



**ZONING BOARD OF ADJUSTMENT
BY-LAWS
Adopted on January 19, 2023**

1. ORGANIZATION & ADMINISTRATION

1.1. Annual Organization; Elections; Meetings.

- 1.1-1. Organization Meeting. At the first meeting of the Cherry Hill Township Zoning Board of Adjustment (Board) during the month of January in each year at 7:30 pm, the Board shall convene a meeting for the purpose of organizing the affairs of the Board for the calendar year. Such meeting shall be conducted in the presence of the Board Attorney who was appointed for and served through the preceding calendar year, and who shall serve *pro tem* until reappointment or replacement during said meeting until the election of the Chair. The Board shall not, however, conduct their Organization Meeting until after Township Council has conducted their annual Reorganization Meeting.
- 1.1-2. Election of Officers. At the Organization Meeting, the Board shall elect from its Regular members a Chair and Vice-Chair.
- 1.1-3. Board Attorney. The Board shall annually appoint or reappoint an Attorney-At-Law of the State of New Jersey having recognized competence in the law of local governments, land use, and zoning. The Board Attorney shall be compensated pursuant to agreement and shall be the legal advisor and representative of the Board. The Board Attorney shall prosecute and defend litigation and appeals on behalf of the Board.
- 1.1-4. Board Engineer. The Board shall appoint or reappoint a licensed Professional Engineer (P.E.) of the State of New Jersey, who shall review and report on the engineering aspects of applications and other matters pending before the Board at the direction of the Board, and who shall attend the meetings of the Board unless otherwise restricted.
- 1.1-5. Board Traffic Engineer. The Board may appoint or reappoint a licensed Professional Engineer (P.E.) or Professional Planner (P.P.) of the State of New Jersey, who shall review and report on the traffic circulation and related matters of applications and other matters pending before the Board at the direction of the Board, and who shall attend the meetings of the Board unless otherwise restricted.
- 1.1-6. Board Planner. A municipal planner, who is a licensed Professional Planner (P.P.) in the state of New Jersey, shall review and report on land use and all other matters of applications pending before the Board, and shall attend all Board meetings.

- 1.1-7. Other Assistance. The Board may also appoint or engage such other officers and/or assistants and engage such additional experts or staff as it may be necessary from time to time.

1.2. Election to Office & Duties.

- 1.2-1. Vote to Elect; Term. A candidate receiving the majority vote of the entire membership of the Board shall be deemed elected to the office for which the vote was taken and shall serve for one (1) year or until he or she is re-elected or his or her successor shall take office. In the event an office shall become vacant in some factual manner, or by operation of law, the office shall be filled as soon as possible by the same election procedure and the term of such office shall be the unexpired term of the predecessor.
- 1.2-2. Chair. The Chair shall preside over all meetings and hearings of the board, decide all points of order and matters of procedure governing said meetings or hearings, and shall perform all the duties normally appertaining to his or her office, as required by law, ordinance these rules or prevailing parliamentary practice.
- 1.2-3. Vice-Chair. The Vice-Chair shall preside at all Board Meetings and hearings in the absence or upon disqualification of the Chair and shall have all of the powers of the Chair under such circumstances.
- 1.2-4. Acting Chair. Upon the absence or disqualification of the Chair and Vice-Chair, the Board shall elect from among its Regular Membership an Acting Chair to preside over the application or meeting, as the case may be, and shall have all the powers of the Chair under such circumstances.
- 1.2-5. Secretary. The Secretary shall generally perform the secretarial work of the Board, including, but not limited to the following:
- a. Conduct all official correspondence, compile all required records, keep and maintain all necessary files and indexes with respect to the operation of the Board, cause all notices of meetings required to be given pursuant to the *Open Public Meeting Act (OPMA)*, *New Jersey Municipal Land Use Law (MLUL)*, or any other applicable law or ordinance;
 - b. Attend all meetings of the Board, take and have custody of all records and documents, maps, plans and evidence, and provide for the care and custody of items for which no other provision is made by statute or these rules; take or direct the taking of roll call votes, and insure the recordation of affirmative and negative votes as well as abstentions;
 - c. Make a transcription record of the proceedings of each hearing of the Board in accordance with these rules, keep minutes of the proceedings of each meeting

