

MODEL RULES FOR A ZONING BOARD OF ADJUSTMENT.

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**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 _____, New Jersey."

1:1-2. Annual Meeting; Officers. The annual meeting of the Board shall be held on the fourth Monday of January of each year, at which time the Board shall elect, from among its members, a Chairperson and a Vice-Chairperson. The Board shall also appoint a Secretary, an Assistant Secretary, and a Board Attorney, all of whom shall serve for one year and until their successors have been appointed. The Board may appoint such other officers or assistants and employ such experts or staff as it may deem necessary. Only the Chairperson and Vice-Chairperson must be members of the Board.

1:1-3. Chairperson. The Chairperson, subject to these rules, shall decide all points of order and matters of procedure governing the meetings, unless otherwise directed by a majority of the Board in session at the time. He shall have, subject to these rules and the governing statutes, all the powers and perform all the duties normally appertaining to his office. He or his 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 of the Chairperson.

1:1-5. Secretary. (a) Subject to these rules, and under the direction of the Chairperson, the Secretary shall conduct all official correspondence, compile the required records, maintain and keep in order the necessary files and indices, and generally perform the secretarial work of the Board. He may assign such parts of his duties as he may decide to the Assistant Secretary, if such there be, and he, or his assistant, shall notify the Municipal Clerk and the Officer charged with enforcement of the Zoning Ordinance of all meetings of the Board and shall provide them with a list of the matters scheduled for hearing at each meeting. He shall give all notices of meetings required to be given by the Open Public Meetings Law, the Municipal Land Use Law or any other applicable law or ordinance.

(b) The Secretary or Assistant Secretary shall attend all meetings of the Board, and shall have the care and custody of all records, documents, maps, plans and papers of the Board, for the care and custody of which no other provision is made by statute. When the "yeas" and "nays" are taken, he shall call the roll in the order of the arrangement of the seats of the members beginning with the first at his left, and the Chairperson shall be called last.

(c) He shall make record of, and keep on file, the minutes of the proceedings at each meeting or hearing held by the Board and shall enter therein with the other proceedings, such resolutions and orders as are adopted and a copy of the minutes of that meeting. He shall issue notices of meetings and shall perform such other duties as usually appertain to his office.

(d) He shall publish the notice and serve copies of the Board's resolution as provided in Rule 2:8-5.

Rule 1:2. Meetings

1:2-1. Regular Meetings. The regular meetings of the Board shall be held at the Municipal Building, _____, New Jersey, at _____ o'clock P.M. on the _____ of each month. If the

regular meeting day falls on a legal holiday, the meeting shall be held on the next succeeding secular day. The 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 Law, N.J.S. 10:4-6 et seq.

1:2-2. Special Meetings. Meetings may be called by the Chairperson, or in his absence by the Vice-Chairperson, at any time or upon the written request of two members, provided notice thereof be mailed or given to each member of the Board at least two days prior thereto, and to the public as required by the Open Public Meetings Law, N.J.S. 10:4-6 et seq.

1:2-3. 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.

1:2-4. Order of Business. The order of business at all meetings shall be as follows:

- (a) Roll Call
- (b) Open to Public
- (c) Motions for adjournment of scheduled cases, and other motions
- (d) Calendar of unfinished business
- (e) Calendar of new business
- (f) Communications
- (g) Approval of minutes of previous meeting
- (h) Reports
- (i) Adjournment

1:2-5. Record of Proceedings. The Board shall provide for the verbatim recording of the proceedings by either stenographer, mechanical or electronic means, or both. The Board shall furnish a transcript, or duplicate recording in lieu thereof, on request of any interested party at such party's expense. All stenographer's notes, electronic recordings or other verbatim records of meetings shall be retained by the Board for at least five years from the date of the hearing, or until the termination of any proceedings relating to such matter in the Superior Court or the Supreme Court of the State of New Jersey, whichever is longer.

Rule 1:3. Quorum and Voting

1:3-1. 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.

1:3-2. Motions. All motions shall require a second; a motion which does not obtain a second shall be deemed to be rejected.

1:3-3. Voting. All votes shall be taken by roll call and the vote and name of the person casting the vote shall be recorded in the minutes.

Rule 1:4. Alternate Members

1:4-1. Designation. 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.

1:4-2. Appointment of alternate to serve on case. During the absence or disqualification of any regular member, the Chairperson shall appoint one of the alternate members to serve in the place of said regular member; provided, however, that where the alternate member is designated to serve in place of the regular member who is disqualified from participating in the hearing of a particular case, the alternate member shall be designated to serve only with respect to such case.

