

Borough of Roselle
ZONING BOARD OF ADJUSTMENT
RULES OF PROCEDURE

Table of Contents

Part 1 General Rules

Rule 1:1	<i>Organization</i>	
1:1-1		Reorganization Meeting
1:1-2		Elections and Appointments
	(a)	Chairperson & Vice-Chairperson
	(b)	Secretary
	(c)	Board Attorney
	(d)	Other Appointees
	(e)	Chairperson Pro Tempore
1:1-3		Members
1:1-4		Alternate Members
1:1-5		Temporary Members
Rule 1:2	<i>Duties</i>	
1:2-1		Chairperson
1:2-2		Vice-Chairperson
1:2-3		Secretary
Rule 1:3	<i>Meetings</i>	
1:3-1		Location and Time
	(a)	Date
	(b)	Time
	(c)	Location
	(d)	Conference Meeting
1:3-2		Cancellation
1:3-3		Special Meetings
1:3-4		Quorum
1:3-5		Voting
1:3-6		Member's Right to Vote Although Absent During Hearing
1:3-7		Order of Business
	(a)	Conference Meeting
	(b)	Regular Meeting
	(c)	Special Meeting
1:3-8		Open and Closed Meetings

- 1:3-9 Oaths and Subpoenas
- 1:3-10 Time Limitations

Part 2 Applications & Hearings

Rule 2:1 *Application Submission – Variance/Site Plan/Conditional Use/Interpretations*

Rule 2.2 *Completeness of Application*

Rule 2:3 *Hearing Date and Notice of Hearing*

Rule 2:4 *New Submissions by Applicant Prior to Hearing*

Rule 2:5 *Submissions After Hearing Has Commenced*

Rule 2:6 *Attorneys for Parties*

Rule 2:7 *Testimony Under Oath*

Rule 2:8 ***Appearances***

- 2:8-1 Applicant
- 2:8-2 Opposing Parties
- 2:8-3 Groups or Organizations

Rule 2:9 ***Presentations***

- 2:9-1 Applicant
- 2:9-2 Opposing Parties
- 2:9-3 The Public
- 2:9-4 Rebuttal Testimony
- 2:9-5 Witnesses to Remain Available
- 2:9-6 Board Members Submitting Evidence
- 2:9-7 Judicial Notice

Rule 2:10 ***Rules of Evidence***

- 2:10-1 Authentication of Evidence
- 2:10-2 Objections
- 2:10-3 Experts

Rule 2:11 ***Burden of Proof***

- 2:11-1 Entitlement to Relief
- 2:11-2 Nature of Relief / Variances and Conditional Uses

Rule 2:12 ***Reports from Officers, Boards or Agencies***

- 2:12-1 Requesting Reports
- 2:12-2 Examination of Person Making Report
- 2:12-3 Referrals

Rule 2:13 ***Board Experts***

Rule 2:14 ***Continuances***

- 2:14-1 Continuance on Motion of the Board
- 2:14-2 Continuance on Request of Any Interested Person
- 2:14-3 Length of Continuance

Rule 2:15 ***Closing the Record and Hearing***

- 2:15-1 Chairperson’s Statement
- 2:15-2 Closing the Record and Hearing
- 2:15-3 Effect of Closing the Record and Hearing

Rule 2:16 ***Communications to the Board***

- 2:16-1 Permitted Communications
- 2:16-2 Other Communications

Rule 2:17 ***Dismissal Without Prejudice***

Rule 2:18 ***Court Reporter***

Rule 2:19 ***Conditions Placed Upon Approvals***

Part 3 Decision Making

Rule 3:1 ***Approval or Disapproval of Application***

- 3:1-1 Resolution Required
- 3:1-2 Adoption of Resolution
 - (a) When Adopted
 - (b) Voting
 - (c) Contents
 - (d) Relief Differing from Request
 - (e) Retention of Jurisdiction
- 3:1-3 Effective Date of Board Action
- 3:1-4 Failure of Board to Reach Timely Decision
- 3:1-5 Additional Actions or Filings
- 3:1-6 Variances/Directions
- 3:1-7 Notice and Publication

Rule 3:2 ***Rehearing, Vacation or Modification***

- 3:2-1 Rehearing
- 3:2-2 Vacation or Modification
- 3:2-3 Discretion of the Board
- 3:2-4 Notice and Hearing

Part 4 Miscellaneous

Rule 4.1 ***Fees and Costs***

- 4:1-1 Fees at Filing
- 4:1-2 Costs of Special Meetings
- 4:1-3 Copy of Voice Recording
- 4:1-4 Escrow Deposit

Rule 4:2 ***Transfer Between Boards***

Rule 4:3 [Reserved]

Rule 4:4 [Reserved]

Rule 4:5 ***Conflicts and Amendments***

- 4:5-1 Conflicts with Ordinance or Statute
- 4:5-2 Effective Date of these Rules
- 4:5-3 Amendments

PART 1
GENERAL RULES

1:1 *Organization.*

1:1-1 Reorganization Meeting. In each year the Board's first meeting following January 1st shall be the Reorganization Meeting.

1:1-2 Elections and Appointments. At the Reorganization Meeting the following elections and appointments shall take place:

(a) Chairman and Vice-Chairman. The Board shall elect a Chairman and a Vice-Chairman to serve until their successors have been elected at the next Reorganization Meeting. Hereinafter, the Chairman and Vice-Chairman are, respectively, referred to as the Chairperson and the Vice-Chairperson.

