**, the governing body of the Township of Upper believes it is in the best interests of the Township of Upper and its residents to consolidate the functions and powers of the Upper Township Zoning Board of Adjustment into the Upper Township Planning Board in order to streamline the land use application and review processes, to reduce administrative expenses, and to ensure uniform and consistent application of land use regulations and procedures within the Township of Upper; and

**WHEREAS**, through consolidation of the land use functions of the Township of Upper into the Upper Township Planning Board, as set forth above, Chapters 19 and 20 of the Upper Township Municipal Code shall be revised to effectuate that purpose.

**NOW THEREFORE BE IT ORDAINED** by the Township Committee of the Township of Upper, in the County of Cape May, and State of New Jersey, as follows:

**SECTION 1:** Chapter 19-3 of the Municipal Code of the Township of Upper shall be amended to replace the current definition of “Board” as follows:

BOARD — Shall mean the Planning Board of the Township of Upper.

**SECTION 2:** Chapter 19-4 of the Municipal Code of the Township of Upper shall be amended to read as follows upon the effective date of this Ordinance:

**§ 19-4.1.** Planning Board and Zoning Board of Adjustment.

A Planning Board is hereby established pursuant to N.J.S.A. 40:55D-23 *et seq.* and amendments thereto and Subsection 20-7.1 of the Zoning Ordinance of the Township of Upper, as amended.

The Planning Board Secretary is the administrative officer given the responsibility for ensuring orderly and expeditious processing of subdivision and site plan applications. For zoning permits, the administrative officer remains the Zoning Officer.

**§ 19-4.2. Jurisdiction.**

Pursuant to the authority provided for in N.J.S.A. 40:55D-25, the Planning Board shall have powers and authority to review all aspects of a development plan, including applications for variance relief pursuant to N.J.S.A. 40:55D-70(c) and/or N.J.S.A. 40:55D-70(d), minor and/or major site plan, and minor and/or major subdivision, subject to the limitations in the Municipal Land Use Law.

**SECTION 3:** Chapter 19-5 of the Municipal Code of the Township of Upper shall be amended to read as follows upon the effective date of this Ordinance.

**§ 19-5.3. Application.**

- a. Assignment. The applicant shall have the option of seeking the direction of the Zoning Official as to which approvals are required and the Planning Board for hearing same. The administrative official's determination shall be presumed to be correct. The following applications may be filed:
  1. Minor subdivision - subdivision classification.
  2. Major subdivision, preliminary.
  3. Major subdivision, final.
  4. Site plan preliminary.
  5. Site plan final.
  6. Site plan waiver.

(Note: Certain applications may involve a combination of actions and may require simultaneous applications for variances under N.J.S.A. 40:55D-70.)

- b. Content. An application for development shall include the items specified in § 19-9 of this chapter which constitutes a checklist of items to be submitted for subdivision and site plan review.
- c. Complete Application. A subdivision and/or site plan application shall be complete for purposes of commencing the applicable time period for action by the Planning Board when so certified by the Planning Board or its authorized committee. For an application to be certified complete, it must include each item in the checklist in § 19-9 of this chapter.
- d. Waiver. The applicant may request that one or more of the submission requirements in the checklist be waived. Such request shall be made in writing. If a waiver is requested, the applicable time period shall toll until the regular Planning Board Meeting.

Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that the applicant is entitled to approval of the application. The Planning Board 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 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 Planning Board.

Any applications deemed complete by December 31, 2025 shall proceed under this Ordinance after January 1, 2026 without re-notice, unless the relief sought materially changes.

