

Zoning Board of Appeals

Residential Variance Application Guide

PURPOSE

This document is intended to provide a general guidance to help residential applicants understand and navigate the Zoning Variance Application process, including an explanation of important terminology, required forms and documentation, sequence of events, and timeframes involved.

This guide is NOT meant, nor should be relied upon, to provide legal advice.

To confirm the exact requirements for a specific application please refer to the Old Lyme Zoning Regulations (posted on Town of Old Lyme website) and Connecticut General Statutes, as amended, and consult with the Old Lyme Zoning Enforcement Official (ZEO); you may also choose to consult with your own attorney.

The Old Lyme Zoning Board of Appeals (ZBA), its members, and the Town of Old Lyme are not responsible for errors or inaccuracies contained in this guide.

TOPICS COVERED

Section 1 – Introduction to “Variances” and “Unusual Hardship”

Section 2 – The Role of the ZBA and Conditions of Approval

Section 3 – The Variance Application Process

Section 4 – Legally Prescribed Timings of the Variance Application Process

Section 5 – What to Expect at the ZBA Public Hearing

Note - This Guide, except for those parts that are required by State statute, the Old Lyme Zoning Regulations, or Municipal ordinance, may be waived or amended by the Zoning Board of Appeals at any time. If ever this Guide becomes inconsistent with State statutes or applicable Land-Use Case Law, such State statutes or court rulings govern.

Section 1 - Introduction to “Variances” and “Unusual Hardship”

This section is intended to help landowners understand what variances are and what the law requires a landowner to prove in order to obtain a variance. Because the law regarding variances is very complicated, this guide cannot be exhaustive; however, it attempts to summarize some of the fundamental requirements that may be helpful to the landowner in deciding whether to apply for a variance.

VARIANCE

A variance is an approval to use property in a manner that would not otherwise be allowed under Zoning Regulations (land-use laws) that other landowners in the same zoning district must obey.

In most instances, a variance applicant must prove BOTH:

- (1) an “unusual hardship” exists; and
- (2) the variance, if granted, would not have significant detrimental effects on the comprehensive plan of zoning or the neighborhood.

Because the zoning regulations have been adopted with the goal of serving the best interests of Town residents, businesses, and taxpayers, the courts have frequently stated that variances should only be granted sparingly.

The courts have also overturned many variances that had been granted without following the legally prescribed procedures or complying with the statutory evidence requirements, including a satisfactory demonstration of “unusual hardship”.

UNUSUAL HARDSHIP

The concept of “unusual hardship” is perhaps the most difficult aspect of variances to understand. In zoning law, it means the demonstration that it would be unusually difficult for a landowner to comply with strict enforcement of the zoning regulations due to some peculiar condition of the property itself, and that the condition does not generally affect other properties in the district.

EXAMPLES: Demonstration that the peculiar shape of a lot would make it extremely difficult to build a reasonably sized house that conforms to all of the zoning setback regulations may, in some circumstances, represent an unusual hardship.

In contrast, a valid hardship does not relate to the personal desires or the financial considerations of the landowner.

EXAMPLE: A landowner’s desire to construct a detached garage that would encroach into a setback because it would be less costly than constructing an attached garage that would comply with the setback requirement would not alone justify a variance.

Also, a valid hardship cannot be “self-created” – due to a voluntary action of the property owner.

EXAMPLE: If a landowner divided a parcel into two irregularly shaped lots, the subsequent lot irregularity may be viewed as a “self-created” hardship and may preclude its use in justifying a future variance.

Section 2 – The Role of the Zoning Board of Appeals, and Conditions of Approval

The Zoning Board of Appeals (ZBA) is the only entity that can vary the application of the Zoning Regulations. Thus, the ZBA plays an important role in standing between the public and individual property owners, to protect the latter from unnecessary hardship that strict enforcement of the zoning regulations may impose.

However, the ZBA's legal authority to grant a variance is limited, and any variance granted or denied without the required evidence, or without following legally required procedures, is subject to being overturned by the Connecticut Superior Court upon appeal by any aggrieved party.

There are only three situations whereby the ZBA may grant a variance without demonstration of an 'unusual hardship': 1) when the ZBA determines that a proposed decrease in legal, pre-existing non-conformity adequately off-sets the proposed increase in non-conformity; 2) when the ZBA determines that the variances requested are the minimum to allow the structure in a flood zone to become FEMA compliant; and 3) when the ZBA determines that the variances requested are to allow a 'reasonable accommodation' for the needs of a 'disabled person' as defined by the American Disabilities Act (ADA).

