

**NOTE:** The Board of Zoning Appeals rules on Zoning Code issues. Building Code issues are revised separately.

## **BOARD OF ZONING APPEALS GUIDELINES FOR APPLICANTS**

All applicants or representatives of applicants, for relief before the City Zoning Board of Appeals should be aware of the procedure involved in applying for and receiving a determination. First, an applicant must have received a formal decision or action by the Zoning Officer or Building Inspector as a prerequisite to taking an appeal before the Board. Second, the applicant or their representative must present proof under the applicable legal standards that is sufficient to allow the Board to grant relief.

### **THE FOLLOWING QUESTIONS AND ANSWERS SHOULD HELP:**

#### **Q.WHO MAY APPLY TO THE BOARD FOR RELIEF?**

- A. Anyone who stands to be “aggrieved” (i.e. injured or harmed) by the decision of the Zoning Officer or Building Inspector. Commonly the “aggrieved” party is the property owner who has been refused a permit, but an “aggrieved” party could also be a neighboring landowner who believed the Officers decision in issuing a permit was improper and will injure him. Also, anyone who has received an enforcement action (such as a cease-and-desist order) is eligible to take an appeal to the Board.

#### **Q. WHAT TYPES OF RELIEF CAN THE BOARD GRANT?**

A. Basically the Board can grant (or deny) three types of relief. First, the Board may affirm, modify, or reverse the decision of the enforcement officer, based on the evidence and testimony placed before the Board. Second, the Board may grant or deny a variance or special exception, based on specific showing of practical difficulty or unnecessary hardship. Because of this range of powers that Board has, it is essential that the applicant or his representative know what type of relief to request when making application to the Board. If the applicant (either the landowner or a third party) believes the officer’s decision was incorrect, the appropriate request is for a reversal. If the applicant landowner believes that the officer’s decision may have been correct, but that he (the landowner) can show either practical difficulty or unnecessary hardship in complying with the decision, then the appropriate request is for a variance. It is possible for an applicant to make a request for a reversal, and, in the same application, ask for a variance if the reversal is not granted.

#### **Q. WHAT MUST THE APPLICANT BE PREPARED TO DO?**

- A. When an application for relief is filed, the Board will notify the applicant of a hearing date. At any time before or during the hearing, the applicant may submit written

evidence and/or argument supporting this case. Obviously, the sooner that written testimony or material is received, the more time Board Members will have to consider the case and reach a proper decision. Preferably, written material should be submitted with the application, or as soon thereafter as possible, so that it can be sent to the Board Members prior to the hearing. Anyone else having an interest in the outcome of the case is also entitled and, in fact, encouraged, to submit written evidence as well.

At the hearing itself, the Board will offer the applicant and/or their representatives the opportunity to present his case for relief. The applicant may testify himself, call his own witness, or submit written evidence, including drawings and graphics. Because an appeal is an adversarial proceeding, the Board will offer the City an equal opportunity to present its side of the case. Each side will be given the opportunity to question the other, or the other's witness. In addition, the Board themselves may ask questions. After the applicant and the City have presented their case, any other interested persons will be given the opportunity to speak and/or submit written material. If necessary, the hearing may be adjourned and continued at a later date. When all parties and interested persons have been granted the opportunity to be heard, the hearing will be closed. At this point, the Board may go into deliberations, reach a decision, or may postpone a decision until a later meeting. If the Board deems it necessary, the hearing may be reopened, either at the same session or at a later date. Once the hearing is finally closed, the Board must issue its decision within 30 days.

#### **BURDEN OF PROOF**

The applicant for relief should be prepared to make a case for relief under the rules established by the laws and the courts of The State of Ohio. If requesting a simple reversal, the applicant must prove that the enforcement officer's decision was incorrect according to a proper interpretation of the City Zoning Regulations.

**If requesting a use variance**, that is permission to establish a use of his property not otherwise permitted in his zoning district, the applicant must prove "unnecessary hardship". That is, he must show:

- A. The Board of appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.
- B. No such use variance shall be granted by a Board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

1. The applicant cannot realize a reasonable return, provided that a lack of return is substantial as demonstrated by competent financial evidence;
  2. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
  3. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
  4. That the alleged hardship has not been self-created.
- C. The board of appeals, in the granting of use variances, shall grant the minimum Variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time, preserve and protect the character of the neighborhood and the health, safety and welfare of the community,

**If requesting an area variance**, that is, permission to build in an otherwise restricted portion of the property (such as in the required front, side or rear yards, or above the required building height, or in excess of the lot coverage regulations), then the applicant must prove "practical difficulty".