**§ 19-5.4. Minor Subdivision/Subdivision Classification Procedure.**

- a. Any applicant requesting classification of a proposed subdivision or approval of a minor subdivision as defined in this chapter shall submit to the Planning Board Secretary 20 copies of the plat and the items required in § 19-9 of this chapter, together with an executed application form, the prescribed fees, and evidence that no taxes or assessments are outstanding against the property, no more than 35 or less than 21 days before the regular scheduled monthly meeting of the Planning Board.
- b. The application shall be declared complete or incomplete within a 45-day period from the date of its submission according to the provisions of Subsection 19-5.3c of this section.
- c. The Planning Board shall take action on minor subdivision/subdivision classification applications within 45 days after the submission of a complete application or within 120 days, if a variance under N.J.S.A. 40:55D-70 is sought, or within such further time as may be consented to by the applicant.
- d. Any subdivision determined by the Board to be creating, imposing, aggravating or leading to the possibility of an adverse effect upon either the original property being subdivided or upon any adjacent properties may be required to be revised by the subdivider to remove such adverse effect(s) prior to further review, classification or approval by the Board, or where the remaining portion of the original tract is of sufficient size to be subdivided further, the subdivider may be required to submit a sketch plat of the entire remaining portion of the tract to indicate a feasible plan whereby the applied for subdivision together with subsequent subdivision(s) may be submitted that will not create, impose or aggravate or lead to any such adverse effect.
- e. The Planning Board shall condition any approval that it grants upon the timely receipt of a favorable report on the application by the Cape May County Planning Board or approval by the County Planning Board by its failure to report thereon within the required 30-day time period.
- f. If classified and approved as a minor subdivision, the Board may waive notice and hearing thereon, except where relief is requested pursuant to C. 40:55D-60 or C.40:55D-76, and the subdivision shall be deemed approved. However, no action shall be taken by the Planning Board unless either the applicant or the applicant's attorney is present.
- g. Approval of a minor subdivision shall expire 190 days from the date of municipal 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 Municipal Engineer and the Municipal Tax Assessor as specified by N.J.S.A. 40:55D-1 et seq. Any such plat or deed proposed by filing shall be presented to the Board Solicitor with a copy of the plat approved by the Planning Board. He shall conform the plat and descriptions and form and, if acceptable, direct the Board Chairman and Secretary to sign the document for the Planning Board.

- h. 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 of minor subdivision approval.
- i. If the plat is classified as a major subdivision, a notation to that effect shall be made on the plat which shall be returned to the subdivider.

**SECTION 4:** Chapter 19-8 of the Municipal Code of the Township of Upper shall be amended to read as follows upon the effective date of this Ordinance.

**§ 19-8.1. Performance Guarantee Estimate.**

Before recording of final subdivision plats or as a condition of final site plan approval, the Planning Board shall require the provision of performance and maintenance guarantees in accordance with the following standards. If improvements are installed prior to final subdivision approval, construction plans and specifications shall be approved by the Township Engineer prior to construction of the improvements.

- a. A performance guarantee estimate shall be prepared by the developer's design engineer and forwarded to the Township Engineer for his approval. The performance guarantee estimate shall set forth the costs of all required improvements, which shall be limited to the following:
  - 1. Those improvements required by an approval or developer's agreement, ordinance, or regulation to be dedicated to a public entity, and that have not yet been installed, which cost shall be determined by the municipal engineer, according to the method of calculation set forth in N.J.S.A. 40:55D-53.4, for the following improvements as shown on the approved plans or plat: streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor's monuments, as shown on the final map and required by "the map filing law," N.J.S.A. 46:23-9.9 et seq. or N.J.S.A. 46:26B-1 through N.J.S.A. 46:26B-8, water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements, showing quantity, unit price and total amount;
  - 2. Privately owned perimeter buffer landscaping; and
  - 3. For safety and stabilization guarantee, which shall be solely for the purpose of returning property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition during the time periods and subject to the conditions set forth in N.J.S.A. 40:55D-53(d), as may be amended from time to time.

- b. The Township Committee shall pass a resolution either approving or adjusting this performance guarantee estimate and a resolution to the developer for use in obtaining and posting a performance guarantee.
- c. The approved performance guarantee estimate shall fix the requirements of maintenance of the utilities and improvements to be installed and completed by the developer. A surety company or cash bond meeting the requirements hereinabove set forth may be furnished to secure the maintenance guarantee, or the performance bond may be styled or amended to provide such security in reduced amount in keeping with the requirements.

