

# INFORMATION ABOUT VARIANCES

## TYPES OF VARIANCES

### (a) Appeal of an Administrative Decision

An Appeal of an Administrative Decision is a request for the review of a decision made by the Zoning Officer to determine if the decision was in error under the provisions of the Zoning Ordinance or relevant statutes. Only the Zoning Board of Adjustment may hear such a request.

### (b) Interpretation or Special Question

An Interpretation is a request for the interpretation of the Zoning Ordinance or Map, or for a decision on "special questions" which may arise in connection with the administration of the Zoning Ordinance. Only the Zoning Board may hear such a request.

### Bulk (c) Variance

A bulk (c) variance (sometimes referred to as a "hardship" variance) is the relief of requirements from the Zoning Ordinance, which generally relates to physical features, such as lot and yard requirements. Either the Planning Board or Zoning Board has authority to hear bulk (c) variance requests.

### Use (d) Variance

A use (d) variance is a request to permit the following:

1. use or principal structure in a zone that restricts such a use or principal structure,
2. expansion of a non-conforming
3. deviation from a specification or standard pursuant to a conditional use, use,
4. an increase in the permitted density (permitted number of dwelling units/gross area),
5. an increase of more than ten (10') feet or 10% of the permitted height of a principal structure. A use (d) variance may be heard only by the Zoning Board of Adjustment, approved only on the affirmative vote of five (5) members. All other requests may be decided by a simple majority of the Board members present and voting.

## STANDARDS FOR VARIANCES

The requirements of the Zoning Ordinance and other relevant laws and ordinances are presumed to further the purposes of zoning embodied in the Municipal Land Use Law (M.L.U.L.). Therefore, every variance must, at least presumptively and to some limited extent, create some detriment to the public interest. The burden of proof is on the applicant to show that the application meets certain tests.

### Bulk (c) Variance

1. The strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property
  - a. By reason of exceptional narrowness, shallowness or shape of a specific piece of property, or
  - b. By reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or
  - c. By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon; or
2. In an application or appeal relating to a specific piece of property the purposes of the M.L.U.L. would be advanced by a deviation from the Zoning Ordinance requirements; that the variance can be granted without substantial detriment to the public good; that the benefits of this deviation would substantially outweigh any detriment; and that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

### Use (d) Variance

For use (d) variances, the Board must review the positive and negative aspects of the application. The applicant must demonstrate that:

1. Relief can be granted without substantial detriment to the public good and
  2. Will not substantially impair the intent and purpose of the zone plan and zoning ordinance
- Or that:
3. The proposed use is an inherently beneficial one;
  4. It is not inherently beneficial, but the proposed site is particularly suited to the use; or
  5. The property would be zoned into inutility without the variance.