

Borough of Medford Lakes

General Instructions for Preparing Variance Applications

Applying for a variance, subdivision, or site plan is a legal proceeding which is governed by State laws and local ordinances. The planning board cannot waive or relax the procedural application of these laws. If you want to be sure that your application is prepared and presented properly, you should consider hiring a professional.

Why Do I Need a Variance?

Variations are typically required if your project comes too close to your lot line or your neighbor's yard. It may also be needed if the size of your project exceeds the allowed lot coverage, if it is too high or if you plan to change the use of your property. There are many other situations that may require a variance. If you are not sure, it's best to talk with the construction official before planning a project. The construction official will determine if you will just need a building permit or if a variance is required.

Preparing a Variance Application

If you need a variance, there are steps you must take and an application package you must prepare before the planning board can hear your appeal. This package, which can be obtained from the borough office, includes a *Land Use Application Checklist and Receipt* to help you along the way. Generally, the variance process includes the following:

- Completion of a *Reason for Denial of Building Permit* by the construction official
- Preparation of documents and public notices by the applicant
- Payment of application fee and fees for professional services and escrow
- Proof of payment of borough taxes
- Preparation of notices to newspaper and neighbors
- Submission of plans and survey
- Approval by the planning board administrative official as to the completeness of the application
- Publication of *Notice of Hearing Date* by the applicant in a local newspaper
- Notification to neighbors
- Submission of Notice of Hearing Affidavits to board administrative official
- Meeting with the planning board to hear your appeal

Important: In order to schedule your request to be heard by the planning board, the variance application package must be completed and certified as complete by the planning board administrative official 16 days prior to that month's meeting. If you are unable to meet with the planning board administrative official at the appointed time (at least 16 days prior to the next regularly scheduled planning board meeting) a borough office staff member will acknowledge that your application has been received. However, it is your responsibility to contact the planning board administrative official to determine whether your application is suitable to proceed

with the *Notification of Hearing* process. A schedule of planning board meetings is posted on the bulletin board of the Borough of Medford Lakes' office and found on the internet at www.medfordlakes.com.

Getting Started - Preparing Documents and Public Notices

When your application for a building permit is denied because you need a variance, the construction official will fill out a *Reason for Denial of Building Permit* form (MLPB005) and give it to you. You must then complete a *Petition for Appeal* form (MLPB004) which explains the reasons you are seeking a variance to the planning board. When completing the "Relief Desired" section of the petition, make sure to use your own words in describing the requested relief and why you need a variance. *Do not copy the construction official's reason for denial.* The following is an example of the language that can be used.

"Construct a two story addition in the rear of the home that will come within 20 feet of the rear property line instead of the required 25 feet setback."

Using the same language in the "Relief Desired" section of your appeal petition, complete the *Notice of Hearing Before the Planning Board* form (MLPB006) and the *Notice of Hearing* (see sample form MLPB009) that you must place in the legal notice section of the newspaper. (More on how and where to advertise and how to notify your neighbors will come later.)

Pay Application Fee and Fees for Professional Services and Escrow

Complete the *Agreement to Pay Fees* form (MLPB008) which is called an "escrow agreement." The fees cover the cost of the planning board attorney to review your application, research legal questions and prepare resolutions granting or denying the variance. In some cases, the planning board requires the services of an engineer and/or professional planner. State law and the borough zoning ordinance requires the applicant to pay for these services. There is also an application fee to submit a variance application.

You will have to pay a \$150.00 deposit toward these professional fees for a residential use or bulk variance. In the majority of cases this amount is more than sufficient to cover the cost of professional review fees incurred by the planning board. In these cases, you will receive a refund. In those instances where bills for professional services exceed your \$150 escrow, you will be contacted and required to make additional deposits.

Provide Proof of Payment for Borough Taxes

Obtain from the borough office a completed *Medford Lakes Planning Board-Certification of Tax Collector* form (MLPB007). State law permits that the borough may require that all taxes, assessments and other municipal fees be paid in full as a condition of any variance approval that may be granted.

