

RULES OF THE ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF HOWELL

adopted September 19, 1989
revisions adopted November 21, 1989
revisions adopted June 17, 1999
revisions adopted December 3, 2002
revisions adopted January 26, 2009
revision adopted March 23, 2009
revision adopted July 14, 2014

PURPOSE OF RULES. This document has been compiled in accordance with the requirements of N.J.S. 40:55D-8 and Howell Ordinance 14-35.5 which shall be made available to the public at a reasonable fee.

These rules and regulations (hereinafter referred to as Rules) seek to provide a guide by which members of the Board shall conduct business and also intends to assist members of the public and participants in meetings in understanding the Board's usual procedure.

To the extent that a given Rule's substance is not required by any statute or ordinance, said Rule need not be adhered to in every case. They are not to be construed as inflexible or binding in every case. These Rules do not, by themselves, have the force of law nor may anyone assert that the Board must follow any Rule when its substance is not required by statutory or municipal law.

RULE 1 - ORGANIZATION, OFFICERS and GENERAL PROVISIONS

1:1-1 REORGANIZATION MEETING

An annual meeting in which the Board shall reorganize its membership, committees and employees shall take place at the first regular meeting of each calendar year. At said meeting, the Board shall elect, from among its members, a Chairperson, Vice-Chairperson and Secretary for the term of one year until the following reorganization meeting.

The Board shall also appoint and employ an attorney, engineer, and such other officers, assistants, experts and employees as it deems necessary.

The Chairman may also select, from among Board members, committees for Site Review, Rules and other committees as are deemed necessary. The term of appointment shall be for one (1) year. Alternate members of the Zoning Board are eligible for service on the above-mentioned committees, without limitation, at the discretion of the Chair.

An alternate member designated to serve in the absence of a previously appointed member may also be appointed by the Chair. At no time shall there be more than three members participating on a committee. (Amended Date: January 26, 2009 and July 14, 2014).

Reorganization meeting shall be amended to provide that no reorganization meeting as required by statute be adjourned due to the absence of a regular member if a duly qualified alternate is present to be appointed by the Chairperson.

1:1-2 THE CHAIRPERSON

The Chairperson shall preside over all meetings and shall decide all points of order and procedure. However, during meetings of the Board, a majority of the voting members may object to the intended ruling of the Chairperson on a particular point of order or procedure to be employed. Such objection shall be based on the objecting member's stated belief that the Chairperson's ruling is contrary to law or the Board's own precedence. In such case, the majority will rule on the objection and decide the point of order or procedure to be followed. All Board members are encouraged to make comment upon procedural and other issues, but Board members at all times shall show due deference to the authority of the Chairperson as the conductor of the meeting.

1:1-3 VICE-CHAIRPERSON

The Vice-Chairperson shall preside at all Board meetings and hearings in the absence of the Chairperson.

1:1-4 THE SECRETARY

The Secretary shall preside at all meetings where the Chairperson and Vice-Chairperson are absent or abstain from a given case. Subject to the direction of the Chairperson, he shall at all times, be responsible for signing resolutions, and marking all exhibits during hearings.

1:1-5 ADMINISTRATIVE ASSISTANT

The Board shall, whenever possible, employ an Administrative Assistant to conduct all official correspondence, to perform necessary secretarial service, shall be responsible for notifying the Municipal Clerk and the Officers charged with enforcement of the Zoning Ordinance of all meetings of the Board. He shall give all notices of meetings required to be given by the Open Public Meetings Act. He shall make an agenda in advance of each meeting for the Board members and staff.

He shall attend each meeting at the pleasure of the Board and record all votes. He shall have care and custody of all records and documents of the Board of which no other provision is made by statute and shall keep on record all minutes of meetings. At the direction of the Board, he shall have published all the Zoning Board's resolutions. He shall check all applications for development to see that they are complete and that the required notices for hearings have been duly made. He shall declare when an application is complete, and subject to change by the direction of the Board, shall schedule all hearings. He shall keep track of all time limitations for applications and appeals and shall receive the required time extensions when mandated. At the discretion of the Board he shall prepare a written report of his site inspection of each subject property.

