
ZONING BOARD OF APPEALS
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ATTORNEY TO THE ZONING BOARD
THOMAS DELLAPENNA, ESQ.



EVENINGS AT 7:00 P.M.
TOWN OFFICE BUILDING
BOARD ROOM, 2ND FLOOR
(USE MAIN ENTRANCE)

RELAX & TAKE A DEEP BREATH

A Town of Union Official has just informed you that it is not possible for him to grant you a building permit. Do you have to do without that needed bedroom, the larger kitchen or the patio roof? The answer is "Not Always"! Based on 1985 & 1986 figures, one building permit in every ten was denied for various reasons. This pamphlet will help explain the reason the permit request was denied and the procedure necessary to possibly receive permission to accomplish your project.

THE BUILDING INSPECTOR DID NOT LISTEN TO THE REASONS WHY I NEEDED MY REQUEST GRANTED

It is not that the Inspector didn't listen or didn't care about your problem! By Law the Building Inspector has to enforce Zoning Law as written and does not have the power to grant permits based on one's personal needs. In some cases, the inspector may suggest alternatives that can be approved.

WHY CAN'T I DO WHAT I WANT TO DO?

In most cases, it is one of three reasons that your request was denied. The reason was probably one (or more) of the following items:

The Town of Union Zoning Ordinance requires certain setbacks from property lines to structures on the lot. Also, accessory structures, such as sheds and pools, have to have a minimum setback from the principal building or other accessory structures. In many cases, the existing structures on the lot do not meet the current Ordinance.

Each parcel of land in the Town of Union is zoned based on a comprehensive plan. The comprehensive plan portrays the Town's future land use scheme and in doing so, may conflict with current uses on the lot. It is possible that a residential use currently exists on a parcel designated on the master plan and zoning map as commercially zoned property. Since residential uses are not permitted in commercial districts a permit cannot be issued.

The Building Inspector has to enforce the Zoning Ordinance as he reads it. It may be possible for you to read the same section of the Ordinance and disagree with the Inspector's ruling.

THE INSPECTOR SAID MY PROPERTY WAS NONCONFORMING

WHATEVER THAT IS

"Nonconforming" simply means that the existing structure or use of the property does not meet the current laws. Any legal use or building established before April 4, 1984 may be nonconforming; you may continue to use your property as it currently exists. However, in almost all cases, if you want to increase the size of the building, change the use, or add structures to the lot, the property then must conform to current regulations, or you will require a variance from the Zoning Board of Appeals.

WHAT IS THE BOARD OF APPEALS?

The Zoning Board of Appeals is a seven (7) Member "Quasi Judicial" Board comprised of Town of Union residents appointed by the Town of Union Town Board. It is the function of the Board of Appeals to give applicants permission to do something

contrary to the Zoning Regulations, provided the Applicant provides SUFFICIENT evidence to JUSTIFY the variance. The Board of Appeals has the legal power to issue area and use variances, and also resolve issues concerning disagreements with the decision of the Building Inspector. The Zoning Board also "interprets" the meaning of the Zoning Ordinance.

WHAT IS AN AREA VARIANCE? & WHEN CAN THE BOARD OF APPEALS ISSUE ONE

In the case of an "Area" variance, the Applicant is seeking modification of dimensional standards, such as yard requirements; setback lines lot coverage, or bulk requirement, so that the property may be utilized for one of the uses permitted by the Zoning Ordinance. The Zoning Board shall 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. In making such consideration, the Board shall 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 alternative method, feasible for the applicant to pursue, other than an area variance.
- 3) whether the requested variance is substantial

- 4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood;
- 5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The Board of Appeals, in the granting of area variances, shall 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.

WHAT IS A USE VARIANCE AND WHEN CAN THE BOARD ISSUE ONE

A use variance gives permission to the Applicant to use the property contrary to the uses permitted in the Zoning Ordinance. No such use variance shall be granted by the Board of Appeals without a showing by the Applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the board of appeals *that "for each and every permitted use under the zoning regulations for the particular district where the property is located,"*

- 1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as **demonstrated by competent financial evidence;**
- 2) the alleged hardship relating to the property in question is unique and does not

apply to a substantial portion of the district or neighborhood;

- 3 that the requested use variance if granted will not alter the essential character of the neighborhood; and;
- 4) the alleged hardship has not been self-created.

The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

THE BURDEN OF PROOF IS ON THE APPLICANT

Applicants should be prepared to present facts (letters, photos, financial statements, testimony, etc.) that will prove to the Board of Appeals that the above listed considerations will be in harmony with the general purposes and intent of the Zoning Ordinance, and will not be injurious to the neighborhood, impair the development of adjacent properties, or be detrimental to the public welfare. That the hardship or problem is real and cannot be practically resolved in any other way than be a variance.

CONCLUSION

The Zoning Board of Appeals CAN help you and grant relief from Strict Application of the Zoning Laws, but only if you do your homework and clearly demonstrate your hardship/difficulty and sufficiently address the considerations outlined in this pamphlet.

IMPORTANT NOTE

This brief pamphlet is not intended to provide a comprehensive outline of all the various aspects of Zoning Laws and the Zoning Board of Appeals. It is merely intended as a simple orientation for the Applicant with which to get started, and to briefly explain the process involved in applying for a variance.

Additional more specific legal assistance can be obtained from an Attorney versed in Town Law and Zoning.

If you have any questions, please feel free to contact the Building Official or the Secretary to the Zoning Board at 786-2920.

Fees:

Residential uses have a \$100.00 application fee. Commercial and Industrial uses have a \$200.00 application fee.

NOTES: