

ZONING BOARD OF APPEALS OVERVIEW

VARIANCE

WHAT IS A VARIANCE? A VARIANCE is an exception granted by the Zoning Board of Appeals (ZBA) from the terms or standards of the Zoning Regulations for an individual property where, because of special conditions, a literal enforcement of the Regulations would result in exceptional difficulty or unusual hardship. However, a variance MUST still be in harmony with the general intent of the Town's Comprehensive Plan and not contrary to public welfare.

The granting of a VARIANCE is a fine balance between attempting to maintain the Town's Comprehensive Plan for uniformly regulated districts, and the need to provide relief from the terms or standards in individual circumstances. VARIANCES are granted only for individual parcels and for particular purposes.

It is the applicant's obligation to present and establish hardship. Financial impacts or self-created conditions or an inability to use a property at its maximum potential or reasons that the proposed change would not adversely affect the neighborhood are not considered a hardship in this context. Hardship is generally seen as a physical or restrictive imposition beyond the reasonable control of the owner.

The ZBA may attach conditions to a granted VARIANCE in order to make them more in harmony with the purpose of the Zoning Regulations. Typical conditions that could be attached to a setback variance might include the installation of a screen or buffer

ZONING BOARD OF APPEALS

The Zoning Board of Appeals (ZBA) is essentially a court consisting of local volunteers who judge AN applicant's claim that they cannot comply with the zoning regulations because the regulations affect their land in some unique way. This land based hardship can be the basis for a variance to be granted from the zoning regulations. If a variance is granted, the applicant does not have to comply with a specific provision of the zoning regulations. The ZBA also hears appeals from people who feel staff has made an error in interpreting or enforcing a provision of the zoning regulations, or if they have been denied a zoning permit from the Zoning Enforcement Officer.

There will generally be five ZBA members sitting on a case with the affirmative votes of at least four members required under Connecticut law for the granting of any variance application. Note, however, that should only four ZBA members be present, four votes in favor are required.

Due to the exceptional nature of variances, be prepared to demonstrate that the Variance you seek is the minimum that is necessary. For example, if a five-foot variance is sufficient, apply for five feet.

Demonstrate that the special topography of your property will not permit the improvement you want to make without the Variance you seek. If there are other areas of your property that will permit the improvement without the Variance, you must show why the improvement cannot be placed in that other area. Be prepared to discuss with the ZBA any alternative construction plans you may have explored.

Remember that financial reasons are not sufficient cause for a Variance and cannot be considered as such. For example, if the topography of your property will permit construction without the need for a Variance, it is insufficient for you to show that your construction expenses will be less if the Variance is granted

The ZBA requires a survey or a site plan that shows the exact nature and extent of the variance(s) you seek. Make certain that the property lines and setback measurements are exact and drawn to scale. It may be advisable to consult with a licensed surveyor, engineer or architect to more accurately satisfy this requirement.

In certain cases a Zoning Location Survey or Improvement Location Survey of the subject property that conforms to Horizontal Accuracy Class A-2 must be submitted with this application when requesting a variance indicating the location of the proposed structure(s) and the requested setback distance to the property line(s). The Zoning Board of Appeals reserves the right to require additional information on surveys and accept surveys and maps of a lesser accuracy.

What the ZBA Must Consider:

The following circumstances are among the facts the ZBA must typically consider when deciding whether to issue a variance. Although other factors may also be important to a particular application, an applicant should be prepared to discuss these issues:

- Does the applicant have reasonable use of the property without the variance?
- Do extraordinary physical conditions peculiar to and inherent in the subject property amount to more than a mere inconvenience to the property owner? Where there are special circumstances or conditions applying to your land or structure which are peculiar to that lot or structure, and which do not generally apply to other lots or structures in your neighborhood, and do those conditions arise out of the property rather than the personal situation of the current owner of the property lot?
- Would adhering to the Zoning Regulations deprive the applicant of substantial rights commonly enjoyed by owners of other properties subject to the same provision?
- Will granting a variance result in a use or development of the subject property that would not be in harmony with the general and specific purposes of the applicable Zoning Regulations?

- Will the results of the variance be in harmony with the Zoning Regulations' "general purpose and intent and with due consideration of conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated" ?

HELPFUL INFORMATION FOR VARIANCE APPLICATIONS

Although variances are often requested from the Zoning Board of Appeals, many applicants do not understand what a variance really is and what it means to the Town when they are granted. Variances are only supposed to be issued sparingly, and the legal standards for granting them are strict and complicated. The Zoning Board of Appeals has prepared these guidelines in an effort to help take some of the mystery and confusion out of the application process. These guidelines are intended to give only a general overview of variances. They should not be viewed as being comprehensive. The Zoning Board of Appeals cannot give legal advice.

Proof of Hardship A variance constitutes permission to act in a manner that is otherwise prohibited under the Zoning Regulations of the Town. Therefore, an applicant must show that, because of some peculiar characteristic of the property, the strict application of the Zoning Regulations produces an "exceptional difficulty or unusual hardship." Because a variance is granted for a property and holds for all subsequent owners, hardship is a term that applies to the conditions of the property—not the owner. It is not a matter of personal circumstance. Furthermore, the hardship must differ from the general conditions that affect other properties in the same area, and it must arise from circumstances beyond the control of the applicant.

The burden of proof of a hardship is on the owner who should be prepared to explain why the unusual characteristics of the property make it more difficult to use the property in compliance with the Zoning Regulations than it is for other owners of property in the same district. Financial constraints, health problems or any self-created hardship cannot justify a variance.

NOTE

The courts have strictly interpreted the variance requirements set forth in C.G.S. Section 8-6, and they have sustained several appeals from decisions in which variances were improperly granted. Financial considerations are rarely a valid reason for issuing a variance; the possible economic advantage to the landowner is not sufficient. In addition, the fact that the proposed use will not be detrimental, and may even be beneficial, to the neighborhood is not sufficient. The **HARDSHIP** must arise from the operation of the regulations on the property, not on the landowner, and the property must be "peculiarly disadvantaged" by the regulation for which a variance is being sought.