

SECTION 21
ZONING BOARD OF APPEALS

- 21.1 General. The Zoning Board of Appeals shall have all of the powers and duties prescribed by these Regulations and the General Statutes of the State of Connecticut. The powers and duties of the Zoning Board of Appeals include the following:
- 21.1.1 to hear and decide appeals where it is alleged that there is an error in any order, requirement or decision made by the agent of the Commission, or any other official charged with the enforcement of these Regulations;
 - 21.1.2 to hear and decide all matters including Special Permits in which it is required to pass by the specific terms of these Regulations; and
 - 21.1.3 to determine and vary the application of provisions 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 affecting generally the district in which it is located, a literal enforcement of these Regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare preserved.

[From former Section 52.1, Renumbered Only Effective 3-7-08]

- 21.2 Policy for Grant of Variances. It shall be the policy of the Zoning Board of Appeals, when exercising the power to determine and vary the application of these Regulations as described in Paragraph 21.1.3., to make all of the following findings:
- 21.2.1 that there exist conditions, fully described in the findings, especially affecting the parcel of land for which a variance is sought, as a result of which conditions a literal enforcement of these Regulations would result in exceptional difficulty or unusual hardship;
 - 21.2.2 that such conditions do not affect generally the district in which the parcel is situated;
 - 21.2.3 that, for reasons fully set forth in the findings, the variance is necessary to relieve the exceptional difficulty or unusual hardship and is the minimum necessary to accomplish such purpose; and
 - 21.2.4 that the variance will be in harmony with the purpose and intent of these Regulations and will conserve the public health, safety, convenience, welfare and property values.

21.2.5 where a variance application is predicated upon the American with Disabilities Act, that the variance sought constitutes a “reasonable accommodation,” as that term has been applied by the courts of the United States for needs of a “disabled person,” as that term is defined in the American with Disabilities Act.

[From former Section 52.2, Amended Effective 3-7-08]

21.3 Conditions: Expiration Date. The Zoning Board of Appeals may in its discretion require any application for a variance or Special Permit under this Section to be accompanied by certification of the Director of Health of the Town of Old Lyme that the proposed provisions for water supply and sewage disposal comply with all sanitary codes, rules and regulations. Applications for Special Permits and variances granted by the Zoning Board of Appeals shall be subject to such terms and conditions as may be prescribed by the Board, but no Building or Use which has or may be authorized by said Board shall be commenced more than eighteen (18) months after the effective date of granting of such Special Permit or variance, and no such use or occupancy shall be permitted unless the same has been substantially completed within three (3) years of said date.

[From former Section 52.3, Revised Effective 3-7-08]

21.4 Use Variances. The Zoning Board of Appeals shall adhere to the following when application is made for a variance of use permitted or prohibited under these Regulations:

21.4.1 Where a use of land, buildings or other structures is permitted in a district subject to administrative approval of a SITE DEVELOPMENT PLAN in accordance with Section 13A of these Regulations, a variance in connection with such use may be granted only subject to submission and approval of a SITE DEVELOPMENT PLAN by the agency designated by these Regulations to review such applications.

21.4.2 Where a use of land, buildings or other structures is prohibited in a district but is permitted in another district subject to administrative approval of a SITE DEVELOPMENT PLAN in accordance with Section 13A of these Regulations, a variance to permit such use may be granted only subject to submission and approval of a SITE DEVELOPMENT PLAN by the agency designated by these Regulations to review such applications.

21.4.3 No variance shall be granted which would permit a use of land, buildings or other structures prohibited in all districts in the Town.

[From former Section 52.4, Amended Effective 3-7-08]

21.5 Appeals and Variances in Flood Plain District. These Regulations impose special requirements applicable in the Flood Plain District as set forth in Section 4.4. The Zoning Board of Appeals shall hear and decide appeals and requests for variances from the Flood Plain District requirements as follows:

- 21.5.1 to hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Zoning Enforcement Officer in the enforcement and administration of Section 4.4;
 - 21.5.2 to issue variances from the standards of Section 4.4 taking into account the general considerations and conditions for variance specified in Paragraph 21.6; and
 - 21.5.3 to issue variances for the repair or rehabilitation of historic structures without regard to the provisions of Paragraph 21.6 upon a determination that i) the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure, and ii) the variance is the minimum necessary to preserve the historic character and design of the structure.
- 21.6 Considerations and Conditions for Variance in Flood Plain District. The following considerations and conditions are applicable to action on applications for and grant of variances in the Flood Plain District:
- 21.6.1 Considerations of Variance: When acting on applications for variance of the special requirements of Section 4.4, the Zoning Board of Appeals shall consider
 - a) the technical evaluations and studies that are the basis of Section 4.4, b) the standards of Section 4.4, and c) the following:
 - a. the danger that materials may be swept onto other lands to the injury of others;
 - b. the danger to life and property due to flooding or erosion damage;
 - c. the susceptibility of the proposed facility and its contents to flood damage, and the effect of such damage on the individual owner;
 - d. the importance of the services provided to the community by the proposed facility;
 - e. the necessity of a waterfront location for the function of the facility;
 - f. the availability of alternative locations for the proposed facility which are not subject to flooding or erosion damage;
 - g. the compatibility of the proposed use with existing and anticipated other development;
 - h. the relationship of the proposed use to the plan of development for the Town and the flood plain management program for that area;

- i. the safety of access to the property in times of flood for ordinary and emergency vehicles;
- j. the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- k. the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

21.6.2 Conditions for Variance. The following are conditions applicable to the issuance of variance of the special requirements of Section 4.4:

- a. No variance shall be issued within a floodway if any increase in flood levels during the base flood discharge will result.
- b. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- c. Otherwise, variances may be issued for new construction, and substantial improvements to be erected on a lot of one-half acre or less in area when the lot is contiguous to and generally surrounded by lots with existing structures constructed below the base flood elevation provided that the following criteria are met:
 - i. a showing of good and sufficient cause;
 - ii. a determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - iii. a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other existing Town laws, ordinances and regulations.

