

TIPS FOR HOMEOWNERS APPEARING WITHOUT AN ATTORNEY

1. What is a variance, and how best to support your application.

Before your hearing the board members will review your application, so it is important that you provide a complete and accurate description about what you are proposing to build, what variances you require, and why the board should grant the variances that you seek. Be sure to include an accurate survey of the property and copies of any architectural drawings showing the proposed improvements. Construction drawings are not required, but simple plans with room layouts, dimensions, and exterior elevations often will be necessary for you to prove your case.

Variances may be sought pursuant to N.J.S.A. 40:55D-70c(1) as “hardship” applications. This provides for variance relief to be granted where the physical characteristics of the property or an exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon cause practical difficulties to the strict compliance with the law. For example a lot may be so narrow or have such extreme topographical features that construction is not realistically possible without deviating from a front, rear or side yard setback requirement. Variance applications may also be sought pursuant to N.J.S.A. 40:55D-70c(2) where the purposes of the Municipal Land Use Law would be advanced by a deviation from the Zoning Ordinance requirements and the benefits of the deviation substantially outweigh any detriment. The zoning benefits resulting from permitting the deviation must be for the community and not merely for the private purposes of the owner. You should offer testimony and exhibits to the board showing why this is true, why the variance that you request is as small as practical under the circumstances, and why the proposed improvement would not harm neighboring properties.

The board may not grant a variance where the need is solely personal to the owner. For example, the board will not grant a variance permitting an addition to an existing home where the only reason for it is the homeowner's desire to permit an elderly parent to move in. The "hardship" basis for a variance must relate to the property itself, and not to the owner's personal needs.

4. What to expect at your hearing.

When your case is called you should go to the front of the meeting room with any witnesses who will testify on your behalf. Anyone who will testify must swear to tell the truth. Describe what you would like to build, what variances you need, and why you are entitled to receive those variances. You may present photographs, plans, or other exhibits that show conditions on the property and what you propose to build. Letters of support from your neighbors are not evidence and will not be accepted the board. Only live testimony is admissible into evidence.

Any engineer, architect or other professional testifying on your behalf may testify only after presenting a summary of their professional credentials.

The board members will ask questions of you and any witnesses about your application, and may suggest or request that you modify your application in certain respects. If so you may agree to make the modifications or you may proceed with your application as submitted, but keep in mind that the board may be more likely to approve your application if you modify it to meet the board's concerns. If you need time to meet a request of the board or to get more information, or

if you simply want time to consider your options based on feedback from the board, you may ask that the case be adjourned (or "carried") to the next meeting.

When the board is finished asking questions and you have nothing further to add the meeting will be opened to members of the public. Any interested person will be given the opportunity to ask questions about the application, of you and your witnesses. They also will have the opportunity to be placed under oath and testify, either in favor of your application or against it.

After the public portion is complete, the case will be closed to further testimony and the board will discuss openly the merits of your application before voting whether to grant or deny your application. In all but "d" variances a majority of the voting members must vote "yes" for your application to be approved. For "d" variances five "yes" votes are required.

After the meeting the board's attorney will prepare a formal resolution of approval or denial, for adoption by the board at its next meeting. You need not be present for this. If your application is granted you may apply for your construction permit as soon as this resolution of approval is adopted, which will almost always be about a month after your case is decided.