

BY LAWS

BOARD OF ZONING APPEALS

The following rules of procedure, as amended, are hereby adopted by the Board of Zoning Appeals (BZA) to facilitate the performance of its duties as outlined in Act 285 P.A. of 1931, as amended. The references are made to the Zeeland City Code – ZZC Vol. II, AKA the City of Zeeland Zoning Ordinance.

Section 1.0 OFFICERS

- 1.1 At the regular meeting in May of each year, the BZA shall select from its membership a Chair, Vice-Chair, and Secretary. All officers are eligible for re-election for consecutive terms for the same office.
- 1.2 The Chair, Vice-Chair, and Secretary shall take office immediately following their selection and shall hold office for a term of one year or until their successors are selected to assume office.
- 1.3 The officers of the BZA shall constitute the Executive Committee. As such, they shall at the request of the Chair meet from time to time by themselves or with others to expedite the work of the Board. They do not have the authority to make decisions reserved for the Board itself.
- 1.4 The Chair shall preside at all meetings, appoint committees, and perform such other duties as may be ordered by the Board. The Vice-Chair shall act in the capacity of the Chair in the absence of the Chair. In the event the office of Chair becomes vacant, the Vice-Chair shall succeed to this office for the unexpired term and the Board shall select a successor to the office of Vice-Chair for the unexpired term.

Section 2.0 MEETINGS

- 2.1 A monthly meeting shall be conducted on the third Tuesday of each month for which a hearing is required, the regular meeting date subject to the approval of the Board at its organizational meeting.
- 2.2 When the regular meeting day falls on a legal holiday or upon a day resulting in a conflict, the Board shall, if possible, select a suitable alternate day in the same month for the regular monthly meeting.
- 2.3 Special meetings shall be called at the request of the Chair or of any three (3) members of the Board. Notice of special meetings shall be given to the members of the Board by the Zoning Administrator or the Recording Secretary and shall state the purpose and time of the meeting.
- 2.4 All regular and special meetings, hearings, and work sessions, records and accounts shall be open to the public except as otherwise provided by law.

- 2.5 Three (3) members shall constitute a quorum for the transaction of business and the taking of official action for all members, except the granting of Use Variances which require four (4) positive votes. Whenever a quorum is not present at a regular or special meeting, those present shall adjourn the meeting.
- 2.6 Public pre-hearing meetings may be held before hearings at the discretion of the Chairman and the Zoning Administrator, dependent upon the complexity of the cases.
- 2.7 Motions are to be made in the positive, requiring a “yes” vote from supporters of the motion, and shall be worded as follows: “I move that the variance requested by John Q. Public for a south-side yard setback variance of five feet be granted. This motion is supported by the following facts:
- The property includes a wet land in the rear and on the north side making it impossible for the applicant to build a conforming dwelling within the otherwise required side yard setbacks. This constitutes a practical difficulty.
 - The variance is the minimum necessary to allow the applicant to enjoy the property rights of others in his/her zone district.
 - No evidence was found to indicate that granting the variance would have a negative impact upon surrounding properties, the community, or the intent or purposes of the ordinance.
 - The existence of such protected wet lands on properties is not so usual or recurrent that it would be better to request a revision to the ordinance.
 - And the practical difficulty found was not caused by any action of the applicant.
- 2.8 The following is the procedure to be followed for conducting public hearings. This information through Section 2.10 should be communicated to all those present before the hearing gets underway, orally by the chairman and made available in writing at the meeting.

Hearing Procedures: Zeeland Board of Zoning Appeals

The Board of Zoning Appeals (BZA) is pledged to ensure that the intent of Zeeland’s zoning ordinance be preserved, that public safety be secured, and that substantial justice be done. It is composed of citizens who have devoted considerable time to understanding the ordinance and what circumstances must be present in order for variances to it to be lawfully granted.

Members of the BZA are sworn to uphold the ordinance and state statutes and case law that govern the granting of variances. They do not take their responsibilities lightly, for they know that granting a variance is essentially granting a citizen the right to violate the law. Three members of the board must vote in support of a dimensional variance in order for it to be approved, four members for a use variance.

