

Zoning Board of Appeals Overview

**Potsdam Local Government Conference
October 9, 2018**

Presented by Jason Pfotenhauer, St. Lawrence County Planning Office

Welcome to ZBA Training!

- ***Congratulations on your appointment!***
- ***ZBA Basics***
- ***Keeping up the Momentum***
- ***Use Variances***
- ***Area Variances***
- ***Conditions***
- ***Interpretations***
- ***SEQR - what it is and when to submit***
- ***Referral to the County Planning Board***
- ***Case Studies***
- ***Training Requirements***
- ***Take-Aways – remember all three and win a prize!***

Appointment

- ◉ Municipal Board (town) or Chief Elected Official (village) make appointments
- ◉ Membership
3 or 5 members
- ◉ Terms should be staggered, and area equal to the number of members on the board
- ◉ Alternate members appointed by the municipal board

ZBA Basics

- ◉ Meetings
-Advertised and as needed
- ◉ Public Hearings
-Required, within “reasonable time”
- ◉ Minutes are a must
- ◉ Decisions need to be made within 62 days of a public hearing

How to keep up Board service momentum

Problem: It's becoming harder and harder to get residents to serve on the Zoning Board of Appeals and keep them there.

Solution: Have a large, controversial development occur in your community.
OR...

Serve Beer!



Incentives

- ◉ Some municipalities pay a mileage reimbursement
- ◉ Some pay an actual yearly stipend for service
- ◉ Some pay for conferences
- ◉ Incentives are at the discretion of the municipal board

Education

- ◉ The more people understand the roll that you play in your community the more it will be seen as imperative
- ◉ Critical that municipalities keep land use documents current and use them
- ◉ The more Board members know the more invested in the process they become

Shared Duties

- ◉ Planning Board and ZBA members can sit on each other's Board
- ◉ CEO can sit on Planning Board but not ZBA
- ◉ Meetings cannot be combined
- ◉ Two municipalities can agree to have a joint Planning Board or ZBA

Take-Away # 1

Minutes are a vital part of any meeting. They help you remember what you did! Always take written minutes.

What is a Use Variance?

Town Law § 267, Village Law § 7-712,
and General City Law § 81 define a
use variance as:

“The authorization by the zoning board
of appeals for the use of land for a
purpose which is otherwise not allowed
or is prohibited by the applicable
zoning regulations.”

Use Variances

The use variance allows zoning regulations to
be superseded

- Denial by CEO first step in variance process
- Applicant is told that they must “make their case”
before the ZBA
- Hardship must be demonstrated before variance can
be granted

To prove hardship applicant must pass **all four** tests

Use Variances (Four Tests)

Applicant must prove that:

- There is no reasonable return on the property
- The hardship is unique
- That the request, if granted, will not alter the essential character of the neighborhood
- The hardship has not been self-created

Legal Test (1)

1. The owner cannot realize a reasonable return on the property as zoned. The lack of return must be substantial and proven by competent financial evidence.

What is reasonable return?

Does not mean desired use would be more profitable. Must show you can't make a financial "going" from any permitted use.

What is competent financial evidence?

Original cost of property compared to current offers or appraisals.

Legal Test (2)

2. The hardship must be unique to the owner's property and not applicable to a substantial portion of the zoning district.

What does unique mean?

Could be geographic: steep slope, wetland; or environmental: land use pattern changes or traffic/road network changes that affect one parcel more than others

Legal Test (3)

3. Granting the variance will not alter the essential character of the neighborhood.

What does altering essential character mean?

Judgment call made by ZBA – but factors that should be considered include: size, location, noise, traffic impacts, etc.

Legal Test (4)

4. The hardship is not self-created.

Not self-created means beyond the control of the owner. Buying the land with the hope that a variance will be granted results in a self-created hardship.

Take-Away # 2

The use variance legal tests are hard to meet and all 4 have to be met. Make sure there is documentation to go along with all four legal tests.

What is an Area Variance?

Town Law § 267, Village Law §7712, and General City Law § 81

define an area variance as:

“The authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.”

