

RULES OF THE BOARD OF ADJUSTMENT
TOWNSHIP OF BRANCBURG- 2018

PART I-ADMINISTRATION

RULE 1:1 ORGANIZATION, OFFICERS, and GENERAL PROVISIONS

1:1-1 TITLE OF THE BOARD:

The Title of the Board shall be: "The Board of Adjustment of Branchburg Township."

1:1-2 REORGANIZATION AND ANNUAL MEETING: OFFICERS:

The annual Reorganization meeting of the Board shall be the first meeting of each year, at which time the Board shall elect from among its members a Chairperson, a Vice-Chairperson and a Secretary. The Board shall also appoint a Board Attorney, a Board Planner, and a Board Engineer. The elective and appointive terms will be a period of one (1) year and until a successor is elected or appointed. The Board may appoint such other officers and/or assistants as it may deem necessary. Only the Chairperson and Vice-Chairperson must be members of the Board.

1:1-3 CHAIRPERSON:

The Chairperson shall be one of the Class IV members and, subject to these rules and Roberts Rules of Order, shall decide all points of order and matters of procedure governing the meetings. He or she shall have, subject to these rules and governing statutes, all the powers and perform all the duties normally appertaining to this office.

1:1-4 VICE-CHAIRPERSON:

The Vice-Chairperson shall be one of the Class IV members and shall preside (acting as Chairperson) 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 containing all resolutions adopted by the Board, and generally perform the secretarial work of the Board. The Secretary may assign such parts of his/her duties as he/she may decide to the Land Use Secretary, an employee of the Township, and he/she or the Land Use Secretary, shall notify the Township Clerk, the Township Administrator, and the Officer charged with enforcement of the Township's Land Development Ordinances of all meetings of the Board and shall provide them with a list of the matters scheduled for hearing at each meeting.

(B) The Secretary or Land Use Secretary shall keep the minutes of every regular or special meeting and shall include the names of the person(s) appearing and addressing the Board,

the names of person(s) appearing by attorney, and the actions taken by the Board.

(C) The Secretary or Land Use Secretary shall attend all meetings of the Board and shall have the care and custody of all records, documents, maps, plans and papers of the Board, for the care and custody of which no other provision is made by statute. When the "yeas" and "nays" are taken, he/she shall call the roll of eligible voters, as directed by the Chairperson.

(D) He/she shall make record of, and prepare each month 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 every report, petition and other paper presented.

(E) At the regularly scheduled meeting, he/she shall transmit to each member of the Board, a true copy of the minutes of the preceding public meeting and hearing. He/she shall issue notices of meetings and shall perform such other duties as usually appertain to his/her office.

RULE 1:2 MEETINGS:

The regular meetings of the Board shall be held at the Branchburg Township Municipal Building, at 7:30p.m. on the first Tuesday and third Wednesday of each month and on other dates determined at the Reorganization meeting, in accordance with the published Schedule of regular meetings.

If the regular meeting day falls on a legal holiday, the meeting shall be held on the next succeeding secular day unless rescheduled by the Board. Meetings are governed by Roberts Rules of Order. When there are no matters to be considered at any regular meeting, other than the Reorganization meeting, the Chairperson may dispense with such meeting by notifying each member of the Board at least 48 hours in advance of the time set for such meeting and by giving notice in accordance with the Open Public Meetings Act, (N.J.S.A. 10:4-6 et seq.) except such requirement, shall not apply in the event of emergency or the necessity to cancel or reschedule due to inclement weather or other emergency condition at his/her discretion.

1:2-1 SPECIAL MEETINGS:

Meetings may be called by the Chairperson, or in his/her absence by the Vice-Chairperson, at any time or upon the written request of two (2) members, provided notice thereof be mailed or given to each member of the Board at least three (3) days prior thereto and provisions of the Open Public Meetings Act are adhered to.

1:2-2 MEETINGS OPEN TO PUBLIC:

Except as hereinafter provided in this section, all meetings shall be open to the public. The public may be excluded only from that portion of a meeting at which the Board discusses matters falling within the exceptions enumerated in the Open Public Meetings Act (the "OPMA") or as otherwise provided by law. However, prior to said exclusion, the Board shall adopt a resolution stating the general nature of the subject to be discussed and when the results of the discussion will be disclosed to the public. Any action calling for a formal vote shall take place only at a

public meeting.

