

NEW CASTLE COUNTY DEPARTMENT OF LAND USE



INFORMATION BOOKLET

This book is intended to be a helpful tool for applicants to the Board of Adjustments, citizens who are interested in providing input to the Board, or anyone who would like to understand the role of the Board. The book has been designed to be generally informational, not all-inclusive. For a definitive interpretation of any specific matter related to the Board, please contact the Department of Land Use.

What is the Board of Adjustment?

The Board of Adjustment is a 7-member citizens' board, created by state law and appointed by the County Executive and County Council. The Board meets on the second and fourth Thursdays of the month to hear requests from property owners for variances from a variety of County laws and regulations.

What is the procedure for applying to the Board of Adjustment?

Those who are interested in applying to the Board of Adjustment need to fill out an application. A copy of the application form is enclosed on Page 8, can be downloaded from the New Castle County website (<http://www.nccde.org/389/Board-of-Adjustment>) or is available in the Department of Land Use, 87 Reads Way, New Castle, DE 19720, (302) 395-5400.

The application must be submitted to the Department of Land Use, along with any required documents and the fee. The application must be filled out in its entirety or it will not be accepted by the Department. Approximately one month after the Department has received the application, the applicant will be notified of the hearing date and time.

It is very important that the applicant know the zoning classification for the property before seeking any type of relief from the Board of Adjustment.

What is the scope of the Board's authority?

The Board may hear applications for the following types of requests:

- **Dimensional Variances.** Every property has a particular zoning attached to it. Each type of zoning has standards that set lot width, lot area, setback and rear and side property yard requirements. If an applicant cannot comply with these standards, he/she may file an application to the Board. The standard that the Board applies to these requests is whether the applicant is experiencing exceptional practical difficulty in complying with the standards. This means that the applicant must establish that there is something peculiar with the property which prevents the applicant from meeting the requirements. The Board will also look to the character of the immediate vicinity, the effect of the variance request on neighboring properties and the difficulty the applicant faces in making normal improvements, all based on Zoning Code (UDC) requirements.
- **Use Variances.** Each zoning category establishes the ways in which a property may be used. A use variance permits a particular use on a lot that is not allowed by the zoning. To obtain this type of variance, the applicant must be suffering some type of unnecessary hardship that prevents him/her from using the property for its intended purpose. The Board must look at these factors: 1/ whether the property can yield a reasonable return when used in a manner that is permitted by the Zoning Code, 2/ whether the situation being faced by the property owner is due to unique circumstances or whether it is self-created, 3/ whether the use proposed will alter the

essential character of the community, and 4/ whether all uses that are permitted with the existing zoning are economically unfeasible for the subject land. For example, if an applicant proposes a commercial use in a residential district, a use variance may be the remedy to seek if the standards can be met. A use variance will not be granted if the appropriate remedy would be to rezone the property. If the Board grants a use variance, the decision of the Board must also be approved by Resolution of County Council.

- **Special Uses.** Certain land uses and developments present unique conditions with respect to their relationship to the community. These uses are identified in the General Use Table, found in the UDC 40.03.110 GENERAL USE TABLE. These are uses that may be permitted in some zoning districts by right, but in other districts require approval as a special use. Examples include kennels, protective care facilities, and commercial towers. Applicants must show, among other things, that the proposed use is compatible with the character of the land in the immediate vicinity. The Board has the discretion to impose other conditions for the use to be allowed.
- **Non-Conforming Status.** The Board also hears requests for confirmation of non-conforming status; that is a use that does not meet the provisions of the property's zoning district, but was initiated prior to the adoption of the Zoning Code in 1954 or any amendments thereto; and has been in continuous existence since that time. The burden of proof that the property is legally non-conforming rests with the applicant.

What kind of testimony is presented at the public hearing?

The Board will ask the applicant or his/her representative to state their case and to present any documentation that supports the application. Documentation may include photographs, plot plans, affidavits from expert witnesses or written statements from neighbors or community associations. In making the presentation, the applicant states the type of relief requested and his/her reasons for believing that the request should be granted. The applicant must address those standards that the Board needs to apply for the particular type of request and demonstrate how those standards apply to the particular property. If the applicant does not address those standards, it can result in the application being denied. The Board may ask questions of the applicant or request clarification.