Area Variances

- Deal with dimensional, bulk or density restrictions
- In determining area variances ZBA must weigh benefit of applicant against the health, safety and welfare of the community
- ZBA must evaluate five factors in this “balance-of-interest” test for an area variance

Area Variances (Five Factors)

- Will an undesirable change to neighborhood character take place?
- Can benefit be achieved by other means?
- Is the variance substantial?
- Will variance negatively affect environment?
- Has the hardship been self-created*?

* This factor should be considered but does not necessarily preclude the granting of the area variance

Additional Information on Variances

- A Public hearing is required
- Variances run with the land (who the current owner is should not factor into decision)
- The ZBA can impose reasonable conditions on variances
- SEQR applies to all use variances
- Local decision filed with Clerk within 5 business days

Conditions

- ◎ ZBAs can impose conditions on variances to protect neighborhood character and minimize impacts on surrounding area
- ◎ Conditions must be:
 - Reasonable;
 - Directly related to the granting of the variance;
 - Apply to the use of the land and not the user as a person;
 - Imposed to minimize the impact on the surrounding community; and
 - Apply only to the property under consideration.
- ◎ A zoning board may grant a variance on the condition that the variance will lapse if the variance is not acted upon within a certain time.

Interpretations

- Occurs when an individual disagrees with a CEO's interpretation
- ◎ Attempt to determine the local board's original intent when a provision was enacted
 - Review definitions
 - Review methodology for calculating dimensions
 - ◎ Decision is based on reviewing municipal zoning regulations and arriving at the most practical solution

SEQR

- ◎ SEQR stands for: State Environmental Quality Review Act
- ◎ SEQR applies to any Action taken by the Zoning Board that may affect the environment
- ◎ Environment includes: natural resources, noise, visual aesthetics and community character, etc.

SEQR

- ◎ The Planning Board classifies the action into one of three categories: Type 1, Type 2 or unlisted
- ◎ If there is no significant negative impact then a Negative Declaration is made.
- ◎ If there is a detrimental impact then a Positive Declaration is made and an Environmental Impact Statement is required.
- ◎ <http://www.dec.ny.gov/permits/357.html>

The County Referral Process

GML Section 239m:

If a county planning agency or regional planning council exists, application materials must be referred **before** taking final action on the proposal.

What is Referred

GML Section 239m 3(a):

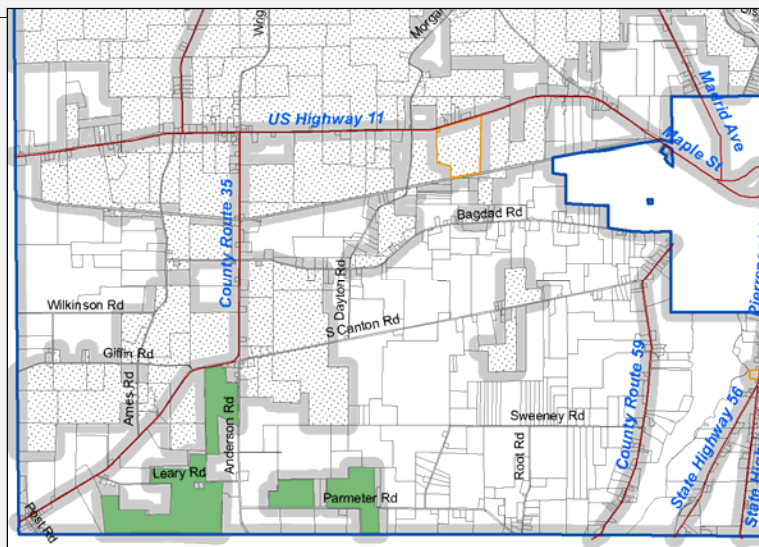
- (i) adoption or amendment of a comprehensive plan;
- (ii) adoption or amendment of a zoning ordinance or local law;
- (iii) issuance of special use permits;
- (iv) approval of site plans;
- (v) granting of use or area variances;
- (vi) other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law.

Features that Trigger Referral

Within 500' of:

- ◉ Municipal boundary;
- ◉ County/State park or recreation area;
- ◉ County/State road or right of way;
- ◉ County stream or drainage channel;
- ◉ County/State land with public facility;
- ◉ A farm operation in an Agricultural District.

