

**PART I  
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 Delaware Township, New Jersey."

**1:1-2. Annual meeting; Officers.** The annual meeting of the Board shall be held on the second available Thursday of January of each year, or on the first available Thursday after the Township Committee has reorganized, at which time the Board shall elect, from among its members, a Chairperson and a Vice-Chairperson. The Board shall also appoint a Secretary and a Board Attorney, each of whom shall serve for one year and until their successors have been appointed. The Board may appoint such other officers or assistants and employ such experts or staff 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 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 the duties normally appertaining to his or her office.

**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.** Subject to these rules, and under the direction of the Chairperson, the Secretary shall (a) conduct all official correspondence, compile the required records, maintain and keep in order the necessary files and indices; (b) generally perform the secretarial work of the Board; (c) notify the Municipal Clerk and the officer charged with enforcing the Zoning Ordinance of all meetings of the Board and provide them with a list of the matters scheduled for hearing at each meeting; (d) attend all meetings of the Board; (e) 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; (f) give all notices of meetings required to be given by the Open Public Meetings Act, the Municipal Land Use Law or any other applicable law or ordinance; (g) call the roll and take the votes; (h) make record of, and keep on file, the minutes of the proceedings at each meeting or hearing held by the Board and enter therein with the other proceedings, such resolutions and orders as are adopted and a copy of the minutes of that meeting; (i) issue notices of meetings; (j) publish the notice and serve copies of the Board's resolutions as provided in Rule 2:8-5; (k) perform such other duties as may be required or assigned.

**Rule 1:2      Meetings**

**1:2-1. Regular meetings.** The meetings of the Board shall be held at the Municipal Building, Delaware Township, New Jersey, on the second Thursday of each month, unless such

date is not practical and an alternate date is duly publicized. Meetings shall begin at 7:30 p.m. 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 Act, N.J.S. 10:4-6 et seq.

**1:2-2. Special Meetings.** Meetings may be called by the Chairperson, or in his absence by the Vice-Chairperson, at any time, 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 Act, N.J.S. 10:4-6 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. 40:55D-9b and N.J.S. 10:4-6 et seq.

**1:2-4. Order of Business.** The order of business at all meetings shall be as follows:

- (a) Call to Order and reading of Open Public Meetings Act notice
- (b) Pledge of Allegiance
- (c) Roll Call
- (d) Approval of minutes of previous meeting
- (e) Memorializations
- (f) Applications
  - (1) Hearings will be scheduled in the order in which initial applications are filed; unless the Chair determines another order will best facilitate the meeting.
  - (2) The chair reserves the right to alter the order of applications to facilitate meeting requirements.)
  - (3) Normally, no more than five hearings will be scheduled for a single evening meeting
  - (4) No hearing on new applications will begin after 10:30 p.m.; no application hearing then in progress will be continued later than 11:00 p.m. (a hearing in progress well be adjourned to the next meeting).
- (g) Planning Board Update
- (h) Correspondence
- (i) Adjournment

**1:2-5. Record of Proceedings.** The Board shall provide for the verbatim recording of the proceedings by either stenographer, mechanical or electronic means, or both. The Board shall furnish a transcript, or duplicate recording in lieu thereof, on request of any interested party at such party's expense. All stenographer's notes, electronic records or other verbatim records of meetings shall be retained by the Board for at least five years from the date of the hearing, or until the termination of any proceedings relating to such matter in the Superior Court or the Supreme Court of the State of New Jersey, whichever is longer.

### **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.

**1:3-1. Motions.** All motions shall require a second.

**1:3-3. Voting.** Votes on applications before the Board shall be taken by roll call and the vote and name of the person casting the vote shall be recorded in the minutes.

#### **Rule 1:4      Alternate Members**

**1:4-1 Designation.** The two alternate members of this Board appointed by the Township Committee shall be designated by the appointing authority as "Alternate No. 1" and "Alternate No. 2," respectively.

**1:4-2 Appointment of alternate to serve on case.** During the absence or disqualification of any regular member, an alternate member shall serve in the place of the regular member.

**1:4-3 Participation in discussions; voting.** 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 No. 1 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 appeal alleging that there is error in any order, requirement, decision or refusal made by the building inspector, zoning officer, or other official enforcing the General Ordinances of the Township of Delaware, "Land Use," shall be commenced by filing a notice of appeal with the Board Secretary in accordance with the provisions of the statute within twenty (20) days from the date of the order, decision or refusal appealed from. The notice of appeal shall also be filed with the officer from whom the appeal is taken and shall specify the grounds for such appeal. The 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. The applicant shall pay at the time of filing an escrow deposit and fee as required by ordinance.

(b) **Applications to Board of Adjustment.** An application for a "c" variance shall be commenced by filing an original and thirteen (13) copies of the application with the Board Secretary, together with (1) the fee required by ordinance; (2) all matters or documents required by the checklist established by ordinance; (3) the escrow deposit required by ordinance.

