

Introduction to Variance Applications:

Zoning is the common term for local land use laws that define what may be done on a lot (permitted uses) and where structures may be built on the lot.

There may be times when a property owner wants to use the land for purposes that may not be allowed under the Zoning law. If property owners want to do something contrary to local land use law, they may apply to the Zoning Board of Appeals (ZBA) for relief from the constraints of existing law. If the ZBA grants the relief the property owner has applied for, that relief is called a “variance.”

The “Area” variance: Property owners apply for an Area Variance when they want to build something that doesn’t conform to local laws governing structures. Applications for area variances are common. Typically these are requests for relief from “property line set back” or “road frontage” requirements. Area Variance requests are judged by different legal standards than Use Variance requests. When considering an area variance, the ZBA is required to “balance” a number of issues in its decision.

The issues to be balanced are the benefit to the applicant if the variance is granted vs. the detriment to the health, safety and welfare of the neighborhood or community by such grant.

In rendering its determination, the ZBA is legally obligated to consider, and the Applicant is legally obligated to prove:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
2. Whether the benefit sought by the applicant can be achieved by some method, feasible to the applicant to pursue, other than an area variance.
3. Whether the requested variance is substantial.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

5. Whether the difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in the granting of 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.

The ZBA's decisions must be consistent with the Town of Day Comprehensive Plan.

Based on the evidence presented, including evidence gathered at a Public Hearing, the ZBA may grant the variance requested, modify the request and grant the variance, or deny the request with no variance granted.

When a request for a variance is denied, applicants may re-apply with a substantially different proposal or they may wait 1 year to resubmit a variance application that was denied.

A variance granted by the ZBA will expire in one year if the Codes Enforcement Officer has not approved the building plans and issued a building permit. Once the building is completed, the variance remains in effect.

The Use Variance: Use Variance applications are judged by different standards than Area Variance applications

There are 4 factors a Use Variance applicant must demonstrate to the ZBA. If the ZBA finds that the applicant has failed to demonstrate any single 1 of the 4 factors, the Use Variance will not be approved.

The Applicant must prove "unnecessary hardship". The applicant must prove this by showing that for each and every permitted use under the zoning regulations for the particular district where the property is located:

1. They cannot realize a reasonable return as proven by substantive competent financial evidence.

2. The alleged hardship is unique to their property, and does not apply to substantial portions of their district or neighborhood.
3. The requested variance will not alter the essential character of the neighborhood.
4. The alleged hardship has not been self-created.

ZBA shall grant the minimum variance it deems necessary and adequate to address the unnecessary hardship, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community. Based on the evidence presented, including evidence gathered at a Public Hearing, the ZBA may grant the variance requested, modify the request and grant the variance, or deny the request with no variance granted.

If a request for a variance is denied, applicants may reapply with a substantially different proposal or they may wait 1 year to resubmit a variance application that was denied.

A variance that is granted will expire in one year if the Code Enforcement Officer has not stipulated that the approved "Use" has been implemented by that date. Once the "Use" has been implemented, it remains in effect.