



## **READINGTON TOWNSHIP BOARD OF ADJUSTMENT 2022 RULES AND REGULATIONS**

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**PART I. ORGANIZATION AND ADMINISTRATION.**

**Rule 1:1. Membership; Office; Annual Organization; Elections; Appointments.**

**1:1-1. Membership.** The Board shall consist of seven (7) regular members, and two (2) alternate members all of whom are appointed in accordance the provisions of N.J.S.A. 40:55D-69.

**1:1-2. Attendance and Determination of Vacancy for Excessive Absences.** Each member shall notify the Board secretary at least 24 hours in advance of a meeting he or she cannot attend. The position of any member or alternate member shall be deemed vacant whenever the member, without being excused by a majority of the authorized members of the Board, fails to attend and participate at meetings of the Board for four (4) consecutive regular meetings or eight (8) consecutive weeks, whichever shall be of longer duration, at the conclusion of such period, provided that the Board shall notify the appointing authority in writing of such determination. The Board member, however, shall have the right to notify the Board in writing if he or she chooses to do so, as to any excuse which the Board member feels is legitimate. In the event of the Board's notice to the approving authority, the approving authority shall forthwith fill the vacancy for the unexpired term in a manner prescribed by law. This rule shall be automatically amended by operation of law in the event that the above standards are made more strict pursuant to amendment henceforth of N.J.S.A. 40A:9-12.1 or other relevant prevailing enactment, in which event the language of this rule shall be deemed substituted by the language of such enactment.

**1:1-3. Office.** The office of the Board shall be located at the Municipal Building located at 509 Route 523, Whitehouse Station (Readington Township), New Jersey 08889. All records of the Board concerning pending applications shall be kept at this location and shall be available for public inspection at this location between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except for legal

holidays at which time the office is closed. The public may also inspect the records at the office at other times but by appointment only to be made with the Board Secretary. Board meetings and hearings on applications shall take place in the first floor meeting room in the Municipal Building located at 509 Route 523, Whitehouse Station (Readington Township), New Jersey 08889 in accordance with Rules 1:4 and 2:2 below.

**1:1-4. Organization Meeting.** The Board shall convene a meeting on the third Thursday of January in each year at 7:30 p. m. for the purpose of organizing the affairs of the Board for the calendar year. Such meeting shall be conducted in the presence of the Board Attorney who was appointed for and who served through the preceding calendar year, and who shall serve pro tem until reappointment or replacement.

**1:1-5. Election of Officers.** At the organization meeting, the Board shall elect from its regular members a Chair and Vice-Chair. The Board shall also elect a Secretary from among its members, except that if the Administrator of the Planning and Zoning Department of the Township is available to serve as Secretary, such person may so serve. The secretary shall be compensated upon agreement and in accordance with the ordinances and/or determinations of the Zoning Board and the Governing Body of the Township. A candidate receiving the majority vote of the entire membership of the Zoning Board shall be deemed elected to the office for which the vote was taken and shall serve for one year or until he or she is re-elected or his or her successor shall take office. In the event that an office shall become vacant in some factual manner or by operation of law, the office shall be filled as soon as possible by the same election procedure, and the term of such office shall be the unexpired term of the predecessor.

**1:1-6. Board Attorney(s).** The Board shall annually appoint or reappoint an Attorney(s)-at-Law of the State of New Jersey having recognized competence in the law of local governments, land use and zoning. The Board Attorney(s) shall be compensated pursuant to agreement and shall be the legal advisor(s) and representative(s) of the Board of Adjustment. The Board Attorney(s) shall prosecute and defend litigation and appeals on behalf of the Board. In the event the Board elects to appoint or reappoint more than one attorney, the Board shall determine as it sees fit which of the attorneys shall represent it in particular cases and/or at particular meetings. The Township Attorney shall not be the Board Attorney.

**1:1-7. Board Engineer(s).** The Board shall appoint or reappoint a licensed professional engineer(s) of the State of New Jersey who shall review and report on the applications and other matters pending before the Board at the direction of the Board, and who shall attend the meetings of the Board and committees of the Board as instructed by the Board.

**1:1-8. Planner(s).** The Board shall appoint or engage a licensed professional planner(s) of the State of New Jersey who shall review applications and land use matters and who shall attend the meetings of the Board and committees of the Board as instructed by the Board.

**1:1-9. Other Assistance.** The Board may also appoint such other officers and/or assistants and engage such additional experts or staff as it may deem necessary from time to time and may provide professional contracts to be executed by such assistants and experts.

## **Rule 1:2. Officers and Duties.**

**1:2-1. Chair.** The Chair shall preside at all meetings and hearings of the Board, decide all points of order and matters of procedure governing said meetings or hearings, decide issues of expert qualifications and admission of evidence, appoint committees, and shall perform all the duties normally appertaining to his or her office, as required by law, ordinance, these rules or prevailing parliamentary practice. Unless overruled by a majority vote of members, the Chair's decisions on the aforementioned issues shall be deemed the decision of the Board as a whole.

**1:2-2. Vice-Chair.** The Vice-Chair shall preside at all Board meetings and hearings in the absence or upon the disqualification of the Chair, and shall have all of the powers of the Chair under such circumstances.

**1:2-4. Secretary.** The Secretary shall generally perform the secretarial work of the Board, including, but not limited to the following:

- (a) Conduct all official correspondence, compile all required records, keep and maintain all necessary files and indexes with respect to the operation of the Board, cause all notices of meetings required to be given pursuant to the Open Public Meetings Act, the Municipal Land Use Law or any other applicable law or ordinance;
- (b) Attend all meetings of the Board, take and have custody of all records, documents, maps, plans and evidence, and provide for the care and custody of items for which no other provision is made by statute or these rules; take or direct the taking of roll call votes, and insure the recordation of affirmative and negative votes as well as abstentions;
- (c) Make a recording of the proceedings of each hearing of the Board in accordance with these rules, keep minutes of the proceedings of each meeting (including work sessions) held by the Board and file them in a book, and sign the resolutions and orders adopted by the Board and file them in a book;
- (d) Cause to be mailed or otherwise delivered or made available to each member of the Board and professional consultants to the Board true copies of the minutes and all other documents and materials pertaining to the business of the Board; and
- (e) Perform such other duties as normally pertain to the office of Secretary of the Board of Adjustment, or as directed by the Chair.

### **Rule 1:3. Committees.**

**1:3-1. Standing Committees.** There shall be the following standing committees of the Board:

- (a) **Technical Review Committee.** The Technical Review Committee shall review applications for development and render determinations of completeness pursuant to N.J.S.A. 40:55D-10.3

**1:3-2. Committee Composition.** The standing committees shall be comprised of not less than two, nor more than three, members of the Board. The Chair shall annually appoint the members of each committee for a one (1) year term. Vacancies shall be filled at or by the next regular session of the Board. Not more than one alternate member may serve on any standing committee.

**1:3-3. Special Committees.** Special committees may be established by a vote of the majority of the full membership of the Board. The Chair shall appoint the members of such committee, who shall serve for a term to be determined by the Board when it acts to establish such committee.

### **Rule 1:4. Meetings.**

**1.4-1. Regular Meetings.** Regular meetings of the Board of Adjustment shall be held in the first floor meeting room in the Municipal Building located at 509 Route 523, Whitehouse Station (Readington Township), New Jersey 08889, at 7:30 p.m. on the third Thursday of each month. If a regular meeting falls on a legal holiday, such meeting shall be held on such other day as the Board may select. Whenever there are no matters to be considered at any regular meeting other than the organizational meeting or the Chair becomes aware that there will not be a quorum of members present other than at the organizational meeting, the Chair may dispense with such meeting by directing the Secretary to provide notice of cancellation to each member of the Board by reasonable means and as soon as possible in advance of the time set for such meeting and by giving notice in accordance with the Open Public Meetings Act or otherwise posting the cancellation for the convenience and interests of the public.

