



# City of Westfield

## ZONING BOARD OF APPEALS

### OBTAINING A VARIANCE

#### What is a Variance and why do I need one?

A variance is a special exemption from the requirements of the Zoning Ordinance, with which your proposal does not comply. Variances are intended to be granted only in **strict and unique circumstances**, out of **necessity rather than convenience** and only for the **smallest relief absolutely necessary**. A variance overrides the law (zoning ordinance) that was publicly vetted and duly adopted with a supermajority vote of the City Council. This ordinance is normally given deference in protecting public health, safety and welfare - and it is heavily relied upon by abutters to preserve their property values and interests. Generally, you should exhaust all other options before considering a project which requires variance relief.

#### When does the Board meet?

The Board generally meets on the 1<sup>st</sup> Wednesday of each month, and may meet at other times as warranted. Meetings are typically at 7:15pm in City Hall Room 315. Official notice of any meeting is posted by the City Clerk at least 2 days prior.

#### How do I file my variance application and how long will the process take?

Deliver two copies of your complete [application](#) package to the Community Development & Planning Office no later than the **last Wednesday** of the month. You should then attend the upcoming ZBA meeting, where the Board will review and accept your application and schedule a formal public hearing (generally the following month). Board members often visit the property prior to the hearing and, depending on your request, may ask that the subject area be marked (such as the property line or limits of proposed building construction). After filing, allow a minimum of 8-10 weeks for your permit to take effect.

#### What will this cost?

The application fee varies depending on the request, either \$275 or \$425 (includes the Assessors Office cost to prepare an abutters list for the Board). You will also be billed directly for the required legal ads by the newspaper (cost varies), have an approved permit certified by the City Clerk (\$10) and ultimately record it at the Hampden County Registry of Deeds (\$105).

#### Do I need to notify my neighbors or obtain their approval?

No, but a newspaper notice will be published and the City will mail a notice to all property owners within 300 feet of your lot, including information about your proposal and the public hearing, should they wish to attend or comment. The decision ultimately rests with the Board.

#### What do I do at the Public Hearing?

The Chair will introduce the application at which time you may present your case. You should state your name and address and summarize your request to the Board. Members of the Board may ask you questions as they discuss your petition. Members of the public will also be given an opportunity to ask questions of fact, and to speak for or against it. Though less formal, you should think of this process as if you were in court making a case to a judge or jury. You must provide evidence (by application materials and testimony) to support the Board's legal grant of a variance based on all of the following: (1) due to the **soil conditions, shape, topography or structures** unique to the property, a **substantial hardship** will result if the zoning ordinance is literally enforced, (2) the variance will not result in detriment to the public good nor (3) nullify or derogate from the zoning ordinance's intent and purpose.

### **What is a “substantial hardship”?**

A site-related substantial hardship is often a difficult hurdle to prove. The fact that something may simply be desirable is not a hardship. Unauthorized or preliminary construction, expenses already incurred, loss of potential profits and non-conforming conditions on nearby lots cannot justify a hardship. Furthermore, any hardship cannot be the result of a self-created situation.

### **What if I am unable to attend the hearing?**

If you or your representative cannot attend, you may request the Board continue your hearing to a future date. This can be done by contacting the Planning Office. Repeated continuance requests inconvenience the public and the Board, so a \$50 continuance fee may apply.

### **What if they ask for information I don't have?**

The Board may continue the hearing to a future date to allow more information to be considered. *(One the public hearing is closed, the Board cannot consider new information).*

### **Can I discuss my petition with Board members privately?**

No; all information and testimony which Board members will consider should be openly disclosed during the public hearing. You may discuss your petition anytime with City staff.

### **When does the Board make their decision?**

Generally, they vote the same night they close the public hearing, but they have a 100-day window for action (from the filing date). To grant your relief, all 3 members of the Board must vote in favor of your application *(the Board membership includes 2 alternate members).*

### **Can they impose conditions? What if I don't comply?**

Yes; the Board may impose conditions, safeguards and limitations. The Board generally discusses proposed conditions with you such that both parties can arrive at a consensus. However, the Board has the power to impose any conditions it sees fit. Failure to comply with the conditions of a variance may constitute a zoning violation, subject to enforcement action.

### **Can I ever change what I originally proposed and was approved for?**

If you propose later changes, you may file a Zoning Determination with the Building Department and/or ask the ZBA to determine if an application for a new or amended variance may be required. You should be aware that a variance is issued for the very specific purpose and manner you had proposed; it is not a blanket exemption from the rules.

### **What if my application is denied?**

If you do not prove the 3 criteria, the Board cannot make the needed findings and thus cannot grant your relief. Denied applications generally cannot be considered again for two years.

### **They approved my petition! Now what?**

A written record of the decision will be filed with the City Clerk shortly thereafter and also mailed to you. After 20 days (during which anyone aggrieved may appeal the decision) you must have the City Clerk sign the decision. Then, in order for the permit to take effect and before any building permit can be issued, you will need to record the document (bearing the City Clerk's signature) at the Hampden County Registry of Deeds (there is a Registry of Deeds satellite office located in City Hall).

### **Is a variance transferrable? Does it expire?**

The variance is linked to the property, regardless of ownership. If more than one year has elapsed since your variance was approved, and you have not exercised the relief it granted, it will have lapsed and you will need to reapply for a new variance, except that you may request one 6-month extension prior to the expiration date. Once it is exercised, however, a variance does not expire.