PLEASE TAKE NOTICE the following ordinance was introduced and passed on first reading at the September 8, 2020 meeting of the Mayor and Borough Council and will be considered for second reading and final passage during the meeting scheduled to begin at 7:00 p.m. on September 21, 2020 in the Municipal Building, located at 555 Brighton Avenue, Spring Lake Heights, at which time and place any person desiring to comment on this ordinance will be given the opportunity to be heard. A copy of the ordinance is available in the clerk's office.

Janine Gillis, Borough Clerk

ORDINANCE No. 2020-04

AN ORDINANCE REPEALING CHAPTER XXII, ARTICLE II ENTITLED "CREATION OF BOARDS" AND ADOPTING A NEW ARTICLE II TO BE ENTITLED "CREATION OF LAND USE BOARD

Purpose:

The Purpose of this Ordnance is to create a Combined Land Use Board in the Borough of Spring Lake Heights as permitted by the Municipal Land Use law (N.J.S. 40:55D-1 et seq)

SECTION 1

Chapter XXII, Article II Entitled Creation of Boards" is hereby repealed in its entirety and replaced by the following New Article II

ARTICLE II CREATION OF LAND USE BOARD

22-200.1 ESTABLISHMENT OF THE BOROUGH OF SPRING LAKE HEIGHTS COMBINED LAND USE BOARD

A. There is hereby established in the Borough of Spring Lake Heights, pursuant to N.J.S.A. 40:55D-23 and N.J.S.A. 40:55D-25 a Board entitled the Borough of Spring Lake Heights Land Use Board consisting of nine (9) regular members and four(4) alternates consisting 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 municipality other than a member of the Governing Body, to be appointed by the Mayor.

3. Class III: A member of the Governing Body to be appointed by it.

4. Class IV: Other citizens of the municipality, to be appointed by the Mayor.

5. Alternates. The Mayor shall have the authority to appoint up to four (4) alternate members who shall meet the qualifications of Class IV members and shall be designated at the time of appointment as

Alternates No. 1 through 4. Alternate members may participate in discussions of the board proceedings, but may not vote, except in the absence or disqualification of a regular member of any class. The term of a Class IV alternate member shall be two (2) years.

6. The phrase "Land Use Board" replaces the phrases "Planning Board," "Zoning Board of Adjustment," "Zoning Board" or "Board of Adjustment" wherever these phrases appear in the General Ordinance of the Borough of Spring Lake Heights.

B. Terms of Membership

1. The term of the member composing Class I shall correspond with his or her official tenure.

2. The terms of the members composing Class II and Class III shall be for one (1) year or terminate at the completion of their respective terms of office, whichever occurs first, except for the Class II member who is also a member of the Environmental Commission. The term of a Class II or a Class IV member who is also a member of the Environmental Commission shall be for three (3) years or terminate at the completion of his or her term of office as a member of the Environmental Commission, whichever comes first.

3. The term of a Class IV member who is also a member of the Board of Education, shall terminate whenever he or she is no longer a member of any such body or at the completion of the Class IV term, whichever occurs first.

4. The term of each Class IV regular member shall be four (4) years.

5. The terms of the Class IV alternate members shall be two (2) years, except that the terms of the alternate members shall be such that the term of not more than two alternate members shall expire in any one (1) year. (N.J.S.A. 40:55D-23.1)

C. Role of Alternate Members

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 and if unavailable to vote, Alternate 2, if not Alternate 3 and if Not Alternate 4..

D. Vacancies

If a vacancy of any Class of a regular or alternate member shall occur other than at the expiration of term, it shall be filled by appointment as above provided for the unexpired term only.

E. Compensation

Members of the Land Use Board shall serve without compensation except that reimbursement of reasonable expenses in the execution of official duties may be made by the municipality.

F. Removal

Any member other than a Class I member may be removed by the Governing Body for cause but only after public hearing and other due process proceedings.

G. Conflict

No regular or alternate member of the Land Use Board shall be permitted to act on any matter in which he or she has either directly or indirectly any personal or financial interest. No member who is so disqualified may act on that particular matter, shall not continue to sit with the Board on hearing of such matter, nor shall participate in any discussion or decision.