Project Referral Maps



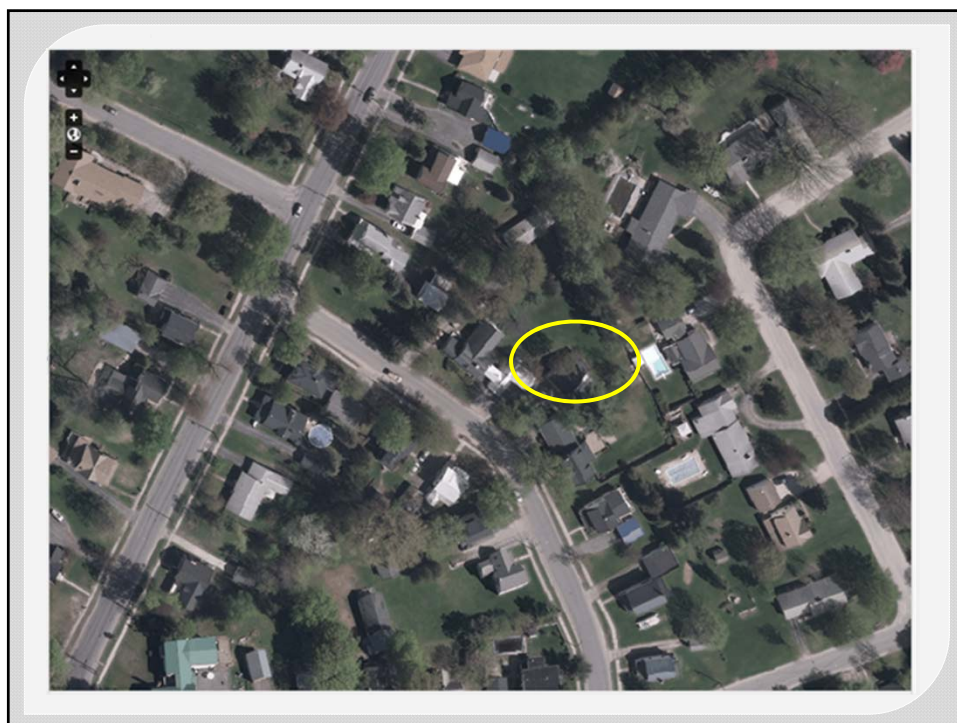
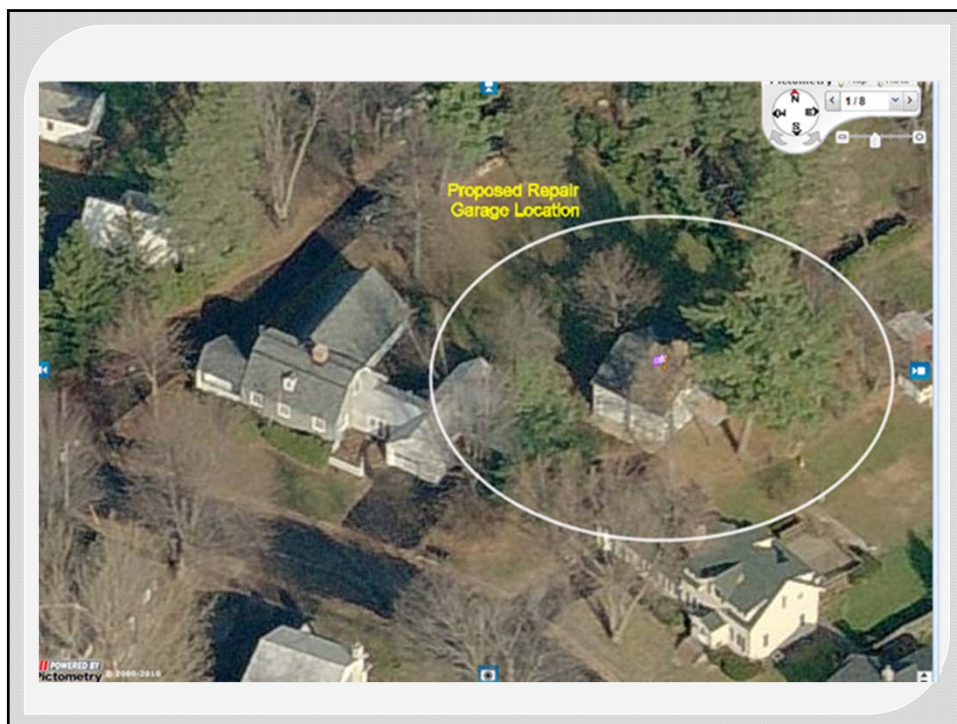
Take-Away # 3

