



# **TOWNSHIP OF LONG HILL**

COUNTY OF MORRIS

GILLETTE, HOMESTEAD PARK, MEYERSVILLE, MILLINGTON, STIRLING

ZONING BOARD OF ADJUSTMENT

## **RULES FOR THE ZONING BOARD OF ADJUSTMENT OF LONG HILL TOWNSHIP**

**Adopted April 7, 2015**

# **Long Hill Township Zoning Board of Adjustment Resolution Adopting Procedural Rules**

**Whereas** The Long Hill Township Zoning Board of Adjustment was created as a legal body by Long Hill Township Ordinance 172, pursuant to Municipal Land Use Law N.J.S.A. 40:55D-1 et. seq, and,

**Whereas** Section 172:13, Rules and Procedures, of the above Ordinance requires that: “The Board of Adjustment shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this Section,” and,

**Whereas** Chairman E. Thomas Behr and a subcommittee of Vice Chairman Edward Gerecht, Esq. and Board member Michael O’Mullan, Esq. prepared draft rules for the Board’s consideration with the additional support of Board Member Michael Pesce, and,

**Whereas** the Board of Adjustment duly considered a series of drafts and revisions at noticed public hearings on October 7, 2014; December 2, 2014; February 3, 2015; February 17, 2015 and March 17, 2015.

**Now Therefore Be It Resolved** that the Long Hill Township Zoning Board of Adjustment hereby adopts the following Rules to govern its operations and carry out its duties as required by law.

## **Roll Call Vote**

Those in Favor: Mr. Gerecht, Mr. Keegan, Mr. Pesce, Mr. O’Mullan, Mr. Wills, Chairman Behr

Those Opposed: NONE

I, Cyndi Kiefer, Planning and Zoning Secretary for the Zoning Board of Adjustment of the Township of Long Hill in the County of Morris, do hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the Zoning Board of Adjustment at a regular meeting held on the 7<sup>th</sup> of April, 2015.

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Cyndi Kiefer  
Planning and Zoning Board Secretary

Dated: April 13, 2015



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# RULES FOR THE ZONING BOARD OF ADJUSTMENT OF LONG HILL TOWNSHIP

## PART I: ADMINISTRATION

### RULE 1:1. ORGANIZATION, OFFICERS, GENERAL PROVISIONS

**1:1-1. Annual Meeting; Officers.** The Reorganizational Meeting of the Board of Adjustment shall be held on the first regularly scheduled Tuesday in January of each year immediately following the Township Committee reorganizational meeting, at which time the Board shall elect, from among its Regular Members, a Chairperson and a Vice-Chairperson.

**1:1-2. 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.

**1:1-3. Vice-Chairperson.** The Vice-Chairperson shall preside at all Board meetings and hearings in the absence of the Chairperson and perform all the duties of the Chairperson.

**1:1-4. Board Staff.** At the Reorganizational Meeting of the Board of Adjustment, pursuant to N.J.S. 40:55D-71, the Board shall appoint and fix the compensation of a Secretary, a Planning & Zoning Administrator, a Planning Consultant, an Engineer and a Board Attorney, all of whom shall serve for one year at the pleasure of the Board. The Board may appoint such other officers or assistants and employ such experts or staff as it may deem necessary.

**1:1-5. Secretary.** 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 or she shall notify the Municipal Clerk of all meetings of the Board and shall provide the Municipal Clerk with an agenda for each meeting.

- a) The 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.
- b) The Secretary shall record and file the minutes of each Board meeting or hearing in accordance with the appropriate Long Hill Township Ordinance. The Secretary shall provide copies of minutes from previous hearings to the Board for approval at a subsequent Board meeting on a timely basis. The Secretary shall publish copies of approved minutes on the Township Bulletin Board and on the Township website.
- c) The Secretary shall publish the notice and serve copies of Board Memorialized Resolutions as provided in Rule 2:6-2.

**1:1-6 Planning and Zoning Administrator.** Under the direction of the Chairperson, The Planning and Zoning Administrator shall perform all duties as required for the purposes of the Board and as provided for in the list of Duties – Planning and Zoning Administrator on file in the Planning and Zoning Office.