RULE 1.2 - MEETINGS

1.2-1 REGULAR and SPECIAL MEETINGS SCHEDULES

The regular meetings of the Board shall be held at the Municipal complex at 4567 Route 9 North, 2nd Floor, Howell Township, New Jersey at 7:30 P.M. on the second and fourth Monday of each month, such time and place subject to the Board's change at its reorganization meeting. If the regular meeting day falls on a legal holiday the meeting shall be held on the next succeeding secular day. The Administrative Assistant shall furnish a copy of the regular meeting dates for the year to the news media designated by the municipal governing body in accordance with the Open Public and an affirmative vote to adjourn has been made, but the Board must by motion extend the time of any meeting that ends later than 11:00 P.M.

(Amended Date: July 14, 2014).

Special meetings may be called by the Chairperson at any time or upon the written request of two members, provided notice thereof be mailed or given to each member at least two days prior to the meeting and to the public as required by the Open Public Meetings Law.

1:2-2 MEETINGS OPEN TO PUBLIC

All meetings shall be open to the public, except such executive sessions as authorized by N.J.S. 40:55D-9b and N.J.S. 10:4-6 et seq.

1:2-3 ORDER OF BUSINESS

The order of business at all regular meetings shall be as follows:

- (a) Roll Call
- (b) Open Meeting to the Public
- (c) Reading of correspondence
- (d) Approval of minutes
- (e) Payment of vouchers and expenses
- (f) Resolutions
- (g) Decisions
- (h) Hearings
- (i) Adjournment

The order of business as stated shall not prevent the Chairman or other officer presiding over the meeting from declaring necessary adjournments during meetings nor to change the order of business when necessity or other reasons exist for so doing, except that each meeting will begin with the roll call and opening of the meeting to the public.

1:2-4 QUORUM

At all meetings of the Board a quorum for the conducting of business shall consist of four members. In the absence of a quorum, the members present may adjourn the meeting, and the hearing on any motion or application, to another date.

RULE 1:3 - VOTING

1:3-1 RIGHTS and PRIVILEGES

Among others, a right and privilege of a regular member of the Board is to vote on all decisions for hearings, interpretations, appointments of employees and legal decisions, such as whether to adopt a defense in a legal proceeding.

1:3-2 DESIGNATION OF ALTERNATE MEMBERS

The two alternate members of this Board appointed by the Governing Body 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 was appointed.

1:3-3 ALTERNATE MEMBER VOTING

An alternate may only vote if a regular member is not present for the vote, or is present for the vote but was absent during a part of all of the hearings and has not be affidavit sworn to having listened to the voice recordings of the meetings or portions thereof in which he was not present. However, the alternate, in order to vote, must also have been present during the hearings or have sworn to having listened to the voice recordings of the hearings or portion thereof at which he was not present.

An alternate shall be appointed to vote by the Chairperson whenever the alternate is qualified to vote.

Alternate member voting, be amended to provide that, in the absence of a regular member, an alternate member shall be appointed by the Chairperson to vote, whenever the alternate is qualified to vote, on any matter before the Board, including the annual Reorganization meetings for the selection of a new Chairperson, Vice-Chairperson and Secretary, as well as all Board professionals, as provided in Rule 1:1-1, and N.J.S.A. 40:55D-69.

1:3-4 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.

1:3-5 RIGHTS AND PRIVILEGES

An alternate member who has been designated to serve in the place of an absent or disqualified regular member shall, during the period his service, enjoy all of the rights and privileges and shall be subject to all of the duties and disabilities pertaining to regular members, but no alternate member shall be eligible to serve as Chairperson or Vice-Chairperson of the Board.

Rights and Privileges, be amended to provide that, as indicated above, duly appointed alternate member shall have the right to vote in annual reorganization meetings.

1:3-6 PARTICIPATION IN DISCUSSION: 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.

Participation in Discussion: Voting, be amended to expressly prohibit proxy voting at any time by a regular member who is absent, in accordance with N.J.S.A. 40:55D-69.

1:3-7 ADJOURNING VOTES

The Chairperson shall adjourn a vote upon the request of an applicant for a variance until such time as seven members of the Board are available to vote, provided the applicant grants whatever extension of time is necessary.