**§ 19-8.6. Conditions for Acceptance of Municipal Improvements.**

The approval of any plat under this chapter by the Planning Board shall in no way be considered as acceptance of any street or drainage system, or any other improvement required by this chapter, nor shall such plat approval obligate the Township in any way to maintain or exercise jurisdiction over such street or drainage system or other improvement. No improvements shall be accepted by the Township Committee unless and until all of the following conditions have been met:

- a. The Township Engineer shall have certified that the improvements are complete and that they comply with the requirements of this chapter.
- b. The final plat shall have been approved by the Planning Board.
- c. The developer for major subdivision shall have filed with the Township Committee a maintenance guarantee in an amount equal to not more than 15% of the original estimate of the cost of installing the improvements and shall run for a period of two years. The procedures and requirements governing such maintenance guarantee shall be identical with the procedures and requirements for a performance guarantee set forth in Subsection 19-8.1 of this chapter. The requirements for a maintenance guarantee may be waived by the Township Committee only if the Township Engineer has certified that the improvements have been in continuous use for not less than two years from the date the Township Engineer certified completion of such improvements in accordance with the provisions of Subsection 19-8.6a of this section and that during this period, the subdivider has maintained the improvements in a satisfactory manner.
- d. The subdivider shall file with the secretary of the Planning Board deeds for all street rights-of-way, easements, and lands shown on the final plat that are dedicated to the Township. Deeds will be filed by the Township after approval by the Board and Township Solicitor.
- e. During the period covered by the maintenance bond the developer is responsible for any damage to the subdivision improvements including pavements, curbs, sidewalks, driveways, storm drains, and drainage structures.
- f. Maintenance bond shall not be released until a final inspection at the end of the two-year period is made by the Township Engineer.

**SECTION 5:** Chapter 19-11 of the Municipal Code of the Township of Upper shall be amended to read as follows upon the effective date of this Ordinance.

**§ 19-11.1. Reviews and Requests for Approvals.**

- a. Applications for the following reviews and requests for approvals shall be accompanied by checks payable to the Township of Upper in accordance with the following fee schedule:

Type of Application	Fees	
	Nonrefundable Application Fee	Escrow Review Fee
Minor Subdivision	\$200	\$800
D Variance	\$300	\$1,000
C Variance	\$250	\$600
Major Subdivision-Sketch Plat	\$200	\$600
Major Subdivision-Preliminary	\$500 plus \$50 per lot	\$150 per lot
Major Subdivision-Final	\$500 plus \$50 per lot	\$100 per lot
Site Plan-Preliminary (under 10 acres)	\$300	\$1,500
Site Plan-Preliminary (10 acres and above)*	\$600	\$1,500 plus \$150 per add'l acre over 10 acres
Site Plan-Final**	\$300	\$1,000
Conditional Use	\$300	\$1,000
Interpretation/Appeal	\$300	\$1,000
Extension	\$200	\$400
Site Plan Waiver	\$200	\$800
Request for Rezoning	\$400	\$5,000
Special Meeting	\$500	
Concept Plan Review (Planning Board only)***	\$200	\$1,000
Application Not Listed	\$300	\$1,000

Type of Application	Nonrefundable Application Fee	Escrow Review Fee
Tax Map Changes		
Minor Subdivision	\$150	—
Major Subdivision		
1 to 5 lots	\$240	—
6 to 15 lots	\$325	—
Over 15 lots	\$440	—
Street Vacation	\$100	—
Lot Consolidation	\$100	—
Zoning Permit for fence, sign, shed	\$10	—
Zoning Permit for pool, detached garage, clearing	\$25	—
Zoning Permit for revision of house	\$25	—
Zoning Permit for buildings, additions or for any other purpose	\$50	—

\* Partial acres are considered full acres for purposes of determining escrow amount.