- a) The Planning and Zoning Administrator shall accept all applications for development, determine Board jurisdiction for all applications, research any prior applications for development of the subject property, provide the Board attorney and consultants with copies of any prior resolution(s) regarding the subject property, initially review applications for completeness, and prepare them for formal completeness review by the Completeness Review Committee.
- b) The Planning and Zoning Administrator shall prepare, direct, and oversee the efforts of Board Consultants and Staff in completing the Zoning Review and Administrative Review.
- c) The Planning and Zoning Administrator shall publish all notices of meetings required to be given by the Open Public Meetings Act, N.J.S. 10:4-6 et seq., N.J.S.40:55D-12 and in all matters including, where required by ordinance, those brought pursuant to N.J.S. 40:55D-70a through d, and/or any other applicable law or ordinance. The Planning and Zoning Administrator shall prepare all legal notices of decisions and arrange for their publication.
- d) The Planning and Zoning Administrator shall publish notice of the Board’s action 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.
- e) The Planning and Zoning Administrator shall follow up with Board Engineer, Township Engineer, and Board Planner as to status of conditions of approval for Board Resolutions, and when completed, review plans and submit to Board Officers to sign.
- f) The Planning and Zoning Administrator shall ensure that sufficient funds have been posted to satisfy any deficiency in professional review escrow accounts prior to hearing(s) and prior to the signing of plans by the Board Officers.
- g) When applications are concluded, and all billings have been received and paid, the Planning and Zoning Administrator shall prepare written request to the C.F.O, to return final balance of professional review escrow account to applicants.

**RULE 1:2. MEETINGS**

**1:2-1. Regular Meetings.** Unless otherwise announced, the regular meetings of the Board shall be held at Town Hall, 915 Valley Road, Gillette, New Jersey, at eight o’clock P.M. (or immediately following an executive session if deemed necessary) on the first and third Tuesday of each month, with the following exceptions: in July, August and December, the Board will only meet on the first Tuesday. If the regular meeting day falls on a legal holiday, the meeting shall be held on the next regularly scheduled Tuesday meeting date.

**1:2-2. Special Meetings.** 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 Board Members, provided notice thereof be mailed/emailed or given to each member of the Board at least two weeks prior thereto, and provided to the public as required by the Open Public Meetings Act, N.J.S. 10:4-6 et seq.



**1:2-3. Record of Proceedings.** The Board shall provide for the verbatim recording of the proceedings by stenographer and/or electronic means. The Board shall furnish a transcript or duplicate recording on request to 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 as statutorily required or until the termination of any proceedings relating to such matter in any 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 Board Members. In the absence of a quorum, the Board 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, except where a single Board Member votes on the adoption of a Resolution of Memorialization.

**1:3-3. Qualification to Vote.** Whenever a hearing is continued over two or more sessions, or the Board has reserved decision on any matter, any members of the Board, even though they did not sit upon the hearing of the application, may, nevertheless, participate in the decision of the case if, but only if, they have read or listened to a recording of the entire proceedings and have certified in writing that they have done so.

**1:3-4. Voting.** The following shall apply in any meeting at which a quorum is present, and failure to meet such requirements shall constitute defeat of the motion or denial of an application before the Board.

- a) In any matter not related to the approval or denial of an application or involving public monies, the Chairperson may authorize a simple voice vote of the Board Members present to approve a motion.
- b) On a motion to approve an application, an affirmative roll call vote of a simple majority of eligible Board Members shall be required except for applications requiring a "d" variance, in which case the affirmative vote of five (5) eligible Board Members is required by statute.
- c) The Chairperson shall vote last on all motions.
- d) A Resolution of Memorialization of action previously taken shall require the affirmative roll call vote of a majority of the Board Members present who voted in favor of that previous action. However, if only one such Board Member is present the Resolution of Memorialization may be adopted by the voice vote of that Board Member.
- e) The vote of each Board Member shall be recorded by the Secretary and in the minutes.
- f) In principle, Board Members should refrain from abstaining on motions to approve or deny an application. A Board Member who abstains from a vote is still counted toward a quorum. An abstention shall be regarded as an assent to the vote of the majority except in "d" variances which require an affirmative vote of five (5) Board Members for approval.

**RULE 1:4. BOARD MEMBERS**

**1:4-1 Establishment and Composition.** Pursuant to the Municipal Land Use Law 40:55D-69 et seq .the Board of Adjustment shall consist of seven (7) citizens of the Township appointed by the Township Committee as Regular Members and two (2) citizens of the Township appointed by the Township Committee as Alternate Members.

- a) The terms of the Regular Members shall be four (4) years from January 1 of the year of their appointment. Nothing in this subsection shall, however, be construed to affect the term of any present member of the Board of Adjustment, all of whom shall continue in office until the completion of the term for which they were appointed. The terms of the Alternate Members shall be two (2) years from January 1 of the year of their appointment.
- b) Alternate Members shall be designated at the time of appointment as "Alternate No. 1" and "Alternate No. 2" and each alternate shall retain said designation during the term for which he or she was appointed.