(b) Secretary. The Board shall elect a Secretary to serve until his or her successor has been elected at the next Reorganization Meeting. Serve at the discretion of the Board. The Secretary shall receive remuneration agreeable to the Board and such person and as authorized by the Borough Council. In the absence of the Secretary a replacement will be named to serve as Acting Secretary for the meeting.

(c) Board Attorney. A Board Attorney shall be appointed to serve until a successor has been appointed at the next Reorganization Meeting. Such attorney, who shall be a member of the New Jersey Bar familiar with the law of local governments, zoning and planning, shall receive remuneration agreeable to the Board and such person and as authorized by the Borough Council. In the disqualification or other absence of the Board Attorney when the presence of an attorney is required, a duly qualified attorney shall be Acting Board Attorney.

(d) Other Appointees. The Board may also appoint such other officers or assistants, or employ such staff or experts, as it may deem necessary. The Board may pay any such person such remuneration as agreeable to the Board and such a person; subject always to the available lawful funding. The Board Attorney, and any such other appointees or employees shall serve at the pleasure of the Board.

(e) Chairperson Pro Tempore. In the event that the Chairperson and the Vice-Chairperson both shall be disqualified or otherwise absent at a meeting or hearing or in regard to a matter, the Board shall designate another Member as Chairperson Pro Tempore.

1:1-3 Members. The Board shall consist of seven (7) members, who shall be appointed as provided by Borough Code Chapter 77-8.

1:1-4 Alternate Members. The two Alternate Members, designated as Alternate No. 1 and Alternate No. 2, respectively, are appointed as provided by Borough Code Chapter 77-8. Those designations are effective for each individual's entire term of appointment. Each Alternate Member shall participate in the business and affairs of the Board subject to the following provisions:

- (a) An Alternate Member may sit with the Board, or any committee, and participate in any hearing or business conducted; except that an Alternate Member may not vote in any matter or on any question or issue other than in the place and stead of a Member who is disqualified or otherwise absent or ineligible to participate.
- (b) No vote by the Board shall be delayed for the purpose of enabling an absent Member to appear and vote if an Alternate Member is available and otherwise eligible to vote in that person's place and stead.
- (c) In the event that both Alternate Members are present but only one Member is absent or disqualified, Alternate No. 1 shall vote if qualified.
- (d) Except as to the restrictions upon voting by an Alternate Member, each Alternate Member shall have all of the rights and privileges, and shall be subject to all of the duties and disabilities, pertaining to Members other than the right to serve as Chairperson, Vice-Chairperson, or Chairperson Pro Tempore.

1:1-5 Temporary Members. If the Board lacks a quorum to hear and act upon a matter because any of the Members or Alternate Members are prohibited from acting due to personal or financial interest, members of the Planning Board shall be called upon to serve as Temporary Members of the Board, in such matter only, as provided in the Borough Code.

1:2. *Duties.*

1:2-1 Chairperson. The Chairperson shall preside at all meetings and hearings of the Board, rule upon all points of order and matters of procedure arising in regard to such meetings or hearings, and perform all of the duties normally appertaining to such office; all as required by or consistent with law, ordinance, these Rules, or prevailing parliamentary practice.

1:2-2 Vice-Chairperson. The Vice-Chairperson shall act in place and stead of the Chairperson in that individual's disqualification or other absence.

1:2-3 Secretary. The Secretary shall, under the direction of the Chairperson, generally perform all of the work appertaining to the office of secretary, as well as that appertaining to an administrative officer; including, but not limited to:

- (a) Conduct official correspondence; compile the required records; keep and maintain in proper order the necessary files and indices with respect to the business and affairs of the Board; give all notices required to be given under the Open Public Meetings Act, the Municipal Land Use Law or any other applicable law or ordinance or these Rules; and maintain a directory of Board Members.
- (b) Provide all Board Members with timely notice of, and all necessary backup information regarding, all Applications which will come before the Board. Unless prevented by unexpected circumstances, such information shall be sent not less than five (5) days before the Board meets.
- (c) Attend all meetings of the Board; have custody and care of all records, documents, exhibits, maps, plans and papers of or in the possession of the Board for which no other provision is made by statute or ordinance; take attendance; take roll call votes, and note the yeas and nays and abstentions thereon as each Member votes - the presiding officer being the last to vote.
- (d) Cause a voice recording to be made of the proceedings of each hearing conducted by the Board.
- (e) Make and submit minutes of the proceedings of each Board Meeting, including conference and workshop meetings, which report the business before the Board and the actions taken.
 - (1) All minutes shall show the time and place of the meeting, compliance with notice requirements, the Members present, the subjects or matters considered, the actions taken, the vote of each Member, and any other information required to be shown in minutes by law.
 - (2) The minutes of every Regular or Special Meeting shall include the names of the persons appearing and addressing the Board, and of the persons appearing by attorney, the actions taken by the Board, the findings, if any, made by the Board and the reasons therefore.
 - (3) All minutes shall be presented to the Board, for review, no more than forty-five (45) days after the meeting to which the minutes pertain, and shall be acted upon by the Board no more than sixty (60) days after such meeting. Thereafter, the minutes shall be maintained and available for public inspection as required by law, at the office of the Secretary, during normal business hours.
- (f) Maintain a file and index of all resolutions adopted by the Board.

1:3 Meetings.