H. Reserved

I. Reorganization

Yearly, the Land Use Board shall organize by selecting from among its Class IV regular members a Chairman and Vice Chairman. The Board shall also select a Secretary who may be either a member of the Board or a municipal employee.

J. Funding

The Governing Body shall make provisions in its budget and appropriate funds for the expenses of the Land Use Board.

K. Board Attorney

The Land Use Board may annually appoint to such office and fix compensation or rate of compensation of an attorney-at-law of New Jersey other than the municipal attorney.

L. Staff

The Land Use Board may also employ or contract for and fix compensation of such experts and other staff and services as it may deem necessary. The appointment and compensation shall be fixed by contract in compliance with N.J.S.A. 40A:11-5. The Board shall not, however, exceed, exclusive of gifts or grants, the amount appropriated by the Governing Body for such purpose.

M. Education Requirements.

Members of the Planning Board are required to complete the course on land use law as required by N.J.S.A. 40:55D-23.3.

22-200.2 POWERS AND JURISDICTION OF THE LAND USE BOARD

A. The Land Use Board shall have and exercise all of the powers, duties and procedures prescribed or necessarily implied by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. for planning boards and shall have further powers, duties and procedures prescribed by ordinance adopted pursuant to the Municipal Land Use Law.

B. In addition to the powers set forth in subsection A., the Land Use Board shall exercise, to the same extent and subject to the same restrictions, all of the powers of a board of adjustment; but the Class I and the Class III members shall not participate in the consideration of applications for development which involve relief pursuant to subsection (d) of N.J.S.A. 40:55D-70.

C. The Land Use Board shall have the powers listed below in addition to other powers established by law:

1. Make, adopt, and from time to time, amend a master plan for the physical development of the municipality, including any areas outside its boundaries that, in the Board's judgment, bear essential relation to the planning of the municipality;

2. Participate in the preparation and review of programs or plans required by State or Federal law or regulation;

3. Assemble data on a continuing basis as part of a continuous planning process;

4. Annually, prepare a program of municipal capital improvements projects projected over a term of six (6) years and amendments thereto and recommend same to the Governing Body;

5. Prepare, within the time prescribed by law a periodic reexamination of the Master Plan and/or adoption of a Master Plan or certain elements of same;

7. To perform such other advisory duties as are assigned to it by ordinances or resolution of the Governing Body for the aid and assistance of the Governing Body by other agencies or officers;

8. The Land Use Board shall have such other powers as prescribed by law, including, but not limited to, the power to grant the following variances, to the same extent and subject to the same restrictions as the Land Use Board acting as the Zoning Board of Adjustment, when the Land Use Board is reviewing applications for approval of subdivision plans, site plans or conditional uses:

   a. Variances pursuant to N.J.S.A. 40:55D-70a-c;

   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 drainage way, flood control basin or public area; and

c. Direction pursuant to N.J.S.A. 40:55D-35 for issuance of a permit for a building or structure on a lot not abutting a street.

22-200.2 POWERS AND JURISDICTION OF THE LAND USE BOARD ACTING AS THE ZONING BOARD OF ADJUSTMENT

The Land Use Board acting as the Zoning Board of Adjustment shall have the power to:

A. Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, or refusal made by the Administrative Officer based on or made in enforcement of the Development Review Ordinance.

B. Hear and decide requests for interpretation of the Zoning Map or Development Review Ordinance or for decisions upon other special questions upon which the Board is authorized to pass on any Zoning or Official Map Ordinance.

C. Grant a variance from the strict application of a regulation, upon an application or an appeal, so as to relieve difficulties or hardships.

D. 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; or

E. Where in an application or appeal relating to a specific piece of property the purposes of the Municipal Land Use Law and this Ordinance would be advanced by deviation from the Development Review Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow the departure from zoning regulations; provided, however, that no variance from those departures enumerated in the following subsection shall be granted under this section; 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.