Once the applicant has made the presentation, the Board invites anyone who wishes to speak in favor of or in opposition to the application to address the Board.

How can the public be involved in the process or express an opinion on applications?

Following the presentation by the applicant, the Board will ask if there is anyone else who would like to speak to the issue. This is the opportunity for neighbors or other interested parties to express their thoughts on the issue before the Board. Just as the applicant should address the standards that apply to the application, so should those who wish to testify in favor of or in opposition to the request. As listed above, each type of application before the Board is evaluated based upon certain criteria. The Board may

reject comments that do not address these standards. In general, it is best to keep comments brief and to be prepared to answer questions from Board members. If you are unable to attend the hearing, you may send comments in writing to: The Board of Adjustment, Department of Land Use, 87 Reads Way, New Castle, DE 19720. Be sure to reference either the application number or the address for the property. Comments can also be e-mailed to LandUse@nccde.org. In the subject line, type “Board of Adjustment Application.”

Where can I find out what items are on the Board’s agenda?

Notices for hearings are advertised in the Saturday edition of the News Journal at least 12 days before the hearing, are published on the New Castle County website (www.nccde.org). The adjoining property owners are notified of the hearing by mail. The property is also posted with a sign that indicates that it is the subject of a Board of Adjustment application.

What is the timeframe for receiving a decision?

In most circumstances, the Board will vote on the application the evening of the hearing. The formal written decision will be issued approximately one month after the public hearing. The decision is mailed directly to the applicant. If any other parties would like a copy of the written decision, they may send their request via e-mail to LandUse@nccde.org, by mail to Board of Adjustment, Department of Land Use, 87 Reads Way, New Castle, DE 19720, or by telephone (395-5400.)

What if I decide to withdraw my application?

Any application may be withdrawn at any time prior to the public hearing. If the application has not yet been advertised, the Department may consider a refund of the filing fee. Once the application has been advertised for public hearing, the applicant forfeits the filing fee. If the applicant notifies the Board more than 3 days prior to the hearing, the item is removed from the agenda and the applicant does not need to attend the hearing. If the applicant notifies the Board less than 3 days prior to the hearing, he/she must attend the hearing and make a request to the Board. The Board then decides whether it will grant a withdrawal.

Be prepared!

1. You will need to attach a copy of the plot plan for your property to the application.

You should have received a copy of the plot plan with your other papers when you bought the property. The plot plan should show the location of the subject property, the layout of existing structures on the lot, and the size and location of any proposed structures. Please see the attached info piece on Understanding Your Plot Plan.

2. The applicant must know the zoning classification of the property in order to pursue any type of request through the Board of Adjustment. If you do not know your zoning, you can check on-line using the New Castle County website (www.nccde.org), then select ParcelView. Enter your property address or tax parcel number in the appropriate field. Your property information will include the zoning classification.

Talk to your neighbors

It is very important for applicants to discuss their requests with neighboring property owners and the local civic association, where one exists, prior to the hearing. This way a lot of misunderstanding can be avoided and possible disagreements resolved.

Please remember...

If the applicant or representative of the applicant does not appear at the scheduled hearing, it is an automatic denial of the request and the fee is forfeited.

Expiration

Variances and special use permits will become void if not put into effect within a 2 year time period from the expiration of the appeal period following the date of filing of the decision in the Department of Land Use.

