

BY-LAWS
ZONING BOARD OF ADJUSTMENT
OF THE
CITY OF ENGLEWOOD

OBJECTIVES; STATUTORY AUTHORITY; RULES OF CONSTRUCTION

These by-laws are written to facilitate the work of the Zoning Board of Adjustment (hereafter "Board") and are adopted pursuant to the provisions of the Municipal Land Use Law (hereafter "MLUL"), more particularly N.J.S.A. 40:55D-8, which requires the adoption of "reasonable rules and regulations, not inconsistent with this act or with any applicable ordinance, for the administration of its functions, powers and duties". These by-laws are also mandated by §250-28 of the Code of the City of Englewood.

The Board is the statutory Zoning Board of Adjustment under N.J.S.A. 40:55D-69 of the MLUL and §250-20 et seq. of the Code of the City of Englewood.

Nothing contained herein is intended to supersede the provisions of the MLUL or Chapter 250 of the City Code, and, in the event of a discrepancy or conflict with these by-laws, the MLUL and the City Code shall prevail.

The use of masculine pronouns herein shall be deemed to include feminine pronouns; singular words shall be deemed to include the plural; and use of the term "shall" shall be deemed to be mandatory, as distinguished from use of the term "may", which shall be deemed to be optional.

PART I

ADMINISTRATION

RULE 1.1. ORGANIZATION, OFFICERS, GENERAL PROVISIONS.

1.1-1 Title of the Board.

The title of the Board shall be "The Zoning Board of Adjustment of Englewood, New Jersey".

1.1-2. Annual organization; Officers; Appointed professionals.

1.1-2.1. The organizational meeting of the Board shall be held on the third Thursday of January in each calendar year at 8:00 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 last served in the preceding calendar year, and who shall serve pro tem until reappointment or replacement.

1.1-2.2. At the organizational meeting, provided there are no vacancies in a full complement of regular members, the Board shall elect a chairperson and vice-chairperson. The chairperson and vice-chairperson shall be regular members of the Board, not alternate members. A candidate receiving the majority vote of the membership of the Board shall be deemed elected to the office for which the vote was taken and shall serve for one year or until reelection or until a successor is elected. In the event the office becomes vacant, it shall be filled as soon as possible by the same election procedure to the unexpired term of the predecessor.

1.1-2.3. If there are vacancies in a full complement of regular members, the election of a chairperson and vice-chairperson shall be postponed, in which event if the previous chairperson and/or vice chairperson remain on the Board as regular members, they shall continue to serve as interim officers. If their terms as regular members have expired, the Board shall elect from its regular

members an acting chairperson and/or vice-chairperson until such time as a permanent officer can be elected by a full complement of regular members.

1.1-2.4. The Board shall also appoint an Administrative Secretary and an Attorney-at-Law of the State of New Jersey having recognized competence in the law of local governments, land use and zoning. The Administrative Secretary and Board Attorney shall be compensated within the budgetary limits established by the governing body for each position. As to the Board Attorney and any other professionals serving the Board, their compensation may be supplemented by escrow deposits of applicants, as permitted and in accordance with the MLUL and City ordinances.

1.1-2.5. Each of the foregoing officers and appointees shall serve for one year and until their successors have been appointed.

1.1-2.6. The Board may appoint such other officers or assistants and employ such experts or staff as it may deem necessary, again within its budgetary limits or as provided with the escrow deposits of applicants.

1.1-3. Chairperson.

The chairperson shall conduct all meetings of the Board and decide all points of order and matters of procedure governing the meetings or hearings, unless otherwise directed by a majority of the Board at the time and shall have all the powers and perform all the duties normally pertaining to his office, as required by law, ordinance, these By-laws and parliamentary practice as per the latest edition of Robert's Rules of Order. The chairperson or the chairperson's designee shall swear all witnesses giving testimony before the Board.

1.1-4. Vice-Chairperson.

The vice-chairperson shall preside at all Board meetings and hearings in the absence, recusal or disqualification of the chairperson, and shall have all of the powers of the chairperson under such circumstances.

1.1-5. Administrative Secretary. The Administrative Secretary shall:

1.1-5.1. Attend all regular meetings of the Board, and all special meetings when, as and if compensated.

1.1-5.2. Maintain all records, documents, maps, plans and papers of the Board, unless alternative care and custody is provided by ordinance or by statute.

1.1-5.3. Record roll calls in the order of the arrangement of the seats of the members but with the chairperson being called last.

1.1-5.4. Make records of and keep on file the minutes of the proceedings at each meeting or hearing held by the Board and enter therein such resolutions and orders as are adopted and a copy or synopsis of every report, application and other paper presented.

1.1-5.5. Cause to be mailed to each member of the Board the Board Attorney, the Board's planner and engineer, if retained on an annual basis, and to the address designated by each such person, notices of meetings and all matters to be considered at the Board's meeting, reasonably in advance of said meeting.

1.1-5.6. Issue official notices of the Board, including notices of meetings required to be given by the Open Public Meetings Act, N.J.S.A. 10:4-1 et seq., the MLUL or any other applicable law or ordinance, and notices of decisions of the Board, unless alternative means are provided by ordinance or by statute.

RULE 1.2. MEETINGS.