F. Grant a variance to allow a departure from the zoning regulations, in particular cases and for special reasons to permit:

G. A use or principal structure in a district restricted against such use or principal structure;

H. An expansion of a non-conforming use;

I. Deviation from a specification or standard pertaining solely to a conditional use;

J. An increase in the permitted floor area ratio;

K. An increase in the permitted density except as applied to the required lot area for a lot or lots for detached one (1) or two (2) dwelling unit buildings which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision; or

L. A height of a principal structure that exceeds by ten (10) feet or ten percent (10%) the maximum height permitted in the district for a principal structure.

M. A variance under this subsection shall be granted only by the affirmative vote of at least five (5) members.

N. The Land Use Board acting as the Zoning Board of Adjustment 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 Land Development Ordinance provisions which were the subject of variance requests and its recommendations for Land Development Ordinance amendment or revision, if any. The Land Use Board acting as the Zoning Board of Adjustment shall send copies of the report and resolution to the Governing Body.

O. Any interested party may appeal to the Governing Body any final decision of the Board when acting as the Zoning Board of Adjustment approving an application for a variance pursuant to N.J.S.A. 40:55D-70d. Such appeal shall be made within ten (10) days of the date of publication of such final decision. The appeal to the Borough Council shall be made by serving the Borough Clerk in person or by certified mail with a notice of appeal specifying the grounds thereof and the name and address of the appellant and name and address of his attorney, if represented. Such appeal shall be decided by the Borough Council only upon the record established before the Zoning Board of Adjustment.

P. In the granting of hardship and use variances, a time limit of one (1) year from the date of the variance approval shall be set within which the owner shall secure a building permit, otherwise the variance granted shall be null and void. The Zoning Board of Adjustment may, for good cause shown, extend the period for securing a building permit for an additional period not exceeding six (6) months.

22-202.3 Minutes.

Minutes of regular and special meetings shall be kept and shall include the names of persons appearing and addressing the Board and of persons appearing by attorney, the action taken, the findings, if any, and reasons therefor. The minutes shall be available for public inspection during normal business hours at the Office of the Borough Clerk. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceedings concerning the subject matter of such minutes and be charged a fee for their reproduction.

22-202.4 Hearings.

a. The Board shall make rules governing the conduct of hearings. The rules shall be consistent with N.J.S.A. 40:55D-1, et seq. and this chapter. The approving authority may

waive the required notices and hearing for minor and exempt subdivisions and site plans except where a variance or conditional use is part of the application.

b. The presiding officer, or such person as he may designate, shall have power to administer oaths or 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 of 1953 (N.J.S.A. 2A:67A-1 et seq.).

c. The testimony of all witnesses shall be taken under oath or affirmation by the presiding officer and the right of cross-examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.

d. Technical rules of evidence shall not be applicable, but irrelevant, immaterial or unduly repetitious evidence may be excluded.

e. The board shall provide for the verbatim recording of the proceedings by either stenographer, mechanical or electronic means. Each Board shall furnish a transcript, or duplicate recording in lieu thereof, on request to any interested party at his expense.

f. If an applicant desires a certified court reporter, the cost of taking testimony and transcribing it and providing a copy of the transcript to the borough shall be at the expense of the applicant, who shall also arrange for the reporter's attendance.

g. When any hearing before the Board shall carry to two (2) or more meetings, a member of the Board who was absent for one (1) or more of the meetings shall be eligible to vote on the matter upon which the hearing was conducted, notwithstanding the member's absence from one (1) or more of the meetings, provided such Board member has received a transcript or recording of the meeting from which he was absent and certifies in writing to the Board that he has read such transcript or listened to such recording.

22-202.5 Complete Application and Commencing Applicable Time Periods.

a. An application for development shall be complete for purposes of commencing the applicable time period for action when the application is certified complete by the approving authority. In the event that the application is not certified to be complete within forty-five (45) days of the date of its submission, the application shall be deemed complete upon the expiration of the forty-five (45) day period for purposes of commencing the applicable time period, unless:

   1. The application lacks information indicated on a checklist adopted by ordinance and provided to the applicant.

   2. The approving authority has notified the applicant in writing, of the deficiencies in the application within forty-five (45) days of submission of the application.

b. The applicant may request than one (1) or more of the submission requirements be waived, in which event, the approving authority shall grant or deny the request within forty-five (45) days.

