

CITY OF MIDDLETOWN PLANNING DEPARTMENT

APPEAL FOR VARIANCE

(To be submitted to the Board of Zoning Appeals)

1. Applicant's Name _____

Mailing Address _____

Telephone Number(s) _____

2. Owner's Name _____

Mailing Address _____

3. Property Address _____

4. Parcel Number(s) _____

5. Use of Property _____

6. Zoning District Classification _____

7. The approval of an application for a certificate of zoning compliance was denied by the Zoning Administrator (please describe proposed construction, reason for denial including applicable Section of the Zoning Ordinance):

Items 8, 9, 10 and 11 must be completed.

8. A variance can be granted only if it is justifiable based on the criteria stated in Section 1282.03, as shown on pages 2 and 3 of this application. The appeal is properly brought before the Board of Zoning Appeals for the following reason(s):

_____ Exceptional narrowness, shallowness, or shape of a specific piece of property on the effective date of the Zoning Ordinance

_____ Exceptional topographic condition

_____ Other extraordinary situation or condition of such piece of property, or use and development thereon, or the use or development of property immediately adjoining the piece of property in question

9. Describe the unique circumstances that pertain to your property that do not exist with other properties in your neighborhood or zoning classification that impair your use of the property for the designated zoning classification. (why should your property be treated differently from other properties in your neighborhood with respect to the regulation being appealed?) Hardship must be based on the physical attributes of the site in question with respect to the uses permitted in the zoning ordinance.

10. What effect will the granting of the variance have on the adjoining properties and neighborhood?

11. How will the granting of the variance be in keeping with the intent of the regulation that is being waived?

12. I certify that I am the applicant named above and that I have familiarized myself with the subject property and request. The information presented above is accurate to the best of my knowledge.

13. Date _____ Applicant's Signature _____

Note: This application must be accompanied by:

- 1) three (3) copies of a plot plan of the property's physical features;
- 2) preliminary plans and elevations of proposed construction;
- 3) \$150.00 fee for processing and publishing appeal cases, and
- 4) names and mailing addresses of owners of properties within 200 feet of the subject property.

DEPARTMENTAL USE

Plot plan received _____. Other plans received _____. Fee paid _____

Application is accepted for the BZA Agenda. Secretary's initials _____

BZA Case No. _____ Legal Notice No. _____ Date _____

§ 1282.03 APPEAL FOR VARIANCE.

An appeal for variance may be taken by any property owner or by any officer, department or board of the City.

(a) *Filing.* Such appeal shall be filed with the Zoning Administrator, who shall transmit the same, together with all plans, specifications or other descriptive material pertinent to the case, to the Board of Zoning Appeals at its next meeting, if not within 15 calendar days from the date of filing such application.

(b) *Criteria for granting variance.* Upon appeal in specific cases, filed as provided herein, the Board shall have the power to authorize variances from the literal enforcement of the requirements of this Zoning Ordinance only in accordance with the criteria set forth as follows:

(1) *Justification for appeal.* Where, by reason of the exceptional narrowness, shallowness or shape of a specific piece of property on the effective date of this Zoning Ordinance (Ordinance 4886, passed December 27, 1968), or by reason of exceptional topographic condition or other extraordinary situation or condition of such piece of property, or use and development thereon, or of the use or development of property immediately adjoining the piece of property in question, the literal enforcement of the requirements of this Zoning Ordinance would involve practical difficulties or would cause undue hardship, unnecessary to carry out the spirit and purpose of this Zoning Ordinance, the Board shall have power to authorize a variance from such strict application so as to relieve such hardship and so that the spirit and purpose of this Zoning Ordinance shall be observed and substantial justice done. In authorizing a variance, the Board may attach thereto such conditions regarding the location, character and other features of the proposed structure as it may deem necessary in the interest of the furtherance of the purposes of the Zoning Ordinance and in the public interest. In authorizing a variance, with attached conditions, the Board shall require such evidence and guarantee or bond as it may deem to be necessary, that the conditions attached are being and will be complied with.

(2) *Board determination.* No such variance in the provisions or requirements of this Zoning Ordinance shall be authorized by the Board unless the Board finds that all the following facts and conditions exist:

A. That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties or class of uses in the same zoning district; and

B. That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this Zoning Ordinance or the public interest.

(3) *Required finding.* No grant of a variance shall be authorized unless the Board specifically finds that the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation.

(4) *Use adjustments.* Use adjustments, such as use variances and substitutions of nonconforming uses for property and structures, shall be heard and decided by the Planning Commission as provided in Chapter 1283.

(Ord. O79-164, passed 9-4-1979)