

Revised 10/1/94

STANDARDS OF PROOF - AREA VARIANCE

The Zoning Ordinance (Law) applies uniformly to all lands and buildings located within your Town. Like most Zoning Ordinances (Laws), it contains several minimum dimensions with which all buildings and the location of buildings must conform. These area requirements (dimensional requirements) may involve the minimum distance from the highway to the building (front yard setback) or the minimum distance between the building and lot side line (side yard setback) as well as other dimensions.

You have asked for special dispensation allowing you to meet reduced requirements. In other words, you have petitioned the Zoning Board of Appeals for a modification or “variance” of some particular area or dimensional requirement of the Zoning Ordinance (Law). You applied for an Area Variance.

The Zoning Board of Appeals is the only body that is empowered by law to grant Area Variances. The Zoning Board of Appeals cannot grant any Area Variance unless proof is presented to the Board by you, the applicant, that warrants special treatment as to your property. The fact that you simply “want” a variance is not enough.

The New York State Legislature has enacted into law requirements that an applicant for an Area Variance must furnish proof to the Zoning Board of Appeals establishing the following:

- (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 in 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.

After you have presented your proof, the Zoning Board of Appeals will take into consideration the benefit to you, if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by granting the variance.

“Proof” is not just parroting these criteria. You must produce “facts” so as to enable the ZBA to carefully consider each of the criteria. Then the ZBA will weigh the benefit to you as contrasted with the detriment to the Town.

Consideration might well be given to hiring a professional real estate appraiser (not a broker or salesman) or a landscape architect to develop proof that will satisfy the above standards.

Remember, this is your case. The Zoning Board of Appeals does not have the power to grant variances unless the required proof is furnished.

As the Appellate Division of the Supreme Court recently held, an applicant must demonstrate that strict compliance with the Zoning Ordinance (Law) will result in practical difficulties.