

## *Borough of Garwood of Planning Board*

### *Filing Instructions for Residential Bulk Variance– 1 of 2*

The following instructions are prepared in the interest of assisting residents in the process of preparing an “Application to the Planning Board” and other required documents and in performing other required functions that are requisite to hearings before the Planning Board. Please note that **not all pages** in the Development Assistant Package apply.

Please note- Borough employees with whom applications are filed will attempt to be of assistance to the applicant, but are **not authorized or permitted** to give legal advice.

#### **Filing Instructions**

- I. **ALL APPLICATION PACKETS MUST BE COLLATED.** As per N.J.S.A. 40:55D-10.3, the Board has 45-days (from the date of receipt) to deem each application complete.
  - A. A complete application will consist of the following:
    1. An “*Application to the Planning Board of the Borough of Garwood*” – completed and including a **detailed statement** for the variance with supporting facts that will assist the Board in its decision (use additional sheets if necessary). **Submit 1 original (notarized with owner’s signature) and 15 copies. Please note that pages 1-8 of the Developer’s Assistance Package pertain to residential C/Bulk variances. Form # 01 pages 1-8** Complete all applicable sections- Identify the section of the ordinance from which you are seeking relief on page 4, # 13 & **Form 04** Page 7 must be signed and notarized.
    2. **Submit 16 copies (with signatures and raised seals) of property survey depicting proposed relief requested. A survey is sufficient in seeking a variance for a Deck, Fence, etc.**
    3. The application fee in the form of a check payable to the “Borough of Garwood.” (See attached “*Development Fees*”).
    4. Certification from the Office of the Borough’s Tax Collector that property taxes are up-to-date on the property in question using **Form 01 Page 8**
    5. “*Request for Certified List of Names*” and payment of the appropriate fee is to be submitted to the Borough **Clerks office.**- **Form # 17** Applicant must contact neighboring towns for said diagram and list, if necessary.
  - B. **Once the application is deemed complete and a hearing date has been scheduled by the Board Secretary**, a scheduling confirmation letter will be sent to the applicant. The applicant must then do the following:
    1. By certified mail or by hand delivery, notify all property owners of all lots within 200-feet of the subject property (both in Garwood and in adjoining towns, if necessary), using the attached “*Notice of Public Hearing*” **Form # 11** (*Within 200-Feet*), **at least 10 days prior to the date of the public hearing.**
    2. Publish a notice of the hearing in the Westfield Leader or Star Ledger using the attached “*Notice of Public Hearing*” in an issue published at **least 10 days prior to the date of the public hearing.**
    3. Complete the attached “Affidavit of Proof of Service” form in the presence of a Notary Public.
    4. File the notarized “*Affidavit of Proof of Service*”, **Form # 12** a copy of the “*Notice to Adjacent Property Owners (Within 200-Feet)*”, an affidavit of publication (supplied by the newspaper) and the date-stamped white certified mail stubs (if notice was done by certified mail) to the Board Secretary **at least two days prior** to the hearing.
- II. The applicant or owner, or the attorney representing either of the aforementioned, must be present at the time of the public hearing. Failure to appear may result in re-advertising the hearing (at the applicant’s expense) and re-serving public notice to all property owners within 200-feet of the subject property (at the applicant’s expense). Applicants are advised to be prepared to address the Proofs required in Variance cases. (pg. 2)
- III. Notice of the Decision of the Board is published by the Board Secretary in the Westfield Leader after adoption (memorializing) of the resolution regarding each case. **The applicant is responsible for this advertising fee and shall include said fee in the total cost of the application.** A copy of the Resolution and the Notice of Decision of the Board will be forwarded to the applicant.

## **BOROUGH OF GARWOOD PLANNING BOARD PROOFS REQUIRED IN VARIANCE CASES**

N.J.S.A. 40:55D-70 sets forth the statutory requirements necessary for an applicant to obtain a variance.

### **Positive Criteria for “c” variances**

The two sets of standards governing the “c” variance appear at N.J.S.A. 40:55D-70c(1) and c(2), and are to be applied by the Board in considering the variance request. The first set of standards is for conventional bulk variances of “**hardship**” variances (N.J.S.A. 40:55D70c(1)).

#### **“Hardship” Variance**

- (1) Where
  - (a) By reason of exceptional narrowness, shallowness or shape of a specific piece of property, or
  - (b) By reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or
  - (c) By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to Article 8 of [the Municipal Land Use Law]... would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property,

[the Board shall have the power to] grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship;

#### **“Flexible c” Variance**

The second set of criteria allows an applicant to request a variance that would achieve the purposes of the Municipal Land Use Law, which appear at N.J.S.A. 40:55D-70c(2), **better** than the applicable zoning regulations, although the burden would always be on the applicant to demonstrate how the deviation would do that. These latter variances are also known as “flexible c” variances and the criteria are as follows:

- (2) Where in an application or appeal relating to a specific piece of property the purposes of this act [the MLUL] would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

#### **Negative Criteria**

The application **must also** prove the so called **negative criteria** which states That the variance or other relief cannot be granted without a showing that such variance or relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.