1:2-3 AGENDA AND NOTICE:

Copies of the agenda shall be made available to the public at least twenty-four (24) hours in advance of the meeting. The Secretary or Land Use Secretary shall provide for written notice of all meetings at least forty-eight (48) hours in advance of said meeting giving the time, date, location and agenda, to the extent known, and whether formal action will be taken. Said notice shall be:

- 1) Prominently posted by the Secretary or Land Use Secretary in at least one (1) public place reserved for such announcements by the Township Committee;
- 2) Mailed to the designated official newspaper(s);
- 3) Filed with the Township Clerk of Branchburg Township; and
- 4) Sent to those requesting individual notice and paying the required fee. 1:2-4

ORDER OF BUSINESS:

At the commencement of all meetings, the Chairperson shall announce that adequate notice of the meeting has been given, or, if not, the reasons therefor. The order of business at all meetings shall, unless altered by the Chairperson, be as follows:

- 1) Call to Order
- 2) Sunshine Notice
- 3) Salute to the Flag
- 4) Roll Call
- 5) Approvals of Minutes
- 6) Approvals of Resolutions
- 7) Adjourned Applications
- 8) New application hearings
- 9) Other business
- 10) Communication(s)
- 11) Approval of claims
- 12) Open to the public
- 13) Open to professionals
- 14) Open to Board Members
- 15) Executive Session (if applicable)
- 16) Adjournment.

RULE 1:3 QUORUM AND VOTING

1:3-1 QUORUM:

At all meetings of the Board, a quorum for the conduct of business shall consist of four (4) members. A case involving "d" variance relief, however, cannot be heard unless at least five (5) eligible members are present. In the absence of a quorum, and/or the required minimum number of eligible members to hear the case, the members present may adjourn the meeting and/or the hearing on any motion or application, to another date.

1:3-2 VOTING:

Other than variances granted pursuant to N.J.S.A. 40:55D-70(d), in all actions or matters in which the Board acts by virtue of the powers conferred upon it by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., (the "MLUL"), once a quorum is achieved, a vote of a majority of the members present shall be required to take action. In the case of an application for variance relief pursuant to N.J.S.A. 40:55D-70(d), five (5) affirmative votes are required to grant such relief. When a member, for reason of interest of otherwise, is disqualified from voting; or for any reason declines or abstains from voting, such abstention, disqualification or declination shall not be counted as a vote either in favor or against the proposal; but while abstention, or declination shall not affect the count for determining whether there is a quorum, any member disqualified from participation or voting on a matter shall not be counted in the quorum for that matter.

1:3-3 EMPLOYMENT OF EXPERTS:

The Board may employ experts, professionals, and staff, including an attorney, planner, engineer, and secretary referred to in Rule 1:1-2, and pay for their services and for such other expenses as may be necessary and proper, not exceeding in all, the amount appropriated by the Township Committee or the amount charged to an applicant for such services pursuant to the provision for Professional Review Fees and Escrows in the Land Development Ordinance and the MLUL.

RULE 1:4 SPECIAL COMMITTEES:

1:4-1 Special committees may be appointed by the Chairperson for purposes and terms which the Board approves.

PART II-APPLICATIONS AND HEARINGS

RULE 2:1 COMMENCEMENT OF ACTION

2:1-1 FILING:

An application over which the Board of Adjustment has jurisdiction shall be commenced by filing an original application, in accordance with the Land Development Ordinances of the Township and complying with all check-list requirements (except as may be waived by the Board).

2:1-2 FILING REQUIREMENTS; INFORMAL REVIEW:

(A) The failure of the applicant to comply with instructions of the Board, checklists, and ordinances will result in the application being deemed incomplete and will delay the hearing of same. All statutory time periods for action by the Board commence to run only upon the filing of a complete application, determined to be administratively complete in that it satisfies all checklist requirements, or if one or more checklist waivers is required, determined by the Board to have become complete by virtue of its granting such waivers. All applications shall be filed on the forms provided by the Township.

(B) At the request of the applicant, the Board may grant an informal review of a conceptual plan for development, giving due regard to avoidance of variance issues. Neither party shall be bound by the results of such a review.

2:1-3 ASSIGNMENT OF CASE NUMBERS:

Complete and Incomplete Applications.

(A) Upon receipt of an application by the Municipal Land Use Officer, the application shall be assigned a case number, block number and lot number, which shall, thereafter, appear on all subsequent papers filed in the case. All submissions shall be accompanied by a cover or transmittal letter explaining the contents. The original copy of the application, together with a copy of all other documents filed with the application, shall be filed in the case file of the Board.

(B) In order to facilitate the orderly submission and distribution of plans and revisions, all materials and information at every step of the application and approval process shall be submitted to the Municipal Land Use Officer.

