

**RULES OF PROCEDURE
FOR THE
CITY OF OCEAN CITY
NEW JERSEY
ZONING BOARD OF ADJUSTMENT**

Note: For internal Ocean City Zoning Board of Adjustment use only. This document is not intended for legal guidance or advice.

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Organization, Officers, General Provisions

RULE 1:1

Organization, Officers, General Provisions

1:1-1 Title of the Board.

The Title of the Board shall be “The Zoning Board of Adjustment of Ocean City, New Jersey.”

1:1-2 Annual Meeting; Officers.

The annual meeting of the Board shall be held on the third Wednesday of January each year, at which time the Board shall elect, from among its’ members, a Chairperson and a Vice-Chairperson. The Board shall also appoint a Secretary, and a Board Attorney, all of whom shall serve for one year and until their successors have been appointed. The Board may appoint such other officers and assistants and employ such experts or staff as it may deem necessary, pursuant to N.J.S.A. 40:55D-71. Only the Chairperson and Vice-Chairperson must be members of the Board.

1:1-3 Chairperson.

The Chairperson, subject to these rules, shall decide all points of order and matters of procedure governing the meetings, unless otherwise directed by a majority of the Board in session at the time. She/he shall have, subject to these rules and the governing statutes, all the powers and perform all the duties normally pertaining to the office. He/she or his/her designee shall swear all testifying witnesses giving testimony before the Board.

1:1-4 Vice-Chairperson.

The Vice-Chairperson shall preside at all Board meetings and hearings in the absence of the Chairperson.

1:1-5 Secretary.

- (a) Subject to these rules, and under the direction of the Chairperson, the Secretary shall conduct all official correspondence, compile the required records, maintain and keep in order the necessary files and indices, and generally perform the secretarial work of the Board. He/she may assign such parts of his/her duties to the Assistant Secretary, if such there be, and he/she or his/her assistant, shall notify the Municipal Clerk and the Officer charged with enforcement of the Zoning Ordinance of all meetings of the Board and shall provide them with a list of the matters scheduled for hearing at each meeting. He/she shall give all notices of meetings required to be given by the Open Public Meetings Law, the Municipal Land Use Law or any other applicable law or ordinance.
- (b) The Secretary (or his/her designate) shall attend all meetings of the Board and shall have the care and custody of all records, documents, maps, plans and papers of the Board, for the care and custody of which no other provision is made by statute. When the “yeas” and “nays” are taken, he/she shall call the roll call, with the Vice-Chairperson voting first and then in the order of decreasing Board seniority, and the Chairperson shall be called last.
- (c) He/she shall make a record of, and keep on file, the minutes of the proceedings at each meeting or hearing held by the Board and shall enter therein with the other proceedings, such resolutions and orders as are adopted and a copy of the minutes of that meeting.
- (d) He/she shall publish the notice and serve copies of the Board’s resolution as provided in Rule 2:8-5.

RULE 1:2
Meetings

1:2-1 Regular Meetings.

The regular meetings of the Board shall be held at the Municipal Building, Ocean City, New Jersey, or any other appropriate pre-determined and appropriately noticed Ocean City municipal site at 7:00 p.m. on the third and/or fourth Wednesday of each month and shall be held as scheduled unless a lack of applications should result in a vacant agenda, in which case the meeting may be cancelled. If the regular meeting day falls on a legal holiday, the meeting shall be held on the next secular day. A second monthly meeting, to be held on the fourth Wednesday of specific months to be determined at the first meeting of the year will also be included in the Board schedule. The Secretary shall annually furnish a copy of the regular meeting dates of the year, to include the aforementioned second monthly meeting dates, to the news media designated by the municipal governing body in accordance with the Open Public Meetings Law, N.J.S.A. 10:4-6 et seq.

1:2-2 Special Meetings.

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

1:2-3 Meetings Open to the Public.

All meetings shall be open to the public, except executive sessions as authorized by N.J.S.A. 40:55D-9b and N.J.S.A. 10:4-6 et eq.

1:2-4 Order of Business.

The order of business at all meetings shall be as follows: (Note: this sequence may be changed at the discretions of the Chairperson or Vice-Chairperson in his/her absence.)

