

# **Rules for Township of Ocean Zoning Board of Adjustment**

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## **Rules for Township of Ocean Zoning Board of Adjustment**

### **Rule 1:1. Officers, Employees, Annual Meeting.**

**1:1-1 Annual Meeting; Election of Officers.** At the Board's first meeting following July 1st of each year, the Board shall elect from its members a Chairman and Vice Chairman. These officers shall serve for the fiscal year and until their Successors have been duly elected.

**1:1-2. Appointment of Secretary.** At said first meeting, the Board shall also appoint a secretary. Such secretary shall serve for the fiscal year and until a successor has been appointed.

**1:1-3. Appointment of Board Attorney.** At the first meeting, the Board shall also appoint a member of the New Jersey Bar, who is familiar with zoning and planning matters, as attorney for the Board. The attorney shall serve for the fiscal year and until a successor has been appointed.

**1:1-4. Appointment of Officers, Staff, and Experts.** The Board may also appoint such other officers and/or assistants and employ such experts or staff as it may deem necessary.

**1:1-5. Alternate Members.** Four alternate members of this Board appointed by the Governing Body shall be designated by the appointing authority as "Alternate Number 1", "Alternate Number 2", "Alternate Number 3", and "Alternate Number 4", respectively, and each alternate shall retain said designation during the term for which he or she was appointed. Such alternate members shall participate in Board affairs subject to the following provisions:

(a) An alternate member may sit with the Board and participate in discussions of any Board business or hearings being held by the Board, but may not vote except as designated by the Chairman to serve in the place of a regular member who is absent or disqualified.

(b) A vote on any matter shall not be delayed by the Board so that a regular member may vote instead of an alternate member, provided that where the alternate member is designated to serve in place of a regular member who is disqualified from participating in the hearing of a particular case, the alternate member shall be designated to serve only with respect to such case.

(c) In the event that a choice must be made as to which alternate member is to vote, Alternate Number 1 shall vote. Alternate Number 2 shall vote if Alternate Number 1 is absent or ineligible. Alternate Number 3 and then Alternate Number 4 would vote if Alternates Number 2 is absent or ineligible.

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(d) Any alternate member who serves 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 the duties and disabilities pertaining to regular members, but no alternate member shall be eligible to serve as Chairperson or Vice Chairperson of the Board.

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

**1:2-1. Chairman.** The Chairman shall preside at all meetings and hearings of the Board, decide all points of order and matters of procedure governing said meetings or hearings, and perform all the duties normally appertaining to his office, as required by law, ordinance, these rules, or the Board. He, or his designee, shall swear all witnesses giving testimony before the Board.

**1:2-2. Vice Chairman.** The Vice Chairman shall preside at all Board meetings and hearings in the absence of or disqualification of the Chairman.

**1:2-3. Secretary.** The secretary shall, under the direction of the Chairman, generally perform the secretarial work of the Board, including, but not limited to the following:

(a) Give all notices of meetings required to be given by the Open Public Meetings Act, the Municipal Land Use Law, or any other applicable law or ordinance.

(b) Attend all meetings of the Board; take roll call votes, and note the yea or nay of each member as he votes, the Chairman being called last.

(c) Make a taped record of the proceedings of each hearing of the Board in accordance with these rules and keep minutes of the proceedings of each meeting (including workshop meetings) and hearing held by the Board.

(d) Cause to be mailed to each member of the Board, at his residence address, and to the Board's attorney, within one month after each meeting, a true copy of the minutes of that meeting.

(e) Perform such other duties as usually appertain to this office.

**1:2-4 Planning Administrator** The Planning Administrator shall, under the direction of the Chairman, generally perform the following duties:

(a) Conduct all official correspondence, compile the required records, and keep and maintain, in order, the necessary files and indices with respect to the operation of the board.

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(b) Have custody and take care of all records, documents, maps, plans, and papers of the Board, and provide for the care and custody of items for which no other provision is made by statute.

### **Rule 1:3 Meetings**

**1:3-1. Regular Meetings.** The regular meetings of the Board shall be held at the Municipal Building in the Public Meeting room at 7:30 P.M. on the second Thursday of each month. If the regular meeting falls on a legal holiday, the meeting shall be held on such other day as the Board may select. The first regular meeting after July 1st of each year shall constitute the annual organizational meeting of the Board. Whenever there are no matters to be considered at any regular meeting, other than the organizational meeting, the Chairman may dispense with such meeting by notifying each member of the Board at least forty-eight (48) hours in advance of the time set for such meeting and by giving notice in accordance with the Open Public Meetings Act.