**1.4-2. Special Meetings.** Special meetings may be called by the Chair at any time or upon the written request of two (2) or more members of the Board, provided that notice thereof be mailed or given to each member of the Board and to the public as required or allowed by law. An applicant may request but shall not be entitled to a special meeting. Special meetings at the request of an applicant may be scheduled at the pleasure of the Board provided the public interest is fairly and reasonably served. The applicant shall be responsible for all fees and costs related thereto.

**1.4-3. Quorum.** At all meetings of the Board, a quorum to conduct any business of the Board shall consist of four (4) qualified members. In the absence of a quorum, the members present may convene a meeting only for the purpose of adjourning the same to another date. No hearing may proceed without a qualified quorum of the Board for that particular hearing.

**1.4-4. Open Meetings.** Except as otherwise provided in these rules and regulations, the meetings of the Board shall be open to the public at all times. Nothing herein shall be construed to limit the discretion of the Board to permit, prohibit or regulate the active participation of the public at any meeting. The Board may exclude the public only from those portions of a meeting at which the Board discusses matters within the exclusions provided under N.J.S.A. 10:4-12b and/or N.J.S.A. 40:55D-9b.

**1.4-5. Photography and Video at Meetings.** The Board recognizes the right of persons to take pictures and video during its meetings provided that the persons taking the pictures or video do so in a manner that is respectful, unobtrusive and not disruptive to the meeting and those attending the meeting. As such, persons wishing to take pictures from hand held cameras or personal communication devices (cellular phones, tablets, laptop computers, and the like) can do so from their seats or, if standing, from the rear of the room adjacent to the exterior wall. Persons wishing to video may do so from their seats if the video equipment is hand held. For video equipment which is shoulder held or on a tripod or uni-pod, persons wishing to video can do so from the rear of the room adjacent to the wall. In all cases, no lights or flash shall be used. Any person wishing to photograph or video a meeting or any portion of a meeting must publicly announce their intention so that all persons are aware of same.

**1.4-6. Order of Business.** Subject to the discretion of the Chair to the contrary, the order of business for all regular sessions of the Board shall be as follows:

- (a) Call to Order
- (b) statement of compliance with Open Public Meetings Act
- (c) Flag salute
- (d) roll call;
- (e) approval of minutes of previous meetings;
- (f) adoption of resolutions;
- (g) adjournments of any scheduled cases and any motions;
- (h) old business (continued hearings);
- (i) new business (new hearings);
- (j) other discussion;
- (k) closed session; and
- (l) adjournment.

**1:4-7. Time Limitations.** The Board shall be under no obligation to consider any business after 10:00 p.m. The Board shall take no new testimony beyond 10:30 p.m. This rule may be waived, however, by a majority of the Board members then present and qualified.

**1:4-8. Parliamentary Procedure.** Robert's Rules of Order, latest edition, shall be followed whenever a particular procedure or practice is not contemplated by these rules.

## **PART II. PROCEDURES.**

### **Rule 2:1. Applications and Hearings.**

**2:1-1. Application to Board.** Applications for development and for any other relief shall be considered by the Board in accordance with the Land Use Ordinance. Upon receipt of an application by the Board Secretary together with the fee required by ordinance, the application shall be assigned an application number which may appear on all subsequent papers filed in the case. The original copy of the application, together with a copy of all other documents filed with the application, shall be filed in the permanent case docket of the Board. The Board or its designees shall determine the completeness of the application in accordance with the Land Use Ordinance. Upon a determination of completeness, the Board Secretary shall so notify the applicant, and the application shall be determined to be complete as of the day it was so certified by the Secretary for the purposes of commencement of the time period within which the Board must act upon an application.

**2:1-2. Document Requirements.** The document requirements shall be those requirements which are set forth in the official checklist set forth in the applicable ordinance.

**2:1-3. Scheduling; Transmittals.** Upon a determination of completeness in accordance with the MLUL, the application shall be assigned a hearing date and the Board Secretary shall forward copies of all application materials and documents to the Board Attorney, the Board Engineer, the Board's planning expert, and any other Board expert(s) whose input is sought. The application materials and documents shall also be forwarded to all Board members prior to the scheduled hearing session. Applications shall be scheduled for hearing in the order in which they are declared complete except that an application may be advanced so as to comply with statutory and ordinance limitations of time but shall otherwise be at the discretion of the Board or its designee(s).

**2:1-4. Filing of Maps and Documents.** At least ten (10) business days prior to the date scheduled for the hearing, the applicant shall file with the Board Secretary the maps, plans, plats and/or documents for which approval is sought and/or which the Board required to be filed. Applicants should take note that N.J.S.A. 40:55D-10b provides a ten (10) day minimum filing period. The Board has required a ten (10) day filing period in order for its experts and staff to have sufficient time to prepare reports so that they can be filed prior to the date for the hearing, rather than on the date of the hearing. This ten (10) day requirement shall apply to the initial hearing session as well as all subsequent hearing sessions.

**2:1-5. Notice of Hearing.** Prior to a hearing commencing on an application for development, the applicant must have given notice of the hearing at least ten (10) days prior to the date set for the hearing in accordance with all requirements of the MLUL and the Township ordinances and must file with the Board an affidavit of proof of service of the notice together with stamped certified proof of mailings (if service was by mail) and an affidavit of publication of notice in the newspaper. As to the requirement in N.J.S.A. 40:55D-12 that notice of a hearing be given to the owners of all real property as shown on the current tax duplicates, the applicant must send notice to all property owners on a list prepared by the Township Tax Assessor which is no more than six (6) months old at the time of service of the notices.

## **Rule 2:2. Hearing Procedure.**

**2:2-1. Appearance by Parties.** Individuals may either appear on their own behalf before the Board at the time of the hearing or be represented by an attorney authorized to practice law in New Jersey. Pursuant to New Jersey Court Rule 1:21-1(c), no business entity (whether a corporation, partnership or any other form), with the sole exception being a sole proprietorship, shall appear before the Board at the time of the hearing except through an attorney authorized to practice law in New Jersey.

**2:2-2. Testimony Under Oath.** All persons giving testimony at a hearing shall be duly sworn by the Board Attorney or, in the absence of the Board Attorney, the Chair or his or her designee.

**2:2-3. Order of Presentation.** Generally, each application shall be considered in accordance with the following order of presentation:

- (a) The applicant or, if the applicant is represented by an attorney, the attorney shall enter an appearance on the record. If counsel represents the applicant, the attorney shall enter his or her appearance, identifying the name and location of his or her firm, and identifying the client who is represented.
- (b) Prior to testifying, all of the applicant's witnesses shall then be sworn, as well as any Board experts who have filed reports concerning the application and/or who have not filed reports but may provide input on the application during the hearing.
- (c) The applicant or, if the applicant is represented by an attorney, the applicant's attorney shall then proceed to make opening remarks, if any, present testimony and any other evidence, documentary or otherwise, upon which the applicant intends to rely in order to establish a basis for the relief sought. The Board may impose reasonable limitations on the time and number of witnesses.
- (d) At the commencement of a witness' testimony and/or at the introduction of other evidence, the Chair shall rule on qualifications and admissibility. Board members may question a witness during his or her testimony. The Chair shall allow Board members, Board experts, objectors and interested parties to ask questions of such witness pertaining directly to their testimony, and shall permit reasonable cross-examination by counsel representing an objector or interested party. An attorney representing a group of objectors or interested parties shall submit to the Board a written list of persons represented by such attorney and shall submit a copy of the same to the applicant or the attorney for the applicant. Such persons shall cross-examine (question) witnesses only through their attorney, but they may provide testimony under oath. The Board may impose reasonable limitations on the time and number of questions posed to / cross examination of witnesses.
- (e) Upon the conclusion of the presentation of the application, any objector(s) wishing to present a case in objection to the relief sought may do so in such order as may be recognized by the Chair. The objector(s) may call witnesses for relevant testimony and introduce any relevant documentary or other relevant evidence subject to reasonable cross-examination by the applicant or his or her attorney and the Board. The Chair shall allow a reasonable opportunity for interested parties to ask questions of such witnesses. The Chair shall first recognize presentations of counsel for objectors and those presentations involving expert testimony in the order that the Chair shall determine upon the exercise of reasonable discretion. Such presentations shall be subject generally to the procedure set forth in the above subparagraphs, affording the attorney for the applicant and an applicant pro se a reasonable opportunity for cross-examination and questions. The applicant may thereafter present rebuttal evidence subject generally to the procedure set forth in the above subparagraphs.
- (f) The Board shall thereafter recognize public commentary by interested parties appearing pro se, provided that those giving commentary are sworn and each such interested party is subject to cross-examination and questioning. The Board may impose reasonable limitations on the time of each public comment to ensure that all public commenters have an opportunity to be heard. All rebuttal testimony or evidence shall be considered in such order as the Chair shall designate. The Board shall consider only relevant objections. The Board shall not consider unreasonable, repetitive or disorderly testimony or objections. The Board may impose reasonable limitations on the time and number of objecting witnesses. The Board shall also have the power to limit objections to those expressed by interested parties as the term is defined in the Municipal Land Use Law and construed by the courts of this State.
- (g) Any member of the Board may place evidence before the Board as to any relevant matter of which he or she has personal or official knowledge for the purpose of amplifying the record, including facts ascertained from a viewing of the premises in question subject to these rules. See, Rule 2:2-8 as to the procedures to be followed in this regard.
- (h) The Board shall have the right to rely upon the expertise of its attorneys as well as the expertise of its engineering and planning experts and any and all other Board experts that have testified during the hearing. The Board may also call, as witnesses, other municipal officials such as police officers, municipal engineers, the tax assessor, municipal



employees managing municipal utilities, etc., to testify as to particular facts pertinent to the application. The Board shall also have the power to acquire additional evidence consistent with these rules.

**2:2-4. Reports from Officers or Agencies.** The Board may refer an application to another person or agency for a report provided that such reference shall not extend the time within which the Board must act. Such reports from other persons or agencies shall be made available to the applicant and to other interested parties for examination and refutation. The Board may either obtain such reports prior to the hearing, giving all interested parties the right to examine the same, or the hearing may be adjourned to a specific time and place for the purpose of receiving the reports and recommendations of public officials or agencies involved. The Board may accept the report into evidence without the author of the report being present to be questioned / cross examined unless the applicant or an interested party requests the opportunity to question / cross examine the author of the report, in which case the Board may not accept the report into evidence unless the author or other representative of the agency is made available for questioning / cross examination at the hearing.

**2:2-5. Continuances.** All cases may be continued to another date certain, which shall be the next regularly scheduled Board meeting unless otherwise determined by the Board. The Chair shall announce to all those present the date, time and place to which the hearing on the matter is continued. The applicant need give no further notice in that event. However, if the matter is continued to a special meeting, notice required under the Open Public Meetings Act shall be given. The Board reserves the right to continue a hearing on its own motion for purposes of further consideration, subject to limitations of time as provided in the Township Ordinances and the Municipal Land Use Law. The Board may also grant reasonable requests of interested parties to continue a matter in order to afford such parties sufficient time to prepare, engage counsel, obtain witnesses or for other good cause. However, the Board shall do so only to the extent that the applicant's interests are not unduly compromised or prejudiced with respect to the applicant's protected interests pursuant to prevailing law. Where adjournment for a continuance would extend the statutory period within which the Board is required to act, the consent of the applicant shall be evidenced in writing or shall be made on the record.

**2:2-6. Refusal to Consent to Continuance.** Where an applicant refuses to consent to a continuance so that objectors can be heard or the Board has insufficient opportunity to consider the matter, such refusal by the applicant may be deemed arbitrary and unreasonable by the Board. Should the applicant move the Board to decide the matter without granting a continuance under those circumstances, the applicant shall be at risk of a denial of the application for failure to sustain the burden of proof and/or failure to afford the Board an opportunity to reach an informed decision.

**2:2-7. Testimony from Expert Witnesses.** The Board may require expert witnesses and/or reports from applicants if the Board believes same is/are necessary in order to make an informed decision on an application. Experts shall be qualified to the satisfaction of the Board. In addition to experts for the applicant, the Board shall have the power to engage its own independent experts to provide their opinions on issues raised in the application and/or on the testimony of experts produced by an applicant or other party. The Board shall not be bound to accept the testimony of any expert. Where there is conflicting testimony of experts, the Board shall decide which to accept. These rules shall not be construed as requiring expert testimony to sustain a Board finding. The Board may permit its experts to confer with the experts of the applicant where appropriate and, where appropriate, with experts hired by objectors or the Board in order to expedite consideration of the application. Informal communications between the Board's experts and those for the applicant shall be permitted outside the context of public meetings but any information as a result of those communications that any party wishes the Board to rely upon or that the Board wishes to rely upon shall be made part of the record. The applicant shall reimburse the municipality for the expenses incurred by the municipality in having Board professionals and experts participate in such communications.

**2:2-8. Site Visits by Board Members; Personal Knowledge of Board Members.** The Board may make site visit(s) of the property that is subject of an application upon reasonable notice to the parties and subject to the Open Public Meetings Act and prevailing New Jersey case law. In that event, or in the

event that individual Board members visit the subject property or are well acquainted with the subject property, knowledge acquired of any particular fact or facts by way of a site visit or personal knowledge of the site may be used in making a decision if such member or members expresses such facts on the record at the time of the hearing. The applicant, any objector, or any interested party shall have an opportunity to refute such facts and the right to question the member(s) on the circumstances of acquiring the knowledge. In the event that Board members visit the subject property or have historical or other knowledge of the subject property and no reference is made to the same on the record, it will be presumed that such facts were not necessary to reach an informed decision and merely helped such members to understand the evidence presented to them at the hearing. The absence of references to site visits and impressions shall not vitiate any decision otherwise reached by the Board.

**2:2-9. Evidence; Exhibits.** The formal rules of evidence adopted by the courts of the State of New Jersey may be used as a guide but shall not strictly apply in the proceedings before the Board. However, no decision shall be based upon any facts not proved or on matters which are not part of the record unless they are items of which the Board is entitled to take judicial notice in accordance with Rule 2:4-6 below. When any documents or exhibits are admitted into evidence during or for purposes of a hearing, they shall be marked and shall be retained by the Board as part of the permanent file. After the Board has rendered its decision and the time for filing an appeal has expired, the Board Secretary may return any such exhibits or documents to the person who offered them upon request, may keep them in the permanent file or may discard them. Any evidence presented, whether by testimony or by documents and exhibits presented for the purpose of the hearing(s), which are not questioned or controverted by any other party or by any member of the Board, may be deemed to be true by the Board for purposes of its decision. The Board may limit irrelevant, immaterial or redundant evidence. As set forth in the rules above, the Chair shall decide all issues of admission of evidence and, unless overruled by a majority vote of Board members, the Chair's decision shall be deemed the decision of the Board as a whole.

**2:2-10. Effect of Restrictive Covenants and Deed Restrictions.** The Board is established for the sole purpose of exercising the powers conferred upon it by the MLUL. The Board is authorized by local ordinance only to hear matters within the purview of the ordinance. A restrictive covenant or deed restriction shall be construed as being in the nature of a private contract which may be enforceable either by a Grantor or other protected party by a proceeding in the Superior Court of New Jersey. Such a restriction shall not affect the jurisdiction of the Board, and the grant of relief by the Board shall not affect the validity of any restrictive covenant or deed restriction. The existence of a restriction shall generally have no bearing on the Board's determination, unless the restriction was imposed as a condition of prior approval.

