

Considerations for Zoning Variances



Prepared for: Painesville Township Board of Zoning Appeals

Each variance request should be carefully considered, keeping in mind the fact that the burden of proof rests with the applicant. There are two (2) types of variances: use vs. area. They are different and explained below.

Use Variances

Definition

The applicant is seeking relief for a particular land use not permitted in the district (residential, industrial, commercial). For example, a doctor wants to construct a doctor's office in a residential zone where the office would not otherwise be permitted.

Standard of proof

A necessary hardship must exist. This implies no economically viable or reasonable use of the property exists under the current zoning classification.

It should be noted that you are not required to give the best, most profitable use of the site, simply a viable use is sufficient.

Criteria (6)

1. Will the literal enforcement of the resolution result in an unnecessary hardship?

To show unnecessary hardship the owner must show that there is no viable use of the property under the zoning resolution, not simply that their desired use is not permitted.

2. Will the spirit of the resolution be observed and substantial justice done if the variance is granted?
3. Was the hardship condition created by the actions of the applicant?

Self imposed hardships for use variance requests are not sufficient grounds for variance approval. This is often viewed as a fatal flaw.

4. Is the condition unique to the property and not ordinarily found in the same district?
5. Will the variance adversely affect the rights of adjacent property owners?
6. Will the variance adversely affect the public health, safety, or general welfare?

Area Variances

Definition

The applicant is seeking relief from a dimensional requirement such as area, size, and setbacks as established in the Zoning Resolution. For example, a homeowner wants to construct an addition to their home which will result in a 12' side yard setback as opposed to the required 15' setback.

Standard of proof

A practical difficulty exists in conforming to the Zoning Resolution. This is less stringent than a use variance.

Practical difficulties exist whenever an area zoning requirement unreasonably deprives the landowner of a permitted use of their property.

Criteria

The Ohio Supreme Court set forth the "Duncan Factors" when considering area variances. There are seven (7) factors, all of which must be considered during the review process. All factors do not have to be satisfied; rather they shall be weighed together in the analysis.

1. Will the property yield a reasonable return or can there be a beneficial use of the property without the variance?
2. Is the variance substantial?
3. Will the essential character of the neighborhood be substantially altered or will adjoining properties suffer a substantial detriment if the variance is granted?
4. Will the variance adversely affect the delivery of governmental services?
5. Did the property owner purchase the property with knowledge of the zoning restrictions?
6. Can the problem be resolved by some manner other than the granting of the variance?
7. Will the variance preserve the "spirit and intent" of the zoning resolution and will "substantial justice" be done by granting the variance?

The BZA shall apply the factors consistently for the courts to give deference to the decisions. Furthermore, the BZA may consider additional factors, such as:

1. Complete a detailed and thorough investigation of the facts before making a decision.
2. The burden of proof is on the applicant to establish either "practical difficulty" or "unnecessary hardship."
3. Economic impact (increase or decrease of property value) does not, by itself, constitute a sufficient hardship justifying a variance.
4. Ask if the situation is substantially unique? There should be concern for setting precedent to the extent that the problems alleged are not substantially unique and exist for other similarly situated property.
5. Is the applicant trying to avoid re-zoning the property; or recently denied a zone change?
6. Does the Zoning Resolution need to be revised?
7. Do not be swayed by emotional appeals.
8. Always grant the minimum variance necessary.
9. Remember the standards of "practical difficulty" and "unnecessary hardship".
10. Always make sure your decision is based upon the evidence presented at the hearing.
11. Always refer to your zoning resolution.