

**RULES OF THE
ZONING BOARD OF ADJUSTMENT
BOROUGH OF FORT LEE, NEW JERSEY**

Part 1-ADMINISTRATION

Rule 1.1 Organization, Officers, General Provisions

1.1—2 Title of the Board

The Title of the Board shall be: “The Zoning Board of Adjustment of the Borough of Fort Lee, New Jersey.

1:1—2 Re-Organization Meeting; Officers

The re-organization meeting of the Board shall be held on the first and/or second Tuesday 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, a Recording Secretary and 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 employ such experts or professionals per the Local Unit Pay-to-Play Law for Fair and Open Contracts, as it may deem necessary.

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 Board Attorney and/or by majority of the Board in session at the time. He/she shall have subject to these rules and the governing statutes all the powers and perform all the duties normally appertaining to his/her office. He/she or their designee shall swear in 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 cause to be liaison with the Planning Administrator/Board Secretary who will conduct all official correspondence, compile the required records, maintain and keep in order the necessary files and indices, and generally cause to have performed the secretarial work of the Board. The Planning Administrator/Board Secretary shall notify the Municipal Clerk and the Officer charged with the enforcement of the Zoning Ordinance of all meetings of the Board and shall provide them with a list of the matters scheduled for hearings at each meeting. The Planning Administrator/Board Secretary shall cause to be given 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 Board Secretary/Planning Administrator 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.
- (c) The Recording Secretary shall record when the “yeas” and “nays” are taken, he/she shall call the roll in the order of arrangement of the seats

of the members beginning with the first at his left, and the Chairperson shall be called last.

- (d) The Recording Secretary and/or The Planning Administrator shall cause to be made 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 or synopsis of every report, application and other paper presented.
- (e) The Planning Administrator/Board Secretary shall cause to be mailed to each member of the Board at his/her residence address and within ten days after each meeting, a true copy of the minutes of that meeting. He/she shall issue notices of meetings and shall perform such other duties as usually appertain to his/her office.
- (f) The Planning Administrator/Board Secretary shall cause to publish the notice and serve copies of the Board's resolutions as provided in Rule 2:8-5.

Rule 1:2 Meetings

1:2-1

The regular meetings of the Board shall be held at the Municipal Building, as established by resolution at the organization meeting, at 7:30 P.M. If the regular meeting day falls on a legal holiday the meeting shall be held on the next succeeding regular meeting day. The Planning Administrator/Board Secretary shall annually furnish a copy of

the regular meetings dates for the year to the news media and post same notice on the Municipal Building bulletin board as designated by the municipal governing body in accordance with the Open Public Meetings Law, N.J.S.A. 10:4-1 et seq.

1:2-3 Meeting Open to Public

All meetings shall be open to the public, except such executive session 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 and salute to the flag
- (b) Statement of meeting concerning compliance with the provisions of the Sunshine Act.
- (c) Approval of minutes of previous meeting.
- (d) Motions for adjournment of scheduled cases, and other motions
- (e) Memorializations
- (f) Acceptance/Completeness of Applications
- (g) Public Hearings
- (h) Calendar of new business
- (i) Open to public after presentation of proofs
- (j) Adjournment.

Rule 1:3-1 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 alternative members of this Board appointed by 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 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, unless the regular member has read

the transcript of hearing and/or listened to audio tapes of said hearing and signed an affidavit stating same, 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 members, 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 regular member, nor shall any vote be delayed in order that a regular member may vote instead of 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 inspector, zoning officer, or other official based on or made in the enforcement of the zoning ordinance shall be commenced by the filing of three copies 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 office from whom the appeal is taken and shall specify the grounds of such appeal. Said officer shall immediately transmit to the planning Administrator/Board Secretary all papers constituting the record upon which the action appeal from was taken and the Planning Administrator/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.

(b) Application to Board of Adjustment

The filing of 20 copies of an application, together with 20 appropriately certified/sealed plans shall commence an application for a variance or for any other relief, with the Planning Administrator/Board Secretary.

