

Zoning Board of Adjustment

An Explanation of the Hearing Process

Overview

The Board of Adjustment is empowered by State law to grant variances from ordinances that regulate property. We hope this outline provides an explanation of the procedure that we are required by law to follow. The order of events are guided by an agenda. However, the Board has the right to hear the cases in any order. Sometimes all of the cases on an agenda are not completed during a given meeting. The Board normally concludes its evening by 11:00 p.m. If your case is not reached, your case will be carried to another night. The Board will make a motion to carry your case and will decide at that time if you need to re-notice.

Procedure

Your hearing is similar to a court proceeding: the Chairman runs the proceedings as a judge might. The Board is comparable to a jury who will vote on a final decision based upon the facts and the law. A verbatim record of the proceedings is kept by a court reporter.

The Rules of Evidence apply to these procedures but are relaxed. Although they are relaxed, the Board cannot accept hearsay testimony; which means you cannot say what somebody else said. They must be present and say it for themselves. This is why the Board can never accept a written petition, because the applicant has the right to cross-examine anyone who wants to comment on their case.

In most cases, applicants will be assisted by either an Attorney or experts such as a Planner or Architect. All of your experts must be licensed in the State of New Jersey. You do not have to hire an Attorney, but bear in mind that without an Attorney, only you can direct your case. Your experts are not permitted to direct your case like a lawyer.

After each of your experts testifies, the Board and the public have the right to cross-examine these witnesses. When you are done calling witnesses, the public has a right to comment. Each member of the public who wishes to give testimony will be sworn under oath. You and the Board have a right to ask them questions as well. Then, when the public has finished, you have a right to sum up. Your summation can only be made by you or an Attorney representing you.

Public Participation – Questions and Comments

When you speak, do so slowly and loudly.

Questions:

When you ask questions, you must first state your name and address. Please spell your last name. Every time you return to ask questions you must duplicate this procedure.

When a witness completes his testimony, and if you have a question (not a comment), raise your hand. When the Chairman calls on you, please stand, state your name and address, and direct your question to the person you wish to respond. (Responders may only testify in their area of expertise).

When the public has had ample opportunity to ask questions, the applicant will call their next witness and the above procedures will be repeated. When all witnesses have been presented and testimony completed, the Board will ask any final questions. At this time the Chairman will open the meeting to any interested person for comments.

Comments:

When you comment on your view of the application, you will be placed under oath and you will once again be asked to state your name and to spell your last name.

Your right to comment is not unlimited. The Chairman decides who speaks when, so please wait to be called on. The Chairman has the right to limit public comment if he feels the audience is unruly or repetitive, or if the comments are not relevant to the case. He may also limit the time or number of questions, in order to give adequate time to others. The Chairman has the right to close the public portion of a hearing.

When the public has finished commenting, the applicant or their Attorney will make a summation. A summation is not required and in most matters is not needed.

Board Comments and Vote

The Chairman will close the public portion of the meeting and then move the Board into executive session. In executive session, the Board will deliberate and consider the evidence presented. The public is permitted to listen to the deliberations, but no one is to interrupt the Board during their deliberations. However, the Board may ask a question or make a query of the applicant or his Attorney through the Board's Attorney. Sometimes the Board may ask an applicant if they would entertain a modification to their plan; however, there is no obligation on the Board to make such a request. Regardless, the Board may approve all or just a part of a proposed plan.

During deliberation the Board will express their reasoning as to why they are for or against the application. The Board Attorney may explain the law to the Board. The Board will apply the law to the facts presented when concluding whether they are for or against. The Board members serve in a quasi-judicial capacity and must have a Zoning reason underlying their decision.

After all the Board members have commented, they usually list the conditions to be imposed on the application. One of the Board members will then make a motion to approve or deny the application.

Resolution

The Board Attorney will prepare a Resolution for a future meeting which will contain the Board's findings and the conditions of approval. This is usually done within a month of the vote (but not later than 45 days as required by law). Once the Board votes (again) on the memorialized Resolution, you will be able to obtain a copy through the Department of Community Services. This is a VERY important document that will be inserted in your property file. All of the conditions of the Resolution must be complied with or your approval may be voided. In the event you cannot comply with the conditions of approval, you will need to return to the Board to seek an amendment to your Resolution which the Board may or may not grant depending on the circumstances.