1.2-1. Regular Meetings.

In-person Regular Meetings of the Board shall be held at the Englewood Municipal Court Building, 73 S. Van Brunt Street, Englewood New Jersey, at 8:00 o'clock p.m. on the third Thursday and fourth Monday of each month, or such other dates as may be established from time to time by resolution of the Board. If the regular meeting day falls on a legal holiday, the meeting shall be held on the next succeeding secular day, unless the Board establishes a different date. The Administrative Secretary shall annually 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 Meetings Act and in the name of the Board.

1.2-2. Special Meetings.

Special meetings may be called by the chairperson or in his or her absence by the vice-chairperson at any time, or upon the written request of two members; provided notice thereof shall be mailed or given to each member of the Board at least two (2) days prior to the special meeting date and to the public as required by the Open Public Meetings Act. In the event a special meeting is scheduled and convened for the benefit of an applicant, any fees and costs to be incurred by the City, including professional and administrative fees for attending a meeting in excess of the scheduled two (2) regular meetings per month, shall be reimbursed to the City by the applicant. The Board may require a reasonable antecedent escrow deposit to cover these costs.

1.2-3. Meetings open to the public.

All meetings shall be open to the public, unless there is a basis for closing the meeting to the public as authorized by N.J.S.A. 40:55D-9b of the MLUL and N.J.S.A. 10:4-12 of the Open Public

Meetings Act. If so closed, the Board shall adhere to the procedural rules of the Open Public Meetings Act.

1.2-4. Regular or Special Meetings Not In-Person.

As an alternative to in-person meetings and consistent with the “Senator Byron M. Baer Open Public Meetings Act”, N.J.S.A. 10:4-6 et seq., the Board may conduct its regular and special meetings by interactive live-stream, interactive audio or both, in which the persons involved at the meeting are not present at the same location, and by which all such persons can simultaneously hear or see and hear, and speak with each other, as a group.

1.2-5. Order of business. *The order of business at regular meetings shall be as follows:*

Call to Order;

Statement of Compliance with Open Public Meetings Act;

Roll call;

Motions for Adjournment of Scheduled Cases and other Motions

Continued hearings;

New hearings;

Approval of minutes of previous meetings;

Adoption of Memorialization Resolutions;

Other new business;

Adjournment.

1.2-6. Time of adjournment. *Meetings shall be adjourned at 11 o’clock p.m. or as soon thereafter as is reasonably practical, in the discretion of the chairperson; or as may be extended by a majority vote of the members present, which shall have priority.*

*1.2-7. **Parliamentary Procedure.** Robert's Rules of Order (latest edition) shall be followed whenever a particular procedure or practice is not contemplated by these Rules. Unless prohibited by law, the Board may, by majority vote of the members present, suspend, waive or modify any of these Rules during the course of a meeting.*

RULE 1.3. QUORUM.

At all regular meetings of the Board, a quorum for conducting business shall consist of four members, including alternate members. In the absence of a quorum, the members present shall adjourn the meeting and the hearing on any motion or application to another date, unless such an adjournment may result in an automatic approval under the MLUL, in which event Class IV members of the Planning Board may be called upon to serve as temporary members of the Zoning Board of Adjustment, in accordance with N.J.S.A. 40:55D-69.1. In the absence of a quorum or an emergency precluding a public meeting of the Board, the meeting may be postponed to an announced date, carrying all scheduled matters to the announced date without applicants bearing the burden of serving and publishing new notices pursuant to Rule 2.3 herein, as follows:

1.3-1. With respect to an in-person meeting, by the Board's Administrative Secretary placing an adjournment notice and the new date for consideration of matters on the agenda of the postponed meeting (1) on the public access door where the meeting was to have been conducted and (2) on the City's website; and

1.3-2. With respect to a "virtual" meeting, by the Board's Administrative Secretary placing an adjournment notice and the new date for consideration of matters on the agenda of the postponed meeting (1) on the City's website and (2) on the Interactive live-stream link for no less than one hour from the time of commencement of the adjourned meeting.

RULE 1.4. ALTERNATE MEMBERS.

1.4-1. Designation. *The four alternate members of the Board shall be designated by the appointing authority as "Alternate No. 1", "Alternate No. 2", "Alternate No. 3" and "Alternate No. 4", respectively, and each alternate shall retain said designation during the term for which he or she was appointed.*

1.4-2. Preference as per MLUL. *As provided by N.J.S.A. 40:55D-69, during the absence or disqualification of any regular member the Alternates shall serve in the place of said regular member by the priority of their number. Accordingly, if Alternate No. 1 is unable to serve, Alternate No. 2 shall so serve; then Alternate No. 3, then Alternate No. 4.*

1.4-3. Continued service until conclusion of case. *In the case of an in-person meeting, an alternate member who has been designated to sit in place of regular member and who has participated in such hearing coming before the Board shall continue to act in the place of such regular member until the final disposition of the matter by the Board. An alternate member shall not be eligible at a continued hearing unless the alternate member was present at all prior hearings of the case or is qualified to act pursuant to **Rule 2.11-1**. This shall apply notwithstanding the fact that there was a prior hearing or hearings on the same matter in which the alternate member was not acting in the place of a regular member, and notwithstanding the fact that the matter is not resolved at the meeting in which the alternate member has been designated to sit for a regular member.*

