

**SECTION 14 - Zoning Board of Appeals**14.1 Powers and Duties of the Zoning Board of AppealsA. Zoning Enforcement Appeals

1. The Board shall hear and decide appeals where it is alleged that there is an error in any order, requirement, or decision of the Zoning Enforcement Officer or the Assistant Zoning Enforcement Officer in the enforcement of the Zoning Regulations.
2. The Board may reverse, affirm (wholly or partly), or may modify any order, requirement, or decision appealed from in accordance with these Regulations.
3. The Board shall make such order, requirement, or decision as in its opinion should be made regarding the premises and shall have all the powers of the officer from whom the appeal has been taken but only in accordance with Section 8-7 of the Connecticut General Statutes.
4. If the Board sustains or reverses (wholly or partly) any order, requirement, or decision under review, the Board shall state upon the record the reasons for its decision.

B. Zoning Variances

1. The Board shall determine and vary the application of these Regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare, and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the zoning district in which it is situated, a literal enforcement of the Regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured.
2. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of these Regulations in the district involved nor shall it grant a variance to allow any use expressly, or by implication prohibited, by the terms of these Regulations in the district involved.

3. The variance application shall contain, at a minimum, the following information:
  - a. The specific section(s) of the Zoning Regulations that is sought to be varied;
  - b. The special conditions and circumstances that the applicant claims exist that are peculiar to the parcel of land involved, that are not generally applicable to other property in the same zoning district, and that do not result from the actions of the applicant;
  - c. The claimed exceptional difficulty or unusual hardship that exists for the property; and
  - d. The claimed reasons why and how the proposed variance will be in harmony with the general purpose and intent of the Zoning Regulations and will not result in injury to the public health, safety, convenience, welfare, and property values.
4. The Board shall not grant a variance if the special conditions and circumstances of hardship result from the actions of the applicant.
5. The Board's decision-making shall be consistent with the following requirements:
  - a. The Board shall state upon the record, and its written decision shall contain, the reasons for its decision.
  - b. The Board shall make the following findings which shall be stated in the Board's decision:
    - 1) Whether or not the variance will be in harmony with the general purpose and intent of the Zoning Regulations;
    - 2) Whether or not the variance will result in injury to the public health, safety, convenience, welfare, and property values; and
    - 3) Whether or not special conditions and circumstances exist that are peculiar to the parcel of land involved, that are not generally applicable to other property in the same zoning district, and that do not result from the actions of the applicant.

- c. If the Board grants a zoning variance application, it shall state upon the record the section(s) of the Zoning Regulations that is varied and shall specifically describe the exceptional difficulty or unusual hardship upon which the decision is based.
  - d. In granting any variance, the Board shall modify the relief sought so as to grant only the minimum variance that will make possible the reasonable use of the land, building, or structure.
  - e. Approval of a variance shall be conditioned upon the applicant's filing of a copy of the variance in the Town Clerk's Office and the recording of a Board-certified copy of the variance on the Bethany Land Records. The filing and recording shall take place within thirty days of publication of the notice of approval of the variance. Failure to comply with the filing and recording conditions shall cause the approved variance to become null and void.
- 6. The Board may subject a variance to appropriate conditions and safeguards in conformity with these Regulations. Violations of such conditions and safeguards shall be deemed a violation of these Regulations, subject to enforcement as provided in these Regulations and the Connecticut General Statutes.
  - 7. The Board may require the applicant to post a bond to cover the cost of work to be done in connection with the variance approval, including any conditions or special requirements established by the Board. The bond shall be in a form acceptable to the Town Attorney and in an amount acceptable to the Town Engineer.
- C. Construction Within Setback  
Consistent with Section 4.1(B) of these Regulations, the Board may permit the construction of a new building in a location, which is less than fifty feet from any property line adjacent to a public highway in order to conform with the placement of pre-existing buildings on the same lot.
  - D. Floodplain Appeals and Floodplain Variances
    - 1. Consistent with Section 18.8 of these Regulations, the Board has the authority to hear and decide appeals and to grant variances

regarding Section 18 "Floodplain Management Regulations" of these Regulations.

2. Applications for Floodplain Appeals and Floodplain Variances shall be filed and decided in accordance with Section 18 of these Regulations and with this Section 14 (as to Zoning Variances and Zoning Enforcement Appeals) to the extent that this Section 14 does not conflict with Section 18.8.

E. Other

1. The Board shall have such other powers and duties as provided in the Connecticut General Statutes, as amended.
  2. The Board's powers and duties shall be exercised in accordance with this Section 14 and with the pertinent statutory and case law.
- F. The Board shall have no jurisdiction to hear or decide any appeals from any action of the Planning and Zoning Commission, such as, but not limited to, the granting or denial of any zoning permit or special exception permit by the Commission.