When issuing a variance, the Board may attach such conditions that it deems necessary to further the purpose and intent of this Regulation.

21.6.3 Residential Floodproofed Basements. A variance may be issued for residential basements below the base flood elevation provided the following conditions are satisfied, in addition to the other standards normally required for granting a variance.

- a. Fully-Enclosed Areas Below Base Flood Elevation: New construction or substantial improvements of buildings that include fully-enclosed areas formed by foundation and other exterior walls below the base flood elevation shall have at least one side at or above grade and shall be designed to preclude finished living space and designed to allow for the automatic entry and exit of flood waters to equalize hydrostatic flood forces on exterior walls. Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
- i. provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - ii. the bottom of all openings shall be no higher than one foot above grade; and
 - iii. openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions. Other coverings must be designed and certified by an engineer and approved by the Building Official.
 - iv. electrical, plumbing and other utilities are prohibited below the base flood elevation; and
 - v. use of the enclosed area shall be the minimum necessary to allow for parking of vehicles or limited storage of maintenance equipment used in connection with the premises or entry to the living area (via stairway or elevator).

- b. The Zoning Enforcement Officer shall give each applicant for variance written notice specifying the difference between the base flood elevation and the elevation to which the applicant's structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation, up to amounts as high as \$25.00 for \$100.00 of insurance coverage.
- c. The Zoning Enforcement Officer shall maintain documentation on file of the form certifying the degree of floodproofing, and record the elevation of the first floor, the elevation to which the structure is floodproofed, and the base flood elevation. This official shall also maintain a record that the applicant was advised of the insurance ramifications of building floodproofed basements.

21.6.4 Notices and Records. The Zoning Enforcement Officer shall notify the applicant for variance in writing that a) the issuance of a variance to construct a structure below the base flood elevation will result in increased premiums for flood insurance, and b) such construction below the base flood elevation increases risks to life and property. The Zoning Enforcement Officer shall maintain a record of such notice to applicants, shall maintain a record of all variance actions including the justification for their issuance and shall report such variance issue in an annual report to the Federal Insurance Administration.

[From former Section 52.6, Renumbered Only Effective 3-7-08]

21.7 Procedures.

- 21.7.1 The Board shall hold a public hearing on all applications and appeals, and shall publish a notice of said hearing as prescribed by these Regulations and the Connecticut General Statutes as amended.
- 21.7.2 In accordance with Connecticut General Statutes Section 8-6a, whenever an application for a variance is joined with an appeal of any order, requirement or decision of the Zoning Enforcement Officer, the Board shall decide the issues presented in the appeal before considering the variance application.
- 21.7.3 The Board shall hold a public hearing, close such hearing, and render its decision on any application within the time limits imposed by Section 8-7d of the Connecticut General Statutes. The Board may reverse or affirm wholly or partly or may modify any order, requirement or decision appealed from, and make such order, requirement or decision as in its opinion should be made. When acting on an appeal from a decision of the Zoning Enforcement Officer, the Board shall have all the powers of such Officer, but only in accordance with Connecticut General Statutes §8-7,

and only to the extent that the Board's actions deal directly with the subject of such appeal. Such order, requirement or decision, and any grant of any variance, may be subject to such conditions and restrictions as appear necessary to the Board in order to insure that the granting of the application or petition shall be in harmony with the purposes of these Regulations, as set forth in the Preamble to these Regulations, and as set forth in Section 8-2 of the Connecticut General Statutes. In granting any variance, the Board shall describe specifically the exceptional difficulty or unusual hardship on which its decision is based, and why the granting of the variance is in harmony with the purposes of these Regulations.

- 21.7.4 In accordance with Public Act 05.287, §46, the Board shall record by a sound-recording device or competent stenographer each meeting at which the Board deliberates on a formal petition, application, request or appeal.
- 21.7.5 Any conditions or restrictions imposed upon the granting of any application or petition, as set forth in the preceding paragraph, shall be completed within ninety (90) days of the granting thereof, unless the Board, upon the request of the applicant, grants a single extension of ninety (90) additional days, with the total extension not to exceed one hundred eighty (180) days.
- 21.7.6 Any variance in the use of buildings or land which is granted by the Board shall be placed upon the Land Records of the Town of Old Lyme by recording a copy of the variance or exception with the Town Clerk or as otherwise provided by the Connecticut General Statutes as amended, provided that any such filing shall be done no later than ninety (90) days after the approval thereof. Any variance not so recorded shall be null and void.
- 21.7.7 Any variance shall be deemed to incorporate the contents of any site or building plans or other documentation submitted in connection with any variance application, such that there shall be no change or Alteration in such plans or documents without the consent of the Board.
- 21.7.8 The Board shall adopt such procedure as may be necessary to carry out the provisions of this Section.

[From former Section 52.7, Amended Effective 3-7-08]

- 21.8.1 Appeal to Court. Any party aggrieved by any decision of the Zoning Board of Appeals may take an appeal to the Superior Court of the county or judicial district in which such municipality is located in the manner as provided under Section 8-8 of the General Statutes of the State of Connecticut. [From former Section 52.8, Amended Effective 3-7-08]