

**BOROUGH OF HO-HO-KUS
ZONING BOARD OF ADJUSTMENT
VARIANCE APPLICATION**

GENERAL INFORMATION:

The Zoning Board of Adjustment of the Borough of Ho-Ho-Kus hears applications for variances from the Zoning Ordinance of the Borough of Ho-Ho-Kus and the Municipal Land Use Law of the State of New Jersey ("MLUL"). It also has the power to hear appeals taken from a decision of an administrative officer, to interpret the zoning ordinance, and in certain instances, to grant subdivision and site plan approval.

The regular meeting of the Zoning Board of Adjustment of the Borough of Ho-Ho-Kus is held on the first Thursday of each month in the Council Chambers of the Ho-Ho-Kus Borough Hall. In order to be listed on the agenda, all new applications, together with all required supporting documents and fees, must be filed with the Board Secretary () days prior to the next regularly-scheduled meeting of the Board. If this is done, the application will be listed on the agenda for the next meeting for the limited purpose of determining whether it is "complete", as that term is used in the MLUL. If found to be complete; the date for the public hearing will be established.

The public hearing is generally held at the next regularly-scheduled meeting of the Board. At that time, the applicant will be given the opportunity to present a case in support of the application through sworn testimony from expert and lay witnesses and documentary evidence. The Board will generally not consider hearsay evidence in the form of petitions or letters. Members of the public interested in the application will also be given an opportunity to be heard, to call witnesses and present evidence of their own. The Board will generally render a decision at this meeting, which is memorialized in the form of a written resolution adopted at the next regularly-scheduled meeting of the Board.

An applicant has the right to appeal a decision of the Board by filing a Complaint in Lieu of Prerogative Writ in the Superior Court of New Jersey. Such a complaint must be filed within forty-five (45) days following the publication of a notice setting forth the Board's decision.

MUNICIPAL LAND USE LAW

40:55D-70 POWERS.

The Board of Adjustment shall have the power to:

- A. **Hear** and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of the zoning ordinance; (part I)
- B. **Hear** and decide requests for interpretation of the zoning map or ordinance or for decisions upon other special questions upon which said board is authorized to pass by any zoning or official map ordinance, in accordance with this act; (part II)
- C. (1) **WHERE:**
 - (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or
 - (b) by reason of exceptional typographic 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 this act [40:55D-62 et seq.] would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, 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;
- (2) **Where** in an application or appeal relating to a specific piece of property the purposes of this act would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from regulations pursuant to article 8 of this act; provided, however, that no variance from those departures enumerated in subsection d. of this section shall be granted under this subsection; and provided further that the proposed development does not require approval by the planning board of a subdivision, site plan or conditional use, in conjunction with which the planning board has power to review a request for a variance pursuant to subsection 47 a. (C. 40:55D-60a) of this act: and

MUNICIPAL LAND USE LAW - Continued

D. In particular cases for special reasons, grant a variance to allow departure from regulations pursuant to article 8 of this act to permit:

- (1) a use or principal structure in a district restricted against such use or principal structure,
- (2) an expansion of nonconforming use,
- (3) deviation from a specification or standard pursuant to section 54 of P.L. 1975, c.291 (C.40:55D-67) pertaining solely to a conditional use,
- (4) an increase in the permitted floor area ratio as defined in section 3.1 of P.L. 1975, c. 291 (C.40:55D-4),
- (5) an increase in the permitted density as defined in section 3.1 of P.L. 1975, c.291 (C.40:55-D-4) except as applied to the required lot area for a lot or lots detached one or two dwelling unit buildings, which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision or
- (6) a height of a principal structure which exceeds by 10 feet or 10% the maximum height permitted in the district for a principal structure.

A variance under this subsection shall be granted only by affirmative vote of a least five members, in the case of municipal board, or two-thirds of the full authorized membership, in the case of regional board, pursuant to article 10 of this act.

If an application for development requests one or more variances but not a variance for a purpose enumerated in subsection d. of this section, the decision on the requested variance or variances shall be rendered under subsection c. of this section.

No variance or other relief may be granted under the terms of this section unless such variance or other 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.

