

BYLAWS OF THE LEBANON TOWNSHIP BOARD OF ADJUSTMENT

Article I. Objectives and Purposes.

The objectives and purposes of the Lebanon Township Board of Adjustment are those set forth in the Municipal Land Use Law (MLUL), NJSA40:55D-1 et. seq. and amendments and supplements thereto and the Ordinances governing the Lebanon Township Board of Adjustment and Zoning Ordinances.

Article II. Officers and Duties: Election of Officers.

Section 1. Pursuant to NJSA 40:55D-69 & 69.1, the members of the Board shall elect a Chairman and Vice Chairman from its members and appoint a Secretary. Also, the Board can elect a Chairman Pro-tem at their Reorganization Meeting in the event both the Chair and Vice Chair are absent at a meeting. In the event the board lacks a quorum due to a member(s) personal or financial interest regarding an application, Class IV members of the Planning Board shall be called upon to serve for the matter only, as temporary members of the Board of Adjustment. The Planning Board members shall be called upon to serve in order of seniority to constitute a quorum. (Sentence starting with In the event is from the MLUL).

Section 2. The Chairman shall preside at all meetings and hearings of the Board and shall have the duties normally conferred by parliamentary procedure on such officers. In the absence or disqualification of the Chair, the Vice Chairman shall perform the duties of the Chairman.

Article III. Members of the Board, Selection and Terms of Office.

Section 1. Pursuant to NJSA 40:55D-69 and Ordinance 45-2B, the Board of Adjustment shall consist of seven (7) regular members and not more than two (2) alternate members. All regular members and alternates shall be municipal residents. The terms of the members first appointed shall be so determined that to the greatest practicable extent, the expiration of such terms shall be distributed in the case of regular members, evenly over the first four (4) years after their appointment and in the case of alternate members, evenly over the first two (2) years after their appointment, provided that the initial terms of no regular members shall exceed four (4) years and the initial terms of no alternate member shall exceed two (2) years.

No member may hold any elective office or position within the municipality.

Article IV, Obligations of the Board of Adjustment.

Section 1. No member of the Board of Adjustment shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. No member of the Board

shall participate in any proceedings in which such member has a conflicting interest that may interfere with the impartial performance of his or her duties as a member of the Board. The decision as to whether a particular interest is sufficient to disqualify shall depend on the facts and circumstances of the particular case. The test shall be whether the circumstances could reasonable be interpreted to show that they had the likely capacity to tempt the Board member to depart from his or her sworn public duty.

Section 2. The members of the board shall comply and be bound by the provisions of the Local Government Ethics Law, NJSA 40A:9-22.1, et. seq. and shall annually file a statement as prepared by the Local Finance Board and the Division of Local Government Services, Department of Community Affairs.

Section 3. A member of the Board may by public hearing if he or she request it, may be removed by the Township Committee for cause,

Article V. Disqualification for Interest.

Section 1. Any Board member having been deemed or having deemed himself or herself disqualified in any matter shall not sit with the Board to participate in the consideration of such matter. The nature of the disqualification shall be disclosed at the time of recusal unless doing so would constitute an unwarranted invasion of individual privacy or could adversely affect the public interest. Such member may be heard at the appropriate time as an interested party or applicant, but whenever such member appears before Board on his or her own behalf or by legal representative, it shall be disclosed that the member's comments are made solely to exercise or protect private rights and are not expressed as a member of the Board. Every effort shall be made by such member to avoid the possible influence of fellow Board members and the appearance of impropriety from the point of view of the general public.

Section 2. Where a conflict of interest is only possible and not actual by virtue of the involving, either directly or indirectly, any personal or financial interest such conflict need not necessarily result in a disqualification but should be disclosed. For purpose of illustration, prior dealings and friendships should be disclosed so that disqualification can be considered on an informed basis. Disclosure of interest is necessary in order to judge whether a particular interest is sufficient to disqualify or is remote and speculative.

Concern for the impartial exercise of authority, in appearance as well as in fact, requires that when a member of the Board must disqualify himself or herself in a matter because of a conflict of interest, the disqualification is absolute and cannot be waived. However, if a conflict is only potential and is disclosed, the Board may reasonably find that a particular interest it's too remote or speculative to cause a disqualification. The Board Attorney shall be consulted in each case. Whenever the board is called upon to waive a potential conflict, the affected Board member shall disclose the nature of the relationship and shall satisfy the Board that the relationship would not in any way influence her or her decision.

Section 3. When a member fails to disqualify himself or herself where the circumstances require disqualification, any interested party may move before the Board for an order or determination that such member is or was disqualified to act and may even after decision, seek to vacate the decision and a rehearing or other appropriate relief. The motion shall contain a statement of 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.

Article VI. Meetings and Order of Business.

Section 1. The Board shall prepare and publish a calendar of its regular meetings at its Annual Reorganization Meeting in January of each year, pursuant to the "Open Public Meetings Act."

Section 2. In the event the work of the Board cannot be discharged in full at the regular meeting provided in its meeting schedule, additional meetings may be called as adjourned meetings and the time may be set at the regular meeting. These adjourned meetings do not require notice in writing to the members.