- (a) Open Meeting to the Public
- (b) Flag Salute (Pledge of Allegiance)
- (c) Roll call
- (d) Approval of minutes of previous meeting
- (e) Voting on any open resolutions
- (f) Hearing of Scheduled Applications
- (g) Motions for adjournment of scheduled cases and other motions
- (h) Calendar of unfinished business
- (i) Communications
- (j) Adjournment

Note: the sequence of these items may be changed at the beginning of each year as pre-determined by the incoming Chairman.

RULE 1:3
Quorum and Voting

1:3-1 Quorum.

At all meetings of the Board a quorum for the conducting of business shall consist of four members. In the absence of a quorum, the members present may adjourn the meeting and the hearing upon motion or application to another date.

RULE 1:4
Alternate Members

1:4-1 Designation.

The two alternate members of this Board appointed by the Governing Body shall be designated by the appointing authority as "Alternate No. 1" and "Alternate No. 2," respectively, and each alternate shall retain said designation during the term for which he/she is appointed.

1:4-2 Appointment of Alternate to Serve on Case.

During the absence, recusal, or disqualification of any regular member, the Chairperson shall appoint one of the alternate members to serve in the place of said regular member. The alternate member shall be designated to serve in place of the regular member only with respect to such case.

1:4-3 Alternate to Serve Until Final Disposition.

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

1:4-4 Alternate No. 1 to Vote.

In the event that a choice must be made as to which of the two alternate members is to vote, Alternate No. 1 shall vote.

1:4-5 Alternate Not to Serve at Adjourned or Continued Hearing Unless present at Prior Hearing.

When a regular member has been present and has participated in the first hearing on any matter, no alternate member shall be designated to serve during the absence of such regular member during any adjourned or continued hearing or hearings in the same matter unless said alternate member was present at such first hearing or any other prior adjourned or continued hearing on such matter.

1:4-6 Rights and Privileges.

An alternate member who has been designated to serve in the place of an absent, recused, or disqualified regular member shall, during the period of his/her 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.

1:4-7 Participation in Discussions; Voting.

Alternate members may participate in discussions of the proceedings, but may not vote except in the absence, recusal, or disqualification of a regular member (as indicated in Article 1:4-2), 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 of the two alternate members is to vote, Alternate No. 1 shall vote.

RULE 2:1

Commencement of Action; Service and Filing of Papers

2:1-1 Commencement of Action.

- (a) **Appeals of Decision by Officials.** 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 21 copies of a notice of appeal, (Part I in the Application to the Zoning Board of Adjustment) in accordance with the provisions of the statute within 20 days from the date of the order, decision or refusal appealed from, which the officer from whom the appeal is taken and shall specify the grounds of such appeal. Said officer shall immediately transmit to the Board Secretary all papers constituting the record upon which the action appealed from was taken and the Board Secretary shall proceed to place the matter on the calendar in accordance with the provisions of Rule 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 one (1) original and 20 copies of an application (Part II in the Application to the Zoning Board of Adjustment) with the Secretary of the Board of Adjustment along with the fee required by ordinance.
- (c) **Other Requirements.**
1. Every application must be signed by the owner of the lands and premises so affected, or by his/her 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. Any maps or documents for which approval is sought at a public hearing shall be on file and available for public inspection at least 10 days before the date of the hearing during normal business hours in the Planning Office. 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, a copy of which is given to the applicant.
 3. One photograph of the subject premises shall be submitted with every application.
 4. The application form shall be filled out completely and, where necessary, supplemented by additional information in order to make it clear to the Board what relief is being sought. No action shall be considered complete until all applicable requirements of Rule 2:1-1 have been complied with. For the assistance of the applicant, the Board's Secretary may render such other assistance to the applicant as may be practical.
 5. 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.A. 40:55D-70d, the applicant may submit at the time of filing his/her application for a variance, an application for site plan review or subdivision approval, prepared in accordance with all applicable ordinance requirements and regulations of the Planning Board of the City of Ocean City, New Jersey together with fees and deposits in the amount which would have been charged by the Planning Board in connection with the submission of a similar site plan review application.
 6. 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 Ocean City, New Jersey, Zoning and Land Development Ordinance 88-27 as amended.