RULE 2:1 - COMMENCEMENT OF ACTION; SERVICE AND FILING OF PAPERS

2:1-1 COMMENCEMENT OF ACTION

(a) **Appeals.** An action in the nature of an appeal alleging that there is error in any order, requirement, decision or refusal made by the building inspector, zoning officer, or other official based on or made in enforcement of the zoning ordinance shall be commenced by the filing of a copy of a notice of appeal in accordance with the provisions of the statute within 20 days from the date of the order, decision or refusal appealed from, which notice of appeal shall be filed in triplicate with the officer from who the appeal is taken and shall specify the grounds of such appeal. Said officer shall immediately transmit to the board secretary all papers constituting the record upon which the action appealed from was taken and the board secretary shall proceed to place the matter on the calendar in accordance with the provisions of R.2:2-1. The applicant shall pay at the time of such filing the fee required by ordinance.

Notwithstanding the above requirements, the Township Official shall be notified of the hearing date and be available to testify at the hearing. The official is also subject to issuance of subpoena by the Board as set forth in Rule 2:13 of the Board's By-Laws. Failure of the official to timely transmit the record upon which the appeal was taken, or to appear at the hearing of the contested matter, may result in an ex parte decision by the Board granting the requested relief to the Applicant. (Amended Date: March 23, 2009)

(b) **Applications to Board of Adjustment.** An application for a variance or for any other relief shall be commenced by the filing of a copy of an application with the Administrative Assistant together with the fee required by ordinance. Said applications shall forthwith be forwarded to the Secretary of the Board of Adjustment.

(c) Other Requirements.

1. Any maps or documents for which approval is sought at a hearing shall be on file and available for public inspection at least 10 days before the date of the hearing during normal business hours in the office of the Municipal Clerk. This filing shall be in addition to the maps and other documents required to be filed with the application, as set forth in the application form and the check list of items required by ordinance, a copy of which is given to all applicants.

2. The application form shall be filled out completely and, where necessary, supplemented by additional information in order to make it clear to the Board what relief is being sought. No action shall be considered complete until all applicable requirements of R.2:1-1 have been complied with.

3. When an application is made for any variance relating to a use or structure which is not permitted in the district in which the lands are located or for other relief pursuant to N.J.S. 40:55D-70(d), the applicant may submit at the time of filing his application for a variance, an application for site plan review or for subdivision approval, prepared in accordance with all applicable ordinance requirements and regulations of the Zoning Board of the Township of Howell together with fees and deposits in the amount which would have been charged by the Board in connection with the submission of a similar site plan review application. Application for site plan review need not be filed at the time of filing an application for a use variance, but any use variance granted by the Board shall be subject to proper submission of a site plan in accordance with the municipal ordinances.

(d) **Fees.** Fees are established by ordinance shall be paid simultaneously with the filing of an application and as otherwise provided by ordinance.

4. In accordance with the provisions of the municipal subdivision and site plan review ordinances, an applicant shall, in connection with an application involving site plan or subdivision approval, pay, in addition to the fees hereinabove specified, deposits to cover special expenses incurred by the Board for the rendering of services by its planning consultant, engineer, attorney and other experts in the amounts set forth in said ordinance.

5. Applicant shall submit proof that no taxes or assessments for local improvements are due or delinquent on the property for which any application is made, in accordance with the provisions of N.J.S. 40:55D-65(h) and local ordinance.

2:1-2 CERTIFICATION OF COMPLETENESS

The Administrative Assistant shall examine each application to ascertain that all required check-list items required by municipal ordinance are shown or furnished in the application or accompanying documents, or that otherwise a waiver has been required. If all check-list items are provided and no waivers requested, the application shall be deemed complete and the applicants shall be so notified. If waivers are requested as to any items the Board shall, at its next ensuing regular or special meeting held not later than 45 days from the date of submission of such application decide whether to grant or deny the waiver or waivers requested and applicant shall be notified promptly.

2:1-3 COPIES TO ZONING OFFICER, ATTORNEY, ETC.; FILING

A copy of the map and any other requested document on file with the Administrative Assistant will be forwarded to the Board Attorney, Engineer and Environmental Commission. The Secretary shall also give notice to the Zoning Officer and Attorney of the time set forth the hearing on the application. The original copy of the application shall be filed in the case docket of the Board.

2:1-4 DOCKET NUMBER

The Secretary shall assign to each new action a docket number, which number shall thereafter appear on all subsequent papers filed in the cause.

RULE 2:2 - HEARING DATE

2:2-1 Hearing Date

As soon as any complete appeal or application is filed in accordance with the foregoing rules, the case shall be assigned a hearing date. The applicant shall be notified of time set for the hearing thereon. The Board may assign all hearing dates within time limits required by law.

