

RULES FOR THE MONTCLAIR
ZONING BOARD OF ADJUSTMENT

PART 1--ADMINISTRATION

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 the Township of Montclair, New Jersey."

1:1-2 Annual Meeting; Officers

The annual meeting of the Board shall be held on the third Wednesday of January of 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 who shall serve for one year and until a successor has been appointed. The Board may appoint such other officers or assistants and employ such experts or staff as it may deem necessary. 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. The Chairperson shall have, subject to these rules and the governing statutes, all the powers and perform all duties normally appertaining to his office. The Chairperson or his designee shall swear all witnesses giving testimony before the Board.

1:1-4 Vice-Chairperson

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

1:1-5 Secretary

(a) Subject to these rules, and under the direction of the Chairperson, the Secretary shall conduct all official correspondence, compile the required records, maintain and keep in order the necessary files and indices, and generally perform the secretarial work of the Board. He may assign such parts of his duties as he may decide to the Assistant Secretary, if there be such.

The Secretary shall give all notices of meetings required to be given by the Open Public Meetings Law, the Municipal Land Use Law or any other applicable law or ordinance.

(b) The Secretary or Assistant 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 shall call the roll in the order of the arrangement of the seats of the members beginning with the first at his right.

(c) the Secretary shall make record of, and keep on file, the minutes of the proceedings, resolutions and orders as are adopted.

(d) The Secretary shall cause to be mailed to each member of the Board a true copy of the minutes of that meeting. He shall issue notices of meetings and shall perform such other duties as usually appertain to his office.

(e) The Secretary shall publish the notice and serve copies of the Board's resolutions as provided in Rule 2:8-5.

Rule 1:2 Meetings

The regular meetings of the Board shall be held at the Municipal Building, 205 Claremont Avenue, Montclair, New Jersey, at 8:00 o'clock P.M. on the third Wednesday of each month. If the regular meeting day falls on a legal holiday, the meeting shall be held on the next succeeding secular day. The Secretary shall annually furnish a copy of the regular meeting dates for the year to the news media designated by the municipal governing body in accordance with the Open Public Meetings Law, N.J.S.A. 10:4-1 et seq.

1:2-2 Special Meetings

Meetings may be called by the Chairperson, or in the Chairperson's absence, by the Vice-Chairperson, at any time or upon the written request of two members, provided notice thereof be mailed or given to each member of the Board at least two days prior thereto, and to the public as required by the Open Public Meetings Law, N.J.S.A. 10:4-1 et seq.

1:2.3 Meetings Open to Public

All meetings shall be open to the public, except such executive sessions as authorized by N.J.S.A. 40:55D-9b and N.J.S.A. 10:4-1 et seq.

1:2-4 Order of Business

The order of business at all meetings shall be as follows:

- (a) Roll Call
- (b) Open Public Meetings Act Statement
- (c) Motions for adjournment of scheduled cases, and other motions.
- (d) Calendar of unfinished business
- (e) Calendar of new business
- (f) Approval of pending resolutions
- (g) Approval of minutes of previous meetings
- (h) Reports
- (i) Adjournment

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 on any motion or application, to another date.

Rule 1:4 Alternate Members

1:4-1

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

1:4-2

During the absence or disqualification of any regular member, the Chairperson shall appoint one of the alternate members to serve in the place of said regular member; provided, however, that where the alternate member is designated to serve in place of the regular member who is disqualified from participating in the hearing of a particular case, the alternate member shall be designated to serve only with respect to such case.

1:4-3

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

When one alternate member has served in place of a regular member, he shall not be designated to serve again until the

other alternate member has served; but the foregoing requirement shall not apply where both alternate members have served simultaneously, or where such other alternate member is absent or disqualified from serving.

1:4-5

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 on the same matter unless said alternate member was present at such first hearing or any prior adjourned or continued hearing on such matter.

1:4-6

An alternate member who has been designated to serve in the place of an absent or disqualified regular member shall, during the period of his service, enjoy all of the rights and privileges and shall be subject to all of the duties and disabilities pertaining to regular member, but no alternate member shall be eligible to serve as Chairperson or Vice-Chairperson of the Board.

1:4-7

Alternate members may participate in discussions of the proceedings, but may not vote except in the absence or disqualification of a regular member, nor shall any vote be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, alternate number one shall vote.

