

## **GUIDELINES FOR VARIANCES**

THE ZONING HEARING BOARD IS A QUASI-JUDICIAL BODY. THE DETERMINATION OF APPEALS AND/OR APPLICATIONS MADE TO THE BOARD WILL BE BASED ON LEGAL AND TECHNICAL CONSIDERATIONS CONTAINED IN THE UPPER ST. CLAIR TOWNSHIP ZONING ORDINANCE AND THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE. ANY APPLICANT WITHOUT A GOOD WORKING KNOWLEDGE OF THE ZONING ORDINANCE AND THE PLANNING CODE WOULD BE WELL ADVISED TO CONSULT WITH A REGISTERED LAND SURVEYOR AND AN ATTORNEY PRIOR TO PROCEEDING WITH THE APPLICATION OR APPEAL. WHILE SUCH PROFESSIONAL ASSISTANCE IS NOT SPECIFICALLY REQUIRED (EXCEPT IN THE PREPARATION OF PLANS), IT MAY SAVE MUCH TIME AND UNNECESSARY EXPENSE IN ESTABLISHING A COURSE OF ACTION AND INSURING THAT PROPER PROCEDURES ARE FOLLOWED. FAILURE TO PROPERLY PREPARE OR PRESENT THE CASE MAY RESULT IN THE DENIAL OF THE REQUESTED ACTION.

### **VARIANCES**

Variance provisions were established because the zoning requirements for any given district did not affect all properties equally. A mechanism was needed to permit minor changes in the requirements where a particular property was so unreasonably burdened that it could not be developed in strict conformity with the provisions of the Zoning Ordinance.

A variance is, and should be, difficult to obtain. So long as the property can be developed for some reasonable use (in conformity with the provisions of the Zoning Ordinance), the fact that it could produce more income or satisfy the needs or desires of the owner more thoroughly is not a sufficient basis for the award of a variance. Financial hardship will not be taken into consideration.

Unfortunately, many applicants assume that a variance is something designed to permit the highest and best use of, or the greatest financial return from, their property where the requirements of the Zoning Ordinance limit its use or value in some way. This is an incorrect perception of a variance, and one that causes the applicant a great deal of difficulty when a case is based on that reasoning. Even when the proposed variance would be beneficial to the community as a whole, the Zoning Hearing Board is not empowered to make adjustments to the Zoning Ordinance unless and until the requisite criteria for a variance are fully established by the applicant, and then only to the extent that it is the minimum variance that will relieve the hardship to the particular property.

**The applicant must prove that the property specifically meets each of the five tests listed.** If the applicant should fail to prove this, the Board will have no option but to deny the application. Because of the many legal and technical considerations inherent in these cases, the applicant should seriously consider obtaining professional representation in the preparation and presentation of the case. A thoroughly prepared, professionally presented argument will substantially increase the likelihood of a satisfactory outcome for the applicant.

**APPLICATIONS AND HEARINGS**

Applications shall include the following:

1. Six (6) copies of the Zoning Hearing Board Application, provided by the Township, must be filled out completely and be signed by the landowner and the applicant. If the applicant is other than landowner, evidence of authorization by landowner is required.
2. Six (6) copies of a plan demonstrating the above tests, prepared by a registered professional land surveyor, must accompany the Application Form. This plan must include, as a minimum, property boundaries, important topographical, natural or structural features which form a basis for or are relevant to the application, and the location and dimensions of existing and proposed structures, parking areas and driveways. The actual distance from such structures and intended structural changes (including overhangs) to the property lines shall be clearly shown. No Application will be deemed to be complete if the plan fails to meet these requirements when submitted. Failure to include relevant information on your site survey may result in a substantial delay in scheduling your hearing before the Board, and could result in the continuation of your hearing or a denial of your application if the Board should deem the information contained on the plan to be insufficient, inaccurate, or unreadable.
3. Filing Fee -- The Application shall be accompanied by a check or money order made payable to the Township of Upper St. Clair in the amount of \$500.00 for Residential and \$700.00 for Commercial. No cash please. No refund of the application fee can be made once the application is filed.
4. Six (6) copies of a map showing the site which is the subject of the appeal and indicating and identifying with Lot/Block numbers all lots within two hundred (200) feet of the site. The base map is to be obtained from the Allegheny County Tax Assessment Office.
5. Six (6) copies of a complete list (on Public Notice Property Owners List form supplied by Township) of the Lot/Block numbers and names and addresses of the owners thereof of all lots adjacent to and all lots otherwise within two hundred (200) feet of the lot which is the subject of the appeal from the most current records of the Allegheny County Tax Assessment Office.

