

# Zoning Board of Appeals



Land Use Academy Fact Sheets

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## Legal Basis of Authority

Section 8-5 of the Connecticut General Statutes (CGS) requires that any town with a Zoning Commission must have a Zoning Board of Appeals.

## Membership

The Zoning Board of Appeals shall consist of 5 regular members and 3 alternates who are;

1. Must be electors of the town,
2. Must not be members of the Zoning Commission, and
3. May be either elected or appointed

## Terms of Office

The terms of office of board members shall be set forth in the municipal ordinance. In the event of a mid-term vacancy, establishing a town legislative body or the chief executive officer shall fill vacancies on the board for the unexpired portion of the term unless otherwise provided by ordinance or special act.

## Election of Officers, Keeping Records

The board shall:

1. Elect a chairman,
2. Keep minutes of its proceedings, showing the vote of each member, and
3. Keep records of its official actions.

## Voting

The concurring vote of four board members is required to:

1. Reverse any decision of the Zoning Enforcement Officer,
2. Approve any application, or
3. Grant any variance. [8-7]

## Powers and Duties

Zoning Board of Appeals has the following powers:

1. To hear and decide appeals from decisions of the Zoning Enforcement Officer;

2. To grant variances from the application of the zoning regulations. The variance power is limited to extraordinary situations and must:

- Be in harmony with the general purpose and intent of the zoning regulations;
- Consider the public health, safety, convenience, welfare and property values;
- Be used only with parcels having unusual conditions that cause "exceptional difficulty or unusual hardship;" and
- Must not be used if the regulations provide that certain prohibited uses may not be permitted by variance; [8-6

3. To hear and decide on special permits and special exemptions where that power is conferred on the Zoning Board of Appeals by the zoning regulations;

## Variances

- Applications for variances are the most common matters brought before the Zoning Board of Appeals.
- The Zoning Board of Appeals is the only board that can vary the application of the zoning regulations. The regulations cannot be varied by the Zoning Commission or the Zoning Enforcement Officer.
- The power to grant a variance allows the Zoning Board of Appeals to stand between the public and individual property owners to protect the latter from unnecessary hardship that strict enforcement of the zoning regulations would impose.
- To vary the application of the zoning regulations, a parcel of land must have unusual conditions not generally found in the district, which would make development in accord with the regulations extremely difficult.

*\*Bracketed numbers reference sections of the Connecticut General Statutes, visit [cga.ct.gov/2009/pub/title8.htm](http://cga.ct.gov/2009/pub/title8.htm)*



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## Variations con't

- These unusual conditions must create “exceptional difficulty” or “unusual hardship,” however CT courts have found “exceptional difficulty” “too lacking in precision of meaning.” Therefore, the standard commonly used by boards of appeals for granting variances is that of “unusual hardship.”

## About “Unusual Hardship”

Numerous court cases have further defined what does or does not constitute “unusual hardship.” Courts have ruled that:

- the hardship must be unique and different in kind from those generally affecting properties in the same zoning district;
- Economic hardship, such as financial loss, is not a proper basis for granting a variance;
- Where applications of the zoning regulations greatly decrease or practically destroy property value, variances should be granted;
- Variances should only be granted where the general purpose of the zoning plan will not be undermined.
- Variances should be based on the condition of the land not the owner. (In 1993, the CGS was amended to clearly provide that variances run with the land and not the owner or applicant.)

## CHECK OUT THESE ONLINE TOOLS AND RESOURCES

- *Online Academy* - provides online resources for those who want a quick refresher or are unable to attend a training. Visit [clear.uconn.edu/lua/online](http://clear.uconn.edu/lua/online)
- *Community Resource Inventory Online* - provides organized maps, tutorials and case examples that assist you in developing a basic inventory of your towns natural and cultural resources.
- *Connecticut's Changing Landscape* - provides data about how CT 's landscape has changed since 1985. Local Land Use officials can use this resource to evaluate the environmental, social and economic impacts of development that guide their decision making.

To learn more visit [nemo.uconn.edu/tools.htm](http://nemo.uconn.edu/tools.htm)

For more information

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Disclaimer: The materials contained in this fact sheet are a general, lay summary of the roles and responsibilities of local land use commissioners. They should not be relied on as a valid legal opinion or position. As such, these materials should not be used in place of consulting an attorney about the roles and responsibilities of a local land use commissioner.