**1:4-2. Alternate 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 first, followed by Alternate No. 2 if needed.

**RULE 1:5. QUALIFICATION AND DISQUALIFICATION OF BOARD MEMBERS OF THE BOARD**

**1:5-1 Impartiality and Transparency.** Board Members shall not discuss the substance of any current or pending application except within the specific context of a properly noticed public Board hearing.

- a) Board Members may discuss procedural matters relating to a current or pending application or seek clarification of the legal issues impacting a given application, so long as that conversation does not touch on the specific merits of the application.
- b) No Board Member may discuss the merits of any matter current or pending or before the Board with any person including applicant, interested party, member of the public or elected official except within the specific context of a properly noticed public Board hearing.
- c) Board Members are encouraged to visit the subject property prior to the hearing of an application. In doing so, however, the Board Members shall not engage in any conversation with the owners or residents of the property concerning the merits of the pending application.

### **1:5-2. Disqualification of Board Members.**

- a) Any member of the Board of Adjustment shall disqualify him or herself from sitting on the hearing of any matter in which he or she has a disqualifying interest such as, but not limited to, the following situations:
- Where the Board Member owns property within 200 feet of the property affected by the action. Where the applicant or their attorney is the employer, employee, or partner of a Board Member, or is a corporation in which the Board Member is a shareholder or has other financial interest that might reasonably be expected to impair the Board Member's objectivity or independence of judgment.
  - Where the Board Member or a member of his or her immediate family has a direct or indirect financial or personal involvement that might reasonably be expected to impair the Board Member's objectivity or independence of judgment.
  - Where the Board Member has any other personal or pecuniary involvement or interest that might reasonably be expected to impair the Board Member's objectivity or independence of judgment.
- b) A Board Member who is disqualified shall not sit with the Board or participate in meetings or hearings related to the matter in question, nor may such Board Member participate by testifying either for or against the relief sought by the applicant. A Board Member who owns property that is the subject of an application, or who lives within 200 feet of such property, has the legal right to be heard. To avoid the possible taint or appearance of impropriety, whenever possible such Board Member should have his or her interests represented by a third party such as an attorney or a spouse.
- c) Should a Board Member fail to disqualify himself or herself from a particular matter on the basis of potential conflict of interests as defined in 1.5-2(a), any interested party or member of the Board of Adjustment may request that the Board make a determination of that Board Member's qualification.
- The Board may go into closed session pursuant to the Open Public Meetings Act to receive legal advice from its Attorney. If the matter cannot be resolved consensually, a hearing shall then be held, in public, as to whether the Board Member with the potential conflict should be required to disqualify himself or herself from hearing and deciding the particular matter. During the hearing, both the Board Member with the potential conflict and the balance of the Board Members shall have the right to call, question and cross examine witnesses, and to make statements of their respective positions. The general public shall have the right to observe these proceedings but shall not participate in same (give testimony, question or cross examine witnesses, make statements, etc.).
  - The hearing shall be heard by up to seven (7) Board Members, it being understood that the Board Member with the potential conflict shall not sit, but rather, shall be replaced by an alternate so that the Board has a full complement of seven (7) Board Members to potentially hear and rule on the motion. At the conclusion of the hearing the sitting Board Members shall vote on whether the Board Member with the potential conflict shall be disqualified from hearing the particular matter. Disqualification shall occur if and only if at least five (5) of the sitting Board Members vote to disqualify, regardless of the number of Board Members voting. Should disqualification occur, the terms of Rule 1.5-2(b) shall apply.

## PART II: RULES OF PRACTICE

### RULE 2:1. COMMENCEMENT OF ACTION

**2:1-1. Appeals.** An appeal to the Township Committee from any final decision of the Board of Adjustment approving an application for a development pursuant to N.J.S. 40:55D-70d, shall be taken within ten (10) days of the date of publication of such final decision of the Board of Adjustment. Such appeal shall be made in accordance with the provisions of N.J.S. 40:55D-17.

An appeal from any other final decision of the Board of Adjustment may be taken only to the Superior Court pursuant to law.

**2:1-2 Applications to Board of Adjustment.** The applicant shall submit to the Board of Adjustment Secretary all documents and information as required by the appropriate Long Hill Township Ordinance or N.J.S.A. 40:55D-12h and N.J.S.A. 40:55D-76b.