If you are not sure if a project needs to be referred to the County call us. We are here to help! 315-379-2292

Case Studies: Use Variance

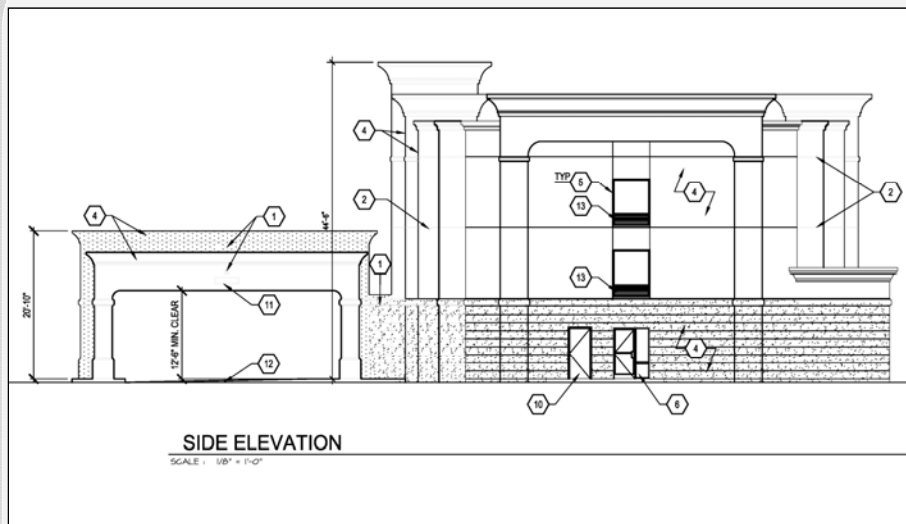
Small Engine Repair

1. Applicant recently laid off -- financial hardship
2. Unique hardship is property came with large garage for RV
3. Garage doors will be kept closed to keep out noise and protect community character
4. Hardship not self-created, did not choose to be laid-off



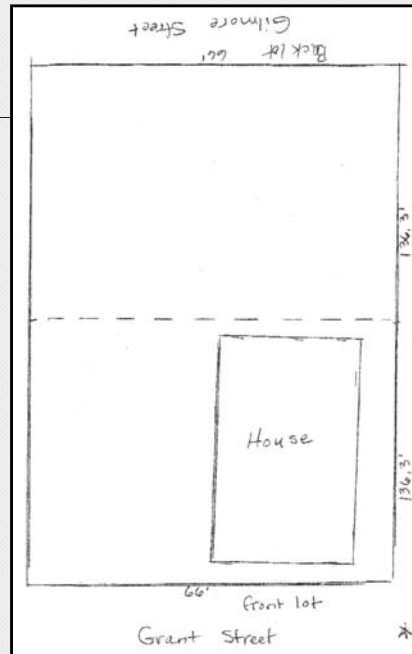
Case Studies: Area Variance

- ◉ Applicant is seeking area variance to exceed maximum height limit by 4' 6"
- ◉ Max height in B-1 zone: 3 stories or 40'
- ◉ Hotel parapet will reach 44' 6"



Area Variance

- ◉ A 66' wide, double-frontage lot in a residential zone
- ◉ Owner wants to sell portion of lot with the residence, and keep rear lot
- ◉ Minimum lot width is 80'
- ◉ All other lots in neighborhood are 66' wide



Training Requirements

- ◉ Four hours per year are required
- ◉ Alternates need to be trained as well
- ◉ County offers two 2-hour sessions per year
- ◉ On-line training is available

Additional Training Resources

- ◉ Local Government Conference, Tuesday, October 15, 2019, SUNY Potsdam
- ◉ <http://www.dos.ny.gov/lg/lut/index.html>
- ◉ County Planning Office, 379-2292
- ◉ <http://new.dancgis.org/ima/>