

RULES AND REGULATIONS
LAND USE BOARD of the TOWNSHIP OF FRELINGHUYSEN
Adopted August 4, 2014/Revised January 30, 2023

ARTICLE I
ANNUAL REORGANIZATION MEETING;
COMMITTEES; SELECTION OF OFFICERS; ORDER OF VOTING

1.01. At the first meeting of the Land Use Board during the month of January, the Board shall elect, from among its members, a Chairperson and Vice-Chairperson. These officers shall serve for the calendar year and until their successors have been duly elected.

1.02. At said first meeting, the Board shall also appoint a Secretary who shall be either an employee of the municipality or resident of the municipality and who is familiar with zoning matters. Such Secretary shall receive compensation for services rendered and such person shall serve for the calendar year or until a successor has been appointed. One or more Assistant Secretaries may also be appointed if deemed appropriate by the Board.

1.03. At the first meeting, the Board shall also appoint a member of the New Jersey Bar who is familiar with zoning and planning matters as the Board Attorney and will pay such attorney compensation as is agreed upon between the Board and the attorney. The Board Attorney shall serve for the calendar year or until a successor has been appointed.

1.04. The Board may also appoint such other officers and/or assistants and employ such experts or staff as it may deem necessary. Such experts and staff shall include, but not be limited to, a professional engineer and a planner.

1.05. The Board may establish committees which will report to the Board on all matters directed to them for review. Such committees may include, but not be limited to, a Technical Coordinating Committee (TCC). The TCC shall consist of the Board Attorney, Engineer, Planner and one member of the Board. The purpose of the TCC is to meet with applicant to identify legal, planning, engineering, technical, procedural, evidential issues so as to assist the applicant in making a more efficient and informative presentation to the Board. All committees established pursuant to this section shall meet on a monthly basis if they have applications or matters to consider. Such committees shall review all applications referred to them and make recommendations to the applicant and/or to the Board for further action. Any recommendations shall be set forth in a written report to be submitted to the Board (unless the Board agrees to receive an oral report), with a copy to the applicant, where appropriate. Members of such committees shall serve for one year terms and be selected on an annual basis by the Chairperson at the reorganization meeting of the Board. Members

of such committees shall be chosen from among the Board's members and/or the Board's professional advisers or staff.

1.06. At the first meeting, the Board shall also determine the day(s) of the month on which the regular meetings of the Board shall be held and which days of the month shall be set aside for agenda meetings and work sessions. The Board may also decide which day of the month shall be tentatively set aside for possible special meetings.

1.07. All Board members and Board professionals shall file with the Board Secretary within ten (**10**) days of the annual reorganization meeting a statement disclosing any interests such person may have in any property or matter that may be the subject of an application before the Board. Said statement shall be made in accordance with the disclosure form of the Board and shall be available for inspection by the public.

ARTICLE II

DUTIES OF BOARD OFFICERS AND PERSONNEL

2.01. The Chairperson shall preside at all meetings and hearings of the Board; shall decide all points of order and matters of procedure governing said meetings or hearings, and perform all the duties normally appertaining to the office and as required by law, ordinance, or these rules of the Board. The Chairperson or the Chairperson's designee shall swear all witnesses giving testimony before the Board.

2.02. The Vice-Chairperson shall preside at all Board meetings and hearings in the absence of or disqualification of the Chairperson.

2.03. The Secretary shall, under the direction of the Chairperson, generally perform the secretarial work of the Board including, but not limited to, the following:

A. Conduct all official correspondence, compile all required records, keep and maintain all necessary files and indexes with respect to the operation of the Board, cause all notices of meetings required to be given pursuant to the Open Public Meetings Act, the Municipal Land Use Law ("MLUL"), or any other applicable law or ordinance;

B. Prepare an agenda and distribute same to the Board and the public, attend all meetings of the Board, take and have custody of all records, documents, maps, plans and evidence, and provide for the care and custody of items for which no other provision is made by statute or these rules; take or direct the taking of roll call votes, and insure the recordation of affirmative and negative votes as well as abstentions;

C. Make a transcription record of the proceedings of each hearing of the Board in

accordance with these rules and keep minutes of the proceedings of each meeting (including work sessions) held by the Board and enter therein such resolutions and orders as are adopted by the Board;

D. Cause to be mailed or otherwise delivered or made available to each member of the Board and the professional consultants to the Board true copies of the minutes and all other documents and materials pertaining to the business of the Board, including without limitation all applications and related materials;

E. Perform such other duties as normally appertain to the office of Secretary of the Board, and assign such parts of such duties as may be appropriate to an assistant or designee.