1:3-1 Location and Time. Unless otherwise determined by the Board and stated in a proper notice:

- (a) Meetings of the Board shall be held at the Borough Hall on such Thursdays of each month as shall be determined at the annual Reorganization Meeting. Within seven (7) days after the Reorganization Meeting, the schedule of such meetings and their locations shall be posted, and thereafter maintained in the Borough Hall, and shall be published in the local newspaper of record.
- (b) All Regular and Special meetings shall be preceded by a Conference Meeting. Conference Meetings shall start at 7:00 PM, and any Regular Meeting or Special Meeting shall start at 7:30 P.M.
- (c) All Regular Meetings and Special Meetings of the Board shall be held in the Chambers of the Borough Hall unless the Board determines otherwise.
- (d) All, or a portion, of a Conference Meeting may be used as a Workshop Meeting, or the Board may schedule a Workshop Meeting in lieu of a Regular Meeting. Workshop Meetings shall be for the purpose of discussing and studying Applications or other matters coming before the Board, and shall not be for the purpose of holding hearings or taking formal or official action in connection with an Application for development. Workshop activities shall not be considered a "hearing" as described in N.J.S.A. 40:55D-10.

1:3-2 Cancellation. In the event that there shall be no matters for consideration by the Board at a scheduled meeting other than the Reorganization Meeting, the Chairperson may exercise discretion to cancel the meeting upon forty-eight (48) hours advance notice to the Members and to the Public.

1:3-3 Special Meetings. Special Meetings, as permitted by law, may be called by the Chairperson, or by the Vice-Chairperson in the absence of the Chairperson, at any time, and may be called upon the written request of any two Regular Members; provided always, that (i) public notice of every such meeting shall be given as required by law and (ii) that all Members shall be given notice not less than forty-eight (48) hours in advance of the meeting. An Applicant may request, but shall not be entitled to, a Special Meeting. The Board may grant such a request if the public interest is fairly and reasonably served. The Applicant shall bear all costs of the Board and its staff, including without limitation the Board Attorney, the Secretary, and any Consultant to the Board, and any other expert retained by the Board, related to such meeting. As permitted by law, a flat fee per Special Meeting to cover such fees and costs.

1:3-4 Quorum. Five (5) Members shall constitute a quorum for all meetings, including hearings or other proceedings, of the Board.

- (a) If there are not five (5) Regular Members present, one or both of the Alternate Members may be counted in the quorum as required.

- (b) In the absence of a quorum, the Members present shall adjourn the meeting and any matter(s) on the agenda to another date. If, in the course of any meeting that opened with a quorum, the absence of a quorum is noted, the presiding officer shall immediately adjourn the meeting to another date.
- (c) If it is determined that, by reason of disqualification or extended absence, there will not be sufficient qualified Regular or Alternate Members to act upon a matter to be heard by the Board, regular Class IV members of the Planning Board shall be called upon to serve, for that matter only, as temporary members of the Board, in order of seniority of continuous service to the Planning Board and subject to availability, until there are the minimum number of persons to constitute a quorum of people without disqualification. If a choice has to be made between members of the Planning Board with equal seniority, the Chairman of that board shall make the choice.

1:3-5 Voting. The following shall apply in any meeting at which a quorum is present, and failure to meet such requirements shall constitute defeat of the motion or denial of the Application:

- (a) In all matters not covered by (b) or (c) below; the affirmative vote of a simple majority of the Members present and eligible to vote, shall adopt the motion or approve the Application.
- (b) On a motion to approve an Application to permit a building or structure in the bed of any street, or in any public drainage way, or in any flood control basin, or in any area reserved as a public area on an official map, the affirmative vote of a number of Members present and eligible to vote equal to not less than a majority of all the Regular Members of the Board shall be required.
- (c) If an ordinance or statute requires a higher vote for an action than otherwise required by these Rules, the ordinance or statute shall govern.
- (d) A Resolution of Memorialization of action previously taken shall require the affirmative voice vote of a majority of the Members present who voted in favor of that previous action. However, if only one such Member is present the Resolution of Memorialization may be adopted by the voice vote of that Member. No Member who was not a voter in favor at the time of the previous action may vote upon such a Resolution.
- (e) If any motion to approve an Application fails to receive the number of required affirmative votes set forth in this Rule 1:3-5, such failure shall constitute final action denying the Application.
- (f) The Chairperson shall vote last on all motions.

- (g) The vote of each Member shall be recorded by the Secretary.
- (h) A Member who abstains from a vote is counted toward a quorum. An abstention shall be regarded as assent to the vote of the majority, but shall not be considered or counted as an affirmative vote. However, an abstention in a vote that results in a tie shall not be construed as approval of an Application; nor shall an abstention be used to create a tie.

1:3-6 Member's Right to Vote Although Absent During Hearing.

- (a) When any hearing before the Board shall carry over to one or more additional meetings, a Member who was present for the opening session but absent for one or more of the subsequent meetings, shall, notwithstanding such circumstances, be eligible to vote on the matter upon which the hearing is conducted; provided that such Member certifies to the Board, in writing, to having read the transcript or listened to the recording of all of the hearings from which absent. This rule shall not be construed as authorizing any hearing to be held when less than a quorum is present.
- (b) If a Member was not present because disqualified to hear the matter and an Alternate Member was designated to act in the disqualified Member's place and stead; or if the designation was to establish a quorum, the Member in whose place the Alternate was designated shall not thereafter participate or vote in the matter.
- (c) If at the time of a vote to approve or deny an Application a Member who is otherwise qualified to vote is absent, an Alternate Member who was present at all hearing sessions or has read the transcript of any hearings at which absent may vote in place and stead of that absent Member.