- A. The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.
- B. In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider:
1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
  2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
  3. Whether the requested area variance is substantial;
  4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district, and

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals but shall not necessarily preclude the granting of the area variance.
- C. The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and, at the same time, preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

**If requesting a Special Exception**, which is a request for a minor adjustment to the requirements of the zoning ordinance where, owing to special conditions of the property, the exception is necessary and desirable and would not adversely affect the adjacent property owners, the following standards apply:

When considering a Special Exception, the board shall consider the following issues when applicable:

1. Whether approval of the special exception will be detrimental to the public welfare, to the neighborhood character, neighboring properties, or existing building architecture.
2. Whether approval of the special exception will impair an adequate supply of light or air to an adjacent property, or cause or substantially increase traffic congestion or increase the danger of fire or the spread of fire or endanger the public safety.
3. Whether approval of the special exception will alter the essential character of the area, neighborhood, or the zoning district.
4. Whether the proposal will be compatible with neighboring properties in the surrounding neighborhood.

Imposition of conditions.

The board of appeals shall, in the granting of use variances, area variances and special exceptions, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law and shall be imposed for the purpose of minimizing any adverse impact such approvals may have on the neighborhood or community.

It is important that the potential applicant understand and appreciate the above rules and standards under which appeals, and variance decisions must be made by a board of appeals. These standards have been set forth in law and by the courts of the State, and, if not followed, would subject the City to costly lawsuits. Too often, an applicant will appear before the board and offer only generalized conclusions that his proposed project will “look nice” and that it won’t bother his neighbors. This isn’t enough. It puts the board in position of having to guess what the relevant facts are, and whether the applicant is really presenting true hardship,

difficulty, or a case for reversal. The Board, therefore, urges all applicants, or their representatives, to become familiar with the applicable standards, to be guided by them in deciding whether an appeal would be appropriate, and to present clear, definite facts showing that the standards have been met. While the board will offer full assistance to the applicants who may be unfamiliar with the procedure itself, the Board cannot grant relief where proper legal proof is not adequately presented.

Appeal of the Board of Zoning Appeals Decision

Any person jointly or severally aggrieved or affected by a decision of the board of zoning appeals may appeal such decision by filing a petition with the Court of Common Pleas having jurisdiction for the area.



**DEPARTMENT OF PLANNING & DEVELOPMENT**

126 W 6<sup>th</sup> Street

East Liverpool, OH 43920

330-385-5394

**Zoning Board of Appeals Application**

Date Application Received at Planning Department: \_\_\_\_\_ Hearing No.: \_\_\_\_\_

**The following is to be completed and signed by the property owner:**

**Property owner contact information:** (if more than one property owner is to be a contact person, list all others on a separate sheet of paper, with the same information as below, and attach to this application)

**Applicant Name:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**Address for mailing zoning notices:** \_\_\_\_\_

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**Project name:** \_\_\_\_\_

**Location of property:** \_\_\_\_\_

**East Liverpool Codified Ordinance code section you are appealing:** \_\_\_\_\_

**Zoning District(s) as shown on the zoning map:** \_\_\_\_\_

**Number of parcels involved:** \_\_\_\_\_ **Columbiana County Parcel No's.** \_\_\_\_\_

(If more than one parcel involved, list all parcels on a separate sheet of paper and attach to this application)

**When was the subject structure constructed?** \_\_\_\_\_

**What are you proposing to build or maintain?** \_\_\_\_\_

\_\_\_\_\_

**Is the property in separate ownership from all adjoining properties?**

(a) If yes, since what date? \_\_\_\_\_

(b) If no, what adjoining property is held by the same owner? \_\_\_\_\_

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**Type of appeal:** \_\_\_ Use Variance \_\_\_ Area Variance \_\_\_ Special Exception \_\_\_ Other (if Other, please explain: \_\_\_\_\_ )

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**This appeal is regarding the decision of the Zoning Inspector on Application for Zoning Certificate No. \_\_\_\_\_ dated \_\_\_\_\_ whereby the Zoning Inspector denied/granted a permit for use for Col. County Parcel No. \_\_\_\_\_, address \_\_\_\_\_.**

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Was there a previous appeal to the decision of the Zoning Inspector for the same location yes/no? (If yes, on a separate sheet of paper, describe the appeal, circumstances and actions taken by the Board)

Describe the existing use: \_\_\_\_\_

Describe the proposed use: \_\_\_\_\_

(If you need more room for your descriptions, please do so on a separate sheet of paper and attach to this application.)

Is your project located in a floodway or floodplain? Yes/No.

Is your project located in a federal or state wetland? Yes/No.