ARTICLE III MEETINGS

3.01. The regular meetings of the Board shall be held at the Town Hall, Frelinghuysen, New Jersey at 7:00 p.m., on the first Monday of each month or as otherwise established by the Board at its first meeting each year. If the regular meeting falls on a legal holiday, the meeting shall be held on the next succeeding secular day or such other day as the Board may select. The first regular meeting during the month of January of each year shall constitute the annual organizational meeting of the Board. Whenever there are no matters to be considered at any regular meeting, other than the organizational meeting, the Chairperson may dispense with such meeting by notifying each member of the Board at least twenty-four hours in advance of the time set for such meeting, and posting notice of the cancellation at the Town Hall and giving any other required notice in accordance with the Open Public Meetings Act. 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 and the MLUL.

3.02. If no applications or other matters are on the agenda for any regular meeting date, the Chairperson, or in the Chairperson's absence the Vice-Chairperson, may cancel the meeting.

3.03. Special meetings, work sessions and executive sessions as permitted by law, may be called by the Chairperson or in the Chairperson's absence by the Vice-Chairperson at any time or upon the written request of two members, provided that notice thereof be mailed or given to each member of the Board at least three days prior thereto and to the public, as required by law.

A. The purpose of a work session shall be to discuss and study any 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. The consideration of any application or matter at a work session shall not be considered a "hearing" as that term is used in the MLUL.

B. An applicant may request but shall not be entitled to a special meeting. Special meetings at the request of an applicant may be scheduled at the pleasure of the Board provided the public interest is fairly and reasonably served. Such a hearing may exceed three (3) hours duration only upon the

agreement and consensus of the Board. The applicant shall be responsible for all fees and costs related thereto, including any special fees for any agreed upon extended time of the meeting. All such fees and costs shall be paid prior to such meeting.

3.04. Except as may otherwise be established from time to time by the Chairperson, the order of business for all regular sessions of the Board shall be as follows:

- (i) call to order;
- (ii) statement of compliance with Open Public Meetings Act;
- (iii) Pledge of Allegiance;
- (iv) roll call;
- (v) correspondence;
- (vi) approval of minutes of previous meetings;
- (vii) approval of vouchers;
- (viii) escrow balances tracking;
- (ix) adoption of resolutions;
- (x) motions for adjournments of any scheduled cases, any other motions and calendar issues;
- (xi) old business (continued hearings);
- (xii) new business (new hearings);
- (xiii) open to the public;
- (xiv) other discussion;
- (xv) closed session;
- (xvi) adjournment.

3.05. All meetings, hearings and actions taken by the Board, except executive sessions pursuant to statute, shall be open to the public.

3.06. No new case or witness will be heard by the Board after 10:00 p.m. and no testimony will be taken after 10:30 p.m. However, the Chairperson may modify these time limits.

3.07. Robert's Rules of Order, latest edition, shall be followed whenever a particular procedure or practice is not contemplated by these rules.

3.08. 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. In the case of a lengthy and/or complex application, the Board may, in its discretion, require an applicant to provide, at the applicant's expense, a court reporter to record all public hearings on the application. In such event, the applicant shall provide to the Board a copy of the transcript within 10 days following each such hearing, or prior to the next scheduled hearing on the application, whichever first occurs. All stenographers' notes, electronic recordings 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.

ARTICLE IV

QUORUM; VOTING; ALTERNATE MEMBERS

4.01. At all meetings of the Board, a quorum for the conducting of any business shall consist of five (5) members. In the absence of a quorum, the members present shall adjourn the meeting and the hearing on any motion or petition to another date. Under certain circumstances, a member may be considered present and may participate in the meeting by means of a conference telephone or any other means of communication by which all persons participating in the meeting are able to hear each other.