*This applies only to a regular member's absenteeism at an in-person meeting for two reasons: (i) a virtual meeting is videotaped, and thus available in the same audio-visual format to the attending alternate member and the absent member who complies with the certification requirements of **Rule 2.11-1**; and (ii) in-person presence is preferred in the law to virtual presence.*

1.4-4. Other modes of participation. *Alternate members may participate in discussions of the proceedings but shall 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. Alternate members shall vote in the selection of officers and in appointments made by the Board, whether a full complement of regular members is present and voting. They shall not, however, be qualified to serve as officers of the Board.*

PART II

RULES OF PRACTICE

RULE 2.1. COMMENCEMENT OF APPLICATION; SERVICE AND FILING OF PAPERS.

2.1-1. Commencement of action; service and filing of papers.

2.1-1.1. Appeals under N.J.S.A. 40:55D-70(a).

An appeal alleging an error in any order, requirement, decision or refusal made by an administrative officer based on or made in enforcement of the zoning ordinance or official map shall be commenced by filing a notice of appeal within the time permitted by N.J.S.A. 40:55D-72. Said notice of appeal shall be filed with the Board's Administrative Secretary and shall specify the grounds for such appeal. The Administrative Secretary shall then transmit to the Board all papers constituting the record of the decision under appeal. Upon receipt of the record, the appeal will be placed on the next available agenda of the Board.

2.1-1.2. Interpretations under N.J.S.A. 40:55D-70(b) and development applications under N.J.S.A. 40:55D-70 (c) and (d).

Interpretations of the zoning ordinance or zoning map, decisions on special questions upon which the Board is authorized to act and applications for variances shall be commenced by the filing

of an application with the Administrative Secretary. See **Rule 2.4.1** below.

2.1-1.3. Other requirements.

2.1-1.3.1. Pre-filed documents; substantial modifications.

Any maps or documents for which approval is sought at a hearing shall be on file and available for public inspection at least ten (10) days before the date of the hearing, during normal business hours in the office of the Administrative Secretary. This is not to preclude the applicant from producing in less than ten (10) days or at the hearing amended or other documents or records to substantiate, clarify or supplement previously filed maps or documents, so long as any amendment to a pre-filed document is not so materially different from the pre-filed document as to mislead or otherwise surprise an interested person or professionals servicing the Board. Any new maps or documents produced by an applicant at a hearing may be a cause for the hearing to be postponed, in the absolute discretion of the Board.

2.1-1.3.2. Photographs required. *Photographs of the subject property and properties adjoining yards (front, side and rear) that are the subject of a variance application, shall be submitted with every application.*

2.1-1.3.3. Plans drawn to scale. *All variance applications shall be accompanied by plans showing the proposed development drawn to scale and bearing the signature and seal of an appropriate licensed professional as to topographic, boundary and dimensional data.*

2.1-1.3.4. Fees. *The fees established by ordinance shall be paid simultaneously with the filing of an appeal or application and an appeal or application shall not be deemed "complete" as set forth in N.J.S.A. 40:55D-10.3 without the payment filing fees. As an alternative, applicant may request a postponement of payment conditioned upon the suspension of Board vote on the merits of the*

application until the municipal taxes and/or assessments are paid. Nothing herein is intended to affect the running of interest or penalties on nonpayment.

2.1-1.3.5. Payments to professionals serving the Board. *An applicant may be required to deposit into an escrow account managed by the Board or the City, monies to cover expenses incurred by the Board with respect to the development application, for services rendered by professionals serving the City, either on a continuing or consulting basis. The escrow deposit will be managed, disbursed and accounted for in accordance with the provisions of N.J.S.A. 40:55D-53.2.*

2.1-1.3.6. Proof of payment of taxes and assessments. *As a precondition to any approval, an 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.A. 40:55D-65(h) and local ordinance.*

2.1-1.3.7. Proof of ownership or owners' consent. *As a precondition to hearing any application, the applicant shall submit proof of ownership of the subject property or furnish the authorization of the owner to permit the development application to be made by applicant.*

2.1-2. Certification of completeness.

The Board or the Board's designee shall examine each application to ascertain that all required checklist items are shown or furnished in the application or accompanying documents, or that a waiver is requested. If all checklist items are provided and no waivers requested, the application shall be deemed "complete" as provided in N.J.S.A. 40:55D-10.3, and the applicant shall be so notified. If waivers are requested as to any items on the checklist, the Board or its designee shall decide whether to grant any requested waiver and the applicant shall be notified promptly. If an application is found not to be "complete" the applicant shall be notified of the deficiencies within

forty-five (45) days of the effective date of filing of the application. Notwithstanding a pre-hearing determination that an application is “complete”, the Board or any interested party may move to require additional or supplemental information at the hearing stage.

2.1-3. Copies to City officials and agencies.

Copies of every appeal or development application shall be forwarded by the applicant or the Administrative Secretary to the Zoning Officer, the Board attorney, the Environmental Commission and any other Board or agency of the City entitled to notice pursuant to law.

2.1-4. Designation by Block and Lot Numbers.

