

3-1 ESTABLISHMENT; COMPOSITION.

A Zoning Board of Adjustment is hereby established in the Borough of Bernardsville pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., consisting of seven (7) regular members and four (4) alternate members, all of whom are citizens of the Borough, appointed by the Governing Body. No member of the Zoning Board of Adjustment may hold any elective office or position under the municipality, except that one (1) such regular member may be a member of the Planning Board. (Ord. No. 581 § 3-1; Ord. No. 05-1374 § 1)

3-2 TERMS.

The terms of the regular members shall be four (4) years from January 1 of the year of their appointment. The Governing Body may appoint four (4) alternate members of the Zoning Board of Adjustment. Alternate members shall be designated by the Governing Body "Alternate Member No. 1," "Alternate Member No. 2," "Alternate Member No. 3" and "Alternate Member No. 4," as appropriate. The initial term of one of the additional alternates appointed pursuant to this section shall be one (1) year and the term of the second additional alternate appointed under this section shall be two (2) years. Thereafter, the term of each alternate member shall be two (2) years and the terms of not more than two (2) alternate members shall expire in any one (1) year. (Ord. No. 581 § 3-2; Ord. No. 05-1374 § 1)

3-3 VACANCIES.

If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment as above provided for the unexpired term. (Ord. No. 581 § 3-3)

3-4 ORGANIZATION OF BOARD.

The Board of Adjustment shall elect a Chairman and Vice Chairman from its members and shall also select an Administrative Officer who may be either a member of the Zoning Board of Adjustment or a municipal employee designated by it. (Ord. No. 581 § 3-4)

3-5 BOARD OF ADJUSTMENT ATTORNEY.

There is hereby created the Office of Attorney to the Zoning Board of Adjustment. The Zoning Board of Adjustment may annually appoint, fix the compensation of or agree upon the rate of compensation of the Zoning Board of Adjustment Attorney, who shall be an attorney other than the Municipal Attorney. (Ord. No. 581 § 3-5)

3-6 EXPERTS AND STAFF.

The Zoning Board of Adjustment may also employ or contract for and fix the compensation of such experts and of other staff and services as it may deem necessary. The Board shall not authorize expenditures which exceed, exclusive of gifts or grants, the amount appropriated by the Governing Body for its use. (Ord. No. 581 § 3-6)

3-7 POWERS OF THE ZONING BOARD OF ADJUSTMENT.

3-7.1 The powers of the Zoning Board of Adjustment shall be in accordance with N.J.S.A. 4:55D-69 et seq. and amendments and supplements thereto, and with the provisions of this chapter.

3-7.2 It is further the intent of this chapter to confer upon the Zoning Board of Adjustment as full and complete powers as may lawfully be conferred upon such Board, including, not by way of limitation, the authority, in connection with any case, action or proceeding before the Board, to interpret and construe the provisions of this chapter, or any term, clause, sentence or word hereof, and the Zoning Map, in accordance with the general rules of construction, applicable to legislative enactments.

3-7.3 The Board may, in appropriate cases and subject to appropriate conditions and safeguards, grant variances from the terms of this chapter in accordance with the general or specific rules contained herein.
(Ord. No. 581 § 3-7)

3-8 POWERS GRANTED BY LAW.

The Board of Adjustment shall have such powers as granted by law to:

3-8.1 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 Officer or Agency based on or made in the enforcement of Article 12, Zoning.

3-8.2 Hear and decide request for interpretation of the Map or Zoning Ordinance, or for decisions upon other special questions upon which such Board is authorized by Article 12, Zoning, to pass.

3-8.3 Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) 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 structure lawfully existing thereon, the strict application of any regulation pursuant to Article 12 of this Code (1) would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, 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; (2) where in an application or appeal relating to a specific piece of property the purposes of this act would be advanced by a deviation from the Zoning Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from regulations pursuant to Article 12 of this Code; provided, however, that the fact that a proposed use is an inherently beneficial use shall not be dispositive of a decision on a variance under this subsection and provided that no variance from those departures enumerated in N.J.S.A. 40:55D-70d shall be granted under this subsection; and provided further that the proposed development does not require approval by the Planning Board of a subdivision, site plan or conditional use, in conjunction with which the Planning Board has power to review a request for a variance pursuant to N.J.S.A. 40:55D-60.

