

ZONING BOARD OF ADJUSTMENT

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Introduction

The purpose of this information is to make you familiar with the procedures of the Zoning Board and the standards that the Board will apply in considering your variance application. The Board will endeavor to quickly act on your application but your attention to the requirements of the Board will expedite that process. This information is not a substitute for legal advice and the Board recommends that all applicants consult with an attorney familiar with land use matters.

The Application

After it is determined by the Planning Department that your proposed (or possibly existing) improvement (such as deck or addition) requires a variance from the Livingston Zoning Ordinances, you must file an application for a variance and pay all applicable fees and costs. Please read this entirely before completing the application for a variance and please feel free to ask the Planning Department staff any questions that you may have about the Application. The Livingston Zoning Ordinances (Chapter 170) are available for your review on the Township website at www.livingstonnj.org.

Notice of Your Application

The Planning Department will explain to you the notices that you must serve on your neighbors living within 200 feet of your property and the notice that must be published in the local paper at least ten (10) days before the scheduled hearing. Proof of service and publication must be provided to the Planning Department. In addition, all taxes on the property must be paid and not be in arrears.

An Updated Survey

The Board requires that you obtain an updated survey of your property showing all existing structures. A second copy of your current survey should have marked on it the outlines of your proposed addition with the proposed distances for which a variance(s) is requested such as from the front, side and rear lines of the property. The second survey marked showing the distances of the requested variance(s) should be prepared accurately so that the distance to the lot lines are accurate. We recommend that you ask your surveyor or architect to measure these distances. If this measurement is done incorrectly, and the actual distance is less than noted on the survey, your variance may not be sufficient requiring you to re-apply when your error is discovered. Please note that most people do not know the exact location of their lot lines and "estimations" should be avoided.

The Standards that the Zoning Board Uses

The Board is required to use the New Jersey Municipal Land Use Law's standard to determine if you are entitled to variance. While there are a few alternative standards available, the most usual is under New Jersey Statutes Annotated Title 49:55D-70(c)(1) and is referred to as the "C-1" variance. This statute says that a variance may be granted if the applicant demonstrates that because of the circumstances of the real property in question an undue or exceptional hardship would be imposed upon the applicant unless a variance is granted. This means that any of the various dimensional and topographical conditions of your property must be the basis for a "C-1" variance. However, no variance may be granted unless the variance will not impair the public good (your neighbors' rights) and will not violate the intent and purpose of the zoning ordinance. The Board must balance all the factors and rights of various parties in making its decision.

Non-Standard Lots

When the Zoning Ordinance was adopted, the various front, side and rear yard set backs were enacted based a standard lot of certain dimensions that varies in the four principal residential zones. A summary of the standard lots in the four residential zones and their basic zoning standards (Zoning Table) can be obtained from the Planning or Zoning Departments or on the website at www.livingstonnj.org. The initial analysis that the Board uses to determine whether you are entitled to a variance is whether your lot deviates from a "standard" lot in its residential zone and whether that deviation is related to your requested variance.

For example, in the R-4 zone, the zone with the smallest standard lot, the width of the standard lot is 75 feet and depth is 125 feet. If your lot is only 65 feet wide and 110 feet deep, then your lot is narrower and shallower than the standard R-4 zone lot. If your proposed addition requires a three (3) foot side yard variance from the required ten (10) foot side yard setback and a seven (7) foot rear yard variance from the thirty five (35) foot rear yard set back, you would have a factual basis for your variances. Please note that if you were requesting a ten (10) foot side yard variance, or the full distance to your lot line, the Board probably would not permit you to build in the entire side yard as this would impair the public good (and be unfair to your neighbors who have the right to rely on some reasonable distance between residences) and violate the intent of the Zoning Ordinance to leave open spaces in the side yard. Lots come in many sizes and shapes and the law contemplates that variances would be required to the residents who have non-standard lots, provided that the public good and intent of the zoning plan are not impaired.

On your application and at the beginning of your case, you need to tell the Board in what ways your lot varies from the standard lot in your zone (see the attached chart) and explain the basis of your variance(s) requested.

Non-Conforming Structures

There are other ways that you may be able to qualify for a variance. Certain residences are already in violation of the Ordinance as they were built before the Ordinance's current standards were adopted. If this applies to your facts, you are entitled to continue to use and occupy your home without any requirement to conform to a new ordinance. Such a residence is referred to as a

“non-conforming” structure. For example, the front yard in the standard R-1 zone lot is 75 feet. If your house is only 50 feet from the front lot line, any vertical or lateral expansion within 75 feet of the front lot line would be a front yard setback violation requiring a variance. However, the Board recognizes that it would be a hardship to move the residence back by 25 feet. If your proposed renovation is no closer to the front yard line than the current residence, it is likely that the Board will grant you a variance under these circumstances.

With respect to variance requests for pools, the Board is fair to those concerned about the noise that may be the natural result of enjoying the pool and the privacy of neighbors so any variances with respect to pools will require the Board to carefully balance the rights of the applicant and the neighbors.

Other Reasons for a Variance

There are other reasons that a variance may be granted and this is not intended to list them all. For example, if your lot is unusually shaped, has an extreme slope, has drainage issues, a stream, a large tree that should be preserved or other reasons, the Board will consider that condition provided that the rights of your neighbors are considered in the Board’s decision. You have the burden of convincing the Board that your proposed expansion or addition will not be detrimental to your neighbors and will not impair the intent and purpose of the Zoning Ordinance. If you have commenced or completed construction and then it is determined that a variance is required, the Board will use the same analysis as if the construction had not occurred.