(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 Planning Administrator/Board Secretary. This filing shall be in addition to the maps and other documents required to be filed with the application, as set forth in the application form.
2. Photographs of the subject premises shall be submitted with every application.
3. The application form shall be filled out completely and, where necessary, supplemented by additional information in order to make it clear to the Board what relief is being sought. Not action shall be considered complete until all applicable requirements of R. 2:1-1 have been compiled with. If the Board Planner and/or the Planning Administrator/Board Secretary determine

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.

4. When an application is made for any variance relating to a use or structure which is not permitted in the district in which the lands are located or for other relief pursuant to N.J.S.A. 40:55D-70 (d), the applicant may submit at the time of filing his application for a variance, an application for site plan review or for subdivision approval, prepared in accordance with all applicable ordinance requirements and regulations of the Planning Board and the Borough of Fort Lee, 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 need not be filed at the time of filing an application for a use variance, but any use variance granted by the Board shall be subject to proper submission of a site plan in accordance with the municipal ordinances.

(d) Fees

1. Fees as established by ordinance shall be paid simultaneously with the filing of an application for variance and/or site plan review.

2. In accordance with the provisions of the municipal subdivision and site plan review ordinances, an applicant shall, in connection with an application involving site plan, variance or subdivision approval, pay, in addition to the fees hereinabove specified, escrow deposits to cover special expenses incurred by the Board for rendering of services by its planning consultant, engineer, attorney and other experts.

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) and local ordinance.

2:1-2 Certification of Completeness

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 Planning Administrator/Board Secretary shall also give notice to the Zoning Officer and Attorney of the time set

for the hearing on the application. The original copy of the application shall be filed in the case docket of the Board.

2:1-3 Docket Number

The Planning Administrator/Board Secretary shall assign to each new action a docket number, which number shall thereafter appear on all subsequent papers filed in the cause.

2:2-2 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 therefore, for good cause, upon 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 evidence 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. 40:55-D-12.

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. 4 in the Appendix to these rules.

2: 3-3 List of Owners Supplied by Zoning Officer and/or Planning Administrator

Where the authorized official(s) has furnished 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 ad 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 Form

Every appeal or application shall be filed on the appropriate form provided to the applicant by the Planning Administrator/Board 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 Planning Administrator/Board 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 now 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.

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 six (6) or more lots, or variance to construct a multiple dwelling of twenty-five (25) or more family units, or for approval of a site plan for commercial purposes shall list the names and addresses of all stockholders or individual partners owning at least ten (10) percent of the stock of any class or at least ten (10%) 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. An Attorney-at-Law of New Jersey shall represent every corporation.

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 Chairperson or his designee 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 person's interest 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 a member of the Board, the Board Attorney, or any interested person.

2: 5-4 Examination by Board; Testimony

The applicant and every other person appearing and presenting testimony at any hearing may be examined by any member of the Board and the Board Attorney for the purpose of eliciting any relevant information which may assist the Board in deciding the issue. Any member of the Board may testify as to any relevant matter of which he has personal or official knowledge for the purpose of amplifying the record, including facts ascertained from a viewing of the premises in question and the general area.

2: 5-5 Closing of Hearing; Continuances

- (a) When the applicant and all other interested persons have had an opportunity to be heard, the Chairperson may declare the hearing to be closed. Thereafter no further evidence will be received in the action unless the matter is reopened in accordance with these rules.
- (b) The applicant or any other interested person, prior to the closing of the hearing, may move the Board for continuance of the hearing for the purpose of presenting further relevant evidence, which the Board, acting in its sound discretion, may either grant or deny.

(c) In cases where the Board feels that testimony or other evidence should be received in the public interest from any municipal, county, or state official or from any other persons, to assist in rendering a just decision, the Board may, on its own motion, continue the hearing to another day certain for such purposes.

