

**What Is a Variance?** In general terms, a variance is the legal relaxation of the town's Zoning Regulations in a specific situation where an unusual or unique condition associated with a parcel of land makes it impossible to meet one or more requirements of the regulations; this unusual or unique condition is referred to formally as a "hardship." Variances are obtained from the town's Zoning Board of Appeals (ZBA), a five-member board of citizens given the authority by state and local law to consider and act upon requests for variances (among other duties).

**EXAMPLE:** The Goodfellows want to add a 12-foot-wide garage onto the side of their house, which is located 28 feet from their side property line. According to the town's Zoning Map, their lot is in an AA Residential zone; the town's Zoning Regulations require that in the AA zone there be a minimum distance of 20 feet between the building and the side property line (the "side yard"). As proposed, the Goodfellows' addition would extend into this required 20-foot side yard by four feet. In order for the Goodfellows to build the garage in the desired location, they need to apply for and obtain a variance of the minimum side yard requirement.

**How Do I Obtain a Variance?** The ZBA meets once a month on the 2<sup>nd</sup> Thursday of the month to hear and act upon requests for variances. In order for your variance request to be placed on the ZBA's meeting agenda for a public hearing, you must first file an application with the Board. This is done at the Land Use Office, which is located on the ground floor of Stafford Town Hall. The Land Use Office acts as the administrative arm of the ZBA and is responsible for processing all ZBA applications; the staff there will provide you with the necessary application forms, offer assistance and advice, and try to answer your questions. The Land Use Office is open from 8:00 AM to 4:30 PM, Monday through Wednesday and till 6:30 on Thursday. The telephone number is (860) 684-1793.

**Filing the Application:** An application for a variance consists of a completed application form, copies of a map or plan, the filing fee and, on occasion, other additional information.

**Application Form:** The application form, available at the Land Use Office, is largely self explanatory. The Land Use staff can assist you with filling out the form and provide you with certain technical information you will need to complete it, such as the Assessor's Map and Lot numbers, zoning district, and type of variance. A couple of important reminders:

- (1) the application form must be signed by each and every owner of the property (e.g., both you and your spouse, if you own the lot together);
- (2) An explanation of the reasons why this is the only area where the proposed structure can be placed and that this structure is the minimum size needed to accomplish the desired use.
- (3) Your hardship should be explained in detail why "a literal enforcement of such bylaws, ordinances or regulations would result in exceptional difficulty or unusual hardship".
- (4) The completed application form is going to be copied and distributed to Board members for their review and thus needs to be legible. So, when filling it out, please print or type all required information!

**Map:** The map or plan should show the existing features of your property (e.g., lot lines, location of all structures and distances to lot lines, driveways, well, septic fields), the proposed activity for which the

variance is needed (e.g., location and size of the proposed structure), and the location and extent of the proposed variance (e.g., the shortest distance between the proposed structure and the property lines, as well as the well and septic system if required). The map or plan should be drawn by a design professional such as a surveyor or an engineer. An existing plot plan of your property, brought up to date, may be acceptable, check with the Land Use Office.

**Fee:** The application fee (\$360.00) is payable at the time you file your application with the Land Use Office. The fee helps defray the cost involved with processing your application (staff time, legal notices, etc.). Checks should be made payable to "Town of Stafford". Please note that the fee is generally not refundable or waivable.

**Other Information:** Occasionally, a variance is requested for a situation that cannot be shown on a map or plan—for example, a height variance for a garage or a size variance for a sign. If you are applying for this type of variance, you should submit additional explanatory materials such as measured drawings or sketches which clearly illustrate the type of variance you are requesting. Again, check with the Land Use Office.

#### **A Practical Guide to the Variance Process** "They told me I need a variance. What do I do now?"

Each ZBA meeting has an application filing deadline associated with it; the deadline falls approximately two and-a-half weeks before the meeting. In order for your variance application to be heard by the Board at a particular meeting, you must submit your completed application to the Land Use Office no later than 12:00 noon on the filing deadline day for that meeting. There are no exceptions to this rule. The Land Use Office maintains a list of the ZBA's meeting dates and filing deadline days for the current year.

Before the meeting, at least 12 days before the hearing on your application, you will need to post a "notice of Variance" sign on your property which informs the public that your property is the subject of a variance request. If the sign is posted improperly (or not at all), the ZBA will not hear your application as scheduled and will postpone the hearing until its next meeting. The Land Use Office will provide you with a sign.

Before the meeting, at least 10 days before the hearing on your application, you will need to mail letters to the abutters of your property informing them of the time date and location of the meeting. You may draft your own letter or use the legal notice that was published in the paper or both. A list of abutters can be obtained from the land use office. These letters need to be mailed either "certified" or via a "certificate of mailing". You will need to bring the proof of these mailings to the meeting or given to the land use office prior to the meeting. Your application will not be heard if you do not provide the proof of mailing.