**2:2-11. Letters and Petitions in Objection.** Letters of objection and petitions relating to an application for development shall not be admissible. If submitted to the Board Secretary, and to the extent reasonably practicable, such letters shall be returned by the Secretary to the author or sender with an explanation citing this rule and advising the author or sender that he or she can appear before the Board to testify regarding the application for development but cannot submit a letter or a petition of objection. This shall not bar the author of a letter or the signer of a petition from appearing and testifying under oath and, as part of such sworn testimony, reading a prepared statement, provided, however, that such person is subject to cross-examination and questioning.

**2:2-12. Burden of Proof.** The burden of proof is upon the applicant, and it is the applicant's responsibility to supply competent and credible evidence in order that the Board might determine the nature and degree of the relief sought by the applicant. The applicant must establish, to the Board's satisfaction, that pursuant to statutory and ordinance criteria the applicant is entitled to the relief sought. If an applicant refuses to produce someone within its control who may have information relevant to an application, the Board may draw any reasonable adverse inference from such refusal. If a Board member is not convinced that the applicant has satisfied its burden of proof, the Board member should vote to deny the application rather than abstain in the absence of a compelling reason to the contrary.

### **Rule 2:3. Voting.**

**2:3-1. Voting Procedure.** The Board shall vote on all applications and matters by motion(s) made by a member. All motions shall require a second. In the absence of a second, the motion shall be deemed defeated. The Chair shall allow discussion on any motion made and duly seconded. The Board shall have the right, but not the obligation, to conduct a deliberation on any application or matter prior to any motion being made. All votes on substantive matters shall be taken by roll call, and the vote and name of the member casting the vote shall be recorded in the minutes.

**2:3-2. Voting Margin and Effect.** Once a quorum of the Board is present (which is at least four (4) members pursuant to Rule 1:4-3 above), an affirmative vote of a majority of up to seven (7) members present is required for any decision, determination or official action of the Board except that applications for a variance under N.J.S.A. 40:55D-70(d), which must be approved by at least five (5) affirmative votes. If a motion to approve an application for development fails to receive the number of required votes, such failure shall be deemed an action denying the application.

**2:3-3. Abstentions.** Abstentions are disfavored except for good cause. An abstention shall be regarded as an assent to the vote of the majority. Thus, if the majority of those voting would affirm a measure, abstentions would be counted toward affirmance; if the majority would defeat a measure, abstentions will be counted toward defeat. A disqualified member shall not be counted as an abstention and shall, instead, be deemed to have removed himself or herself from the panel and not be involved in the consideration of the application. If the Board is evenly split in its decision, no majority exists with whom an abstaining member can be said to vote and accordingly abstentions shall not be assigned to either block. A tie vote shall be deemed an action denying the application, and abstentions shall not be construed to approve an application; nor shall abstentions be used to create a tie.

**2:3-4. Voting Eligibility; Review of Record.** When any hearing before the Board has been continued, a member of the Board who was absent for one or more hearing sessions shall be eligible to vote on the matter upon which the hearing is conducted notwithstanding the member's prior absence provided that such member certifies in writing to the Board that he or she has read a transcript or listened to a recording of the entire session for which he or she was absent. This rule shall not be construed as authorizing any hearing to be held whenever less than a quorum of the Board is present.

#### **Rule 2:4. Other Hearing Requirements and Procedures.**

**2:4-1. The Record.** The record shall mean the application form, any plans, plats or maps submitted by the applicant, any other documents submitted by the applicant, an objector, an interested party and/or any Board expert(s), any exhibits submitted during the hearing, the verbatim recording of the hearing by stenographic, tape and or other electronic means, the resolutions adopted by the Board containing the Board's decision on the application, all Township ordinance provisions as well as all provisions of the Master Plan, any and all prior Planning Board, Board of Adjustment or Township Council resolutions relevant to the application and/or to the property, and any and all other matters or documents of which the Board may take judicial notice in accordance with Rule 2:4-6 below. The minutes of the meeting shall be considered both a summary of the record and part thereof but only a transcript of a hearing session or a recording of a hearing session shall constitute a verbatim record of the hearing session.

**2:4-2. Transcripts.** The Board shall furnish a transcript of the hearing, or duplicate recording in lieu thereof, on request, to any interested party at his or her expense. Interested parties shall not be charged more than the maximum permitted by applicable law.

**2:4-3. Inability to Make Verbatim Record.** If, at the time set for hearing, a verbatim record cannot be made for good reason, as where recording equipment is inoperable and no certified stenographer is present, the Board shall, if time is not a factor, continue the hearing to another date. However, if time is a factor, and if all interested parties present agree, the Board may proceed with the hearing on the understanding that in the event of an appeal or further review, an agreed statement of facts will be supplied to the reviewing body. In the absence of such agreement, where time is a factor and the applicant refuses to consent to extend the time within which the Board has to make a decision, the Board shall be entitled to

deny the relief sought in order to prevent statutory automatic approval by reason of the Board's failure to make a decision within the required time.

**2:4-4. Oaths; Subpoenas; Contempt.** The Chair and the Board Attorney shall have power to provide for oaths to be administered to all witnesses in cases before the Board and may designate individual(s) to actually administer oaths. The Chair shall also have the power to issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties. The provisions of the County and Municipal Investigations Law, N.J.S.A. 2A:67A-1 et seq. shall apply. Any person under subpoena who refuses or fails to appear or refuses to be examined or answer any proper questions or to produce any books, papers, documents or tangible things in accordance with the subpoena, shall be subject to the proceedings in the Superior Court for an order to compel him or her to do so. If a person subject to subpoena shall engage in contemptuous conduct at any hearing, the Board may apply to the court to compel such person to refrain therefrom, and may seek costs and fees in connection therewith.

**2:4-5. Perjury.** Any person who shall knowingly or willfully give false testimony under oath in the course of any hearing held before the Board shall, in accordance with the provisions of the County and Municipal Investigations Law (N.J.S.A. 2A:67A-1 et seq.), be guilty of perjury.

**2:4-6. Judicial Notice.** The Board may take judicial notice of such matters as are so notorious as not to be the subject of reasonable dispute, including but not limited to matters of common knowledge, provisions of law, provisions of the Township Ordinances, resolutions adopted by the Planning Board, Board of Adjustment and Township governing body, and the contents of municipal, county, state and federal government documents and publications (including internet published documents).

**2:4-7. Dismissal of Applications.** The Board, on its own motion, may dismiss any action without prejudice if neither the applicant nor anyone on his or her behalf appears at the time set for the hearing of said application. The Board may also dismiss any action without prejudice if neither the applicant nor anyone on his or her behalf actively prosecutes the application. Further, the Board, on its own motion, may dismiss any action, without prejudice, for failure to comply with these rules. Any applicant may, at any time before the commencement of the hearing, voluntarily withdraw his or her application, in which case the application shall be deemed to have been dismissed without prejudice. After commencement of a hearing, the applicant shall not have the right to withdraw its application. A voluntary dismissal may be had but only with the approval of the Board, in which case the Board shall dismiss the action with or without prejudice depending on the circumstances of the particular case. The Board reserves the power to impose reasonable terms and conditions on the dismissal of any application where the request for the dismissal is made after the commencement of the hearing on the application.

**2:4-8. Amended Applications.** An applicant may, prior to the commencement of a hearing, amend his or her application without leave of the Board and in all such cases new notice shall be given as in the case of the original application and the amended application shall be subject to a completeness determination as is the case with the original application. After commencement of a hearing, an application may be amended only by leave of the Board. If the amendment after commencement of hearing is for the purpose of reducing the nature or extent of the relief sought, no new notice will be required. Otherwise, new notice shall be given. In either event, the time within which the Board has to act on the amended application shall be deemed to start to run from the day the amended application is determined to be or deemed to be complete.

**2:4-9. Time of Submission Rule.** Notwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development. Any provisions of an ordinance, except those relating to health and public safety, that are adopted subsequent to the date of submission of an application for development, shall not be applicable to that application for development.