7. 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 Rule 2:4-2.
8. A corporation or partnership applying for relief from this Board which involves subdivision 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 interest in the partnership as the case may be, in accordance with the requirements of N.J.S.A. 40:55D-48.1. If a corporation or partnership owns 10% or more of the stock of a corporation, or 10% or greater interest in a partnership, subject to disclosure pursuant to N.J.S.A. 40:55D-48.1, that corporation or partnership shall list the names and addresses of its stockholders holding 10% or more of its stock or of 10% or greater interest in the partnership, as the case may be; and this requirement shall be followed by every corporate stockholder or partner in a partnership, until the names and addresses of the non-corporate stockholders and individual partners exceeding the 10% ownership criterion established in this act have been listed in accordance with the requirements of N.J.S.A. 40:55D-48.2.
9. Applicant shall file informational copy of his/her application with the Environmental Commission and the Historic Preservation Commission and the proof of such filings with the Secretary of the Zoning Board of Adjustment.

(d) **Fees.** Fees established by ordinance shall be paid simultaneously with the filing of an application.

1. In accordance with the provisions of the Ocean City, New Jersey, Zoning and Land Use Development Ordinance 88-27 as amended, an applicant, in connection with an application involving site plan or subdivision approval, shall pay deposits to cover special expenses incurred by the Board for the rendering of services in its Planning Consultant, Engineer, Attorney, and other experts in the amount set forth in said ordinance.
2. In addition to the fees herein above specified, the applicant shall submit proof that no taxes or assessments for local improvements are due or delinquent on the property for which application is made, in accordance with the provisions of N.J.S.A. 40:55D-65(h) and the Ocean City, New Jersey Zoning and Land Development Ordinance 88-27 as amended.

2:1-2 Certification of Completeness.

The Committee or other authorized designees of the Board 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 are requested, the application shall be deemed complete and the applicant shall be notified. If waivers are requested as to any items the Board shall, at its next ensuing regular or special meeting held not later than 45 days from the date of submission of such application, decide whether to grant or deny the waiver or waivers requested and applicant shall be notified promptly. If an application is neither found to be complete nor found to be incomplete and the applicant was notified of the deficiencies with 45 days from the date of filing, the application shall be deemed to be complete as of the 45th days following the date of submission.

2:1-3 Copies to Zoning Officer, Attorney, etc.; Filing.

One copy of every application shall be forwarded by the Secretary to the Zoning Officer, one copy to the Board's Attorney and one copy to the Environmental Commission. (note: Required by N.J.S.A. 40:55D-27 if Environmental Commission has filed an index of the natural resources of the municipality with the Board of Adjustment). The Secretary shall also give notice to the Zoning Officer and Attorney of the time set for the hearing on the application. The original copy of the application shall be filed in the case docket for the Board.

2:1-4 Docket Number.

The Secretary shall assign to each new action a docket number, which shall thereafter appear on all subsequent papers filed in the case.

**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 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.A. 40:55D-70(d) may either simultaneously file an application for any required site plan or subdivision approval or 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.

All provisions of N.J.S.A. 40:55D-11 through N.J.S.A. 40:55D-15 shall be strictly adhered to. Pursuant to N.J.S.A. 40:55D-11, N.J.S.A. 40:55D-13 and N.J.S.A. 40:55D-15 notice shall be given by the Secretary of the Board. All other notice required by N.J.S.A. 40:55D-11 and N.J.S.A. 40:55D-12 shall be given by the applicant at his/her expense.

Public notice of a hearing shall, in accordance with N.J.S.A. 40:55D-12, be given for Appeal of Determinations of Administrative Officers pursuant to N.J.S.A. 40:55D-70a and for requests for interpretation pursuant to N.J.S.A. 40:55D-70b.

Notice shall be given to all persons and officials entitled thereto by the requirements to N.J.S.A. 40:55D-12.

In addition to the above, all notices shall comply with 25-900.7 of the Revised General Ordinances, City of Ocean City, Vol. II.

2:3-2 Notice; Form.

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

2:3-3 List of Owners Supplied by Tax Assessor.

Where the Tax Assessor of the municipality has furnished applicant with a list of property owners entitled to notice pursuant to the provisions of N.J.S.A. 40:55D- 12(c), a copy of the official certification and list shall be annexed to applicant's proof of service.