Each new application shall be designated by the Block and Lot numbers, which numbers shall also appear on all Board resolutions relating to the application.

RULE 2.2. HEARING DATE.

2.2-1. Hearing Date.

The Administrative Secretary, in consultation with the chairperson, shall assign a hearing date upon a determination of completeness, and the applicant shall be so notified.

2.2-2. Adjournments.

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.

When an application is made for a use variance pursuant to N.J.S.A. 40:55D-70(d), the applicant may submit at the same time an application for site plan review or subdivision approval, prepared in accordance with all applicable ordinance requirements. Alternatively, site plan review may be bifurcated, in the discretion of the applicant as per N.J.S.A. 40:55D-76(2)(b), and any use variance granted by the Board shall be subject to site plan approval by the Board at a later date.

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.A. 40:55D-12, which includes notice by certified mail and publication in a newspaper in general circulation in the municipality .

2.3-2. Notice; form.

The notice shall state the date, time and place of the hearing, the nature of the variances and other matters to be considered and an identification of the property proposed for development by street address, tax lot and block numbers and the location and times at which any maps and documents for which approval is sought are available for public inspection.

2.3-3. List of persons to receive notice to be supplied by City.

An official of the City has been designated to furnish an applicant with a list of the property owners entitled to notice pursuant to the provisions of N.J.S.A. 40:55D-12(c). Said list and the form of notice shall be annexed to applicant's proof of service.

2.3-4. 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 the MLUL and these rules shall be made by affidavit of the person who 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 and content.

Every appeal or application shall be filed in triplicate on the appropriate forms provided to the Board's Administrative Secretary. Annexed hereto and made a part hereof as appendices are the Board's approved forms, which may be amended by resolution of the Board from time to time without amendment of these By-laws. Each such form shall bear the date of approval and the latest date of revision.

2.4-2. By whom filed.

Every application for development shall be signed either by the owner/applicant, or the owner/applicant's duly authorized agent of the property proposed for development, or by a person with a contractual interest in the property. This provision shall not apply to an 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.

To assist an applicant or any interested person or party, the Board's Administrative Secretary and attorney are hereby directed to render such assistance as may be practicable.

2.4-4. 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.***

2.4-5. Application by or on behalf of “for profit” or “not for profit” entities; disclosure of ownership interests.

Any application for development filed by or on behalf of a corporation, partnership, limited liability company, limited liability partnership, or any other entity, for-profit or not-for-profit, shall list the names and addresses of all persons owning at least ten (10) percent of the entity . In the case of a not-for-profit entity, its application shall list the names and addresses of all trustees. The requirement for disclosure shall apply to both an entity as applicant and an entity as property owner.

RULE 2.5. HEARING PROCEDURE.

2.5-1. Appearances. *At the hearing upon the application, the applicant and any other party shall appear in person or represented by an attorney-at-law of New Jersey. Every corporation and limited liability company, including single-member or solely owned limited liability companies, shall be represented by an attorney-at-law of New Jersey.*

2.5-2. Oath. *The applicant and all witnesses shall be placed under oath or affirmation by the chairperson or his or her designee before giving testimony.*

2.5-3. Order of presentation.

2.5-3.1. *Before proceeding, the chairperson shall make the following inquiries on the record:*
(i) whether or to what extent documents to be relied on by the applicant have been posted on the City’s website; (ii) whether any member in attendance has or may have a potential conflict of interest that would require the member to be recused from participation; and (iii) whether any member in attendance has been contacted by any person and been engaged in any conversation concerning the

*application. An affirmative response by any member in attendance and the member's refusal to self-recuse from participation in the matter shall entitle the Board to go into closed session to evaluate the member's participation in accordance with **Rule 2.11** herein.*

2.5-3.2. When the hearing is called to order, the applicant or applicant's attorney shall make opening remarks, stating the relief sought by the application.

2.5-3.3. The applicant or applicant's attorney shall then present the case through the testimony of witnesses (which may include the applicant) and the submission of documentary evidence.

2.5-4. At the conclusion of each witness's testimony, the chairperson shall allow the Board members, the Board professionals, and any interested parties, including attorneys representing interested parties, to question the witness. In doing so, an attorney shall identify the person represented and if multiple persons are represented, the attorney shall identify who the attorney represents. Any person represented by legal counsel shall participate only through the person's attorney by name and address.

2.5-5. The applicant or applicant's attorney shall then be given the opportunity to redirect questions of the witness, who shall then be subject to further cross-examination in the discretion of the chairperson.

2.5-6. After cross-examination of all of applicant's witnesses, the hearing shall be opened to the public any all persons wishing to testify under oath shall be given the opportunity to do so, subject to discretion of the chairperson to exclude irrelevant or redundant testimony. Those persons in support of the application shall speak before persons in opposition to the application. Rebuttal testimony or evidence by the applicant shall then be allowed, if any. Any witness may be cross-examined by any

interested person.

2.5-7. Examination by Board; Testimony.

The regular and alternate members of the Board, the Board attorney and professional consultants to the Board shall have the right to question witnesses.