Fee Schedule

DIMENSIONAL VARIANCES:

- For Individual Residential Lot/Use\$300.00
- For Non-Residential & other Residential Uses..... \$2,000.00

USE/BENEFICIAL USE VARIANCES:

- Residential Lot \$1,500.00
- Non-Residential & Other Residential Lot or Use.....\$2,500.00

SPECIAL USE:..... \$2,500.00

APPEAL:

- Appeal of a decision by an administrative officer or agency regarding the interpretation of any zoning provision in New Castle County Code, Chapter 40...\$3,000.00

SPECIAL HEARING

- Special public hearing..... \$6,000.00

CONTINUANCE

- Public Hearing Continuance for Individual Residential\$300.00
- Public Hearing Continuance for Non-Residential * Other\$1,500.00

MITIGATION

- Mitigation of a Non-conforming situation
 - For individual residential lot or use\$500.00
 - For other residential & nonresidential lots or uses ...\$3,000.00
- All other applications not specifically included above\$3,000.00

DEPARTMENT OF LAND USE
New Castle County Government Center
87 Reads Way
New Castle, DE 19720
302-395-5400



**BOARD OF ADJUSTMENT
APPLICATION FOR PUBLIC HEARING**

Application Number _____

Fee Received/Check No. _____

REFER TO THE INFORMATION HANDBOOK FOR ASSISTANCE IN COMPLETING THIS APPLICATION

APPLICANT

LEGAL OWNER

Name _____ Name _____

Address _____ Address _____

City _____ State _____ Zip Code _____ City _____ State _____ Zip Code _____

Phone (_____) _____ Phone (_____) _____

E-mail address _____

Subject Property Location _____
Address _____ City/State _____ Zip Code _____

Tax Parcel Number _____ Council District _____ Zoning Classification _____

In addition to the persons listed above, copies of all correspondence should be sent to:

Name _____

Address _____

Phone _____

- Has a previous application for this property been filed with the Board? If yes, App. No. _____ Hearing Date _____
- Is the application being requested due to a code violation? If so, attach a copy of violation notice.
- Attach a copy of the plot plan for the subject property showing the layout of structures of the lot, the location of the subject property, and the size and location of any structures proposed.
- Attach the appropriate filing fee, payable to New Castle County, as shown on the fee schedule.
- Pursuant to Section 40.31.340.E, a public hearing notice is required to be posted on the subject property no later than ten working days in advance of the hearing. A signed affidavit of the posting is also required. (**Residential applications are exempt**).
- Pursuant to Section 40.31.140.B, any Board of Adjustment application which would require the filing of a land development plan for implementation shall be accompanied by a simultaneous exploratory plan submission.

The undersigned hereby certifies that the legal owner of the subject property is aware of and agrees to the filing of this application and that information contained herein is correct. (If the applicant is not the legal owner of this property, the legal owner or his authorized representative must sign this form.)

Applicant's Name (Please Print)

Applicant's Signature

Date

The Legal Owner of the subject property, hereby certifies that the information provided herein is correct and agrees to be bound by any decision of the Board of Adjustment with respect to subject property.

Legal Owner's Name (Please Print)

Legal Owner's Signature

Date

For Department Use Only

CHECK THE APPROPRIATE SECTION BELOW AND FILL IN THE REQUIRED INFORMATION PERTAINING TO THE TYPE OF RELIEF REQUESTED.

Dimensional Variance from code requirement. State size of variance being requested (example: variance from the required 6 foot side yard setback to construct [maintain] a dwelling 4.2 feet from the northerly property line):

Special Use for the following: _____

Use Variance to use property for use other than that allowed by its zoning classification, changing from its existing use as _____

To a proposed use as _____

Appeal from an Administrative Decision _____ dated _____

For the following reasons: _____

Confirmation of a Non Conforming Use _____

Beneficial Use Appeal _____

A fee is required for each application submitted, and please note that an as-built survey will be required as a part of the building permit process.

Dimensional Variance – for residential use.....	\$300	Mitigation of a Nonconforming situation for an individual residential lot or use	\$500
Dimensional Variance – non-residential use.....	\$2000	Mitigation of a Nonconforming situation for other residential and nonresidential lots or uses.....	\$3,000
Use Variance – residential use.....	\$1,500	All other Board of Adjustment applications.....	\$3,000
Non-residential use	\$3,000		
Special Use	\$2,500		
Special Public Hearing	\$6,000		
Continuation of public hearing – residential.....	\$300		
Non-residential.....	\$1,500		
Appeal of decision by an administrative officer or agency regarding the interpretation of a zoning provision in New Castle County Code, Chapter 40-.....	\$3,000		