

Chapter 330. Zoning

Article XVIII. Board of Appeals

§ 330-167. Specific types of variances.

In the instances of the following types of variances, the Board of Appeals is hereby specifically empowered to grant the variance pursuant to the guiding principles and the general standards stated in § **330-166B** and **C** and to the provisions which follow.

- A. With respect to lots lying across district boundary lines, to grant a permit, in appropriate cases where the lot of the appellant, as such lot existed on the effective date of this chapter, lies across the boundary of two districts, for the extension into the more restrictive district but for a distance not exceeding 50 feet measured at right angles to such district boundary line.
- B. With respect to nonconforming uses, buildings, structures and lots:
- (1) To grant a permit for the extension of such a nonconforming use on the same lot on which it was located or an increase in the degree of nonconformity of a nonconforming building or structure on the lot occupied by such building or structure, provided that:
 - (a) In the case of a nonconforming use, such enlargement or extension shall not exceed, in all, 50% of the floor area of such building or structure actually devoted to such nonconforming use on the effective date of this use having first become nonconforming.
[Amended 6-26-2001 by L.L. No. 24-2001]
 - (b) All parking and truck loading requirements of §§ **330-92** through **330-101** are complied with.
 - (c) There shall be no change in the nature or character of such nonconforming use or of such building or structure.
 - (d) The lot coverage and density shall not be greater than would be permitted by the most restrictive lot coverage and density provisions of this chapter applicable to a permitted use or special exception use of the same nature or character. The term "density" includes, among other things, the number of dwelling units allowed based on the lot area, the number of guest units allowed based on the lot area and the number of uses allowed based on the lot area.
 - (2) To grant a permit for the reconstruction, structural alteration, restoration or repair of a building or structure used for a nonconforming use, to an extent not to exceed an aggregate 100% of the gross floor are of such building or structure.
 - (3) To grant a certificate of occupancy for a change in a nonconforming use, provided that:
 - (a) The Board of Appeals shall have made a determination that such change will be beneficial to the general neighborhood.
 - (b) Such change is made subject to such reasonable conditions and safeguards as the Board of Appeals may stipulate.
- C. With respect to yard requirements, to grant a variance modifying the yard requirements of a nonconforming lot which qualified under the terms of § **330-115D** as to ownership, but where compliance with the dimensional

provisions of this chapter is not feasible.

- D. With respect to fences, to grant a permit, in appropriate cases, for a higher fence or wall than the maximum heights stipulated in § **330-109**.
- E. With respect to accessory parking and truck loading spaces:
- (1) To waive, in whole or in part, the requirements of §§ **330-94**, **330-95** and **330-96** for off-street parking and truck loading spaces in a case where the Town owns or operates a public parking and/or truck loading area within 500 feet of the lot and where the Board of Appeals determines that there is no need for additional facilities.
 - (2) To waive, in whole or in part, the requirements of §§ **330-94**, **330-95** and **330-96** for off-street parking and/or truck loading spaces after making a finding that a normal application of such requirements is unfeasible because:
 - (a) The lot has either too restricted an area or unusual dimensions, shape or topographic character; and
 - (b) No other suitable and adequate lot can be reasonably put to such use within 500 feet of the property to which said parking and/or truck loading spaces are accessory.
 - (3) To permit a reduction in the number of off-street parking spaces and/or truck loading spaces originally required and installed for a particular use pursuant to §§ **330-94**, **330-95** and **330-96** in cases where the Board of Appeals determines that, by reason of diminution in number of dwelling units or residents or in floor area, seating capacity or area or number of employees or change in other factors determining the demand for such spaces, the proposed reduction in available spaces will be consistent with the requirements of said sections, and further provided that the area so withdrawn from these uses shall remain in reserve for potential future increases in need.
- F. With respect to temporary building permits, to grant a temporary building permit for a period not to exceed one year for a nonconforming building, structure or use incidental to a building or other construction project, including such uses as the storage of building supplies and machinery, a real estate office or model houses located on or near a tract of land where individual properties are being offered for sale, provided that:
- (1) Such temporary permit shall be issued only upon written agreement by the owner or his agent to remove such building, structure or use or to convert it to a conforming use upon the expiration of the permit.
 - (2) Such permit shall be subject to such reasonable conditions as the Board of Appeals shall determine to be necessary to protect the public health, safety, morals or general welfare.
- G. With respect to temporary directional signs indicating the location of a real estate subdivision:
- (1) To grant a permit for the location of a temporary directional sign off the subdivision site for a period of one year, provided that:
 - (a) Such temporary permit shall be issued only upon written agreement by the owner or his agent to remove such temporary directional sign upon the expiration of the permit.
 - (b) Such permit shall be subject to such reasonable conditions as the Board of Appeals shall determine to be necessary to protect the public health, safety, morals or general welfare.
 - (c) Only the minimum number of such signs is permitted, consistent with their purpose.
 - (2) Such permit may be renewed annually, at the direction of the Board of Appeals, for not more than two additional years.
- H. ^[1]With respect to the addition of a second dwelling on a lot, the Zoning Board of Appeals shall find that the landowner has exhausted all possible opportunities to acquire and transfer development rights or PBCs pursuant to the applicable provisions of this chapter.
[Added 10-23-2001 by L.L. No. 44-2001]