In determining whether a variance would not have a significant detrimental effect on the Town's comprehensive plan of zoning and would be in harmony with the general purpose and intent of the Old Lyme Zoning Regulations, the ZBA considers whether the variance would conserve public health, safety, convenience, welfare and property values, such that substantial justice would be done and the public safety and welfare preserved.

The ZBA will also consider input provided by relevant government agencies (e.g.: CT-DEEP) and Land Use Commissions and Staff (e.g.: Zoning Enforcement Official, ZEO), neighbors, and the public. The ZBA may also refer an application to additional municipal or consulting technical experts for review, if it (or its staff) deems necessary.

The ZBA also has a responsibility to assure that any variance, if granted, is the minimum necessary to address the demonstrated hardship and to allow reasonable use of the property.

Conditions of Approval

ZBA has the right to place "conditions of approval" on a variance granted, to help assure that the variance will not have an unnecessarily harmful impact on the comprehensive plan of zoning or the neighborhood.

Any variance granted shall be deemed to incorporate the content of any site or building plans or other documentation submitted in connection with the variance application; there shall be no change or alteration to such plans without the consent of the ZBA, unless the ZBA by resolution grants the Zoning Enforcement Officer (ZEO) authority to approve minor, non-substantial deviations from the approved variances (per Zoning Regulations, Sections 21.7.7 and 20.7.c)

All evidence presented and statements made to the ZBA must be true and to the best of the applicant's knowledge and belief. In the event the ZBA determines or discovers that information provided in support of a variance was incorrect or invalid, the ZBA may, following a public hearing with notice to the subject property owner, void such approval (per Section 20.7.e).

Section 3 – The Variance Application Process

Instructions for completing the Old Lyme ZBA Variance Application are provided on the first page of the **Variance Application Form**, the current version of which is available on the Town of Old Lyme website. Hard copies are also available at the Land Use Office located on the second floor of Old Lyme's Memorial Town Hall, 52 Lyme Street, Old Lyme, CT.

Depending upon the plan proposed and the location of the property, supplemental information may be required, e.g.: Coastal Site Plan Review Application (per Section 4.2 of the Old Lyme Zoning Regulations), Flood Hazard Area Permit application (per Section 4.4.7), and/or a referral to a related Land Use Commission (e.g.: Connecticut River Gateway) or Government Agency (e.g.: Land and Water Resources Division of CT-DEEP), as required.

Please note, an incomplete variance application may constitute the basis for the ZBA denying the variance(s) requested, and the ZBA is not required to review the same or substantially the same variance application for a period of 6 months.

Therefore, it is to the applicant's benefit to submit a **complete** application with all of the information required, including detailed plot plans, floorplans, elevations, a complete list of all variances being requested and the extent of the relief requested (Zoning Table – see available templates), evidence for the 'unusual hardship' claimed, and evidence that the proposal is in harmony with the general purpose and intent of the Old Lyme Zoning Regulations and will not have a detrimental effect on the comprehensive plan of zoning. The applicant should also be prepared to demonstrate that the variance requested is the minimum needed to address the 'unusual hardship' claimed to allow reasonable use of the property.

It is highly recommended that the applicant consults with the Old Lyme Zoning Enforcement Official (ZEO) **prior to** submitting a variance application, to facilitate submission of a complete variance application with a complete list of the variances that would be required. If the applicant has a legal basis to challenge the ZEO's decision as to the required variances, the applicant has 30-days to appeal the ZEO's decision to the ZBA, and that appeal can be submitted prior to, or in parallel with, the variance application.

The legally prescribed timings associated with a variance application process are summarized in **Section 4**.

After official "receipt" of the variance application, a date for the Public Hearing is set, and a Notice of Public Hearing is published in "The Day" newspaper and mailed to the applicant. The applicant must notify all abutting property owners within 100 ft of the Public Hearing, by mailing a copy of the Notice to each abutter and obtaining a US Postal Service Certificate of Mailing no less than 10 days before the Public Hearing. Proof of mailing must be submitted to the ZEO before commencement of the Public Hearing, or the hearing may be continued.

In preparation for the Public Hearing, ZBA members may make informal individual site visits to the property to provide context for their review of the variance application. To support the value of these site visits, the applicant must arrange for the corners of any proposed new building or structure to be staked by a CT Licensed Land Surveyor. When the proposed new construction will be near or within setbacks, the applicant must also stake the property corners or the location of the relevant property line. Failure to mark these locations may cause a delay in the review of the application.

