

Chapter 135. Zoning

Article XXVIII. Zoning Hearing Board

§ 135-383. Zoning Hearing Board functions.

- A. The Zoning Hearing Board shall hear and render final adjudications in any matter for which the Board shall have been granted jurisdiction by Article **IX** of the Municipalities Planning Code.
- B. Special exceptions. When special exceptions are provided for in this chapter, the Board shall hear and decide requests for such special exceptions in accordance with stated standards and criteria. In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in this chapter, as it may deem necessary to implement the purposes of the Municipalities Planning Code and this chapter. The Board may grant approval of a special exception, provided that the applicant complies with the following standards for special exceptions and that the proposed special exception shall not be detrimental to the health, safety or welfare of the neighborhood. The burden of proof shall rest with the applicant.
 - (1) Compliance with this chapter. The applicant shall establish by credible evidence compliance with all conditions on the special exception enumerated in the section which gives the applicant the right to seek the special exception. The applicant shall provide the Board with sufficient plans, studies or other data to demonstrate compliance with all applicable regulations.
 - (2) Traffic and public services. The applicant shall establish by credible evidence that the proposed special exception shall be properly serviced by all existing public service systems. The peak traffic generated by the subject of the application shall be accommodated in a safe and efficient manner or improvements made in order to effect the same. Similar responsibilities shall be assumed with respect to other public service systems, including but not limited to police protection, fire protection, utilities, parks and recreation. If the proposed use or development is estimated to generate more than 1,000 daily trips or more than 100 a.m. or p.m. peak hour trips using accepted engineering standards such as the ITE Trip Generation Manual, the applicant shall provide a traffic study meeting all requirements of Chapter **119**, Subdivision and Land Development, § **119-32C(5)**.
[Amended 2-19-2024 by Ord. No. 342-2024]
 - (3) Site planning. The applicant shall establish by credible evidence that the proposed special exception shall be in and of itself properly designed with regard to internal circulation, parking, buffering and all other elements of proper design as specified in this chapter and any other governing law or regulation.
 - (4) Neighborhood. The proposed special exception shall not substantially injure or detract from the use of neighboring property or from the character of the neighborhood, and the use of property adjacent to the area included in the special exception application shall be adequately safeguarded.
 - (5) Safety. The applicant shall establish by credible evidence that the proposed use will not create a significant hazard to the public health and safety, such as fire, toxic or explosive hazards.

- (6) The Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of and ensure compliance with the Municipalities Planning Code and this chapter, which conditions may include plantings and buffers, harmonious designs of buildings and the elimination of noxious, offensive or hazardous elements.
- (7) Unless otherwise specified by the Board or by law, a special exception shall expire if the applicant fails to obtain a zoning permit within one year from the date of authorization thereof by the Board or by the court if such special exception has been granted after an appeal or fails to complete any erection, construction, reconstruction, alteration or change in use authorized by the special exception approval within two years from the date of authorization thereof by the Board or by the court if such special exception has been granted after an appeal. The Board, upon written application and for reasonable cause shown, may extend the approval for an additional period of up to two years.

C. Variances.

- (1) The Board shall hear requests for variances where it is alleged that the provisions of this chapter inflict unnecessary hardship upon the applicant. The Board may grant a variance, provided that the following findings are made where relevant in a given case. The burden of proof shall rest with the applicant.
 - (a) That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of a lot size or shape or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions generally created by the provisions of this chapter in the neighborhood of or district in which the property is located.
 - (b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - (c) That such unnecessary hardship has not been created by the applicant.
 - (d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.
 - (e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- (2) In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter. The Board shall require that adequate on or off-site water and sewage disposal facilities are available for the use intended.
- (3) Unless otherwise specified by the Board or by law, a variance shall expire if the applicant fails to obtain a zoning permit within one year from the date of authorization thereof by the Board or by the court if such variance has been granted after an appeal or fails to complete any erection, construction, reconstruction, alteration or change in use authorized by the variance approval within two years from the date of authorization thereof by the Board or by the court, if such variance has been granted after an appeal. The Board, upon written application and for reasonable cause shown, may extend the approval for an additional period of up to two years.