\*\* If applicant is applying for simultaneous preliminary and final site plan approval, the applicant shall deposit fees equal to both preliminary and final approval.

\*\*\* Applications for concept plan review require full notice to property owners and publication pursuant to N.J.S.A. 40:55D-12.

- b. All application fees and escrow review fees pursuant to the Schedule listed above shall be submitted at the time of the application. These monies are intended to cover all necessary and reasonable costs incurred by the technical and/or professional staff retained by the Planning Board to review and make recommendations on such applications. The technical and professional staff is intended to include but not be limited to the following: Board Attorneys, Municipal Planner, Municipal Engineer, other professionals as may be required on particular applications. The fee for the services of the technical and professional staff shall be determined by resolution of the Planning Board or Township, as appropriate.
- c. The amount specified for escrow deposits are estimates, and it is recognized additional escrow fees may be necessary in particular applications. In the event that more than the amount specified for escrow is required in order to pay the reasonable costs incurred, the applicant shall, prior to being permitted to move forward in the approval procedure, or prior to obtaining construction permits or Certificates of Occupancy for any portion of the application project, pay all additional required sums.
- d. Escrow fees shall be controlled by the Township Chief Financial Officer. In the event that the escrow deposit is more than required to pay necessary and reasonable costs of the technical and professional staff, the excess funds shall be returned to the applicant within 180 days of publication of the resolution approving the application.
- e. Additionally, if the Planning Board creates as a condition of any approval a requirement that ongoing inspections or approvals are necessary by the professional staff or Township officials to insure compliance of a condition of approval by an applicant, then it shall be the obligation of the applicant to bear the cost of the additional fees by placing a sum designated by the Planning Board or the Township, as appropriate, in an escrow fund. When all approvals or inspections have been completed to the satisfaction of the Planning Board or Township as appropriate, any excess escrow fund shall be returned to the applicant within 60 days of the last approval or inspection.
- f. When applications for preliminary and final approval are made simultaneously the Planning Board shall have the right to waive the payment of additional deposits.

**SECTION 6:** The terms of all members of the Upper Township Zoning Board of Adjustment shall expire upon the effective date of this Ordinance. All applications pending before the Zoning Board of Adjustment as of December 31, 2025 are hereby transferred to the Planning Board without prejudice; all statutory time periods are tolled from December 31, 2025 to January 15, 2026.

**SECTION 7:** Chapter 20-7 of the Township of Upper Municipal Code shall be amended to read as follows upon the effective date of this Ordinance:

**§ 20-7 PLANNING BOARD.**

**§ 20-7.1. Planning Board.**

a. Establishment of the Planning Board.

1. A Planning Board is hereby established consisting of nine members in accordance with the State Municipal Land Use Law, set forth at N.J.S.A. 40:55D-23, et seq. Up to four (4) alternate members may be appointed in accordance with N.J.S.A. 40:55D-23, et seq.

b. Powers and Jurisdiction of the Planning Board. The Planning Board shall have the power to:

1. Pursuant to N.J.S.A. 40:55D-25(c)(1), the Planning Board shall exercise, subject to the same extent and subject to the same restrictions, all the powers of a zoning board of adjustment; but the Class I and Class III members shall not be permitted to participate in the consideration of any applications for development which involve relief pursuant to N.J.S.A. 40:55D-70(d).
2. Make and adopt and amend a Master Plan for the physical development of the Township, including any areas outside its boundaries, which, in the Board's judgment, bear essential relation to the planning of the Township.
3. Administer the provisions of Chapter 19, Land Subdivision and Site Plan and Chapter 20, Zoning of the Township in accordance with the provisions of these ordinances.
4. Participate in the preparation and review of programs or plans required by State or Federal law or regulations.
5. Assemble data on a continuing basis as part of a continuous planning process.
6. May annually, 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.
7. Consider and make report to the governing body within 35 days after referral as to any proposed development regulation submitted to it and also pass upon other matters specifically referred to the Planning Board by the Township Committee.
8. The Planning Board shall have such other powers as prescribed by law.
9. The Planning Board shall exercise the powers and perform the duties set forth in N.J.A.C. 7:50-6.153(a) and shall issue Certificates of Appropriateness pursuant to Subsection 20-5.14 (1)(2) of this chapter.
10. Direct Issuance of a Permit Within the Bed of a Mapped Street or Flood Control Basin. Direct issuance of a construction permit for the construction of a building or structure within the bed of a mapped street or public drainageway, flood control basin or public area as shown on a duly adopted Official Map Ordinance of the Municipality whenever one or more parcels of land within the bed cannot yield a reasonable return to the owner unless a