4.02. All motions shall require a second; a motion which does not obtain a second shall be deemed to be rejected. All votes, except votes on procedural matters (adjournment, setting of meeting dates and the like) shall be taken by roll call and the vote and name of the person casting the vote shall be recorded in the minutes. Unless otherwise provided herein or under prevailing law, any action may be authorized by a majority vote of the members present at such meeting. In all such circumstances, the Chairman, or acting Chairman, shall vote last.

4.03. When any hearing before the Board has been continued, a member of the Board who was absent for one or more hearing sessions shall be eligible to vote on the matter upon which the hearing is conducted notwithstanding the member's prior absence, provided that such member certifies in writing to the Board that he or she has read a transcript or listened to a recording of the entire session for which he or she was absent. This rule shall not be construed as authorizing any hearing to be held whenever less than a quorum of the Board is present.

4.04. The four (4) alternate members of the Board appointed by the governing body shall be designated by the appointing authority as "Alternate No. 1," "Alternate No. 2," "Alternate No. 3," and "Alternate No. 4," respectively, and each alternate shall retain said designation during the term of appointment. Such alternate members shall participate in Board affairs subject to the following provisions:

A. An alternate member may sit with the Board and participate in discussions of any Board business or hearings being held by the Board, but may not vote except as designated by the Chairperson to serve in the place of a regular member who is absent or disqualified. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote first, and if he/she is not in attendance or cannot vote on the issue, Alternate No. 2 shall vote, and so on..

B. A vote on any matter shall not be delayed by the Board so that a regular member may vote instead of an alternate member.

C. Where an alternate member is designated to serve in place of a regular member who is disqualified from participating in the hearing of a particular case, the alternate member shall be designated to serve only with respect to such case.

D. When a regular member has been present and has participated in the first hearing on any matter, no alternate member shall be designated to serve during the absence of such regular member during any adjourned or continued hearing or hearings on the same matter unless said alternate member was present at such first hearing or any prior, adjourned or continued hearing on such matter, or unless such alternate member certifies in writing to the Board that he or she has read a transcript or listened to a recording of the entire session for which he or she was absent.

E. Any alternate member who has been designated to serve in the place of an absent or

disqualified regular member shall, during the period of his service, enjoy all of the rights and privileges and shall be subject to all of the duties and disabilities pertaining to regular members, but no alternate member shall be eligible to serve as chairperson or vice chairperson of the Board.

ARTICLE V

PRE-HEARING PROCEDURES

5.01. An action in the nature of an appeal to the Board alleging that there is error in any order, requirement, decision or refusal made by the building inspector, zoning officer, or other official based on or made in the enforcement of the zoning ordinance, shall be commenced by the filing of copies of a notice of appeal within 20 days from the date of the order, decision or refusal appealed from. The notice of appeal shall be filed with the officer from whom the appeal is taken and shall specify the grounds of such appeal. Said officer shall immediately transmit to the Board Secretary all papers constituting the record upon which the action appealed from was taken.

5.02. An application for a variance, development project or subdivision, or for any other relief over which the Board has jurisdiction shall be commenced by the filing of an application form, required maps and checklist.

5.03. The applicant shall file an application in accordance with relevant ordinances of the Township, and in accordance with the completion checklist. The failure of the applicant to comply with the checklist requirements and all appropriate ordinance requirements may result in a dismissal of the application or a delay in its being heard. All statutory time periods for actions by the Board commence to run only upon a determination by the Board that the applicant has filed a complete application as required by the completion checklist ordinance, all other appropriate ordinances and by these rules. Application forms shall be provided by the Board Secretary and shall be filled in completely and the applicant shall supply any and all other information and data that may be required to assist the Board with respect to the relief sought by the applicant whether or not such information is specifically requested by the form. All applications shall be filed on the forms provided by the Board. A checklist of required submissions shall be furnished to each applicant upon request. All

applicants shall execute a site inspection form permitting the Board and its professionals to enter upon the property that is the subject of the application.

5.04. Any applicant or prospective applicant may request a preliminary review of a development proposal by the TCC, either before or after filing a formal application with the Board or the Board may refer the matter to the TCC.