Rule 2: 6 Evidence

2: 6-1 Competent Evidence

Although 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 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 Recording Secretary and may be retained by the Board until the termination of the matter, at which time they shall be returned by the Recording 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 purpose 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 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 on 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, 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 Borough of Fort Lee, 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, 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 making public announcement 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 actions; the Board of Adjustment shall examine the application and notices given by 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 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 be the applicant shall constitute a decision motion duly made and seconded, with the votes of all members recorded on a roll- call vote.

2: 8-2 Form

The judgment of the Board shall be in the form of a written resolution containing findings and conclusions which shall be adopted either on the date of the meeting at which the Board granted or denied approval, or, if the meeting at which such action was taken occurred within the final 45 days of the applicable time period for rendering a decision on the application, within 45 days of such meeting by the adoption of a resolution of memorialization setting forth the decision and findings and conclusion of the Board. An action resulting from failure of a motion to approve an application shall likewise be memorialized by the 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: 55-d-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 therefore.

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, or site plan approval 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 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 Planning Administrator/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: 9-1 Motions

2: 9-1 Rehearing

Any applicant or other interested person may, within 20 days after the publication of notice of the decision, move the Board for a rehearing of the matter by filing an application in the form of a letter addressed to the Board containing a brief statement of the grounds relied upon. If the Board grants the motion, 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 applicant 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 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 a transcript 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 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 himself from sitting on the hearing of any matter in which he has a disqualifying interest, such as, but not limited to, the following situations.

1. Where he 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 of any person so related.
3. Where the applicant or his 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 has any other personal or pecuniary interest in the proceeding.

Any member so disqualifying himself 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 himself, 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 R.S. 40-55D-10f, the Board shall provide for the verbatim recording of all hearings by either a stenographer, or by mechanical or electronic means. A transcript or duplicate recording in lieu thereof shall be furnished to any interest party at his expense.

2: 11-2 Notes by Recording Secretary

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

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

2:12-2 Communications

Any communication purporting to be a petition asking for a modification or change in the Zoning Ordinance or for any other relief shall be regarded as a mere notice of intention to seek such relief until a formal application is filed in the manner required by these rules.

2:12 Subpoenas

2:12-1 Issuance

The Board, by its subpoena issued under its seal and under the hand of its Chairperson or Vice-Chairperson and 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 powers of inquiry. The issuance of a

subpoena may be requested by the applicant or any other interested person.

2: 12-2 Service

Any such subpoena may be served by the Sheriff, Under-Sheriff or Deputy, or any person 18 or more years of age. Delivering a copy thereof to the person named, or as otherwise permitted by law shall make service of subpoena.

2: 12-3 Failure to Comply

If a person under such subpoena shall refuse or fail to appear or refuse to be examined or to answer any proper question, or to produce any books papers, documents or tangible things, in accordance with the subpoena, the Board may apply to the Superior Court for an order to compel him 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: 67A-1 et seq.), be guilty of perjury. The Board shall submit a transcript of testimony it believes may be perjurious to the County Prosecutor for investigation.

PART III—MISCELLANEOUS PROVISIONS

Rule 3:1 Relaxation of Rules

3:1-1 Where Rules May be Relaxed

For good cause shown, or where the strict application of any rule would work surprise or injustice, the Board may relax the requirement of such rule, except where the provisions of the rule are also statutory requirements.

Rule 3: 2 Meaning of Certain Terms

3: 2-1 Person; Interested Person

Whenever in these rules reference is made to “any person,” “any interested person,” “any person 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 Application of Certain Laws

3: 3-1 Laws Applicable

The provisions of the County and Municipal Investigations Law shall be applicable to proceedings before this Board and the Board may exercise all of the power conferred by said act. These rules are adopted pursuant to the provisions of N.J.S.A. 40: 50D-8, subject generally to the provisions of Chapter 55D of Title 40 of the Revised Statutes of New Jersey.