Section 3. Meetings may be called by the Chairman, or in his/her absence by the Vice Chairman, at any time or upon written request of two (2) Board members, provided notice thereof be received by each Board member at least two days prior thereto, by mail or by email and to the public as required by the "Open Public Meetings Act" NJSA10:4-6 et. seq. 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.

Section 4. No business may be transacted nor may any hearing proceed at a regular meeting or special meeting unless at least four (4) members of the Board are present for a quorum or in the event of a Use (D Variance) were a quorum of (5) members of the Board are present. In the absence of a quorum, the members present may convene a meeting only for the purpose of adjourning the meeting to another date.

Section 5. Regular meetings may be cancelled by the Chairman when there are no cases pending. Notification shall be given to members, not less than 24 hours prior to the time set for such meeting.

Section 6. Subject to the discretion of the Chair, the order of business at meetings shall be as follows:

- a. Call to Order
- b. Flag Salute
- c. Roll Call

- d. Open Public Meeting Announcement
- e. Approval of Minutes
- f. Resolutions, if any
- g. Unfinished Business, if any
- h. New Business
- i. Items for Discussion, if any
- j. Presentation of Bills
- k. Correspondence
- l. Open to the Public
- m. Adjourn

All meetings will commence at 7:00 p.m. and adjourn at 10:00 p.m. unless the Board is hearing testimony and at the conclusion of said testimony, the hearing will adjourn to the next regular scheduled meeting date.

Section 7. Where an applicant has taken a substantial period of time to present its 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 decide the matter without affording such opportunity, the applicant shall be at risk of 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.

Article VII. Annual Report

Section 1. The Board of Adjustment per 40:55D-70.1 shall at least once a year, review its decisions on applications and appeals for variances and adopt by Resolution a Report on its findings on zoning ordinance amendments or revision, if any. The Board of Adjustment shall send copies of their report to the Planning Board and Township Committee.

Article VIII. Procedure in Hearing an Application

1. No hearing shall be scheduled until the application has been deemed complete.
2. At the time of the hearing on an application, the Applicant may appear in his own behalf or be represented by Counsel. If the Applicant is an LLC, Incorporated or Partnership or any entity other than a sole proprietorship, they must be represented by an Attorney.
3. A verbatim record of the proceedings shall be provided for:
4. All witnesses shall testify under oath or affirmation.

5. The Applicant or its Attorney may make a brief initial statement outlining the nature of its application and the relief sought prior to introducing evidence.
6. Evidence shall usually be introduced in the following order:
 - a. Applicant presents evidence;
 - b. Board asks questions of applicant;
 - c. Witnesses for the applicant give testimony;
 - d. Board asks questions of the witnesses;
 - e. Interested parties ask questions of the witnesses;
 - f. Interested parties present evidence;
 - g. Board questions interested parties;
 - h. Applicant cross examines interested parties;
 - i. Rebuttal by Applicant;
 - j. Rebuttal by Interested parties.
7. The Board shall not be bound by the strict rules of evidence, but it may exclude irrelevant, Immaterial, incompetent or unduly argumentative or repetitious testimony or evidence.
8. If the Board finds that viewing a site would be helpful, the Board shall fix the time and date for the Site visit and shall publicly announce during the hearing the date and time of its visit. Notice of The site visit shall also be given as provided under the "Open Public Meetings Act". No hearing shall be conducted at the site and no evidence or testimony shall be taken. The Board shall not discuss the application at the site visit.

Article IX Voting.

Section 1. All motions shall require a second. All voting shall be by Roll Call on all applications for development and where else deemed necessary by the Board or any Board member and all votes shall be recorded by the Board Secretary. Unless otherwise provided herein or by law, any action may be authorized by a majority of vote of the members present at such meeting. Alternate members may participate but may not vote except in the absence or disqualification of a regular member. All actions shall be taken by a majority vote of the members present at the meeting, except as otherwise required by the provisions of the Municipal Land Use Law (MLUL), as set forth under NJSA40:55D-10,2.

Section 2. If a motion to approve an application for development fails to receive the number of required votes, such failure shall be deemed an action denying the application. A tie vote on a motion to approve an application shall be considered a denial.

Section 3. Abstentions are disfavored except for good cause. An abstention shall be regarded as an assent to the vote of the majority. A disqualified member shall not be counted as an abstention. If the

Board is evenly split in its decision; no majority exists with whom an abstaining member can be said to vote. Abstentions shall not be construed to approve an application, nor shall they be used to create a tie vote.

Article X Memorialize Resolution.

Section 1. Memorializing a Resolution adopted no later than 45 days after the date of the meeting at which the Board voted to grant or deny approval. Only the members of the Board who voted to grant the application can vote to memorialize the Resolution. A notice of the decision shall be published in the official newspaper of the municipality.

Article XI Employees

Section 1. The Board may employ or contract for a fix the compensation of legal counsel (other than the municipal attorney) and other experts, staff and services as it deems necessary, not exceeding, exclusive of gifts or grants, the amount appropriated by the governing body for its use.

Article XII Amendments.

These Bylaws may be amended by an affirmative vote of four (4) or more members of the Board.

Adopted: 4/24/1985

Amended: 5/1997, 4/24/2019/ 6/2023