5.05. At the time of filing an application or requesting TCC review, or upon the referral to the TCC is the Board, the applicant (or prospective applicant in the case of a pre-application TCC review) shall pay applicable fees established by ordinance, including escrow fees to cover special expenses incurred by the Board for the rendering of services by its planning consultant, engineer, attorney and other experts.

5.06. The applicant, at the time of filing the application for development, pursuant to the requirements of all applicable ordinances of the Township, shall file with the Board an affidavit that taxes are currently paid and up-to-date. If any delinquent taxes shall accrue during the pendency of the application, same shall be paid upon grant of approval by the Board and that such payment shall be made a condition of the final approval granted by the Board.

5.07. Upon receipt of an application by the Board Secretary, the application shall be assigned a docket number, which number shall thereafter appear on all subsequent papers filed and on copies of all other documents filed with the application and all such documents shall be filed in the permanent case docket of the Board.

5.08. To be heard by the Board, all applications must be deemed complete by the Board, or matters not deemed complete must be waived for purposes of completeness. No completeness hearing by the Board shall be scheduled until at least 21 days have elapsed since the filing of the application. All applications shall be reviewed for completeness in accordance with the MLUL and the ordinances of the Township by the Board Engineer, who shall report to the Board as to the same. The Board may also refer applications to the TCC for review and comment, either before or after a ruling on completeness is rendered. For applications deemed complete, the application will be placed on the Board's agenda for the next available meeting of the Board to be heard on the merits. If deemed incomplete, the applicant must provide the missing information at least ten days prior to the next Board meeting. No applications shall be heard on the merits at the same hearing where they are deemed complete, unless the Board permits the same by motion and unanimous vote.

An application for development shall be complete for purposes of commencing the applicable time period for action by the Board when so certified by the the Board or its authorized committee or designee. In the event that the Board, committee or designee does not certify the application to be complete within 45 days of the date of its submission, the application shall be deemed complete upon the expiration of the 45 day period for purposes of commencing the applicable time period; unless: (a) the application lacks information indicated on a check list as hereinafter specified, a copy of which shall have been provided to the applicant; and (b) the Board or its authorized committee or designee has notified the applicant in writing of the deficiencies in the application within 45

days of submission of the application. The applicant may request that one or more of the submission requirements be waived, in which event the Board or its authorized committee or designee shall grant or deny the request within 45 days. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that he is entitled to approval of the application. The Board may subsequently require correction of any information found to be in error and submission of additional information not specified in the ordinance or any revisions in the accompanying documents as are reasonably necessary to make an informed decision as to whether the requirements necessary for the approval of the application for development have been met. The application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents so required by the Board.

5.09. The applicant shall submit to the Board Attorney directly proof of service of notice and publication as require by the MLUL at least two days prior to the public hearing.

5.10. Except as otherwise required by the Board, an applicant to the Board seeking a variance pursuant to N.J.S.A. 40:55D-70d may either simultaneously file an application for any required site plan or subdivision approval or may make a subsequent application to the Board for such approval. If deemed appropriate by the Board, the Board may consider the variance request before dealing with the subdivision or site plan; provided, however, that the Board may require the applicant to present certain site plan information in connection with the variance application. In circumstances where the Board determines that site plan and "d" variance issues are sufficiently connected, the Board may refuse to permit the bifurcation of the applications.

5.11. The applicant shall be notified within forty-five (45) days of the filing of an application as to whether or not such application is deemed complete. Such notification shall be in writing and if the application is found to be deficient, shall set forth the reasons that the application has been found to be incomplete. Failure to notify the applicant in writing within the forty-five (45) day period, that the application is incomplete, shall result in the application being deemed complete. If the application is found to be complete, the Board Secretary shall immediately notify the applicant that the application is complete as of the day it was so certified for the purposes of commencement of time periods for action by the Board.

5.12. As soon as an application filed with the Board is deemed complete in accordance with the appropriate ordinances and these rules, the case shall be assigned a hearing date. If, in connection with the completeness review, the Board requires the submission of additional information prior to the hearing, all such material must be delivered to the Board Secretary and to the Board professionals at least 10 days prior to the hearing date. Failure to do so may result in an adjournment of the hearing.

5.13. Public notice of the hearing shall be given by the applicant in accordance with the MLUL and the ordinances of the Township. If the public notice given, as required by statute and ordinance, is deemed inadequate at the time of the

hearing, the application shall be considered to be incomplete, notwithstanding an earlier certification of completeness, and adjourned for lack of jurisdiction.