2.5-8. Testimony by Board members. *Any member of the Board may testify 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. In such an event, the member shall be placed under oath.*

2.5-9. Reliance on professional consultants to the Board and other municipal officials. *The Board shall have the right to rely upon the expertise and testimony of its legal, engineering and planning consultants, as well as other municipal officials (such as police officers, building and health code officials, the Zoning Officer and City Engineer), and may use its power of subpoena to compel such testimony. See Rule 2.14.*

2.5-10. Closing of hearing; continuance.

2.5-10.1. Closing the hearing by vote of the Board. *When the applicant and all other interested persons have had an opportunity to be heard, the chairperson shall call for a vote to close the hearing. Thereafter, no further evidence will be received in the action, unless the matter is reopened in accordance with these rules.*

2.5-10.2. Motion for a continuance. *Prior to the closing of the hearing, an applicant or any interested party 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. The Board may, on its own motion, continue the hearing, if it seeks to elicit additional testimony or*

other evidence in the public interest and the Board has a reasonable expectation that such testimony will be forthcoming.

2.5-10.3. Applicant's refusal to consent to continuance. *When an applicant refuses to consent to a continuance, particularly where objectors have not had the opportunity to testify or the Board has an insufficient opportunity to consider the matter, such refusal by the applicant may be deemed unreasonable and require the Board to deny the application without prejudice to a refiling by the applicant.*

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 evidence which is part of the record of the hearing; unless it be such as to which the Board is entitled to take judicial notice (see Rule 2.6-4). The Board, through its chairperson, may limit irrelevant, immaterial or redundant testimony.*

2.6-2. Documentary evidence. *When any papers, documents or exhibits are admitted into evidence during a hearing, they shall be marked by the Board attorney, Administrative Secretary or official reporter, if any, and may be retained by the Board until the termination of the matter, after which time they may be returned to the person who offered them or retained pending expiration of the time for appeal, or pending an appellate determination, for any other reason in the discretion of the Board and subject to State of New Jersey regulations for records retention.*

2.6-3. Effect of restrictive covenants. *A restrictive covenant in a deed may confer private rights and obligations by and between property owners but in no way affects the jurisdiction of the Board to grant a variance; and the grant of a variance in no way affects the validity of the covenant. As*

distinguished from a deed covenant conferring private rights, a restrictive covenant imposed as a condition of a prior approval by either the Zoning Board or Planning Board and recorded as a deed or imposed by the City in a deed conveyance from the City , is a covenant imposed in the public interest. As such, the covenant is not capable of modification or nullification by the Board and can only be modified or nullified in the Chancery Division of the Superior Court of New Jersey, as set forth in Soussa v. Denville Tp. Planning Bd. 23 N.J. Super. 66, 66-69 (App. Div. 1990).

2.6-4. Letters and petitions of objection or support. *Letters and petitions of objection or support are not admissible unless the person or persons signing the document attend the hearing to allow the Board members and all interested parties the opportunity to question the signatory. Otherwise, the document is “hearsay” and cannot be evidentiary.*

2.6-5. Supplemental opinion evidence.

2.6-5.1. The Board’s right to supplement the record. *The Board may, at any time, request a written report on any particular matter from any source 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.*

2.6-5.2. Postponement or dismissal of action awaiting receipt. *In any case where, prior to consideration of any appeal or application by the Board, a report or recommendation is requested of the Planning Board or other public agency, such report shall be received at least ten (10) days prior to the time within which the Board must render its decision; otherwise, the hearing shall be continued until the report is received or the application shall be dismissed without prejudice, unless the applicant consents in writing to an extension of time.*

2.6-5.3. The Board may arrange to take the testimony of any expert witness employed by it.

*2.6-6. **Judicial notice.** The Board may take judicial notice of relevant provisions of any ordinance of the municipality, any statute or regulation of the State of New Jersey or the United States, any officially reported judicial decision, and matters which are of common knowledge or so notorious as not to be the subject of reasonable dispute.*

RULE 2.7. 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 always remains upon the applicant.

RULE 2.8. DISMISSAL OF ACTIONS; TRANSFER OF ACTIONS.

*2.8-1. **Voluntary.** An applicant may at any time before a decision on the merits of the application, voluntarily withdraw the application, in which case the action shall be dismissed without prejudice to re-filing.*

*2.8-2. **Nonappearance.** When, at the time set for the hearing, neither the applicant nor anyone on the applicant's behalf appears, and no adjournment has been previously requested, the application may be dismissed without prejudice to re-filing.*

*2.8-3. **Infraction of rules.** For failure to comply with any Rule herein, which failure is deemed by the Board to be egregious, the Board may dismiss the application with prejudice.*

2.8-4. Transfer of actions.

Whenever an application filed with the Board should have been filed with the Planning Board, the Zoning Board may, by resolution, cause said application to be transferred to the Planning Board, making public announcement thereof at the meeting and causing notice of its action to be published as in all other cases. In the case of actions transferred to the Board of Adjustment from the Planning Board, the Board of Adjustment shall examine the application and notices given by applicant, and if same are in proper form, shall proceed to hear the application as if it had been filed with the Zoning Board in the first instance.

RULE 2.9. DECISION; RESOLUTION OF BOARD.