Hearings and deliberations follow these steps:

1. The chairman announces the cases that are to be heard (in the order determined by the zoning administrator).
2. The zoning administrator describes each case as it is called, emphasizing those factors he believes have made an appeal necessary. The zoning administrator also covers any communications he may have received relevant to each case as it is heard.
3. The applicant (or his/her representative) may briefly present his/her case, emphasizing how it meets the tests spelled out in the application. The board will ask the applicant or his/her representative questions as well, also following the tests in the application.
4. Others wishing to present evidence to support the applicant's case may do so.
5. Those opposed to the variance request will be heard.
6. The applicant may make a closing statement.
7. The board will close the hearing and may begin its deliberation. It may or may not call for further testimony after the hearing is closed.

As many people as wish to may testify pertaining to a particular case, but a group of people of like mind on an issue is advised to appoint a spokesperson. The BZA chairperson, in the interest of time, reserves the right to limit testimony to new information.

All testimony is to be made from the lectern, one person at a time, the speaker identifying him- or herself (name and address) for the record. Anyone making remarks otherwise will be considered out of order. All statements – from formal testimony to attempts to be recognized – are to be addressed to the chairperson.

The board usually tries to reach a decision before it adjourns but may find it needs more evidence before it can do so. Whatever the situation, the board will eventually vote either to

- grant the variance as requested
- grant it in part
- grant it with conditions
- grant it tentatively, contingent upon review within a specified time period (not to exceed 60 days) by another body or individual with particular expertise to make any recommendations on any conditions that may be relevant and authorized by law and ensuring that granting the variance will not violate applicable law.
- Postpone a decision for up to 60 days to gather more information
- Deny the request altogether

Applicants should be aware that their testimony has two main parts: One is what is written in the application. The other is what is said at the hearing.

An applicant will benefit from reading carefully the section(s) of the ordinance that pertain to his/her case, being sure not to overlook the section on variance procedures (section 2.200 B or C). Questions regarding the zoning ordinance can be addressed to the office of the zoning official.

2.9 The following is the text of the “test” portion of the application for a Nonuse/Dimensional Variance:

The following questions are based upon the six tests (section 2.205 B of the ordinance) for granting relief to property owners in the form of non-use (dimensional) variances. Applicants are required to prove that they have a “practical difficulty.” Practical difficulty is a legal term. They are said to exist when the relief sought is for situations that pass the *each* of the six tests as spelled out in 2.205 B and on this application.

Because each of the six tests in the ordinance must be satisfied in order for the Board of Zoning Appeals to grant a variance, it is in the best interest of the applicant to answer each question in this application clearly and completely, with as much detail as necessary to support their case. Extraneous information will not help their case and will not be considered in the finding of facts. (Applicants may use the back sides of this application or attach extra sheets if they wish. They may include photographs and illustrations to support their case.) Here are the questions the board uses to find whether or not applicants can rightfully claim a practical difficulty:

1. What are the exceptional or extraordinary circumstances or conditions that apply to your property, circumstances and conditions that do not generally apply to other properties in the same zoning district as your property?

To meet this test, you must be able to explain what makes your parcel, your property, and/or your land truly *unique* in *at least one* of the following three possible ways:

- Having an unusual size or shape or location or other physical characteristic, like extreme narrowness, exceptional shallowness, unusual shape, and/or unusual topographical characteristics (like a wet land, large boulder, or deep ravine)
- Having an extraordinary situation related to the land, building, or structure
- Having unusual use or development of immediately adjoining property

2. If you are not granted this variance, will you be unable to enjoy substantial rights and privileges available to others in your zoning district?

Does the uniqueness shown in number one prevent you from enjoying the same substantial rights and privileges that others in your zoning district enjoy? For example, if you claim your lot is too narrow to allow you to build a garage without a variance, yet other residents in your zone district with the same size lots are able to do so, you likely do not have a strong case for a variance.

3. Is the possibility of increased financial return your *primary* reason for this variance request?

You may have an understandable wish to increase the financial return on your property, but that is not by itself sufficient basis to prove practical difficulty. You must first pass the test for uniqueness.

4. Will granting this variance be significantly detrimental to the property adjacent to yours and to your surrounding neighborhood?

Your neighbors' feelings about your request for a variance is considered, but neighbors' support is not necessarily sufficient for determining whether or not your request will be detrimental to the neighborhood. Variances go with the land, not with the current land owner. Consequently, the board may be inclined to take a broader and longer view than do the neighbors.