(including work sessions) held by the Board and enter therein such resolutions and orders as are adopted by the Board;

- d. Cause to be mailed or otherwise delivered or made available to each member of the Board and the professional consultants to the Board true copies of the minutes and all other documents and materials pertaining to the business of the Board;

- 1.2-6. Alternate Secretary. The Board may appoint one or more individuals to the position of Alternate Secretary who shall generally perform the secretarial work of the Board in the absence, disqualification, or direction of the Secretary and shall have all of the powers of the Secretary under such circumstances.

1.3. Meetings.

- 1.3-1. Regular Meetings. Meetings of the Board shall convene in a setting that allows the public to fully participate, whether in-person, fully remote, or by hybrid means in accordance with the *OPMA*, the *MLUL*, any other applicable State laws or regulations, and/or relevant case law, with caucus beginning at 7:00 pm and the regular meeting beginning at 7:30 pm, on the first and third Thursdays of each month. If a regular meeting falls on a legal or Township holiday, such meeting may generally be held on the next succeeding secular day, such other day as the Board may select, or be cancelled.
- 1.3-2. Special Meeting. Special meetings of the Board may be called by the Chair or, in her or his absence, by the Vice-Chair, at any time or upon the written request of two (2) or more members of the Board, provided that notice thereof be mailed or e-mailed or given to each member of the Board and to the public as required by or allowed by law. An applicant may request, but shall not be entitled to a special meeting. Special meetings at the request of an applicant may be scheduled at the pleasure of the Board, provided the public interest is fairly and reasonably served. The applicant shall be responsible for all fees and costs related thereto, including but not limited to, all costs associated with public notice of said special meeting.
- 1.3-3. Quorum. At all meetings of the Board, a quorum to conduct any business of the Board not involving a variance request pursuant to *N.J.S.A. 40:55D-70(d)1-6*, shall consist of four (4) qualified members. A quorum to conduct any business of the Board involving a variance request pursuant to *N.J.S.A. 40:55D-70(d)1-6* shall consist of five (5) qualified members. In the absence of a quorum, the members present may convene a meeting only for the purpose of adjourning the same to another date. No hearing may proceed without a qualified quorum of the Board for that particular hearing.
- 1.3-4. Open Meetings. Except as otherwise provided in these rules and regulations, the meetings of the Board shall be open to the public at all times. Nothing herein shall be construed to limit the discretion of the Board to permit, prohibit, or regulate the active participation of the public at any meeting. The Board may exclude the public

only from those portions of a meeting when the Board discusses matters within the exclusions provided under *N.J.S.A. 10:4-12b* and *N.J.S.A. 40:55D-9b*.

1.3-5. Order of Business. Subject to the discretion of the Chair to the contrary, the order of business for all regular sessions of the Board shall be as follows:

- a. call to order;
- b. statement of compliance with the *OPMA*;
- c. roll call;
- d. swearing in of professionals;
- e. approval of minutes of prior meeting;
- f. motions for adjournment of any scheduled applications and/or any other motions;
- g. old business (continued hearings);
- h. new business (new hearings);
- i. adoption of resolutions;
- j. adjournment.

1.3-6. Time Limitations. The Board shall be under no obligation to consider new matters after 10:30pm, and it will take no new testimony beyond 11:00pm. This rule may be waived by an affirmative vote by a majority of the Board members then present and qualified.

1.3-7. Parliamentary Procedure. *Roberts Rules of Order*, latest edition, shall be followed whenever a particular procedure or practice is not contemplated by these rules.