2:2-2 Adjournment

The time for hearing may be adjourned from the time fixed therefor, for good cause, upon the motion of the applicant or other person interested in the action, or on the Board's own motion, provided, however, that where such adjournment 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.

2:2-3 Bifurcation

An applicant seeking a variance pursuant to N.J.S. 40:55D-70(d) may either simultaneously file an application for any required site plan or subdivision approval or may make a subsequent application to this Board for such approval. The Board may consider the variance request before dealing with the subdivision or site plan.

RULE 2:3 - NOTICE; UPON WHOM SERVED; TIME

2:3-1 Notice; Upon Whom Served

Notice shall be given to all persons and officials entitled thereto by the requirements of N.J.S. 40:55D-12. Public notice is required for all applicants seeking certification of a prior nonconforming use.

2:3-2 List of Owners Supplied by Clerk

Where the Clerk of the municipality (or other authorized official) has furnished applicant with a list of the property owners entitled to notice pursuant to the provisions of N.J.S. 40:55D-12(c), a copy of the official certification and list shall be annexed to applicant's proof of service.

2:3-3 Proof of Service

The service and publication of notices as hereinabove provided is a jurisdictional requirement, and proof of the service and publication of all required notices in accordance with these rules shall be made by affidavit of the person or persons who actually served or mailed said notices as required by law, and by the authorized official of the newspaper which published same.

RULE 2:4 - APPLICATIONS AND APPEALS

2:4-1 Form

Every appeal or application shall be filed in triplicate on the appropriate form provided to the applicant by the Administrative Assistant.

2:4-2 By Whom Filed

Every appeal or application must be signed by the owners of the lands and premises to be affected, or by his duly authorized agent, or may be signed by any other person having an interest in the action. This provision shall not apply to any appeal from a decision of the administrative officer by one who has no ownership or contractual interest in the property affected.

2:4-3 Assistance

For the assistance of the applicant, the Administrative Assistant may render such other assistance to the applicant as may be practicable.

2:4-4 Application: Content

The applicant shall set forth in his application all facts upon which he will rely to establish his right to the relief sought and supply all information requested on the application form or otherwise required by law.

2:4-5 Affidavit of Ownership

If the applicant is not the owner of the premises affected by the variance requested in the application, an affidavit or consent executed by the owner of the affected premises shall be filed with the Board consenting to the filing of the application, except as otherwise provided in R.2:4-2.

2:4-6 Application by Corporation or Partnership, Disclosure of Stockholders or Ownership Interest

A corporation or partnership applying for relief from this Board which involves subdivision of a parcel of land into six (6) or more lots, or a variance to construct a multiple dwelling of twenty-five (25) or more family units, or for approval of a site plan for commercial purposes shall list the names and addresses of all stockholders or individual partners owning at least ten (10) percent of the stock of any class or at least ten (10) percent of the interest in the partnership as the case may be, in accordance with the requirements of N.J.S. 40:55D-48.1

RULE 2:5 - HEARINGS

2:5-1 Appearances

At the hearing upon the application, the applicant, or any other party, shall appear in person, or may be represented by an Attorney-at-Law of New Jersey. Every corporation shall be represented by an Attorney-at-Law of New Jersey.

2:5-2 Oath

At the hearing, the applicant and all witnesses shall be sworn by the Chairperson or his designee before giving testimony.

2:5-3 Hearing Order of Presentation

(a) When the hearing is called to order, the Administrative Assistant shall state the relief sought in the application.

(b) The applicant shall then present, by his testimony and the testimony of his witnesses, or by such documentary evidence or exhibits as he may submit, proof of all facts upon which he relies to establish his right to the relief sought by the application.

(c) Any other interested person (which the Board may refer to as objectors) may then question the applicant's witnesses or evidence.

(d) When the applicant has finished giving his direct testimony and evidence, any other interested person shall at his request be heard and may present any relevant testimony or evidence tending to show why the relief sought by the applicant should be denied or if granted, in some modified or conditional form.

(e) Persons in favor of the application who have not testified as witnesses for the applicant may also give testimony and evidence in support of the application.

(f) The applicant or his attorney may cross-examine any objector opposed to the application. The Board may accept but it may limit cross-examination by the applicant or his attorney of an objector who speaks in support of the application.

(g) Rebuttal testimony or evidence shall then be admitted in such order as the Chairman shall designate.