**PROCEDURES**

1. Submit the application from 8:00 AM to 4:00 PM, Monday through Friday to the following:

Department of Planning and Community Development  
Upper St. Clair Township  
1820 McLaughlin Run Road  
Upper St. Clair, PA 15241

The filing deadline is the fourth (4<sup>th</sup>) Thursday prior to the meeting at which the matter is to be heard. When the fourth (4<sup>th</sup>) Thursday is a day when the Township offices are closed, the deadline shall be the working day preceding the fourth (4<sup>th</sup>) Thursday. See the attached schedule.

2. Township staff will review the application for completeness. Incomplete applications will be returned to the applicant for resubmission.
3. The Zoning Hearing Board will hold a public hearing on the application within sixty (60) days of filing of a complete application. (See attached meeting schedule) Public notice consists of mailing by certified mail to property owners adjacent to the subject property and by regular mail to other property owners within 200 feet of the subject property, by legal advertisements in a newspaper of general circulation in the Township and by posting a notice on the property.
4. A decision must be made at a public meeting and a written decision rendered within forty-five (45) days after the close of the public hearing.

**AFTER THE DECISION**

After the written decision of the Zoning Hearing Board is issued, the Applicant must obtain all required permits before proceeding with the project including, but not limited to, zoning approval, building permit, and grading permit. If an appeal of the decision is filed, a project could be jeopardized or at least delayed.

**APPEALS**

After the written decision is issued, all parties have 30 days to file an appeal to the Court of Common Pleas. Generally, the assistance of an attorney is needed for filing an appeal. An appeal does not stay the action appealed from but appellants may appeal for a stay.

**ORDER OF HEARING**

The following is the order of the hearing as established in the Zoning Hearing Board Rules of Procedure:

- (A) Hearing called to order;
- (B) Chairman's statement of reason for hearing;
- (C) Outline of procedures to be followed during hearing;
- (D) Chairman's statement of parties to hearing;
- (E) Swearing in of all those about to give testimony;
- (F) Secretary's presentation of evidence of public notice;
- (G) Statement of the case by Zoning Officer;
- (H) Applicant's presentation of their case:
  - (1) Board cross-examination of applicant's witnesses;
  - (2) Objectors' cross-examination of applicant's witnesses;
- (I) Statement of the Zoning Officer:
  - (1) Board's cross-examination;
  - (2) Applicant's cross-examination;

- (3) Objectors' cross-examination.
- (J) Identification of other parties wishing to be heard;
- (K) Objectors' presentation of their case:
  - (1) Board cross-examination of objectors' witnesses;
  - (2) Applicant's cross-examination of objectors' witnesses.
- (L) Other testimony and evidence;
- (M) Concluding remarks, including statement of continuance, final decision, or notice of when decision is expected to be made;
- (N) Adjournment of hearing.

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**ESTABLISHING THE NEED FOR A VARIANCE**

**A VARIANCE IS A MINOR MODIFICATION OF THE ZONING REQUIREMENTS CONTROLLING THE USE OF A PROPERTY, AND CAN ONLY BE GRANTED IF THE PROPERTY OWNER IS ABLE TO DEMONSTRATE, TO THE SATISFACTION OF THE ZONING HEARING BOARD, THAT THE SUBJECT PROPERTY CANNOT BE DEVELOPED IN STRICT ACCORDANCE WITH THE PROVISIONS OF THE ZONING ORDINANCE. IN ORDER TO SATISFY THIS REQUIREMENT, THE APPLICANT MUST MEET ALL OF THE FOLLOWING TESTS REQUIRED BY THE ORDINANCE:**

1. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the Zoning Ordinance in the neighborhood or district in which the property is located;
2. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
3. That such unnecessary hardship has not been created by the applicant (Financial hardship shall not be construed as the basis for granting a variance);
4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare;
5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

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