

LAND USE EDUCATION PARTNERSHIP VARIANCES

You would like to build an addition to your house. You go to the Town Hall to get the necessary permits and the Zoning Enforcement Officer tell you your addition would be too close to your property line. Before you can get a permit, you will need a variance from the ZBA.

What is a variance? And, what's a ZBA?

A variance is a request to vary the Zoning Regulations. In other words, a variance lets you do something with your property that the Zoning Regulations do not allow.

Variances are granted on the basis of "exceptional difficulty or unusual hardship".

A "ZBA" is the Zoning Board of Appeals. It has five regular members and three alternate members. ZBA members are unpaid volunteers who are either elected or appointed depending on your town ordinance.

Exceptional Difficulty? Unusual Hardship? - Please define.

Exceptional difficulty and unusual hardship are terms used in the Connecticut General Statutes to describe the conditions that must be met before the ZBA can grant a variance. You must convince the ZBA that there are special conditions or circumstances affecting your lot but not affecting the rest of the lots in the zoning district. These conditions or circumstances must be related solely either to the property's unusual shape or topography or to the condition or location of existing structures.

The exceptional difficulty or unusual hardship cannot be because of something you did – e.g. putting up a building without a permit.

You must convince the ZBA that without the variance you would have no "reasonable" use for the property. Remember "reasonable use" is not simply the use that would bring you the greatest financial returns. It is also not simply the alternative that is the cheapest, most convenient or most desirable for you to take.

You must also convince the ZBA that what you want to do will not hurt the surrounding properties. As a condition of granting a variance, the ZBA can require you to modify your plans so that your neighbors will not be affected. They could, for example, require you to erect a fence or plant trees to buffer your property from the adjoining property.

This sounds tough. How about an example.

Suppose you own a piece of property that was subdivided prior to zoning. The property is wide but not very deep. To meet the front yard setback and the rear yard setback requirements, you would have to build a single family house that was only 6 feet wide. The hardship – your inability to build even a single family house – would be due to the lot's unusual shape.

Another example: the vacant property you own has wetlands on it. To stay out of the wetlands you have to build a single family house closer to the side yard than is allowed. In this case the hardship would be due to the topography – e.g. the wetlands.

I need to build an addition to my house because I have a growing family – doesn't that count as a hardship?

No. Hardship relates to the land – not the person. If you already have a house on the property – even if it is smaller than you would like – then you have a “reasonable use” of the property.

I need to expand my business but money is tight and I can't afford to expand the parking lot or put in all those damn trees and shrubs the zoning regulations require. Does my financial situation count as a hardship?

No. The exceptional difficulty or unusual hardship cannot be just financial. Your contentions that money is tight or that trees and shrubs are a waste of money do not qualify as hardships or unusual circumstances.

My son has been unemployed for nearly a year. I want to build an apartment onto my house so he will have a place to live. Surely, that is a hardship.

No. Again, hardship must relate to the land. The hardship must not be due solely to your personal circumstances. While providing an apartment for a child – or an elderly parent – is commendable, it is not grounds for a variance.

What do I have to do to apply for a variance?

You must fill out an application form and pay an application fee. Each town has different forms and fees. Many towns will require the submission of a survey. Ask the Zoning Enforcement Officer to whom you must submit the application. You should make sure the application is complete.

Then what happens?

State Statutes require the ZBA to hold a public hearing on all variances. The public hearing must be held within 65 days of the “date of receipt”. Day of receipt is defined as the day of the next regularly scheduled ZBA meeting or thirty-five days after the application is submitted – whichever is sooner.

When you submit the application, you should find out when the public hearing will be held. You should also inquire about any other notification requirements the town might have. Some towns require you to post a sign on the property or to notify the adjoining neighbors of the public hearing. Make sure you fulfill all the notification requirements exactly as required. Your failure to meet all the notification requirements can result in your public hearing being delayed or your variance being denied.

What happens at the public hearing?

You will have the opportunity to present your case to the ZBA as to why you should be granted the variance. Any ZBA member may ask you questions about the property or about your reasons as to why you should be granted the variance. Remember it is your responsibility to convince them that you have a hardship. You should stick to reasons relating to the land.

Anyone opposed to your receiving the variance will also have the opportunity to speak. Depending on the town, there may be reports from the town planning staff or the zoning enforcement officer.

After all sides are heard from, the Chairperson “closes” the public hearing. A public hearing can remain open for thirty days. After a public hearing is closed, the ZBA can hear no more testimony about the application. The ZBA, however, may ask questions of its staff.

How long after the public hearing is closed do I have to wait for the ZBA to make up their minds?

By State Statute, the ZBA has 65 days after the close of the public hearing in which to make a decision. The State Statutes also require that four of the five members must vote in favor of a variance before it can be granted.

If you are granted a variance, a certification form will have to be filed on the town land records. Check with your town to determine how the certification form is handled. The variance does not become effective until the certification form is filed.

If you are denied the variance, you can appeal to the Superior Court in your county.

If I get the variance and then sell the property, what happens?

Nothing. The variance goes with the property. The new owner will have the same rights – and obligations – as the person who applied for, and received, the variance.