**2:4-10. Conditions.** The Board shall have plenary power and discretion to impose conditions. The right to impose conditions is an inherent power of the Board that exists regardless of whether the ordinance grants such a right to the Board. Such conditions shall not be deemed exclusive, and the applicant shall be subject to terms and conditions of approval that are expressed and implied at law, including those imposed pursuant to ordinance as applied uniformly to every development application. If a term or condition of approval is imposed by ordinance or law and the Board is not expressly granted the power to waive, enlarge or relax such term or condition, the Board shall not have such discretion or power. The right to impose conditions is an inherent power of the Board that exists regardless of whether the ordinance grants such a right to the Board. To be enforceable, a condition must be part of the record. Conditions must not offend against any provisions of the Land Use Ordinance, must be in the public interest, must be reasonably calculated to achieve a legitimate objective of the ordinance and shall not be unnecessarily burdensome to the applicant and/or owner. The Board shall have the power to require that conditions be fulfilled within a stated period of time. The Board may require that some or all conditions of approval, or the resolution itself, be recorded with the County Clerk along with any maps for filing.

Unless good cause exists, the Board shall impose the following conditions as a minimum, which the Board deems as its “standard” conditions, and in the event the Board neglects to include any of the following conditions in a resolution approving an application for development the following conditions shall be deemed to have been imposed by the Board:

1. **Revisions to Plans/Plats.** Prior to the Board Chair and Secretary signing any approved site plans or subdivision plats, and prior to issuance of zoning and construction permits, the applicant shall be required to make revisions to the plan(s) and/or the plat(s) in accordance with Board’s experts’ reports and testimony to the satisfaction of the Board expert(s) who filed the report or testified as well as to the satisfaction of the Township Engineer and Township Planner. The Board shall impose as a further condition a time within which to make the revisions which shall be six (6) months unless the Board determines another time period is more appropriate depending on the circumstances of the case before it. And, the condition shall also provide that, in the event that the applicant fails to revise the plans as required and/or fails to obtain signatures on the plan as required, all within said time period, or extension thereof as granted by the Board, the approvals shall expire and become automatically null and void. (The Board notes that, in the absence of the within time limitation condition, it would decline to grant conditional approvals and, instead, would continue the hearing on an application for no more than a six month period to provide the applicant with the opportunity to revise the plat, plans and documents. Failure by the applicant to resubmit same to the Board within that period or submission within that period but failure of the applicant to make all the required revisions, would result in denial of the application.) Any dispute(s) concerning satisfaction of any conditions related to the revisions of the plans/plats may be brought to the Board for resolution by written letter application submitted by the applicant without the necessity for public notice but on written notice to the Township Engineer and Township Planner.
2. **Design, Construction and location of Improvements.** The applicant shall be required to design, construct and locate the proposed development in substantial conformity with the plans and the plats approved and signed by, and conditions imposed by, the Board as well as to the exhibits submitted into evidence during the hearing. The requirements of this condition shall be satisfied prior to issuance of a certificate of occupancy, completion or compliance (whichever is applicable).
3. **Landscaping.** All landscaping, as installed, shall conform to and be in accordance with the landscaping plan approved and signed by the Board, and which landscape plan shall include any and all the landscaping changes required by condition #1 above. Prior to the issuance of a permanent certificate of occupancy, completion or compliance (whichever is applicable) and prior to the release of any performance bond, the landscaping shall be installed and a two (2) year maintenance bond in a form acceptable to the Township

Attorney and in an amount acceptable to the Township Engineer, shall be posted with the Township. If the applicant applies for a certificate of occupancy during a non-planting season, the applicant may obtain a temporary certificate of occupancy without installation of the landscaping but if and only if the applicant posts a performance bond in a form acceptable to the Township Attorney and in an amount acceptable to the Township Engineer guaranteeing installation of the landscaping during the next planting season and further guaranteeing the subsequent posting of a two (2) year maintenance bond.

4. **Enforcement and Maintenance of Parking.** The applicant shall strictly monitor and enforce parking as permitted and reflected on a signed site plan. This means that parking shall be permitted only in those areas and in those spaces designated on the site plan for same. The owner of the property shall include provisions in all leases to this effect. The applicant shall identify on the site through pavement markings and signage (as approved by the Township Engineer) all parking spaces and fire lanes/zones. The applicant shall have a continuing obligation to maintain all parking areas, which shall include but not be limited to repainting and reinstalling signage for all required spaces.
5. **Night-Light Test.** There shall be a night-light test conducted by the Township Engineer prior to the issuance of a certificate of occupancy, compliance or completion (whichever is applicable) and the applicant shall correct any lighting problems which are exposed as a result of the test prior to the issuance of said certificate. The purpose of the night-light test is to assure adequate lighting throughout the site for safety purposes while safeguarding neighboring property owners and the traveling public from glare, unnecessary brightness and glow. The requirements of this condition shall be satisfied prior to issuance of a certificate of occupancy, completion or compliance (whichever is applicable).
6. **Escrow Fees.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 30 days of the adoption of a resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable). Failure to abide by this condition shall result in the relief granted, as well as any and all underlying relief for the property, automatically terminating and becoming null and void
7. **Easements, Dedications and Conveyances.** Any and all easements, dedications and/or conveyances running to and in favor of the Township which are proposed on the site plan and/or subdivision plat and/or required as a condition of the approval resolution shall, in addition to being identified on the applicant's plans, maps and/or plats, be contained in separate documents to be prepared by the applicant and approved by both the Planning Board Attorney and the Township Attorney after the metes and bounds descriptions of the easement, dedication and/or conveyance areas have been reviewed and approved by the Township Engineer. Said documents shall specifically outline the grant of the easement, dedication and/or conveyance and its purpose and shall contain a metes and bounds description of the easement, dedication and/or conveyance area. All such documents shall then be recorded and, upon completion of the recording process, be transmitted to the Township Clerk for maintenance with other title documents of the Township. The requirements of this condition shall be satisfied prior to the Board Chair and Secretary signing any approved site plans or subdivision plats, and prior to issuance of zoning and construction permits.
8. **Time to Obtain Construction Permits and Commence and Complete Construction.**

- a. In cases where the Board grants preliminary site plan and/or preliminary subdivision approval, the Board shall impose a time limitation within which to file an application for final approval. Unless the Board determines that some other time periods are more appropriate based upon the unique circumstances of the case before it, the standard time limitation condition shall be as follows: “The applicant shall file an application for final site plan and/or subdivision approval within three (3) years of the date of the adoption of the resolution granting preliminary approval. If an application for final site plan and/or final subdivision approval is not filed within said three (3) year period, or extension thereof as granted by the Board, the within preliminary approval shall automatically expire and become null and void.”
  
- b. In cases where the Board grants final site plan and/or subdivision approval, the Board shall impose a time limitation within which to obtain construction permits, commence construction and complete construction. Unless the Board determines that some other time periods are more appropriate, based upon the unique circumstances of the case before it, the standard time limitation condition in cases involving final site plan and/or subdivision approval shall be as follows: “The applicant shall apply for and obtain a construction permit within two (2) years of the date the resolution granting final site plan and/or subdivision approval is adopted. If during said two (2) year period, or extension thereof as granted by the Board, the applicant fails to obtain a construction permit, the within final approval shall automatically expire and become null and void. The applicant shall also have one (1) year from the date of issuance of the construction permit to commence construction and obtain a permanent certificate of occupancy. If during said one (1) year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy is not obtained, the within final approval shall automatically expire and become null and void.”
  
9. **Specific Approvals and Permits.** Prior to the Board Chair and Secretary signing any approved site plans or subdivision plats, and prior to issuance of zoning and construction permits, the applicant shall obtain all applicable permits and/or approvals from all applicable agencies and/or departments including (if applicable) but not necessarily limited to the following municipal, county and/or state agencies and/or departments:
  - a. Township Board of Health approval of any aspect of the development within its jurisdiction,
  - b. Hunterdon County Department of Health approval of any aspect of the development within its jurisdiction;
  - c. Hunterdon County Soil Conservation Service certification of the soil erosion and sediment control plan,
  - d. Hunterdon County Planning Board and/or Hunterdon County Engineering Department approval of any aspect of the proposed development within its jurisdiction,
  - e. NJDOT highway access permit if the proposed development is on a road within NJDOT’s jurisdiction, and
  - f. NJDEP approval of any aspect of the proposed development within its jurisdiction.