5.14. The service and publication of notices as hereinabove provided is a jurisdictional requirement, and proof of the service and publication of all required notices in accordance with these rules shall be made by affidavit of the person or persons who actually served or mailed said notices as required by law, and by the authorized official of the newspaper which published same. Such affidavits shall be submitted to the Board Attorney at least two (2) business days prior to the hearing. A copy of the official certification and list provided by the Township shall be annexed to applicant's proof of service.

ARTICLE VI

CONDUCT OF THE HEARING

6.01. At the time of the hearing on the application, the applicant and any other party shall appear in person; or any such person may be represented by an attorney-at-law admitted to practice in the State of New Jersey. Every corporation, partnership, limited liability company or any other form of entity other than a "sole proprietorship" shall be represented by an attorney-at-law admitted to practice in the State of New Jersey.

6.02. Any Board member or professional representing the Board shall withdraw from proceedings involving any application in which the Board member or professional has any personal, financial or other disqualifying interest as such interest is defined in the MLUL or the Local Government Ethics Law. Any such disqualification or statement of interest shall be made on the record at the commencement of the hearing. When a Board member is in doubt concerning a potential conflict, advice of the Board Attorney should be sought. Any disqualified member shall not sit with the Board during the hearing or determination of the case in question.

6.03. A hearing may be adjourned from the time fixed therefor, 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.

6.04. The Board, on its own motion, may dismiss any action without prejudice if neither the applicant nor any representative of the applicant appears at the time set for the hearing of said application or requests an adjournment. Further, the Board, on its own motion, may dismiss without prejudice any application for failure to diligently pursue to the application or to comply with the provisions of the appropriate ordinances or these rules. Any applicant may, at any time before the commencement of the hearing, voluntarily withdraw the application in which event the application shall be dismissed without prejudice.

6.05. The burden of proof is on the applicant and it is the applicant's responsibility to supply competent and credible evidence in order that the Board might determine the nature and degree of the relief sought by the applicant. The applicant must establish to the Board's satisfaction the applicant's entitlement to the relief sought pursuant to the applicable statutory provisions.

6.06. All testimony shall be under oath. All persons giving testimony at the hearing, including members of the public, shall be sworn by the Chairperson or the Chairperson's designee before giving any testimony and shall provide their names and addresses to the Board. Members of the Board and the Board professionals may be sworn in January of each calendar year for testimony given by such person throughout such calendar year. The Board Chair, or acting Chair, in his or her discretion, may limit by time the quantity of testimony of any applicant or member of the public.

6.07. When a case is called by the Chairperson, the following shall be the order of presentation, except as may be otherwise determined by the Chairperson from time to time:

A. The applicant or the applicant's attorney shall present an opening statement identifying the attorney (if the applicant is represented by an attorney); identifying the applicant (and the owner of the property if not the applicant); identifying and describing the property; describing the applicant's proposal; identifying the relief sought; briefly summarizing the basis for the relief; and identifying the witnesses to be called.

B. The applicant, or the applicant's attorney, shall then present the testimony of the applicant's witnesses and documentary evidence or exhibits.

C. At the end of the testimony of each witness in support of the applicant, the Chairperson shall allow members of Board and the Board professionals to ask questions relating to the testimony of the witness.

D. At the end of the testimony of each witness in support of the applicant, the Chairperson shall allow members of the public to ask questions relating to the testimony of the witness and shall permit reasonable cross-examination by any attorney representing an objector.

E. Where a group of interested parties are represented by an attorney, the attorney shall present to the Board Chairperson a list of the persons he represents and such persons shall participate in the proceeding only through their attorney.

F. At the time the applicant has submitted all evidence in support of the application, any objector or the attorney for an objector may then submit the case in support of the objector, calling any witnesses and introducing any documentary evidence in objection to the application. Each such witness shall be subject to reasonable cross-examination by the applicant or the applicant's attorney, members of the Board, the Board professionals, and members of the public.