- a) Promptly after the completeness review and payment of all required fees, the application documents shall be distributed by the Secretary to each member of the Board of Adjustment, the Board Attorney, the Board Planner, the Board Engineer, and the other Township officials and consultants as specified in the appropriate Long Hill Township Ordinance.
- b) It shall be the responsibility of the applicant to provide appropriate County, State or Federal agencies or public utility with copies of the subject application.

**2:1-3 Fees.** Fees shall be paid in accordance with the provisions of the appropriate Long Hill Township Ordinance.

**2:1-4. Certification of Completeness.** Certification for Completeness shall be in accordance with the provisions of Long Hill Township Ordinances, Completeness Requirements, and Technical Review Committee.

**2:1-5. Amended Applications.** Applicants may, prior to the commencement of a hearing, amend their application without leave of the Board and in all such cases new notice shall be given in accordance with Rule 1:1-6 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 1:1-6.

### RULE 2:2 HEARING DATE

**2:2-1. Hearing Date.** As soon as any appeal or application is deemed complete in accordance with the foregoing rules, the case shall be placed on the calendar. The applicant shall be notified of the time set for the hearing thereon.

**2:2-2. Adjournment.** The time for hearing may be adjourned from the time fixed therefore, 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.

**2:2-4. 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 those brought pursuant to N.J.S. 40:55D-70a, b, c, and d, and/or all matters where required by ordinance.

### **RULE 2:3. HEARINGS**

**2:3-1. 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.

**2:3-2. Oath.** At the hearing, the applicant and all witnesses shall be sworn by the Chairperson or his or her designee before giving testimony.

**2:3-3. 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.

**2:3-4. Meetings to be Orderly and Respectful to All.** All persons who appear before the Board have the right to be heard. The Chairperson is responsible for ensuring that all persons appearing before the Board are treated with respect and that testimony is not needlessly and unreasonably redundant. The Board has the right to remove disorderly or disruptive persons from a meeting in order to ensure the Board's ability to perform its public duty.

#### **2:3-5. Order of Proceedings**

1. Complete initial agenda items.
2. If public present, briefly review Board process.
3. Start applications.
  - Verify Proof of service with Board Secretary.
  - Swear in Board Planner and Engineer
  - Consider Completeness Waivers requested by Applicant.
  - Applicant(s) come forward, introduce themselves, and are sworn in.
4. Applicant(s) present their case.
  - Invite applicant(s) and/or their attorney to identify witnesses and provide an overview of the proposed project:
  - As appropriate, qualify and swear in applicant(s) witness(es)
  - Invite applicant(s) and/or witness(es) to present their testimony.
  - Invite applicant(s) and/or witness(es) to review pertinent report(s) from the Board's professionals and respond to any open issues not covered by previous testimony.
5. Board Members/Consultants question applicant(s) and/or witness(es).
6. The public is invited to question applicant(s) and/or witness(es)

7. If there are any interested parties represented by an attorney, all questions must be posed by their attorney, all arguments must be presented by their attorney and any direct testimony given should be in response to questions by their attorney.
  - If a number of interested parties jointly hire an attorney, the Board and all other persons are entitled to have a list of such interested parties filed with the Board.
  - Interested parties have the right to bring in general and expert witnesses to refute or question testimony given by applicants and/or their witnesses.
  - Members of the public and applicants and their witnesses have the right to cross-examine interested parties' witnesses.
8. When applicant's testimony and discussion is completed, members of the public are invited to make statements about the application.
9. Applicant or their representative makes summation.
10. When the applicant and all other interested persons have had an opportunity to be heard, the Chairperson declares the hearing to be closed. Thereafter, no further evidence will be received in the application unless the matter is reopened in accordance with these rules.
  - Chairman/Board Consultants summarize conditions to be met were the Board to approve the application, with customary conditions and conditions gleaned from the record to also be included in Memorialized Resolution.
  - As needed, Board Members respond to/confirm any open issues regarding conditions for approval.
11. Board Members deliberate.
12. Board Attorney presents draft Resolution.
13. Motion is made and seconded to approve or deny application.
14. Board Members vote on approval or denial in accordance with Rule 1:3-4.
15. If approved, Board Chairperson explains the next steps (Resolution Memorialization) and applicant responsibilities regarding completion of conditions.
16. Board Secretary and/or their designee documents conditions for approved applications and forward them to consultants within two working days following the hearing.