1:3-7 Order of Business. Unless the Board shall determine otherwise, the order of business shall be:

- (a) For a Conference Meeting –
 - (1) Call to Order
 - (2) Statement of Compliance with Open Public Meetings Act
 - (3) Roll Call
 - (4) Approval of Minutes of Previous Meetings (of any type)
 - (5) Communications
 - (6) Approval of Resolutions
 - (7) Old Business and Continued Matters
 - (8) New Business
 - (9) Adjournment.
- (b) For a Regular Meeting –

- (1) Call to Order
- (2) Statement of Compliance with Open Public Meetings Act
- (3) Roll Call
- (4) Communications or Announcements
- (5) Continued Matters
- (6) New Matters
- (7) Adjournment.

(c) For a Special Meeting –

- (1) Call to Order
- (2) Statement of Compliance with Open Public Meetings Act
- (3) Roll Call
- (4) Communications or Announcements
- (5) Continued Matters
- (6) New Matters
- (7) Adjournment.

1:3-8 Open and Closed Meetings.

- (a) All meetings, hearings and any other proceedings of the Board shall be open to the Public except for executive sessions pursuant to statute. Nothing herein shall be construed to limit the discretion of the Board to lawfully regulate, permit, or otherwise control, the active participation of members of the Public at any meeting.
- (b) Unless invited by the Board, comments or questions from members of the Public shall not be received at a Conference Meeting.

1:3-9 Oaths and Subpoenas.

- (a) The Board Attorney or Chairperson, or a designee of the Chairperson, shall, in the absence of a stenographer or certified court reporter authorized to administer oaths, swear or take the affirmation of all persons giving testimony before the Board. Such persons shall testify under oath subject to penalty for perjury.
- (b) The Board Attorney or Chairperson shall issue subpoenas required to compel the attendance of witnesses and the production of relevant evidence as permitted by law. The Board may apply to a court of appropriate jurisdiction for enforcement of subpoenas not complied with.

1:3-10 Time Limitations.

The Board shall not be under any obligation to remain in

session beyond 11:00 P.M.

PART 2
APPLICATIONS & HEARINGS

- 2.1** *Application Submission – Variances/Site Plan/Interpretations..* Upon receipt of an Application for Variance/Site Plan/Interpretations, the Zoning Office shall assign an Application Number to it. That number shall appear on all subsequent filings, notices and papers in the matter. All Applications and other documents submitted to the Zoning Office shall be stamped with the date of receipt. All Applications are reviewed by the Development Review Committee (DRC), which makes its recommendations to the Board. The Applicant or the Applicant’s counsel, or both as appropriate, may be present at the time of the committee meeting. Any questions that the Board has regarding the application shall be resolved before the Board votes upon the Application. The Board is not bound by the recommendations of the DRC.
- 2.2** *Completeness of Application.* The Board or its designee(s) shall determine the completeness of the Application within 45 days after the day of submission. If determination is made that the Application is not complete, the Zoning Office shall, not later than that 45th day, inform the Applicant (or the Applicant’s attorney if the Applicant is represented by an attorney) in writing that the Application is incomplete and the reasons therefore. If the Application is found to be complete the Zoning Office shall provide the Applicant, or the Applicant’s attorney as appropriate, written notice of the determination and the date on which it was made. The permitted time for the Board to grant or deny the action or relief sought by the Application shall commence on the date that completeness was determined.
- 2.3** *Hearing Date and Notice of Hearing.* The hearing date on an Application shall not be set until the Application is complete. The [Zoning Office] [Secretary] shall set the hearing date and advise the Applicant, or the Applicant’s attorney as appropriate, of the hearing date in the same written communication that advises of determination of completeness. Applicant shall then provide public notice of the hearing date as required by law.
- 2:4** *New Submissions by Applicant Prior to the Hearing Date.* In order to facilitate efficient review of any plans, drawings, reports, written opinions, other documents or exhibits created, modified or amended (other than by colorization, enlargement or reduction) subsequent to the date of completeness of the Application, the Applicant is encouraged to serve them on the Secretary not less than **20 days** before the initial hearing date.
- 2:5** *Submissions After The Hearing Has Commenced.* After a hearing has commenced, if original or amended plans, drawings, or reports, or written opinions, or other exhibits (other than colorized, reduced or enlarged versions of prior exhibits or

items previously submitted), are offered by any Party at a subsequent session without prior availability to the Board so that the Board shall have had opportunity to review them prior to that session; they shall not be considered by the Board, and testimony in regard to them shall not be heard, until the next session so that the Members and the Public shall have had reasonable opportunity to review them and be able to ask informed questions.

Should delay for such opportunity for review of a submission by or for an Applicant result in the statutory time for Board action on the Application being exceeded, the Applicant shall be deemed to have consented to an extension of time by its actions. Submission to the Secretary ten (10) days prior to the session at which the item will be offered shall be deemed to constitute reasonable opportunity for review by the Public and sufficient availability to the Board. There shall be a rebuttable presumption that a submission made less than ten (10) days prior to the session did not provide sufficient opportunity for such review or availability.

2:6 *Attorneys for Parties.* Every corporation or other artificial person shall be represented by an attorney-at-law admitted to practice in the State of New Jersey. A natural person may appear on his or her own behalf or may be represented by an attorney-at-law admitted to practice in the State of New Jersey.

