

**TOWN OF LYNDON  
BOARD OF APPEALS**

**GUIDE FOR APPLICANTS FOR A ZONING VARIANCE**

**1. APPLICATION PROCEDURE.**

- (A) Schedule a meeting with the Plan Commission to review your proposal.
- (B) If the Plan Commission determines that you need a variance in order to complete your project, obtain a variance application form from the Town Clerk.
- (C) Ask the Town Clerk for a tentative hearing date. You will then be given the deadline date for submitting the application.
- (D) Complete the application and submit it to the Town Clerk with the required fee.
- (E) Applications must include the following, at a minimum:
  - 1. The original signature of all owners of the property, including spouses or other joint owners. If owned by a corporation, partnership, LLC, or other organization, the signature of an authorized officer, member or partner is sufficient.
  - 2. The legal description of the property.
  - 3. A plat of survey that:
    - (a) was prepared by a Registered Land Surveyor,
    - (b) accurately depicts the current status of the parcel including boundary lines and all improvements, and
    - (c) was prepared not more than five (5) years before the date of application.
  - 4. A site plan, drawn to scale, indicating the location of all existing structures and the proposed construction; lot lines; size of lot; streets and other public ways; driveways; off-street parking; loading areas; and existing and proposed front, side, and rear yards. If the site plan is not prepared by a surveyor, architect, or engineer, it must be approved by the Plan Commission as being substantially equivalent in quality and accuracy to a site plan prepared by a surveyor, architect or engineer.
  - 5. Unless waived by the Plan Commission, a topographical map with two-foot contour lines, if the property contains a difference in grade elevation of two feet or more between

- any two points within twenty-five feet from the area of proposed construction.
- 6. Photographs of the property.
- 7. Names and addresses of owners of property within 300 feet of the boundaries of the property for which you are seeking a variance, and all others who potentially will be affected by the variance.
- 8. Additional information requested by the Plan Commission.

You may present any additional information with the application or at the hearing that you feel will assist the Board of Appeals in reaching a decision - but see the final section below, "5. Practical Advice to Applicants".

(F) Unless waived by the Plan Commission, not later than one week before the hearing the property must be accurately staked to indicate the property boundaries. In addition, if the project involves any excavation or lateral expansion of a structure, the location of the project shall be staked.

## 2. STANDARDS FOR VARIANCES.

The Board of Appeals cannot grant a variance just because they think the proposal would be great for the neighborhood, or because they think you're a wonderful person, or because the tax base will be enhanced. The Board is required by state law to deny your request unless you convince them that your proposal passes all three of these tests:

- (A) **PRACTICAL DIFFICULTY/UNNECESSARY HARDSHIP.** The ordinance that you're seeking a variance from applies to all properties in the town. You need to show how that ordinance results in a practical difficulty or unnecessary hardship on *your* parcel. Fixing an inconvenience, lifestyle enhancement, aesthetics, and similar *personal* factors are not enough. The unreasonable difficulty or hardship must arise from *the application of the ordinance to the property.*

This test often (but not always) relates to the buildings on the property - for example, a house built before zoning doesn't meet the minimum setbacks, and you want to do some construction that isn't allowed by the current ordinance. This *might* qualify for a variance.

- (B) **UNIQUE PROPERTY LIMITATIONS.** Unique physical characteristics of your property must prevent you from completing your project in compliance with the ordinance, and the Board must conclude your proposal is the most reasonable alternative. The *property* must qualify for the variance, *regardless of your particular preferences.*

This test often (but not always) relates to the land - for example, a lot approved before zoning doesn't meet the minimum dimensions (area, width, depth, street frontage, shoreline frontage), and you want to do

some construction that isn't allowed by the current ordinance. This *might* qualify for a variance.

- (C) **NO HARM TO PUBLIC INTEREST.** The key point the Board will consider under this test is whether your proposal is consistent with the reasons the particular zoning ordinance was adopted in the first place. We recommend you carefully read section .04 of the zoning code, "Intent", to understand the Town's reasons for adopting the code.

Then, decide which goals are served by the specific code section you're seeking relief from. Note that §.04 has 12 subsections.

You need to be prepared to persuade the Board that your request is fully compatible with *all 12* items in §.04 but focus on the items that are most important in your case.

For example, one of the key reasons for the dimension and setback requirements is §.04(8) - to "provide adequate light, air, sanitation, drainage, and open space." That's five separate points in a single subsection. You should be prepared to address those points, along with all of the other subsections.

### **3. FACTORS THE BOARD MAY CONSIDER.**

Some of the factors the Board may consider are the following. Be ready to give realistic, honest, and detailed responses to questions you may be asked by the Board.

#### **PRACTICAL DIFFICULTY/UNNECESSARY HARDSHIP FACTORS**

- (A) **Alternatives That Would Meet the Code:** Are there any alternatives the applicant could utilize that would fully comply with the ordinance? If so, would it be unreasonable to insist the applicant resubmit a plan that meets the ordinance?
- (B) **Alternatives That Still Need a Variance:** Are there any alternatives that would result in a lessened degree of violation of the ordinance (i.e., reducing dimensions)? If so, would it be unreasonable to insist the plan be redrawn and resubmitted?
- (C) **Number of Violations:** How many code sections does the proposal violate?
- (D) **Degree of Violation:** By how much does the proposal violate the standard in the ordinance?
- (E) **Cause of Violation:** Was any part of the problem caused by previous acts by the applicant, i.e., is this a self-created hardship?

