

Township of Montclair, NJ  
Thursday, June 20, 2024

## Chapter 202. Land Use Procedures

### Article I. Planning Board

#### § 202-1. Establishment.

A. There is hereby established pursuant to P.L. 1975, c. 291,<sup>[1]</sup> in the Township of Montclair, a Planning Board of nine members consisting of the following four classes:

- (1) Class I: The Mayor or the Mayor's designee in the absence of the Mayor. The Mayor's designee, if any, shall be a resident of the Township of Montclair whose designation shall be made in writing and filed with the Municipal Clerk and the Secretary of the Planning Board.
- (2) Class II: one of the officials of the municipality, other than a member of the governing body, to be appointed by the Mayor, provided that so long as there exists an Environmental Commission in the Township, 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 alternated members of the Planning Board both a member of the Zoning Board of Adjustment and a member of the Board of Education.
- (3) Class III: a member of the governing body, to be appointed by it.
- (4) Class IV: six other citizens of the municipality, to be appointed by the governing body. The Class IV members shall hold no other municipal office, position or employment, except that one such member may be a member of the Zoning Board of Adjustment or Historic Preservation Commission and one member may be a member of the Board of Education. So long as there exists a Township 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 both a member of the Zoning Board of Adjustment or Historic Preservation Commission and a member of the Board of Education, in which case the member common to the Planning Board and Township Environmental Commission shall be deemed a Class II member of the Planning Board. 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.

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

B. Alternate members.

- (1) The governing body shall appoint not more than two alternate members who 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."
- (2) No member or alternate 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 may, after public hearing if he or she request one, be removed by the governing body for cause.

- (3) Alternate members may participate in discussions of the proceedings 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.

## § 202-2. Terms of office.

- A. The term of the Class I member shall correspond with his/her official tenure. If the Class I member is the Mayor's designee in the Mayor's absence, 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.
- B. The term of a Class IV member who is also a member of the Board of Adjustment, the Historic Preservation Commission or the Board of Education shall terminate whenever he or she is no longer a member of such other body or at the completion of his or her Class IV term, whichever occurs first. The terms 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 or her term of office as a member of the Environmental Commission, whichever occurs first.
- C. All Class IV members shall be appointed for terms of four years except as otherwise herein provided. All terms shall run from January 1 of the year in which the appointment was made.
- D. The terms of alternate members shall be for two years, running from January 1 of the year in which the appointment was made, and the term of not more than one alternate member shall expire in any one year. A vacancy occurring otherwise than by expiration of term shall be filled by the appointing authority for the unexpired term only.
- E. 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 interests therein, regular members of the Zoning Board of Adjustment shall be called upon to serve, for that matter only, as temporary members of the Planning Board in order of seniority of continuous service to the Board of Adjustment until there are the minimum number of members necessary to constitute a quorum to act upon the matter without any personal or financial interest therein, whether direct or indirect. If a choice has to be made between regular members of equal seniority, the Chair of the Board of Adjustment shall make the choice.

## § 202-3. Vacancies.

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

## § 202-4. Organization of Board.

The Planning Board shall elect a Chair and Vice Chair from the members of Class IV and select a Secretary and Assistant Secretary, who may be either members of the Planning Board or municipal employees designated by it.

## § 202-5. Planning Board Attorney.

There is hereby created the office of Planning Board Attorney. The Planning Board may annually appoint, fix the compensation of or agree upon the rate of compensation of the Planning Board Attorney, who shall be an attorney other than a member of the Township Law Department.

## § 202-6. Experts and staff.

The Planning Board may also employ or contract for the services of experts and other staff and services as it may deem necessary. The Board shall not, however, exceed, exclusive of gifts or grants, the amount appropriated by the governing body for its use.