2:7 *Testimony Under Oath* Every person giving testimony or presenting evidence in regard to an application shall first be sworn or give an affirmation as provided in 1:3-9(a) above.

2:8 *Appearances.*

2:8-1 Applicant. The Applicant shall enter an appearance. Attorneys appearing for Applicants shall identify themselves, their firms and their clients. Every corporation, other artificial person, or partnership shall be represented by an attorney-at-law.

2:8-2 Opposing Parties. Any individual(s) opposing an Application without representation by an attorney shall identify themselves by name and address. Attorneys representing opposing parties shall identify themselves, their firms and their clients. Every corporation, other artificial person or partnership appearing as a party shall be represented by an attorney-at-law.

2:8-3 Groups or Organizations.

(a) If a group or organization not required to be represented by an attorney-at-law, presents its views or expresses its questions in regard to an Application as a party or otherwise, or in any other hearing, it shall be represented by one of its members as primary spokesperson; and the members of such a group or organization shall participate only through such spokesperson in the making of an appearance or on

matters of procedure or questions of law. However, if the group or organization is represented by an attorney (whether by choice or as required by 2:3 above), such attorney shall be its sole spokesperson. In each instance, the spokesperson shall first present to the Board a list of all the members of the group or organization.

- (b) All provisions of these Rules regarding participation by members of the Public who are not parties shall also apply to any group or organization, and its members, that has not appeared as a Party but asks questions or offers sworn testimony.

2:9 *Presentations.*

2:9-1 Applicant.

- (a) The Applicant, or the Applicant's attorney, as appropriate, shall inform the Board whether all jurisdictional requirements, including publication and service of notice, payment of fees, satisfaction of tax obligations, providing of escrow funds have been met.
- (b) The Applicant or the Applicant's attorney, as appropriate, shall make an opening statement of the action sought and the testimony and evidence to be presented in support of the Application.
- (c) The Applicant or the Applicant's attorney through witnesses, as appropriate, shall then present the testimony of the Applicant and any supporting witnesses, together with such documentary or other evidence or exhibits upon which Applicant will rely.
- (d) Members and the Board Attorney may question the Applicant or any other witness in the course of testimony as well as at the completion of any witness' testimony.
- (e) Other Parties or their attorneys, as appropriate, who have entered appearances may, when recognized by the Chairperson, then engage in reasonable cross-examination of the witness.
- (f) Thereafter, members of the Public or their attorneys, as appropriate, recognized by the Chairperson may, upon stating their names and addresses, ask questions of the witness as to the witness' testimony.

2:9-2 Opposing Parties.

- (a) Upon completion of the Applicant's presentation of its testimony and evidence, any Party having entered an appearance in opposition to the Application and

desiring to be heard shall inform the Chairperson. Opposing Parties shall be heard in sequence as determined by the Chairperson.

- (b) When heard, each Opposing Party shall in person, or by its attorney as appropriate, make an opening statement and call such witnesses and offer such documentary or other evidence or exhibits upon which such Party will rely.
- (c) Questions by Members of the Board, the Board Attorney, other Parties or their attorneys, attorneys representing non-party groups or organizations, or members of the Public or groups or organizations not represented by counsel, shall be permitted to ask questions in regard to testimony of witnesses of opposing parties as permitted in regard to testimony of witnesses for the Applicant.

2:9-3 The Public.

- (a) After all Parties have completed their presentations in support of, or opposition to, the Application, the Chairman shall afford opportunity to the Public to testify under oath as witnesses in support of, or in opposition to, the relief sought by the Applicant. Such testimony may be accompanied by documentary or other evidence or exhibits offered by the witness.
- (b) Members of the Public so testifying shall be subject to questioning by Members of the Board and the Board Attorney in the course of such testimony, and may be cross-examined by a Party, or the Party's attorney as appropriate, as provided in regard to witnesses for a Party.

2:9-4 Rebuttal Testimony. Thereafter, rebuttal testimony or evidence in regard to any presentation shall be heard in such order as the Chairperson shall determine.

2:9-5 Witnesses to Remain Available. All witnesses are subject to cross-examination. The Party calling the witness shall have the witness available, or subject to recall, for further questioning until excused by the Board.

2:9-6 Board Members Submitting Evidence. At any time, for purposes of amplifying the record, any Member may place evidence before the Board as to any relevant matter as to which the Member has personal or official knowledge, including facts ascertained from a viewing of the properties in question and the general area.

2:9-7 Judicial Notice. The Board may take judicial notice of matters of law and of fact.

2:10 *Rules of Evidence.*

2:10-1 Authentication of Evidence. No documents or exhibits in regard to an Application shall be received into evidence unless marked and authenticated to the

reasonable satisfaction of the Board. After the Board has rendered its decision in the matter and the time for appeal has expired, the Secretary may return any such item of evidence to the offering Party upon the written request of such Party. No petitions or like documents shall be accepted or considered by the Board in any matter. In regard to an Application, no other communications, statements, documents or exhibits shall be accepted or considered by the Board unless presented at the hearing with each maker or signer present and subject to questioning by the Board, any Party or the Public.

2:10-2 Objections. Only relevant objections shall be considered by the Board. The Chairperson may rule unreasonable, repetitive, disorderly or indecorous objections out of order.

2:10-3 Experts. Expert witnesses shall be qualified to the satisfaction of the Board.