(h) At any time, all witnesses may be cross-examined by any member of the Board or the Board Attorney.

(i) All witnesses, parties, persons in interest and objectors who seek to give evidence or question witnesses must be sworn or must affirm to tell the truth.

(j) Applicants requesting an Interpretation of the Land Use Ordinance from the Zoning Board of Adjustment are initially limited to a 15 (fifteen) minute presentation to the Board, in order for the Board to determine if the application is appropriately brought as an Interpretation request. Upon motion and approval by a majority vote, this time frame may be extended.

2:5-4 Examination by Board: Testimony

The applicant and every other person appearing and presenting testimony at any hearing may be examined by any member of the Board and the Board Attorney for the purpose of eliciting any relevant information which may assist the Board in deciding the issue. Any member of the Board may testify as to any relevant matter of which he has personal or official knowledge for the purpose of amplifying the record, including facts ascertained from a viewing of the premises in question and the general area.

2:5-5 Closing of Hearing: Continuances

(a) When the applicant and all other interested persons have had an opportunity to be heard, the Chairperson may declare the hearing to be closed. Thereafter, no further evidence will be received in the action unless the matter is reopened in accordance with these rules.

(b) The applicant or any other interested person, prior to the closing of the hearing, may move the Board for a continuance of the hearing for the purpose of presenting further relevant evidence, which the Board, acting in its sound discretion, may either grant or deny.

(c) In cases where the Board feels that testimony or other evidence should be received in the public interest from any municipal, county, or state official or from any other persons to assist in rendering a just decision, the Board may, on its own motions, continue the hearing to another day certain for such purposes.

RULE 2:6 - EVIDENCE

2:6-1 Competent Evidence

Although formal rules of evidence are not enforced before the Board, every fact indispensably necessary to establish the applicant's right to the relief sought shall be based upon the consideration of any facts or matters which are in the record, unless they are such as to which the Board is entitled to take judicial notice. The Board may limit irrelevant, immaterial or redundant testimony.

2:6.2 Documents and Exhibits

When any papers, documents or exhibits are admitted into evidence during a hearing, they shall be marked by the Secretary and may be retained by the Board.

Evidence, be amended to require applicants seeking requests for Interpretation of the Ordinance submit, whenever practicable, all documentary evidence in advance of the hearing which the applicant intends to rely upon to be pre-marked as exhibits. Any documentary evidence relied upon by applicant at the time of the hearing shall be marked by the Secretary and retained by the Board.

2:6.3 Judicial Notice

The Board may take judicial notice of the provisions of any ordinance of the municipality, any public statute of the State of New Jersey and any official reported judicial decision.

2:6-4 Burden of Proof

It is the applicant's responsibility to supply competent and credible evidence to apprise the Board of the nature and degree of the zoning burden sought to be alleviated and to demonstrate that a proposed use will not impair the zone plan or be inconsistent with the purposes of zoning, and the burden of proof remains upon the applicant at all times.

RULE 2:7 - DISMISSAL OF ACTIONS

2:7-1 Voluntary

Any applicant may at any time before the commencement of hearing, voluntarily withdraw his application, in which case the action shall be dismissed without prejudice. After commencement of the hearing a voluntary dismissal may be taken only with the approval of the Board.

2:7-2 Nonappearance

When, at the time set for the hearing or continued hearing on any application, neither the applicant nor any one in his behalf appears, and no adjournment has been previously requested, the action may be dismissed without prejudice.

2:7-3 Infraction of Rules

For failure to comply with the provisions of Rule 2.2, the Board shall, and for failure to comply with any other rule, the Board may dismiss the application.

2:7-4 Preliminary Reports

(a) In any case where, prior to consideration of any appeal or application by the Board, a report or recommendation is required by the terms of the Zoning Ordinance of the Township of Howell to be made to the Board by the Planning Board or other public agency, such report shall have been received at least 10 days prior to the time within which the Board must render its decision pursuant to Rule 2:8-1; otherwise, the appeal or application shall be dismissed without prejudice unless the applicant consents in writing to an extension of time.

(b) The Board may, at any time, request a written report on any particular matter from any officer, board, or agency in connection with a pending case provided, however, that a copy of any such report shall be made available to the applicant who shall, if requested, have an opportunity to question the maker of such report as to any fact or conclusion therein contained.

(c) The Board may arrange to take the testimony of any expert witness employed by it.