Section 4 – Legally Prescribed Timings of the Variance Application Process (per CT General Statutes, Chapter 124)

The Applicant “submits” a completed Variance Application to the Land Use Office

- ↳ “Receipt” of the variance application is defined as occurring within **35 days** of “submission”, or on the date of the next regularly scheduled ZBA meeting, whichever is sooner.
- ↳ A Public Hearing is scheduled within **65 days*** of “Receipt” of the application, after which a “Notice of Public Hearing” is published.
- Note:** *The ZBA strives to schedule complete applications submitted at least 2 weeks prior to the date of “Receipt” at the next regularly scheduled ZBA meeting - typically within 35 days of Receipt. Incomplete applications will usually be scheduled for a subsequent ZBA meeting, to allow the applicant time to provide omitted information.*
- ↳ ZBA opens the public hearing within **65 days*** of “receipt” of the application
- ↳ ZBA closes the public hearing within **35 days*** of opening.
- ↳ ZBA renders a decision within **65 days*** of the close of public hearing (typically the same day as the close of the public hearing or at the next regularly scheduled ZBA meeting).
- ↳ Within **15 days** of the ZBA decision, a Legal Notice of Decision is published, and a certified copy is sent to the applicant or their authorized representative.
- ↳ a **15-day** appeal period follows publication of the Notice of Decision, during which time any aggrieved person(s) may appeal the ZBA decision to Connecticut Superior Court.
- ↳ If the decision is not appealed, a “Notice of Variance Granted” is recorded in the Land Records**

* The applicant may consent to **one (1) or more extensions**, totaling no more than **65 days**, at any point in the process - typically between the scheduling and closing of the public hearing.

** **The variance does not become effective until AFTER the “Notice of Variance Granted” is recorded in the Land Records.**

Variance Expiration (per Old Lyme Zoning Regulations, Section 21.3): The building or use related to the variances granted must commence within **18 months** of the variance effective date, and be substantially completed within **3 years** of said date, or the variance **expires**.

The request for a one-time **extension** of up to 18 months may be made to the ZBA, without fee, but must be submitted prior to the original expiration date. The ZBA is under no obligation to grant such an extension.

Section 5 – What to Expect at the ZBA Public Hearing

- 1) The ZBA Chair will introduce each case, by reading its public notice and the list of variances being requested. All ZBA meetings are recorded.
- 2) The applicant and/or their representative(s) **must** participate in the public hearing, and will be asked to state their name and address or affiliation for the record.
 - a) All statements made must be true to the best of their knowledge and belief.
- 3) The applicant's presentation should include:
 - a) a review of the proposed plans, the specific variances being sought, the extent of relief being requested, evidence for the "unusual hardship" claimed, and/or any proposed reductions in legal pre-existing non-conformity
 - b) how the proposed project is in harmony with the purpose and intent of the Zoning Regulations and will not adversely affect the comprehensive plan of zoning.
 - c) how the requested variance(s) would be the minimum needed to address the unusual hardship claimed and allow reasonable use of the property.
- 4) ZBA members will ask questions about the application and the evidence presented.
 - a) The ZBA Secretary will read any responses from referrals and any correspondence received into the record.
- 5) The ZBA Chair will open the hearing to the public for comment:
 - a) Each person to provide their name and address and to direct all comments to the Board
- 6) The applicant will be given the opportunity to respond to any questions or concerns raised during open public comment.
- 7) If the ZBA needs further information to make an informed decision, or has questions that cannot be answered at the meeting, the ZBA may:
 - a) choose to make a motion to continue the public hearing (rather than deny with or without prejudice) or suggest the applicant consent to an extension of the public hearing, if allowed within the legal timeframe.
- 8) Once all of the evidence has been presented, the ZBA will move to close the public hearing and deliberations will begin.
 - a) After closing the public hearing, no new information may be provided to the ZBA.
 - b) Only voting ZBA members may deliberate on whether to GRANT the variances requested, with or without conditions, or DENY, with or without prejudice.
 - c) ZBA Members may ask Staff or the ZBA Attorney procedural questions.
- 9) The ZBA will discuss potential reason(s) for granting or denying the variance application prior to making a motion.
 - a) Four (4) positive votes are required to grant a variance.