construction permit is granted. The Board may grant such relief only by an affirmative vote of a majority of the full authorized membership of the Planning Board, ensuring that such relief will tend to cause a minimum change of the Official Map Ordinance and will not significantly add to the cost of opening any proposed street. The Planning Board shall impose reasonable requirements as a condition of granting the construction permit so as to promote the health, morals, safety and general welfare of the public.

11. Direct Issuance of Permit When Lot Not Abutting a Street. Direct issuance of a construction permit for the construction of a building or structure on a lot not abutting a street which is shown on a duly adopted Official Map Ordinance of the Municipality, or which is a) an existing State, County or Municipal street or highway, or b) a street shown upon a plat approved by the municipal Planning Board, or c) a street on a plat duly filed in the office of the County Recording Officer. The Planning Board may grant such relief only where the enforcement of the statute requirement that a building lot abut a street would entail practical difficulty or unnecessary hardship or where the circumstances of the case do not require the building or structure to abut a street. The Planning Board shall impose requirements or conditions that will provide adequate access for firefighting equipment, ambulances and other emergency vehicles necessary for the protection of the health and safety and will protect any future street layout shown on the Official Map Ordinance or on the general circulation plan element of the municipal Master Plan.

12. Any municipal variance approval which grants relief from the density or lot area requirements set forth in subsections 20-4.4, 20-4.10 or 20-4.13 for a residential or principal nonresidential use in the PV Zone, in that portion of the TV Zone located in the Pinelands Area or in that portion of the CM Zone located in a Pinelands Village shall require that Pinelands Development Credits be used for all dwelling units or lots in excess of that permitted without the variance.

c. Actions by the Planning Board

1. Appeals to the Planning Board

(a) Appeals to the Planning Board may be taken by an interested party affected by any decision of the Construction Official of the Municipality based on or made in the enforcement of this Chapter or Official Map. Such appeal shall be taken within 45 days by filing a notice of appeal with the officer from whom the appeal is taken, specifying the grounds of such 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) A developer may file an application for development with the Planning Board for action under any of its powers without prior application to the Construction Official.

2. Time for Decision.

(a) The Planning Board shall render a decision not later than one hundred twenty (120) days after the date (1) an appeal is taken from the decision of the Construction Official, or (2) the submission of a complete application for development to the Planning Board, as determined by the Secretary of the Planning Board.

(b) Failure of the Planning Board to render a decision within such one hundred twenty (120) day period or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant.

(c) The Planning Board may reverse or affirm, wholly or in part, or may modify the action, order, requirement, decision, interpretation, or determination appealed from and to that end have all the powers of the Construction Official from whom the appeal is taken.

(d) An appeal to the Planning Board shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made, unless the officer from whose action the appeal is taken certifies to the Planning Board, 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 case, proceedings shall not be stayed other than by an order of the Superior Court upon notice to the officer from whom the appeal is taken and on due cause shown.

(e) Unless otherwise specified by the Planning Board, a variance granted by the Planning Board shall expire and become null and void two (2) years from the grant by the Planning Board, unless within the period, the applicant obtains a construction permit or otherwise avails himself of the grant or approval. The Planning Board, upon application and within the period, may extend the period for one (1) year, but not to exceed three (3) extensions.