PART II---RULES OF PRACTICE

Rule 2:1 Commencement of Action; Service and Filing of Papers

2:1-1 Commencement of Action

(a) Appeals

An action in the nature of an appeal alleging that there is error in any order, requirement, decision or refusal made by the building sub-code official, zoning officer, or other official based on or made in the enforcement of the zoning ordinance shall be commenced by the filing of a notice of appeal, in accordance with the provisions of the statute within 20 days from the date of the order, decision or refusal appealed from, which notice of appeal shall be filed in triplicate with 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 R.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 three copies of an application with the Secretary of the Board, together with the fee required by ordinance.

(c) Other Requirements

1. Any maps or documents for which approval is sought at a hearing shall be on file and available for public inspection at least 10 days before the date of the hearing during normal business hours in the office of the Secretary of the Board. 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.

2. 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 R.2:1 have been complied with. If the Secretary determines that an application is not complete, the applicant shall be advised of the specific deficiencies within 45 days, otherwise it shall be deemed to be complete.

3. 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-70(d), the applicant may submit at the time of filing for a variance, an application for site plan review or for subdivision approval, prepared in accordance with all applicable ordinance requirements and regulations of the Planning Board of the Township of Montclair together with the appropriate fee. Application for site plan review need not be filed at the time of filing an application for a use variance, but any use variance granted by the board shall be subject to proper submission of a site plan in accordance with the municipal ordinances.

5. Applicant shall submit proof that no taxes or assessments for local improvements are due or delinquent on the property for which any application is made, in accordance with the provisions of N.J.S.A. 40:55D-65 (h).

2:1-2 Certification of Completeness

Upon submission of an application, the Secretary shall determine its completeness. If complete, a certification shall be made by the Secretary on the application form. If the application is incomplete, the Secretary shall notify the applicant in writing of the deficiencies within 45 days of the submission or the application shall be deemed to be properly submitted.

2:1-3 Docket Number

The Secretary shall assign to each new application a number which shall thereafter appear on all subsequent papers filed in the cause.

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 time set for the hearing thereon.

2:2-2 Adjournment

The time for hearing may be adjourned from the time fixed therefor, for good cause, upon the motion of the applicant or other person interested in the action, or on the Board's own motion, provided, however, that where such adjournment would extend the statutory period within which the Board is required to act, the consent of the applicant shall be evidenced in writing or shall be made on the record.

Rule 2:3 Notice: Upon Whom Served; Time

2:3-1 Notice: Upon Whom Served

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

2:3-2 Notice: Form

The notice required to be served and published pursuant to Rule 2:3-1 shall be in accordance with the requirements of N.J.S.A. 40:55D-11.

2:3-3 List of Owners Supplied by Secretary

Where the Secretary of the Board has furnished the applicant with a list of the 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 hereinabove provided is a jurisdictional requirement, and proof of the service and publication of all required notices in accordance with these rules shall be made by affidavit of the person or persons who actually served or mailed said notices as required by law, and by the authorized official of the newspaper which published same.

Rule 2:4 Applications and Appeals

2:4-1 Forms

Every appeal or application shall be filed in triplicate on the appropriate form provided to the applicant by the Board's Secretary.

2:4-2 By Whom Filed

Every appeal or application must be signed by the owner of the lands and premises to be affected, or by his duly authorized agent, and may be signed by any other person having an interest in the action. This provision shall not apply to an appeal from a decision of the administrative officer by one who has no ownership or contractual interest in the property affected.

2:4-3 Assistance

For the assistance of the applicant, the Board's Secretary may render such other assistance to the applicant as may be practicable.

2:4-4 Application: Contents

The applicant shall set forth in his application all facts upon which he will rely to establish his right to the relief sought and supply all information requested on the application form or otherwise required by law.

2:4-5 Affidavit of Ownership

If the applicant is not the owner of the premises affected by the variance requested in the application, a letter of 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 R.2:4-2.

2:4-6 Applications by Corporation or Partnership, Disclosure of Stockholders or Ownership Interests

A corporation or partnership applying for relief from this Board which involves subdivision of a parcel of land into 6 or more lots, or a variance to construct a multiple dwelling of 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 10 percent of the stock of any class or at least ten 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.

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 and all witnesses shall be sworn by the Chairperson or his designee before giving testimony.

2:5-3 Order of Presentation

(a) When the hearing is called to order, the Secretary shall state the relief sought by the application.

(b) The applicant shall then present, by his testimony and the testimony of his witnesses, or by such documentary evidence or exhibits as he may submit, proof of all facts upon which he relies to establish his right to the relief sought in the 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 why 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, the Board Attorney, or any interested person and the Board may call its own witnesses for the purpose of assisting in its determination of any matter.

