JOHN LAWYER, ESQ.
12 MAIN STREET
ANYWHERE, USA
Attorneys for Plaintiff

JOHN DOE,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: [insert] COUNTY
Plaintiff,	:	
	:	
vs.	:	DOCKET NO.:
	:	
TOWNSHIP OF BLANK,	:	
ZONING BOARD OF ADJUSTMENT OF	:	**Civil Action**
BLANK TOWNSHIP, COMMITTEE OF	:	
BLANK and THE PLANNING BOARD OF	:	
BLANK,	:	
	:	
Defendants.	:	**COMPLAINT IN LIEU OF**
	:	**PEROGATIVE WRIT**

Plaintiff, [insert name] residing at [insert address] Township of [insert], County of [insert], State of [insert], by way of Complaint against the defendant alleges and says as follows:

FIRST COUNT

1. Plaintiff, [insert name] is the contract purchaser of a tract of property situated at Block [insert], Lot [insert] in the Township of [insert], County of [insert], and State of [insert]. Located on [insert location] in the Township of [insert].

2. Defendant, [insert] is the duly constituted administrative agency of the Township of [insert], County of [insert], charged with the duty, among other things to grant variances from the provisions of the zoning ordinance of the Township of [insert].

3. Plaintiff=s tract lies within the agricultural district (AG Zone as established under the Zoning Ordinance of the Township of [insert]).

4. On [insert date], plaintiff applied to the Township of [insert] for permission to occupy the premises for the purpose of construction of a [description of what is to be constructed]. A copy of the application is attached as Exhibit 1, and incorporated by reference.

5. The Township of [insert] through the Township Committee of [insert], in its official capacity purchased the surrounding property to plaintiff=s land and participated by

influence in the decision of the Zoning Board to deny plaintiff=s request for a use variance. This action is ultra vires.

6. The Zoning Board of the Township of [insert] improperly referred the request for plaintiff=s use variance to Defendant [insert] Township Planning Board.

7. Defendant, [insert] Planning Board made a recommendation to the Zoning Board that plaintiff=s intended use of the property was not a viable use, despite the fact that the Township is using its adjacent property for a same and similar use. This action is ultra vires.

8. By notice dated [insert], the Zoning Officer denied plaintiff=s application.

9. By application duly filed on [insert], pursuant to Section [insert] of the Municipal Land Use Law, plaintiff appealed to the Board of Adjustment of the Township of [insert] for a variance from the requirements of Section [insert] as well as any other sections of the Ordinance to permit the use of the premises for the above stated purpose.

10. Hearings were held over a substantial period of time on numerous occasions. The plaintiff=s testimony clearly showed that the use was proper and conformed to the community and would not violate the intent to the Zoning Ordinance. The vote of the Zoning Board was 3 in favor of and 4 against the granting of plaintiff=s use variance.

11. By Resolution dated [insert], and published [insert] the Zoning Board of Blank, dismissed plaintiff=s appeal and denied the requested variance.

12. The Resolution of the Board of Adjustment is illegal, null and void in that the benefits of the requested variance would outweigh any detriment. The denial of the variance is arbitrary, capricious and unreasonable.

13. The variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning plan and zoning ordinance.

14. Additionally, the variance would benefit the general welfare in that the property use as a [description of what is to be constructed] is particularly fitted to the location due to the fact that [description of what is to be constructed] are located on adjacent property owned by the Township of [insert].

WHEREFORE, the plaintiff, John Doe, demands judgment against the defendants, Township of [insert], Zoning Board of Blank of [insert] Township, Township Committee of [insert] and [insert] Planning Board:

a. Reversing the Order of the Board of Adjustment.

b. Directing it to grant plaintiff all necessary variances from the requirements of the Zoning Ordinance of the Township of [insert] to permit plaintiff=s proposed use of the premises at Block [insert] Lot [insert], Route [insert] [insert remainder of address].

c. Ordering said defendants to pay compensatory damages.

d. Ordering said defendants to pay punitive damages.

d. Ordering such other relief as may be just.

e. Awarding plaintiff attorney=s fees, costs of suit.

