

**MORRIS COUNTY
CONSTRUCTION BOARD OF APPEALS**

RULES OF PROCEDURES

BOARD RULES REGARDING FILING OF APPEALS

Appeals will be considered to be complete when a completed UCC form or similar facsimile thereof is received by the Secretary of the Board with the \$100 filing fee (the fee is waived for failure to act on application for permit N.J.A.C.5:23A-2.1(e)). The appeal document must clearly indicate the action, which aggrieved the appellant. The appellant should provide copies of all pertinent documents to support the appeal.

Pursuant to N.J.A.C. 5:23A-2.2(a) “Hearing procedures”

All parties to any dispute shall be accorded full opportunity to address the construction board of appeals, present testimony and examine and cross-examine witnesses, consistent with reasonable rules or procedures and due process. All testimony shall be under oath or affirmation. Parties shall be allowed to appear through legal counsel or public or corporate officers. Construction, subcode and fire officials may appear and testify on behalf of their local enforcing agencies.

In the event of an appeal filed by the contractor or agent and where the outcome of the appeal may require changes to the structure, systems or components, the entity filing the appeal shall, in the absence of the Owner of Record, provide proof, satisfactory to the Board, that the contractor or agent will be allowed access to the property or structure to implement any corrective action or repairs. In the case of a Request for Variation, the Contractor shall provide proof that the Owner of Record is in concurrence with the requested variation.

Proof of Service if not on the documents submitted shall be provided by the Local Enforcing Agency with a full copy of the file documents from the Municipality. **For PL 1995 appeals**, the Municipality must forward to the Board a copy of the full record of the application (N.J.A.C.5:23A-2.1c (1)).

Ten (10) sets of copies to be used at the hearing should be submitted to the Board within seven days prior to the hearing.

All documents submitted to the board by either party must be copied to the adversarial party. (N.J.A.C.5:23A-2.1(d)).

All documents submitted shall be in hard copy form, legible, and capable of additional reproduction in standard office equipment. Partial plans and other incomplete documents will not be accepted for use at the hearing.

BOARD RULES REGARDING SCHEDULING OF APPEALS AND ADJOURNMENTS

Appeals are required to be heard by the Board within ten (10) business days.

In general the Board has established a schedule of regular meetings held on a monthly basis to hear appeals. The appellant may sign a waiver to permit the hearing to be scheduled beyond the ten day period at a regularly scheduled meeting of the Board. Unless the waiver is granted, the hearing before the Board will be held on a “hear or dismiss” basis within the ten day period.

Appeals involving the Uniform Construction Code (UCC) may be adjourned on the request of the Appellant for good reason, provided that there is not a life safety issue involving an occupied building with the outstanding violation notice. The Board may request the Local Enforcing Agency to concur on the request.

Appeals involving the Uniform Fire Code (UFC) may be adjourned on the request of the Appellant, for good reason, but only with the written concurrence of the Local Enforcing Agency.

In the case of an extended stay in a life safety or other matter posing a significant risk to the occupants, employees, visitors or public in general, the LEA may be requested to initiate an analysis that the continued operation or occupancy with the cited violations outstanding does not constitute an unreviewed safety question.

Cases will be heard or dismissed at the third hearing scheduled by the Board to hear the appeal (second request to reschedule the appeal) unless extenuating circumstances can be demonstrated to the Board, or if for any reason the Board is unable to convene a forum of five members. The Board may require an appearance by the parties to address any such requests at the Boards discretion.

In general, scheduling and notification of hearings will be by formal communication however where extenuating circumstances exist, telephone and facsimile may be used to notify board members and persons involved in appeals provided that at least 48 hours’ notice is given (N.J.A.C.5:23A-1.5(a)1).

Appeals will be scheduled in the order that they had been submitted, except in cases where an imminent hazard exists. **Imminent hazard cases are heard as a priority,** and the Board may schedule a special hearing to decide the case promptly.

The Board reserves the right to adjust the hearing schedule at the meeting to accommodate special needs.

BOARD RULES REGARDING WITHDRAWN CASES AND FEES

Appeals should be withdrawn prior to 1:00 PM the day of the hearing. Failure to do so may require the parties to put an appearance on the record as scheduled.

The Board will only acknowledge a request to withdraw an appeal from the Appellant, authorized agent or Counsel for the Appellant.

CONDUCT OF HEARING

5:23A — 2.2 Hearing Procedures

The hearing will begin with the Chairperson making opening remarks regarding:

Statute under which the appeal is being brought

The nature of the appeal

The date of the action appealed from

The basis of the appeal

The Chairperson may request motions from the parties to the appeal regarding timeliness of the filing if it is unclear that the appeal was filed within the time limits prescribed by the regulations.

The Chairperson will request an affirmation from the parties to the appeal that the matter is not being addressed in any other forum or jurisdiction.

Municipal Enforcing Agency and **Appellant** will present all witnesses who may give evidence at the hearing. Witnesses to be sworn in.

Opening Statement: Representative of the enforcing agency, the municipality, or the professional hired by the municipality or municipal agency, shall explain the basis for the action, ruling, order, notice or fee.

Opening Statement: The appellant, or his or her representative, shall then present the basis for his or her disagreement.

Municipal Enforcing Agency will then present their witnesses to testify, who will then be cross examined by the appellant and then by the Board in the order of presentation.

Appellant will then present his or her witnesses to testify, who will then be cross examined by the Municipal Enforcing Agency and then by the Board in the order of presentation.

Municipal Enforcing Agency will present closing argument. Since the Board has just heard the case, this is intended to highlight areas and may be waived.

Appellant will present closing argument. Since Board has just heard the case, this is intended to highlight areas and may be waived.

There will be open discussion by the Board. In general the parties will not be allowed to provide additional testimony, comments or discussion regarding the Board's discussion, except for extenuating cases where the Board seeks additional information.

The Board will by motion, approved by a majority of the quorum, decide to uphold, modify, or reverse the action by the municipal official or provide any other decision as permitted by the regulations.

All questions concerning the presentation of evidence will be ruled upon by the chair. Evidence will be liberally construed; however, all evidence must be relevant. Hearsay evidence will not be admitted nor will documents unique to the appeal unless the authority who prepared the document is presented and sworn in as a witness.

Robert's Rules of Order will control the procedures. The Board's attorney will advise the Board or the chair on any legal procedures and is to render advice to the Board and to the chair and is not available to give advice to either appellant or the respondent on procedures.

The Board will draft a resolution to be voted upon at the next meeting when sufficient members are present to act on the resolution.

The Board's attorney may prepare the resolution as directed by the Board. In the event that the Board prepares the resolution, the Board's Attorney shall review and advise the Board of the adequacy of the resolution prior to the Board's adoption of same.

The Board's attorney shall, in his discretion, defend or prosecute any litigation, which may occur after a meeting of the Board and prior to the next meeting of the Board.

All applicable federal and state statutes and administrative code provisions shall govern the Board's action. This Rules of Procedure embrace the regulations that govern the Board's, and add local rules as required by the Board. In the case of conflicts, the Regulations take precedence over local rules.

The Board shall comply with N.J.S.A 10:4-8 (Open Public Meeting Act) and N.J.A.C 5:23A as well as all other applicable statutes when setting meeting dates.

The Board reserves the right to relax any of these rules as deemed appropriate.