3-8.4 In particular cases for special reasons, grant a variance to allow departure from regulations pursuant to Article 12 of this Code to permit: (1) a use or principal structure in a district restricted against such use or principal structure, (2) an expansion of a nonconforming use, (3) deviation from a specification or standard pursuant to N.J.S.A. 40:55D-67 pertaining solely to a conditional use, (4) an increase in the permitted floor area ratio as defined in N.J.S.A. 40:55D-4, (5) an increase in the permitted density as defined in N.J.S.A. 40:55D-4, except as applied to the required lot area for a lot or lots for detached one or two dwelling unit buildings, which lot or lots either an isolated undersized lot or lots resulting from a minor subdivision or (6) 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. If an application development requests one (1) or more variances but not a variance for a purpose enumerated in N.J.S.A. 40:55D-70d, the decision on the requested variance or variances shall be rendered under N.J.S.A. 40:55D-70c.

3-8.5 No variance or other relief may be granted under the provisions 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 purpose of the Zoning Map and Article 12, Zoning. Any application under any subsection of this section may be referred to any appropriate person or agency including the Planning Board, for its report provided that such reference shall not extend the period of time within which the Zoning Board of Adjustment shall act.

(Ord. No. 581 § 3-8; Ord. No. 98-1149 § 1 Art. 3)

3-9 ADDITIONAL POWERS.

The Zoning Board of Adjustment shall in addition to the powers specified in Section 3-8 of this Article have power given by law to:

3-9.1 Direct issuance of a permit pursuant to N.J.S.A. 40:55D-76a (1) for a building or structure in the bed of a mapped street or public drainageway, flood control basin or public area reserved on the official map.

3-9.2 Direct issuance of a permit pursuant to N.J.S.A. 40:55D-76a (2) for a building or structure not related to a street.

3-9.3 Grant to the same extent and subject to the same restrictions as the Planning Board, subdivision or site plan approval pursuant to Articles 9 or 10 of this chapter, or conditional use approval pursuant to Article 12 whenever the proposed development requires approval by the Board of Adjustment of a variance pursuant to subsection 3-8.4 of this chapter. 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 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 Zoning Map and Article 12, Zoning. The number of votes of Board of Adjustment members required to grant any such subsequent approval shall be as otherwise provided in this chapter for the approval in question and the special vote pursuant to subsection 3-8.4 of this chapter shall not be required.

(Ord. No. 581 § 3-9)

3-10 APPEALS AND APPLICATIONS; PROCEDURE FOR FILING.

3-10.1 Appeals to the Board of Adjustment may be taken by any person aggrieved, or by any officer, department, board, or bureau of the Municipality affected by any decision of the Administrative Officer. Each appeal shall be taken within the twenty (20) days prescribed by the Statute by filing a notice of appeal with the officer from whom the appeal was taken, together with two (2) copies of the notice with the Administrative Officer of the Board of Adjustment. The Notice of Appeal shall specify the grounds for the appeal. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

3-10.2 Applications; Review Checklist.

- a. Applications addressed to the original jurisdiction of the Zoning Board of Adjustment shall be filed with the Board's Administrative Officer. The applicant shall file, at least ten (10) days before the date set for hearing, twenty-one (21) copies of a complete application on the form adopted by the Board and twenty-one (21) copies of a complete review checklist as adopted in paragraph b. of this subsection. At the time of filing the appeal of application, but in no event less than ten (10) days prior to the date set for hearing, the applicant shall also file all plat plans, maps, or other papers required by virtue of any provision of this chapter or any rule of the Board of Adjustment. The applicant shall obtain all necessary forms from the Board Administrative Officer. The Administrative Officer shall inform the applicant of the steps to be taken to initiate proceedings and of the regular meeting dates of the Board.
- b. Board of Adjustment Review Checklists which are incorporated herein by reference and which shall be included in Appendices A and B to this chapter are hereby adopted and shall be completed by all applicants in accordance with paragraph a. above.