In respect to any airport safety zones delineated under the "Air Safety and Zoning Act of 1983," P.L. 1983, c. 260 (C.6:1-80 et seq.), no variance or other relief may be granted under the terms of this section, permitting the creation or establishment of a nonconforming use which would be prohibited under standards promulgated pursuant to that act, except upon issuance of a permit by the Commissioner of Transportation. An application under this section may be referred to any appropriate person or agency for its report; provided that such reference shall not extend the period of time within which the zoning board of adjustment shall act.

(Reprinted from 1993 Edition New Jersey Zoning and Land Use Administration by William M. Cox, Pages 750-752).

The foregoing Rules, Regulations, and Fee Schedule were adopted by Ordinance No. 626, July 26, 1988, Chapter 32A-29.

BOROUGH OF HO-HO-KUS - VARIANCE APPLICATION

REQUIREMENTS

1. Application forms can be obtained from the Board Secretary.
2. When the denial from the Zoning Official and fee have been collected the Board Secretary will request from the Borough Tax Assessor a list of those persons and entities owning property within 200 feet of the property which is the subject of the application. That list, together with the relevant portion of the Borough Tax Assessment Map, will be sent to the applicant by mail.
3. Application cover sheet to be completed.
4. A detailed description of the proposed construction plan will need to be submitted for review. If the plan is drawn by a professional, professional seal is required on all copies.
5. A survey of the property, prepared by a licensed surveyor of the State of New Jersey, must be submitted. The survey must include the following information: tax map lot and block number; dimension of the lot and all structures on it; setbacks of all existing structures. The survey must also show whatever the applicant intends to build, including dimensions and setbacks. This information can be drawn on the survey by the applicant, but must be certified by the applicant as being correct. Because the Board will base its decision upon the drawing which is submitted, any errors which are subsequently discovered may require the applicant to return to the Board.
6. Property and Proposed Construction Calculation Form to be completed.
7. Completion of the variance request that is specific to the Municipal Land Use Law. A detailed letter explaining the land hardship, **not personal**, to be attached.
8. Applicant's certification to be completed. If the applicant is different than owner, the owner needs to complete appropriate section. Statement(s) to be notarized.
9. On the copy of the relevant portion of the Borough Tax Assessment map supplied by the Board Secretary, the applicant is to show the approximate location of all structures built on lots within 200 feet of the property in question.
10. All supporting documents are to be filed with the Board Secretary ~~14~~ ¹⁵ days prior to the next regularly-scheduled meeting of the Board. The matter will be listed on the agenda for that meeting for the sole purpose of determining whether the application is complete, and if so, to set a date for the public hearing. At that time, the Board will not take testimony or consider the matter on its merits, but will review the application from procedural perspective. The applicant may be asked to supply additional information. This information to be submitted to the Board Secretary ~~14~~ ¹⁵ days before the next scheduled meeting.
11. After the application has been declared complete, and the date for the public hearing set, the applicant must serve the Notice of Hearing upon the persons and entities shown on the list prepared by the Tax Assessor. In general terms, all owners of property located within 200 feet of the subject property, together with certain other entities, are entitled to notice. Notice must be given at least ten (10) days prior to the date of the public hearing by certified mail (return receipt requested). White receipts are to be given to the Board Secretary the same day as the letters are mailed.

REQUIREMENTS - CONTINUED

12. If service is made by personal delivery, an acknowledgement of service signed by the owner (or his agent) on property located within 200 feet, or by an authorized representative of an entity otherwise entitled to notice. The applicant is required to file an Affidavit of Proof of Service with the Board Secretary at least five (5) days prior to the date of the public hearing.
13. A notice of public hearing is also published in a local newspaper.
14. An application will not be heard unless all real property taxes assessed against the subject property are current at the time of the hearing.
15. At the public hearing, the applicant will be given the opportunity to present evidence, through the form of sworn testimony and legally-admissible documentary evidence, supporting the application. Members of the public will also be heard. The applicant should be prepared to establish a factual and legal basis for the granting of the relief requested. If the applicant plans to introduce any exhibits into evidence, the applicant should bring an extra copy of each exhibit, which will be marked, and kept as part of the board's file.
16. In most instances, the Board will deliberate and render a decision immediately following the public hearing. The decision is memorialized by the adoption of written resolution at the next regularly-scheduled meeting of the Board. Notice of the adoption of that resolution will then be published in the local newspaper. The cost is included in the application fee.