Submit Plans and Drawings

Prepare 14 sets of project plans (including two signed and sealed/certified by a licensed professional) and current survey (within one year) showing what you want to do and where it will be located on your property. These plans must also include current lot coverage and proposed lot coverage calculations.

Prepare Public Notices for the Newspaper and Neighbors

Placing a public notice in the newspaper and notifying your neighbors is required to let everyone know of your intention to seek a variance. Because the time period between approval of your application by the planning board administrator and your hearing date is often quite short, it is important to prepare public notices in the early stages of the variance process. **However, do not “advertise” in the newspaper or give notice to your neighbors until your variance package is approved by the planning board administrator and the date of your hearing has been set. Early advertising and notice to your neighbors before approval may mean that you will have to do it again if your application is deemed incomplete or delayed.**

Once your package has been approved by the planning board administrator, the advertisement must appear in the newspaper **a minimum of 11 days** before the planning board meets. The same language found in your *Petition of Appeal* can be used to describe your request. You must use **one** of the following three newspapers to advertise: *Burlington County Times*, the *Camden Courier Post* or the *Central Record*. A sample notice (MLPB009) is included.

To show proof that you advertised you need an *Affidavit of Publication* from the newspaper. Follow the instructions at the bottom of the *Sample Newspaper Notice* (Form #MLPB009). This affidavit must be provided to the planning board administrator once you have advertised.

This requirement cannot be waived or relaxed even in cases where the newspaper had your advertisement in plenty of time but failed to publish it at least 11 days in advance of the date the planning board meets.

You must also notify your neighbors of your intention to seek a variance before the planning board will hear your case. When you get the variance application package from the borough, you will also get a list prepared by the tax assessor of everyone who owns property within 200 feet of any portion of your property. You must “serve” everyone on the list with the *Notice of Hearing Before Planning Board* form (MLPB006) **a minimum of 11 days** before the date that the planning board meets. The meeting date itself does not count as a part of the 11 days. Use the language from the “Relief Desired” section of the *Petition of Appeal* form (MLPB004) when describing your request in your notice.

You can use the borough provided list of property owners to make your job easier. Next to each name on the list write in the date when you served each person with the *Notice of Hearing Before the Planning Board* and have the property owner sign the document.

There are two ways to “serve” your neighbors with the *Notice of Hearing Before the Planning Board*: personal service or certified mail. In addition to the date on which you made service, write how you served notice to each person. Simply write “PS” for personal service or “CMRRR” for certified mail, return receipt requested. If hand delivered, the resident **must** sign and date the document.

Personal service means that you personally handed a copy of the *Notice of Hearing Before Planning Board* to a property owner whose name appears on the list prepared by the tax assessor. Leaving the notice with a minor child is not personal service. If you are giving notice to an entity like Medford Township or a corporation like Medford Lakes Colony, you can make personal service by handing a copy of the *Notice of Hearing before Planning Board* form to a representative like the Township Clerk, or the office staff in the Medford Lakes Colony office.

So that the planning board knows that you have “served” your neighbors, you must complete and sign the *Planning Board, Borough of Medford Lakes – Affidavit* (Form # MLPB0010). This affidavit must be signed before a notary public. It is a sworn statement of how, when and to whom you gave notice that you are applying for a variance. The affidavit must be returned to the planning board administrator before your application for a variance can be heard. A copy of the notice is to be included in the appeal package.

Guidelines for Presentations of Variance Requests Before the Planning Board

The purpose of these guidelines is not to give legal advice or to act as a substitute for legal advice but is offered to assist an applicant when appearing before the planning board. These guidelines only pertain to “Use Variances.”

There are two general types of variances: bulk variances and use variances. A “bulk” variance would typically be required if you are building too close to the lot line, expanding your home beyond your lot coverage limits or constructing a fence that is taller than allowed. A “use” variance would be needed, for example, if you are changing the use of your property by converting your garage into an art studio.