(Ord. No. 2001-1234 § 1; Ord. No. 2005-1395 § 1; Ord. No. 2019-1800)

3-10.3 An appeal stays all proceedings in furtherance of the action in respect of which the decision appealed from was made, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a Restraining Order which may be granted by the Board of Adjustment or by the Superior Court of New Jersey on application or notice to the officer from whom the appeal is taken and on due cause shown.

(Ord. No. 581 § 3-10; Ord. No. 2001-1234 § 1)

3-11 POWER TO RESERVE OR MODIFY DECISIONS.

In exercising the above mentioned power, the Board of Adjustment may, in conformity with the provisions of N.J.S.A. 40:55D-1 et seq. or amendments thereto or subsequent statutes applying, reverse or affirm wholly or partly or may modify the order, requirement, decision, or determination appealed from, and make such other requirement, decision or determination as ought to be made, and to that end have all the powers of the Administrative Officer from whom the appeal was taken. (Ord. No. 581 § 3-11)

3-12 EXPIRATION OF VARIANCES.

Any variance from the terms of any ordinance hereafter granted by the Board of Adjustment pursuant to N.J.S.A. 40:55D-70d permitting the erection or alteration of any structure or structures, or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by the variance, or unless such permitted use has actually been commenced, within twelve (12) months from the date of entry of the judgment or determination of the Board of Adjustment; except however, that the running of the period of limitation herein provided shall

be tolled from the date of filing an appeal from the decision of the Board of Adjustment to the Governing Body, or to a court of competent jurisdiction, until the termination in any manner of such appeal or proceeding. (Ord. No. 581 § 3-12)

3-13 TIME FOR DECISION.

The Board of Adjustment shall render its decision not later than one hundred twenty (120) days after the date: (1) an appeal is taken from the decision of an Administrative Officer; or (2) the submission of a complete application for development to the Board as defined in subsection 1-3.2 of this chapter, pursuant to the provisions of N.J.S.A. 40:55D-70.

a. In the event that the developer elects to submit separate consecutive applications as provided in subsection 3-9.3, the one hundred twenty (120) day provision shall apply to the application for approval of the variance. The period for granting or denying any subsequent approval shall be as otherwise provided in this chapter.

b. Failure of the Board of Adjustment to act within the prescribed period or within such further time as may be consented to by the applicant, shall constitute a decision favorable to the applicant.
(Ord. No. 581 § 3-13)

3-14 RULES AND REGULATIONS.

The Board shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this chapter. In the issuance of subpoenas, administration of oaths and taking of testimony, the provisions of the County and Municipal Investigations Law of 1953 (N.J.S.A. 67A-1 et seq.) shall apply. (Ord. No. 581 § 3-14)

3-15 APPEALS TO ZONING BOARD OF ADJUSTMENT.

An appeal to the Zoning Board of Adjustment may be taken by any interested party affected by any decision of an officer of the municipality based on or made in the enforcement of the Zoning Ordinance (See Article 12) or Official Map. Such appeal shall be taken within sixty-five (65) days by filing a Notice of Appeal in the manner set forth in subsection 3-10.1 and in accordance with the provisions of N.J.S.A 40:55D-69 et seq. (Ord. No. 581 § 3-15)

3-16 APPEALS FROM ZONING BOARD OF ADJUSTMENT.

3-16.1 Appeals to Governing Body.

An appeal from the Zoning Board of Adjustment approving an application for a development involving the following may be taken to the Governing Body within ten (10) days of the date of publication of each final decision, and such appeal shall be made pursuant to N.J.S.A. 40:55D-17 and Article 5 of this chapter.

a. An approval pursuant to N.J.S.A. 40:55D-70d and subsection 3-8.4.