## § 202-7. Powers and duties generally.

The Planning Board shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this chapter. It shall also have the following powers and duties:

- A. To make and adopt and from time to time amend a Master Plan for the physical development of the municipality, pursuant to N.J.S.A. 40:55D-28, which Master Plan shall give due consideration to the relationship between the proposed physical development of the Township and the Master Plan for those areas outside its boundaries which in the Board's judgment bear essential relation to the planning of the municipality.
- B. To administer the provisions of Chapter **301**, Subdivision of Land, and Chapter **281**, Site Plan Review, of the Code of the Township of Montclair, in accordance with the provisions of said chapters and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.
- C. To approve conditional use applications in accordance with the provisions of Chapter **347**, Zoning, and N.J.S.A. 40:55D-67.
- D. To participate in the preparation and review of programs or plans required by state or federal law or regulations.
- E. To assemble data on a continuing basis as part of a continuous planning process.
- F. To 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.
- G. To consider and make report to the governing body within 35 days after referral as to any proposed development regulation submitted to it pursuant to the provisions of N.J.S.A. 40:55D-26a, and also to review other matters specifically referred to the Planning Board by the governing body pursuant to the provisions of N.J.S.A. 40:55D-26b.
- H. Variances; direction for issuance of certain permits.
  - (1) When reviewing applications for approval of subdivision plats, site plans or conditional uses, to grant, to the same extent and subject to the same restrictions as the Zoning Board of Adjustment:
    - (a) Variances pursuant to § **202-21A(3)** and N.J.S.A. 40:55D-70c.
    - (b) Direction pursuant to N.J.S.A. 40:55D-34 for issuance of a permit 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.
    - (c) Direction pursuant to N.J.S.A. 40:55D-36 for issuance of a permit for a building not related to a street.
  - (2) Whenever relief is requested pursuant to this subsection, 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.
  - (3) The developer may elect to submit a separate application requesting approval of the variance or direction of the issuance of a permit and a subsequent application for any required approval 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 impairment of the intent and purpose of the zone plan and Chapter **347**, Zoning.

- I. To perform such other advisory duties as are assigned to it by ordinance or resolution of the governing body for the aid and assistance of the governing body or other agencies or officers.
- J. To issue subpoenas, administer oaths and take testimony in accordance with the provisions of the County and Municipal Investigations Law of 1953 (N.J.S.A. 2A:67A-1 et seq.)

## § 202-8. Time for action.

- A. Minor subdivisions. Minor subdivision approvals shall be granted or denied within 45 days of the date of submission of a complete application to 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 minor subdivision approval. Approval of a minor subdivision shall expire 190 days from the date of Planning Board approval unless within such period a plat in conformity with such approval and the provisions of the Map Filing Law,<sup>[1]</sup> 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. Any such plat or deed must be signed by the Chairperson and Secretary of the Planning Board. The Planning Board may extend the one-hundred-ninety-day period for filing a minor subdivision plat or deed if the developer proves to the reasonable satisfaction of the Planning Board that 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 that 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.

[1] *Editor's Note: See N.J.S.A. 46:23-9.9 et seq.*

- B. Preliminary approval of major subdivisions. Upon submission of a complete application for a subdivision of 10 or fewer lots, the Planning Board shall grant or deny preliminary approval within 45 days of the date of such submission or within such further time as may be consented to by the developer. Upon submission of a complete application for a subdivision of more than 10 lots, the Planning Board shall grant or deny preliminary approval within 95 days of the date of such submission or within such further time as may be consented to by the developer. Otherwise, the Planning Board shall be deemed to have granted preliminary approval for the subdivision.
- C. Ancillary powers. Whenever an application for approval of a subdivision plat, site plan or conditional use includes a request for variance relief or direction for the issuance of a permit pursuant to § **202-7H**, the Planning Board shall grant or deny approval of the application within 120 days after submission by a developer of a complete application to the administrative officer or within such further time as may be consented to by the applicant. In the event that the developer elects to submit separate consecutive applications, the aforesaid provision shall apply to the application for approval of the variance or direction for issuance of a permit. The period for granting or denying and subsequent approval shall be as otherwise provided by these regulations. Failure of the Planning Board to act within the period prescribed shall constitute approval of the application, and a certificate of the Administrative Officer as to the failure of the 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.
- D. Final approval. Application for final subdivision approval shall be granted or denied within 45 days of submission of a complete application or within such further time as may be consented to by the applicant. Failure of the Planning Board to act within the period prescribed shall constitute final

approval and a certificate of the Administrative Officer 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. Final approval of a major subdivision shall expire 95 days from the date of signing of the plat by the Chair and Secretary of the Board 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. 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. The Planning Board may extend the ninety-five-day or one-hundred-ninety-day period if the developer provides to the reasonable satisfaction of the Planning Board that 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 that 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 an extension either before or after the original expiration date.

