

CITY OF BEACON

ZONING BOARD OF APPEALS OVERVIEW

A variance is permission granted by the zoning board of appeals so that property may be used in a manner not allowed by the local zoning.

- **Use Variance:** a request to use land for a purpose not allowed in the zoning regulations. General City Law Section 81-b(1)(a).
- **Area Variance:** request to obtain relieve from dimensional requirements of zoning regulations. General City Law Section 81-b(1)(b).

WHY ARE VARIANCES ALLOWED?

Variations provide flexibility in the application of the zoning law and afford the landowner an opportunity to apply for administrative relief from certain provisions of the law. Alternatively, the property owner could petition the City Council (as the local legislative board) to rezone the property or change the text of the City's Zoning Ordinance to allow what is presently prohibited.

AUTHORITY TO ISSUE VARIANCES

The zoning board of appeals has been delegated the statutory authority to issue use and area variances. General City Law 81-b and City of Beacon Code Section 223-54 *et seq.* The jurisdiction of the zoning board of appeals is limited to reviewing the decisions of, or hearing appeals from the determination of an administrative official charged with enforcing the zoning law. The board is limited to granting the minimum variance necessary that addresses the need for the variance while preserving the character, health, safety, and welfare of the community.

HOW VARIANCES WORK

When an application for permission to build is made to the Building Inspector that does not comply with the literal requirements of the zoning law, the Building Inspector must deny the application. If the reason for the denial is that the application violates the use or area provisions of the law, the applicant may apply to the zoning board of appeals for a use or area variance.

STATUTORY STANDARD FOR USE VARIANCE

To obtain a use variance, the applicant must demonstrate that the applicable zoning regulations cause an unnecessary hardship. To prove unnecessary hardship, the applicant must establish that the requested variance meets all four of the following statutory conditions:

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1. No reasonable return. The owner cannot realize a reasonable return on the property as zoned.
2. Unique circumstances. The hardship must be unique to the owner's property and not applicable to a substantial portion of the zoning district.
3. No alteration to the essential character of the neighborhood. Granting the variance will not alter the essential character of the neighborhood.
4. The hardship is not self-created.

These four conditions are requirements that must be reviewed by zoning board of appeals in reviewing applications for use variances. Furthermore, the board must find that the applicant has met each element of the test.

STATUTORY STANDARD FOR AREA VARIANCES

For a zoning board of appeals to grant an area variance from the dimensional and area requirements of a zoning ordinance, it must find that the benefits to the applicant of the requested variance outweigh the detriment it will cause to the health, safety, and welfare of the neighborhood. Unlike use variances, area variances require a balancing test. The board must weigh the benefits of the requested variance to the applicant against the five factors set forth in the statute. For area variances, satisfying all five factors is not required under the law.

1. Change to neighborhood character. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of an area variance? Will the proposed action compromise the character of the neighborhood?
2. Alternatives. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance? For example, can a proposed addition be constructed in a different location on the property, where a variance would not be needed. The applicant should at least explore the possibility of various alternatives and explain why they may or may not be feasible.
3. Substantiality of the request. Is the requested area variance substantial?
4. Effect on physical or environmental conditions. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
5. Is the alleged difficulty self-created?

CONDITIONS

The board of appeals when granting a use or area variance may impose reasonable conditions and restrictions that are directly related to and incidental to the proposed use of the property. Once granted, area variances and use variances run with the land, subject to any reasonable conditions, and not the property owner. Conditions cannot be personal to the owner. For example, the ZBA may not restrict the variance to use by a current owner. Similarly, the courts have held that conditions imposed on any land use approval must relate to the legitimate objectives of zoning and not to matters related solely to the operation of a business.

PRECEDENTIAL VALUE OF PRIOR APPROVALS

Variances concern the appropriateness of a project proposal on a particular parcel of land, having their own unique characteristics. The facts and circumstances applicable to an application often differ from those applicable to other applications. The ZBA should apply a generally consistent approach to its consideration of the variance standards as they apply to the facts of each case. The results will not always be identical as the ZBA reviews the specific facts and circumstances of an application and conditions can change overtime.

JUDICIAL REVIEW OF LAND USE DECISIONS

In general, courts defer to local land use decisions, particularly those of local legislatures, declaring that those decisions are given a presumption of constitutionality and correctness. The effect of this is to place a heavy burden of proof on those who challenge such decisions to show that they are unreasonable.

When reviewing a decision, the courts will limit their review to ascertain whether the determination has a rational basis and is supported by substantial evidence. A zoning board of appeals may not premise a decision on community opposition (or support) or pressure. The board must discern factual information from mere “general sentiment.” General sentiments cannot support a finding. The Court of Appeals has clearly held that generalized community opposition, in the absence of substantial evidence, cannot constitute support for the denial of an application.

A determination will not be considered to be rational and will be invalidated if it is solely based “on subjective considerations, such as general community opposition, or if it lacks an objective factual basis.” *Cacsire v. City of White Plains Zoning Bd. of Appeals*, 87 A.D.3d 1135,1137, 930 N.Y.S.2d 54, 57 (2d Dep’t 2011).

LEGAL DISCLAIMER

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