3-16.2 An appeal from any other final decision may be taken only to the Superior Court pursuant to law.

(Ord. No. 581 § 3-16)

3-17 REFERRALS.

The Zoning Board of Adjustment may refer any application to any appropriate person or agency for its report pursuant to N.J.S.A. 40:55D-70; provided that such reference shall not extend the period of time within which the Zoning Board of Adjustment shall act.

3-17.1 Referrals to the Planning Board shall be pursuant to N.J.S.A. 40:55D-26 and Article 4 of this chapter.

(Ord. No. 581 § 3-17)

3-18 ENVIRONMENTAL COMMISSION.

Whenever the Environmental Commission has prepared and submitted to the Planning Board and Board of Adjustment an index of the natural resources of the municipality, the Board of Adjustment shall make available to the Environmental Commission an information copy of every application for development to the Board of Adjustment. Failure of the Planning Board to make such informational copy available to the Environmental Commission shall not invalidate any hearing or proceeding. (Ord. No. 2005-1395 § 2)

3-19 SITE VISITS; PROPERTY MARKOUT.

Viewing the property that is the subject of the application by Board members and consultants shall be permitted upon reasonable notice to the applicant. The presence during the site visit or visits of the applicant or his or her counsel is unnecessary. If there are site visits, or if one (1) or more members of the Board are familiar with the subject property, such knowledge may be used in making a decision if such Board member establishes such facts on the record at the time of the hearing. The applicant, any objector, or any interested party shall have an opportunity to refute such facts. Contemporaneously with the filing of his or her application, the applicant shall "mark out" the corners of any subdivision, building or addition to be placed on the property that is the subject of the application. (Ord. No. 2006-1442 § 1)

REVIEW CHECKLIST

ZONING BOARD OF ADJUSTMENT APPLICATIONS
Borough of Bernardsville
(Subsection 3-10.2)

Block _____ Lot _____ Name _____

Below is a list of required information which must be submitted with an application for a Minor Site Plan and Preliminary Application of a Major Site Plan. For more information, refer to Article 9, entitled "Site Plan Review," in the Development Regulations (Ordinance #581).

The applicant must submit ten (10) sets of drawings to the Borough of Bernardsville which will be forwarded to the" Planning Board or Board of Adjustment, Borough Engineer, Board of Health, Shade Tree Commission, Environmental Commission, Zoning Officer, County Planning Board and N.J.D.O.T. (if project affects Ste R.O.W.). The applicant must also submit a set of drawings to Somerset County Soil Conservation.

<p>9-9.2 Minor Site Plan and Preliminary Application of a Major Site Plan. The minor site plan and the preliminary application of a major site plan shall be drawn at a scale of not smaller than 50 feet to the inch and not more than 10 feet to the inch. It shall include such details as may be necessary to properly evaluate the minor site plan or the preliminary application of a major site plan and determine compliance with this Ordinance. In the case of a scale other than one inch equals 50 feet is submitted, one copy of a photomechanical reduction to a scale of one inch equals fifty feet shall also be submitted. Any minor site plan or preliminary application of a major site plan involving any new building, or addition thereto, or any site improvements shall be drawn by a licensed New Jersey professional engineer, land surveyor, architect or professional planner. Where applicable to the proposed use or construction, the following information shall be clearly shown:</p> <p>a. North arrow, scale, graphic scale, date and notes and dated revisions.</p>	
<p>b. The Zoning District in which the property is located and the Zone District or districts of the immediately adjoining properties.</p>	
<p>c. The following legends shall be on the Site Plan Map:</p> <p>1. Site Plan of _____ Lot _____ Block _____ Zone _____ Date _____ Scale _____</p> <p>2. I consent to the filing of this Site Plan with the Planning Board of Bernardsville.</p> <p>_____ (Owner) (Address) (Phone No.) (Date)</p> <p>3. I hereby certify that I have prepared this Site Plan and that all dimensions and information are correct.</p> <p>_____ (Name) (Address) (Title & License No.)</p> <p>4. I have reviewed this Site Plan and certify that it meets all codes and ordinances under by jurisdiction.</p> <p>_____ (Date) (Borough Engineer)</p> <p>5. To be signed before issuance of a building permit: I hereby certify that all the required improvements have been installed or a bond posted in compliance with all applicable codes and ordinances.</p> <p>(If improvements installed) _____ (Borough Engineer)</p> <p>(Date)</p> <p>(If bond posted) _____ (Borough Clerk)</p> <p>(Date)</p> <p>Building Permit Issued _____</p> <p>(Date)</p> <p>6. Approved by the (Approving Agency)</p> <p>Preliminary _____ Final _____</p> <p>_____ (Chairman) (Date) (Secty.) (Date)</p>	
<p>d. All existing and proposed signs and their size, nature of construction and location, and all existing and proposed exterior lighting, including size, nature of construction, location, height, the area and direction of illumination and the lumen power.</p>	
<p>e. Rights-of-way, easements and all lands to be dedicated to the Borough.</p>	
<p>f. The entire property in question, even though only a portion of said property is involved in the site plan provided, however, where it is physically impossible to show the entire property on the required sheet, a key map is permitted.</p>	
<p>g. All abutting streets and property lines within 500 feet of the affected property.</p>	
<p>h. Indication of sanitary disposal system.</p>	
<p>i. Area of the lot and all lot line dimensions.</p>	

j. Survey Map, and metes and bounds description signed, sealed and certified by a Licensed Land Surveyor of New Jersey, showing boundaries of the properties of the properties, lines and all existing streets and roads, easements, rights-of-way. These shall be dimensioned and where applicable, referenced as to direction and purpose. All distances shall be in feet and hundredths of a foot. All angles shall be given to the nearest ten (10) seconds or closer. The error of closure shall not exceed one in ten thousand.	
k. Location of off-street parking areas showing proposed parking, sidewalks and loading spaces, with dimensions, width or proposed access drives and aisles and traffic circulation.	
l. Existing and proposed contours of the property and for 100 feet outside the property at 12-foot intervals when new buildings or parking areas are proposed. If only a portion of the property is being developed, contours need only be shown for said portion and 100 feet beyond.	
m. Elevations at the corners of all proposed buildings and paved areas and at property corners if new buildings or paved areas are proposed.	
n. Tentative building floor plans and front, rear and side building elevation drawings showing building material. Said plans shall be at a scale of not less than 1/8" = 1'. Said plans shall be drawn by a licensed architect.	
o. Specifications for and location of proposed surface paving and curbing.	
p. Location of all structures on any abutting property within 300 feet of the property in question.	
q. Existing streams, brooks, or other natural or man-made drainage facilities, when pertinent to any proposed construction on the lot.	
r. Proposed storm drainage facilities, water mains, sanitary sewer lines, water wells, waste disposal systems and other such proposed construction on the lot, as well as existing facilities of this nature when pertinent to any proposed use or construction.	
s. Certification from the Tax Collector that no taxes or assessments for local improvements are due or delinquent on the subject property.	
t. All fences, walls, sidewalks or similar features to be provided.	
u. The present status, location, and contemplated use of all existing buildings on the property.	
v. A Soil Erosion and Sediment Control Plan if required in accordance with P.L. 1975, Chapter 251. Said Plan shall be submitted to the Soil Conservation District in accordance with said statute and approval of the application shall be conditioned upon certification of the Soil Erosion and Sediment Control Plan by the District.	
w. Map showing the entire drainage area and the drainage area contributing to each pertinent drainage structure along with drainage tabulation sheets showing calculations for each drainage area. Each drainage area shall be marked for identification purposes.	
x. Official seals of licensed professional engineer, land surveyor, architect or planner preparing the plans.	
aa. For any use located in a flood area, the following information:	
1. The existing and proposed contours on the property in question at a contour interval of one foot.	
2. The proposed elevations of the levels of the lands involved at the corners of the foundation of any structure or structures.	
3. The lowest elevation of the lowest proposed floor level including basement, if any, within any proposed structure after its completion.	
4. The layout of existing and proposed public streets and the nature, extent and location of existing and proposed public utilities servicing and to service the premises in question.	
bb. Photographs of the property where necessary to show any unusual topographic, environmental or physical aspect of the site. This would include but not be limited to rock outcroppings, vegetation, natural drainageways, wetlands and existing structures and improvements.	