Rule 3: 4 Removal of Member

3: 4-1 Grounds; Recommendation

Whenever a member of this Board shall absent himself from meetings of the Board, without just cause, for a period detrimental to the conduct of Board business, the Board may recommend to the Mayor and Council of the Borough of Fort Lee in writing that such member be removed in accordance with the provisions of N.J.S.A. 40: 55D-69.

Rule 3:5 Citations of Rules and Decisions

3: 5-1 Citation

(a) 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 the surprise, hardship or injustice to the petitioner or other interested persons.

NOTICE TO BE SERVED ON OWNERS OF PROPERTY

AFFECTED BY PROPOSED VARIANCE FROM THE REVISED
GENERAL ORDINANCES OF THE BOROUGH OF FORT LEE

OWNER OF PREMISES

PLEASE TAKE NOTICE:

That the undersigned has appealed to the Board of Adjustment of
the Borough of Fort Lee for a variance from the terms of Chapter
_____ and Sub Section (s) _____ schedule
_____ of the Revised General Ordinances of the Borough of
Fort Lee so as to (circle whichever applies) erect, alter, extend or use a On
premises known as Lot (s) _____ Block _____ on
the Tax Map of the Borough of Fort Lee, New Jersey and known as
_____ Fort Lee, New
Jersey. This appeal is now Docket No. _____ and a public
hearing has been ordered for Tuesday _____ 200-- at 7:30 P.M.
in the Municipal Building, 309 Main Street, Fort Lee, New Jersey, at
which time you may appear either in person, or by an agent, or attorney
and present any facts, or objections which you may have relative to the
granting of this appeal.

The application together with all plans and supporting documentations are
on file in the office of the Planning Administrator/Board Secretary, 309
Main Street, Fort Lee, New Jersey, and are available for inspection
between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday.

AMENDMENT TO THE RULES OF THE ZONING BOARD OF
ADJUSTMENT OF FORT LEE, NEW JERSEY

Rule 2: 7-2 is amended to read as follows:

Rule 2: 7-2 – Non-appearance on Behalf of the Applicant or Failure to proceed for Three Separate Regular Meetings.

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 application may be dismissed without prejudice. In the event an applicant fails to submit proofs to the Board for three separate regular meetings and the Board has not granted any further adjournment, the Board may dismiss the application without prejudice.

AMENDMENT TO THE RULES OF THE ZONING BOARD OF
ADJUSTMENT OF FORT LEE, NEW JERSEY

Rule 2: 9-1 is deleted and replaced as follows:

Rule 2: 9-1

An applicant or other interested person may, within ten days after a final vote has been taken by the Board and prior to the final vote being memorialized by a Resolution of the Board, move the Board for a rehearing of the matter by filing an application in the form of a letter by certified mail, return receipt requested, addressed to the Board containing a brief statement of the grounds relied upon.

The Board, in determining whether a motion for a rehearing should be granted, shall consider only whether the final vote on the application was based upon misrepresentation, fraud or mistake.

If the motion for a rehearing is granted, the Board shall set a date for the rehearing and shall require the moving party to give all persons who were entitled to notice by the requirements of N.J.S.A. 40: 55D 70 (a) and (b) notice of such hearing.

AMENDMENT TO THE RULES OF THE ZONING BOARD OF
ADJUSTMENT OF FORT LEE, NEW JERSEY

Rule: 2: 3-4 Proof of Service is amended to read as follows:

Rule 2: 3-4 Proof of Service

The service and publication of notices as herein above provided is 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 authorized official newspaper which published same. All property owners notification green return-receipt, certified mail postal cards must be given to Board Secretary five (5) days prior to hearing date.

A copy of the Amendment to the Rules of the Zoning Board of Adjustment is on file in the Office of the Fort Lee Board of Adjustment Municipal Building, 309 Main Street, Fort Lee; and the same is available for inspection from 8:30 A.M. to 4:00 P.M. daily.