10. **Subject to Other Laws and Approvals.** All resolutions shall contain the following “catch-all” condition:

“The within approval and the use of all property subject to the within approval are conditioned upon and made subject to any and all laws, ordinances, requirements, and/or regulations of and/or by any and all municipal, county, state and/or federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of all property subject to the within approval are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, state and/or federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or the use of the property. In the event of any inconsistency(ies) between the terms and/or conditions of the within approval and any approval(s) required by the above, the terms and conditions of the within approval shall prevail unless and until changed by the Board upon proper application.”

### **PART III. TAKING ACTION ON APPLICATIONS.**

#### **Rule 3:1. Decisions; Resolution of the Board.**

**3:1-1. Time of Decision.** Unless the applicant has consented in writing or on the record to an extension of time, the Board shall render a decision on an application for development not later than within the following time periods:

- (a) 95 days after the date of completeness of an application for general development plan approval;
- (b) 45 days after the date of completeness of an application for minor site plan approval, whether or not including a request for site plan exception(s);
- (c) 45 days after the date of completeness of an application for preliminary site plan approval involving 10 acres of land or less and 10 dwelling units or less, whether or not including a request for site plan exception(s);
- (d) 95 days after the date of completeness of an application for preliminary site plan approval involving more than 10 acres or more than 10 dwelling units, whether or not including a request for site plan exception(s);
- (e) 45 days after the date of completeness of an application for final site plan approval, whether or not including a request for site plan exception(s);
- (f) 45 days after the date of completeness of an application for minor subdivision approval, whether or not including a request for subdivision exception(s);
- (g) 45 days after the date of completeness of an application for preliminary subdivision approval involving 10 dwelling units or less, whether or not including a request for subdivision exception(s);
- (h) 95 days after the date of completeness of an application for preliminary subdivision approval involving more than 10 dwelling units, whether or not including a request for subdivision exception(s);
- (i) 45 days after the date of completeness of an application for final subdivision approval, whether or not including a request for subdivision exception(s);
- (k) 95 days after the date of completeness of an application for conditional use approval;
- (l) 120 days after the date an appeal is taken from the decision of an administrative officer pursuant to N.J.S.A. 40:55D-70(a); or 120 days after the date of completeness of an application for subdivision, site plan and/or conditional use approval when any or all of those applications include or require a request or application for the following relief: a variance pursuant to N.J.S.A. 40:55D-70(c) and/or (d), issuance of a permit pursuant to N.J.S.A. 40:55D-34 and/or pursuant to N.J.S.A. 40:55D-36.



**3:1-2. Failure to Decide within Prescribed Time.** Failure of the Board to render a decision within the period prescribed or within such further time as may be consented to by the applicant may constitute a decision favorable to the applicant but only if the Board intentionally fails to render the decision within said time periods and acts in bad faith.

**3:1-3, Decision Based on Evidence.** Each case shall be decided strictly on the basis of the facts adduced at the hearing viewed in light of the statutory and ordinance requirements. The Board is a quasi-judicial body whose function is to apply the facts adduced at the hearing to the legal requirements of the statute and ordinance and to decide whether the requested relief can be legally granted or not. The number of opponents or objectors present, or even the fact that no objections are heard, shall be only of secondary importance unless the Board finds that the absence of objection is evidence that relief can be granted without substantial detriment of the public good. The facts adduced at the hearing and the evidence on which the Board bases its decision, must be part of the record and the Board's decision must include findings of the facts from the record on which it based its decision and conclusions on the points of law raised. The vote on the making of its decision and the adoption of its resolution must be taken at a public meeting.

**3:1-4. Alternative Relief.** The Board shall have the discretionary power to grant relief other than the precise relief or portion thereof sought by the applicant provided that interested parties shall have received reasonable notice of the fact that such relief might be granted.

**3:1-5. Reservation of Decision.** The Board may decide to reserve decision on a matter after the hearing is completed and may make its decision at the next meeting provided that the period within which to decide the application will not expire prior to the next succeeding meeting. The Board may also authorize the Board Attorney to prepare a resolution for consideration at the next meeting provided prevailing time limitation will not expire prior to such meeting. The making of a motion to have a resolution prepared for consideration shall not be construed as the making of a decision. The Board shall not be bound by such measure.

**3:1-6. Form of Decision – Written Resolution.** All decisions of the Board shall be in the form of a written resolution containing findings and conclusions and conditions, which resolution shall be adopted by a majority vote of the members of the Board who voted in favor of the action previously taken either on the date of the meeting at which the Board grants or denies approval, or, within 45 days of such meeting by the adoption of a resolution of memorialization setting forth the decision, findings, conclusions and conditions of the Board. No other member shall vote thereon. The resolution of the Board shall contain:

- (a) a statement of the Board's findings of fact and its conclusions of law, the Board's decision, any conditions imposed upon the relief granted, or other provisions as the Board may deem appropriate and necessary;
- (b) Where the Board has determined to impose conditions on the relief granted, such conditions shall be clearly set forth in the resolution. The Board may, when it is deemed necessary to protect the public interest, specifically provide in its resolution for the retention of jurisdiction over the matter before the Board for a reasonable time. Such time may be specifically set forth or may be conditioned on the happening of a certain event. The purpose of such retention of jurisdiction shall be to enable the Board without limitation to vary the terms of any conditions therein imposed or to impose additional conditions, in the public interest, in light of the then-existing circumstances; or to permit the Board to finalize its action with respect to its other powers, as granted to the Board by statute and/or ordinance. However, nothing herein contained shall be construed to limit the Board's inherent power to modify a decision for good cause shown, irrespective of whether the Board has expressly retained jurisdiction; and
- (c) the resolution shall set forth, with specificity, the relief granted to the applicant. The Board may grant such relief as it deems appropriate and in keeping with the intent and purpose of the appropriate ordinance, as the case may be, although the relief granted may be different in kind or degree from that requested in the application.

If the resolution of memorialization is not adopted within forty-five (45) days of the Board's action, any interested party may apply to the Superior Court for an Order compelling the Board to reduce its findings and conclusions to writing within a stated time, and the cost of the application, including attorney's fees, may be assessed against the municipality pursuant to the provisions of N.J.S.A. 40:55D-10 (g) (2). Municipal action shall be deemed to have been taken at the original meeting and not the date at which the resolution or memorialization is adopted, except that the date on which the resolution of memorialization is adopted shall constitute the date of decision for the required mailing of a copy of the decision to the applicant and for the publication of the Board's decision in the official newspaper of the municipality as required by subsections (h) and (i) of N.J.S.A. 40:55D-10.

An action resulting from failure of a motion to approve an application shall likewise be memorialized by resolution regardless of the time at which such action occurs within the time period for rendering a decision. Whenever a resolution of memorialization is adopted in accordance with the provisions of N.J.S.A. 40:55D-10, the date of such adoption shall constitute the date of the decision for purposes of the mailings, filings and publications required by statute.

**3:1-7. Effect of Resolution.** Once the Board votes to adopt a resolution, the findings of fact, conclusions of law and conditions contained in the resolution become the findings, conclusions and conditions of the Board in the matter. It shall be immaterial that at the time of voting certain Board members may have given other reasons or discussed matters not addressed in the resolution. Nor shall it be necessary that Board members articulate particular reasons for reaching a decision at all, it being sufficient that the application be either approved or disapproved by a vote and that thereafter a resolution (of memorialization or otherwise) is adopted. The resolution shall be drafted in such a way as to give the greatest possible support to the decision that has been made by the Board. Once the resolution has been voted on favorably by the requisite number of Board members and is signed by the Board Secretary, it shall become the resolution of the decision of the Board regardless of who drafted it.