**1:3-2. Special Meetings.** Special meetings and work sessions, as permitted by law, may be called by the Chairman or, in his absence, by the Vice Chairman, at any time or upon the written request of two members, provided that notice thereof be mailed or given to each member of the Board at least three (3) days prior thereto and to the public as required by law.

**1:3-3. Quorum.** At all meetings of the Board, a quorum for the conducting of any business shall consist of four (4) members. In the absence of a quorum, the members present may adjourn the meeting, and the hearing on any motion or petition, to another date.

**1:3-4. Voting.** When voting on any matters, except on a motion for adjournment where a quorum is not present, the following number of votes is required, so long as a quorum is present:

(a) In all matters, other than those referred to in subparagraph b, below, any action may be authorized by a majority vote of the members present at the meeting.

(b) In all matters related to NJSA 40:55D-7.d., any action may be authorized by an affirmative vote of at least five members.

(c) If a motion to approve an application for development does not receive the number of required votes, as hereinbefore set forth, such failure shall be deemed an action denying the application.

**1:3-5. Absent Members.** When any hearing before the Board shall carry over one or more meetings, a member of the Board who was absent for one or more of the meetings, shall be eligible to vote on the matter upon which the hearing is conducted, notwithstanding his absence, provided that said Board Member certifies, in writing, to the

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Board, that he has read the transcript or listened to a recording of the entire meeting for which he was absent. This rule shall not be construed as authorizing any hearing to be held whenever less than a quorum of the Board is present.

- 1:3-6. Order of Business. The order of business of all regular meeting of the Board shall be as follows:
- a. Call to Order
  - b. Roll Call
  - c. Salute to Flag
  - d. Statement of compliance with the Open Public Meetings Act
  - e. Approval of minutes of previous hearings.
  - f. Approval of resolutions
  - g. Action on any other business
  - h. Communications
  - i. Continued and carried cases and any other motions.
  - j. Hearing of new cases
  - k. Adjournment

**1:3-7. Open Meetings.** All meetings, hearings, and any action by the Board shall be open to the public. The only exceptions are executive sessions held for the following reasons:

- (a) Procedural Preliminaries
- (b) Determination of Application's Compliance with Requirements
- (c) Determination of Members for Disqualification Purposes
- (d) Legal Matters/Litigation
- (e) Personnel Matters.

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## PART II

### APPLICATION AND HEARINGS

#### Rule 2:1 Commencement of Action

**2:1-1. Filing.** An application or any other relief over which the Board has jurisdiction, shall be commenced by filing an original and up to fifteen (15) copies of an application, filed in accordance with the "Instructions of the Board" and complying with all check list requirements.

#### **2:1-2. Filing Requirements;**

The applicant shall file his application in accordance with the development regulations of the Land Development Ordinance and in accordance with the checklist requirements of that ordinance. The failure of the applicant to follow the "instruction" and the checklist requirements of the appropriate ordinance will result in the application being deemed incomplete and will delay the hearing of same. All statutory time periods for action by the Zoning Board of Adjustment commence to run only upon the filing of a complete application as required by the appropriate ordinances. Application forms shall be provided by the Board and shall be completely filled in, and shall supply any and all other information and data that may be required for the relief sought by the applicant. A checklist of required submissions shall be furnished to each applicant. All applications shall be filed on the forms provided by the Office of Planning Administration.

**2:1-3. Complete and Incomplete Applications.** All applications will be filed with the Planning Administrator. The Planning Administrator shall then review the application for its completeness, in accordance with the definition of a "complete application" as contained in N.J.S. 40:55D-3. In the event the application is found to be incomplete, the applicant shall be notified within forty five (45) days of the filing of such application. Such notification shall be in writing and shall set forth the reasons that the application has been found to be incomplete. Upon failure to notify the applicant, in writing, that his application is incomplete, within the forty five (45) day period, the application shall be deemed to be complete. If the application is found to be complete, the Planning Administrator shall immediately issue a certificate to the developer that the application is complete, and the application shall be determined to be complete as of the day it was so certified, for the purposes of commencement of time periods for action by the Board.