2:3-4 Proof of Service.

The service and publication of notices as herein above provided is a jurisdictional requirement. Proof of the service and publication of all required notices in accordance with these Rules shall be made by affidavit of the person or persons who actually served or mailed said notices as required by law and by the authorized official of the newspaper which published same.

RULE 2:4 Appeals

2:4-1 Form.

Every appeal shall be filed in triplicate on the appropriate form provided to the applicant by the Board's Secretary and which is set form as Form No. I in the Appendix of these Rules.

2:4-2 By Whom Filed.

Every appeal must be signed by the owner of the lands and premises so affected, or by his/her 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.

RULE 2:5 Hearings

2:5-1 Appearances.

At the hearing upon the application, the applicant or any other party shall appear in person, or may be represented by an Attorney-at-Law of New Jersey. Every corporation shall be represented by an Attorney-at-Law of New Jersey.

2:5-2 Oath.

At the hearing, the applicant (if testifying) and all testifying witnesses shall be sworn by the Chairperson or his/her designee before giving testimony.

2:5-3 Order of Presentation.

- (a) When the hearing is called to order, the Chairperson or the Secretary shall state the name and docket number of the application.
- (b) The applicant and/or representative shall then indicate the relief sought and present, by his/her testimony and the testimony of his/her witnesses, or by such documentary evidence or exhibits as he/she may submit, proof of all facts upon which he/she relies to establish his/her right to such relief sought in this application.

- (c) Any other persons interested in the action shall then be heard and may present any relevant testimony or evidence in support of the application.
- (d) Any other persons interested in the action shall then be heard and may present any relevant testimony or evidence tending to show the relief sought by the applicant should not be granted.
- (e) Rebuttal testimony or evidence shall then be admitted in such order as the Chairperson shall designate.
- (f) All witnesses may be cross-examined by any member of the Board and/or the Board Attorney.

2:5-4 Examination of Board; Testimony.

The application 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 as ascertained from a viewing of the premises in question and the general area.

2:5-5 Closing of Hearing; Continuation.

- (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 the 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 the rendering a just decision, the Board may, on its own motion, continue the hearing to another day certain for such purposes.

**RULE 2:6
Evidence**

2:6-1 Competent Evidence.

Although formal rules of evidence are not enforced before the Board, every fact indispensably necessary to establish the applicant's right to the relief sought shall be based upon the consideration of any facts or matters which are in the record, unless they be such as to which the Board is entitled to take judicial notice. The Board may limit irrelevant, immaterial or redundant testimony.

2:6-2 Documents and Exhibits.

When any papers, documents or exhibits are admitted into evidence during a hearing they shall be marked by the Secretary and/or Board Attorney and may be retained by the Board until the termination of the matter, at which time they shall be returned by the Secretary to the person who offered them.

2:6-3 Judicial Notice.

The Board may take judicial notice of the provisions of any ordinance of the municipality, any public statute of the State of New Jersey and any officially reported judicial decision.

2:6-4 Burden of Proof.

It is the applicant's responsibility to supply competent and credible evidence to apprise the Board of the nature and degree of the zoning burden sought to be alleviated and to demonstrate that a proposed use will not impair the zone plan or be inconsistent with the purpose of zoning, and the burden of proof remains upon the applicant at all times.

**RULE 2:7
Dismissal of Actions**

2:7-1 Voluntary.

Any applicant may at any time before the commencement of hearing, voluntarily withdraw his/her 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 with the provisions of Rule 2:2, the Board shall, and for failure to comply with any other rule, the Board may dismiss the application.

2:7-3 Infraction of Rules.

For failure to comply with the provisions of Rule 2:2, the Board shall, and for failure to comply with any other rule, the Board may dismiss the application.

2:7-4 Preliminary Reports.

- (a) In any case where, prior to consideration of any appeal or application by the Board, a report or recommendation is required by the terms of the Zoning Ordinance of the City of Ocean City, to be made to the Board by the Planning Board or other public agency, such report shall have been received at least ten days prior to the time within which the Board must render its decision pursuant to Rule 2:8-1; otherwise, the appeal or application shall be dismissed without prejudice unless the applicant consents in writing to an extension of time.
- (b) The Board may, at any time, request a written report on any particular matter from any officer, board or agency in connection with a pending case provided, however, that a copy of such report shall be made available to the applicant who shall, if requested, have an opportunity to question the maker of such report as to any fact or conclusion therein contained.
- (c) The Board may arrange to take the testimony of any expert witness employed by it.