The land use office will publish a legal notice in a local paper two times before the hearing. The first notice will be published 11 days before the hearing and the second notice will be published 3 days before the hearing. About one week before the hearing on your application, you will receive a copy of

the meeting agenda from the Land Use Office. (The ZBA usually meets on the second Thursday of the month at 7:00 PM in the Veterans Meeting room on the first floor of Town Hall.)

At the meeting, the ZBA usually hears the applications in the order in which they appear on the agenda. When your application is announced, you (or your representative) should step up and address the Board. Speak clearly and give your name and address; then briefly explain to the Board what it is you propose to do, why you need a variance, what your hardship is, and any other information which will give the board a full understanding of your request. During the hearing, Board members may ask you questions about your application. When you have finished, the Chairman will give the public the opportunity to speak either in favor of or against your application. If anyone speaks against it, you will be given the opportunity to respond to their comments. When all parties have spoken, the Board will close the public hearing on your application. Sometimes, however, the Board may feel that it needs additional information regarding an application; if so, it may choose to leave the hearing open and continue it to the following month's meeting, to allow the additional information to be provided and entered into the record of the public hearing.

After the public hearing is closed, the Board will discuss your application and review your hardship to ensure that it is in conformance with the comprehensive plan and state statute 8-6. The Board will then take a vote to either approve or deny it. Once the hearing is closed, no member of the public, including yourself, is allowed to address the Board regarding the application. Your application needs four affirmative votes of the ZBA in order for your variance to be approved. In approving your variance, the Board may attach conditions that it feels necessary to protect the public health, safety and welfare

By State law, the Zoning Board of Appeals operates within the following Timetable: The Board has 35 days from the "day of receipt" of your application to begin the public hearing. The day of receipt is the day of the next regular meeting of the Board after you have filed your application with the Land Use Office, or 35 days after filing, whichever is sooner. The Board must schedule and open the public hearing within 35 days of the "receipt" of application. Typically the board accepts your application and opens the public hearing on the day of receipt, but is not obligated to do so. The Board has 65 days in which to complete the hearing. Once the public hearing is closed, the Board has 35 days in which to make a decision. Usually (but not always), the Board tries to make a decision on your application right after the close of the public hearing. The Board has the right to extend these time limits for an additional 65 days but needs your consent in order to do so. After the meeting you will receive a letter from the Land Use Office stating the outcome of your application. The decision will be published in a local paper within 15 days of the meeting. If the notice is not published within this 15 day period you have the right to publish the notice within 10 days after the expiration of the 15 day period.

If your application was approved, you will receive a variance document with the letter of decision. This form, which describes the approved variance, must be filed on the land records in the Office of the Town Clerk in order for your variance to become effective. There is a 15 day period from the date of the publication of the notice of decision wherein an aggrieved person may appeal the decision to Superior Court. There is a \$60.00 recording fee for this filing.

If your application was denied, you may appeal the ZBA's decision to the Superior Court or file a new application for hearing by the Board. A court appeal is a legal matter, and you should consult your attorney about it. If you file another application, you should be aware that, under State law, the Board is not required to hold a public hearing on the same or substantially the same variance request if your previous application was decided upon within the past six months.

**Some Tips:** • At any time during the process of obtaining a variance, you may represent yourself or have someone else represent you, such as an attorney. That decision is entirely up to you; there is no requirement that anyone else represent you. • Your hardship cannot be self-created or based upon economic or financial considerations. • You should bring anything to the public hearing that you think might help clarify or support your application, such as letters from neighbors or visual aids such as photographs. • The variance you request should be the smallest variance needed to accomplish your objective.

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**Public Sec. 8-6. Powers and duties of board of appeals.** (a) The zoning board of appeals shall have the following powers and duties: (1) To hear and decide appeals where it is alleged that there is an error in any order, requirement or decision made by the official charged with the enforcement of this chapter or any bylaw, ordinance or regulation adopted under the provisions of this chapter; (2) to hear and decide all matters including special exceptions and special exemptions under section 8-2g upon which it is required to pass by the specific terms of the zoning bylaw, ordinance or regulation; and **(3) to determine and vary the application of the zoning bylaws, ordinances or regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such bylaws, ordinances or regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured**, provided that the zoning regulations may specify the extent to which uses shall not be permitted by variance in districts in which such uses are not otherwise allowed. No such board shall be required to hear any application for the same variance or substantially the same variance for a period of six months after a decision by the board or by a court on an earlier such application.

(b) Any variance granted by a zoning board of appeals shall run with the land and shall not be personal in nature to the person who applied for and received the variance. A variance shall not be extinguished solely because of the transfer of title to the property or the invalidity of any condition attached to the variance that would affect the transfer of the property from the person who initially applied for and received the variance.