1.4. Procedures for Remote Meetings.

1.4-1. Technology. The technology utilized by the Board to conduct business remotely shall:

- a. be routinely used in academic, profession or business settings, and can be accessed by the public at no cost;
- b. include a telephonic option to allow members of the public with limited or no internet access to actively participate in a meeting;
- c. allow the Board to mute all members of the public and allow members of the public to mute themselves;
- d. afford members of the public the opportunity to participate via video and/or audio;
- e. ensure that all presentations and documents made available to the public during an in-person meeting be made visible on the video broadcast of the remote public meeting or be made available through the website of the Board and/or Township of Cherry Hill;

- f. require the identification of members of the public seeking to join a meeting remotely;
 - g. be replete with sufficient cybersecurity protections consistent with the FedRAMP Moderate Impact Level Authorized dedicated servers or cloud service; and
 - h. allow the remote meeting be recorded as any in-person meeting.
- 1.4-2. Executive/Closed Sessions. Should an executive or closed session be required, the Board shall ensure that any audio or video of the session cannot be accessed except for those individuals legally permitted to participate in the session.
- 1.4-3. Application Plans, Documents, and Exhibits. The Board shall ensure that all documents typically made available to the public in hard copy prior to and/or during an in-person meeting be made available in advance of the meeting for download from the website of Board and/or Township of Cherry Hill.
- 1.4-4. Public Comment.
- a. Members of the public wishing to make a comment and/or cross-examine a witness related to an application being heard by the Board during a remote meeting shall be permitted to do so using the audio and/or video technology under which the remote meeting is being held.
 - b. A member of the public wishing to speak during a remote meeting shall state their name and address for the record prior to making their comment.
 - c. Members of the public commenting during a remote meeting shall not act in any manner to disrupt the meeting. If such a member of the public becomes disruptive during the meeting, the individual chairing the meeting shall mute, or direct the muting of, the disruptive member and warn that any continued disruption may result in the member being prevented from speaking during the meeting or be removed from the remote meeting. Disruptive conduct includes, but is not limited to, sustained inappropriate behaviors such as shouting, interruption, and the use of profanity.
 - d. Any member who continues to be disruptive after receiving an initial warning may be muted while other members of the public are allowed to proceed with their questions or comments. If time permits, the disruptive individual shall be allowed to speak after all other members of the public are provided an opportunity to comment. Should the individual remain disruptive, the individual may be muted or kept on mute for the remainder of the remote meeting or removed from the meeting.

- 1.4-5. Notice. In addition to any other public notice required by law, the Board shall provide clear notice and instructions to the public detailing how the public may access, participate, and comment as part of a remote meeting.

2. PROCEDURES

2.1. Applications & Hearings.

- 2.1-1. Administration of Applications; Completeness. In accordance with the Zoning Ordinance of Cherry Hill (Zoning Ordinance), the Board shall consider applications for development. The Administrative Officer shall determine when the application is complete. Upon a determination of completeness, the Administrative Officer shall determine the hearing date and notify the applicant, the Board Attorney, Board Professionals, and the Board Chair.
- 2.1-2. Scheduling; Transmittals. Upon determination of completeness, the Board Secretary shall forward copies of the Board Professional's reports and all application materials to the applicant, the Board Attorney, Board Professionals, and the Board Chair.
- 2.1-3. Filings of Maps & Documents. At least ten (10) calendar days prior to the time appointed for the hearing, the applicant must submit the required maps and documents, as defined in the Zoning Ordinance, to the Board Secretary.
- 2.1-4. Transmittals; Hearing Materials. At least five (5) calendar days prior to the hearing, the meeting agenda, the Board Professional's reports, appropriate maps, exhibits, and documents for member viewing purposes including directions to and address of the site in question will be transmitted to Board members.