14.2 Applications

A. Filing Procedures

1. Any person requesting action by the Board shall apply on the official forms adopted by the Board for such purposes, which forms are available at the Office of the Bethany Zoning Enforcement Officer.
2. Completed applications shall be filed in the Office of the Bethany Zoning Enforcement Officer.
3. For the purposes of this Section, those applications discussed in Section 14.1.A through Section 14.1.E shall be referred to as "zoning applications".
4. A complete application shall consist of the following:
  - a. A completed application form, which shall specify the property address and Assessor's map and lot number and shall include a legal description of the subject premises and a statement as to whether the same or a similar application has been previously filed concerning the subject premises. If the owner is not the applicant, the signature of the owner consenting to the application must be included.

- b. A location map detailing the location of the subject premises in relation to its neighborhood. This map may be an excerpted copy of a street map;
- c. In the case of a zoning application, the filing fee set forth in Section 129 of the Code of the Town of Bethany, and in the case of a location approval application, the filing fee, costs, and expenses set forth in Section 14-55 or Section 14-322(a) (as appropriate) of the General Statutes;
- d. In the case of a zoning application, evidence that the applicant has provided written notice of the zoning application to water companies as required by General Statutes, Section 8-3i;
- e. In the case of a Zoning Enforcement appeal, a copy of the order, requirement, or decision under review;
- f. In the case of a Zoning Variance application:
  - 1) Ten (10) copies of a Zoning Location Survey, as detailed in Regulations of Connecticut State Agencies, Section 20-300b-2(c)(2), which shall be, at a minimum, a class A-2 survey;
  - 2) If topographic conditions are claimed as a hardship, the applicant shall submit photographs and ten (10) copies of a topographic survey which clearly details the hardship conditions and which survey shall be, at a minimum, a Class T-3 topographic survey; and
- g. Such additional evidence as the Board determines is necessary to a decision on the application.

**B. Waiver of Survey Requirements**

- 1. The applicant may request a waiver of the A-2 survey or T-3 topographic survey requirement by filing a written waiver request (which shall include a statement of the reasons for the request) with the application.
- 2. A Class D survey shall also accompany a request to waive the A-2 survey requirement, and the Class D survey shall contain the following information:
  - 1) Lot dimensions (area; width; front, rear, and side lines; and building setbacks);
  - 2) Zoning boundary lines;
  - 3) Dimensions and location of buildings (present and proposed); and

- 4) Such other information which clearly defines the relief sought;
  3. The Board, in its sole discretion, may waive the A-2 survey and/or the T-3 topographic survey requirements if it finds that the survey is not required in order to make an informed decision on the application and if each voting Board member has made a site visit to the property.
  4. When deciding whether or not to waive the survey requirements, the Board shall consider the following:
    - a. The type of variance sought;
    - b. The number and degree of the variances sought; and
    - c. The extent to which other information presented to the Board adequately defines the variance sought, the reasons for it, and the conditions and dimensions of the property and buildings at issue.
  5. Four (4) votes in favor are required to waive the survey requirements.
- C. If the Board determines that an application is incomplete because it does not contain all of the information required by this Section 14, the Board may deny the application.

#### 14.3 Public Hearings

- A. The Board shall hold a public hearing prior to deciding the merits of Zoning Enforcement Appeals, Floodplain Appeals, Zoning Variance Applications, Floodplain Variance Applications, and applications for location approvals (except as provided in Section 14.3.B of these Regulations).
- B. The Board may waive the requirement for a public hearing with respect to a certificate of approval for the location of a motor vehicle dealer or motor vehicle repairer, pursuant to Section 14-55 of the Connecticut General Statutes, if approval was previously granted for the location or if approval was previously granted for the location and the business is to be enlarged to include adjoining or adjacent property.
- C. Public hearings shall be noticed, conducted, and closed in accordance with applicable law, including the Board's Bylaws.

14.4 Voting Requirements

- A. The following actions require the concurring vote of four (4) members of the Board:
  - 1. Decisions pertaining to Zoning Enforcement Appeals and Floodplain Appeals;
  - 2. Deciding in favor of the applicant concerning a Zoning Variance or Floodplain Variance;
  - 3. Deciding in favor of the applicant on any matter upon which the Board is required to pass under any bylaw, ordinance, rule, or regulation; and
  - 4. Waiver of survey requirements pursuant to Section 14.2.B of these Regulations.
- B. Unless required otherwise by law or by Section 14.4.A of these Regulations, Board actions require a majority vote of a quorum of the Board.