If the construction code official has checked the box next to the word “Use” on the line entitled “Type of Variance,” on the *Reason for Denial of Building Permit*, it is recommended that you consult a professional experienced in the procedure for obtaining variances. (i.e. attorney, architect, engineer, etc.) to help you with your appeal.

A variance is permission to deviate from the zoning ordinance requirements. Strict legal standards must be met before a variance can be granted. If the construction code official has determined you need a bulk variance, there are several conditions that would help you to be successful in your case before the planning board.

Proof of Hardship

The first standard is “hardship.” Hardship does not mean financial hardship, but rather circumstances that would cause the applicant to not be able to make reasonable use of the property. Growing families that need more living space on a small lot or a family member that requires specialized ramps because of health problems that are too close to property setbacks are examples of hardship.

There are also hardships that relate to your property. For example, your lot is 50 feet wide instead of the 100 feet required by the current zoning ordinance, and the addition you want to build will come closer to your side lot line than the ordinance permits. Perhaps you want to build a detached garage, shed or other accessory building, but you have a triangular or other oddly shaped lot and, as a result, cannot build your building where the zoning ordinance says it should be placed. The essence of a hardship is that the shape, size, slope or some natural feature of your lot makes it inordinately difficult for you to make reasonable use of your property and still obey the zoning ordinance. Right-of-way and easements can also affect hardships.

Proof of Positive Purpose

If there is no hardship, you can still prove your entitlement to a variance if you can show that, because of some special circumstance in your case, breaking the zoning ordinance would actually be better than following it or some positive zoning purpose which outweighs any detriment would be served by deviating from the zoning ordinance requirements.

In the typical case of this kind, a homeowner wants to build an addition, install a deck, a pool or similar improvement. If the addition, pool or shed is built where the zoning ordinance says it should be built, the homeowner would have to cut down half a dozen mature oak trees and a beautiful stand of mountain laurel. If, on the other hand, the addition, deck or pool is allowed to come 10 feet closer to the rear property line than the zoning ordinance would permit, no more than two scrub oaks and a few immature trees would be removed. A stated objective of the borough zoning ordinance is to save our wooded lots. So, by deviating from one part of the zoning ordinance, the homeowner can help achieve something that another part of the zoning ordinance is trying to accomplish.

Whichever of these two approaches you choose, an additional standard must be met. The applicant must prove to the planning board that granting the variance will not be a substantial detriment to the neighborhood and will not substantially impair the intent and purpose of the master plan and zoning ordinance. This is known as satisfying “negative criteria.” This standard can be met in many ways. The common ways are to show that many properties in the immediate area deviate from the strict requirements of the zoning ordinance in exactly the same way, or in similar ways, as your proposal seeks to do. If this is not the case, you can still show the planning board that what you want do is an

overall improvement which will not have a substantial negative impact on the neighborhood or run counter to the objectives of the zoning ordinance.

Forms Included in this Variance Package

MLPB003	Application Checklist
MLPB004	Petition of Appeal
MLPB005	Reason for Denial of Building Permit
MLPB006	Notice of Hearing
MLPB007	Certification of Tax Collector
MLPB008	Agreement to Pay Fees
MLPB009	Sample Newspaper Notice
MLPB010	Affidavit of Service

**Borough of Medford Lakes
Land Use Board
Land Use Application Checklist and Receipt**

This checklist below is provided to help you make sure that your application is in good order when you submit it to the borough offices. Your application must be returned **AT LEAST 16 DAYS IN ADVANCE OF THE LAND USE BOARD MEETING DATE**. It will be dated and acknowledged by the person in the borough office who accepts it and a copy will be available to you so that there will be no dispute about the date you filed your application.

Once filed in the borough office, the planning board administrative official has 45 days to review the application for the purpose of determining suitability for placement on the agenda for that month's meeting. **At this point in the process**, once your application is considered in good order by the administrative official, you must expediently proceed with the notification portion of the application process.