**3:1-8. Nature of Resolution Drafts.** A draft or proposed form of resolution, regardless of who prepared it (i.e., a Board member or the Board Attorney), which is transmitted to individual Board members, the Board Secretary and/or Board experts for review, comment and/or consideration shall be considered a privileged document and shall not become a matter of public record unless the Board attorney or Board Secretary intentionally transmits the draft or proposed form of resolution to a third party. Only the form of resolution that is ultimately adopted by the Board shall be a matter of public record unless the Board attorney or Board Secretary intentionally transmits a draft or proposed form of resolution to a third party and, in such case, only the draft or proposed form of resolution that is so transmitted shall be a matter of public record. Only the form of the resolution that has been voted on favorably by the requisite number of Board members and signed by the Board Secretary shall constitute the decision of the Board.

**3:1-9. Relief Granted.** With respect to relief requested by an applicant, the Board may grant or deny such relief depending upon whether the applicant has proved entitlement to the relief. Additionally, however, the Board may also grant relief which may be different in kind or degree from that requested in the application, again depending upon the applicant's proofs, as the Board shall have the discretionary power to grant relief other than the precise relief or portion thereof sought by the applicant.

**3:1-10. Publication of Notices of Decisions.** A copy of the Board's resolution shall be furnished to the applicant or his attorney within 10 days from the date of adoption thereof and a copy of the resolution shall also be made available to any person who has requested it and has paid the fee established therefore. A copy of the resolution shall be filed in the office of the Board and shall be available to the public upon adoption. A brief notice of the decision shall be published in the official newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality. Such publication shall be arranged by the Board Secretary unless a particular municipal officer is so designated by ordinance. Nothing herein contained shall be construed as preventing the applicant from arranging such publication if so desired. The municipality may make a reasonable charge for its publication. The period of time in which an appeal of the decision may be made shall run from the first publication of the decision, whether arranged by the municipality or the applicant. The date of adoption of the .

memorializing resolution shall constitute the date of decision for the purpose of mailings, filings and publications. .

The Board's Secretary shall cause notice of the Board's action to be published, once, in the official newspaper of the municipality, in accordance with the provisions of the MLUL.

**Rule 3:2. Rehearing; Modification.**

**3:2-1. Rehearing.** An applicant or other interested party may, within 20 days after the publication of notice of the decision, move the Board for a rehearing of the matter or a portion thereof by filing an application in the form of a letter addressed to the Board containing a brief statement of the grounds relied upon. If the Board grants the motion, the moving party shall deposit into the applicant's escrow account sufficient funds to cover the anticipated Board professional fees incurred in the rehearing. Once the escrow deposit has been made, the Board shall fix a date for rehearing and shall require the moving party to give notice to all persons who participated in the original hearing or hearings, upon such terms as the Board may deem adequate. Failure to make the escrow deposit within 30 days of the Board granting the motion shall result in the Board vacating the grant of the motion for the rehearing. The Board may grant a rehearing on its own motion when unusual circumstances so require in the interest of justice.

**3:2-2. Misrepresentation, Fraud, Mistake.** The Board may presume that all material statements of act are true. The Board may also presume that all exhibits, maps and other documents submitted are true and accurate representations of all facts which such materials have been introduced to substantiate. In the event that it later appears to the Board on reasonable grounds that an applicant or witness has not been truthful, or that a mistake has been made, and such circumstances bear on facts which are essential in the granting of the relief sought by the applicant and were relied upon by the Board in taking such action, then, upon discovery of such misrepresentation, fraud or mistake, the Board may re-hear the matter either upon application of an interested party or on its own motion when unusual circumstances so require in the interest of justice. In such event, the Board may, upon notice directed to the applicant and all other interested parties, require the applicant to appear before it for the purpose of explaining the testimony previously given at the hearing. At such subsequent hearing, it may be determined whether or not the testimony as given at the original hearing was in fact false. Mistake or fraud in proceedings, left uncured, shall constitute grounds for rescission.

**3:2-3. Vacation or Modification.** At any time after the adoption of a resolution of memorialization, any person having an interest in such decision may move the Board for an order vacating or modifying any term or condition of said decision by filing with the Board a petition in the form of a letter setting forth the reasons therefor and the grounds relied upon. If the petition is granted, the Board shall fix a date for hearing and the movant shall give notice of such hearing in the same form and manner as otherwise required in the case of original applications. The Board, on its own motion, may, in a proper case, similarly order all parties in interest to show cause at a time and place fixed in the notice why the terms or provisions of any variance ought not to be vacated or modified.

**3:2-4. Res Judicata.** If the same parties or their privies seek the same relief in the same factual setting, the case may be dismissed on the ground that it has already been decided. However, if the first case was not a decision on the merits, there shall be no bar to the second application. If a second application seeks relief which is entirely different or is of lesser proportions than in the first application, the second application shall not be barred. An applicant shall also be given a fair opportunity to show that circumstances have changed significantly or that other good cause exists for reconsideration- This rule shall not be construed to disallow an application for modification or enlargement of an approval or for the lifting or relaxation of conditions previously imposed in connection with an approval upon a proper showing of changed circumstances or other good cause warranting a reconsideration.

**PART IV. AVAILABILITY AND ELIGIBILITY OF MEMBERS.**

**Rule 4:1. Alternate Members.**

**4:1-1. Designation.** There shall be two alternate members of the Board who shall be designated by the appointing authority as "Alternate No.1" and "Alternate No. 2", respectively, and each alternate shall retain said designation during the term for which he or she was appointed.

**4:1-2. Appointment of Alternate to Serve on Case.** During the absence or disqualification of any regular member, the Chair shall recognize one of the alternate members to serve in the place of said regular member; provided, however, that where the alternate member is designated to serve in place of a regular member who is disqualified from participating in the hearing of a particular case, the alternate member shall be designated to serve only with respect to such case unless otherwise needed to fill an absence of a member.

**4:1-3 Alternate to Serve Until Final Disposition.** In the event of disqualification of a regular member for any hearing or matter, an alternate member who has participated in such hearing or matter coming before the Board shall continue to act in the place of such regular member until the final disposition of said matter by the Board.

**4:1-4. Alternate No. 1 to Vote.** In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

**4:1-5. Alternate Not to Serve at Adjourned or Continued Hearing Unless Present at Prior Hearings and/or Reviewed Transcript or Recording.** When a member has been present and has participated in the first hearing session on any matter, no alternate member shall be designated to serve during the absence of such member during any adjourned or continued hearing sessions on the same matter unless said alternate member was present at such first hearing session or any prior adjourned or continued hearing sessions on such matter or, if absent, said alternate member certifies in writing to the Board that he or she has read a transcript or listened to a recording of the entire hearing session(s) for which he or she was absent. This rule shall not be construed as authorizing any hearing to be held whenever less than a quorum of the Board is present.

**4:1-6. Rights and Privileges.** An alternate member who has served in the place of an absent or disqualified member shall, during the period of service, enjoy all of the rights and privileges and shall be subject to all of the duties and disabilities pertaining to regular members if the alternate member is eligible in all pertinent respects, provided, however, that no alternate member shall be eligible to serve as Chair or Vice-Chair of the Board.

**4:1-7. Participation in Discussions; Voting.** Alternate members may participate in discussions of the proceedings, but may not vote except in the absence or disqualification of a regular member, nor shall any vote be delayed in order that a regular member may vote instead of an alternate member.

