

**Town of Wheatland
Zoning Board of Appeals
Applicant Information Sheet**

This sheet is a “plain language” guide to the Town of Wheatland Zoning Board of Appeals process. Any specific legal questions or concerns should be directed to your attorney.

THE PROCESS

The Town Building Inspector is charged with the enforcement of our and the State’s regulations along with issuing building permits. The Building Inspector will decide if a request or situation in the Town is in compliance with the regulations or not. If the Town Building Inspector issues a decision that you do not agree with, then you can appeal that decision to the Zoning Board of Appeals. You will need to fill out an application and provide some information such as maps and drawings. The Zoning Board of Appeals will then hold a public hearing. At that hearing you will get a chance to present your information and show why you should get a variance. There are certain tests that must be met for approval. These tests are discussed below. The public will also get a chance to give input at this hearing. The Board will then decide whether to approve, disapprove or approve with conditions your request.

INFORMATION THAT YOU NEED

You should provide maps that show dimensions and property lines, roadways, driveways, buildings, etc., a detailed description of what you want, and you must meet all the legal requirements for the type of variance that you are requesting. If you chose not to provide information your application may be denied or postponed.

TYPES OF VARIANCES

There are two types of variances, a “use” variance, and an “area” variance.

A “USE variance” means authorization by the Zoning Board of Appeals for the use of land for a purpose which is not allowed or is prohibited by the Town zoning regulations.

An “Area variance” means authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the Town’s zoning regulations.

USE VARIANCE

In order for the Zoning Board to grant a use variance, the applicant must show that the Town zoning regulations and restrictions have caused unnecessary hardship. To prove an unnecessary hardship, the applicant must demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

- 1) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.
- 2) That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood,
- 3) That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- 4) That the alleged hardship has not been self-created.

If you can prove the four above items, the Zoning Board of Appeals, in the granting of use variance, must grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

AREA VARIANCE

In making its decision, the Zoning Board of Appeals must take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board must consider:

- 1) Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the area variance;
- 2) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
- 3) Whether the requested area variance is substantial,
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- 5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the variance,

The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

IMPOSITION OF CONDITIONS

The Board of Appeals has the authority in the granting of both use variances and area variances to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. The conditions must be consistent with the spirit and intent of the zoning ordinance or local law and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.