5. Will granting this variance harm the intent and purpose of this ordinance?

The board must consider whether or not granting a variance will hinder the community in achieving the very goals and objectives the ordinance is trying to accomplish. Statements of intent are found at the beginning of the Zoning District as well in Section 1.101. You should be able to explain *how* your application is consistent with, does not violate the intent of the ordinance; merely saying it does not is not enough.

6. Has the immediate practical difficulty been caused by anything you (the applicant) have done?

So-called "*self-created*" practical difficulties are not legal bases for granting a variance. An example of such a self-created difficulty would be your purchasing property that is conforming and subsequently dividing it into parcels that are deemed then to be of an impractical size.

2.10 The following is the text of the "test" portion of the application for a Use Variance:

The following questions are based upon the tests (section 2.205 C of the ordinance) for granting relief to property owners in the form of use variances. Applicants are required to prove that they have an "unnecessary hardship." Unnecessary hardship is a legal term. Unnecessary hardships exist when the relief sought is for situations that pass each of the tests for granting a use variance as spelled out in Section 2.205 C.

Because each of the tests in the ordinance must be satisfied in order for the Board of Zoning Appeals to grant a variance, it is in the best interest of to answer each question in this application clearly and completely, with as much detail as necessary to support their case. Extraneous information will not help their case and will not be considered in the finding of facts. Applicants may use the back sides of this application or attach extra sheets if they wish. They may include photographs and illustrations to support their case. Here are the questions (based upon the tests in 2.205 C) the board uses to find whether or not an unnecessary hardship exists:

1. Are you unable to gain a reasonable return from your building, structure, or land if used as permitted within the zone district in which it is zoned?

If you can currently achieve a “reasonable return” from your property, you will have difficulty making a case for a use that is not permitted.

2. What are the exceptional or extraordinary circumstances or conditions that apply to your property, circumstances and conditions that do not generally apply to other properties in the same zoning district as your property?

To meet this test, you must be able to explain what makes your parcel, your property, and/or your land truly *unique* in *at least one* of the following three possible ways?

- Having an unusual size or shape or location or other physical characteristic, like extreme narrowness, exceptional shallowness, unusual shape, unusual topographical characteristics (like a wet land, large boulder, or deep ravine)
- Having an extraordinary situation related to the land, building, or structure
- Having unusual use or development of property immediately adjoining yours

3. Will granting this variance alter the essential nature of the neighborhood?

Your neighbors’ feelings about your request for a variance are important, but neighbors’ support is not necessarily sufficient to convince the board that granting a variance will not be detrimental to the neighborhood. Variances go with the land, not with the current land owner. Consequently, the board may be inclined to take a broader and longer view than do the neighbors.

4. Will granting this variance be significantly detrimental to the adjacent properties and to the surrounding neighborhood?
5. Will granting this variance harm the intent and purpose of this ordinance?

The board must consider whether or not granting a variance will hinder the community’s achieving the very goals and objectives the ordinance is trying to accomplish. Statements of intent are found at the beginning of most sections of the ordinance as well in Section 1.200. You should explain *how* your application is consistent with, does not violate the intent of, the particular sections(s) that apply to it; merely responding “it does not” is not enough.

- 2.11 The following are the hearing worksheets (the first for nonuse/dimensional variance hearings, the second for use variance hearings) to be used by board members to facilitate fact finding, decision making, and composing motions:

DIMENSIONAL / NON-USE VARIANCE WORK SHEET

Applicant: _____
Address: _____
Variance(s) requested: _____
Previous variances granted: _____
Department head comments: <input type="checkbox"/> Police <input type="checkbox"/> BPW <input type="checkbox"/> Fire Dept. <input type="checkbox"/> Superintendent
Pertinent information: _____

1. Are there exceptional or extraordinary circumstances or conditions unique to this property?
 Yes No

- Unique conditions or situations existing on the property in question:
- exceptional narrowness
 - shallowness or shape
 - exceptional topographic conditions
 - other extraordinary situations on the land, building or structure
- _____
- use or development of property immediately adjoining the property in question
 - none
- The resulting practical difficulty: _____

2. Substantial property right(s) lost if variance(s) not granted: _____

None

3. Increased financial return primary reason for request?
 Yes No

4. Detrimental effects of variance(s) on adjacent properties and surrounding neighborhood: _____

None

5. Impairments to the intent and purpose of this ordinance if variance(s) granted: _____

None

6. Has the immediate practical difficulty been caused by any direct action of the applicant?
 Yes No

To grant a variance:

1. Question 1 must be answered "yes."
2. Lost property right must be identified.
3. Financial gain may not be the primary reason for an appeal.
4. No significant detrimental effects on adjacent properties or surrounding neighborhood may exist.
5. No impairments to the intent or purpose of this ordinance may occur as a result of granting the variance.
6. Practical difficulty may not be caused by any direct action of the applicant.