(c) **Applications to Board of Adjustment.** An application for a "d" variance or for any other relief shall be commenced by filing an original and nineteen (19) copies of the application with the Board Secretary, together with (1) the fee required by ordinance; (2) all matters or

documents required by the checklist established by ordinance; (3) the escrow deposit required by ordinance.

(d) **Other Requirements.** No application will be heard by the Board unless all of the following applicable steps have been accomplished:

1. Any maps or documents for which approval is sought at a hearing must be filed at least ten (10) days before the date of the hearing. The filed maps or documents shall then be available for public inspection during normal business hours in the office of the Board Secretary. All filed plans must be sealed by a Professional Engineer or an Architect licensed by New Jersey, or must be accompanied by a sworn affidavit signed by the applicant attesting that he has prepared and signed his own plans, pursuant to N.J.S.A. 40:55-52.

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 the applicant has complied with all applicable requirements.

3. As required by state law (N.J.S. 40:55D-65(h)) and local ordinance, the 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.

4. The applicant has met the filing deadline for the filing of required plans and the initial application: At least 45 days in advance for site plan applications (Sec 10:3). At least 28 days in advance for all other types of applications (Sec. 8:1).

5. The Board's Engineer has completed his technical review and made his report on the applicant's filed plans, including all supporting data and calculations (applicable to site plans and subdivisions only.)

6. The Environmental Commission has received a copy of the filed development application, as per section 6:14

(e) **Fees.** Fees as established by ordinance shall be paid simultaneously with the filing of an application.

**2:1-2. Certification of Completeness.** Any determination that an application is not complete shall be made within 45 days of the date of filing of the application, in accordance with the provisions of N.J.S.A. 40:55D-10.3, with notice to the applicant. The Board shall determine whether an application for major site plan or major subdivision approval is complete, while all other completeness determinations may be made by the Board, and/or the Board Secretary, and/or the Board Engineer, as appropriate.

**2:1-3. Copies to Zoning Officer, Attorney, etc.** 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 (if the Environmental Commission has filed an index of

the natural resources of the municipality with the Board of Adjustment).

**2:1-4. Case Number.** Each new action shall be assigned a case number, which shall thereafter appear on all subsequent papers filed in the cause.

**2:1-5. Amended Applications.** An applicant may, prior to the commencement of a hearing, amend the application without leave of the Board and in all such cases new notice shall be given in accordance with Rule 2:3. After commencement of hearing, an 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 in accordance with Rule 2:3.

**Rule 2:2 Hearing Date**

**2:2-1. Hearing Date.** As soon as any complete appeal or application is filed, the case shall be placed on the calendar. The applicant shall be notified of the time set for the hearing.

**2:2-2. Adjournment.** The time for hearing may be adjourned from the time fixed therefore, 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.

**2:2-3. Bifurcation.** An applicant seeking a variance pursuant to N.J.S. 40:55D-70(d) may either simultaneously file an application for any required site plan or subdivision approval or may make a subsequent application to this Board for such approval. The Board may consider the variance request before dealing with the subdivision or site plan.

**Rule 2:3 Notice; Upon Whom Served; Time**

**2:3-1. Notice; Upon Whom Served.** Notice of hearing shall be given to all persons and officials entitled thereto by the requirements of N.J.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 substantially the form set forth as sample notice in application package.

**2:3-3. Proof of Service.** The service and publication of notices is a jurisdictional requirement. Proof of the service and publication of all required notices shall be made to the Board Secretary.

**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 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 the owner's 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 Secretary may render such assistance to the applicant as may be practicable.

**2:4-4. Application: Contents.** The applicant shall set forth in the application all facts upon which he or she will rely to establish his or her right to the relief sought and supply all information requested on the application form or otherwise required by law.

**2:4-5. Applications by Corporation or Partnership, Disclosure of Stockholders or Ownership Interests.** A corporation, partnership or any legally recognized entity other than an individual applicant applying for permission to subdivide a parcel of land, or for a variance to construct a multiple dwelling, 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) percent of the interest in the partnership, as the case may be, in accordance with the requirements of N.J.S. 40:55D-48.1.

## **Rule 2:5      Hearings**

**2:5-1. Appearances.** At the hearing, 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 in accordance with the rules of the Superior Court of New Jersey.

**2:5-2. Oath.** At the hearing, the applicant and all witnesses shall be sworn by the Chairperson, his designee or the Board Attorney before giving testimony.

**2:5-3. Order of Presentation.** When the hearing is called to order:

(a) The applicant shall present, by the applicant's testimony and the testimony of the applicant's witnesses, or by such documentary evidence or exhibits as he or she may submit, proof of all facts upon which the applicant relies to establish his/her right to the relief sought in the application.

(b) Any other persons interested in the action shall then be heard and may present any relevant testimony or evidence in support of or in opposition to the application. When these comments are in the nature of evidence, they shall be taken under oath.

