
PART THIRTEEN — PROJECT AND ZONING CODE

ARTICLE 1326 Variance Approval Procedure

- 1326.01 Purpose.**
- 1326.02 Variance.**
- 1326.03 Application.**
- 1326.04 Required findings.**

CROSS REFERENCES

Variances—see WV Code 8A-7-11

1326.01 Purpose.

The purpose of this Article is to provide relief from the strict and literal requirements of this Zoning Ordinance under certain circumstances when a property owner is facing a unique or unusual hardship created by the physical characteristics of the property owner's land.

1326.02 Variance.

If a proposed Project for which an applicant is seeking to obtain a Project Permit does not satisfy the minimum standards of this Zoning Ordinance, the applicant must request a Variance from the Board of Zoning Appeals in accordance with this Article, and the applicant shall not proceed with such Project unless and until the Board of Zoning Appeals approves the requested Variance and issues the related Project Permit. No Variance shall be approved if the approval of such Variance would:

- (a) Permit a Use that is otherwise prohibited in the applicable Zoning District; or
- (b) Change the zoning classification of any property.

1326.03 Application.

- (a) To request a Variance, a Project Permit application shall be filed with the Board of Zoning Appeals, which shall state the grounds on which the Variance is requested and include a statement describing the specific provision or provisions of this Zoning Ordinance from which the Variance is sought.
 - (1) If a request for a Variance directly relates to and is being sought solely in conjunction with a Sign Permit or Zoning Compliance Permit, the applicant may file one Project Permit application with the Board of Zoning Appeals.
 - (2) If a request for a Variance directly relates to and is being sought in conjunction with a Conditional Use Permit, a separate Project Permit application for each shall be filed with and submitted to the Board of Zoning Appeals, but if practical, appropriate and otherwise permissible under this Zoning Ordinance, the Board of Zoning Appeals may permit the applicant to submit one Project Permit application for both.
- (b) Notice and hearing timelines for a Variance determination shall conform to the following.
 - (1) Within ten days of receipt of an application for a Variance, the Board of Zoning Appeals shall set a time for a public hearing of the application and give notice. A public hearing must be held within 45 days of receipt of the application unless

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015) and Ord. 2017-01 (passed 02-25-2017).

PART THIRTEEN — PROJECT AND ZONING CODE

- the Board of Zoning Appeals requires expert advice in which case the limit is 75 days.
- (2) At least 15 days before the date set for a public hearing on an application, the Board of Zoning Appeals shall publish a notice of the date, time and place of the public hearing on the application as a Class I legal advertisement in compliance with the provisions of Article Three, Chapter 59 of West Virginia State Code and written notice shall be given to the interested parties as determined by the Board of Zoning Appeals.
 - (3) The applicant shall be required to pay for the cost of public notice and written notice to interested parties in accordance with a fee schedule approved by the Town Council. The costs of expert studies may be borne by the applicant.
 - (4) At a public hearing, any interested party may appear in person, by agent or by an attorney licensed to practice in this state.
 - (5) Every decision by the Board of Zoning Appeals must be in writing and state findings of fact and conclusions of law on which the Board of Zoning Appeals based its decision.
 - (6) The written decision by the Board of Zoning Appeals shall be rendered within 30 days after the date of the last public hearing pertaining to such decision. If the Board of Zoning Appeals fails to render a written decision within 30 days, then any party may pursue additional legal remedies to obtain a decision, including, but not limited to, seeking a *writ of mandamus*.

1326.04 Required findings.

- (a) The Board of Zoning Appeals may approve a request for a Variance, in whole or in part, conditionally or unconditionally, and may only consider the facts presented with the Project Permit application or at the public hearing. The Board of Zoning Appeals shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to ensure compatibility with surrounding properties). A request for a Variance may be denied and an approved Variance may be revoked by the Board of Zoning Appeals:
 - (1) If the applicant fails to comply with a reasonable request of the Board of Zoning Appeals for furnishing specific information related to the requested Variance; or
 - (2) For failing to satisfy any conditions that are or were contingent upon the Board of Zoning Appeals approving the requested Variance.
- (b) The Board of Zoning Appeals shall approve a requested Variance if the following criteria are satisfied:
 - (1) The approval of the Variance will not adversely affect the public health, safety or welfare, or the rights of the abutting property owners or residents;
 - (2) The request for the Variance arises from special conditions or attributes which pertain to the property and were not created by the person requesting the Variance;
 - (3) The approval of the Variance will eliminate an unnecessary hardship and permit a reasonable Use of the land; and
 - (4) The approval of the Variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done.