NOTE:

These instructions are designed to provide general information, which may be of assistance to an applicant coming before the Board. They are not to be considered as a substitute for the provisions of the Municipal Land Use Law and relevant ordinances of the Borough of Ho-Ho-Kus. Because the filing of an application with the Board is a technical matter, with significant legal consequences, all applicants are urged to consult with an attorney.

Questions may be addressed to the Board Secretary, Monday through Friday between 9:00AM and 4:30PM, at (201) 652-4400.

THE FEE SCHEDULE OF THE ZONING BOARD OF ADJUSTMENT
BOROUGH OF HO-HO-KUS

1. Application for interpretation of the zoning map or ordinance or for decisions on other questions upon which the Board is authorized to pass in accordance with N.J.S.A.40:55D-70 (b) and pursuant to the Land Use Procedures Ordinance of the Borough.
\$175.00
2. Application for Hardship Variance pursuant to N.J.S.A.40:55 D-70 (c) and the Land Use Procedures Ordinance of the Borough. \$400.00
3. Application for a Use Variance pursuant to N.J.S.A.40:55D-70 (d) and the Land Use Procedures Ordinance of the Borough.
\$450.00
4. All other applications including, but not limited to subdivision, site plan or conditional use approval in connection with a Use Variance application or an application for issuance of a permit pursuant to N.J.S.A.40:55 D-34, N.J.S.A.40:55 D-36, and the Land Use Procedures Ordinance of the Borough.
\$400.00
5. Reinstatement of a dismissed application.
\$100.00
6. Non Residential Variance \$1,000.00

Escrow fee of \$1500 to cover
engineering and legal costs
associated with Zoning Board
Application

**BOROUGH OF HO-HO-KUS
ZONING BOARD OF ADJUSTMENT
VARIANCE APPLICATION**

1. APPLICANT

Name _____ Phone # _____

Address _____

Block _____ Lot _____ Zone _____

2. Variance/Location of Property (landmark or intersection with other street)

3. OWNER OF PROPERTY

Name _____

Address _____

Block _____ Lot _____

4. Date of Acquisition _____

By filing this application, the applicant consents to having the Members of the Board, individually, visit the applicant's property for the sole purpose of making themselves familiar with the applicant's property and the neighborhood where the property is located. The visit may not be scheduled in advance, but the Board Member will identify himself/herself upon arrival. The applicant should not discuss the application with the Member at this time.

C 1

PROPERTY AND PROPOSED CONSTRUCTION CALCULATION FORM

APPLICANT SEEKS RELIEF PURSUANT TO N.J.S.A. 40:55(D) (70) _____ (C) _____ (D)

Zoning Ordinance(s) _____

Description of ALL structures _____

Dimensions of property _____

Area of property _____

Current Setbacks: _____

Side yard _____

Front yard _____

Rear yard _____

PROPOSED CONSTRUCTION- NEW _____ ADDITION _____

Description _____

Size of structure: _____

Dimensions _____

Height _____

No. of stories _____

Set backs: _____

Side yard _____

Front yard _____

Rear yard _____

Lot coverage-list each existing structure individually

SQ. FT. AND PERCENTAGE _____

Proposed Construction _____

Improved Lot Coverage _____

TOTAL LOT COVERAGE & PERCENTAGE _____

Date of sealed survey: _____

**SAMPLE FORM OF CALCULATIONS THAT ARE REQUIRED
TO BE SUBMITTED ON DRAWINGS**

	REQUIRED	EXISTING	PROPOSED	VARIANCE*
MINIMUM LOT AREA				
MINIMUM LOT FRONTAGE				
MINIMUM LOT WIDTH				
MINIMUM LOT DEPTH				
MINIMUM FRONT YARD SETBACK				
MINIMUM SIDE YARD SETBACK				
MINIMUM REAR YARD SETBACK				
MAXIMUM LOT COVERAGE				
MAXIMUM IMPROVED LOT COVERAGE				
MAXIMUM BUILDING HEIGHT				
MINIMUM LIVABLE FLOOR AREA				
ACCESSORY STRUCTURE SETBACKS				
BETWEEN BUILDINGS				
FRONT				
SIDE				
REAR				
MAXIMUM HEIGHT				

revised 12/98

CODE: N/C - no change

* - yes or no to be entered

D

If there has been any prior request, appeal or application to the Zoning Board, Planning Board or any other municipal or regional body with respect to the property, to the best knowledge of the applicant, set forth complete details, including the date and nature of the application and the decision made with respect to that application.

