BY-LAWS OF THE
ZONING BOARD OF ADJUSTMENT
OF THE BOROUGH OF MORRIS PLAINS, NEW JERSEY

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PREAMBLE

An ad-hoc committee of the Board, organized and led by the Chairperson, updated the previous By-Laws (adopted in December of 1990 and unchanged since that date) in summer 2020, and a draft update was presented to the Board at its September 2020 meeting. This version of the By-Laws was adopted by the Board at its October 2020 meeting.

PART I
ADMINISTRATION


1:1-1. Title of the Board. The Title of the Board shall be: “The Zoning Board of Adjustment of the Borough of Morris Plains, 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 or at such other date as designated by the Board, at which time the Board shall elect, from among its members, a Chairperson and a Vice-Chairperson. The Board shall also appoint a Secretary, and a Board Attorney, all of whom shall serve for one year or 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. 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. The Chairperson shall have, subject to these rules and the governing statutes, all the powers and perform all the duties normally appertaining to this office. The Chairperson, or Board Attorney when requested by the Chairperson, 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. The Secretary may assign parts of the Secretary’s duties to an assistant, shall notify the Municipal Clerk and Borough Zoning Officer of all meetings of the Board, and shall provide them with a list of the matters scheduled for hearing at each meeting. The Secretary 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 shall attend all meetings of the Board, and shall have the care and custody of all records, documents, maps, plans, papers, and electronic files of the Board, for the care and custody of which no other provision is made by statute. When prompted by the Chairperson, the Secretary shall undertake a roll call in alphabetical order by last name of members present and eligible to vote, and the Chairperson shall be called last.

(c) The Secretary shall make record of, and keep on file, the minutes of the proceedings of 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. The Secretary shall issue notices of meetings and shall perform other duties as usually appertain to the office.

(d) The Secretary shall publish the notice and serve copies of the Board’s resolutions as provided in MP ZBR 2:8-5.

1:1-6. Membership. The Board shall consist of regular members appointed in such manner as the ordinance creating the Board provides. In addition, there shall be alternate members. All members, regular or alternate, must be residents of the borough. The number of members and alternate members shall be in accordance with the provisions of N.J.S. 40:55D-69.

Rule 1:2. Meetings.

1:2-1. Regular Meetings. The regular meetings of the Board shall be held at 7:30 P.M. on the fourth Monday of each month or at such other time as designated by the Board. Meetings may be held remotely or in-person, or a hybrid of the two (a combination of in-person and remote), as directed by the Chairperson. In-person meetings shall be held at the Municipal Building, 531 Speedwell Avenue, Morris Plains, New Jersey. Remote or hybrid meetings shall be held using streaming services or online meeting platforms that provide for public access the meeting through the use of telephonic and/or web-based audio/video streaming. 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. Special meetings may be provided for at the call of the Chairperson, or at the call of a majority of Board members, provided notice thereof be mailed, e-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 Act, 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 established by the Chairperson. The following topics, or substantively similar as set by the Chairperson, shall be covered during the course of a meeting:

(a) Call to order
(b) Pledge of Allegiance
(c) Open public meeting and judicial proceedings notices
(d) Roll Call
(e) Special announcements of the Chairperson
(f) Review of meeting minutes
(g) Open to Public
(h) Memorialization of resolutions
(i) Public hearings
(j) Correspondence and Bills
(k) New Business
(l) Old Business
(m) 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 shall be retained by the Board as required by applicable law.

1:2-6. **Time Limitation.** Generally, the Board will take no new testimony during a hearing beyond 10:30 P.M. The Chairperson may allow new testimony to be heard beyond 10:30 at his/her discretion.

**Rule 1:3. Quorum and Voting**

1:3-1. **Quorum.** At all meetings of the Board a quorum for the conducting of business shall be four members. In the absence of a quorum, the members present may undertake no business except to 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. The name of the person making a motion and the name of the person seconding the motion shall be recorded in the meeting minutes.

1:3-3. **Voting.** All votes shall be taken by roll call and the vote (yes/no/abstain) and name of each person casting a vote shall be recorded in the minutes.

**Rule 1:4. Alternate Members**
1:4-1. **Designation.** Alternate members of this Board appointed by the governing body shall be designated by the appointing authority as “Alternate No. 1”, “Alternate No. 2”, etc. as appropriate, and each alternate shall retain said designation during the term for which the alternate was appointed.

1:4-2. **Appointment of alternate to serve on case.** During the absence or disqualification of any regular member, the Chairperson shall recognize 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. In the event that a choice must be made as to which alternate member is to vote, alternate members shall vote in the order of their numerical designation.

1:4-3. **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 members shall vote in the order of their numerical designations.

**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 a notice of appeal, in accordance with the provisions of the statute within 20 days from the date of the order, decision or refusal appealed from, which notice of appeal shall be filed with the officer from whom the appeal is taken and shall specify the grounds of such appeal. Said officer shall immediately transmit to the Secretary all papers constituting the record upon which the action appealed from was taken and the Secretary shall proceed to place the matter on the calendar in accordance with the provisions of MP ZBR 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 an application with the Secretary together with (1) the fee required by ordinance and (2) all matters of documents required by the checklist established by ordinance.