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I the undersigned, do hereby affirm, the information contained in this application is true and accurate to the best of my knowledge and belief. I further understand that intentionally providing false or misleading information are grounds for immediate denial of my application.

I further understand that I, or a designated representative, must be present at the hearing and prepared to prove and justify the need for Board approval.

Signature of Property owner: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name of Property Owner: \_\_\_\_\_

**Property owner/applicant must be prepared to prove their case and be able to justify the need for Board approval.**

# Zoning Board of Appeals Application

Hearing No.: \_\_\_\_\_

## Use Variance Application

To prove your case, you must be able to address and justify each of the following items:

1. **Reasonable Return.** The subject property is not capable of yielding a reasonable rate of return if used for its present use or developed, redeveloped, or used for any other use permitted in the district in which such property is located. There is no means other than the granting of the variance by which the property can yield a reasonable return. Such inability to yield a reasonable return must be shown by fact (dollars and cents) from an expert or authority in economic deprivation, not the unsupported opinion of the owner or those appearing for the owner.

How can you prepare such proof for this item? By engaging a professional such as a licensed real estate appraiser whose sole profession is appraising.

2. **Uniqueness.** Prove that your project or location has unique limiting characteristics that would prohibit use if a variance were not granted.

3. **Essential Character.** Prove by competent evidence the proposed use will not alter the essential character of the neighborhood. Describe accurately and fully the entire neighborhood. Use of tax maps, aerial photographs or ground level photographs may help.

4. **Self-Created Hardship.** If the hardship complained of or appeals is self-imposed, then the Board must deny your request. The cases hold that a party who knowingly acquires land for a use prohibited by the Zoning Ordinance creates his own hardship. Even if the buyer did not actually learn of the prohibition at the time of the purchase, they are nevertheless chargeable with knowing the restriction on use.

5. **Rights of Adjacent Property Owners.** Prove that your use variance, if granted, will not adversely affect the rights of adjacent property owners or residents.

6. **Spirit and Intent.** Prove that your use variance, if granted, will be consistent with the general spirit and intent of the Zoning Ordinances.

7. **Relief.** Demonstrate the variance sought is the minimum that will afford relief to your project.

**The bottom line in “Use Variances”, the burden of proof is on the property owner/applicant. If you do not satisfy each of the standards above, the variance must be denied.**



# Zoning Board of Appeals Application

Hearing No.: \_\_\_\_\_

## Area Variance Application

To prove your case, you must be able to address and justify each of the following items:

1. **Reasonable Return.** The subject property is not capable of yielding a reasonable rate of return if used for its present use or developed, redeveloped, or used for any other use permitted in the district in which such property is located. There is no means other than the granting of the variance by which the property can yield a reasonable return. Such inability to yield a reasonable return must be shown by fact (dollars and cents) from an expert or authority in economic deprivation, not the unsupported opinion of the owner or those appearing for the owner.

How can you prepare such proof for this item? By engaging a professional such as a licensed real estate appraiser whose sole profession is appraising.

2. **Relief.** Your variance request is not substantial.

3. **Adjoining Properties.** Essential character of the neighborhood would or would not be substantially altered or whether adjoining properties would or would not suffer detriment as a result of variance approval.

4. **Services.** Will the variance if approved, adversely affect the delivery of governmental services (e.g., water, sewer, garbage, police and fire protection).

5. **Owner Knowledge.** Did the owner purchase the property with knowledge of zoning restrictions?

6. **Alternatives.** Can the property owner's predicament feasibly be obviated through some method other than a variance?

7. **Spirit and Intent.** Prove that your use variance, if granted, will be consistent with the general spirit and intent of the Zoning Ordinances.

**The bottom line in “Area Variances”, the burden of proof is on the property owner/applicant. You must be prepared to address each of the standards above.**

# Zoning Board of Appeals Application

Hearing No.: \_\_\_\_\_

## Special Exception Application

To prove your case, you must be able to address and justify each of the following items:

- 1. Public Welfare.** Whether approval of the special exception will be detrimental to the public welfare, to the neighborhood character, neighboring properties, or existing building architecture.
- 2. Environment.** Whether approval of the special exception will impair an adequate supply of light or air to an adjacent property, or cause or substantially increase traffic congestion or increase the danger of fire or the spread of fire or endanger the public safety.
- 3. Character.** Whether approval of the special exception will alter the essential character of the area, neighborhood, or the zoning district.
- 4. Combability.** Whether the proposal will be compatible with neighboring properties in the surrounding neighborhood.

**The bottom line in “Special Exceptions”, the burden of proof is on the property owner/applicant. You must be prepared to address each of the standards above.**