

I Want To Build An Addition To My Home But Was Denied

January 26, 2012 | by

Dear “Ask the Attorney:”

I want to renovate my home and build an extension, but the building department denied my application for a building permit and said I need a “variance”. What is a variance and how do I obtain one?

L.R.

Dear L.R:

Every Municipality in New Jersey has a Zoning Ordinance which sets forth the various “zone districts” in the Town. It also says what and where something can be built. Let’s assume you want to build a deck onto the rear of your house and the Zoning Ordinance requires that the house must have a 50-foot setback – that is the house cannot be closer to the rear property line than 50 feet. If the proposed deck will extend to the rear so that the distance to the rear property line would be 35 feet you would need to obtain a variance.

First, you would file an application with the Board of Adjustment (in some towns, a Land Use Board) composed of Members appointed by the Mayor and the Governing Body. The procedure requires the filing of a plan showing the location of the proposed deck and what it will look like and a statement as to why you feel the variance should be granted. The criteria for the granting of a variance is set forth in a State Statute which can neither be enlarged nor diminished by the local Municipality in its Zoning Ordinance.

Generally, the criteria for the granting of a variance depends on the type of variance you are seeking – the deck variance in this illustration would require proof that the premises are so unusual as to the topography or the size and shape of the lot that a hardship would be created if the variance was not granted.

After the application, plan and fees have been filed, you would be notified of a hearing date before the Board and it would be your responsibility to file a legal notice in the required newspaper giving the location of the property, the variance sought, the time and place of the hearing and advising the public of their right to review the papers filed and to attend and be heard as to the application. In addition, a similar notice must be sent to all property owners within 200 feet of the property.

At the hearing, you would testify under oath as to why the variance should be granted – showing compliance with the proofs required by the Statute to grant such a variance, Members of the Board would have the right to question you and members of the public would also have the right to question you.

The Board would then discuss the case in public and vote to grant or deny the application. This would be done verbally and then reduced to a written resolution prepared by the Board's attorney setting forth the factual and legal basis for the verbal action taken by the Board at the preceding meeting and would then be adopted by the Board at a public meeting.

All of this can be done by a property owner with or without an attorney. If there is opposition to the application or it is a complicated application, I would recommend retaining an attorney experienced in these types of applications.

Theodore E.B. Einhorn, Esq.