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

d. The approving authority may subsequently require correction of any information found to be in error and submission or additional information not specified in the ordinance 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 have been met. The application shall not be deemed incomplete for lack of any such additional information or revisions in the accompanying documents so required by the approving authority.

22-202.6 Decisions.

Each decision on any application for development shall be reduced to writing, including findings of fact and conclusions thereon, through:

a. A resolution adopted at a meeting held within the required time period for action on the application; or

b. A memorializing resolution adopted at a meeting held not later than forty-five (45) days after the date of the meeting at which the approving authority voted to grant or deny approval. Only the members who voted for the action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution. An action resulting from the failure of a motion to approve an application shall be memorialized by a resolution as provided above, with those members voting against the motion for approval being the members eligible to vote on the memorializing resolution. The vote on any such resolution shall be deemed to be a memorialization of the action of the approving authority and not to be an action of the approving authority. However, the date of the adoption of the resolution shall constitute the date of the decision for purposes of mailings, filings and publication. If the approving authority fails to adopt a resolution or memorializing resolution, any interested party may apply to the Superior Court in a summary manner for an order compelling the municipal agency to reduce its findings and conclusion to writing within a stated time, and the cost of the application, including attorney's fees shall be assessed against the municipality.

c. A copy of the decision shall be mailed by the approving authority within ten (10) days of the date of decision to the applicant, or if represented, then to his attorney, without separate charge, and to all who request a copy of the decision, for a reasonable fee. A copy of the decision shall also be filed by the approving authority in the office of the administrative officer. The administrative officer shall make a copy of such filed decision available to any interested party for a reasonable fee and available for public inspection at his office during reasonable hours.

d. A brief notice of the decision shall be published in the official newspaper of the Borough, if there be one, or in a newspaper of general circulation in the Borough. Such publication shall be arranged by the applicant. The period of time in which an appeal of the decision may be made shall run from the first publication of the decision.

22-202.7 Conditions.

a. Whenever review or approval of the application by the County Planning Board is required by N.J.S.A. 40:27-6.6, the approving authority shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required time period.

b. Regulation of land development and the attachment of reasonable conditions to development applications are exercises of valid police powers delegated by the State to the Borough. The applicant shall comply with reasonable conditions laid down by the approving authority for design, dedication, improvements and the use of the land to conform to the physical and economic development of the municipality and to the safety and general welfare of the future residents and the community at large.

22-202.12 Agenda.

The Clerk of the Board shall prepare an agenda for each meeting, and prior to the meeting, shall send to the members sufficient copies of the agenda and the minutes of the previous meeting.

22-203 CONTRIBUTION DISCLOSURE STATEMENTS.

22-203.1 Definitions.

a. *Application Checklist* shall mean the list of submission requirements adopted by ordinance and provided by the municipal agency to a developer pursuant to N.J.S.A. 40:55D-10.3.

b. *Developer* shall mean a developer as defined by N.J.S.A. 40:55D-4, i.e. the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

c. *Professional* shall mean any person or entity whose principals are required to be licensed by New Jersey Law and who supplies legal representation, expert testimony or written reports in support of an application. Professionals shall include both any individuals supplying the representation, testimonies or reports and the firms or entities in which said individuals practice.

d. *Contribution* shall mean every loan, gift, subscription, advance or transfer of money or other thing of value, including any item of real property or personal property, tangible or intangible (but not including services provided without compensation by individuals volunteering a part or all of their time on behalf of a candidate, committee or organization), made to or on behalf of any candidate, candidate committee, joint candidates committee, political committee, continuing political committee or political party committee and any pledge, promise, or other commitment or assumption of liability to make such transfer. For purposes of reports required under the provisions of the ordinance, any such commitment or assumption shall be deemed to have been a contribution upon the date when such commitment is made or liability assumed.

