

**BOROUGH OF COLLINGSWOOD
ZONING BOARD OF ADJUSTMENT**

**INSTRUCTIONS FOR FILING AN APPLICATION FOR A ZONING
VARIANCE.**
PURSUANT TO N.J.S.A. 40:55 70 & 76

To the Applicant:

Attached are a general discussion of Variance requirements and a checklist of requirements for filing a variance application together with the necessary forms and instructions.

If you read the General Discussion of Variance Requirements, comply with the requirements of the checklist carefully and completely, and meet the required deadlines for various steps we will be able to facilitate a hearing on your application

Any error or omissions in the forms or missed deadlines may result in a delay in scheduling your hearing.

General Information:

- A. The regular monthly meeting of the Zoning Board of Adjustment is held on the first Wednesday of each month at 7:00 PM on the third floor of the Municipal Building, 678 Haddon Ave. unless otherwise noted on the published schedule of Meetings posted on the bulletin board on the first floor of the Municipal Building.
- B. In most cases, the Board will reach a decision on your application on the same night that the matter is heard. The following month the Board will adopt a Resolution of Memorialization stating its decision and explaining the reason for it. The resolution will be advertised in a newspaper of general circulation within the municipality not more than ten (10) days after its adoption. Applicant has the option of publishing notice of the Board's decision subsequent, to the adoption by the Board of the Resolution of Memorialization.

Any member of the public may appeal the Board's decision within forty-five days of the date of publication of the resolution. If there is no appeal within that time the decision then becomes final. However, you may begin to implement your variance immediately after the first approval **AT YOUR OWN RISK**. Any actions taken before the 45-day appeal period ends may be nullified if a successful appeal is taken.

- C. Copies of the Collingswood Zoning Ordinance may be seen at the Borough Clerk's office and at the Public Library at no charge. Copies may be purchased from the Zoning Officer.
- D. A Corporation must be represented by an attorney who is a member of the New Jersey Bar.

**DO NOT USE THE SECTION USE THE PDF FOR THE GENERAL
DISCUSSION FOR PAGE 2 -5
GENERAL DISCUSSION OF VARIANCE REQUIREMENTS**

The Zoning Board of Adjustment is empowered by state law to hear requests from applicants for relief from the municipal zoning ordinance provisions applicable to their property. Most variance applications fall into one of two categories. A “Bulk” or “C” variance is needed when the applicant intends to use his or her land in a manner permitted in its zoning district but cannot comply with the applicable dimensional requirements. It commonly arises when a structure is proposed within the required front, rear, or side yard set back areas. It also arises when new construction is proposed on a lot smaller than the zoning ordinance requires or when the structure would exceed the maximum lot coverage requirements.

In order for the applicant to be excused from the applicable requirements, he or she must convince the Board by a sworn factual presentation that he or she qualifies for an exception from the requirements. This exemption is called a variance. The applicant has the burden to prove to the Board by producing evidence that a variance should be granted. The Board has no responsibility to produce evidence to support the applicant’s position.

The legal requirements imposed by the law are found in the New Jersey Statutes under N.J.S.A. 40:330-70 c). Generally, there are two types of “C” variance each requiring different types of proof.

The first type usually relates to the physical features of the property or the structures on it. In these cases the applicant must prove to the Board why his property (not he or his family personally) is under a hardship if it must be developed in accordance with the existing requirements. The focus must be on the physical characteristics of his property that would make it impractical or would pose peculiar or exceptional practical difficulties relating to the property if applicant were required to conform to the existing requirements.

The second type of “C” variance requires the applicant to prove that the proposed use of the land would advance the purpose of the municipal land use law as expressed in N.J.S.A. 40:55d-2. If the applicant can prove the above and prove further that the benefits that would be created under his or her proposal would substantially outweigh any detriment flowing there from then the applicant will have taken a major step in proving his or her right to a variance.

In both types of “C” Variances, the applicant must also prove that the requested relief can be granted without substantial detriment to the intent and purpose of the zoning plan and the zoning ordinance.

Please note that in “C” variance cases as well as “D” variances explained below it is essential that the applicant accurately describe his or her property and what borders it. An accurate survey showing the distances from the existing and proposed improvement to

the surrounding lot line is essential. Photographs of the area involved are also a great assistance to the Board.

If the applicant can prove to the Board that the above criteria are met he or she is entitled to a variance by a majority vote of the Board.

The second category of variance the Board considers is a "Use " or "D" variance. This variance applies when the proposed use of the property is not permitted by current regulations. This type of variance is harder to get than a "C" variance because it requires five affirmative Board votes. An applicant must prove that special reasons exist to use or erect a principal structure in the district where such use or structure is not permitted or to permit applicant to expand a non-conforming use. A non-conforming use is one that the zoning ordinance permitted when the use began but is not permitted by current ordinances.

These special reasons are loosely described but not defined in the law. It is sufficient to say that special reasons are those which promote the general purpose of the zoning law N.J.S.A. 40:55 D-2. A hardship imposed on an applicant if his property cannot be practically utilized in the manner for which it is zoned can be a special reason. Aesthetic improvements under certain circumstances can also be a special reason. If the general welfare is benefited by the proposed use then that can be a special reason if the applicant's land is uniquely suited for the proposed use. If the proposed use is inherently beneficial to the general welfare (i.e.: hospitals, schools, etc.) that also can qualify as a special reason and applicant does not have to prove that the property is uniquely suited to the proposed use.

The above situations are examples of special reason but are not meant to be all-inclusive.

In addition to the above a "D" variance that is not in an inherently beneficial use category must satisfy an additional requirement. The applicant must demonstrate why his proposed use has been omitted from uses that are permitted. This extra proof must be shown in such a manner as to enable the Board to find that the requested variance is not inconsistent with the intent and purpose of the Master Plan and the Zoning Ordinance.

Finally, as in "C" variances cases, an applicant for a "D" variance must also prove that the requested relief can be granted without substantial detriment to the public good and to the intent and purpose of the zone plan and zoning ordinance.

The law does not favor use variances because they are inconsistent with the applicable zoning plan. Therefore, five affirmative votes (as opposed to the simple majority vote required for a "C" variance) are required. For this reason, it is strongly recommended that applicants retain a lawyer to help them present their proof. Expert testimony to reconcile the contrast between the proposed use and its omission from permitted uses is also highly recommended.

The above is intended as a general discussion of the legal factors applicable to most common request for variances. Appeals from administrative error, questions or interpretations of the zoning ordinances, variances from conditional use requirements and

increases in floor area ratio, permission to build on a lot not abutting a street, are matters not covered here. These types of requests come up less frequently and are beyond the scope of this discussion.

If necessary, zoning officials will explain the requirements applicable to your application. They cannot, however, act as your attorney or counselor and tell you what to do or say to the Board. If assistance is needed to present your application to the Board, an attorney should be consulted.

Please note that New Jersey law requires that a corporate applicant must be represented by legal counsel licensed in New Jersey. Further no one other than licensed New Jersey counsel may appear before the Board to represent the right of another. This does not mean that your architect, contractor, realtor or any other person is prohibited from appearing as a witness and presenting the facts of your case. This is often done and is perfectly acceptable. It does mean that the said individual cannot represent you and make decisions on your behalf before the Board.

CHECKLIST OF REQUIREMENT FOR FILING A VARIANCE APPLICATION

1. After receiving a REFUSAL OF PERMIT FORM from the zoning officer, obtain NOTICE OF APPEAL AND VARIANCE APPLICATION FORM from the Zoning Officer.
2. Order certified list of property owners to be served notice from the Borough Clerk. These are owners of property within 200 feet of your property. There is a charge of \$10 for this list. A TAX MAP of properties within 200 feet of your property comes with the list and must be submitted with your application **with your property marked**.
3. File application and attachments (original and eleven copies) with the Borough Clerk per instruction on the form.
4. Submit the application and escrow fees required by Chapter 141 of the Development Regulations with the variance application. See the Zoning Officer for fee schedule.
5. If your property is in the Historic District you must first apply to the Historic District Commission for a Certificate of Appropriateness for your proposal. The Zoning Board cannot hear your variance application until it receives the Commission's recommendation.
6. The Zoning Board Secretary will notify you of a hearing date upon the completion of steps 2, 3, 4, above and 5 (if applicable). The secretary will also send you a copy of the HEARING PROCEDURE to help you prepare for your hearing.
7. Timely notify property owners on the list of your variance application by using FORM P attached **per the instructions on Page 9**.
8. Obtain and submit to the Board Secretary a notarized AFFIDAVIT OF PROOF OF SERVICE (FORM A attached) no later than the Friday before the hearing.
9. PLEASE NOTE that all applicants must be up-to-date on all payments to the borough for taxes, water & sewer, etc. before your case can be heard. When you pay your application and escrow fees, the Borough Clerk will notify the Board Secretary that all charges have been paid.
10. Publish timely NOTICE OF VARIANCE APPLICATION (FORM N attached) in a local newspaper in accordance **with instructions on page 9**. Obtain AFFIDAVIT OF PROOF OF PUBLICATION from the newspaper and submit to the Board Secretary.
11. If your property is adjacent to a county or state highway or within 200 feet of an adjoining municipality obtain additional instructions from the zoning officer. The name or names of the appropriate jurisdictions will appear on the list of property owner to be served.

