

Understanding New Jersey's Process For Obtaining Land Use And Zoning Variances

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If you are a resident looking to add an addition, pool or deck, for example, to your home, or a business looking to use or improve property, you may be required to apply for what is known as a Variance. The process, with its applications, board requirements, legal notices, and public hearings, can be complicated, not only because New Jersey zoning standards can differ from town to town, but also because delays can occur, and applications can be challenged. This article describes the path a resident or business owner would take to obtain a Variance in New Jersey, with some of the twists and turns that can happen.

Land Use and Zoning Ordinances in New Jersey

In New Jersey, every municipality has adopted a set of Land Use and Zoning Ordinances which describe and define zoning standards for permitted and prohibited uses within a particular zone district. In addition, these same Land Use and Zoning Ordinances establish certain requirements, referred to as bulk standards, that describe zoning criteria for construction. If the proposed use of a property is not specifically permitted, then an owner will need to apply for a Use Variance to allow use of the property that is otherwise prohibited. If proposed construction on a specific piece of property does not conform with a bulk standard, for example, front yard, side yard or rear yard setbacks, the owner will be required to apply for a Bulk Variance. Most Variances can be granted by either a Planning Board or Zoning Board of Adjustment, except that Use Variances can only be granted by a Zoning Board of Adjustment.

Process and Timing for Obtaining a Variance

Under the Municipal Land Use Law (MLUL), there are certain time frames and requirements which must be followed by both an applicant and the Board. It is important to understand the process and timing. To begin, an applicant will be required to complete a written application form, typically referred to as a Land Development Application. The Application will request information about the applicant, the property owner (which is not necessarily the same as the applicant), and property information (including setbacks, land area, proposed use and/or construction), and will require the applicant to identify the specific variance relief being requested. Each municipality also requires application and escrow fees that must be paid at the time the application is filed with the appropriate Board. For most variances, in addition to the application form, an applicant will be required to submit a Survey or Site Plan to support the application for variance relief.

The Board then has 45 days from the date the application is filed to review the application and determine whether the application can be deemed complete for purposes of scheduling a Public Hearing. All variance applications in New Jersey require a Public Hearing. When an application is deemed complete, a Public Hearing will be scheduled for the next available Board agenda. Generally, Planning and Zoning Boards in New Jersey will meet at least once a month.

Legal Notice Requirements

For all Variances, an applicant must also satisfy Legal Notice requirements. An applicant must obtain a list of all property owners located within 200 feet of the subject property. Once the applicant receives this list of property owners, the applicant must provide a written Legal Notice to those property owners. The form of Legal Notice must contain specific information about the application, including, among other requirements, the location of the property, a brief description of the proposed use and any improvements of the property, the specific Variances being sought, and the date, time and location of the Public Hearing. An applicant must also publish a Legal Notice in the official newspaper for the municipality. Both Legal Notices must be provided and published no less than 10 days before the scheduled Public Hearing. Satisfying Legal Notice is jurisdictional, which means that a mistake or failure to properly satisfy the MLUL Legal Notice requirements denies the Board of any ability to proceed with the Public Hearing until proper notice has been provided.

Public Hearing Process

Most Variance applications can be heard and decided at one Public Hearing. Some applications, however, including Use Variances, may require more than one public hearing. As the name implies, Public Hearings are open to the public and allow members of the public to participate during the Board approval process by either supporting or opposing a Variance application. As previously indicated, there are different forms of Variances: Bulk Variances and Use Variances. Each of these forms of Variances have certain legal requirements to be proven and established by the applicant at the time of the Public Hearing. The burden of proof is on the Applicant to establish the legal requirements in order to enable the Board to grant the Variance relief. At the conclusion of the Public Hearing, the Board votes to either approve or deny the application. The Board has an additional 30 days to prepare and adopt a written resolution to memorialize the action taken at the Public Hearing. Generally, the Board has the ability to require and establish certain conditions to mitigate the effects of granting any Variance. The conditions to the approval will be written into the resolution. Variances, including any conditions, run with the land meaning they are not specific to a particular applicant but will be binding upon all subsequent owners, occupants or tenants.

Once the resolution has been adopted by the Board, a Legal Notice of Decision must be published in the official newspaper for the municipality to advise the general public of action taken by the Board. If an interested party seeks to challenge the approval, they must appeal the decision by filing a lawsuit in the Superior Court of New Jersey within 45 days from the date of the published Legal Notice of Decision, with a few exceptions to this timeframe. Unless and until a Variance has been granted and the resolution adopted, an applicant will not be allowed to use or construct any improvements which required the Variance relief. After expiration of the 45-day appeal period, an applicant is generally free to proceed with its use or construction.

The above process can seem daunting. My practice has focused on [Land Use and Zoning](#) and [Real Estate](#) for more than 20 years, and I have helped clients appear before Planning and Zoning Boards throughout New Jersey. Please [contact me](#) to schedule a consultation to discuss your particular needs.