2:11 *Burden of Proof.*

2:11-1 Entitlement to Relief. The burden of proof is upon the Applicant; who has the responsibility of presenting competent and credible evidence that the Applicant is, pursuant to law, entitled to the action or relief sought.

2:11-2 Nature of Relief / Variances and Conditional Uses. The Applicant must establish, to the reasonable satisfaction of the Board, the nature and degree of action to be taken, or relief to be granted, and that relief in the nature of a variance or conditional use approval, if granted, will not adversely affect the zoning plan and scheme and will not be inconsistent with the purposes of the Zoning Ordinance.

2:12 *Reports from Officers, Boards or Agencies.*

2:12-1 Requesting Reports. The Board may, at any time, request a written report, on an Application, or on any particular question or matter relevant to an Application, from any officer, official, board, agency, body, organization, or Borough committee. Upon receipt, the Secretary shall provide a copy of such report to each Member of the Board. The reporting entity or the Secretary shall make a copy of any such report available to the Applicant and any other Party to the proceeding.

2:12-2 Examination of Person Making Report. The Board shall cause any such report received to be marked into evidence and accepted on the record without authentication by the maker or any witness. The Board may, in its discretion, call the person preparing the report as a witness.

2:12-3 Referrals. The Board may refer any Application or matter, or issue presented therein, to any appropriate non-Borough agency, governmental department or body, for its review and report or recommendations; provided, however, that the Applicant and any other Parties shall be notified of the referral and have opportunity to attend any meetings with the agency, department or body. No request for such a review and report or

recommendation shall extend the period of time in which the Board is required to act upon the Application except as provided by law or by consent of the Applicant.

2:13 Board Experts. The Board may, upon its own motion, engage its own experts, to provide written reports or opinions; copies of which shall be provided to all Parties and shall be entered into evidence without need for authentication by the maker or any witness. The experts may offer oral advice on the record and may be examined by Parties as to their reports, opinions or oral advice. The Board may, in its own discretion, take the testimony of such experts as witnesses. All costs of utilizing and presenting such experts incurred by the Board shall be borne by the Applicant in accordance with the applicable Borough ordinance. Such experts, and the Borough Engineer as an advisor to the Board, may be requested by the Board to engage in informal communication with any expert for the Applicant or any other Party, outside the context of public meetings, for the purpose of appropriately expediting the Board's consideration of the Application.

2:14 *Continuances.*

2:14-1 Continuance on Motion of the Board. After the Applicant and all other interested persons have had reasonable opportunity to be heard, but before the record has been closed, the Board may in open meeting and on its own motion, when it deems such action to be in the public interest in order to assist the Board in rendering a just decision, continue the hearing to a day certain in order that the Board may receive the testimony or other evidence of any municipal, county or state official or employee or of any other person. If such continuance is to a Regular Meeting, no further notice is required. If the continuance is to a Special Meeting, notice of the meeting shall be given by the Applicant in the local newspapers of record in accordance with the Open Public Meetings Act.

2:14-2 Continuance on Request of Any Interested Person. Before the record has been closed, the Applicant or any other interested person may request a continuance for the purpose of presenting further relevant evidence. The Board, acting in its sound discretion, may grant or deny such request. Notice requirements shall be as for a continuance upon the Board's own motion.

2:14-3 Length of Continuance.

- (a) In determining whether or not to order a continuance, the Board shall take into consideration the time limits for rendering a decision on the Application before it.
- (b) Where an Applicant has taken a substantial period of time to present the Applicant's case and then refuses to consent to a continuance to enable objectors to be heard or to afford the Board sufficient opportunity to consider the Application, the Board may deem such refusal to be arbitrary and unreasonable. Such a refusal shall place the Applicant at risk that the Board will deny the Application for failure to sustain the burden of proof and failure to afford the Board an opportunity to reach an informed decision.

2:15 *Closing the Record and Hearing.*

2:15-1 Chairperson's Statement. When the Chairperson believes that the Applicant, all interested persons, and the Board Members have had reasonable opportunity to be heard and that the record of the hearing ought to be closed, a statement to that effect shall be made by the Chairperson.

2:15-2 Closing the Record. Having made such statement, the Chairperson shall then, in the absence of any motion or request pursuant to 2:11, declare the record and hearing to be closed. No motion or vote is required for that purpose.

2:15-3 Effect of Closing the Record and Hearing. After the closing of the record and hearing, no further testimony or evidence shall be heard on the matter unless the hearing and record are re-opened in accordance with Rule 3:2-3.

2:16 *Communications to the Board.*

2:16-1 Permitted Communications. All communications and submissions to the Board required by Code or Statute or permitted by these Rules shall be delivered to the Secretary for distribution to the Board.

2:16-2 Other Communications. All other communications or submissions shall be returned to the originator with written advice from the Secretary that the submission cannot be considered unless the originator is present at the hearing, in person or by counsel, to offer the communication or submission with each maker or signatory subject to oral examination.

2:17 *Dismissal Without Prejudice.*

- (a) Any Application may be dismissed without prejudice:
- (1) By voluntary withdrawal by the Applicant before commencement of, or in the course of, the hearing.
 - (2) By the Board, if neither the Applicant nor anyone on the Applicant's behalf appears at a time set for a hearing on the matter.
 - (3) By the Board, for failure of the Application or Applicant to comply with applicable provisions of any appropriate ordinance, these Rules or any instruction of the Zoning Board of Adjustment.
 - (4) By the Board, for lack of prosecution, excessive delays or adjournments, or loss of standing by the Applicant.

