

EXPLANATION OF THE BOARD OF ZONING APPEALS PROCESS

This document offers a brief overview of the Board of Zoning Appeals (BOZA) process and procedures. Applicants are encouraged to meet with staff to discuss their requests, receive informal assessments, and review the required forms for applications, along with application deadlines.

The BOZA is a quasi-judicial body that examines facts and evidence in exercising its three specific powers, duties, and responsibilities, as set forth by South Carolina Local Government Comprehensive Planning Enabling Act of 1994 ([SC Code of Laws, Title 6, Chapter 29](#)):

- I. To hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. There are four tests of hardship established by the state. All four must be met. It is incumbent upon the applicant to demonstrate the hardships.
- II. To permit uses by Special Exception when designated within the Zoning Code, and
- III. To hear and decide appeals of from a decision of a zoning official.

I. VARIANCES

Variance requests are the most well-known duties of the Board of Zoning Appeals by the public but also one of the most misunderstood. Under the 1994 Planning Act, the board has the power to hear and decide appeals (requests) for variances when strict application of the zoning ordinance would result in "unnecessary hardship." S.C. Code § 6-29-800(A)(2).

A variance allows the board to modify an otherwise legitimate zoning restriction when, due to unusual conditions, the restriction may be more burdensome than was intended. The variance must not impair the public purpose. To obtain a variance on the ground of "unnecessary hardship," there must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation. *Hodge v. Pollock*, 223 S.C. 342, 75 S.E.2d 752 (1953); *Colbert v. Krawcheck*, 299 S.C. 299, 384 S.E.2d 710 (1989); *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 516 S.E.2d 442 (1999), certiorari denied, 528 U.S. 1020, 120 S.Ct. 528, 145 L.Ed 2d 409 (1999).

An owner is not entitled to relief from a self-created or self-inflicted hardship. A claim of unnecessary hardship cannot be based on conditions created by the owner nor can one who purchases property after the enactment of a zoning regulation complain that the nonconforming use would work a hardship upon him. *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965); *Georgetown County Building Official v. Lewis*, 290 S.C. 513, 351 S.E.2d 584 (Ct. App. 1986); *Restaurant Row Associates v. Horry County*, *supra*.

When deciding whether to grant or deny a variance, the board is not free to make whatever determination appeals to its sense of justice. Rather, the board must apply the standards prescribed by the zoning ordinance and the 1994 Planning Act. Courts will not uphold a decision of the board to grant or deny a variance based on errors of law, fraud or lack of supporting evidence, or a board action that is arbitrary, unreasonable, discriminatory, or an abuse of discretion. *Hodge v. Pollock*, *supra*.

Standards for Granting Variances

The 1994 Planning Act establishes a four part test for granting variances. All four conditions must be met in order to grant a variance. The Board must strictly follow these criteria and has no authority to grant a variance otherwise. It is incumbent upon applicants to demonstrate and establish how they meet these requirements:

- 1. Extraordinary conditions.** There are extraordinary and exceptional conditions pertaining to the particular piece of property. Extraordinary conditions could exist due to size, shape, topography, drainage, street widening, beachfront setback lines, or other conditions that make it difficult or impossible to make an economically feasible use of the property.
- 2. Other property.** These conditions do not generally apply to other property in the vicinity. See *Bennett v. Sullivan's Island Board of Adjustment*, 313 S.C. 455, 438 S.E.2d 273 (Ct. App. 1993).
- 3. Utilization.** Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.
- 4. Detriment.** The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

Other factors applicable to a variance (S.C. Code § 6-29-800(A)(2)(d)):

- 1. Profitability.** The fact that the property may be used more profitably, if a variance is granted, may not be considered as grounds for a variance. See *Groves v. Charleston*, 226 S.C. 459, 85 S.E.2d 708 (1955).
- 2. Conditions.** In granting a variance, the board may attach conditions to it. These conditions may affect the location, character or other features of the proposed building, structure or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety or general welfare.
- 3. Aesthetics and Design.** The fact that a certain design feature or the location of design elements may be more aesthetically pleasing or more conveniently located, such as a taller roof or the location of an addition, generally does not allow a variance to be authorized.

II. SPECIAL EXCEPTIONS

The Board of Zoning Appeals has the exclusive power to permit uses by special exception subject to standards and conditions in the zoning ordinance. S. C. Code § 6-29-800(A)(3). The zoning ordinance includes the standards and conditions to be followed by the board when considering such appeals.