If you have any questions please call:

Zoning Board Secretary, Madalyn Deets at 856-854-0720 x 110

Or

Zoning Officer, Gretchen Kolecki at 856-854-0720 x 130

Note: all submissions to the Board Secretary may be left with the Borough Clerk

BOROUGH OF COLLINGSWOOD

NOTICE OF APPEAL AND VARIANCE APPLICATION FORM

OFFICIAL USE ONLY: CASE NO. _____ DATE FILED _____
HEARING DATE _____ DECISION _____
.....

PREMISES AFFECTED

Address _____
Block No. _____ Lot No. _____ Lot Size _____ Zone _____
APPLICANT(S) _____ Owner/Lessee
Address _____ Phone _____

LOCATION: Is your property in the Historic district? _____. If so, see checklist Item #5

Owner (If not applicant) _____
Address _____ Phone _____

NOTICE OF APPEAL OF ZONING OFFICER'S DECISION

An application was made to the Zoning Officer on (date) _____
For the purpose of (describe intended action) _____

on the premises described below. On (date) _____ the Zoning officer declined to issue said permit for the reasons stated in the attached copy of his Refusal of Permit form.

Applicant files this Notice of Appeal with the required fees and requests that the Zoning Officer's decision be reversed or modified. Applicant also requests that a hearing date be set for this appeal and states that notice to all concerned parties will be given as required by Statute.

APPLICATION FOR VARIANCE

TO THE BOARD OF ADJUSTMENT:

Application is hereby made for a (hardship), (use), (bulk), variance from the terms of Ordinance 1058 Chapter 141 Section _____ of the Zoning Ordinance so as to permit

DESCRIPTION OF PROPOSED STRUCTURE OR USE

Last use of premises _____
Lot Frontage _____ . Percentage of lot occupied by buildings _____
Total impervious coverage. _____

Size of buildings (present and or proposed)
Width _____ feet, at front building line at street level.
Depth _____ feet Height _____ feet Stories _____

Setback from property lines (in feet)

	Code requirement	Present	Requested
Front yard	_____	_____	_____
Right side yard	_____	_____	_____
Left side yard	_____	_____	_____
Rear yard	_____	_____	_____

Prevailing setback of adjoining buildings on the block _____

Has there been any previous appeal involving these premises? _____. If so, give details and date of disposition _____

Proposed structure or use _____

Reasons why a variance should be granted. _____

This application for a use variance includes an application for: Subdivision _____
Site plan _____ Conditional use _____

Attached hereto and made a part of this application, I submit the following:

1. The original Building Application signed by the Building official and or a true copy of the Official Order issued and signed by the Building Official, where applicable.
2. Copy of the Borough Tax Map showing all lots within two hundred (200) feet of the property. (Obtain this form from the Borough Tax Assessor).
3. A copy of the most recent survey showing location and size of all buildings and size of front, side and rear yards.
4. Copy of subdivision, site plan or conditional use application when applicable.
5. Copy of the zoning Officers Refusal of Permit.
6. Copy of Historic Commission’s approval or refusal of a Certificate of Appropriateness. (This is required only if your property is in the Historic District.)

Date: _____
Applicants or Attorney or Attorney-in-fact

If applicant does not own the premises, the owner must sign.

Date: _____
Owner

Notice to applicant: This original signed application and all of its attachments plus eleven (11) copies of the application and all attachments must be submitted to the Zoning Board Secretary at the Borough Hall no later than 4:00 PM ten days (the second Friday) before the scheduled hearing date.

ALL REQUIRED FEES MUST BE SUBMITTED WITH THIS APPLICATION

INSTRUCTIONS FOR NOTIFYING NEIGHBORING PROPERTY OWNERS

AND

THE GENERAL PUBLIC

Form P – Notice of hearing to property owners. This form is to be served on the persons named on the List of Property Owners To Be Served Notice. This notice is to be served by certified mail or served personally on the property owner or his agent in charge of the property (**if you choose to hand deliver your notices, you must have the person sign and date next to their name on the list**): or such municipality, county or state agency listed in Form XXX. You will be required to furnish a receipt for certified mail, date stamped by the Post Office, for each notice sent by certified mail. You receive this white slip from the Post Office when you send certified mail. Service is completed by certified mailing on the date you mail the notice. Service must be made **at least (10) ten days prior to the date of the hearing** and proofs thereof must be submitted no later than the Friday before the hearing. You are strongly encouraged to effect service by certified mail since the applicant can prove proper notice by simply producing the list of property owners and the corresponding certified mail slip. If proper notice is not established the Board cannot go forward with your variance hearing.