USE VARIANCE WORK SHEET

Applicant: _____

Address: _____

Variance(s) requested: _____

Previous variances granted: _____

Department head comments: Police BPW Fire Dept. Superintendent

Pertinent information: _____

1. Can the building, structure or land yield a reasonable return as zoned?

- Yes No

2. Are there circumstances or conditions unique to this property?

- Yes No

Unique conditions or situations existing on the property in question:

- exceptional narrowness
- shallowness or shape
- exceptional topographic conditions
- other extraordinary situations on the land, building or structure

The resulting hardship: _____

State if the conditions and facts listed above are unique to this property or are of a general and recurrent nature in this zone district.

3. Would the proposed use alter the essential character of the neighborhood?

- Yes No

4. Would granting the variance be significantly detrimental to the adjacent properties and to the surrounding neighborhood?

- Yes No

5. Would granting the variance harm the intent and purpose of the ordinance?

- Yes No

To grant a use variance:

- 1. Question 1 must be answered "no."
- 2. Question 2 must be answered "yes" and the unique circumstance(s) and hardship identified.
- 3. Question 3 must be answered "no."
- 4. Question 4 must be answered "no."
- 5. Question 5 must be answered "no"

Section 3.0 AGENDA

- 3.1 The Chair shall be responsible for the implementing the agenda for all Board meetings.
- 3.2 The order of business for all regular and special meetings shall be:
 - a. Call to order
 - b. Excuse absent members
 - c. Public hearings
 - d. Minutes of previous meeting
 - e. Reports
 - f. Unfinished business
 - g. New business
 - h. Adjournment

Section 4.0 ATTENDANCE

- 4.1 All members shall make every reasonable effort to attend all meetings of the Board
- 4.2 Members unable to attend any meeting for cause shall call the Zoning Administrator or the Recording Secretary in time for either of them to take any and all necessary steps to be sure a quorum is present at the meeting. Such action will constitute an excused absence.
- 4.3 A member with two (2) consecutive unexcused absences will be contacted by the Zoning Administrator and/or the chairman of the board to discuss whether or not it would be appropriate for the member to continue to serve on the board.
- 4.4 The same policy and procedure as that in 4.3 (above) applies to members with a total of four (4) absences of any kind (excused and/or unexcused) within any 12-month period.
- 4.5 The Recording Secretary shall keep a record of the members' absences; distribute a written attendance report to the membership at the January, April, July, and October meetings (or, in each case in which there is no meeting on a designated month, at the next following regular meeting); and notify the Chairman and Zoning Administrator when a member is either unexcused for two (2) consecutive meetings (4.3) or absent for any reason four (4) times within a 12-month period (4.4).

Section 5.0 RESIGNATIONS

- 4.1 Resignation from the Board shall be effected by the Board member by a signed letter of intent sent either to the Chair, the Mayor, or the City Clerk.

Section 6.0 DUTIES OF THE RECORDING SECRETARY

- 6.1 The Recording Secretary or the Zoning Administrator shall perform the following duties:
 - a. Keep a permanent record for the minutes of each Board meeting and shall file them in suitable permanent volumes.

- b. Prepare orders of business and agendas for each meeting under the direction of the Chair.
- c. Issue written correspondence to other groups or persons on behalf of the Board and maintain a permanent file of such correspondence.
- d. Address all communications, petitions, and reports to the Board.
- e. Maintain an attendance record for each Board Members and report those records semi-annually to the Board.
- f. Issue notices as required by the Board.
- g. Perform such other duties as the Board may determine.

Section 7.0 AMENDMENTS

- 7.1 Board by-laws may be amended by a positive vote of four (4) members of the Board.