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**2:1-4. Assignment of Hearing Date; Notice.** As soon as any complete application is filed with the Board in accordance with the appropriate ordinances, these rules and the Board's "Instructions," the case shall be assigned a hearing date, with public notice, if required, in accordance with N.J.S. 40:55D-12, and the applicant shall be notified as set forth in paragraph 3 of the Board's "Instructions". If the public notice given, as required by the statute, is deemed inadequate at the time of the hearing, the Board will be without jurisdiction to hear the application until the applicant has given proper statutory notice.

### **Rule 2:2\_ Procedure for Hearing Applications**

**2:2-1. Appearance by Parties.** At the time of the hearing on the application, the applicant, or any other party, shall appear in person; or such person may be represented by an attorney at law admitted to the practice in the State of New Jersey. Every corporation shall be represented by an attorney at law admitted to the practice of law in the State of New Jersey.

**2:2-2. Time Limits at the Hearing.** Each application will be limited to forty five minutes of testimony at a hearing. No new cases will be started after 11:00 P.M. and no new testimony will be taken after 11:30 P.M.

**2:2-3. Swearing of Persons.** Giving Testimony All persons giving testimony at the hearing shall be sworn by the Chairman, or his designee, before giving any testimony.

**2:2-4. Order of Presentation.** When a case is called by the Chairman, the following shall be the order of presentation:

#### **ALL TESTIMONY SHALL BE UNDER OATH**

(a) The reports of the Board's experts shall be read in either by the Board Chairman or his designee.

(b) The applicant shall present himself, shall identify himself and be sworn. He shall then indicate the relief he is seeking from the Board. If the applicant is represented by an attorney, the attorney shall identify himself and the office, which he represents, identify his client and then proceed with his opening remarks.

(c) The applicant or his attorney shall then present his testimony and the testimony of his witnesses. He shall also submit such documentary evidence or exhibits upon which he intends to rely in order to establish his right to the relief sought in the application.

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(d) Prior to opening the floor to the public, and at the end of the testimony of each witness in support of the applicant, the Chairman shall allow Board Members and other interested parties to ask questions of the witness having just testified and may permit reasonable cross-examination by any attorney representing an objector.

(e) Where a group of interested parties are represented by an attorney, the attorney shall present to the Board Chairman a list of the persons he represents, and such persons shall participate in the proceedings only through their attorney.

(f) At the time the applicant has submitted all of his evidence in support of his application, the attorney for any objector may then put in his case in support of his client, calling any witnesses and introducing any documentary evidence upon which his client will rely in his objection to the appeal. Each such witness may be subject to reasonable cross examination by the applicant or his attorney, and the Chairman shall allow any members of the public to ask questions of such witnesses.

(g) After all of the evidence has been presented to the Board in support of or in opposition to the relief sought by the applicant, the Chairman shall then open the floor to the public subject to the provisions of Rule 2:2-4(d), to allow any member of the public to make any statement relative to the application before the Board. Such member of the public shall be first sworn after identifying himself.

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

(i) All witnesses may be cross examined by any member of the Board, the Board attorney, or any interested person.

(j) Any member of the Board may place evidence before the Board 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.

**2:2-5. Closing of Hearing; Continuances.** When the applicant and all interested persons have had an opportunity to be heard, the Chairman shall determine if the hearing shall be closed. The applicant, or any other interested person, may require from the Board a continuance of the hearing for the purpose of presenting further relevant evidence. The Board, acting in its sound discretion, may either grant or deny their request. In cases where the Board feels that testimony or other evidence Rules for Township of Ocean Zoning Board of Adjustment should be received in the public interest from any municipal, county, or state official, or from any other persons, in order to assist the Board in rendering a just decision, the Board may, on its own motion, continue the hearing to another day certain for other purposes. In the absence of any request to continue the hearing,

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the Chairman shall declare the hearing to be closed and, thereafter, no further evidence will be received in the action. In considering a request to continue any hearing, the Chairman should consider the effect of the time limits for decision as set forth in Rule 2:2-11.

**2:2-6. Evidence.** The formal rules of evidence are not enforced before Boards. However, no decision shall be based upon any facts not proved or on matters which are not in the record, unless they be such items of which the Board is entitled to take judicial notice. When any documents or exhibits are admitted into evidence during a hearing, they shall be marked and shall be retained by the Board as part of the permanent file. After the Board has rendered its decision and the time for the filing of any appeal has expired, the Board's secretary may return any such exhibits or documents to the person who offered them upon his request. Any evidence presented, whether by testimony or by documents and exhibits presented at the hearing, which are not questioned or controverted by any other person appearing or by any member of the Board, may be deemed to be true by the Board in its decision making process and findings of fact.