2:7-5 Transfer of Action

Whenever an application is filed with the Zoning Board of Adjustment which pursuant to the provisions of the Municipal Land use Law ought to have been filed with the Planning Board, the Zoning Board of Adjustment may, by resolution, cause said application to be transferred to the Planning Board at the next regular meeting of said Board making public announcement of the time and place thereof at the meeting and causing notice of its action to be published as in all other cases.

RULE 2:8 - DECISION; RESOLUTION OF BOARD

2:8-1 Time

The Board of Adjustment shall render a decision not later than 120 days after the date:

(1) an appeal is taken from the decision of the administrative officer, or

(2) of the certification of completeness of an application to the Board, unless the applicant has consented in writing or on the record to an extension of time. Every decision shall be made by proper motion duly made and seconded, with the votes of all members recorded on a roll-call vote.

2:8-2 Form

The judgment of the Board shall be in the form of a written resolution containing findings and conclusions which shall be adopted either on the date of the meeting at which such action was taken occurred within the final 45 days of the applicable time period for rendering a decision on the application, within 45 days of such meeting by the adoption of a resolution of memorialization setting forth the decision and findings and conclusion of the Board. 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 120 day time period for rendering a decision. Whenever a resolution of memorialization is adopted in accordance with the provisions of N.J.S. 40:55D-10, the date of such adoption shall constitute the date of the decision for purposes of the mailings. A copy of the resolution shall also be made available to any person who has requested it and has paid the fee established therefore.

2:8-3 Relief Granted

When an applicant has demonstrated his right to relief, the Board may grant such relief as it may deem appropriate and in keeping with the intent and purpose of the zone plan and zoning ordinance, even though the relief granted may be different in kind or degree from that asked for in the appeal or application.

2:8-4 Conditions

The resolution of the Board granting any variance, may subject such grant to such conditions as the Board may impose in the public interest for the purpose of furthering any of the purposes of zoning. The Board may, when deemed necessary in the public interest, specifically provide in its resolution for the retention of jurisdiction over the action for a reasonable time, as therein specified, for the purposes of enabling it to vary the terms of any condition therein imposed, or for the purpose of imposing additional condition in the public interest in the light of then existing circumstances. The Board may maintain jurisdiction of site plans and subdivisions.

2:8-5 Publishing Notice; Service of Copy of Resolution

The Administrative Assistant 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 N.J.S. 40:55D-10i, and shall also serve copies of the Board's decision to the applicant and to all who have requested copies, pursuant to N.J.S. 40:55D-10h.

2:8-6 NOTIFICATION TO ENFORCEMENT AGENCY

If it should come to the attention of the Zoning Board that conditions of approval of a particular Resolution granted to an applicant are not being met, by motion and a majority vote the Administrative Secretary shall be authorized to send correspondence to the appropriate Township Department outlining the non-compliance and requesting that appropriate investigation and action be taken.

RULE 2:9 - MOTIONS

2:9-1 Modifying terms and conditions of a resolution

At any time after the adoption of a resolution granting or denying a variance 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 thereof and the grounds relied upon, provided the modification of terms does not alter an essential term of the resolution unless the objection thereto is based upon an error in the form of a resolution or is based on the contention that the resolution adopted is erroneous in that it does not state accurately the findings or decision of the Board.

RULE 2:10 - DISQUALIFICATION OF MEMBERS OF THE BOARD

2:10-1 When Necessary

(a) Any member of the Board of Adjustment shall disqualify himself from sitting on the hearing of any matter in which he has a disqualifying interest, such as, but not limited to, the following situations:

1. Where he owns property located within 200 feet of the property affected by the action.
2. 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.

3. Where the applicant or his attorney is the employer, employee, or partner of the member, or is a corporation in which the member is a shareholder or has other financial interest.

4. Where he has any other person or pecuniary interest in the proceeding.

Any member so disqualifying himself shall not sit with the Board for participation in any executive session or conference, during the hearing or determination of the case in question.

(b) When a member fails to disqualify himself, any interested party may move the Board for an order or determination that such member is or was disqualified to act.

RULE 2:11 - RECORD OF TESTIMONY

2:11-1 Stenographic or Other Records; Transcripts

In accordance with provisions of N.J.S. 40:55D-10f, the Board shall provide for the verbatim recording of all hearings by either a stenographer, or by mechanical or electronic means. A transcript or duplicate recording in lieu thereof shall be furnished to any interested party at his expense.

