

VARIANCES

A variance is an exception made by the Zoning Board of Appeals to permit land to be used for a purpose or in a way that is not permitted by the Zoning Ordinance. There are two types of variances, use and area. The granting of each type is subject to a different set of conditions. A use variance is needed if the purpose to which a building or land is put is not permitted in that district. An area variance is needed when the building or land does not meet the bulk requirements governing that district. Bulk requirements are such as lot size, front, side, and rear minimum setbacks, building height, area coverage and so on.

A. USE VARIANCE:

The Zoning Board of Appeals (ZBA), on appeal from the decision or determination of the code enforcement officer shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of the Zoning Code.

No such use variance shall be granted by the ZBA without a showing by the applicant that the applicable zoning regulations and restrictions have caused unnecessary hardship, the applicant shall demonstrate to the ZBA that:

1. Economic return. That the building or land in question is deprived of all economic use or benefit when used only for a purpose permitted in the district. Deprivation must be established by competent financial evidence. Proof of a more profitable return if the variance is granted is not, in itself, evidence of hardship.
2. Unique circumstances. That unique circumstances exist for the building or land in question which are not generally found throughout a substantial portion of the district.
3. Neighborhood character. That granting the variance will not alter the essential character or quality of the neighborhood.
4. Not Self-Created. That the alleged hardship has not been self-created.

The Zoning Board of Appeals, in granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

B. AREA VARIANCE:

The Zoning Board of Appeals, shall have the power, upon appeal from a decision or determination of the code enforcement officer, to grant area variances from the area or dimensional requirements of the zoning code. In making its determination, the Zoning

Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to health, safety, and welfare of the neighborhood or community. The spirit of the ordinance must be observed and the following conditions apply in order to grant the variance:

1. Reasonable objective. That the applicant's intended objective is reasonable, and there is no way to accomplish such objective if the bulk regulations of the ordinance are observed.
2. Neighborhood character. That the variance requested will not be unduly detrimental to adjoining properties and will not alter the essential character of the neighborhood.
3. Not self-created. That the problem to be solved is not self-created by the applicant. This consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
4. Minimum relief. That the variance requested is the minimum necessary to grant relief.
5. No adverse effect or impact. That the variance requested will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The Zoning Board of Appeals, in granting area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.