## **RULE 2:4. EVIDENCE**

**2:4-1. 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, the Board's Engineer, the Board's Planning Consultant, and the Board's 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 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 and the general area, as well as their personal knowledge of the community.

**2:4-2. Competent Evidence.** Although formal rules of evidence are not enforced before the Board, every fact indispensably necessary to establish the applicant’s burden of proof shall be made part of the record. The Board may limit irrelevant, immaterial or redundant testimony.

- a) 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.
- b) 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 date certain for such purposes.

**2:4-3. Documents and Exhibits.** When any papers, documents or exhibits are admitted into evidence during a hearing, they shall be marked by the Secretary and shall be retained by the Board until the termination of the matter as statutorily required.

**2:4-4. Judicial Notice.** The Board may take judicial notice of such matters as are so well established so as not to be the subject of reasonable dispute, including, but not limited to the provisions of any local, state or federal ordinance and any officially reported judicial decision.

**2:4-5. 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 circumstances sought to be alleviated. The burden of proof remains upon the applicant at all times.

**RULE 2:5. DISMISSAL OF ACTIONS**

**2:5-1. Voluntary.** Applicants may at any time before the commencement of the initial hearing, voluntarily withdraw their application, in which case the action shall be dismissed without prejudice. After commencement of the hearing a voluntary dismissal without prejudice may be taken only with the approval of the Board subject to such reasonable conditions as the Board may impose including reimbursement of fees and escrows incurred in the application.

**2:5-2. Nonappearance.** When, at the time set for the hearing or continued hearing on any application, neither the applicant nor anyone in the applicant’s behalf appears, and no adjournment has been previously requested by 4:00 p.m. of the Friday preceding the hearing date, the application may be dismissed without prejudice.

**2:5-3. Infraction of Rules.** The Board may dismiss an application for failure to provide proper notice as well as for failure to comply with any other Board rule or for failure to replenish required escrow funds and fees.

**2:5-4. Continuances.** 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.

**2:5-5. 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.

**Rule 2:6. Decision; Resolution of Board**

**2:6-1. Time.** The Board of Adjustment shall render a decision in accordance with the Municipal Land Use Law (40:55D-73) and appropriate case law.

**2:6-2. 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 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.

- a) 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.
- b) 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.
- c) A copy of the Board’s resolution shall be furnished to the applicant or his attorney within 10 days from the date of adoption thereof and a copy of the resolution shall also be made available to any person who has requested it and has paid the fee established therefore.

**2:6-3. Relief Granted.** Where applicants have demonstrated their 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.

**2:6-4. 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 verifying that all conditions have been met, 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.

**RULE 2:7. MOOT QUESTIONS: ADVISORY OPINIONS**

**2:7-1. Prohibition.** 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. The Board shall not render any advisory opinion to any person or persons; provided, however, that this rule shall not be construed as prohibiting the Board from submitting recommendations or advice to the governing body in accordance with the applicable provisions of the Zoning Ordinance or any statute.

**RULE 2:8. SUBPOENAS**

**2:8-1. Issuance.** The Board, by its subpoena issued under its seal and under the hand of its Chairperson and Secretary 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.



**RULE 2:9. FALSE TESTIMONY**

**2:9-1. 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 perjury 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. BOARD STAFF AND CONSULTANT EVALUATION**

**3:2-1. Performance Evaluation.** The performance of the Board’s consultants and staff shall be periodically reviewed throughout the year by an Evaluation Committee consisting of the Chairperson and two Regular Members selected by the Chairperson, with the Vice chairman participating ex-officio.

- a) The Evaluation will be based on the Board of Adjustment Performance Criteria which are included, by reference, in these Rules. At the beginning of each calendar year, the Evaluation Committee will meet with staff and consultants to collaboratively establish performance expectations and metrics for that year. Where staff or consultants’ performance falls short of those expectations during the year, Board leadership will meet with them in a timely manner to resolve these issues.
- b) In November of each calendar year, the Evaluation Committee will meet with staff and consultants to collaboratively review their performance. Based on that review, the Evaluation Committee will make reappointment recommendations to the Board of Adjustment in December of each year.
- c) Although it is the intent of the Board to conduct the above evaluations, should it not do so, that failure shall have no effect on the status or rights of the Board consultants or staff.

**RULE 3:3. AMENDMENTS**

**3:3-1. Amendments.** Amendments to these rules may be made by the Board at any regular meeting, provided notice of such amendments have 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 amendments where the application of such action would result in surprise, hardship or injustice to the applicant or other interested persons.