(C) Subject to compliance with any differing provisions of the MLUL and applicable case law, the Municipal Land Use Officer will review the application for completeness and the following shall apply: In the event the application is found to be incomplete, the applicant shall be notified within 45 days of the filing of such application. Such notification shall be in writing which shall set forth the reasons that the application has been found to be incomplete. If the application is found to be complete, the Municipal Land Use Officer shall issue a certificate to the applicant that the application is administratively complete, and the application shall be determined to be complete as of the day it was so certified for the purposes of commencement of time periods for action by the Board.

(D) The applicant may request a waiver from requirements of the check-list at the time of application. Such requests shall be in writing, specifying each item for which a waiver is requested and justification for the request. The Board Engineer will review the requests and issue a report recommending approval or denial. The approval or denial of a waiver request shall be within the purview of the Board. Under these circumstances-- the application being complete except for those items as to which waivers are sought-- the Municipal Land Use Officer shall issue the letter finding of incompleteness identifying those items as to which waivers are requested and the determination of completeness shall abide the decision of the Board.

2:1-4 ASSIGNMENT OF HEARING DATE NOTICE:

Once an application filed with the Board in accordance with the appropriate ordinances, these Rules and the Board's "Instructions", is deemed "complete", the case shall be assigned a hearing date, with public notices, if required, in accordance with the MLUL, and the applicant shall be notified as set forth in the Board's "Instructions". If the public notice given is deemed inadequate at the time of the hearing, the Board will not proceed due to lack of jurisdiction. Any maps and/or documents for which approval is sought shall be on file and available for public inspection at least ten calendar days before the date of the hearing during normal business hours of the Board. A minimum of 15 days or a longer lead time may be required by the Board for amended maps, plans or other documents where additional pre-hearing review is likely to be needed.

2:1-5 APPLICANT'S REQUEST TO CANCEL:

(A) If an applicant requests to cancel their scheduled hearing, the Board will reschedule the hearing and the hearing will be carried with public notice required, unless otherwise indicated by the Board. The Board's time for decision shall be correspondingly extended.

(B) If an applicant cancels two consecutive hearings, the Board will reschedule the applicant to the next available hearing with mandatory notice.

(C) The Board reserves the right to review multiple requests for cancellations and respond appropriately, including potential dismissal without prejudice for failure to prosecute.

RULE 2:2 PROCEDURES FOR HEARING APPLICATIONS 2:2-1

APPEARANCE BY PARTIES:

At the time of the hearing on the application, the applicant, or any other party, shall appear in person; or such person may be represented by an attorney at law admitted to practice in the State of New Jersey. Every corporation or other business entity (unless a solo proprietorship) shall be represented by an attorney at law admitted to practice in the State of New Jersey. At the discretion of the Board, mandatory appearance for the hearing may be waived.

2:2-2 ORDER OF PRESENTATION:

When a case is called by the Chairperson, the following shall be the order of presentation:

ALL TESTIMONY SHALL BE UNDER OATH

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

(B) The applicant or his/her attorney shall then present his/her testimony and the testimony of the witnesses. The attorney shall also submit such documentary evidence or exhibits upon which they intend to rely in order to establish right to the relief sought in the application.

(C) Prior to opening the meeting to the public, and at the end of the testimony of each witness in support of the applicant, the Chairperson shall allow Board members and other interested parties to ask questions of the witness having just testified and may permit reasonable cross-examination by any objector.

(D) Where a group of interested parties are represented by an attorney, the attorney shall present to the Board Chairperson a list of the persons he/she represents, and such persons shall participate in the proceedings only through their attorney. Nothing herein shall limit the right of any interested party from making a statement for or against the application once all witnesses have testified but before the Board deliberates on the application.

(E) At the time the applicant has submitted all of their evidence in support of the application, any objector may then put in his/her case, calling any witnesses and introducing any documentary evidence upon which they rely in the objection to the application. Each such witness may be subject to reasonable cross-examination by the applicant or their attorney and Board members, and the Chairperson shall allow any members of the public to ask questions of such witnesses.

(F) After all of the evidence has been presented to the Board in support of or in opposition to the relief sought by the applicant, the Chairperson shall then open the meeting to the public subject to the provisions of Rule 2:2-2(D), to allow any member of the public to make any statement relative to the application before the Board.

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

(H) Any member of the Board may place information in the record 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.

(I) Applicant is to provide one rendered plan for display, unless waived by the Board.