- (5) By the Board, when in the course of the hearing it becomes apparent that the action or relief being sought by the Applicant has become so substantially different from that described in the Applicant's notice to the Public that a new notice is required in the interest of justice.
 - (6) By the Board for failure to pay administrative fees or to provide escrow deposits.
- (b) The Board may impose reasonable terms and conditions on the dismissal of any Application.

2:18 Court Reporter.

- (a) A stenographic transcript shall be made, by a certified court reporter, of every hearing for:
 - a. Variance Applications for Non-residential Properties/Owners
 - b. Use Variance or Conditional Use; or
 - c. When otherwise required by law.
- (b) The expenses incurred for the court reporter's services in making the transcript shall be borne by the Applicant. Unless an escrow account that covers such expenses shall have been established by the Applicant, a security deposit in like amount shall be made by the Applicant or Applicant's attorney directly to the contract court reporter. A copy of the transcript will be provided to the Applicant or Applicant's attorney upon request.
- (c) Any other person may obtain a copy of the transcript from the Secretary, at such person's expense. The Secretary's charge for such a copy shall not exceed that established by ordinance.
- (d) If, for good reason, a court reporter is not present when a hearing is to commence, the Board may in its sole discretion, and absent objection from the Applicant or any Opposing Party, permit the hearing to proceed with reliance upon the voice recording system in the hearing room; provided that all interested parties agree that if there is any deficiency in such recording and there is an appeal or further review the parties will all agree to a statement of facts. If any Party or person requests that a transcript of the recording be made, such Party or person shall bear the costs of transcription.
- (e) In the event that, for good reason, a court reporter is not present and the voice recording system is not functioning, and time is a factor due to the absence of agreement to continue the hearing to another date, a hearing may proceed provided that all Parties have stipulated, as recorded in the Board's minutes, that an agreed statement of facts will be supplied to the reviewing body in the event of

appeal or review. In the absence of such a stipulation, and to prevent a statutory approval by reason of the Board's failure to make a decision on the Application within the mandated time, the Board shall be entitled to deny the relief sought by the Applicant.

2:19 *Conditions.* The Board has plenary power and discretion to impose conditions upon the approval of an Application when the conditions do not offend against any provision of the Zoning Ordinance, are in the public interest, are reasonably calculated to achieve a legitimate objective of the ordinance, and are not unnecessarily burdensome on the Applicant or property owner. The Applicant, and owner as appropriate, may agree to other conditions. Conditions:

- (a) Shall be development specific.
- (b) Shall be a part of the record.
- (c) Shall not be deemed exclusive and excusing Application of otherwise applicable requirements, terms or conditions uniformly applied to every development project by operation of ordinance or law.
- (d) May include a requirement that the condition be fulfilled within a stated period of time or prior to or upon the happening of a specific event or circumstance.
- (e) May include a requirement that some or all conditions, or the Board's resolution itself, be recorded with the County Clerk along with any deeds or maps for filing.
- (f) When deemed necessary to protect the public interest, the Board may retain jurisdiction for period of time, or until the happening of a certain event, as specified in its Resolution.

PART 3
DECISION MAKING

3:1 *Approval or Disapproval of Application.*

3:1-1 Resolution Required. Every decision of the Board that either approves or denies action or relief sought by an Application shall be taken in the form of a motion and shall include findings of fact based upon the record, or judicial notice, and conclusions based thereon.

3:1-2 Adoption of Resolution.

(a) When Adopted. The text of the resolution shall be adopted either:

(1) At a meeting held within the time period provided by law for the Board to render a decision, or such later date as the Applicant shall consent to in writing or on the record; or

(2) By a memorializing resolution, adopted within forty-five (45) days after the meeting at which the Board voted on its decision.

(b) Voting. Actions on resolutions shall be determined by the voting rules set forth in Rule 1:3-5. **Before voting on a resolution, each Member or Alternate Member who will vote shall acknowledge, on the record, that the resolution has been read and is understood.**

(c) Contents. Every Resolution granting or denying action or relief sought by an Applicant shall include a statement of the Board's findings of fact and its conclusions, any conditions imposed, and other provisions as the Board may deem appropriate and necessary; and shall set forth, with appropriate specificity, the action or relief granted or denied to the Applicant.

(d) Relief Differing from Request. So long as the Parties and the Public shall have received reasonable notice of the possibility, the Board may take such action or grant such relief as it deems appropriate and in keeping with the intent and purpose of the appropriate ordinance even if the action or relief may be different in kind or degree from that requested in the Application.

(e) Retention of Jurisdiction. When the Board deems it necessary in the public interest, the resolution may provide for retention of jurisdiction for a specified period of time; or, for the happening of a certain event; or, over specific subject matter. Nothing contained herein, or in any adopted resolution, shall be construed so as to limit the Board's inherent power to modify a decision for good cause shown.

