

TOWN OF ANDOVER  
**ZONING BOARD OF APPEALS**  
WEDNESDAY, FEBRUARY 2, 2022 - 7:00 P.M.  
LOCATION: COMMUNITY ROOM – TOWN HALL

**SPECIAL MEETING MINUTES**

**Members Present:** William Desrosiers – Chair, Kathleen Skorka – Vice Chair, William Munroe, and Ylo Anson

**Member Absent:** Walter Weir and David Gostanian (alternate)

**Others Present:** Zoning Agent – Jim Hallisey, Board Clerk – Abbie Winter, Mark Branse, Jed Larson, and Kathy Desrosiers

- 1) CALL TO ORDER: Chair W. Desrosiers called the special meeting to order at 7:07 p.m.
- 2) PRESENTATION – THE ROLE OF THE ZONING BOARD OF APPEALS  
Mark Branse, an Attorney with the firm of Halloran & Sage, who is Counsel for Andover's Land-use Boards, will present an informational session on the role of the Zoning Board of Appeals. Specific topics shall include holding a meeting, variances and the legal definition of a hardship. Questions and answers to follow.

M.Branse presented a land use presentation to review details of all Land Use boards, and the details specific to the ZBA. He reviewed the ZBA's purpose, statutory authorization, requirements, jurisdiction, and variance case examples from other towns. Board members asked clarifying questions

3) MISCELLANEOUS

4) ADJOURNMENT

W.Monroe MOVED to adjourn the meeting at 9:00 p.m. Y.Anson SECONDED. MOTION CARRIED unanimously.

Respectfully submitted by Abbie Winter,

*Abbie Winter*

Please see the minutes of subsequent meetings for the approval of these minutes and any corrections hereto.

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# Land Use Presentation

## Coventry ZBA

November 23, 2021

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Richard P. Roberts, Esq.

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# Establishment ZBA

- When a zoning commission has been established, a zoning board of appeals must exist as well.
  - Relief valve from strict applicability of zoning regulations
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# Statutory Authorization

- The ZBA may vary from the zoning regulation as long as the variance is consistent “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 the parcel of land where owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such . . .”
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# Establishment

- Make-up of ZBA
    - 5 regular members
    - 3 alternate members
  - Charter determines if members are elected or appointed and how vacancies are filled
  - Minority representation law applies
    - 4 of 5 regular members from one party is the maximum
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# Regular Meetings

- Meetings shall be open to the public.
  - No member of the public shall be required to sign in, furnish any other information, complete a questionnaire or meet any condition as a prerequisite to attendance.
  - Meetings may be recorded, photographed or broadcast in an inconspicuous manner and in a way so as not to disturb the proceedings of the public agency.
  - Votes of members must be reduced to writing and made available for public inspection within 48 hours.
  - Minutes of meetings must be made available for public inspection within 7 days.
  - Decision must be published in newspaper
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# Regular Meetings

- Schedule of regular meetings for the upcoming year must be filed with the town/city clerk by January 31<sup>st</sup>.
  - Agenda of regular meetings shall be filed not less than 24 hours before the start of the meeting in the agency's regular office or, if none, with the town/city clerk.
  - Items not on the agenda of a regular meeting can be added and acted upon with the vote of 2/3 of those members present and voting.
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# Special Meetings

- Notice must be posted with the town/city clerk at least 24 hours before any special meeting.
  - Notice shall state the time and place of the meeting and the business to be transacted.
  - Notice must be delivered to the home of each member of the agency prior to the special meeting unless a member files notice with the town/city clerk that delivery of notice is not required.
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# Special Meetings

- Requirement of home notice is waived if the member is present at the meeting.
  - No other business may be transacted at the special meeting.
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# ■ Hearing Process

- Application officially accepted at first regularly scheduled meeting after filing or 35 days, whichever is earlier.
- Time limits for review
  - Public Hearing
    - Must begin within 65 days of acceptance of application
    - Must be completed within 35 days of opening
    - Decision must be made within 65 days of close of hearing
    - Commission has 65 additional days for extensions with the consent of the applicant

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# ■ Public Hearing

- Publication twice
    - No more than 15 days nor less than 10 days
    - No less than 2 days
  - Quorum required
  - Hearing must be recorded
  - Applicant can record the hearing separately
  - Any communication by or to a quorum of the commission, whether in person or by electronic equipment, to discuss or act upon a matter over which the commission has authority can be deemed a meeting.
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# Vacancies

- Filling of vacancies is determined by charter.
  - Regular members may designate the alternate who replaces him/her if absent. If not, then the chairman may designate the alternate who will be seated.
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# Limitations on Appearing Before Boards

- No member of a ZBA may appear before the ZBA or PZC on behalf of another person, firm, corporation, etc.
  - ZBA member may appear on his/her own behalf.
  - Member may not participate in a hearing or decision in which he/she has a personal or financial interest.
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# Jurisdiction

- Variances
  - Appeals from orders of the ZEO
  - Special exceptions, but only if given the authority by the zoning regulations.
  - Location permits for:
    - Car dealerships and repairers
    - Vehicle recyclers (junk yards to you and me)
    - Gas stations
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# What is a variance?