2:2-3 CLOSING OF HEARING/CONTINUANCES:

When the applicant and all interested persons have had an opportunity to be heard, the Chairperson shall determine if the hearing shall be closed. The applicant, or any other interested person, may request from the Board a continuance of the hearing for the purpose of presenting further relevant evidence. The Board, acting in its sound discretion, may either grant or deny their request. In cases where the Board feels that testimony or other evidence should be received in the public interest from any municipal, county, or state official or from any other persons in order to assist the Board in rendering a just decision, the Board may, on its own motion, continue the hearing. To the extent permitted by law, and upon such conditions as it deems appropriate,

the Board, in its discretion, for just cause, may reopen a hearing after it has been closed. 2:2-4

EVIDENCE:

The formal rules of evidence are not enforced before the Board. However, no decision shall be based upon any facts not proved or on matters which are not in the record, unless they be such items of which the Board is entitled to take judicial notice. When any documents or exhibits are admitted into evidence during a hearing, they shall be marked and shall be retained by the Board as part of the Board's case file. After the Board has rendered its decision and the time for the filing of any appeal has expired without an appeal having been filed, and a Certificate of Completion or a Certificate of Occupancy has been issued (if one is required), the Board may return any such exhibits or documents to the person who offered them upon such person's request. In the absence of such request, they may be destroyed or discarded.

2:2-5 BURDEN OF PROOF:

The burden of proof is on the applicant, and it is the applicant's responsibility to supply competent and credible evidence in order that the Board might determine the appropriateness of the approval sought and the nature and degree of the relief sought by the applicant. The applicant must establish to the Board's satisfaction that he/she is, pursuant to statutory provisions, entitled to the relief being sought.

2:2-6 DISMISSAL WITHOUT PREJUDICE:

The Board, on its own motion, may dismiss any application, without prejudice, if neither the applicant nor anyone on their behalf appears at the time set for the hearing of said application. Further, the Board, on its own motion, may dismiss, without prejudice, any application for failure to comply with the provisions of the appropriate ordinance, these rules or for failure to comply with the instructions of the Board. Any applicant may, at any time before the commencement of the hearing, voluntarily withdraw an application, in which case, the application shall be deemed to be dismissed without prejudice.

2:2-7 REPORTS FROM OFFICERS, BOARDS OR AGENCIES:

The Board, on its own motion, may at any time request a written report on any particular matter from any officer, Board or agency in connection with the pending case, provided, however, that a copy of any such report shall be made available to the applicant. Should the Board request such a report, such action shall not automatically extend the period of time within which the Board shall act.

2:2-8 TESTIMONY FROM BOARD-RETAINED EXPERT WITNESSES:

The Board may, on its own motion, arrange to take the testimony of any expert witness retained by it.

2:2-9 MEETING ADJOURNMENT TIME:

Giving due regard for the number or completion of items on the Board's agenda, the Chairperson, at his or her discretion, may limit the time or length of any public hearing. The Chairperson's decision in this regard shall be final. No new cases will be heard after 10:00 p.m. and no testimony will be heard after 10:30p.m. The Board shall adjourn by 11:00 P.M., unless, and except for good cause shown, the Board may extend the time for adjournment.

2:2-10 NON-MATERIAL AMENDMENTS TO BOARD APPROVALS:

The Board Engineer shall have the power to render a decision on requests involving the following non-material engineering changes to plans subsequent to Board approval:

(A) Relocation of utilities due to field conditions.

(B) Amendments to grading and "as built" when the survey reflects a deviation of a structure's floor elevation of not more than twelve (12) inches from the approved plans so long as the basic intent of the approved plans, i.e., swales, minimum slopes, general grading and overall drainage pattern are maintained. Further, the final grade must represent an improvement over that which had been originally approved while maintaining overall grading and drainage relationship to contiguous lots, and not result in a change requiring new or different variance relief.

At the Board Engineer's discretion, he/she may refer any non-material engineering changes to the full Board for action at the next regular meeting.

PART III-REMOVAL OF MEMBER; AMENDMENTS

RULE 3:1 REMOVAL OF MEMBER; AMENDMENTS

3:1-1 GROUNDS RECOMMENDATION:

Whenever a member of this Board shall absent him/herself from three (3) consecutive meetings of the Board or a total of five (5) meetings of the Board during a period of twelve (12) consecutive months, such absence shall be deemed detrimental to the conduct of Board business and the Board may recommend to the Township Committee of the Township of Branchburg, in writing, that such member shall be removed.

RULE 3:2 AMENDMENTS

3:2-1 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 ten (10) 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 such application would result in surprise, hardship or injustice to the applicant or other interested persons.