- 3:1-3 Effective Date of Board Action. The date of Board action shall be deemed to have been the date of the meeting at which the Board either adopted a resolution under 3:1-2(a)(1) or determined to utilize a memorializing resolution to reflect determinations made on that day. However, if the adoption is by memorializing resolution the date of the vote upon the text of such resolution shall be the date of decision for purposes of mailing notice of the decision or publishing the decision as required by law.
- 3:1-4 Failure of Board to Reach Timely Decision. Should the Board fail to render a decision, or adopt a memorializing resolution, within the applicable time required by law, or within such greater time as the Applicant may have consented to in writing, or on the record at a hearing, or by Application of these Rules, the Applicant or any other Party may seek the remedies provided by the applicable ordinance or statute.
- 3:1-5 Additional Actions or Filings. Once the Board's action shall have become effective, as provided in this Rule 3:1, it shall be the responsibility of the Applicant to effect any actions or filings required to be made before or with other officials, bodies, agencies or departments at any level of government.
- 3:1-6 Variances/Directions. In any matter in which the Board has acted upon a variance or direction as within its ancillary powers, such action shall be valid and subsisting under the Zoning Ordinance of the Borough.
- 3:1-7 Notice and Publication. Within ten (10) days after the date of adoption of the formal resolution, the Secretary shall provide a copy of the resolution to each Party, or the attorney for such Party, without charge. The Applicant shall cause a notice of the adoption of the resolution to be published in the local newspaper of record. The period of time in which an appeal from the Board's decision may be taken shall run from the first date of such publication.
- 3:2 *Rehearing, Vacation or Modification.***
- 3:2-1 Rehearing. Within 45 days after a decision by the Board, the Applicant or any other Party may file with the Secretary a letter request for rehearing reopening the decided matter. Such letter shall contain a statement of the grounds relied upon.
- 3:2-2 Vacation or Modification. An Applicant, or successor in interest, may, at any time, make Application to the Board for an order vacating or modifying all or any portion of a prior grant of approval. Such Application shall be by letter and shall set forth the reasons for the request and the grounds relied upon.
- 3:2-3 Discretion of the Board. The grant or denial of any request for rehearing, vacation or modification shall be at the discretion of the Board. The Board may, upon its own motion, re-open any matter for just cause.

3:2-4 Notice and Hearing. If a matter is reopened upon request or upon the Board's own motion, for any reason other than correction of typographic error, the Board shall set a hearing date and proper notice shall be provided in the same manner as for any original Application to the Board.

PART 4 **MISCELLANEOUS**

4:1 *Fees and Costs.*

4:1-1 Fees at Filing. At the time of filing of an Application the Applicant shall pay, in advance, all applicable fees set by ordinance. If the Application includes a request for a variance within the powers of the Board, the Applicant shall request the variance in the form required by the Zoning Board of Adjustment for Applications made to it and the Applicant shall pay a fee equal to the statutory fee which would be applicable if the variance were sought from the Planning Board.

4:1-2 Costs of Special Meetings. Should an Applicant request, and the Board agree, that an Application be heard at other than a Regular Meeting; the Applicant shall bear the costs of any Special Meeting as provided in 1:3-3.

4:1-3 Copy of Voice Recording. Upon request of any Person, the Secretary shall provide a true copy of the voice recording made pursuant to 1:2-3(d) above to such Person, provided that:

- (a) The Person shall bear all costs of preparation of such copy;
- (b) The individual preparing the copy shall certify as to the accuracy of the copy;
- (c) The request for a copy shall be accompanied by a deposit equal to the Secretary's estimate of the cost of preparing the copy; and
- (d) At the time of delivery of the copy, the requesting Person shall either pay any costs in excess of the deposit or receive an appropriate refund if the deposit exceeded the cost. However, in no case shall the charge to the requesting Person exceed the maximum amount permitted under the applicable State statute. [N.J.S.A. 2A:11-15]

4.1-4 Escrow Deposit. Whenever these rules, or an applicable law or ordinance, provide that the Applicant or some other interested party will be responsible for fees or costs, the Board, the Secretary, or the Administrative Officer may require an escrow deposit not inconsistent with law or ordinance.

4:2 *Transfer Between Boards.*

4:2-1 From time to time matters may be transferred to or from the Board from or to the Planning Board.

- (a) Whenever an Application which has been filed with the Board is determined to properly be within the subject matter jurisdiction of the Planning Board only, the Board may, upon its own motion or the motion of an Interested Party, transfer the matter to that other board rather than dismiss it.
- (b) Whenever an Application has been transferred to the Board, if the Secretary finds the Application to be complete, the Board shall accept the matter by resolution and then proceed if the Application had been filed with the Board in the first instance but as of the date of such acceptance.

4:3 [Reserved]

4:4 [Reserved]

4:5 *Conflicts and Amendments.*

4:5-1 Conflicts With Ordinance or Statute. If any Rule herein contains a conflict with an applicable provision of the Code of the Borough of Roselle, or with N.J.S.A. 40:55D-1 et. seq., then such Rule shall be null and void only to the extent that it is in conflict with such provision, and all the rest of these Rules of Procedure shall continue in full force and effect. Nothing contained in these Rules shall limit authority or power of the Board to take other actions permitted by law.

4:5-2 Effective Date. These Rules shall become effective on **May 23, 2013**, provided that notice of their adoption shall have been published in the newspaper of record not less than ten (10) days prior thereto.

4:5-3 Amendments. These Rules may be amended, in whole or in part, by majority vote of the full Board; provided:

- (a) Each Member shall have knowledge of the proposed amendment at least five (5) days prior to the meeting at which the amendment will be voted upon.
- (b) No amendment shall be applicable to any Application or matter as to which the hearing was already underway at the time of adoption if such applicability would result in surprise, hardship or injustice to the Applicant or any other interested person.

- (c) Any amendment adopted shall become effective ten (10) days after notice of adoption shall have been published in the newspaper of record unless the amendment specifies that it shall be effective at a later date after such publication.

Adopted: May 23, 2013

, Chairperson

, Secretary