[1] *Editor's Note: Former Subsection H, regarding historic and cultural landmarks, was repealed 10-27-1998 by L.L. No. 38-1998. See now Art. XXVII, Landmarks and Historic Districts. Also see Subsection J of this section.*

I. With respect to the creation of undersized lots, the Zoning Board of Appeals shall find that the landowner has exhausted all possible opportunities to acquire and transfer development rights or PBCs pursuant to the applicable provisions of this chapter. However, the following are exempt from this provision:
[Added 10-23-2001 by L.L. No. 44-2001]

- (1) Undersized lots requesting minor lot area and lot width variances (20% and less).
- (2) Nonconforming lots shown on a filed map approved by the Planning Board after October 14, 1957, and filed in the office of the Suffolk County Clerk or the Town Clerk, but not held in single and separate ownership.
- (3) A legally existing substandard lot comes into the same record of ownership as one or more adjacent lots. Applicants using this exemption must also comply with § 330-115F.

J. With respect to threatened historic and cultural landmarks:
[Added 10-28-2014 by L.L. No. 25-2014]

- (1) To grant a special use permit for such use or uses compatible with an intent to preserve, protect, restore or promote the historic or cultural integrity of a district, site, building, structure or object that meets the definition, herein, of a historic district or landmark, as determined by the Landmarks and Historic District Board, and which is being threatened by new development, alteration or replacement and such relief from parking and other requirements of this chapter as is appropriate, provided that the Board of Appeals determines that:
 - (a) A threat exists to the continuance of the historic district or landmark as a historic or cultural Town resource.
 - (b) Such permit is in the best interest of the Town and not contrary to the visions, goals and directives expressed in the Town's Comprehensive Plan.
 - (c) Such permit is needed to support the continued integrity of the historic district or landmark.
 - (d) Such permit is for a use that is reasonable as it may relate to existing zoning district provisions, provided that the proposed use is compatible with surrounding land uses.
- (2) Prior to submission of an application to the Zoning Board of Appeals, a site plan for the proposed use or uses shall be submitted to the Landmarks and Historic District Board (LHDB), together with the necessary application and documentation required by the LHDB to make findings, recommendations and comments with respect to whether or not the subject district, site, building, structure or object meets the definition of "landmark" in § 330-5 and/or the criteria for landmark or historic district designation pursuant to § 330-321B(1) and (2).
- (3) Prior to the public hearing, the application and a site plan for the proposed use or uses, that conforms to the requirements of §§ 330-181 through 330-184, shall be referred to the Planning Board for its recommendations and comments as they relate to site planning issues.
- (4) Such special use permit shall be conditioned on the following:
 - (a) The district, site, building, structure or object shall be designated by the Town Board as an historic district or landmark in accordance with Article XXVIII of the Zoning Code of the Town of Southampton.
 - (b) A written agreement by the applicant to remove such use or uses or to convert the same to a conforming use upon the termination of the actual landmark itself, its removal from the property, its destruction by natural or other means, or declassification of the historic district or landmark.
 - (c) Any such conditions and safeguards as the Board of Appeals shall deem necessary or advisable.

