

EXPLANATION OF ISSUE, STANDARDS, AND PROCEDURES
FOR QUASI-JUDICIAL HEARINGS ON VARIANCES

This paper is a short explanation of how the Board of Adjustment (the "Board") handles quasi-judicial hearings on variance permit applications. State Statute 160D-705(d) states: "When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following [four standards]."

- 1) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- 2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
- 4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

The decision before the Board when reviewing a variance permit is whether to approve, approve with conditions, or deny. In deciding whether to approve, approve with conditions, or deny variance permit applications, the Board must determine the relevant facts and apply the variance permit standards to the facts to determine whether the standards are met.

The burden of proof is on the Applicant to prove facts that show the above four standards are met.

State law and the Unified Development Ordinance (the "UDO") require the Board to conduct a quasi-judicial hearing on the question of whether to approve, approve with conditions, or deny, a special use permit.

Quasi-judicial hearings have characteristics similar to court proceedings. Quasi-judicial decisions must be based only on the evidence presented at the hearing. The Board Members must be impartial decision makers and must disclose conflicts of interest, site visits, and ex parte communications about pending cases. Witnesses must testify under oath or affirmation. The parties have the right to cross examine the witnesses. There is a right to present rebuttal evidence. The evidence provided by witnesses must be competent and relevant to the issues before the Board.

A witness may not give an opinion about scientific, technical, or other specialized subjects unless the witness, by knowledge, skill, experience, training or education, has expertise on the subject. A person wanting to give an opinion on a subject requiring expertise must first state his or her qualifications for having expertise on the subject. The limitations on expert testimony do not prohibit anyone from testifying about what he or she personally knows or has observed.

Hearsay evidence is testimony by a person present at a hearing trying to prove something is true by telling what someone else said about it. Hearsay evidence is not competent evidence unless the witness shows that the evidence appears to be sufficiently trustworthy and the circumstances show that it is reasonable for the Board to rely on the evidence. The law makes certain exceptions to the rule against hearsay evidence. For example, evidence of what an interested party has previously said or admitted about a relevant subject may be presented against the interested party.

Upon proper authentication, things such as documents, maps, and other exhibits may be used to prove relevant facts. How to authenticate a document or exhibit depends on the nature of the item and includes such things as explaining what it is and who signed or created it, and, if applicable, showing that it is accurate. The hearsay rule may prevent the presentation of some documents. For example, a witness is generally not allowed to present a letter authored by another person as a substitute for the author's being present at the hearing to testify to the facts the author asserts in the letter. Exhibits may be presented with less authentication if they are used merely to illustrate a witness's testimony, and not as independent proof of anything. Please keep in mind that before a witness describes or presents a document or exhibit to the Board, the witness should let the opposing party and the Board Secretary have a copy of it.