## § 202-9. Application procedure; concept plan approval.

- A. Applications for development within the jurisdiction of the Planning Board shall be filed with the Secretary of the Planning Board at least 25 days before the monthly meeting of the Board. The applicant shall obtain all necessary forms from the Secretary of the Board who shall inform the applicant of the steps to be taken to initiate applications and of the regular meeting dates of the Board. A complete application shall mean an application certified as complete by the Secretary of the Board pursuant § **202-29**.
- B. At the request of the developer, the Planning Board shall grant an informal review of a concept plan for a development for which the developer intends to prepare and submit an application for development. The developer 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.  
[Amended 2-15-2011 by Ord. No. O-11-002]

## § 202-10. (Reserved)

- [1] *Editor's Note: Former § 202-10, Advisory Committee, was renumbered as § 202-10.1 1-19-2016 by Ord. No. O-15-042.*

### § 202-10.1. Advisory Committee.

The Mayor may appoint one or more persons as a Citizens Advisory Committee to assist or collaborate with the Planning Board in its duties, but such person or persons shall have no power to vote or take other action required of the Board. Such person or persons shall serve at the pleasure of the Mayor.

### § 202-10.2. Development Review Committee.

[Added 1-19-2016 by Ord. No. O-15-042]

- A. A Development Review Committee shall be established to review all site plan applications for development or requests for review presented to the Planning Board and the Board of Adjustment. The Development Review Committee shall consist of five members. The appointees shall be two members from the Planning Board (one of whom may be the Mayor) to be appointed by the Planning Board Chairman; one member from the Zoning Board of Adjustment to be appointed by

the Board of Adjustment Chairman; the Planning Director; and the Board Engineer. The Zoning Officer, the Construction Official and other staff and Board consultants may provide advice to the Development Review Committee as required. The terms of all members shall be one year, commencing from the first day of January of the year of appointment. Vacancies shall be filled in the same manner as the original appointment, and those vacancies occurring other than by the expiration of a term shall be filled for the duration of the unexpired term. Members shall continue serving after the expiration of their terms until such time as their successors shall be appointed.

- B. The Development Review Committee shall conduct formal meetings, as required, in order to review site plan applications. Applicants may appear on their own behalf or may appear through an attorney, architect or engineer.
- C. The Development Review Committee shall have the authority to conduct formal hearings, after notice, and approve minor site plans that do not require variances, in accordance with Subsection F, below. At least four members of the Development Review Committee shall conduct the hearing, and the decision to approve a minor site plan by the Development Review Committee shall be unanimous. A record shall be kept of the hearing proceedings.
- D. The Development Review Committee shall have the following responsibilities:
  - (1) Determine compliance with the Township's zoning requirements, development regulations and design standards.
  - (2) Make recommendations on the design and technical elements of any application.
  - (3) Conduct formal hearings on minor site plans that do not include any variances.
- E. The report of the Development Review Committee shall be distributed to the Secretary of the Board where the formal application is to be presented and to the applicant. The report shall not be binding upon the Planning Board, the Zoning Board or the applicant, nor shall the applicant be relieved of any requirements or regulations which have not been addressed in the report.
- F. Approval of a minor site plan:
  - (1) The Development Review Committee may conduct formal hearings and approve or deny a minor site plan.
  - (2) The Planning Board may choose not to conduct formal hearings and, instead, refer the minor site plan to the Development Review Committee for action.
  - (3) An applicant may, at any time, choose to have the minor site plan application referred to the Planning Board for action. If a minor site plan is denied by the Development Review Committee, the matter shall be automatically referred to the Planning Board for action.
  - (4) The Development Review Committee may impose reasonable conditions of approval on any minor site plan. If the applicant disagrees with any condition of approval, the site plan shall be referred to the Planning Board for action.
  - (5) Applicants seeking Development Review Committee approval of a minor site plan shall publish notice of the public hearing in the official newspaper of the Township at least 10 days prior to the date of the Development Review Committee hearing.
  - (6) In the event there is opposition to the minor site plan, as expressed by opponents appearing before the Development Review Committee, the minor site plan shall not be approved by the Development Review Committee and shall be forwarded to the Planning Board for action.
  - (7) In reviewing any minor site plan, the Development Review Committee shall use the standards set forth in Montclair Code Chapter 281, Site Plan Review.

