

INSTRUCTIONS AND INFORMATION

This outline has been prepared to assist you in presenting your application before the Zoning Board of Review for the City of Woonsocket. The outline contains four sections:

- (1) The role of the Zoning Board, applicant/owner, and City officials at the hearing.
- (2) Various types of relief – what you must prove.
- (3) The record – what it must contain.
- (4) Helpful hints – nothing in this outline is in the nature of legal advice. It is merely informational. If you retain an attorney, which is advisable in some cases, he/she will assist you in presenting your case.

(1) The Role of the Zoning Board, Applicant/Owner and City Official

Zoning Board of Review - The Zoning Board of Review is a quasi-judicial board that is empowered to do three things:

- Grant variances
- Grant special use permits
- Reverse a decision of the Zoning Officer

The Zoning Board acts as a judge. It takes evidence in the form of oral testimony, pictures, exhibits, plans, etc. and considers whether the applicant has proven his/her case. You must remember that the Board is not a city agency or department and has no duty or authority to assist you at the hearing. The Board will render a decision either granting or denying your request for relief and may impose conditions when it grants relief. In order for you to prevail, there must be four (4) votes in favor of granting a variance or special use permit. To successfully appeal a decision of the Zoning Officer, at least three (3) members must vote to overturn the Zoning Officer's decision. It is important to note that you may also have to appear before another board or agency, such as Design Review, Planning Board, City Council, or Building Inspector, in connection with your application depending on the specifics of your application.

Applicant/Owner – You, the applicant, have the burden of proof with regard to your application. This means that you must produce relevant and competent evidence and persuade the Board members that you are entitled to the relief requested. Additionally, you are responsible for providing a completed application with correct information and plans for the hearing.

Zoning Officer – The Zoning Officer is the City Official responsible for interpreting the zoning ordinance and making determinations on zoning applications. The Zoning Officer reviews the application and determines what sections of the zoning ordinance apply. Likewise, it is the Zoning Officer who determines whether you must show a change of circumstances or if a certain use has been abandoned.

(2) Various Types of Relief – What You Must Prove

As noted above, the Zoning Board is empowered to grant relief in the form of:

- Variances
- Special Use Permits
- Reversal of a Decision of the Zoning Officer

The following are the various legal standards which apply, as well as what you, the applicant/owner, must prove:

Variance – There are two types of variances: use variance and dimensional variance.

- **Use Variance** – You need a use variance when you propose a use in a zone where it is not permitted. The most common examples are: putting a business in a residential zone or increasing the number of housing units in zones where units are limited. In order to obtain relief, you must prove a hardship. This means the loss of all beneficial use of your property. To do this, you must show that the property would be useless or of no value if the restrictions in the zoning ordinance are applied to the property. The fact that you may be losing money on your property is not considered loss of beneficial use. This is a difficult standard to prove and professional legal assistance is often recommended.
- **Dimensional Variance** – This type of relief is available when the proposed use is permitted, but you cannot conform to the regulations that govern where the permitted use is located on the property, such as the height, rear or side lot setbacks. In order to prevail, you must show that the application of the regulations to your property would be more than a mere inconvenience. Be prepared to show by testimony, plans, charts, etc. what you propose and why you cannot locate your construction where the zoning ordinance requires.

Special Use Permit – This is a form of relief which requires that you provide evidence to the Zoning Board to the satisfaction of the following standards:

- That the special use shall be in harmony with the general purpose and intent of this ordinance.
- That the special use is reasonably necessary for the convenience or welfare of the public.
- That all appropriate conditions and safeguards are included in the special use permit in the form of stipulations.
- That in the case of a special use on a lot which adjoins one or more lots in a residential zone, a fence of solid appearance or approved evergreen hedge, having a height of not less than six feet, shall be erected and maintained between such area and the property in the residential district.

Zoning Officer Appeal – When the Zoning Officer makes a decision that you disagree with, such as a denial of a building permit, you may appeal that decision to the Zoning Board of Review. In order to prevail, you must convince three members of the Board that the Zoning Officer's decision was incorrect because it was based on incorrect facts or an incorrect interpretation of the law.

(3) The Record – What It Must Contain

You must consider your hearing before the Zoning Board similar to a trial. This is why it is important that you prepare adequately. The Zoning Board of Review acts as a finder of fact.

There is no other hearing, even if you appeal the Board's decision to the Superior Court. The Superior Court does not take additional evidence. For that reason, you must present your case competently. If you feel that you're unable to do so, you should consult an attorney. In many cases, it may be important to produce expert testimony from an architect, engineer, traffic expert, real estate person, etc. It is crucial for you to present complete and relevant evidence to prove the legal standard that applies to your application. If you fail to do so, you risk losing your case and making a successful appeal to Superior Court unlikely.

(4) Helpful Hints

- Always present a complete and accurate application.
 - Always provide at least nine (9) copies of the application and everything else you want to include such as site plans and/or parking spaces.
 - Always prepare your presentation prior to the hearing. This includes your testimony, expert testimony, lay witness testimony and preparation of charts, plans, and documentary evidence. A properly-prepared application stands a better chance of success.
 - Always stick to relevant, competent evidence during your hearing. This means evidence that directly relates to your application, given by a person with full and first-hand knowledge of the application, the property in question, and the neighborhood in question. This will protect you should you wish to appeal to Superior Court.
 - Always take responsibility for your application and your presentation at the hearing. No one wants to hear you blame others for your lack of preparation.
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- Do not go to the hearing with an incomplete application, incomplete plans or an improperly-prepared presentation. You will certainly be disadvantaged at the hearing and on appeal.
 - Do not present evidence to the Zoning Board that is misleading, confusing or irrelevant to your application. If you do, you risk confusing the Zoning Board members and wasting everyone's time.
 - When questioned by the Board, do not say, "I'll do it the way you want." It is your job to explain and justify the relief you seek. If the Board has concerns, they will impose conditions on the approval known as stipulations.
 - Do not use the "I don't know" defense. Don't say, "I didn't know that", or "They told me I didn't have to do this", or "Nobody helped me". You have ample time from the date you submit your application to the hearing date to get your answers and to properly prepare your application.

Should you hire a lawyer? Ask yourself, "How important is this project to me?" If there is a substantial amount of money involved with your application, you should consider protecting your interest(s) to the best of your ability.