2.2. Hearing Procedure.

- 2.2-1. Appearance by Parties. At the time of the hearing on an application, the applicant or such legal representation shall appear in person, or such person may appear by an Attorney-At-Law admitted to practice in the State of New Jersey. No Corporation, Partnership, or other like entity, such as a Limited Liability Company, shall be heard except through an Attorney-At-Law admitted to practice in the State of New Jersey.
- 2.2-2. Testimony Under Oath. All persons giving testimony at a hearing shall be duly sworn by the Board Attorney.
- 2.2-3. Order of Presentation. Each application shall be considered in accordance with the following order of presentation:
- a. The applicant shall enter an appearance on the record and be duly sworn. If the applicant is represented by counsel, the attorney shall enter his or her appearance,

identifying the name and location of his or her firm, identifying the client who is represented, and shall then proceed to make opening remarks.

- b. The applicant shall then present testimony and such other evidence, depicted, documentary or otherwise, upon which the applicant intends to rely in order to establish a basis for the relief sought.
 - c. At the conclusion of a witness's testimony, the Chair shall allow the members and Board Professionals to ask questions of such witness. Cross examination of witnesses shall generally be limited to questions by the Board.
 - d. At the conclusion of the presentation of the application, any interested member of the public may make comments, ask questions, and/or present a case for or against the application in such order as may be recognized by the Chair. All such presentations shall be generally limited to five (5) minutes per presenter, except as allowed by the Chair. The Chair shall have the right to cause any interested party to be first duly sworn and shall do so whenever an interested party will offer facts on which the Board would be expected to rely. All rebuttal testimony or evidence shall be considered in such order as the Chair shall designate. Relevant objections shall be considered by the Board. Cross-examination of witnesses shall be permitted by the Chair subject to the above provisions.
 - e. Any member of the Board may place evidence before the Board as to any relevant matter of which he or she has a personal or official knowledge for the purpose of amplifying the record, including facts as ascertained from a viewing of premises in question subject to these rules.
 - f. The Board shall have the right to rely on the expertise of its legal, engineering, and planning consultants. The Board may also call as witnesses other municipal employees to testify as to particular facts pertinent to the application. The Board shall also have the power to acquire additional evidence consistent with these rules and the *MLUL*.
- 2.2-4. Continuances. All cases may be continued to another date certain, which generally shall be the next regularly scheduled meeting, unless otherwise determined by the Board. Generally, no further notice shall be needed to be given by the applicant in that event if announcement of the specific date of the continued hearing is provided, unless the Board Chair determines that notice be given.
- 2.2-5. Refusal to Consent to Continuance. Where an applicant has taken a substantial period of time to present his or her case and then refuses to consent to a continuance so that objectors can be heard or the Board has insufficient opportunity to consider the matter, such refusal by the applicant may be deemed "arbitrary and unreasonable" by the Board. Should the applicant move the board to consider the matter without affording such opportunity, the applicant shall be at

risk of a denial of the application for failure to sustain the burden of proof and failure to afford the Board an opportunity to reach an informed decision.