## § 202-11. Environmental Commission.

[Added 10-30-2001 by Ord. No. 01-46<sup>[1]</sup>]

- A. Creation. The municipality of Montclair's Environmental Commission is hereby established pursuant to Chapter 245 of the Laws of 1968 (N.J.S.A. 40:56A-1 to 40:56A-12), as amended by Chapter 35, P.L. 1972.
- B. Members.
- (1) The Commission shall consist of seven members appointed by the Mayor, one of whom shall also be a member of the Planning Board and all of whom shall be residents of the municipality of Montclair; the members shall serve without compensation, but, within budgetary limitations, they may receive reimbursement for actual expenses incurred in the performance of their duties. The Mayor shall designate one of the members to serve as Chairman and presiding officer of the Commission. The terms of the office of the first Commissioners shall be for one, two or three years, to be designated by the Mayor in making his appointments, and their successors shall be appointed for terms of three years and until the appointment and qualification of their successors.  
[Amended 6-11-2019 by Ord. No. O-19-018]
  - (2) The Township Council may appoint not more than two alternate members to the Commission who shall be residents of the municipality of Montclair. Alternate members shall be designated at the time of appointment by the Township Council as "Alternate No. 1" and "Alternate No. 2." An alternate member may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member. 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 first. The term of the alternate members shall be for two years. The first alternate members of the Commission shall be appointed for the following terms:
    - (a) Alternate No. 1 for the two-year term expiring December 31, 2003;
    - (b) Alternate No. 2 for the one-year term expiring December 31, 2002.
  - (3) The Commission may establish in its discretion a nonvoting membership of associate members who will participate in meetings and activities of the Commission.
  - (4) The Township Council may remove any member, alternate member or advisory member of the Commission for cause, on written charges served upon the member and after the hearing thereon, at which the member shall be entitled to be heard in person or by counsel. A vacancy on the Commission occurring otherwise than by expiration of a term shall be filled for the unexpired term in the same manner as an original appointment. Failure to attend meetings for two consecutive months or two consecutive regular meetings without being excused by the majority of the authorized membership shall result in forfeiture of office by such member.
- C. Powers of Commission. The commission is established for the protection, development or use of natural resources, including water resources, located within territorial limits of the municipality of Montclair. The Commission shall have the power to conduct research into the use and possible use of the open land areas of the municipality and may coordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print, and distribute books, maps, charts, plans and pamphlets which in its judgment it deems necessary for its purposes, within budgetary limitations. It shall keep an index of all open areas, publicly or privately owned, including open marshland, swamps and other wetlands, in order to obtain information on the proper use of such areas and may from time to time recommend to the Planning Board plans and programs for inclusion in the Master Plan and the development and use of such areas. The Commission shall have the power to research, make application for and promote grants and other financial assistance programs which can provide funding to the Commission and/or the Township to fulfill the Commission's duties as set forth herein.
- D. Acquisitions by Commission. The Environmental Commission may, subject to the prior written approval of the governing body, acquire property, both real and personal, in the name of the

municipality by gift, purchase, grant, bequest, devise or lease for any of its purposes and shall administer the same for such purposes subject to the terms of the conveyance or gift. Such an acquisition may be to acquire the fee or any lesser interest, development right, easement (including conservation easement), covenant or other contractual right (including a conveyance on conditions or with limitations or reversions) as may be necessary to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve and properly utilize open spaces and other land and water areas in the municipality.

- E. Records and annual reports. The Environmental Commission shall keep records of its meetings and activities and make an annual report to the governing body. All meetings and conduct of business shall be subject to the Open Public Meetings Act., N.J.S.A. 10:4-1 et seq.
- F. Appropriations. The Commission may appoint such clerks and other employees and incur such expenses as it may from time to time require, providing the same shall be within the limits of funds appropriated to it by the governing body or otherwise available to it.
- G. Studies and recommendations. The Environmental Commission shall have the power to study and make recommendations concerning open space preservation, water resources management, air pollution control, solid waste management, noise control, soil and landscape protection, environmental appearance, and protection of flora and fauna as well as any other appropriate topic upon which the Township Council seeks advice and study.

[1] *Editor's Note: This ordinance also provided for the redesignation of former § 202-11 as § 202-11.1.*

## § 202-11.1. Availability of applications for development.

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