

AREA VARIANCES

An area variance is defined as the authorization by the ZBA for the use of land in a manner that is not allowed by dimensional or physical requirements of the applicable zoning regulations. The use to be made is one that is allowed by the zoning. In making its determination, the ZBA must take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board must also consider:

- 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 for the applicant to pursue, other than an area variance;**
- 3. Whether the requested area variance is substantial;**
- 4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and**
- 5. Whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but must not necessarily preclude the granting of the area variance.**

The ZBA, in the granting of area variances, must 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.

IMPOSING CONDITIONS ON VARIANCES

ZBAs have the authority to impose reasonable conditions and restrictions when granting both area and use variances if they are directly related to and incidental to the proposed use of the property. Once the ZBA has imposed a condition on an applicant, it must be complied with before the building inspector or enforcement officer issues a building permit. If it is a condition that must be met while construction is ongoing, it must be completed before a certificate of occupancy is issued. The purpose of these conditions will be to minimize the adverse impact of the variance on the neighborhood or community. These conditions can relate to fences, safety devices, landscaping, screening and access roads, traffic, outdoor lighting and noises, and enclosure of buildings, emission of odors, dust, smoke refuse matter, vibrations, noise, parking and other factors incidental to comfort, peace, enjoyment, health or safety of the surrounding area.

Conditions imposed must be directly related to and be incidental to the proposed use of the property. Improper conditions would include:

- Limiting the variance to the person who owns or occupies the property at the time of the variance;
- An agreement to dedicate land that is not the subject of the variance application;
- Conditions that seek to regulate the details of the operation of a business, rather than the use of the land; and
- Conditions related to another piece of land owned by the applicant that is not subject to the variance.

The ZBA should include the conditions in the filed written decision along with an explanation as to how the conditions are intended to minimize the adverse impact of the variance.