- An authorization obtained from a zoning board of appeals to use property in a manner which is otherwise prohibited by the zoning regulations. See C.G.S §8-6(a)(3)
    - Variances can be granted only when “exceptional difficulty or unusual hardship”
    - The hardship must be unique to the subject property
    - Variance must be consistent with the general purpose and intent of the zoning regulations (comprehensive zoning plan)
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# General Considerations

- Variances should be sparingly granted.
- If variances were regularly granted it would destroy the whole zoning scheme which provides for orderly development and reliance.
- A variance should not be granted if it is inconsistent with the general purpose and intent of the regulations or would adversely affect public health, safety and welfare or property values in the area



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# General Considerations

- A variance runs with the land and can be utilized by all subsequent property owners. It does not expire when the property is sold.
  - A variance for a specific property can prevent unreasonable restrictions on its use and a taking of it by providing relief.
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# Variances

- ZBA must state reason for its granting of a variance (§ 8-7)
  - ZBA can't approve a variance application when a prior application for the same variance has been denied
    - Exception: change in circumstances
  - No de minimis variances
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# Conditions on Variance

- ZBA can grant variance with conditions even though statute does not provide for conditions.
  - Condition must relate to the land to which the variance applies.
  - Variance is not effective until conditions have been satisfied.
  - Hardship is required to amend or remove a condition.
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# Use Variances

- A use variance may be granted if the use is not prohibited in the municipality, is consistent with the comprehensive plan, is consistent with the general purpose and intent of the regulations and a hardship is shown.
  - If zoning regulations state that a particular use is prohibited the ZBA cannot grant a variance.
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# What is a hardship?

- A hardship must be unique. Thus, it must be more burdensome and different from the same restriction imposed on other properties in the area.
  - Economic hardship or financial advantage are not proper considerations for a variance.
  - Variances must occur because of circumstances beyond the applicant's control, thus self-created hardships cannot support a variance.
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# What is a hardship?

- Hardship is one that originates in the zoning ordinance and rises directly out of the application of the ordinance to circumstances or conditions beyond the control of the property owner.
  - The phrase exceptional difficulty or unusual hardship must be viewed as a whole
    - Even if exceptional difficulty exists prohibiting addition to building, variance not proper if reasonable use exists without variance
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# What must an applicant prove?

- Proof of practical difficulty or unusual hardship is a condition precedent to granting a variance.
  - The applicant has the burden of proving the hardship.
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# What must an applicant prove?

1. The variance must not substantially affect the comprehensive zoning plan.
    - If the use to be allowed by the variance is consistent with other uses in the area the first part of the variance test is met.
      - Example: Houses in the area were built on lots which were the same size or smaller and with similar setbacks but exceptional difficulty or unusual hardship might be hard to prove.
  2. The application of zoning regulations would cause an **unusual hardship**.
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# What must an applicant prove?

- The applicant must show that because of some peculiar characteristic of this property the strict application of the zoning regulations results in unusual hardship as opposed to the general impact which the regulation has on other properties in the zone.
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# Hardship

- Loss of competitive advantage is not a basis for variance.
  - Financial considerations are only relevant if the application of the zoning regulations completely destroys the value of the property
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# Examples of legitimate hardship-

1. Proof that there is no market value for the property without the requested variance. Variance for a rooming house was upheld where the building was functionally obsolete and could not attract retail business or commercial offices which were permitted within the zone.
  2. State condemnation of property and filing of a variance under §48-24 (no hardship required).
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# Examples of legitimate hardship-

3. Narrowness and topography providing little area for construction.
4. Variance which eliminates a non-conforming use is an independent ground for approving a variance.
5. In some circumstances, construction done in reasonable reliance to an erroneously issued building permit.

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## Examples where no hardship exists-

1. Paying taxes on two abutting parcels but only being able to improve one.
  2. Having one of the highest tax bills because of the assessment calculation will not allow for the division of a parcel into two lots.
  3. Construction under building permit when owner should have known involved zoning violation
  4. Construction within setback.
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## Examples where no hardship exists-

5. Sale of some property which leaves the remainder a non-conforming lot is self-created.
  6. Financial loss.
  7. Loss of competitive advantage.
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# Practical Considerations

- No one objects
  - Reasonable request
  - Other similar structures and locations on nearby properties
  - Always, always tie variance to particular plan proposed
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# Legal Challenges to Variances

- Most appeals of variances are sustained because hardship is difficult to prove.



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# Appeal from Decision of ZEO

- ZBA acts in a quasi-judicial capacity
  - ZEO is an administrative officer
    - Grants certificate of compliance
    - Issues C&D orders
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# Appeal of Enforcement Decision

- Appeal from Decision of ZEO
  - “De Novo” Review
    - Not really an appeal deciding if ZEO was correct
    - ZBA steps into the shoes of ZEO and decides based on evidence submitted during hearing
    - No hardship required- question is whether person appealing is in violation of regulations
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# Appeal and Variance Application

- When appeal of C&D order and variance application are filed simultaneously, the appeal is decided before the variance application.
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# Appealable Issues

- Refusal of ZEO to enforce zoning regulations is not an appealable decision because enforcement is discretionary.
- Decisions of ZEO, even when not in form of a formal C&D order, can be appealable

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# Certificates of approval of location

- Motor vehicle dealers and repairers
    - C.G.S.14-54-ZBA
  - Gasoline Stations
    - C.G.S. 14-321- Zoning Commission or PZC
  - Motor Vehicle Recyclers
    - C.G.S. 14-67i-ZBA
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# Considerations for location

- Standards for review unclear
    - ❑ Statute contained criteria was repealed – *One Elmcroft Stamford v. ZBA Stamford*
    - ❑ Old standard may be instructive in the absence of any other guidance
      - suitability of the proposed location in view of the proximity of schools, churches, theaters, or other places of public gatherings, intersecting streets, traffic conditions, width of the highway and the effect of public travel.
      - proposed location will not imperil the safety of the public.
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# Land Use Presentation Coventry ZBA

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