### 3. Use Variances Involving Subdivision and/or Site Plan and/or Conditional Use Approval.

(a) Whenever an application for development requests relief pursuant to this subsection, the Planning Board shall grant or deny approval of the application within one hundred twenty (120) days after submission by a developer of a complete application to the Secretary of the Planning Board 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 approval of the application, and a certificate of the Secretary of the Planning Board as to the failure of the Planning Board to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval herein required and shall be so accepted by the County Recording Officer for purposes of filing subdivision plats.

(b) Applicants seeking simultaneous approvals under this subsection shall follow the procedures and details outlined under Chapter 19, Site Plan Review, and, if applicable, Land Subdivision.

### 4. Notice of Decision.

(a) The Secretary of the Planning Board shall mail a copy of the decision to the applicant within ten (10) days of the date of the decision. If the applicant was represented by an attorney, a copy of the decision shall also be mailed to the attorney. One (1) copy of the decision shall be filed with the Township Clerk and one copy retained for the Planning Board's file.

(b) The Secretary of the Planning Board shall cause a brief notice of the decision to be published in the official newspaper of the Planning Board or a newspaper of general circulation within the Township of Upper. The period of time in which an appeal of the decision may be made, pursuant to the requirements of the New Jersey Municipal Land Use Law, set forth at N.J.S.A. 40:55D-1, *et seq.*, shall run from the first publication of the decision.

**§ 20-7.2. Provisions Applicable to the Planning Board.**

1. Conflicts of Interest. No member of the Planning 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 Board on the hearing of such matter nor participate in any discussion or decision relating thereto.

2. Meetings.

(a) Meetings of the Planning Board shall be scheduled no less often than once a month, and any meeting so scheduled shall be held as scheduled unless cancelled 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 (2) Planning Board members, which 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 of the Planning Board without a quorum of the Planning Board membership being present.

(d) All actions of the Planning Board shall be taken by majority vote of a quorum except as otherwise required by a provision of N.J.S.A. 40:55D-1, *et seq.*

(e) All regular meetings and all special meetings of the Planning Board shall be open to the public. Notice of all such meetings shall be given in accordance with the requirements of the Open Public Meeting Law, C.231, Laws of New Jersey, 1975. An executive session of the Planning Board for the purpose of discussing and studying any matters to come before the Planning Board shall not be deemed a regular or special meeting of the Planning Board in accordance with the provisions of N.J.S.A. 40:55D-9.

**SECTION 8:** Chapter 20-8 of the Township of Upper Municipal Code shall be amended to read as follows upon the effective date of this Ordinance:

**§ 20-8. APPEALS OF PLANNING BOARD DECISION.**

All appeals of decisions made by the Planning Board shall be filed directly to the Superior Court of New Jersey and not to the Upper Township Committee.

**SECTION 9:** Chapter 20-9 of the Township of Upper Municipal Code shall be amended to read as follows upon the effective date of this Ordinance:

**§ 20-9. NOTICES, HEARINGS AND RECORDS.**

**§ 20-9.1. Public Notice of a Hearing.**

a. Application of Requirements. Public notice of a hearing on any application for development shall be given in accordance with the strict requirements of N.J.S.A. 40:55D-12.

b. Responsibilities of the Applicant.

1. The Secretary of the Planning Board shall notify the applicant at least two (2) weeks prior to the public hearing at which the application will be discussed. Notice of a hearing requiring public notice pursuant to Subsection a, above, shall be given as follows at least ten (10) days prior to the date of the hearing:

(a) By publication in the official newspaper of the Planning Board, if there be one, or in a newspaper of general circulation in the Township of Upper.