SECOND COUNT

1. Plaintiff repeats the allegations of the First Count as though fully set forth herein.

2. Pursuant to the Zoning Ordinance plaintiff=s property is zoned for [insert use] use. However, pursuant to the master plan, plaintiff=s property is designated for municipal use. The defendant Township acquired all the land around plaintiff=s property with the exception of plaintiff=s _____ acres.

3. The Zoning Ordinance provides a _____ acre minimum to develop the property. The township has acquired all property around the area and plaintiff is unable to acquire a 10 acre parcel in order to develop his property in any way. By denial of the variance defendants have deprived plaintiff of all effective use of his property. This constitutes inverse condemnation.

WHEREFORE, the plaintiff, John Doe, demands judgment against the defendants, Township of [insert], Zoning Board of Blank of [insert] Township, Township Committee of [insert] and [insert] Planning Board:

a. Reversing the Order of the Board of Adjustment.

b. Directing it to grant plaintiff all necessary variances from the requirements the Zoning Ordinance of the Township of [insert] to permit plaintiff=s proposed use of the premises at Block ____, Lot ____, Route ____, [insert], [insert].

c. Ordering said defendants to pay compensatory damages.

d. Ordering said defendants to pay punitive damages.

e. Ordering such other relief as may be just.

f. Awarding plaintiff attorney=s fees, costs of suit.

g. In the alternative an Order requiring the Township of [insert] to acquire or purchase plaintiff=s property for a fair and reasonable price.

THIRD COUNT

1. Plaintiff repeats the allegations of the First Count and Second Count as though fully set forth herein.

2. Plaintiff=s property is compromised of _____ acres located within a ten acre agricultural zone.

3. The subject property is adjacent to a ____ acre section of property owned by the Township of [insert].

4. On its property the Township has constructed one [description of what is to be constructed] and upon information and belief is planning to construct a second [description of what is to be constructed].

5. The Township=s use is of same and similar use to the purpose and intent that plaintiff sought a use variance. The Township by denying plaintiff the use variance yet permitting the same or similar use on its own adjacent property is arbitrary, capricious and unreasonable.

WHEREFORE, the plaintiff, John Doe, demands judgment against the defendants, Township of [insert], Zoning Board of Blank of [insert] Township, Township Committee of [insert] and [insert] Planning Board:

a. Reversing the Order of the Board of Adjustment.

b. Directing it to grant plaintiff all required variances from the requirements of the Zoning Ordinance of the Township of [insert] to permit plaintiff=s proposed use of the premises at Block [insert] Lot [insert], Route [insert], [insert remainder of address].

c. Ordering said defendants to pay compensatory damages.

d. Ordering said defendants to pay punitive damages.

e. Ordering such other relief as may be just.

f. Awarding plaintiff attorney=s fees, costs of suit.

FOURTH COUNT

1. Plaintiff repeats the allegations of the First, Second and Third Counts as though fully set forth herein.

2. Pursuant to the request for a use variance, plaintiff sought to construct a tower for the multiple use of third parties.

3. Defendant, Township of [insert] has constructed one [description of what is to be constructed] on the property and upon information and belief is planning to construct a [description of what is to be constructed].

4. At the hearings, members of the Zoning Board and the Planning Board Meeting questioned plaintiff as to why the proposed tenants of the applicant would not go to the municipally owned towers.

5. The Township of [insert] collects annual fees from the users of the [description of what is to be constructed] on its property.

6. The Zoning Board of Blank=s decision to deny plaintiff a use variance, together with the fact that defendant Township of [insert] is operating a [description of what is to be constructed] on its own adjacent property limits competition and constitutes an unlawful restraint on trade. As a result, the Township is securing its own economic benefit at the expense of plaintiff.