1:4-3. Alternate to serve until final disposition. An alternate member who has been designated to sit in place of a regular member and who has participated in any hearing or matter coming before the Board shall continue to act in the place of such regular member until the final disposition of said matter by the Board.

1:4-4. 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.

1:4-5. Alternate not to serve at adjourned or continued hearing unless present at prior hearings. When a regular member has been present and has participated in the first hearing on any matter, no alternate member shall be designated to serve during the absence of such regular member during any adjourned or continued hearing or hearings on the same matter unless said alternate member was present at such first hearing or any prior adjourned or continued hearing on such matter.

1:4-6. 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 of his service, enjoy all of the rights and privileges and shall be subject to all of the duties and disabilities pertaining to regular members, if, but only if, he certifies that he has read a transcript or listened to a recording of prior meetings in accordance with R.2:10-1; provided, however, that no alternate member shall be eligible to serve as Chairperson or Vice-Chairperson of the Board.

1:4-7. Participation in discussions; voting. Alternate members may participate in discussions of the proceedings, but may not vote except in the absence or disqualification of a regular member, nor shall any vote be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

PART II RULES OF PRACTICE

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 the enforcement of the zoning ordinance shall be commenced by the filing of _____ copies of a notice of appeal, (Part I in Form I of Approved Forms) 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 whom 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.

(b) **Applications to Board of Adjustment.** An application for a variance or for any other relief shall be commenced by the filing of _____ copies of an application (Part II in Form I found at the end of these Rules) with the (Municipal Clerk, Secretary of the Board, etc.) together with (1) the fee required by ordinance and (2) all matters or documents required by the checklist established 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 (Form I) and the check list of items required by ordinance, a copy of which is given to all applicants.

2. One photograph of the subject premises shall be submitted with every application.

3. 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.

4. 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 Planning Board of the _____ together with fees and deposits in the amount which would have been charged by the planning 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 as established by ordinance shall be paid simultaneously with the filing of an application.

5. 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.

6. 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 (Committee or other authorized designee of the Board) 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 requested. If all check-list items are provided and no waivers requested the application shall be deemed complete and the applicant 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. If an application is neither found to be complete nor found to be incomplete and applicant notified of the deficiencies within 45 days from the date of filing, the application shall be deemed to be complete as of the 45th day following the date of its submission.

2:1-3. Copies to Zoning Officer, Attorney, etc.; Filing. One copy of every application shall be forwarded by the Secretary to the Zoning Officer, one copy to the Board's Attorney and one copy to the Environmental Commission. (Note: Required by N.J.S.A. 40:55D-27 if Environmental Commission has filed an index of the natural resources of the municipality with the Board of Adjustment). The Secretary shall also give notice to the Zoning Officer and Attorney of the time set for 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.

2:1-5. Amended Applications. An applicant may, prior to the commencement of a hearing, amend his application without leave of the board and in all such cases new notice shall be given in accordance with Rule 2:3 as in the case of an original application. After commencement of hearing, an application may be amended only with leave of the board. If the amendment after commencement of hearing is for the purpose of reducing the nature or extent of the variance sought, no new notice will be required. Otherwise, new notice shall be given in accordance with Rule 2:3.

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 placed on the calendar. The applicant shall be notified of time set for the hearing thereon.

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 of hearing shall be given to all persons and officials entitled thereto by the requirements of N.J.S. 40:55D-12 in all matters including [where required by ordinance] those brought pursuant to N.J.S. 40:55D-70a and N.J.S. 40:55D-70b.

2:3-2. Notice; Form. The notice required to be served and published pursuant to Rule 2:3-1 shall be in substantially the form set forth as Form No. II in the Appendix to these rules.

2:3-3. 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.

2:3-4. 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 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 Board's Secretary and which is set forth as Form No. I in the Appendix to these rules.

2:4-2. By Whom Filed. Every appeal or application must be signed by the owner of the lands and premises to be affected, or by his duly authorized agent, and may be signed by any other person having an interest in the action. 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. For the assistance of the applicant, the Board's Secretary may render such other assistance to the applicant as may be practicable.

2:4-4. Application: Contents. 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. Applications by Corporation or Partnership, Disclosure of Stockholders or Ownership Interests. A corporation, partnership or any legally recognized entity other than an individual applicant or applicants 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.

2:4-7. Informational Filings With Environmental Commission and With Historic Preservation Commission. Applicant shall file an informational copy of his complete application

with the Environmental Commission and the Historic Preservation Commission and file proof of such filings with the Secretary of the Zoning Board of Adjustment.

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 other than a “sole proprietor” shall be represented by an Attorney-at-Law of New Jersey in accordance with the rules of the Superior Court 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. Order of Presentation. (a) When the hearing is called to order, the Secretary shall state the relief sought by 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 in the application.