2.9-1. Relief granted. *When an applicant has demonstrated the right to relief, the Board shall grant such relief, even when the relief granted may be different in kind or degree from that asked for in the appeal or application. Every such decision shall be made by proper motion duly made and seconded, with the votes of all members recorded on a roll-call vote. 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.*

2.9-2. Abstentions. *Abstentions are unfavored, except for good cause, because an abstaining member may have precluded the participation of another member and a vote by the full Board. Accordingly, it is desirable that an abstaining member explain the basis of his or her abstention. An abstention is recorded as a vote with the majority. If the Board is evenly split in its decision, no majority exists, with no opportunity to reach either an affirmative or negative majority. Consequently, a tie vote defeats an application.*

2.9-3. Conditions. *The Board has plenary power and discretion to impose conditions to a decision granting variance relief; memorialized in its resolution. Any such conditions the Board may impose shall be in the public interest and for the purpose of furthering any of the purposes of zoning. Further, 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 conditions in the public interest in the light of then existing circumstances.*

2.9-4. Time. *The Board shall render a decision not later than 120 days after (i) the date an appeal is taken from the decision of administrative officer or (ii) the date of certification of completeness of an application unless the applicant has consented in writing or on the record to an extension of time. Failure of the Board to decide within such 120-day period or within such further time as may be consented to by the applicant shall have the effect conferred by the MLUL.*

2.9-5. Memorialization. *The judgment of the Board shall be in the form of a written resolution containing findings of fact and conclusions of law. The findings and conclusions set forth in the memorializing resolution become the findings and conclusions of the Board; and it shall be immaterial that at the time of voting on the merits of the application any Board member may have given other reasons not set forth in the resolution; or that at the time of voting on the merits no reasons were articulated by Board members, An action resulting from failure of a motion to approve an application shall likewise be memorialized, setting forth the decision, findings and conclusions of the Board.*

2.9-6. Time of memorialize; vote to memorialize. *The memorialization resolution shall be adopted within forty-five (45) days of the decision on the merits. Approval of the resolution shall require a vote only from those members voting with the majority as per N.J.S.A. 40:55D-10g(2). Only one member who voted for the action is required to adopt the resolution, not a majority of the members who originally voted in favor of the action taken.*

2.9-7. Date of 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.*

2.9-8. Publishing notice; service of copy of resolution. *The Administrative 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 N.J.S.A. 40:55D-10(i) 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.A. 40:55D-10(h).*

RULE 2.10. REHEARING; MODIFICATION.

2.10-1. Misrepresentation, fraud and mistake. *The Board may presume of fact presented in testimony under oath are true. The Board may also presume that all exhibits, maps and other documents exhibited at the hearing are true and accurate representations of the facts which the documents were used 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 untruthfulness or mistake was material to the Board's action in granting or denying the relief sought, as the Board in its absolute discretion may determine, then the Board may reopen the case upon the petition of an interested party or upon the Board's own motion, predicated upon misrepresentation, fraud and/or mistake and in the interest of justice. In such event, the Board shall, upon notice directed*

to the applicant and all other interested parties, request that they appear before the Board on a date and time certain to whether false testimony was given or fraud was committed or material mistakes were made.

2.10-2. Rehearing. *An applicant or other interested person may, within twenty (20) days after the publication of notice of decision, move the Board for a rehearing of the matter, 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 motion is granted by the Board, it shall fix a date for rehearing and shall require the moving party to give notice to all persons who appeared and gave testimony (other than expert witnesses) in the original hearing or hearings, upon such terms as the Board may deem adequate. The Board may grant a rehearing on its own motion when unusual circumstances so require in the interest of justice, such as fraudulent testimony, a material mistake of fact or law or the Board's lack of jurisdiction .*

2.10-3. Vacation or modification. *At any time after the adoption of a resolution granting 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 therefore and the grounds relied upon. If the petition is granted, the Board shall fix a date for the hearing and the movant shall give notice of such hearing in the same form and manner as required in the case of an original application. 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 conditions of any approval ought to be vacated or modified.*

2.10-4. 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 grounds that it has already been decided; provided, the*

Board, in its absolute discretion, may conclude that the new application seeks variance relief that is substantially or significantly different than the original application, in which event there shall be no bar to the new application. An applicant shall be given a fair opportunity, on notice to interested parties pursuant to N.J.S.A. 40:55D-12, to show that circumstances have changed significantly or other good cause exists for reconsideration of a new application. This Rule shall not be construed to disallow an application for moderation or enlargement of an approval or for the lifting or relaxation of conditions previously imposed as part of an approval, upon a showing of changed circumstances or other good cause warranting reconsideration.

RULE 2.11. QUALIFICATION AND DISQUALIFICATION OF MEMBERS OF THE BOARD.

2.11-1. Qualification to act.

*Subject to **Rule 1.4-3**, whenever a hearing is continued over two or more sessions, or the Board has reserved decision on any matter, any member of the Board, even though he or she did not sit upon the hearing of the action, may, nevertheless, participate in the decision of the case if, but only if, he or she has read or listened to a recording of the entire record of the proceedings and has certified in writing that he or she has done so, but this provision shall not apply if an alternate member has been assigned by the chairperson to sit upon the hearing of the application and fully qualifies to vote. This rule shall in no way be construed as authorizing any hearing to be held before less than four members of the Board.*

2.11-2. Conflicts of interest.

