

## **APPLICATION PROCEDURES FOR A**

### **CERTIFICATE OF NONCONFORMANCE**

Pursuant to N.J.S.A. 40:55D-68, any person interested in any land upon which a non-conforming use or structure exists may apply for the issuance of a Certificate of Nonconformance in accordance with the following requirements. Such application may be made to the Zoning Officer within one (1) year of the adoption of the ordinance rendering such use nonconforming or at any time to the Zoning Board of Adjustment.

To file an application with the Zoning Board of Adjustment for a Certificate of Nonconformance, you must submit the following to the Zoning Board of Adjustment Office:

1. Letter from the applicant explaining the nature of the request pursuant to Section 348-3.7 E (1) including information substantiating that the use or structure existed prior to the adoption of the ordinance that rendered the use or structure nonconforming.
2. A \$100 nonrefundable application fee must be paid in cash or check made payable to the Township of Toms River as per Section 348-3.4 of the Township's code.
3. A 200' property owner's list request must be submitted to the Toms River Township Engineering Division along with a \$10 fee (cash or a check payable to the Township of Toms River). This fee covers the first 40 owners of property within 200' of the property in question. After 40 property owners an additional fee of \$0.25 per line item will be charged. Note: You must use this list to give notice of hearing to all real property owners located within 200 feet in all directions of the property which is the subject of a hearing.
4. A \$1000 escrow review fee must be paid in cash or check made payable to the Township of Toms River. Pursuant to the Township's code, the escrow review fee "shall be utilized exclusively to cover the cost of professional reviews of the application by the engineers, planners, attorneys and other professionals retained by the respective reviewing Board..."
5. Completed W-9 Form.
6. Completed Unified Land Development Application form.

Upon receipt of the required documentation and fees, the Board's office will issue a Certificate of Completeness and a Notice of Hearing informing the applicant of the date, time and place of the scheduled hearing before the Zoning Board of Adjustment.

### **GIVING PUBLIC NOTICE**

Pursuant to N.J.S.A. 40:55D-12 all applications being heard by the Toms River Township Zoning Board of Adjustment require a Public Hearing and must give Public Notice of said hearing in accordance with the requirements of the Municipal Land Use Law and Toms River Township Land Use and Development Regulations. This means that the applicant, his agent or attorney shall **at least ten (10) calendar days prior to the hearing date scheduled** give written notice either personally or by Certified Mail to all home owners within 200' of the applicant's property and publish a legal notice in the newspaper. (e.g. - hearing date is 1/12, then notices should be out by 1/2). All certified receipts must be **stamped & dated by the post office at least the 10th day prior to the hearing.**

A blank "Public Notice" form will be provided by the Board's office. This form must be completed by the applicant and shall include the date, time and place of the scheduled hearing. Once completed it is the applicant's responsibility to publish the form in the newspaper and deliver it (either personally or by certified mail) to all property owners within 200' of the subject site.

If the applicant wishes to serve property owners personally, a form is available in the Board of Adjustment Office. The completed "Public Notice" form shall be hand delivered to the homeowner and a signature and date of delivery obtained. Said Notice can be left at the home with an occupant over the age of 14 years.

Where the owner is a partnership or corporation, service upon any partner or officer in the corporation as above provided shall be sufficient.

Where the applicant's property fronts on a County road, adjoins County land or is situated within 200' of the Toms River Township Municipal boundary, Public Notice shall also be given in writing to the Ocean County Planning Board, 129 Hooper Ave., PO Box 2191, Toms River, NJ 08754-2191. If said property fronts upon a State road or adjoins State land, a "Public Notice" shall be given to the N.J. Department of Transportation, 1035 Parkway Ave., Trenton, NJ 08625.

Additionally, if the applicant's property is within 200' of an adjoining Municipality, Notice of Hearing shall be given to the Clerk of such Municipality along with all property owners located within the 200'.