As with considerations of variance requests, the board, in granting or denying a request for a special exception, must apply the standards and conditions imposed by the zoning ordinance.

The general rule is that reviewing courts will not disturb the findings of the BOZA unless such findings or decision resulted from action of the board which is arbitrary, an abuse of discretion, illegal or in excess of lawfully delegated authority. *Bannum v. City of Columbia*, 335 S.C. 202, 516 S.E.2d 439 (1999). In *Bannum*, the court reversed the board's denial of a special exception to a residential halfway house facility for released federal prisoners. The court determined that the board's decision arbitrarily discounted or disregarded all evidence offered by the applicant to show satisfaction of the ordinance requirements. The court concluded that the board's decision was based on the fears of neighboring residents rather than on the requirements for a special exception set out in the ordinance.

III. APPEAL OF A DECISION OF AN ADMINISTRATIVE OFFICIAL

The BOZA is also empowered to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance. Appeals to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the Town. The appeal must be taken within 30 days from the date the appealing party received actual notice of the action from which the appeal is taken, by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals notice of appeal specifying the grounds for appeal.

HEARING PROCEDURE

The hearing procedure for a variance request, special exception, or an appeal from an administrative decision is established by the BOZA's [Rules of Procedure](#) and is as follows:

An oath is administered to all who will speak at the meeting.

1. Chair or designee opens the hearing (reads agenda item)
2. Staff presentation (**5 minutes**)
3. Applicant presentation (**5 minutes**)
4. Public Comment (Up to 3 minutes per speaker as determined by §30.36)
5. Board questions
6. Applicant and staff responses (Up to 3 minutes each)
7. Chair or designee closes public comment
8. Board comments and deliberation
9. Board Disposition (motion and vote)

ORDER OF THE BOARD

Once the Board makes a final decision on a matter, an order shall be issued disposing of a matter by granting or denying relief with such conditions may be deemed necessary; or affirming, modifying, or reversing an administrative decision. A matter may be dismissed for lack of jurisdiction or prosecution. Findings of fact and conclusion of law supporting the board's decision is stated in an order. A copy of the order is sent to each party in interest by certified mail.

REHEARING

The Board may grant a rehearing of an application which has been dismissed or denied upon written

request filed with the secretary within fifteen (15) days after delivery of the order accompanied by new evidence which could not reasonably have been presented at the hearing, or evidence of a clerical error or mutual mistake of fact affecting the outcome.

APPEAL TO CIRCUIT COURT

Petition/Notice of Appeal and Request for Pre-litigation Mediation.

A person with a "substantial interest" in any decision of the BoZA (or an officer or agent of the appropriate governing authority) may appeal a board decision to the circuit court in the county by filing with the clerk of court a written petition setting forth "plainly, fully, and distinctly" why the decision is contrary to law. The appeal petition must be filed within 30 days after the decision of the board is mailed. Although the statutes do not require service of the petition on the board, it is advisable to do so. The clerk of court is required to give immediate notice of the appeal to the secretary of the board. The filing of an appeal does not automatically stay or supersede the decision of the board, but the circuit judge may grant an order of supersedeas upon such terms and conditions as may seem reasonable and proper. S.C. Code § 6-29-820, § 6-29-830.

A 2003 amendment to the 1994 Planning Act allows an alternative appeal procedure for a property owner whose land is the subject of a BOZA decision. Pursuant to S.C. Code § 6-29-820(B), such a property owner can file either an appeal petition or a notice of appeal accompanied by a request for pre-litigation mediation. Any notice of appeal and request for pre-litigation mediation must be filed within 30 days after the decision of the board is postmarked.

Standard of review.

The findings of fact by the board are treated in the same manner as findings of fact by a jury. The court may not take additional evidence. The court can determine only whether the board decision is correct as a matter of law. S.C. Code § 6-29-840(A); *Austin v. Board of Zoning Appeals*, Town of Hilton Head Island, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004).

The decision of the board must be allowed to stand unless there is "no evidence" which reasonably supports the findings. *Austin v. Board of Zoning Appeals*, Town of Hilton Head Island, supra. However, a decision of a zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board abused its discretion. *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 516 S.E.2d 442 (1999), certiorari denied, 528 U.S. 1020, 120 S.Ct. 528, 145 L.Ed. 2d 409 (1999)