2:5-4 Closing of Hearing; Continuances

(a) When the applicant and all other interested persons have had an opportunity to be heard, the Chairperson may declare the hearing to be closed. Thereafter no further evidence will be received in the action unless the matter is reopened in accordance with these rules.

Rule 2:6 Evidence

2:6-1 Competent Evidence

Although formal rules of evidence are not enforced before the Board, all facts necessary to provide a legal basis for the relief sought must be established by the applicant, unless the Board elects to take judicial notice of such facts. The Board may exclude immaterial, irrelevant 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 may be retained by the Board until the termination of the matter, at which time they shall be returned by the Secretary at the request of the person who offered them.

2:6-3 Judicial Notice

The Board may take judicial notice of the provisions of any adopted ordinance or master plan, 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 zoning plan, 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 application, in which case the action shall be dismissed without prejudice.

2:7-2 Nonappearance

When, at the time set for the hearing on any application, neither the applicant nor any one in his behalf appears, and no adjournment has been previously requested, the action may be dismissed without prejudice.

2:7-3 Infraction of Rules

For failure to comply with the provisions of Rule 2:2, or 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 Township of Montclair, to be made to the Board by the Planning Board or other public agency, such report shall have been received at least 10 days prior to the time within which the Board must render its decision pursuant to Rule 2:7-1; 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 any such report shall be made available to the applicant, who shall have an opportunity, if requested, to question the maker of such report as to any fact or conclusion therein contained.

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 making public announcement thereof at the meeting and causing notice of its action to be published as in all other cases. In the case of transferred actions to the Board of Adjustment, 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 the Board of Adjustment 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) the certification of completeness of an application to the Board, unless the applicant has consented in writing or on the record to an extension of time.

Failure of the Board to render a decision within such 120 day period or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant. Every decision shall be made by proper motion duly made and seconded, with the votes of all members present recorded on a roll-call vote.

2:8-2 Form

The judgment of the Board shall be in the form of a written resolution containing findings and conclusions which shall be adopted either on the date of the meeting at which the Board granted or denied approval, or, if the meeting at which such action was taken occurred within the final 45 days of the applicable time period for rendering a decision on the application, within 45 days of such meeting by the adoption of a resolution of memorialization setting forth the decision and findings and conclusion of the Board. An action resulting from failure of a motion to approve an application shall likewise be memorialized by resolution regardless of the time at which such action occurs within the 120 day time period for rendering a 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 the decision for purposes of the mailings, filings and publications required by statute. A copy of the Board's resolution shall be furnished to the applicant or his attorney within 10 days from the date of adoption thereof and a copy of the resolution shall also be made available to any person who has requested it and has paid the fee established therefor.

2:8-3 Relief Granted

Where an applicant has demonstrated his right to relief, the Board may grant such relief as it may deem appropriate and in keeping with the intent and purpose of the zone plan and zoning ordinance, even though the relief granted may be different in kind or degree from that asked for in the appeal or application.

2:8-4 Conditions

The resolution of the Board granting any variance, may subject such grant to such conditions as the Board may impose in the public interest for the purpose of furthering any of the purposes of zoning. The Board may, when deemed necessary in the public interest, specifically provide in its resolution for the retention of jurisdiction over the action for a reasonable time, as therein specified, for the purposes of enabling it to vary the terms of any condition therein imposed, or for the purpose of imposing additional conditions in the public interest in the light of then existing circumstances.

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 10 days after the publication of notice of the decision, move the Board for a rehearing of the matter by filing an application in the form of a letter addressed to the Secretary of the Board containing a brief statement of the grounds relied upon. If the motion is granted by the Board, it shall fix a date for rehearing and shall require the moving party to give notice to all persons who participated in the original hearing or hearings, upon such terms as the Board may deem adequate. The Board may grant a rehearing on its own motion when unusual circumstances so require in the interest of justice.

2:9-2 Vacation or Modification

At any time after the adoption of a resolution granting a variance, any person having an interest in such decision may move the Board for an order vacating or modifying any term or condition of said decision by filing with the Board a petition in the form of a letter setting forth the reasons therefor and the grounds relied upon. If the petition is granted, the Board shall fix a date for hearing and the moving party 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 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 did not sit upon the hearing of the action, may, nevertheless, participate in the decision of the case, if, but only if, he has read or listened to a recording of the entire record of the proceedings and has certified in writing that he has done so, but this provision