- 2.2-6. Testimony from Board-Employed & Other Expert Witnesses. The Board may require expert witnesses and reports. Experts shall be qualified to the satisfaction of the Chair or the Board. In addition to experts for the applicant and others, the Board shall have the power to engage its own independent experts to either corroborate or refute the testimony of experts produced by the applicant or other party. The Board shall not be bound to accept the testimony of any expert. Where there is conflicting testimony of experts, the Board shall decide which to accept. These rules shall not be construed to require expert testimony in all instances to sustain a board finding. The Board may require its consultants to confer with the experts of the applicant and, where appropriate, the experts hired by objectors or the Board in order to expedite consideration of the application. These communications shall be permitted outside the context of public meetings and the applicant shall reimburse the Township for expenses incurred in having the experts participate in such communications.
- 2.2-7. Viewing by Board; Personal Knowledge of Board Members. Viewing the property that is the subject of the application shall be permitted upon reasonable notice to and consent of the parties. Members should view the property prior to the hearing. In that event, or in the event that one or more members of the Board are well acquainted with the subject property, knowledge thereby acquired of any particular fact or facts may be used in making a decision if such member or members establishes such facts on the record at the time of the hearing.
- 2.2-8. Evidence; Exhibits. The formal rules of evidence adopted by the courts of the State of New Jersey shall not be enforced in the proceedings of the Board. However, no decision shall be based upon any facts not proved or on matters which are not on the record unless they be such items of which the Board is entitled to take judicial notice. The Board may limit irrelevant, immaterial, or redundant testimony.
- 2.2-9. Letters & Petitions of Objection. Letters of objection or support and petitions shall not be admissible, though the writer of a letter or the signer of a petition may appear and testify. If unable to attend, a licensed attorney in the State of New Jersey may appear on behalf of the absent public member.
- 2.2-10. Burden of Proof. The burden of proof is upon the applicant. It is the applicant's responsibility to supply competent and credible evidence in order that the Board might determine the nature and degree of the relief sought. The applicant must establish, to the Board's satisfaction, that pursuant to the legal, statutory, and ordinance criteria the applicant is entitled to the relief sought. In variance cases, the applicant bears the burden of proving both the positive and negative criteria as required by the *MLUL* and relevant case law.

2.3. Voting.

- 2.3-1. Voting Procedure. All motions shall require a second. The Chair shall allow discussion on any motion made and duly seconded. All votes shall be taken by roll call, and the vote and name of the member casting the vote shall be recorded in the minutes. Unless otherwise provided herein or under prevailing law, any action may be authorized by majority of vote of those members present at such meeting.
- 2.3-2. Voting Margin & Effect. If a motion to approve an application for development fails to receive the number of required affirmative votes, such failure shall be deemed an action denying the application. If the vote is a tie, no majority exists and the motion is denied.
- 2.3-3. Abstentions. Abstentions are disfavored without good cause. An abstention shall be regarded as an assent to the vote of the majority. Thus, if a majority of those voting would affirm a measure, abstentions would be counted for affirmation; if the majority would defeat a measure, abstentions will be counted for defeat. A disqualified member shall not be counted as an abstention and shall, instead, remove himself or herself from the panel and not be involved in the consideration of the application. If the Board is evenly split in its decision, no majority exists with whom an abstaining member can said to vote and accordingly abstentions shall not be construed to approve an application; nor shall abstentions be used to create a tie.
- 2.3-4. Voting Eligibility; Review of Record. When any hearing before the Board has been continued, a member of the Board who was absent for one or more hearing sessions shall be eligible to vote on the matter upon which hearing is conducted notwithstanding the members prior absence provided that such member certifies in writing to the Board that he or she has read a transcript or listened to a recording of the entire session for which he or she was absent. This rule shall not be construed as authorizing any hearing to be held whenever less than a quorum of the Board is present.

2.4. Other Hearing Requirements & Procedures.

- 2.4-1. Record of Proceedings. The “record” shall mean and include the application form, any documents submitted to the Board in support thereof, maps, reports, plans, exhibits, proper submissions by interested parties, and the verbatim record of the hearings. Also, the adopted minutes of the meeting shall be considered to be both a summary of the record and part thereof.
- 2.4-2. Transcripts. The Board shall furnish a transcript of the hearing to any interested party making the request in writing at his or her expense.