MUNICIPAL LAND USE LAW

1. If you seek relief under N.J.S.A.40:55D-70(c)(1), set forth the facts upon which you rely in establishing the existence of an exceptional or extraordinary condition which affects the property.

2. If you seek relief under N.J.S.A.40:55D-70(c)(2) set forth the facts upon which you will rely in establishing how the granting of the application will advance the purposes of the Municipal Land Use Law or the local zoning ordinance.

3. If you seek relief under N.J.S.A.40:55D-70(d),

a) set forth the facts upon which will rely in establishing "special reasons" which justify the granting of the relief requested.

b) set forth why you feel the granting of the relief requested can be reconciled with the provisions of the zoning ordinance.

Set forth why the relief you request can be granted without substantial detriment to the public good, and without substantially impairing the purpose and intent of the zoning plan and zoning ordinance.

(Enter see attached in appropriate area. Separate sheet of paper with explanation attached to this form is acceptable).

E

APPLICANT'S CERTIFICATION

I, _____, being duly sworn according to law hereby certify that the information presented in the application is true and accurate.

Applicant

Applicant

Sworn to and subscribed before
me this _____ day of _____, 20____

A Notary Public of New Jersey

OWNER'S CONSENT

NOTE: This section to be completed if the owner is not the applicant.

I, _____, owner of the property which is the subject of this application, hereby consent to the filing of this application.

Owner

Owner

Sworn to and subscribed before me
this _____ day of _____, 20____

A Notary Public of New Jersey

F

(SAMPLE RESIDENT LETTER)

BOROUGH OF HO-HO-KUS ZONING BOARD OF ADJUSTMENT

NOTICE OF PUBLIC HEARING

Pursuant to the provisions of the Municipal Code of the Borough of Ho-Ho-Kus and the provisions of N.J.S.A. 40:55D-12, notice is hereby given that (Name of applicants), owners of the property commonly known as (Address of property), also known as Lot (Insert lot #) in Block (Insert block #) on the tax assessment map of the Borough of Ho-Ho-Kus, have filed an application with the Zoning Board of Adjustment of the Borough of Ho-Ho-Kus seeking a variance from the provisions of Section (Insert code sections from which relief is sought) of the Zoning Ordinance of the Borough of Ho-Ho-Kus which regulate Subject matter of code sections from which relief is sought) in the (Insert zone in which property is located) Zone. The applicants wish to (Insert general description of project and nature and extent of variance relief requested).

A copy of the application and related documents are on file in the Office of the Secretary to the Board, Ho-Ho-Kus Municipal Building, 333 Warren Ave., Ho-Ho-Kus, New Jersey 07423, and may be inspected by members of the public, weekdays, between 9 AM and 4:00 PM.

A public hearing with respect to this application has been scheduled for Thursday, (Insert date of public hearing), at 7:00 PM, at the Ho-Ho-Kus Municipal Building, 333 Warren Ave., Ho-Ho-Kus, New Jersey 07423, or as soon thereafter as the matter can be heard. All interested parties are invited to appear and be heard at that time.

This notice is being sent to you as the owner of property within 200 feet of the property which is the subject of this application, or as a person or entity otherwise entitled to notice.

(Insert Name of Applicants)

(Insert Address of Applicants)

6
AFFIDAVIT OF PROOF OF SERVICE

Proof of Service of notices required by Statute must be filed and verified with the Board Secretary at least 5 days prior to meeting or the case will not be heard.

STATE OF NEW JERSEY)
COUNTY OF BERGEN) ss.

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

_____ in the municipality of Ho-Ho-Kus, County of Bergen, and State of New Jersey that (s)he is (are) the applicant(s) in a proceeding before the Board of Adjustment of Ho-Ho-Kus, New Jersey being an appeal or application under the Zoning Ordinance, and relates to premises

_____;
that on _____, 20_____, (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 indicated thereon.

Applicant's Signature

Sworn to and subscribed before me

this _____ day of _____, 20_____.

A Notary Public of New Jersey

NOTE TO APPLICANT: Attach 200' block and lot list with resident's signature on each lot for personnel delivery only.