

## A BRIEF SUMMARY OF PROCEDURES FOR APPLICANTS SEEKING VARIANCES AND SUBDIVISIONS BEFORE MUNICIPAL LAND USE BOARDS

**DUNN & BROWNE, LLC**, represents builders, developers and homeowners in applications before Boards of Adjustment and Planning Boards of municipalities throughout northern New Jersey. Examples of such development, or land use applications range from construction or expansion of homes on undersized lots to major subdivisions or site plans for the use or development of lands for industrial, commercial or multiple family residential use. Applications before such boards often include requests for “variances,” or deviations from local zoning ordinances.

A variance application requires a public hearing upon personal notice to all property owners within 200 feet of the applicant’s property. In addition, publication of notice must be given in a local newspaper for other interested parties. The Boards of Adjustment and Planning Boards, in most small communities, meet only once a month for hearings. Both the publication and the delivery of notices to the affected property owners must occur at least ten days prior to the hearing date. The application process itself is usually extensive and subject to a checklist review before the board will set a date for public hearing. The board is permitted a 45 day time period for such reviews before the time limits begin for a board to act on the application. Such time limits are as short as 45 days after the application is deemed complete, for minor applications, to 120 days for major site plans or subdivisions. Extensions of these limits to complete the review process are common.

The application will require the submission of building plans and plats prepared by an engineer or architect. A plat is a plan of the property to be developed in

relationship to the surrounding property. Among other things, it shows the yards, the surrounding area and the relevant tract dimensions, site conditions and topography. Wetlands, floodways and even trees often need to be shown, and the plat should include any existing nonconforming conditions, as well as proposed improvements which would result in nonconformity. If a subdivision is involved in your application, the plat should show the boundaries of each proposed lot as well as any off tract improvements which will be required, such as sewage lines, storm sewers or streets.

Our firm will working with our client's engineer, architect or planner in the preparation of the plat and in the presentation of your matter before the local Board. In the meantime, photographs of the site should be taken for submission with the application. You should take pictures of your property and the surrounding neighborhood. Photographs should be taken, if possible, from each of the four corners of your site, showing as much of the property as possible. You should also take pictures of the other houses and properties located on the street in order to show the character of the neighborhood. If you have any particular features that are of interest on the property, or which affect the development, photograph them also.

If you are unable to attend to the photography yourself, please advise us, and we will have our own photographer attend to the photography.

Do not assume that the local board has sufficient information about your neighborhood by virtue of the fact that the members live nearby, and that photographs are, therefore, unnecessary. Do not assume that the Board members are your friends, or that your political associations will be adequate to influence a decision in your favor.

Board members in suburban communities are often hostile to “change” and development and the members you know may also be friendly with the objectors to your application.

In a “bulk” variance application, where the issue is compliance with the required zoning dimensions, the burden is upon the applicant to establish two criteria by a preponderance of the evidence. These criteria are as follows:

1. The “positive” criteria: The applicant must show that there is “hardship” by virtue of conditions on the property that make compliance with the zoning ordinance impractical or impossible. This “hardship” does not mean that there is a personal hardship peculiar to you, like a broken leg, or an elderly relative who needs an added room. Rather, it means that a hardship related to the property in view of its particular shape, topography, configuration or condition, such as a swamp or rock, which make compliance with the zoning ordinance unreasonable.

2. The “negative” criteria: The negative criteria require the applicant to show “lack of detriment to the zone plan or the zoning ordinance” as a result of the proposed improvement. This criteria is established by the testimony of your architect or planner. He may testify, for example, that the neighborhood of the subject property included a certain number of properties which are already deficient in side yard area or width, or which are otherwise nonconforming, and that the neighborhood will not, in his expert opinion, be adversely impacted by virtue of the grant of the requested variances.

While the review of site plans or subdivisions is an administrative function of local boards, the grant of variances by a Board of Adjustment or a Planning Board is a quasi-judicial function. That is, the Board makes a decision, much as a jury would in a trial, about whether or not you have established the criteria so as to be entitled to the

variance. Because of the vagaries involved in local land use Board decisions, we try to avoid variances where possible.

A “minor” subdivision is a development application in which the developer seeks to divide his property into no more than three lots, and where there is no extension of municipal facilities, such as a street or road. No public hearing is required for a minor subdivision unless variances are required. However, if extension of roadway, sewage or drainage lines, or additional lots are required, the matter is deemed a “major” subdivision and a public hearing is required. As with variances, such development applications can involve extended hearings before the Board and the cost of the same in engineering and legal fees can increase quickly with greater complexity and opposition.

Legal fees for development applications are based upon the time expended at the attorney’s hourly rate. Those applications requiring public hearings and involving opposition are inherently more complex and time consuming. It is the policy of our firm, and the requirement of the court rules pertaining to legal services by attorneys, that legal fees be reduced to writing. Accordingly, we will forward to you our standard Retainer Agreement for Development and Land Use proceedings. This agreement will specify the current rates and the nature and extent of the legal services our firm will provide.

Multiple hearings, plat revisions, opposition to the application, ancillary applications to other agencies which have jurisdiction or interest in your development, such as the County Planning Board, a utilities authority, or the State Department of Environmental Protection, as well as difficult site conditions, such as floodways, wetlands or contamination, are some of the many factors which can extend the application process and cause an increase in legal fees.

In addition to legal fees, the law firm will notify you of, and request reimbursement for, any disbursements for application fees, publication and certified mail expenses, expert costs, plats, photography, etc. Municipal application fees for development must also be paid. They vary from borough to borough. In addition, the applicant will be required to post escrows for the costs of the board's engineering and legal review. These municipal filing fees and escrows can also multiply rapidly depending upon the nature of your application.

With our 40 year experience in presenting land use applications for our clients to local boards, we have a unique perspective on what kinds of development will work and what will not. That same experience has provided us with significant insight into the development thinking of the communities of northern New Jersey and local board members and. We will advise you more specifically with regard to procedures applicable for your particular matter in meetings with you as your matter progresses. In the meantime, if you have any questions with regard to your matter, or our representation of you, please feel free to call.

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