

Chapter 12. Zoning Board Of Adjustment

40:12-1. Establishment; Membership

40:12-1-1. There is hereby established, pursuant to the provisions of NJSA 40:55D-1 et seq., in the City of Newark, the Zoning Board of Adjustment of seven (7) members and two (2) alternates who shall all be residents of the City of Newark, shall be appointed by the Municipal Council and who shall not hold any elective office or positions under the municipality.

40:12-1-2. There may be two (2) alternate members of the Zoning Board of Adjustment, appointed by the governing body, who shall be designated by the Chairperson as "Alternate No. 1" and "Alternate No. 2". Alternate members may participate in discussions of the proceedings but may not vote, except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made to which alternate member is to vote, Alternate No. 1 shall vote.

40:12-2. Terms of Office; Vacancies

40:12-2-1. All regular members appointed shall serve for terms of four (4) years beginning January 1 of the year of their appointment.

40:12-2-2. Alternate members shall be appointed for a term for two (2) years.

40:12-2-3. A vacancy occurring otherwise than by expiration of term shall be filled by the appointing authority for the unexpired term only.

40:12-2-4. A member, after public hearing if requested, may be removed by the Municipal Council for cause.

40:12-2-5. No member of the Zoning 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.

40:12-2-6. If the Zoning Board of Adjustment lacks a quorum because its regular or alternate members are prohibited by NJSA 40:55D-6g from acting on a matter

due to the member's personal or financial interest, Class IV members of the Planning Board shall be called upon to serve, for that matter only, as temporary members of the Zoning Board of Adjustment. The Class IV members of the Planning Board shall be called upon to serve in order of seniority of continuous service to the Planning Board until there are the minimum numbers of members necessary to constitute a quorum to act upon the matter without any personal or financial interest. If a choice has to be made between a Class IV members of equal seniority, the Chairperson of the Central Planning Board shall make the choice.

40:12-3. Organization of Board

The Zoning Board of Adjustment shall elect a Chairperson and Vice Chairperson from its members and shall select a Secretary who may or may not be a member of the Board.

40:12-4. Experts & Staff

The Zoning Board of Adjustment may employ or contract for the services of experts and other staff and services as it may deem necessary. The Board shall not, however, exceed, exclusive of gifts or grants, the amount appropriated by the Municipal Council for its use.

40:12-5. Powers & Duties

The Zoning Board of Adjustment shall have the following powers and duties:

40:12-5-1. To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in the enforcement of the Zoning Ordinance.

40:12-5-2. To hear and decide requests for interpretation of the Zoning Map or Ordinance, or for decisions upon other special questions upon which such Board is authorized by the Zoning Ordinance to pass in accordance with the Municipal Land Use Law.

40:12-5-3. Bulk & Dimensional Variances

1. Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property;

(b) or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property; or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation in the Zoning Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property, the Board may grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship; or

2. Where in an application or appeal relating to a specific piece of property the purposes of zoning set forth in NJSA 40:55D-2 would be advanced by a deviation from the Zoning Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, the Board may grant a variance to allow departure from regulations in the Zoning Ordinance; provided, however, that no variance from those departures enumerated in Subsection D below of this Section shall be granted under this Subsection; and provided further that the proposed development does not require approval by the Central Planning Board of a subdivision, site plan or conditional use in conjunction with which the Central Planning Board has power to review a request for a variance pursuant to NJSA 40:55D-60(a).

40:12-5-4. Use Variances

1. In particular cases and for special reasons, the Board may grant a variance to allow departure from the Zoning Ordinance to permit: (a) a use or principal structure in a district restricted against such use or principal structure; (b) an expansion of a non-conforming use; (c) deviation from a specification or standard pursuant to NJSA 40:55D-67 pertaining solely to a conditional use; (d) an increase in the permitted floor area ratio as defined in NJSA 40:55D-4; (e) an increase in the permitted density as defined in NJSA 40:55D-4 except as applied to the required lot area for a lot or lots for detached one (1) or two (2) dwelling unit buildings which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision; or (f) a height of a principal structure

which exceeds by ten (10) feet or ten (10%) percent the maximum height permitted in the district for a principal structure. A variance under this Subsection shall be granted only by affirmative vote of at least five (5) members of the Board.

2. If an application for development requests one (1) or more variances but not a variance for a purpose enumerated in this Subsection, the decision on the requested variance or variances shall be rendered pursuant to Section 57 of P.L. 1975, c.291 (NJSA 40:55D-70c). No variance or other relief may be granted under the terms of this Section unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the Zone Plan and Zoning Ordinance. In respect of any airport hazard areas delineated under the Air Safety and Hazardous Zoning Act of 1983, C. 6:1-80 et seq., no variance or other relief may be granted under the terms of this Section permitting the creation or establishment of a non-conforming use which would be prohibited under the standards promulgated pursuant to that act except upon issuance of a permit by the Commissioner of Transportation.

3. To direct issuance of a permit pursuant to NJSA 40:55D-34 for a building or structure in the bed of a mapped street or public drainage way, flood control basin or public area reserved on the Official Map pursuant to NJSA 40:55D-32.

4. To direct issuance of a permit pursuant to NJSA 40:55D-36 for a building or structure not related to a street.

5. To grant to the same extent and subject to the same restrictions as the Central Planning Board subdivision or site plan approval pursuant to NJSA 40:55D-37 et seq. or conditional use approval pursuant to NJSA 40:55D-67 whenever the proposed development requires approval by the Board of a variance pursuant to NJSA 40:55D-70(d). The developer may elect to submit a separate application requesting approval of the variance and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate approval

of the variance shall be conditioned upon grant of all required subsequent approvals by the Zoning Board of Adjustment. No such subsequent approval shall be granted unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the Zone Plan and Zoning Ordinance. The number of votes of Board members required to grant any such subsequent approval shall be as otherwise provided in NJSA 40:55D-1 et seq. for the approval in question, and the special vote pursuant to NJSA 40:55D-70(d) shall not be required.

6. Any application under any Subsection of this Section may be referred to any appropriate person or agency, including the Central Planning Board, for its report and recommendation, provided that reference of any application under any Subsection of this Section shall not extend the period of time within which the Zoning Board of Adjustment shall act.

7. Whenever review or approval of the application by the County Planning Board is required by NJSA 40:27-6.3, in the case of a subdivision, or NJSA 40:27-6.6 in the case of a site plan, the Zoning Board of Adjustment shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required time.

8. The Zoning Board of Adjustment is required to submit monthly attendance reports of all regular and special meetings to the Municipal Council (via the Office of the City Clerk) within fifteen (15) days subsequent to the end of the month.

40:12-6. Annual Report on Variances Heard by Zoning Board of Adjustment

The Zoning Board of Adjustment shall, at least once per year, review its decisions on applications and appeals for variances and prepare and adopt by resolution a report of its findings on zoning ordinance provisions which were the subject of variance requests and its recommendations for Zoning Ordinance amendment or revision, if any. The Zoning Board of Adjustment shall send copies of the report and resolution to the City Council and the Central Planning Board.