**2:2-7. Burden of Proof.** The burden of proof is on the applicant, and it is the applicant's responsibility to supply competent and credible evidence in order that the Board might determine the nature and degree of the relief sought by the applicant. The applicant must establish, to the Board's satisfaction that he is, pursuant to statutory provisions, entitled to the relief being sought. Further, the applicant must establish that the relief granted will not adversely affect the zone plan and scheme nor be inconsistent with the purposes of the Zoning Ordinance, in cases where the applicant is seeking a variance.

**2:2-8. Dismissal Without Prejudice.** The Board, on its own motion, may dismiss any action, without prejudice, if neither the applicant, nor anyone on his behalf, appears at the time set for the hearing of said application. Further, the Board, on its own motion, may dismiss, without prejudice, any application for failure to comply with the provisions of the appropriate ordinance, these rules or for failure to comply with the "Instructions of the Board". Any applicant may, at any time before the commencement of the Rules for Township of Ocean Zoning Board of Adjustment hearing, voluntarily withdraw his application; in which case, the application shall be dismissed without prejudice.

**2:2-9. Reports From Officers, Boards, or Agencies.** The Board, on its own motion, may, at any time, request a written report on any particular matter from any officer, board, or agency in connection with the pending case; provided, however, that a copy of any such report shall be made available to the applicant, who shall, if he so requests,

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have an opportunity to question the maker of such report as to any fact or conclusion contained therein. The Board may also refer any application to any appropriate agency for its review and report. Should the Board request such a report or make such a referral, such action shall not extend the period of time within which the Zoning Board of Adjustment shall act.

**2:2-10. Testimony from Board Employed Expert Witnesses.** The Board may, on its own motion, arrange to take the testimony of any expert witness employed by it.

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## PART III DECISION MAKING

### Rule 3:1 Post Hearing Procedures

#### 3:1-1. Decision Making; Resolution; Time.

Decisions rendered by the Board shall be in the form of a resolution, as required by N.J.S.40:55D-10 (g), including occasions where an application is denied because a motion to approve the application did not receive the required number of votes. [Rule 1:3-4(c) J. The written decision may be provided at the meeting at which the Board takes its action or by a "resolution of memorialization". The resolution of memorialization shall be adopted within forty five (45) days of that meeting. Such resolution of memorialization shall be adopted by a majority vote of the members of the Board who voted in favor of the action previously taken. NO OTHER MEMBER SHALL VOTE THEREON. If the resolution of memorialization is not adopted within forty five (45) days of the Board's action, the application for development shall be deemed to have been approved, notwithstanding any prior action taken thereon. Municipal action is deemed to have taken place on the date of adoption of the resolution. The date of the adoption shall constitute the date of decision for the required mailing of a copy of the decisions to the applicant and for the placing of a publication of the Board's decision in the official newspaper of the municipality as required by subsection (h) and (i) of N.J.S. 40:55D-10. The decisions of the Board, upon the submission of a complete application, shall be made as follows:

- (a) For preliminary site plan approval:
  - 1. For a minor site plan or for a site plan involving ten acres of land or less, or ten dwelling units or less; 45 days.
  - 2. For more than ten acres or more than ten dwelling units; 95 days.
- (b) For preliminary major subdivision.
  - 1. For ten lots or fewer; 45 days.
  - 2. For more than ten lots; 95 days.
- (c) For final approval of site plan and major subdivision; 45 days.
- (d) For minor subdivision approval: 45 days.
- (e) For minor site plan approval; 45 days.
- (f) For conditional use permits; 45 days.
- (g) For combined applications:

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1. Those meeting the requirements of NJS 40:55D-51 (c); the longest time period applicable.
2. For those applications meeting the requirements of NJS 40:55D-61; 95 days.
3. For those applications meeting the requirements of NJS 40:55D-61; 95 days: for variance approval: 120 days

**3:1-2. Contents of Resolution; Publication.** A copy of the Board's resolution shall be furnished to the applicant and his attorney within ten days from the date of the Board's decision. The applicant, at the direction of the Board's secretary, shall cause notice of the Board's action to be published, once, in the official newspaper of the municipality, in accordance with the provisions of State statute. The resolution of the Board shall contain:

(a) A statement of the Board's findings of fact and its conclusions of law, the Board decision, and any conditions imposed upon the relief granted or other provisions as the Board may deem appropriate and necessary.