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

H. All witnesses may be cross-examined by any member of the Board, the Board attorney or any interested party.

I. Any member of the Board may place evidence before the Board as to any relevant matter about which the member has personal or official knowledge,

strictly for the purpose of amplifying the record, including facts ascertained from a viewing of the premises in question and the general area.

J. The Board may also take the testimony of any expert witness employed by it.

6.08. When the applicant and all interested persons have had an opportunity to be heard, the Chairperson shall determine if the hearing shall be closed. The applicant or any other interested party may request from the Board a continuance of the hearing for the purpose of presenting further relevant evidence. The Board, acting in its sound discretion, may either grant or deny such a request. In cases where the Board believes that testimony or other evidence should be received in the public interest from any municipal, county or state official or from any other persons in order to assist the Board in rendering a just decision, the Board may, on its own motion, continue the hearing, to another day certain for such purposes. In the absence of any request to continue the hearing the Chairperson shall declare the hearing to be closed and, thereafter, no further evidence will be received in the action unless the matter is re-opened in accordance with these rules. In considering a request to continue any hearing, the Chairperson should consider the effect of the time limits for decision.

6.09. The Board on its own motion may, at any time, request a written report on any particular matter from any officer, board or agency in connection with the pending application; 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 contained therein. The Board may arrange to take the testimony of any expert witness employed by it. The Board may also refer any application to any appropriate agency for its review and report provided, however, that the applicant shall be notified of such action and shall be informed of when such agency holds its meetings so that the applicant may arrange to be present if desired. Should the Board request such a report or make such a referral, such action shall not extend the period of time within which the Board shall act, unless the applicant consents, in writing, to an extension of time.

6.10. The formal rules of evidence are not enforced before the Board. However, no decision shall be based upon any facts not proved or on matters which are not in the record, unless they be such items of which the Board is entitled to take judicial notice. Persons who wish to bring matters before the Board in connection with any application shall present such material in person; letters, petitions and other correspondence to the Board will not be considered in connection with any application. Any correspondence by the public directed to the Board in connection with a pending application, must be supplied to the applicant. When any documents or exhibits are admitted into evidence during a hearing, they shall be marked and shall be retained by the Board as part of the permanent file. After the Board has rendered its decision and the time for the filing of an appeal has expired, the Board's Secretary may return any such exhibits or documents to the person who offered them, upon request. Any evidence presented, whether by testimony or by documents and exhibits presented at the hearing, which are not questioned or controverted by any other person appearing or by any member of the Board, may be deemed to be true by the Board in its decision-making process and findings of fact.

6.11. The public portion of the Board's agenda, exclusive of the public portion with respect to pending applications, shall take place at the end of the Board's agenda at any given meeting. Comments, questions or testimony from the public with regard to pending applications will not be permitted at that time. Substantive commentary, questions or testimony by the public regarding pending applications shall only be permitted during the public portion of the subject application in the presence of the applicant. The Board will not entertain substantive questions regarding potential applications, or any other matters for which it does not have jurisdiction under the MLUL , nor will the Board render advisory opinions regarding hypothetical applications.

ARTICLE VII

BOARD DECISIONS

7.01. The Board shall render a decision on any application involving a variance 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. Failure of the Board to render a decision within such 120 day period or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant. Every decision shall be made by proper motion duly made and seconded, with the votes of all members recorded on a roll-call vote.

For all site plan and subdivision applications only, once the determination of completeness is made and certified the Board then has:

- (1) 45 days within which to act on an application for a subdivision of ten or fewer lots (N.J.S. 40:55D-48);
- (2) 95 days within which to act on an application for subdivision of more than ten lots (N.J.S. 40:55D-480);
- (3) 45 days for approval of a minor site plan or minor subdivision (N.J.S. 40:55D-46.1 and 40:55D-47, respectively);
- (4) 45 days for the approval of a site plan which involves ten acres of land or less and ten or fewer dwelling units (N.J.S. 40:55D46);
- (5) 95 days for a site plan which involves more than ten acres or more than ten dwelling units (N.J.S. 40:55D-46); and
- (6) 95 days for approval of a conditional use (N.J.S. 40:55D-61).

Where a general development plan is submitted to the planning board, the planning board has 95 days within which to grant or deny. N.J.S. 40:§55D-45.3.