e. *Contribution Disclosure Statement* shall mean a list specifying the amount, date, and the recipient of any and all contributions made to or on behalf of any candidate, candidate committee, joint candidates committee, political committee, continuing political committee or political party committee of, or pertaining to, this municipality, made up to one year prior to filing the variance application and/or during the pendency of the application process, and required to be reported pursuant to N.J.S.A. 19:44A-1 et seq. (Ord. #1-2004, § 1)

22-203.2 General Provisions.

a. *Disclosure Requirements.*

1. Any applicant for a variance pursuant to N.J.S.A. 40:55D-70(d) or a variance pursuant to N.J.S.A. 40:55D-70(c) in conjunction with any application for a subdivision not considered a minor subdivision pursuant to local ordinance or a site plan not considered a minor site plan pursuant to local ordinance as well as any application for a subdivision not considered a minor subdivision pursuant to local ordinance or site plan not considered a minor site plan pursuant to local ordinance requiring waivers or exceptions pursuant to N.J.S.A. 40:55D-51 shall include in the application Contribution Disclosure Statements for all developers; all associates of said developers who would be subject to disclosure pursuant to N.J.S.A. 40:55D-48.1 or 40:55D-48.2; and all professionals who apply for or provide testimony, plans, or reports in support of said variance and who have an enforceable proprietary interest in the property or development which is the subject of the application or whose fee in whole or part is contingent upon the outcome of the application.

2. During the pendency of the application process until final site plan approval is granted, any applicant required to comply with this ordinance shall amend its Contribution Disclosure Statements to include continuing disclosure of all contributions within the scope of disclosure requirement of the above paragraph.

b. *Inclusion of Contribution Disclosure Statements as an Element of the Application Checklist.*

1. An Application Checklist ordinance is hereby adopted pursuant to N.J.S.A. 40:55D-10.3 to require that the Contribution Disclosure Statements specified in paragraph a. of this subsection be submitted by the applicant for all applications for variance relief pursuant to N.J.S.A. 40:55D-70d as well as for relief pursuant to N.J.S.A. 40:55D-70c or N.J.S.A. 40:55D-51 in applications for site plan and subdivision approval not considered to be minor site plans or minor subdivisions pursuant to local ordinance.

2. Reserved

3. An application shall not be deemed complete by the administrative official or accepted for public hearing by the Municipal Agency until the required Contribution Disclosure Statements are submitted.

c. *Availability of the Disclosure Statement.* All Contribution Disclosure Statements shall be available in the office of the administrative officer for review by any member of the public.

d. *Intent of the Disclosure Statement.*

It is the intent of this section that the Disclosure Statement shall serve to inform the public and not serve as evidence relevant to the decision criteria for variance applications pursuant to N.J.S.A. 40:55D-70(d) as well as for relief pursuant to N.J.S.A. 40:55D-70c or N.J.S.A. 40:55D-51 in applications for site plan and subdivision approval not considered to be minor site plans or minor subdivisions pursuant to local ordinance.

SECTION 2

All ordinances or parts of ordinances inconsistent herewith are repealed to the extent of such inconsistency.

SECTION 3

If any word, phrase, clause, section or provision of this ordinance shall be found by any court of competent jurisdiction to be unenforceable, illegal or unconstitutional, such word, phrase, clause, section or provision shall be severable from the balance of the ordinance and the remainder of the ordinance shall remain in full force and effect.

SECTION 4

This Ordinance shall take effect on January 1, 2021 and its publication according to law.

SECTION 5

The Borough Clerk is hereby directed, upon adoption of the Ordinance after public hearing thereon, to publish notice of the passage thereof and to file a copy of this Ordinance as finally adopted with the Monmouth County Planning Board as required by N.J.S.A.40:55D-16. The Clerk shall also forthwith transmit a copy of this Ordinance after final passage to the Borough Tax Assessor if required by N.J.S.A. 40:49-2.1.

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Janine Gillis, RMC
Borough Clerk