(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 ten days before the date of the hearing during normal business hours in the office of
the Secretary. This filing shall be in addition to the maps and other documents required to be filed with the application, as set forth in the application form and the checklist of items required by ordinance.

2. If meetings are to be remote or hybrid, or if so required by the Chairperson, the Secretary shall obtain from an applicant electronic files in a format readable by widely available software (such as Adobe PDF), maintain on file the electronic files, and make said files available for public inspection via the internet by use of a web browser in accordance with applicable rule, resolution, or guidance.

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 of the checklist requirements have been complied with, or waivers granted by the Board, at its discretion, where checklist requirements have not 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 Borough of Morris Plains together with fees and deposits required by ordinance. 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.

1. 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.

2. 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 Board in consultation with the Borough Engineer and Borough Planner shall examine each application to ascertain that all required checklist 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 checklist items are provided and no waivers requested the application shall be deemed complete upon vote of the Board 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.
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, one copy to the Borough Engineer, one copy to the Borough Planner, and one copy to each member and alternate member. The Secretary shall distribute copies to borough personnel as per established practice, and shall send copies to experts that may be retained by the borough or Board on a case-by-case basis. 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. **Application Number.** The Secretary shall assign to each new action an application 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 its application without leave of the Board and in all such cases new notice shall be given in accordance with MP ZBR 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 MP ZBR 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 the date and 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. List of Owners Supplied by Authorized Official. Where the authorized official of the borough has furnished applicant with a list of the property owners entitled to notice pursuant to the provisions of N.J.S. 40:55D-12(c), a copy of the official certification and list shall be annexed to applicant’s proof of service.

2:3-3. Proof of Service. The service and publication of notices as hereinabove provided is a jurisdictional requirement, and proof of the service and publication of all required notices in accordance with these rules shall be made by affidavit of the person or persons who actually served or mailed said notices as required by law, and by the authorized official of the newspaper which published same.


2:4-1. Form. Every appeal or application shall be filed on the appropriate form provided to the applicant by the Secretary. Every appeal or application shall include the appropriate number of copies as identified by the Secretary.

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 its application all facts upon which it will rely to establish its right to the relief sought and supply all information requested on the application form or otherwise required by law.

2:4-5. 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 MP ZBR 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.

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 virtually depending on the format of the meeting, 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 Board Attorney before giving testimony.

2:5-3. Order of Presentation. (a) The hearing is called to order by the Chairperson and the docket number, applicant name, property address and lot and block numbers shall be read.

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

(c) Following each witness, the Borough or Board experts, then Board members, then other persons interested in the action will be permitted to cross-examine the witnesses.

(d) After all witnesses called by the applicant have stepped down, any other persons interested in the action shall then be heard and may present any relevant testimony or evidence in support of, or opposed to, the application.

(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.

(g) At conclusion of items (a) through (f), the applicant shall be afforded an opportunity for a closing statement.

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/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.

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 technical 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 as designated by the Secretary or Board Attorney and shall 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. When animations, fly-throughs, or visualizations are presented during testimony the Secretary shall obtain a copy of the electronic file from the applicant.

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 that it is entitled to the relief sought.

Rule 2:7. Dismissal of Actions

2:7-1. Voluntary. Any applicant may at any time before the commencement of hearing, voluntarily withdraw its 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/her/its 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 any rule, the Board may dismiss the application.

2:7-4. **Preliminary Reports.** (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) 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 motion or 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.

**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. 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/her/its 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.

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 borough 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 MP ZBR 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. Disqualification of Members of the Board

2:10-1. Disqualification. (a) any member of the Board shall disqualify him/herself from sitting on the hearing of any matter in which he/she has a disqualifying interest, such as, but not limited to, the following situations:

1. Where he/she owns property located within 200 feet of the property affected by the action, or lives in a house, dwelling unit, condominium, or apartment 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, wife, or civil union partner of any person so related.

3. Where the applicant or his/her 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/she has any other personal or pecuniary interest in the proceeding.

(b) Any member so disqualifying him/herself 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 him/herself, 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 the 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/her expense.

Rule 2:12. Moot Questions: Advisory Opinions

2:12-1. Prohibition. (a) The Board shall not hear an action based upon and presenting a question which is moot, or becomes moot, or hypothetical or render any decision in such an action.

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

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, 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 or her 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 a transcript of testimony it believes may be perjurious to the County Prosecutor for investigation.

PART III
MISCELLANEOUS PROVISIONS

Rule 3:1. Relaxation of Rules

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 persons 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/herself from meetings of the Board, without just cause, for a period deemed detrimental to the conduct of Board business, the Chairperson may recommend to the governing body of the borough 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 provisions of N.J.S. 40A:9-12.1(g) any Board member who, without being excused by the Chairperson, 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 Chairperson 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 failure to attend and participate which are not due to legitimate illness.

Rule 3:5. Citation of Rules

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

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.

**Rule 3:7. Effective Date**

3:7-1. Effective Date. These rules take effect upon adoption and supersede any prior rules of the Board.

Last version adopted: December 18, 1990
This version adopted: October 26, 2020