RULE 2:12 - MOOT QUESTIONS: ADVISORY OPINIONS

2:12-1 Prohibition

(a) The Board shall not hear an action based upon and presenting a question which is moot, or becomes moot, or hypothetical or render any decision in such an action.

(b) The Board shall not render any advisory opinion to any person or persons; provided, however, that this rule shall not be construed as prohibiting the Board from submitting recommendations or advice to the governing body in accordance with the applicable provisions of the Zoning Ordinance or any statute.

RULE 2:13 - SUBPOENAS

2:13-1 Issuance

The Board, by its subpoena issued under its seal and under the hand of its Chairman or Vice-Chairman and Secretary or Assistant

Secretary, as the case may be, may compel the attendance and testimony of witnesses, and the production of books, papers, documents or tangible things related to any matter or subject within the Board's powers or inquiry. The issuance of a subpoena may be requested by the applicant or any other interested person.

The Board's subpoena authority shall also extend to compel the production of records and/or testimony of Township Officials regarding the enforcement and/or appeal of the Zoning Ordinance as it relates to a particular application. (Amended Date: March 23, 2009)

2:13-2 Service

Any subpoena may be served by the Sheriff, Under-Sheriff or Deputy, or any person 18 or more years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named, or as otherwise permitted by law.

2:13-3 Failure to Comply

If a person under such subpoena shall refuse or fail to appear or refuse to be examined or to answer any proper question, or to produce any books, papers, documents or tangible things, in accordance with the subpoena, the Board may apply to the Superior Court for an order to compel him to do so.

RULE 2:14 - FALSE TESTIMONY

2:14-1 Perjury

Any person who shall willfully give false testimony under oath in the course of any hearing held before this Board shall, in accordance with the provisions of the County and Municipal Investigations Law (N.J.S. 2A:67A-1 et seq.), be guilty of perjury. The Board shall submit transcript of testimony it believes may be perjurious to the County Prosecutor for investigation.

RULE 3:1 - RELAXATION OF RULES

3:1-1 Where Rules may be Relaxed

For good cause shown, or where the strict application of any rule would work surprise or injustice, the Board may relax the requirement of such rule, except where the provisions of the rule are also statutory and ordinance requirements, which the Board may not waive.

RULE 3:2 - MEANING OF CERTAIN TERMS

3:2-1 Person: Interested Person.

Whenever in these rules reference is made to “any person”, “any interested person”, “any person interested in the action” or like, such term refers to any “interested party” as defined in N.J.S. 40:55D-4.

RULE 3:3 - APPLICATION OF CERTAIN LAWS

3:3-1 Law Applicable

The provisions of the County and Municipal Investigations law shall be applicable to proceedings before this Board and the Board may exercise all of the powers conferred by said act. These rules are adopted pursuant to the provisions of N.J.S. 40:55D-8, subject generally to the provisions of Chapter 55D of Title 40 of the Revised Statutes of New Jersey.

RULE 3:4 - REMOVAL OF MEMBER

Whenever a member shall be absent from four consecutive regular meetings without valid cause then pursuant to law, his office shall be declared vacant by the Board which shall notify the Township Committee in writing of the vacancy.

Legitimate illnesses will always be considered valid cause; notwithstanding, however, that so absence will be excused or considered valid unless the Board member notifies the Administrative Assistant or Chairperson of the absence and reason for same, prior to the meeting from which he is absent. The absent member, may, however, notify the Chairperson in writing by the next regular meeting of his reasons for his absence at the preceding meeting which the Chairperson may then excuse, if valid.

In all other cases, the Chairperson shall endeavor to excuse all valid absences when they occur and valid reasons are given, provided those reasons were reported to him or the Administrative Assistant prior to the meeting.

Nothing herein shall limit the Board from removing a member, pursuant to law, for any other valid cause.

Removal of member, be reviewed to provide more strict automatic standards for the termination of membership of any member absent from four consecutive regular meetings without valid cause.

RULE 3:5 - AMENDMENTS TO RULES

Amendments to these rules may be made by the Board at any 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 of such action would result in surprise, hardship or injustice to the petitioner or any other interested party.

If the Board appoints a Rules Committee said Committee may review as directed all the rules or any part of them, for amendments, deletions, corrections or additions.

The Board shall endeavor to review its rules no less than once every three years.