(b) To all owners of real property as shown on the current tax duplicate located within two hundred (200) feet in all directions of the property which is the subject of the hearing, which notice shall be given by serving a copy thereof on the property owner as shown on the 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 the current tax duplicate. It is not required that a return receipt be obtained. Notice is deemed complete upon mailing (N.J.S.A. 40:55D-14). The current tax duplicate is considered to be a list of property owners within two hundred (200) feet in all directions of the subject property which is no more than six (6) months old at the date of the mailing of the certified notices.

(c) 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.

(d) To the clerk of any adjoining municipality or municipalities and to the Cape May County Planning Board when the property involved is located within two hundred (200) feet of the adjoining municipality or municipalities, which notice shall be given by personal service or certified mail.

(e) To the Cape May County Planning Board when the application for development involves property adjacent to an existing County Road or proposed road shown on the official Cape May County map or a Cape May County Master Plan or adjoins other County land.

(f) To the Commissioner of Transportation of the State of New Jersey when the property abuts a State highway.

(g) To the Director of the Division of State and Regional Planning in the Department of Community Affairs when the hearing involves an application for development of property which

exceeds one hundred fifty (150) acres or five hundred (500) dwelling units, in which case the notice shall include a copy of any maps or documents required to be on file with the Municipal Clerk pursuant to N.J.S.A. 40:55D-10b.

(h) Within the Pinelands Area, to the Pinelands Commission when the application is subject to Subsection 20-11.5, such notice shall contain at least the following information:

- (1) The name and address of the applicant;
- (2) The docket number of the Certificate of Filing, if any, issued by the Pinelands Commission and the date on which it was issued;
- (3) The date, time and location of the meeting, hearing, or other formal proceeding;
- (4) The name of the approval agency or representative thereof which will be conducting the meeting, hearing, or other formal proceeding;
- (5) Any written reports or comments received by the approval agency on the application for development which have not been previously submitted to the Commission; and
- (6) The purpose for which the meeting, hearing, or other formal proceeding is to be held.

(i) To the New Jersey Department of Environmental Protection when development includes land located in the CAFRA Zone, involves more than twenty-five (25) dwelling units, or when development includes or borders lands designated as freshwater wetlands, or tidal wetlands.

(j) Such other parties as may be required by existing statutes and regulations.

2. Upon the written request of an applicant, the Township Clerk shall make and certify a list from the current tax duplicates of names and addresses of owners to whom the applicant is required to give notice pursuant to Subsection b1(b). The applicant shall be entitled to rely upon the information contained in such list, and failure to give notice to any owner not on the list shall not invalidate any hearing or proceeding.

3. The applicant shall file an affidavit or proof of service with the Planning Board.

c. Contents of Notice. The notice shall state the date, time, and place of the hearing and the nature of the matters to be considered, and an 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 Municipal Tax Assessor's office, and the location and times at which any maps or documents for which approval is sought are available for inspection.

**§ 20-9.2. Notice of Decisions.**

- a. Any decision of the Planning Board or the Township Committee when acting on an application for subdivision or site plan approval, variance, conditional use, or appeal shall require notice. Notice shall be given in the following ways:

1. A copy of the decision shall be mailed to the applicant or his attorney within ten (10) days of the date of the decision, without charge, and likewise a copy of the decision shall be mailed to all persons who have requested that a copy of the decision be sent to them; and

2. A notice of the decision shall be published in the official newspaper of the Planning Board, if there is one, or in a newspaper of general circulation in the Township of Upper. The publication of such notice shall be arranged for by the Secretary of the Planning Board or Township Clerk, depending upon which agency makes the decision.

3. A copy of the decision shall also be filed with the Township Clerk.

4. Within the Pinelands Area, to the Pinelands Commission pursuant to Subsection 20-11.5d of this chapter.

b. The period of time in which an appeal to the Township Committee or court of competent jurisdiction may be made shall run from the first publication.