NOTE: Give Board Secretary the list of all persons served along with the white certified mail receipts in the **ORDER IN WHICH THEY APPEAR ON THE LIST**. Also submit one copy of the completed letter you sent to all parties.

Form N - Public Notice: The applicant is to publish this form in a newspaper of general circulation in the Borough of Collingswood (The Retrospect or Courier-Post) **at least (10) ten days prior to the day of the hearing**. The newspaper will furnish an affidavit of Proof of Publication. This affidavit must be submitted to the Board Secretary or the Office of the Borough Clerk no latter than the Friday before the day of the hearing. The Public Notice must contain the specific Ordinance and chapter of the Zoning Ordinance from which you seek relief and the exact nature of the relief sought.

Note: Give one copy of the completed Public Notice to Board Secretary.

**BOROUGH OF COLLINGSWOOD
ZONING BOARD OF ADJUSTMENT**

NOTICE OF HEARING TO PROPERTY OWNERS

In compliance with Ordinance 1058, Chapter 141-8 E of the Collingswood Zoning Ordinance, Notice is hereby given you that I (we)

do seek a variance from **Ordinance 1058, Chapter 141-**_____of the Ordinance in order to (give detailed reasons for request): _____

for the premises at (street address)_____ Block_____ Lot_____. The Zoning officer refused this request as being in violation of Ordinance 1058, Chapter 141-_____of the Zoning ordinance from which decision I (we) appeal. I (we) have applied to the Zoning Board of Adjustment for a hardship____, use____, bulk____ variance. (together with subdivision____,site plan____conditional use____approval).

Any person (s) affected by this (appeal or application) will have an opportunity to be heard at a meeting to be held on_____at 7:00 PM in the Municipal Building, third floor, 678 Haddon Ave., Collingswood, NJ. All documents relating to this application may be inspected by the public between 9:00 AM and 4:30 PM in the office of the Borough Clerk in the Municipal Building.

Applicant(s)

Form P

You are being sent this notice as your property is within 200 feet of the subject premises.

BOROUGH OF COLLINGSWOOD
PUBLIC NOTICE

Notice is here by given that on the _____ day of _____ 200__
At 7:00 PM, local time, a public hearing will be held before the Zoning Board of
Adjustment of the Borough of Collingswood at the Municipal Building 678 Haddon Ave.
Collingswood, NJ upon the application of _____
the applicant, for a variance from Ordinance 1058, Chapter 141-____ of the zoning
ordinance of the Borough of Collingswood to permit _____

This variance is sought on Block _____ Lot _____
Located at _____, Collingswood, NJ. All
interested persons will be given an opportunity to be heard. All documents relating to this
application may be inspected by the public between the hours of 9:00 AM and 4:30 PM
in the Collingswood Municipal Building.

Applicant(s)

Form N

BOROUGH OF COLLINGSWOOD
AFFIDAVIT OF PROOF OF SERVICE

CASE NO. _____

STATE OF NEW JERSEY:

SS:

COUNTY OF CAMDEN:

_____, of full age, being duly sworn according to law, deposes and says that (s)he resides at

_____ and that (s) he is the applicant in a proceeding before the Zoning Board of Adjustment of the Borough of Collingswood, NJ , being an appeal or application under the Zoning Ordinance and which case No._____, and related to premises at _____ . That on _____, 200 __, (s) he gave written notice of the hearing on this application to each and all of the persons upon whom service must be had, in the required form and according to the attached lists, and in the manner indicate thereon.

Applicant

Sworn and subscribe to
Before me this ___ day
Of _____ 200 _____

Notary Public

FORM A

ZONING BOARD OF ADJUSTMENT ESCROW

I understand that the sum of \$_____ has been deposited in an escrow account (Builder's Trust Acct) in accordance with the Ordinance of the Borough of Collingswood. I further understand that the escrow account is established to cover the cost of professional services including engineering, planning, legal and other expenses associated with the review of the submitted materials and the publication of the decision by the Board. Sums not utilized in the review process shall be returned. If additional sums are deemed necessary, it is understood that I will be notified of the required additional amount and shall add that sum to the escrow account within fifteen (15) days.

Signature of Applicant

Date