

ZONING REGULATIONS

415 Attachment 2

Town of Winchester

Appendix B Zoning Board of Appeals

1. Establishment. There shall be a Zoning Board of Appeals pursuant to the provisions of C.G.S. Chapter 124 (C.G.S. § 8-1 et seq.).
2. Powers and duties. The Zoning Board of Appeals shall have the following powers and duties:
 - a. Appeals. To hear and decide appeals where it is alleged that there is an error in any order, requirement or decision made by the official charged with the enforcement of these regulations.
 - b. Variances. To determine and vary the application of these regulations in harmony with their general purpose and intent, and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not generally affecting the district in which it is situated, a literal enforcement of such regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and public safety and welfare secured.

No variance shall be granted by the Zoning Board of Appeals unless it finds the following:

- i. The variance would be in harmony with the purposes of these regulations, as set forth in § 415-1 of these regulations;
- ii. The literal enforcement of these regulations would result in unusual hardship, as the same has been defined by the courts of the State of Connecticut and as summarized;
- iii. The hardship recognized by the law is that of the property, due to its unique shape, topography, or other inherent condition; the personal hardship of the owner, such as age or family condition, is not a legal hardship which would support the granting of a variance; except to the extent required by the Americans with Disabilities Act.
- iv. The hardship must not be merely financial, such as that the owner would make more money or lose less money if the variance were granted, as financial hardship is personal and not inherent in the property itself.
- v. The hardship must be unique to the property, in the sense that it is a characteristic which is not exhibited by other properties in the area or in the district, and which makes it appropriate for special treatment. Merely being too small or too narrow is not a legal hardship unless it restricts the property from being put to a reasonable use permitted in the subject district.

WINCHESTER CODE

- vi. The hardship must not be created by the owner or his/her predecessor in title, such as by dividing a parcel to create lots which cannot support the desired use; or creating a topographic condition by excavation, fill or other measures which render the property unusable for its highest use without a variance; or by building a structure which, for whatever reason, violates a current zoning regulation.
 - vii. In accordance with Connecticut case law, the Board is prohibited from varying any condition or requirement set forth in these regulations for a special exception use, such uses being permitted in the subject district only when all conditions or requirements contained here are satisfied.
 - viii. The burden is on the applicant to demonstrate that the requirements for a variance have been met.
 - ix. Variances are to be granted sparingly, and only to the minimum extent necessary to allow property to be used for the least intense use which is permitted in the subject district.
- c. Use Variance. No use variance shall be granted merely because the permitted uses result in a particular difficulty or provide less than the highest and best return to the owner. The Zoning Board of Appeals may, upon application by the owner, grant variances authorizing otherwise prohibited uses if the applicant makes an affirmative showing that:
- i. A dimensional variance will not relieve the exceptional difficulty or hardship;
 - ii. In view of the available alternatives, the public interest would be best served by permitting such use at the proposed location; and
 - iii. The public interest cannot reasonably be served by location of such use in a district in which it is permitted.
- d. Other Duties. The Zoning Board of Appeals shall hear and decide all matters referred to it and upon which it shall be required to pass under any provision of these regulations or the Connecticut General Statutes.