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Information to Aid in the Preparation of an application to the Board of Adjustment

The Board of Adjustment is a quasi-judicial body established by the governing body upon the adoption of the Township Zoning Ordinance, §230-57. It is established under the powers established by the State of New Jersey in the Municipal Land Use Law (MLUL).

The Board consists of seven members and two alternates. Members are appointed by the Township Committee. The Board's job is to grant relief, or adjustment, from the requirements of the Township Zoning Ordinance. Said granting occurs if the Board decides, after weighing the evidence and testimony presented, that such relief would not seriously violate the intent and purpose of the Zoning Ordinance and that said relief would cause no detriment to the public good and public welfare.

Bulk variances generally are sought in relief of dimensional requirements. The Zoning Ordinance establishes such things as lot size, building setbacks to property lines, structure height, etc. If construction of a new building, or alteration of an existing one, would violate any provision of the ordinance, a variance application must be made.

Use variances are sought when a proposed use is not a permitted use in the Zoning Ordinance. The Zoning Ordinance spells out permitted principal uses and permitted accessory uses for each zone. If a property owner wishes to establish a use not allowed, a use variance application must be made.

Other types of applications can be made before the Board of Adjustment. Please refer to Zoning Ordinance 230-63, *Powers of the Zoning Board of Adjustment*.

Preparation for an application to the Board of Adjustment

Prepare yourself by reading this document thoroughly. The application form has been designed to assist in providing as much detail as possible for review by the Board. Pertinent sections of the Zoning Ordinance will further guide you in providing the specific information and details needed. The applicant has final responsibility for the application and other preparation for the hearing.

Hearing Dates

Hearing Dates have been established and the Board of Adjustment meets on the second Thursday of each month. See the ZBA introduction and schedule of meeting dates. On that schedule, it can be noted that the deadline for each meeting is 28 days prior to the meeting date (§230-77). Also to be found on the schedule are the dates for newspaper publication for each monthly meeting. The Board may call a meeting upon the request of any two members.

Attachments to the application

A. Map, plat, or survey of premises; a copy of the survey used at the time of closing would be acceptable. Hand drawn maps may suffice to start the application, but a more precise depiction may be required by the Board.

To be included:

1. North arrow
2. Location of existing and proposed structures; and their setbacks from property lines
3. Lot dimensions
4. Existing physical features; i.e. streams, topography, stone walls, etc.
5. If using a survey, the date of the original plat and each revision must be shown, as well as the signature of the surveyor.
6. If a hand-drawn map is used, a scale of not less than 1" = 50' must be used. The preparer must sign and date the map.

B. Site plan. In the case of a use variance a site plan must be submitted. NJ Statute requires sealed site plans by a licensed professional. Further requirements of the site plan can be found in the Zoning Ordinance, §230-91, *Site Plan Review*.

C. General Description of adjacent properties.

E. Photographs, optional. Photographs are very helpful, but cannot be submitted in lieu of a map or site plan.

Evidence presented at the public hearing

A. The Board receives and acts only on evidence presented by witnesses testifying under oath who have direct personal knowledge of what they are testifying about. Opening verbal statement and argument of applicant or counsel and written statement in the application, must be supported by sworn testimony.

B. The Chair shall conduct all meetings and, subject to being overruled by a majority vote of the Board, shall make all rulings on what is or is not evidential, and all questions of procedure.

C. All evidence shall be received under oath. Interested parties may address cross examination-type questions to the Chair who may disallow the question, ask the witness to respond to all or part of the question, or revise the question to bring out matters relevant to the application before the Board.

D. The concurring vote of four (4) members shall be necessary to approve any application, except a use variance which requires the concurring vote of five (5) members.

E. All applicants should remember the need to prove that requested relief can be granted "without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance."

F. All Applicants should also understand that an application is approved or denied on the basis of its merits.

Miscellaneous matters

- A. All applicants have the right to employ counsel to assist in preparing the applicant's papers and in presenting the applicant's case.
- B. All applicants or objectors have the right to employ at applicant's or objector's expense a stenographer to take down all testimony.
- C. No member of the Board can decide a case until she/he has heard the applicant's case and the case put on by any objectors, and until he/she has had the benefit of discussion with other members of the Board. Consequently, an applicant should not discuss her/his case with any Board member.

Decisions

On February 13, 1986, a Board policy was adopted involving an application of a 'd' variance. A 'd' variance requires five (5) affirmative votes. This established policy would allow the Board to hear all evidence involving a 'd' variance at one meeting, with a decision to be forthcoming at the next meeting. Said policy would allow 30 days in which the Board may obtain additional information concerning the application.

BULK VARIANCES: Applicant's presentation before the Zoning Board *(Also known as a "c" variance)*

A bulk variance requests a change from the yard or other bulk requirements. It does not include a use variance. During your presentation, the following data points may guide you in your responses to Board questions. Some of this information may be presented on surveys or site plans. This type of application is also known as a 'c' variance.

1. Dimensions and setbacks of all existing and proposed structures on the subject property (see application items VII and X); also include existing and proposed impervious coverage; also include information about the driveway.
2. Provide information about the proposed location of the proposed addition or structure; include information about the suitability of the proposed location and how it reduces the variance needed.
3. Discuss the hardship that would be created in placing the proposed structure elsewhere on the property.
4. If pertinent to the application, include floor plans.
5. Contour information needs to be provided to ascertain that the proposed structure will not increase stormwater runoff. Other site landmarks, such as significant trees or stone walls, etc. should to be included.
6. Surrounding neighborhood, including approximate setbacks of home on neighboring lots; provide this information to show how the proposed variance will benefit the neighborhood.

USE VARIANCES: Applicant's presentation before the Zoning Board

(Also known as a "d" variance)

A use variance requests a change in use or a structure which is not allowed by the specific provisions of the Zoning Ordinance. New Jersey is rather anomalous (unusual) in that it permits the granting of use variances, many states do not. The Board of Adjustment exercises great restraint in the granting of use variances. The applicant's presentation to the Board should include, but is not limited to the responses of the following questions:

For all questions, be prepared to explain how and why.

1. Is this a type of land use that inherently serves the general welfare of this Township?
2. How can the grant of the requested use variance be reconciled with the fact that the proposed use is prohibited in this zone?
3. What are the "special reasons" to grant this use variance?
4. Would granting this requested use variance contribute to the general objectives of zoning and to the Township's zone plan?
5. Is the nature of the lot and its surrounding neighborhood such that the applicant could not possibly use it for any of the permitted uses?
6. Will the applicant be deprived of the use of this property under the current Zoning Ordinance unless the use variance is granted?
7. Would the grant of this use variance be detrimental to the public good or welfare?
8. Would the grant of this use variance impair the intent and purpose of the zone plan and zoning ordinance of Delaware Township?

THESE QUESTIONS ARE MEANT TO GUIDE YOU IN YOUR PRESENTATION BEFORE THE BOARD OF ADJUSTMENT.