

APPLYING FOR A VARIANCE

Is your lot too small for the house you want to build? You have an existing house but you want to widen your deck? Perhaps build another deck and outside stairway to the ground level? How about another bedroom to accommodate your growing family? Adding a dining area to your living room?

If any of these questions reflect your needs and interests, you are ready to penetrate the bureaucratic veil of ZONING. You may end up thoroughly frustrated and you might even find some relief. The road will not be an easy one, but keep reading.

Chapter 145, Zoning, of the Code of the Town of South Bethany sets forth, in considerable detail, the maximum height and dimensional setbacks (front, rear and side) of all dwellings, and they are strictly interpreted. However, the zoning chapter does provide for certain exceptions or variances, and if your situation qualifies under rigid criteria, you might be able to achieve the changes you want.

The purpose of the Zoning Chapter is to stabilize property uses in the community. All property owners benefit from comprehensive zoning regulations that are enforced. Minimum building lot requirements, use restriction, and setback requirements are designed to protect the value of your property and to assure that there is a level of commonality and predictability among properties.

Your first step in this process is a discussion with the Code Enforcement Constable. The reason you are contemplating applying for a variance is because the Code Enforcement Constable has turned down your request for a building permit. If your plans violate any provision of the Zoning Chapter, the Code Enforcement Constable has no choice but to turn it down. He/she has very little discretion in this matter.

If you feel there are extenuating circumstances in your case, such as an unusual shape of your lot which makes rigid application of the chapter result in a "substantial injustice", you are ready to apply for a variance. However, it won't be easy.

Your first step is to acquaint yourself with the pertinent provisions of the Zoning Chapter. The application fee and the surveyed plot plan, which you must obtain, are expensive. Here are some of the provisions of the Chapter, which you should read carefully:

Chapter 145 & 145-58(c): A variance from the dimensional terms of this chapter shall be granted only upon a finding by the Board of Adjustment that:

(1) Special conditions or exceptional situations exist with regard to the particular lot or structure (because, among other reason, of it's size, shape, location or topography) such that a literal interpretation/application terms of this chapter to that particular lot will result in unnecessary hardship and/or exceptional practical difficulties to the owner thereof:

(2) That the spirit of this chapter shall be observed and substantial justice done: and

(3) That the granting of the variance will not cause substantial detriment to the public good, and will not substantially impair the intent and purpose of this chapter.

All of the three conditions must be met before the Board of Adjustment can grant a variance. Most of the requests for variances, which have been denied in past years, were based wholly on personal convenience; for example, a deck which would reduce the 25' setback to 20'. This doesn't fly. Apply all of the three criteria to your situation before making your decision. Getting a variance is a lot tougher than trying to persuade a few of your neighbors, who sit on the Board of Adjustment, to just bend the rules for 4 or 5 feet.

GOOD LUCK!

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**PROCEDURES FOR REQUESTING
A VARIANCE**

Chapter 145, Zoning

§ 145-59. Procedures for application for a variance.

Following the denial of an application for a building permit, an application for a variance may be filed in writing with the Town Manager, with application fees, and shall specify the physical conditions of the property on which the application is based. Within ten (10) days after receiving such application for a variance, the Board Secretary shall send the application together with all available documentation, including any relevant comments of the Code Enforcement Constable to the Chairman and other members of the Board of Adjustment.

§ 145-60. Public hearing for variance request.

A public hearing shall be held and notice thereof given in accordance with § 145-58B(2) of this Article.

§ 145-58B(2) reads as follows:

A public hearing shall be held. At least 30 days before the hearing, notice shall be posted and be not less than 11 x 17 inches on the for which the special exception is sought; and at least 8 ½ x 11 inches on the bulletin board in the Town Hall and at four other public places in the town. The notice shall contain the name of the property owner, the geographic location of the subject property, subdivision or other matter requested and the date, time and place of the hearing. The notice shall also be published in one newspaper of general circulation in the town at least 30 days prior to the hearing. A copy of the notice shall be sent by certified mail, return receipt requested, at least 30 days prior to the hearing to the owner(s) of the subject property and to the owner(s) of property, within the town's corporate limits, located within a radius of 200 feet, measured from the center of the subject property, at their addresses as shown on the town's tax records.

The application shall be accompanied with the following:

1. A fee of seven-hundred fifty (\$750.00) dollars;
2. Justification Letter, which shall fully state the relief request and the basis for same;
3. A plot plan, prepared by a licensed surveyor, showing all pertinent dimensions; and
4. Six (6) copies, which shall be clear and legible, of the application and all supporting documents.

**BOARD OF ADJUSTMENT
SOUTH BETHANY TOWN OFFICE
402 EVERGREEN ROAD
SOUTH BETHANY, DE 19930**

APPLICATION FOR VARIANCE

Zoning Sub-District Date of Application

OWNER/S OF PROPERTY _____

LOCATION OF PROPERTY _____, _____, _____
STREET LOT BLOCK

APPLICANT IS SEEKING VARIANCE/S OF:

A. Zoning Chapter No. 145

ARTICLE/S _____
SECTION/S _____

Submit the Following Items with Application:

1. JUSTIFICATION OF EACH "TYPE" OF VARIANCE
2. "LOCATION SURVEY"
3. "ELEVATION SURVEY" WHEN REQUESTING FLOOD OR HEIGHT VARIANCE
4. CONSTRUCTION DRAWING/S FOR EACH TYPE OF VARIANCE
5. SUBDIVISION MODIFICATION PLOT AND DRAWINGS
6. ANY OTHER SUPPORTING DOCUMENTS AND/OR PHOTOS

I, CERTIFY THAT ALL INFORMATION AND ATTACHED DOCUMENTS PROVIDED BY ME IN THIS APPLICATION IS CORRECT, AND I FURTHER UNDERSTAND THAT A HEARING WILL NOT BE SHCEDULED UNTIL THIS APPLICATION IS COMPLETED AS DETERMINED BY THE TOWN MANAGER. FURTHER MORE, THE OWNER(S) OF THESE PREMISES DO HEREBY CONSENT TO THE BOARD OF ADJUSTMENT MEMBERS, CODE ENFORCEMENT CONSTABLE, TOWN MANAGER OR OTHER TOWN OFFICIALS TO ENTER UPON SAID PREMISES FOR THE PURPOSE OF BETTER ASSESSING THE IMPACT OF THIS REQUEST, SAID CONSENT BEING GIVEN ON THE SIGNING OF THIS APPLICATION.

APPLICANT'S SIGNATURE DATE

PHONE

MAILING ADDRESS FILING FEE PAID

.....
OFFICIAL USE ONLY

DOCUMENTS RECEIVED _____

DATE APPLICATION RECEIVED/RETURNED _____ ASSIGNED NUMBER _____

REASON FOR BEING RETURNED _____

DATE ADVERTISED _____ HEARING DATE _____

IF FLOOD PROOF VARIANCE, DATE SUBMITTED TO FEDERAL INSURANCE ADMINISTRATION: _____