(c) Any other persons interested in the action shall then be heard and may present any relevant testimony or evidence in support of the application.

(d) Any other persons interested in the action shall then be heard and may present any relevant testimony or evidence tending to show why the relief sought by the applicant should not be granted.

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

(f) All witnesses may be cross-examined by any member of the Board, the Board Attorney, or any interested person.

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 motion, 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 be 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 until the termination of the matter, at which time they shall be returned by the Secretary to the person who offered them.

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 officially 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 (municipality), 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 Actions. 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. Likewise, the planning board may cause appropriate applications to be transferred from it to this board. In the case of such transferred actions, 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 this board in the first instance.

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. Failure of the Board to render a decision within such 120 day period or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant. 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 the Board granted or denied approval, or, if 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, filings and publications required by statute. A copy of the Board's resolution shall be furnished to the applicant or his attorney within 10 days from the date of adoption thereof and a copy of the resolution shall also be made available to any person who has requested it and has paid the fee established therefor.

2:8-3. Relief Granted. Where 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 conditions in the public interest in the light of then existing circumstances.

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

Rule 2:9. Motions

2:9-1. Rehearing. Any applicant or other interested person may, within 20 days after the publication of notice of the 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 participated 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.

2:9-2. 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 therefor and the grounds relied upon. If the petition is granted, the Board shall fix a date for hearing and the movant shall give notice of such hearing in the same form and manner as required by Rule 2:3 in the case of original petitions. The Board, on its own motion, may in a proper case similarly order all parties in interest to show cause at a time and place fixed in the notice why the terms or provisions of any variance ought not to be vacated or modified.

Rule 2:10. Qualification and Disqualification of Members of the Board

2:10-1. Qualification to Act. (a) 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 did not sit upon the hearing of the action, may, nevertheless, participate in the decision of the case if, but only if, he has read or listened to a recording of the entire record of the proceedings and has certified in writing that he 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.

(b) This rule shall in no way be construed as authorizing any hearing to be held before less than four members of the Board.

2:10-2. Disqualification of Member. (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 personal or pecuniary interest in the proceeding.

(b) Any member so disqualifying himself shall not sit with the Board for participation in any executive session or conference, or during the hearing or determination of the case in question, nor shall such member participate as a member of the public by testifying either for or against the relief sought by the applicant. Nothing herein shall prevent any member of such member's family or his attorney from appearing and giving testimony either for or against the application.

(c) 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 and may, even after entry of judgment, seek the vacation of the judgment and 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.

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.

2:11-2. Notes by Secretary. The Board's Secretary or Assistant Secretary or other designated person, shall take as extensive notes as possible of all testimony, and shall, as soon as possible after the hearing, prepare copies of his resume thereof for distribution to the members of the Board. Such resume shall also be included in the minutes of the hearing. If a transcript of the testimony has been filed with the Board, such transcript shall be filed in the case docket.

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.

2:12-2. 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 2:13. Subpoenas

2:13-1. Issuance. The Board, by its subpoena issued under its seal and under the hand of its Chairperson or Vice-Chairperson 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 of inquiry. The issuance of a subpoena may be requested by the applicant or any other interested person.

2:13-2. Service. Any such 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.

PART III MISCELLANEOUS PROVISIONS

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 requirements.

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 the 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. Laws 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, and subject generally to the provisions of Chapter 55D of Title 40 of the Revised Statutes of New Jersey.

Rule 3:4. Removal of Member

3:4-1. Grounds; Recommendation. Whenever a member of this Board 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 (governing body of the municipality) in writing that such member be removed in accordance with the provisions of N.J.S. 40:55D-69.

3:4-2. Automatic Vacancy. In accordance with the provision of N.J.S. 40A:9-12.1(g) any Board member who, without being excused by a majority of the authorized members of the Board, fails to attend and participate at meetings of the Board for a period of four consecutive regular meetings shall be considered to be no longer a member of the Board and a vacancy on the Board shall be deemed to exist, provided that the Board shall notify the governing body in writing of such determination and further provided that the Board may refuse to excuse only with respect to those failures to attend and participate which are not due to legitimate illness.

Rule 3:5. Citation of Rules and Decisions

3:5-1. Citation. (a) These rules shall be cited as “ZBR 1:1-1” etc. indicating that the rule is a Zoning Board Rule.

(b) Decisions of the Board of Adjustment shall be cited as “Matter of X,” X being the name of the principal applicant.

Rule 3:6. Amendments

3:6-1. 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 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 petitioner or other interested persons.