Pursuant to N.J.S. 40:55D-60 an applicant may also elect to file for the “c” variance first and make a subsequent application for the approval of the subdivision, site plan or conditional use. See 18-1. In such cases the 120 day

period applies to the variance request while the time periods above apply to the subsequent approvals.

7.02. Decisions rendered by the Board shall be in the form of a written resolution containing findings and conclusions. Said resolution shall be adopted either (1) at a meeting held within the time period provided in the MLUL for action on the application, or, (2) as a memorializing resolution adopted at a meeting held not later than 45 days after the date of the meeting at which the Board voted to grant or deny approval. Any such resolution of memorialization shall be adopted by a majority vote of the members of the Board who voted in favor of the action previously taken. No other member shall vote thereon. An action resulting from failure of a motion to approve an application shall likewise be memorialized by resolution regardless of the time at which such action occurs within the 120 day time period for rendering a decision. Municipal action is deemed to have taken place at the original meeting and not the date on which the resolution of memorialization is adopted, except that the date of the memorialization shall constitute the date of the decision for purposes of the mailings, filings and publications required by law.

7.03. Per the Zoning Ordinance of Frelinghuysen, the applicant shall cause notice of the Board's action to be published in the official newspaper of the municipality in accordance with the provisions of the MLUL. A copy of the Board's resolution shall be furnished to the applicant or his attorney within 10 days from the date of adoption thereof and a copy of the resolution shall also be made available to any person who has requested it and has paid the fee established therefor.

7.04. The resolution of the Board shall set forth with specificity the relief granted to the applicant. The Board may grant such relief as it deems appropriate and in keeping with the intent and purpose of the appropriate ordinance, although the relief granted may be different in kind or degree from that requested in the appeal or application.

7.05. 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. Where the Board has determined to impose conditions on the relief granted, such conditions shall be clearly set forth in the resolution. The Board may also require as a condition of approval that an applicant post a performance bond and/or a maintenance bond to assure the installation and maintenance of improvements which have been approved as part of the application. Such required performance bonds must be posted and accepted in accordance with the ordinances of Frelinghuysen adopted pursuant to N.J.S.A. 40:55D-53.

7.06. The actions taken by the Board and the decisions made by it shall be effective pursuant to appropriate ordinance and statutory provisions; and where statutorily required, it shall be the applicant's duty to make the filings with the County Recording Officer.

7.07. At least once a year, the Board shall review its decisions on applications and appeals and prepare and adopt by resolution a report of its findings on zoning ordinance provisions which were the subject of variance requests. Such a report shall also include any recommendations for amendments or revisions to the zoning ordinance. Copies of the Board's report shall be forwarded to the governing body of the Township and the Board.

ARTICLE VIII

MISCELLANEOUS

8.01. The Board, by subpoena issued under its seal and under the hand of its Chairperson or Vice-Chairperson and Secretary or Assistant Secretary, as the case may be, may compel the attendance and testimony of witnesses, and the production of books, papers, documents or tangible things related to any matter or subject within the Board's powers. The issuance of a subpoena may be requested by the applicant or any other interested person. Any such subpoena may be served by the Sheriff, Under-Sheriff or 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. 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.

8.02. Any person who shall willfully give false testimony under oath in the course of any hearing held before the Board shall, in accordance with the provisions of the County and Municipal Investigations Law IN.J.S.A. 2A-67A-1 et seq.), be guilty of perjury.

8.03. 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.

8.04. Whenever a member of this Board shall be absent from meetings of the Board for a period deemed detrimental to the conduct of Board business, the Board may recommend in writing to the governing body of the Township that such member be removed in accordance with the applicable provisions of the MLUL.

8.05. The Board may from time to time amend any part or parts of these rules and regulations at any regular meeting, provided notice of such amendment has been given, in writing, to each member of the Board at least 14 days prior to such meeting. In no case, however, shall any rule as amended be applicable to any action commenced prior to the adoption of such amendment where the application thereof would result in surprise, hardship or injustice to the applicant or any other interested persons. These rules and regulations replace those regulations adopted by the Board of Adjustment on August 11, 2008, and amended on May 18, 2009, February 8, 2012, adopted on August 4, 2014 by the Land Use Board, and amended on January 30, 2023 by the Land Use Board.