### UNIQUE PROPERTY LIMITATION FACTORS

- (F) **Uniqueness:** Has the applicant proved the unique physical characteristics of the property prevent completion of the project in compliance with the ordinance?
- (G) **Similar Cases:** Has the Board addressed similar cases in the past? If so, is the applicant's property truly unique?

### PUBLIC INTEREST FACTORS

- (H) **Neighbors' Feelings:** How do the neighbors feel about the proposal?
- (I) **Feelings of Others:** How do other residents of the Town, the DNR, and any other interested parties feel about it?
- (J) **Impact on Town Infrastructure:** How will the proposal affect existing Town services (fire protection) and Town roads (and sanitary sewers if applicable), from the standpoints of increased use, congestion, safety, adequate capacity, and road maintenance needs?
- (K) **Impact on Other Infrastructure:** How will the proposal affect school enrollment, police protection needs, and congestion on county or state roads?
- (L) **Compatibility With Neighborhood:** Will the proposal result in something that is seamlessly compatible with the immediate neighborhood?
- (M) **Consistency With Long Range Plan:** Is the proposal fully consistent with the Town of Lyndon Long Range Plan?
- (N) **Environmental Impact on the Parcel:** Will the proposal increase the risk of erosion, water pollution, loss of vegetative cover due to grading, loss of vegetative cover due to decreased sunlight, or other environmental concerns?
- (O) **Environmental Impact on the Neighborhood:** Will the proposal impact the neighbors in such ways as surface water diversion, decreased air or sunlight to neighboring parcels, noise, airborne matter, groundwater pollution, or soil contamination?
- (P) **Environmental Impact Beyond the Neighborhood:** Will the proposal have negative impacts beyond its location in terms of surface water, ground water, air (including smoke, dust, other particulates), soil, or noise?
- (Q) **Aesthetics:** Will the project have an attractive, pleasing appearance?
- (R) **Precedent for Future Requests:** If we say "yes" to this proposal, would we have any hesitation in approving ten or fifty identical requests from others? What is the likelihood of similar requests being presented?

The factors listed above are in no particular order, and are not in order of importance. Success or failure is not a matter of counting the factors in your favor and the factors against you. Some of the factors will be given more weight than others, depending on the situation. For example, a proposal to build a garage one foot from your lot line would have an impact on your immediate neighbor. If your neighboring property were a public park or a cemetery, the Board might look at it differently than if your neighbor were another family.

#### **4. FACTORS THE BOARD MAY NOT CONSIDER.**

There are two factors the Board may not consider. Applicants are strongly advised to refrain from any mention of either factor:

- (A) **Economic Benefit:** Of course your project will increase the local tax base. The Board knows that already. But there's a more important reason this factor should not be mentioned: it implies that the rules on land use can be bent in exchange for money. The future of the Town of Lyndon is not for sale.
- (B) **Personal Issues:** Don't raise any personal issues, such as: You're a lifelong resident, your father was Town Chairman, you've been a leading volunteer for community betterment, you're a perfectionist and the project will have the finest materials and craftsmanship, your spouse is quite ill and you have to put a new ADA-compliant bathroom in, and so on.

Land use decisions are not personal decisions. Property ownership changes hands but the property remains. The Board judges the application, not the applicant.

#### **4. PRACTICAL ADVICE TO APPLICANTS.**

If you haven't appeared before a local governmental body before in a similar situation, this section should be helpful. Keep in mind that the people who serve on the Board of Appeals and other similar bodies do so to serve the communities they live in. They don't do it for money - many local boards are unpaid and the others get a nominal amount. And they don't do it for power - they would rather find a way to say yes to an applicant than to have to say no.

With that in mind, consider these suggestions:

- (A) **Be Careful.** There are two major no-no's to avoid:
  - 1. Don't lobby any of the Board members at any time before the hearing. They act in what the law calls a "quasi-judicial capacity", and it is not proper to pitch your situation to any of them before the hearing.
  - 2. Don't say a word at the hearing about economic benefit or personal matters. See section 4 above.

- (B) **Be Prepared.** Before the hearing starts, be sure you have everything that is required - maps, drawings, photos, surveys, plans, and so on. You may have a representative speak on your behalf if you want - an attorney, contractor, or architect, for example - but it's better to do it yourself if that's feasible for you. If your neighbors support your proposal, ask them to come to the hearing. If they can't, ask them to sign a brief letter to the Board supporting you. Read this Applicants' Guide carefully. Be ready to answer any questions.
  
- (C) **Be Polite.** It's fine to address the Board members by first name, but if you're acquainted with any of them don't act like bosom buddies. Keep it businesslike: act as if you were speaking at a business meeting with your boss watching you. Don't interrupt other speakers. Don't speak until recognized by the Chair. Casual language and casual dress are fine, but profanity won't make a good impression. Other ways to make a negative impression: arguing with a Board member; raising your voice; threatening a lawsuit if you don't get what you want.
  
- (D) **Be Prepared.** This is too important to mention just once. To find out how the Board has handled similar situations, make an appointment to meet with the Town Clerk to review the files on recent variance requests. If the Board turned down a similar request, be ready to show how your request is different.
  
- (E) **Be Brief.** When the Chair recognizes you, don't simply stand up and ask for questions; give a brief summary first. Hit the high points, focusing on hardship/difficulty, uniqueness, and public interest. The Chair may set a time limit on your presentation, so be sure to be direct and don't repeat yourself. Then, introduce the neighbors who came to support you. Be ready for questions.

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