At a **MINIMUM**, your application should contain the following to be considered suitable for placement on the agenda:

1. _____ Copy of the REASON FOR DENIAL OF BUILDING PERMIT (MLPB005) signed by the building inspector/construction code official.
2. _____ The completed application form called the PETITION OF APPEAL (MLPB002) together with two (2) checks made payable to the Borough of Medford Lakes for \$_____ for escrow deposit to cover professional fees and \$_____ for the application fee.
3. _____ A signed AGREEMENT TO PAY FEES (MLPB008) charged by the Board's attorney, engineer and planner as required.
4. _____ A CERTIFICATION FROM THE TAX ASSESSOR (MLPB007) indicating that your taxes and other municipal fees are paid and current, if not they must be brought current prior to being placed on the agenda.
5. _____ 14 sets of plans (including 2 signed and sealed/certified by a licensed professional) and current survey (within 1 year) showing what you want to do and where it will be located on the property. These are also to include current lot coverage and proposed lot coverage calculations.
6. _____ Affidavit & slips of notification (200 feet list) of neighbors – minimum of 11 days prior to meeting. Also, submit copy of notification sent or delivered. Affidavit of the notification in 1 newspaper. (Complete forms MLPB006, MLPB009 and MLPB010.)

UNLESS ALL OF THE ABOVE IS COMPLETED IN THEIR ENTIRETY AND FILED IN THE BOROUGH OFFICES AT LEAST 16 DAYS IN ADVANCE OF THE MEETING DATE, THE LAND USE BOARD CAN NOT BY LAW, HEAR YOUR APPLICATION.

RECEIVED BY _____ DATE _____
MLPB003(R4-09)

**Petition of Appeal
Before the Planning Board
Borough of Medford Lakes, Burlington County, New Jersey**
(Please type or print all required information)

Date: _____

Name of Petitioner: _____

Address: _____

Town: _____ County: _____ State: _____

Description of Property Involved:

Street and Number: _____ None: _____

Borough Assessment Map: Block: _____ Lot No.: _____

Present Use of Land or Buildings: _____

Use Desired: _____

Own or Leased: _____ Subject to Sale Agreement: _____

Relief Desired:

Signature of Petitioner: _____

Filed on Behalf of the Petitioner

By: _____ Attorney or Agent

Address: _____

For Official Use Only - Do Not Write Below This Line

_____ Approved

_____ Disapproved

Dated: _____
MLPB004 (R4-09)

Signature: _____

Sample Only

DENIAL OF PERMIT

BOROUGH OF MEDFORD LAKES ZONING OFFICER'S CERTIFICATION

DATE: _____

___ : ZONING AND PLANNING BOARD

APPLICANT'S NAME AND ADDRESS: _____

TELEPHONE NUMBER: _____

LOCATION OF PROPERTY: _____

BLOCK/S: _____ LOT/S: _____

TYPE OF VARIANCE/S REQUIRED: Hardship ___; Bulk ___; Use ___

RECENT SURVEY REQUIRED: YES: ___ NO: ___

SITE PLAN REQUIRED: YES: ___ NO: ___

SITE PLAN WAIVER REQUESTED: YES ___ NO ___

RELIEF IS BEING SOUGHT FROM SECTION NUMBER:

OF THE BOROUGH OF MEDFORD LAKES LAND USE ORDINANCE NUMBER TO:

COMMENTS: _____

PLEASE NOTE: A COMPLETE APPLICATION MUST SPECIFICALLY REQUEST EACH AND EVERY VARIANCE INVOLVED IN THE PROPOSED DEVELOPMENT. IT IS THE APPLICANT'S SOLE RESPONSIBILITY TO LEARN WHAT ASPECTS OF THE PROPOSED DEVELOPMENT REQUIRE VARIANCES.

Notice of Hearing Before the Planning Board

To: _____

Owner of Premises No.: _____

Notice is hereby given that a public hearing has been ordered and will be held by the Planning Board of the Borough of Medford Lakes, in the County of Burlington, New Jersey, at a meeting thereof to be held on the _____ day of _____ 20__ at 7:30 o'clock P.M. in the administration building in said borough on the following matter:

on premises known as _____

(street address)

Block No. _____ Lot No(s). _____

which is within 200 feet of the property owned by you.

The planning board will, at said time and place, hear all persons in support of said appeal and application, or any objections, thereto. Any persons may appear at said hearing in person or by agent or attorney. This notice is sent to you by the appellant by order of the planning board.

CERTIFICATION OF TAX COLLECTOR

Regarding application of _____

BLOCK _____ **LOTS** _____

Owner's Name (If other than applicant)

I hereby certify that:

_____ There is due to the Borough of Medford Lakes on the account of the above property the following amounts:

Taxes	_____
Assessments	_____
Sewer	_____
TOTAL	_____

_____ All taxes, assessments and sewer charges on the above property are paid in full.

DATED: _____

Sharon A. Deviney
Medford Lakes Tax Collector

Agreement to Pay Fees

This agreement is made on _____, between the Planning Board for the Borough of Medford Lakes, a municipal corporation of the State of New Jersey, (hereinafter "Borough"), and _____ (hereinafter "Applicant").

1. Agreement to Pay Fees: The Applicant hereby agrees to pay all reasonable professional review fees incurred by the Borough in connection with the application for development of the property known as _____ on the tax map of the Borough of Medford Lakes. These fees include, but are not limited to, engineer review fees, attorney's review fees, planner review fees or stenographer's costs.

2. Escrow Deposit: The Borough acknowledges receipt of \$150. This sum is a cash deposit to be placed in a Borough account to cover costs of the forementioned fees. Charges against the Applicant's escrow deposit will be paid when they become due. The balance of the escrow sum, if any, after all charges and fees have been paid, shall be returned to the Applicant.

3. Additional Payments: The Applicant agrees to pay any additional money required to pay reasonable charges and fees not covered by the escrow deposit. The Applicant must pay within 15 days after receipt of billing by the appropriate borough office.

4. Notice: The Applicant agrees that all notice or refunds shall be mailed to the following address:

In witness whereof, the parties have hereunto subscribed their hands the date first shown above.

Planning Board of Medford Lakes

Applicant

Chair

Sample Newspaper Notice

(For use in all classes of variances)

Notice of Hearing

Please take notice that at 7:30 P.M. on **(hearing date)** at Oaks Hall, Borough of Medford Lakes, Administration Building, Cabin Circle, Medford Lakes, New Jersey 08055, the Medford Lakes Planning Board will conduct a public hearing on the application of **(names of applicants)** of **(address of applicants)** for a variance to permit them to **(description of relief desired)** to their home site at **(address of property and tax map block and lot of property)**. Relief is requested **(repeat the plain language explanation of what you want to do and why you need a variance to do it.)**

A copy of the application and supporting documents are on file in the Office of the Borough Clerk in the Borough of Medford Lakes, New Jersey 08055 and may be examined between the hours of 9:00 A.M. and 5 P.M., Monday through Friday.

(Name of applicants)

Note: When you place your advertisement, request that you be furnished with an "Affidavit of Publication." If you have not received this document by the time you file your other documents with the Borough Clerk (at least 10 days before the scheduled hearing date), bring the Affidavit of Publication," or the actual newspaper in which the notice was published, to the hearing.

Affidavit

State of New Jersey :

SS.

County of Burlington :

_____ of full age, being duly sworn according to law, deposes and says:

That on the date shown and in the manner indicated on the attached list, he or she gave written notice of the hearing on this appeal to each and all of the owners of property within a radius of 200 feet, in the form attached hereto and according to the attached lists.

(To be signed here by the person who served the notice.)

Sworn and subscribed
Before me this day
of 20

A Notary Public of New Jersey

(Attach to this affidavit a list of the names and addresses of the property owners served, showing method of service, i.e., P.S. - Personal Service, C.M.R.R.R. - Certified Mail Return Receipt Requested.) This affidavit must be filed in the borough offices at least 10 days prior to the meeting or the case will not be heard.