

# Chapter 14 – Zoning Board of Appeals

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## **1400 ZONING BOARD OF APPEALS**

**1400.1 Powers and Duties.** The Zoning Board of Appeals shall have such powers and duties as may be provided in the Connecticut General Statutes, including, but not limited to, CGS § 8-6.

**1400.2 Procedures.** Procedures for submission of applications to the Zoning Board of Appeals shall be as provided in the Connecticut General Statutes, including, but not limited to, CGS § 8-7, or as may be established by rule or regulation of the Zoning Board of Appeals.

**1400.3 Limitations on Use Variances.** As authorized by CGS § 8-6, the Commission establishes the following limitations on use variances.

- A. No use variance shall be granted where a dimensional variance would relieve the exceptional difficulty or unusual hardship.
- B. No use variance for a business use or an industrial use shall be granted in a Residential Zone.
- C. A use variance shall be granted only where, without the use variance, the private property would be rendered valueless or unusable for any purpose.

**1400.4 Following Approval**

- A. A variance granted by the Board shall become effective only upon the filing of a copy, certified by the Board, in the land records of the Town, in accordance with the provisions of CGS § 8-3d.
- B. A variance shall authorize only the particular activities specified in the Board's approval.

## **1401 FLOODPLAIN VARIANCES**

### **1401.1 Specific Situation Variances**

- A. Buildings on a Historic Register - Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or any locally-adopted historic district without regard to the procedures set forth in the remainder of this section and provided the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historical designation.
- B. Functionally Dependent Use or Facility - Variances may be issued for new construction and substantial improvements and other development necessary for the conduct of a functionally dependent use or facility provided the structure or other development is protected by methods that minimize flood damage, creates no additional threat to public safety and meet all the requirements of subpart C below.
- C. Floodway Prohibition - Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

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### **1401.2 Considerations For Granting Floodplain Variances**

In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this regulation and the items listed below. Upon consideration of these factors and the purposes of this regulation, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this regulation.

- A. The danger that materials may be swept onto other lands to the injury of others.
- B. The danger to life and property due to flooding or erosion damage.
- C. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- D. The importance of the services provided by the proposed facility to the community.
- E. The necessity of the facility to waterfront location, in the case of a functionally dependent facility.
- F. The availability of alternative locations not subject to flooding or erosion damage for the proposed use.
- G. The compatibility of the proposed use with existing and anticipated development.
- H. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
- I. The safety access to the property in times of flood for ordinary and emergency vehicles.
- J. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.
- K. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

### **1401.3 Conditions for Floodplain Variances**

- A. Variances shall only be used upon a determination that the variance is the minimum necessary to afford relief considering the flood hazard; and in the instance of a historical building, a determination that the variance is the minimum necessary as not to destroy the historic character and design of the building and result in the loss of historic designation of the building. Variances pertain to a piece of property and are not personal in nature. A properly issued variance is granted for a parcel of property with physical characteristics so unusual that complying with the regulation would create an exceptional hardship to the applicant or the surrounding property owners. Those characteristics must be unique to that property and not be shared by adjacent parcels. For example, economic or financial hardship is not sufficient cause for a variance, nor are inconvenience, aesthetic considerations, physical handicaps, personal preferences or disapproval of one's neighbors.

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- B. Variances shall only be used upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship, and; (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, damage the rights or property values of other persons in the area, cause fraud on or victimization of the public, or conflict with existing local laws, ordinances or regulations. Only hardships that are based on unusual or unique physical characteristics of the property in question, characteristics that are not shared by adjacent parcels, shall qualify to meet subsection (ii) above. Claims of hardship based on the structure, on economic gain or loss, or on personal or self-created circumstances are not sufficient cause for the granting of a variance.
- C. No variance may be issued within a regulatory floodway that will result in any increase in the 100-year flood levels. A variance may be issued for new construction, substantial improvements and other development necessary for the conduct of a “functionally dependent use” provided that there is good and sufficient cause for providing relief; and the variance does not cause a rise in the 100-year flood level within a regulatory floodway. The structure and other development must be protected by methods that minimize flood damages.
- D. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation (BFE), and that the cost of flood insurance will be commensurate with the increased risk resulting from the lowest floor elevation up to amounts as high as \$25 for \$100 of insurance coverage.

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