- 2.4-3. Inability to Make Verbatim Record. If, at the time set for hearing, a verbatim record cannot be made for good reason, as where the recording equipment is inoperable, the Board shall, if time is not a factor, continue the hearing to another date. However, if time is a factor and all interested parties agree, the Board may proceed with the hearing on the understanding that in the event of an appeal or further review, an agreed statement of facts will be supplied to the reviewing body. In the absence of such an agreement, where time is a factor, the Board shall be entitled to deny the relief sought in order to prevent a statutory approval by reason of the Board's failure to make a decision in the required time.
- 2.4-4. Subpoenas; Contempt. The Chair and the Board Attorney shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relative evidence, including witnesses and documents presented by the parties. The provisions of the *County & Municipal Investigations Law, N.J.S.A. 2A:67A-1 et seq.* shall apply.
- 2.4-5. Dismissal Without Prejudice. The Board, on its own motion, may dismiss any action without prejudice if neither the applicant nor anyone on his/her 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 ordinances, these rules, for other good cause, and/or if an applicant fails to respond and/or supplement an application submission within one hundred and twenty (120) days following a determination of incompleteness by the Department of Community Development. Any applicant may, at any time before the commencement of the hearing, voluntarily withdraw his/her application in which event the application shall be dismissed without prejudice.
- 2.4-6. Amended Applications. An applicant may, prior to the commencement of a hearing, amend his or her application without leave of the Board and in all such cases new notice shall be given as in the case of the original application. After commencement of a hearing, 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.
- 2.4-7. Time of Application Rule. Notwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development. Any provisions of an ordinance, except those relating to health and public safety, that are adopted subsequent to the date of submission of an application for development, shall not be applicable to that application for development.

2.4-8. Conditions. The Board shall have the plenary power and discretion to impose conditions of approval. The conditions shall be development-specific and predominantly aimed at mitigating specific concerns arising in connection with the proposed project. The right to impose conditions is an inherent power of the Board regardless of whether the ordinance grants such a right to the Board. To be enforceable, a condition must be part of the record. Conditions must not offend against any provision of the Zoning Ordinance, must be in the public interest, must be reasonably calculated to achieve a legitimate objective of the ordinance and shall not be unnecessarily burdensome to the applicant and/or owner.

2.4-9. Decision Based on Evidence.

- a. Each case shall be decided strictly upon the basis of the competent and substantial evidence and relevant facts adduced at the hearing viewed in light of the statutory and ordinance requirements. The Board's function is to apply the facts adduced at the hearing, as determined by the Board, to the legal requirements of the statute and Zoning Ordinance and to decide on this basis whether or not the requested relief can be legally granted. The Board lacks the legal power to grant variances except in cases where the facts produced at the hearing demonstrate the applicant's right to the requested relief under the terms of the statute.
- b. The Board shall include findings of facts and conclusions based thereon in each decision and shall reduce the decision to writing through a resolution adopted at a meeting held within the time period provide in the act for action on the application. A memorializing resolution can be adopted at a meeting held not later than forty-five (45) days after the date of the meeting at which the board voted to grant or deny approval. Only members of the Board who voted for the action taken may vote on the memorializing resolution.
- c. In cases where a variance is requested, the board has jurisdiction to consider only those variances submitted pursuant to *N.J.S.A. 40:55D-70(c)(1) & (2)*. In both cases, the applicant has the burden of proving the positive and negative criteria established the *MLUL* have been satisfied.
 - i. In (c)(1) cases, the Board must determine whether there has been a showing of peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the applicant arising out of: 1) the exceptional narrowness, shallowness or shape of a specific piece of property, or 2) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or 3) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.
 - ii. In (c)(2) cases, the Board must find that: 1) the purpose of the *MLUL* would be advanced by a deviation from the Zoning Ordinance

requirements, and 2) that the benefits of the deviation would substantially outweigh any detriment to the public good.

3. AVAILABILITY AND ELIGIBILITY OF MEMBERS

3.1. Attendance.

- 3.1-1. Determination of Vacancy for Excessive Absences. The position of any member or alternative member shall be deemed vacant whenever the member, without being excused by a majority of the authorized members of the Board, fails to attend and participate at meetings of the Board for a period of eight (8) consecutive weeks or for four (4) consecutive meetings (both regular and work sessions) whichever shall be of longer duration. The Board may refuse to excuse those absences which are not due to legitimate illness or appropriate reasons. Board members should notify the Department of Community Development a minimum of twenty four (24) hours in advance if they are unable to attend. At the conclusion of such period, the Board shall notify the appointing authority in writing of such determination.