(c) General comments from members of the public shall then be heard. When these comments are in the nature of evidence, they shall be taken under oath.

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

(e) Chair has the right to modify the order of presentation as needed per individual applications.

**2:5-4. Examination by Board; Testimony.** (a) All witnesses may be cross examined by any member of the Board, the Board attorney, or any interested person; (b) any member of the Board may testify as to any relevant matter of which he/she has personal or official knowledge for the purpose of amplifying the record, including facts ascertained from a viewing of the premises in question and the general area.

**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 a 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 necessary to establish the applicant's right to the relief shall be established in the record, unless the fact 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 Secretary or Board Attorney and will be retained by the Board until the termination of the matter.

**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 support each element of the relief sought, and to demonstrate that a proposed use will not impair the zone plan or be inconsistent with the purposes 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/her application, in which case the action shall be dismissed without prejudice. After commencement of the hearing a voluntary dismissal may be taken only with the approval of the Board.

**2:7-2. Nonappearance.** When, at the time set for the hearing or continued hearing on any application, neither the applicant nor any one in his/her 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. Reports.** (a) The Board may, at any time, request a written report of 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.

(b) 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, which ought to have been filed with the planning board, the zoning board may, by resolution, transfer the application to the planning board, making public announcement of the time and place thereof at the meeting and causing notice of its action to be published as in all other cases. Likewise, the planning board may transfer appropriate applications to the zoning board. The Board shall examine the transferred 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 zoning board in the first instance. The applicant shall be responsible for any additional fees or escrow deposits not previously collected.

## **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) of 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. Every decision shall be made by proper motion duly made and seconded, with the votes of all members recorded on a role-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 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. (Note: Use variance applications may not be voted on at the conclusion of the evidentiary hearing, but may be continued to the next board meeting for the purpose of voting on the merits of the use variance.) Whenever a resolution of memorialization is adopted in accordance with the provisions of N.J.S. 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 the applicant's 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/her 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 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. 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. 40:55D-10h.

## **Rule 2:9      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 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 therefore and the grounds relied upon. If the petition is granted, the Board shall fix a date for hearing and the movant 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/she did not sit upon the hearing of the action, may, nevertheless, participate in the decision of the case if, but only if, he/she has read or listened to a recording of the entire record

of the proceedings and has certified in writing that he/she has done so.

(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. Qualification of Member.** (a) Any member of the Board of Adjustment shall disqualify himself/herself from sitting on the hearing of any matter in which he/she has a disqualifying interest, such as, but not limited to, the following situations:

1. Where the Member owns property located within 200 feet of the property affected by the action.

2. Where the applicant is related to the Member within the third degree of consanguinity to the member by blood or in the husband or wife of any person so related.

3. Where the applicant or his/her attorney is the employer of the Member, employee, or partner of the member, or is a corporation in which the member is a shareholder or has other financial interest.

4. Where the Member has any other personal or pecuniary interest in the proceeding.

(b) Any member so disqualifying himself/herself shall not sit with the Board for participation in any executive session or conference, or during the hearing or determination of the case in question, nor shall such member participate as a member of the public by testifying either for or against the relief sought by the applicant. Nothing herein shall prevent any member of such member's family or his/her attorney from appearing and giving testimony either for or against the publication.

(c) When a member fails to disqualify himself/herself, 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 Moot Questions: Advisory Opinions**

**2:11-1. Prohibition.** (a) The Board shall not hear an action based upon and presenting a question which 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.

## **Rule 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, 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, the sheriff's deputy, or any person 18 or more years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named, or as otherwise permitted by law.

**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 2:13 False Testimony**

**2:13-1. 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. 2A:67A-1 et seq.), be guilty of perjury. The Board shall submit any 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. 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 powers conferred by said act. These rules are adopted pursuant to the provisions of N.J.S. 40:55D-8, and subject generally to the provisions of the Municipal Land Use Law.

#### **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 deemed detrimental to the conduct of Board business, the Board may recommend to the governing body of the municipality in writing that such member be removed in accordance with the provisions of N.J.S. 40:55D-69.

**3:4-2. Automatic Vacancy.** In accordance with the provision of N.J.S. 40A:9-12.1(g) any Board member who, 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 four consecutive regular meetings shall be considered to be no longer a member of the Board and a vacancy on the Board shall be deemed to exist, provided that the Board shall notify the governing body in writing of such determination and further provided that the Board may refuse to excuse only with respect to those failures to attend and participate which are not due to legitimate illness.

**Rule 3:5 Continuing Education.**

**3:5-1.** Each Board member and alternate shall participate in such educational training programs as is required by law.

**3:5-2.** Except for good cause shown, failure to attend such a training course shall result in the disqualification of said member or alternate.

**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 rules 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 surprise, hardship or injustice to the petitioner or other interested persons.