WHEREFORE, the plaintiff, John Doe, demands judgment against the defendants, Township of [insert], Zoning Board of Blank of [insert] Township, Township Committee of [insert] and [insert] Planning Board:

a. Reversing the Order of the Board of Adjustment.

b. Directing it to grant plaintiff all necessary variances from the requirements of the Zoning Ordinance of the Township of [insert] to permit plaintiff=s proposed use of the premises at Block [insert], Lot [insert], Route [insert], [insert address].

c. Ordering said defendants to pay compensatory damages.

d. Ordering said defendants to pay punitive damages.

e. Ordering such other relief as may be just.

f. Awarding plaintiff attorney=s fees, costs of suit.

FIFTH COUNT

1. Plaintiff repeats the allegations of the First, Second, Third and Fourth Counts as though fully set forth herein.

2. The Federal Tele Communications Act of 1996 (TCA) 47 U.S.C. '322(c) et. seq.

places significant limitations on defendants= authority to deny plaintiff=s request for a use variance.

3. Pursuant to the TCA local governments are prohibited from discriminating between providers of equivalent services.

4. The denial of plaintiff=s use variance violates '704 of the Federal Telecommunications Act of 1996, (ATCA@) 47 U.S.C. '322(c) et. seq.

WHEREFORE, the plaintiff, John Doe, demands judgment against the defendants, Township of [insert], Zoning Board of Blank of [insert] Township, Township Committee of [insert] and [insert] Planning Board:

a. Injunctive relief requiring the Zoning Board of Blank to approve plaintiff=s variance.

b. Declaratory relief setting forth the rights and liability of the parties.

c. Ordering said defendants to pay compensatory damages.

d. Ordering said defendants to pay punitive damages.

e. Ordering such other relief as may be just.

f. Awarding plaintiff attorney=s fees, costs of suit.

SIXTH COUNT

1. Plaintiff repeats the allegations of the First, Second, Third, Fourth and Fifth Counts as though fully set forth herein.

2. The action of the Defendant, Zoning Board of Blank in voting to deny Plaintiff=s request for a use variance was unlawful and wrongful and was taken with knowledge of the illegality of such action.

3. The said action of the Zoning Board of Blank was done with malice and with knowledge that it would cause substantial detriment and damage to Plaintiff.

WHEREFORE, the plaintiff, John Doe, demands judgment on this count as follows against the defendants, Township of [insert], Zoning Board of Blank of [insert] Township, Township Committee of [insert] and [insert] Planning Board:

a. Ordering said Defendants to pay punitive damages.

b. Ordering such other relief as may be just.

c. Ordering Defendants to pay attorneys fees, interest and costs of suit.

SEVENTH COUNT

1. Plaintiff repeats each and every allegation of the First, Second, Third, Fourth, Fifth and Sixth Counts as though fully set forth herein.

The actions of defendants, Zoning Board of Blank is voting to deny plaintiff=s request for a use variance deprives plaintiff of Arights, privileges, or immunities@ secured by the constitution and laws of the United States of America, in violation of 42 U.S.C. '1983 and other applicable law.

WHEREFORE, the plaintiff, John Doe, demands judgment as follows against the defendants, Zoning Board of Blank:

a. Ordering said defendants to pay compensatory damages.

b. Ordering said defendants to pay punitive damages.

c. Ordering such other relief as may be just.

d. Ordering said defendant to pay attorney=s fees, interest and costs of suit.

DESIGNATION OF TRIAL COUNSEL

_____ is hereby designated as trial counsel in this matter.

CERTIFICATION

I hereby certify, pursuant to Rule 4:5-1, that this matter is not the subject of any other action pending in any Court or of a pending arbitration proceeding, and that there exist, to the best of my knowledge and belief, no other parties that need to be joined to this action.

JOHN LAWYERS, ESQ.
Attorneys for Plaintiff

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