2:7-5 Transfer of Actions.

Whenever an application is filed with the Zoning Board of Adjustment, which pursuant to the provisions of the Municipal Land Use Law ought to have been filed with the Planning Board, the Zoning Board of Adjustment may, by resolution, cause said application to be transferred to the Planning Board at the Planning Board's earliest open schedule, making public announcement of the time and place thereof at the meeting and causing notice of its action to be published as in all other cases. Likewise, the Planning Board may cause appropriate applications to be transferred from it to this Board. In case of such transferred actions, the Board of Adjustment shall examine the application and notices given by applicant and, if same are in proper form, shall proceed to hear the application as if it had been filed with this Board in the first instance.

RULE 2:8 Decision; Resolution of Board

2:8-1 Time.

The Board of Adjustment shall render a decision not later than 120 days after the date:

- (1) An appeal is taken from the decision of the Administrative Officer, or
- (2) Of the certification of completeness of an application to the Board, unless the applicant has consented in writing or on the record, to an extension of time. Failure of the Board to render a decision within such 120 day period or within such 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 written resolution containing findings and conclusions which shall be adopted on the date of the meeting at which the Board granted or denied approval. If the meeting at which such action was taken occurs within the final 45 days of the applicable time period for rendering a decision on the application, within 45 days of such meeting with the adoption of a resolution of memorialization setting forth the decision and findings and conclusion of the Board shall be issued. An action resulting from failure of a motion to approve an application shall likewise be memorialized by resolution regardless of the time at which such action occurs within the 120 day time period for rendering decision. Whenever a resolution of memorialization is adopted in accordance with the provisions of N.J.S.A. 40:55D-10, the date of such adoption shall constitute the date of 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/her attorney within 10 days from the date of adoption thereof. A copy of the resolution shall also be made available to any person who has filed a completed OPRA (Open Public Records Act) request to the City Clerk and has paid the appropriate fees.

2:8-3 Relief Granted.

Where an applicant has demonstrated his/her 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 the 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 municipality in accordance with the provisions of N.J.S.A. 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.A. 40:55D-10h.

RULE 2:9 Motions

2:9-1 Rehearing.

Any applicant or other interested person may, within 20 days after 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 therefore and the grounds relied upon. If the petition is granted, the Board shall fix a date for hearing and the movant shall give notice of such hearing in the same form and manner as required by Rule 2:3 in the case of original petitions. The Board, on its own motion, may in a proper case similarly order all parties in interest to show cause at a time and place fixed in the notice why the terms or provisions of any variance ought not to be vacated or modified.

RULE 2:10 Qualification and Disqualification of Members of the Board

2:10-1 Qualification to Act.

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

2:10-2 Disqualification of Member.

- (a) Any member of the Board of Adjustment shall disqualify him/herself from sitting in the hearing of any 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.
 2. Where the applicant is related within the third degree of consanguinity to the member by blood or is the husband or wife of any person so related.
 3. Where the applicant or his/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.

Any member so disqualifying him/herself shall not sit with the Board for participation in any executive session or conference during the hearing or determination of the case in question.

- (b) 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 provisions of N.J.S.A. 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.

2:11-2 Notes by Secretary.

The Board's Secretary or other designated person, shall take notes of all testimony, and shall, as soon as possible after the hearing, prepare copies of the minutes thereof for distribution to the members of the Board. If a transcript of the testimony has been filed with the Board, such transcript shall be filed in the case docket.

2:11-3 Videorecording, photographing, recording.

Members of the public have a general right to videotape portions of an open public meeting, excluding closed or executive sessions.