Any member of the Board shall disqualify herself or himself from sitting on the hearing of any matter in which she or he has a disqualifying interest, such as, but not limited to, the following

situations:

2.11-2.1. Where the member owns property located within, or resides within, 200 feet of the property which is the subject of the hearing.

2.11-2.2. Where the applicant is related within the third degree of consanguinity to the member or is the husband or wife of any person so related.

2.11-2.3. Where the applicant or applicant's attorney is the employer, employee or partner of the member, or is a corporation in which the member is a significant shareholder or has other financial interests.

2.11-2.4. Where the member has any other personal or pecuniary interest in the proceeding, the test is whether the circumstances could reasonably be interpreted as showing that the relationship or status of the member has the likely capacity to tempt the member to depart from his sworn public duty to be impartial or that the member has prejudged the application. The member is also bound by the Local Government Ethics Law, N.J.S.A. 40A:9-22.1, et seq. requiring recusal in any matter where the Board member, a member of the Board member's immediate family or a business organization in which the Board member or a member of the immediate family has an interest, direct or indirect financial or personal involvement that might reasonably expected to impair the Board member's objectivity or independence of judgment. The use of the term "involvement" extends the reach of the law beyond "interest".

Another indicium of conflict of interest is whether the Board member's interest or involvement is not shared in common with other members of the Board or of the public generally.

***2.11-2. Disclosure of reason for disqualification.** Wherever possible, the reason for disqualification shall be stated in the public proceeding. A justification for non-disclosure would be*

that legitimate private rights would be compromised, and not overridden by the public interest in disclosure.

2.11-3. Disqualification procedure. *Any member so disqualified shall not sit with the Board during a hearing or during any deliberative session involving the case in question.*

2.11-4. Motion to disqualify always in order. *When a member fails to disqualify himself, any interested party or any member of the Board, including the member who is the source of concern, may move the Board for an order or determination that such member is or was disqualified to act and may, even after a decision has been rendered, 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.*

2.11-5. Legal process to compel member to abstain. *If the Board determines that a member has a conflict of interest, it shall, with the consent of the applicant, suspend proceedings and direct the Board attorney to secure an order of a court of competent jurisdiction to compel the member to abstain or be in contempt of court. If the applicant fails to consent, the application shall be dismissed without prejudice to re-filing when, as and if there is a court adjudication of the conflict question. A conflict of interest cannot be waived by the parties in interest.*

RULE 2.12. RECORD OF TESTIMONY.

2.12-1. Stenographic or other records; transcripts.

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

expense. If an applicant independently causes a hearing to be transcribed, a copy of the transcript shall be furnished to the Board's Administrative Secretary and maintained as part of the official record of proceedings.

2.12-2. Minutes to incorporate summary of hearing.

In the absence of a transcript of the hearing as aforesaid, the minutes of the meeting shall contain a summary of the testimony taken and the recorded votes taken in any matter; and shall, together with the memorialization resolution relating to the matter, be the official record of the hearing.

RULE 2.13. MOOT QUESTIONS; ADVISORY OPINIONS.

2.13-1. Mootness. *The Board shall not hear an action based upon or presenting a question which is moot or hypothetical, nor shall the Board render any decision in such an action.*

2.13-2. Advisory opinions prohibited. *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 any other municipal Board, agency or body in accordance with the applicable provisions of the MLUL or any other statute or ordinance.*

2.13-3. Communications.

Any communication purporting to be a petition asking for a modification or change in the zoning ordinance or for any other relief shall be regarded as a mere notice of intention to seek such relief until a formal application is filed in the manner required by these Rules.

RULE 2.14. SUBPOENAS.

2.14-1. Issuance.

The Board by its subpoena, issued under its seal and under the hand of the Chairperson or Vice-Chairperson and Administrative Secretary, may compel the attendance and testimony of witnesses and/or the production of books, papers, documents or tangible things related to any matter within its jurisdiction or subject within the Board's powers of inquiry. The issuance of a subpoena may be requested by an applicant or any other interested person.

2.14-2. Service.

Any such subpoena may be served by any person eighteen (18) or more years of age. Service of the Board's subpoena shall be made by delivering a copy thereof to the person named or otherwise as permitted by law.

2.14-3. Failure to comply.

If a person under such subpoena refuses or fails to appear or produce any books, papers, documents or tangible things in accordance with the subpoena, the Board may apply a court of competent jurisdiction for an order to compel such person to do so.

RULE 2.15. FALSE TESTIMONY.

Any person who shall willfully give false testimony under oath during 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. The Board shall submit a transcript of testimony it believes may be perjurious to the County Prosecutor for investigation.

PART III
MISCELLANEOUS PROVISIONS

RULE 3.1. RELAXATION OF RULES.

For good cause shown, or where the strict application of any Rule would work a surprise or injustice, the Board may relax the requirement of such Rule, except where the provisions of the Rule are mandatory statutory requirements.

RULE 3.2. MEANING OF CERTAIN TERMS.

3.2-1. Person; interested person or party. *Whenever in these rules reference is made to "any interested person," "any person interested in the action", "interested party" or the like, such term refers to an "interested party" defined in N.J.S.A. 40:55D-4.*

3.2-2. Other terms. *All terms defined in the MLUL shall have the meaning contained therein.*

RULE 3.3. ABSENTEEISM; REMOVAL OF MEMBER.