(b) Where the Board has determined to impose conditions on the relief granted, such conditions shall be clearly set forth in the resolution. The Board may, when it is deemed necessary to protect the public interest, specifically provide in its resolution for the retention of jurisdiction over the matter before the Board for a reasonable time. Such time may be specifically set forth or may be conditioned on the happening of a certain event. The purpose of such retention of jurisdiction shall be to enable the Board to vary the terms of any conditions therein imposed or to impose additional conditions, in the public interest, in light of the then existing circumstances; or to permit the Board to finalize its actions with respect to its "other powers" as granted to the Board by State statute.

(c) The resolution shall set forth, with specificity, the relief granted to the applicant. The Board may grant such relief as it deems appropriate and in keeping with the intent and purpose of the appropriate ordinance, as the case may be, although the relief granted may be different in kind or degree from that required in the appeal or application.

### **3:1-3. Failure to Render Decision Within Statutory Time Limit.**

The failure of the Board to render a decision within the time period set forth in Rule 3:1-1, or within such other time as may be consented to, either in writing, or on the record at the Rules for Township of Ocean Zoning Board of Adjustment hearing of the Board, by the applicant, shall constitute a favorable action and the applicant shall request an appropriate certificate, pursuant to statutory provision.

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**3:1-4. Effectiveness of Decisions; Additional Filings.** The actions taken by the Board and the decisions made by it shall be effective pursuant to appropriate ordinance and statutory provisions; and where required it shall be the applicant's duty to make the filings with the County Recording Officer as may be required by appropriate statutory provisions.

### **MISCELLANEOUS**

#### **Rule 4:1 Fees, Record of Proceedings and Miscellaneous Matters.**

**4:1-1. Fees for Incidental Expenses.** The applicant, at the time of filing an application, shall pay fees for the purposes of defraying expenses incidental to the proceedings described in these rules and regulations. The fees applicable to each application shall be determined by reference to the appropriate ordinances.

**4:1-2. Special Expenses.** Should any application before the Board require or necessitate any special expenses incurred by the Board for the rendering of special services by its planning consultant, engineer, attorney, or any other expert, the applicant shall reimburse the Planning Administrator for the cost of such services by establishing an escrow account as required by ordinance.

**4:1-3 Transcript of Proceedings.** In accordance with the provisions of State Statute, the Board shall provide a verbatim recording of all hearings by either a stenographer or by mechanical or electronic means. The transcript or duplicate recording, in lieu thereof, shall be furnished to any interested party at his expense. All requests for copies of such verbatim record shall be made in accordance with the applicable state statutes. If the Board elects to furnish a transcript of the proceedings to an interested party, at his expense, the Board shall not charge such interested party more than the maximum permitted in N.J.S.2A:11-15; said transcript shall be certified, in writing, by the transcriber to be accurate. The Board may elect to furnish a duplicate tape so as to permit any interested party to have a transcript prepared from such tape. A fee shall be charged for each duplicate tape as governed by municipal ordinance. A deposit estimated in accordance with the above fees shall be deposited immediately after the request for a copy of the verbatim Rules for Township of Ocean Zoning Board of Adjustment record is made. Any excess shall be returned to the applicant or any balance owed shall be paid by the applicant at the time of delivery of the transcript.

**4:1-4 Costs for Special Meetings.** Should an applicant request that the Board consider his application at other than a regular meeting of the Board, the applicant shall, in addition to the fees hereinbefore

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provided, pay any costs incurred by the Board in connection with the holding of such special meetings as provided for by the municipal ordinance.

### **4:1-5 (Reserved)**

**4:1-6. Subpoena.** The Chairman of the Board or his designee, pursuant to the "Procedures Ordinance", may issue subpoenas to compel the attendance of witnesses and the production of relevant evidence. Upon failure of a person under Board may apply to the Superior Court for an order to compel such appearance.

**4:1-7. 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. 2A67A-1 et seq.) be guilty of perjury.

**4:1-8 Transfer between Boards.** Whenever an application is filed with the Planning Board which, pursuant to the provisions of the Municipal Land Use Law, ought to have been filed with the Zoning Board, the Planning Board may, by resolution, cause said application to be transferred to the Zoning Board. Similarly, the Zoning Board may cause appropriate applications to be transferred from it to the Planning Board.

### **4:1-9 (Reserved)**

## **Rule 4:2. Amendments**

**4:2-1. Amendments.** The Board may, from time to time, amend any part or parts of these rules and regulations 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 would result in surprise, hardship, or injustice to the applicant or any other interested persons.