To minimize the possibility to disrupting the public meeting, any member of the public (a “citizen”) who wishes to videotape, photograph, or record portions or in its entirety must do so in accordance with the following guidelines:

- (a) The citizen is encouraged to provide the Board Secretary or such designees, at least 24 hours prior to hearing of their intention to exercise their right to videotape or photograph the meeting.
- (b) The citizen must complete their setup of equipment no less than 10 minutes prior to the official start of the hearing. As to location, the same recording equipment may only be setup by the citizen in the rear of the meeting room and as to not block or impede any form of egress, the aisle(s) and/or row(s) and allow for free flow for all other public that may be in attendance.
- (c) The recording equipment must be battery operated, compact, quiet and generally unobtrusive. No more than one videotape recorder or still camera setup per citizen. No added lighting may be used. No citizen is permitted to use any equipment that makes any beeping sounds or other noises or flashes of light. Should beeping sounds, other sounds or flashes of light emanate from the equipment at any time during the public meeting the citizen shall be required to cease videotaping, recording, and/or taking photographs immediately.
- (d) The citizen may not disrupt the public meeting with the equipment. The citizen shall not set up or use videotape or recording equipment in such a way to block or obstruct view of other members of the public. The citizen may not continually exit and re-enter the meeting room or continuously move around within the room during the meeting. The citizen must remain within close proximity of the recording equipment at all times except if the citizen is making a comment during the public comment portion of the hearing. The citizen may not “narrate” the proceeding or speak into any videotape recorder or microphone. The citizen may not engage in any verbal conversation or discourse or comment unless the citizen is making a formal comment in their turn during any public comment portion of the public meeting.
- (e) If the citizen chooses to cease video/audio recording or taking photographs at any time during the public meeting they may do so provided the equipment shall not be removed and/or disassembled, except for hand held equipment, until there is a break of at least five minutes or until the public meeting has concluded.
- (f) The chairperson or such designee may direct that the videotaping, photography, or audio recording cease or be brought into compliance with the regulations at any time they determine the equipment or operator is distracting or disrupting the proceedings or is otherwise in violation of the regulations set forth herein.
- (g) The videotape recording(s) or audio recording taken by any member of the public shall not be represented as an official transcript on any manner and/or for any purpose. The video and/or audio recording taken by the citizen does not constitute an official recording of the hearing/meeting.

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 a prohibition to 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 hand of its Chairperson or Vice-Chairperson and Secretary or Assistant Secretary, as the case may be, may compel the attendance and testimony of witnesses, and the production of books, papers, documents or tangible things related to any matter or subject within the Board's power of inquiry. The issuance of a subpoena may be requested by the applicant or any other interested person.

2:13-2 Service.

Any such person subpoenaed 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 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/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.A. 2A:67-1 et seq.) , be guilty of perjury.

The Board shall submit transcript of testimony it believes may be perjurious to the County Prosecutor for investigation.

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 interested in the action” or the like, such term refers to any “interested party” as defined in N.J.S.A. 40:55D-4.

RULE 3:3
Applicable 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.A. 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 absence him/herself from meetings of the Board, without just cause, for a period deemed detrimental to the conduct of Board business, the Board may recommend to the City Council of the City of Ocean City in writing that such member be removed in accordance with the provisions of N.J.S.A. 40:55D-69.

RULE 3:5
Citation of Rules and Decisions

3:5-1 Citation.

- (a) Any correspondence/communications referencing these rules shall be cited as “ZBR 1:1-1” etc. indicating that the rule is a Zoning Board Rule.
- (b) Decisions of the Board of Adjustment shall be cited as “Matter of x,” x being the name of the principal applicant.

**RULE 3:6
Amendments**

3:6-1 Amendments.

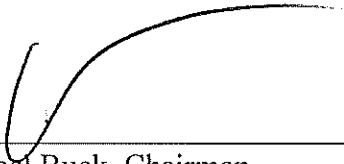
Amendments to these rules may be made by the Board at any regular meeting, provided notice of such amendment has been given in writing to each member of the Board at least three days prior to such meeting. In no case, however, shall any rule as amended be applicable to any action commenced prior to the adoption of such amendment where the application thereof to such action would result in surprise, hardship or injustice to the petitioner or other interested persons.

**RULE 3:7
Duration**

3:7-1 Duration.

These rules shall remain in effect until such time, as the Zoning Board of Adjustment should deem it necessary to amend or change such rules.

- (a) These rules were duly adopted by the Zoning Board of Adjustment of the City of Ocean City at their regular meeting of this 19th day of March, 2025.



Michael Buck, Chairman



Jaima Felker, Secretary