3.3-1. Grounds, general.

Whenever a Board member shall absent himself from meetings of the Board, without just cause, for a period deemed detrimental to the conduct of Board business, the Board may recommend to the appointing authority in writing that such member be removed in accordance with the provisions of N.J.S.A. 40:55D-69.

3.3-2. Grounds, specific.

In accordance with N.J.S.A. 40A:9-12.1(g), whenever a Board member, without being excused by a majority of the authorized members or not suffering from a legitimate illness, fails to attend and participate at meetings of the Board for a period of eight (8) consecutive weeks or for four (4) consecutive regular meetings, whichever shall be of longer duration, the member's office shall be

deemed vacant; and the Mayor and City Council shall be notified in writing by the chairperson and the Administrative Secretary of such vacancy.

RULE 3.4. PAYMENT OF REAL PROPERTY TAXES.

At the time of filing an application for development, the applicant shall file with the Board a certification of the City Tax Collector that municipal taxes and/or assessments are paid to date. Failing such certification, the application shall not be deemed "complete" as per N.J.S.A. 40:55D-10.3. As an alternative, applicant may request a postponement of payment of real property taxes and/or assessments conditioned upon the suspension of a vote on the merits of the application until the municipal taxes and/or special assessment are paid. Nothing herein is intended to affect the running of interest or penalties on the nonpayment.

RULE 3.5. AMENDMENTS.

Amendments to these rules may be made by the Board at any regular meeting, provided notice of 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 to such action would result in surprise, hardship or injustice to the applicant or other interested persons.

Approved by Board on August 17, 2023



Adam Brown, Chair

**Zoning Board of Adjustment
ROLL CALL**

Date <u>08/17/2023</u>	
Name	By-Laws 2023
Angelina Rivera	<div style="display: flex; justify-content: space-between; align-items: center;"> 2 <div> <input checked="" type="checkbox"/> IN FAVOR <input type="checkbox"/> OPPOSED <input type="checkbox"/> ABSENT <input type="checkbox"/> RECUSED </div> </div>
Juanita Harris	<div style="display: flex; justify-content: space-between; align-items: center;"> <div> <input type="checkbox"/> IN FAVOR <input type="checkbox"/> OPPOSED <input checked="" type="checkbox"/> ABSENT <input type="checkbox"/> RECUSED </div> </div>
Kenneth Senkyire	<div style="display: flex; justify-content: space-between; align-items: center;"> <div> <input type="checkbox"/> IN FAVOR <input type="checkbox"/> OPPOSED <input checked="" type="checkbox"/> ABSENT <input type="checkbox"/> RECUSED </div> </div>
Mateo Duque	<div style="display: flex; justify-content: space-between; align-items: center;"> <div> <input type="checkbox"/> IN FAVOR <input type="checkbox"/> OPPOSED <input checked="" type="checkbox"/> ABSENT <input type="checkbox"/> RECUSED </div> </div>
Thom Kelly	<div style="display: flex; justify-content: space-between; align-items: center;"> <div> <input checked="" type="checkbox"/> IN FAVOR <input type="checkbox"/> OPPOSED <input type="checkbox"/> ABSENT <input type="checkbox"/> RECUSED </div> </div>
Uri Moche	<div style="display: flex; justify-content: space-between; align-items: center;"> M <div> <input checked="" type="checkbox"/> IN FAVOR <input type="checkbox"/> OPPOSED <input type="checkbox"/> ABSENT <input type="checkbox"/> RECUSED </div> </div>
Ayala Geva	<div style="display: flex; justify-content: space-between; align-items: center;"> <div> <input checked="" type="checkbox"/> IN FAVOR <input type="checkbox"/> OPPOSED <input type="checkbox"/> ABSENT <input type="checkbox"/> RECUSED </div> </div>
Theresa Thomas	<div style="display: flex; justify-content: space-between; align-items: center;"> <div> <input type="checkbox"/> IN FAVOR <input type="checkbox"/> OPPOSED <input checked="" type="checkbox"/> ABSENT <input type="checkbox"/> RECUSED </div> </div>
Suzanne Mullings	<div style="display: flex; justify-content: space-between; align-items: center;"> <div> <input checked="" type="checkbox"/> IN FAVOR <input type="checkbox"/> OPPOSED <input type="checkbox"/> ABSENT <input type="checkbox"/> RECUSED </div> </div>
David Maron	<div style="display: flex; justify-content: space-between; align-items: center;"> <div> <input checked="" type="checkbox"/> IN FAVOR <input type="checkbox"/> OPPOSED <input type="checkbox"/> ABSENT <input type="checkbox"/> RECUSED </div> </div>
Adam Brown	<div style="display: flex; justify-content: space-between; align-items: center;"> <div> <input checked="" type="checkbox"/> IN FAVOR <input type="checkbox"/> OPPOSED <input type="checkbox"/> ABSENT <input type="checkbox"/> RECUSED </div> </div>
<div style="display: flex; justify-content: space-between; align-items: center;"> <div> Oksana Leonovich, ZBA Secretary </div> <div> <u>08 / 17 / 23</u> </div> </div>	