## **Rule 4:2. Borrowing Members**

**4:2-1. Appointment of Additional Members.** If the Board lacks a quorum because any of its members are prohibited from acting on a matter due to the member's personal or financial interests therein, whether direct or indirect, or other applicable law, regular Class IV members of the Planning Board shall be called upon to serve, for that matter only, as temporary members of the Board of Adjustment, in order of seniority of continuous service to the Planning Board, 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. For an application requesting relief under N.J.S.A. 40:55D-70(d), a minimum number of members necessary to constitute a quorum to act upon the matter shall be seven (7) qualified members. If a choice has to be made between regular members of equal seniority, the Chair of the Planning Board shall make the choice. This procedure shall be invoked only when the direct and proximate cause of a lack of quorum is the disqualification and not the mere absence of one or more members of the Board.

## **Rule 4:3. Disqualification.**

**4:3-1. Disqualification Generally.** No member of the 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 of the Board shall participate in proceedings in which such member has a conflicting interest that may

interfere with the impartial performance of his or her duties as a member of the Board. The decision as to whether a particular interest is sufficient to disqualify shall depend on the facts and circumstances of the particular case. The test shall be whether the circumstances could reasonably be interpreted by a member of the public to show that they had the likely capacity to tempt the Board member to depart from his or her sworn public duty.

**4:3-2. Local Government Ethics Law.** The members of the Board shall comply with and be bound by the provisions of the Local Government Ethics Law, N.J.S.A. 40A: 9-22.1, et seq. and shall annually file a statement as prepared by the local Finance Board and the Division of Local Government Services, Department of Community Affairs. Pursuant to such law, no Board member shall act in his or her official capacity in any matter where he or she, a member of his or her immediate family or a business organization in which he or she has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his or her objectivity or independence of judgment. Any interest or involvement of the Board member that is not shared in common with other members of the public shall be examined to determine eligibility.

**4:3-3. Examples of Disqualification for Interest.** Any member of the Board shall disqualify himself or herself from sitting on the hearing of any matter in which he or she has a disqualifying interest, such as, but not limited to, the following situations:

- (a) where the member owns property located within two hundred (200) feet of the property affected by the action;
- (b) where the applicant is related within the third degree of consanguinity to the member by blood or is the husband or wife of any person so related;
- (c) where the applicant or his or her attorney is the employer, employee, or partner of the member, or is a corporation in which the member beneficially owns more than 10% of the outstanding shares thereof or has other financial interest; and
- (d) where the member has any other personal or pecuniary interest in the proceeding.

**4:3-4 Removal from Panel.** Any member having deemed himself or herself disqualified in any matter or having been deemed by a majority vote of the Board as having a disqualifying interest shall not sit with the Board and shall not participate in the consideration of such matter. Such member may be heard at the appropriate time as an interested party or applicant, but whenever such member appears before the Board on his or her own behalf or by legal representative, it shall be disclosed that the member's comments are made solely to exercise or protect private rights and are not expressed as a member of the Board. Every effort shall be made by such member to avoid the possible influence of fellow Board members and the appearance of impropriety from the point of view of the general public. While not required, any member subject to disqualification is encouraged to leave the hearing room during the pendency of the application and, if the member wishes to exercise his or her right to appear as an interested party, while not required, the member is encouraged to engage counsel and appear through such counsel.

**4:3-5. Disclosure of Possible Conflicts; Waiver by Parties.** Where conflict is only possible and not actual by virtue of involving, either directly or indirectly, any personal or financial interest, such conflict need not necessarily result in a disqualification but should be disclosed. For purposes of illustration, prior dealings and friendships should be disclosed so that disqualification can be considered on an informed basis. Disclosure of interest is necessary in order to judge whether a particular interest is sufficient to disqualify or is remote and speculative. Concern for the impartial exercise of authority, in appearance as well as in fact, requires that where a member of the Board must disqualify himself or herself in a matter because of a conflict of interest, the disqualification is absolute and cannot be waived. However, if a conflict is only potential and is disclosed, the Board may reasonably find that a particular interest is too remote or speculative to cause a disqualification. The Board Attorney shall be consulted in each such case. Whenever the Board is called upon to determine that a potential conflict should not result in disqualification, the affected Board member shall disclose the nature of the relationship and shall satisfy the Board that the relationship would not in any way influence his or her decision.

**4:3-6. Remedy.** When a member fails to disqualify himself or herself where the circumstances require disqualification, any interested party or any other Board member may move the Board for an order

or determination that such member is or was disqualified to act and may, even after decision, seek the vacation of the decision and a rehearing or other appropriate relief. The motion shall contain a statement of the facts upon which it is based, and the Board may thereupon hold a hearing on the matter or take whatever action it may deem appropriate.

## **PART V. MISCELLANEOUS MATTERS.**

### **Rule 5:1. Fees**

**5:1-1. Application Fees.** No application shall be considered which is not accompanied by an application fee in accordance with the schedule of administrative fees for development applications, as amended and in effect at the time application is made.

**5:1-2. Escrow Deposits for Professional Services.** No application shall be considered with respect to which an applicant has failed to comply with the applicable local ordinance or statutory requirements for the payment of escrow deposits toward anticipated municipal expenses for professional services, to be based upon a schedule established by resolution. The amount of the initial deposit shall be established by ordinance.

**5:1-3. Special Meeting Costs.** In the event that a special meeting is scheduled and convened for the benefit of an applicant pursuant to Rule 1:4-2, any special or uncustomary disbursements, expenses, fees or costs incurred by the Board and the Municipality for the rendering of special services, arrangements or accommodations for the benefit of the applicant shall be reimbursed entirely by the applicant. The Board may require a reasonable antecedent escrow deposit to protect against an applicant's failure to comply with this section.

### **Rule 5:2. Payment of Taxes.**

**5:2-1. Proof of Payment; Alternative Agreement.** The applicant, at the time of filing the application for development, shall file with the Board a certification of the Tax Collector that municipal taxes and/or assessments have been paid. In the event that taxes and/or assessments on the property affected by the application for development are unpaid, the applicant shall submit, in lieu of the certificate of payment of taxes and/or assessments, a written request that the Board take action, which request shall include a stipulation that any approval shall be subject to the payment of taxes and/or assessments and the Board may suspend post-approval execution and other action until such time as taxes and assessments are paid, subject to applicable law and ordinance.

### **Rule 5:3. Purpose and Source of Authority.**

**5:3-1. Purpose and Source of Authority of Rules.** The within rules are supplementary to the provisions of the Township ordinances as they relate to the Board and are adopted pursuant to N.J.S.A. 40:55D-8a which provides that the Board shall adopt and may amend reasonable rules and regulations not inconsistent with the MLUL or with any applicable ordinances for the administration or its functions, powers and duties and N.J.S.A. 40:55D-10b which provides that every municipal agency shall make rules governing hearings held on applications for development.

### **Rule 5:4. Amendments.**

**5:4-1. Amendments to the Rules.** The Board may, from time to time, amend any part or parts of these rules and regulations at any regular meeting, provided notice of the consideration of any such amendment has been given in writing to each member of the Board at least three (3) days prior to such meeting. In no case, however, shall any rule, as amended, be applicable to any action commenced prior to

the adoption of such amendment, where the application thereof would result in surprise, hardship or injustice to the applicant or any interested parties.

**Rule 5:5. Relaxation of Rules.**

**5:5-1. Where Rules May Be Relaxed.** For good cause shown, or where the strict application of any rule would cause injustice, the Board may relax the requirement of any rule, except where the provision(s) of the rule at issue are non-waivable statutory requirements.

**Rule 5:6. Objections.**

**5:6-1. Objections to Rule Violations.** Anyone and/or any entity who/which objects to any action taken and/or not taken by the Board on the basis of violation of any part or parts of these rules and regulations must present the objection(s) to the Board prior to the Board taking action on the application. Failure to present the objection(s) prior to the Board taking action on the application shall be deemed a waiver of said objection(s).

**Rule 5:7. Severability.**

**5:7-1. Severability.** The various parts, sections, sentences and clauses of these rules and regulations are hereby declared to be severable. If any part, section, sentences and/or clause is adjudged to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder of the rules and regulations shall not be affected thereby and shall remain in full force and effect.