**§ 20-9.3. Hearing.**

a. The Planning Board shall hold a hearing on each application for a request for site plan or subdivision approval, zoning variance, conditional use, or direction for the issuance of a permit.

b. Planning Board shall make the rules governing such hearings. Any maps and documents for which approval is sought at a hearing shall be on file and available for public inspection at least ten (10) days before the date of the hearing, during normal business hours in the office of the Planning Board Secretary. The applicant may produce other documents, records, or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.

c. The Chairman 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," P.L. 1953, C.38 (C.2A:67A-1 et seq.) shall apply.

d. The testimony of all witnesses relating to an application shall be taken under oath or affirmation by the Chairman, 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.

e. Technical rules of evidence shall not be applicable to the hearing, but the Planning Board may exclude irrelevant, immaterial, or unduly repetitious evidence.

f. The Pinelands Commission may participate in a hearing held by the Township involving the development of land in the Pinelands Area pursuant to N.J.A.C. 7:50-4.36.

**§ 20-9.4. Records.**

a. Minutes of every regular or special meeting shall be kept and shall include the names of the persons appearing and addressing the Planning Board and of the persons appearing by attorney, the action

taken by the Planning Board, the findings, if any, made by it and reasons therefore. The minutes shall thereafter be made available for public inspection during normal business hours at the office of the Township 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.

- b. A verbatim recording shall be made of every hearing on an application required under Subsection 20-9.3. The recording of the proceedings shall be made by either stenographer, mechanical or electronic means. The Planning Board or Township Committee shall furnish a transcript or duplicate recording in lieu thereof on request to any interested party at his expense.

**§ 20-9.5. Application Requirements.**

- a. **Application Forms.** The Planning Board shall approve application forms for Site Plan Preliminary, Site Plan Final, Minor Subdivision, Major Subdivision - Classification, Major Subdivision - Preliminary, Major Subdivision — Final, Environmental Assessment Checklist, Site Plan Waiver, and Variances to the Planning Board. Current application forms are available from the Planning Board Secretary.
- b. **Content.** An application to the Planning Board shall include the items specified in Subsection 19-9.9.
- c. **Complete Application.** An application shall be complete for purposes of commencing the applicable time period for action by the Planning Board when so certified by the Planning Board or its authorized committee. For an application to be certified complete, it must include each item in the checklist specified in Subsection 19-9.9.
- d. **Waiver.** The applicant may request that one or more of the submission requirements in the checklist be waived. Such request shall be made in writing.

**SECTION 10:** Chapter 20-10 of the Township of Upper Municipal Code shall be amended to read as follows upon the effective date of this Ordinance:

**§ 20-10. FEES.**

Application and escrow fees for every application for review by the Planning Board shall be submitted by the applicant at the time of application submission in accordance with § 19-11.

**SECTION 11:** Any sections of Chapter 19 and/or Chapter 20 of the Upper Township Municipal Code that are not expressly amended through this Ordinance shall remain in full force and effect subsequent to adoption of this Ordinance.

**SECTION 12:** This Ordinance shall take effect as of January 1, 2026, a date certain that will arise after final adoption by the governing body of the Township of Upper and after publication as required by law.

ATTEST:

JOANNE R. HERRON, Township Clerk

CURTIS T. CORSON, JR., Mayor

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 14<sup>TH</sup> DAY OF OCTOBER, 2025 AT THE TOWNSHIP HALL, AND WAS TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 10<sup>TH</sup> DAY OF NOVEMBER, 2025 AT 5:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY, AT WHICH TIME SAID ORDINANCE WAS ADOPTED.

JOANNE R. HERRON, TOWNSHIP CLERK  
TOWNSHIP OF UPPER

Legislative History:

Introduced: October 14, 2025

Publication: October 18, 2025

Newspaper(s): The Press of Atlantic City

Second Reading and Public Hearing: November 10, 2025

Final Adoption: November 10, 2025

Final Publication Date: November 15, 2025

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on November 10, 2025 and notice of adoption was thereafter published pursuant to law in the Press of Atlantic City on November 15, 2025.

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JOANNE R. HERRON, Township Clerk