Pursuant to N.J.S.A. 40:55D-12, "Public Notice" must also be given to the following utilities: **This office will provide you with these addresses.**

1. New Jersey Natural Gas Company
2. New Jersey American Water Company
3. United Water
4. Comcast Cable Communications
5. Verizon New Jersey
6. JCP&L
7. Toms River Municipal Utilities Authority

In addition to the above the applicant must also publish a legal notice in the Asbury Park Press, located at 3601 Highway 66, PO Box 1550, Neptune, NJ 07754. Said notice must be published for one day only and must be published at least ten (10) days prior to the date of the hearing. An "Affidavit of Publication" must be obtained from the newspaper in which the notice was published. The "Public Notice" form should be used for the legal notice of hearing.

#### **ITEMS TO BE BROUGHT TO THE BOARD OFFICE PRIOR TO HEARING**

After all notices have been delivered the following items must be submitted to the Board of Adjustment Office **prior to 4:30 PM on the Friday before the scheduled hearing.**

1. White certified receipts date stamped by the post office
2. Original "Affidavit of Publication" of the legal notice placed in the newspaper.
3. "Proof of Service" form signed and notarized.
4. A copy of the Public Notice sent or hand delivered to the property owners and utilities.
5. Property owners list, only if the applicant prepares their own list.

#### **THE MEETING**

On the evening of the public hearing meeting, the applicant, owner, contract purchaser or person having a real interest in the property, his agent or attorney,

shall appear before the Board to submit or present proof in support of the application.

**Pursuant to the Municipal Land Use Law (40:55D-68) “The applicant shall have the burden of proof.” Therefore, it is the applicant’s obligation to appear at the public hearing and furnish the Zoning Board of Adjustment with sufficient proof to render a decision. Should the Toms River Township Zoning Board of Adjustment act to approve the application and certify that the use is legal and non-conforming, a resolution will be adopted memorializing the action taken by the Board.**

In the event that said applicant, his agent or attorney fails to appear at the scheduled hearing, the application shall be dismissed. If the applicant, his agent or attorney is unable to appear before the Board at the appointed time, they shall notify the Board of Adjustment Office no later than 4:00 PM on the date of the public hearing to inform the Board of an absence and the Board office will confirm with the same person a future date at which time the public hearing can be heard by the Board.

### **THE RESOLUTION**

Should the Board of Adjustment take action on your application, the Board will adopt a Resolution at the following meeting memorializing the action taken. A copy of said resolution will be mailed to the applicant and/or their attorney.

If the application is approved, the applicant will obtain a blank "Notice of Decision" form and blank "Real Estate Tax Affidavit" form along with the Resolution. It is the applicant’s responsibility to publish a Notice of Decision in the above noted newspaper after the resolution is adopted. If the application is denied, the Board will publish a notice of decision to deny the application.

**OBTAINING A "RESOLUTION COMPLIANCE CERTIFICATE"**

To obtain a Resolution Compliance Certificate, the applicant must provide the Board of Adjustment office with the following proofs:

1. Proof of compliance with all conditions listed within the Resolution of Approval adopted by the Zoning Board of Adjustment.
2. Original "Affidavit of Publication" from the newspaper. The Notice of Decision form will be provided by the Zoning Board Office. Once again, it is the applicant's responsibility to publish a Notice of Decision in the above noted newspaper after the resolution is adopted.
3. Copy of a completed Real Estate Tax Affidavit form, which will also be forwarded along with the resolution.
4. Payment of all remaining escrow fees if any. The board office will notify you of any outstanding escrow balance that you must pay.

The Zoning Board Engineer will determine whether or not the applicant has satisfied conditions imposed by the Board. The Zoning Board Engineer will issue a Resolution Compliance Certificate after you have satisfied the Board's conditions.

PLEASE NOTE:

THE RESOLUTION AND RESOLUTION COMPLIANCE CERTIFICATE  
CONSTITUTE THE **CERTIFICATE OF NONCONFORMANCE.**

Revised: July 15, 2009