cc. The names of the owners of all contiguous land and of property directly across the street and within two hundred (200) feet of the property, as shown by the most recent tax records of the Borough.	
dd. Key map at a scale of one inch equals one hundred feet (1" = 100'), or larger scale.	
ee. Reference to any existing or proposed deed restrictions or exceptions concerning all or any portion of the parcel. A copy of such covenants, deed restrictions or exceptions shall be submitted with the application.	
ff. All areas dedicated or posed for public use within 200 feet of the property based on the Borough's Official Map.	
gg. Boundaries of any floodways, flood hazard areas or other areas subject to flooding or storm overflows. Said boundaries shall be drawn pursuant to the Floodplain and Watercourse Ordinance 13-4.	
hh. Location of existing rock outcroppings, high points, depressions, vegetation, wooded areas and other significant existing features.	
ii. Trees of five inches or over in caliper shall be specifically located and identified. Any proposed change of such natural features shall be specifically noted.	
jj. Location of all existing bridges, culverts, storm sewers, septic systems, sanitary sewers, water, fire protection, electric and telephone lines, both above and below ground, and poles, gas and underground heating systems, pipe lines, artesian wells and other man-made features. Dimensions, grades and flow direction for culverts and sewers shall also be provided.	
kk. Location of all existing streets and highways on or adjacent to the property affected, including names, right-of-way width, pavement width, curb-to-curb width..	
ll. Location of all historical or architecturally significant properties within 300 feet of the property.	
mm. Copies of any proposed deed restrictions or covenants.	
nn. Where applicable, the method by which any open space or common open space area or commonly held building or structure is to be owned and maintained.	
oo. If applicable, development stages for the proposal.	
pp. The Approving Authority may require other specific data. This data may include but is not limited to geologic information, water yields, flood data, environmental information, traffic counts, road capacities, market or economic information, and similar material.	
qq. The location, design, and size of any on- or off-site pedestrian parks and bicycle pathways, open space, common open space, plazas and recreation areas, bridle paths or any other public use areas.	
rr. The location and design of the proposed buffer areas, screening, landscaping and planting, including a planting plan and a schedule of plant materials. The plan shall identify existing and proposed plantings. Botanical and common names of plants and trees, dimensions, approximate time of planting and maintenance plans shall also be indicated.	
ss. Improvement coverage, number of units, square feet of construction, value of construction, density, coverage, number of employees, number of residents and area of land, etc. Specifically identified on the Site Plan, in tabular form, shall be pertinent zoning data, indicating the bulk area requirements of the zone in which the proposed development is located and how the proposed development corresponds to the zoning requirements.	
tt. All proposed streets and private roads with profiles indicating grading; and cross-sections showing width or roadway, location and width of sidewalk and specifications of the Borough of Bernardsville, as applicable.	
In addition, all variances should be shown:	
1. Building setback lines.	
2. Variances that will be required.	
3. The following should be on the cover sheet:	
a. Zoning requirements.	
b. List of variances	
c. List of property owners within 200 feet of subject property.	

Sidewalks – (Check Master Plan)	
4. Approval from Somerset County Planning Board, by Applicant.	
5. Approval from Somerset-Union Soil Conservation District, by Applicant.	

(Ord. No. 2001-1234 § 1)

ARTICLE 3 ZONING BOARD OF ADJUSTMENT

Published by ClerkBase
©2019 by Clerkbase. No Claim to Original Government Works.