What if None of the Above Apply?

If none of the above reasons apply, then you should consult with an attorney familiar with land use matters for assistance as there are other grounds that may be a basis for a variance. While an attorney is not required to present a case, the Board will not view a case any differently if an attorney is present.

The Hearing

At the hearing, the applicant has the burden of explaining to the Board the reasons why he or she is entitled to a variance. This should be based on the standards discussed above or other applicable legal standards. At the beginning of the hearing, you and all your witnesses will be asked to “swear or affirm that the testimony you give will be truthful.” If you have worked with an architect or other professional, their presence as a witnesses will probably assist your case.

The fact that your neighbor has no objection to your proposed addition is not grounds for approval as the Board must consider the rights of future owners of the adjoining properties and the community at large. The Board will not accept letters or petitions from neighbors or other parties. All witnesses must be present for the Board to consider their views and to answer questions.

If neighbors attend the hearing to support or oppose your application, after the Board completes the questioning of a witness, the neighbors will be permitted to ask the witness any questions relevant to his or her testimony, but will not be permitted to make speeches. If the neighbors

want to testify themselves or make a statement to the Board, they must also be sworn to tell the truth just like the applicant and your witnesses.

While the fact that your family needs the extra living space that you propose to add is important to you, the Board is required by New Jersey law to only use the legal standards, some of which are described above, in making its decision. Usually, your personal situation and needs are not a basis for granting a variance.

The Board appreciates seeing photos of your property and neighboring properties so the Board can consider what impact your application would have on a neighbor adjacent to where the variance is requested. All exhibits used at the hearing must be left with the Board's secretary after the hearing so remember to keep extra copies.

By making the application, you are giving the Board members permission to enter your property at reasonable time to make an in person inspection. Board members often just ride by and park in front to view your property. If they wish to enter your property, they will ring your doorbell and identify themselves. This is not the time to discuss the merits of your case.

The Decision

Usually the Board will render its decision at the hearing. Sometimes the Board decides to consider the facts, take the time to view your property and the surrounding properties and render its decision at the next meeting.

If during the hearing, the Board is reluctant to grant your variance as proposed, a member of the Board may ask if the applicant is willing to accept a lesser variance. If you agree at the hearing that you will accept a lesser variance, then your application will be considered amended at the hearing. However, you are not required to do so and may ask that the Board vote on your application. Once the Board votes, you may not amend your application, but must re-file your application, re-notice and re-publish and wait for your amended application to come before the Board again.

If your property has any obvious violations of the Zoning Ordinance, the Board may condition any grant of a variance upon a curing of that violation. For example, often sheds (referred to as accessory structures) are located too close to the side lines of properties and need to be relocated to conform to the Zoning Ordinance. The required setbacks for accessory structures can be obtained by contacting the Zoning Review Officer in the Township Building Department.

The Resolution

After the Board makes its decision, the decision must be memorialized by a written resolution prepared by the Board's attorney. Usually this occurs at the next regular meeting of the Board and a copy will be mailed to you. You need not attend this next meeting. After the hearing at which the Board votes to grant your application, you may immediately submit an application for a building permit to start your work; however, the permit will not be issued until the Resolution is

adopted by the Board. The Board suggests that you apply for your building permit after the Board announces its decision to avoid any delay as the usual review of plans may take several weeks. Notice that the Board approves (or denies) your application will usually be published by the Board within a week or two of adoption of the Resolution.

Appeals

If you are not satisfied with the decision of the Board, you have a right to appeal the decision to the Superior Court of New Jersey. You should consult with an attorney familiar with land use matters if you wish to appeal. The appeal is commenced by filing a Notice of Appeal which must be served within forty-five (45) days of the publication of the notice that the Resolution has been adopted.

About the Board

There are seven (7) permanent members of the Board and two (2) alternates. The alternates only vote if all seven (7) members are not present to vote. A quorum for the Board is four (4) members. In all instances for (C) variances, the applicant need only receive a majority of those members voting.

All Board members are volunteers appointed by the Livingston Town Council who serve without any compensation or reimbursement. All members are residents of Livingston. If you know one of the Board members, do not discuss your application with them as it is not appropriate. If any Board member is a friend of the applicant or the Board member otherwise believes that there is a business or personal relationship, the Board member is obligated to not participate in your hearing and will leave the room while the matter is being considered.

We hope this information has been helpful to guide you through the variance process. Again we repeat that the information provided is not intended as a replacement for the advice of an attorney familiar with land use matters. If you have additional questions, please address them to the staff of the Planning Department.

JACKIE COOMBS-HOLLIS
Planning Administrator

Township of Livingston – Planning Department
357 S. Livingston Avenue
Livingston, NJ 07039
Office: 973-535-7955
Fax: 973-535-7989
Email: jhollis@livingstonnj.org

CATHERINE MADDREY
Administrative Assistant

Township of Livingston – Planning Department
357 S. Livingston Avenue
Livingston, NJ 07039
Office: 973-992-5000 ext. #5512
Fax: 973-535-7989
Email: cmaddrey@livingstonnj.org