

EAST GOSHEN PLANNING COMMISSION
CRITERIA FOR REVIEWING DIMENSIONAL &
USE VARIANCE REQUESTS

The East Goshen Planning Commission meets every first Wednesday of each and every calendar month at the East Goshen Township Building throughout the year to consider and review subdivision, land development, ordinance amendment requests and both dimensional and/or use zoning variance applications by Township residents and other applicants with proper standing, which require the Planning Commission to provide a written recommendation to the Board of Supervisors whether to grant or deny such requests. As to proposed land development, ordinance amendments and subdivision applications, the Planning Commission, after several hearings with the applicant, moves to make a written recommendation, on motion, to the Board of Supervisors, whereupon the Board of Supervisors decide to grant or deny such applications, which are appealable to the Court of Common Pleas of Chester County. As to use and/or dimensional zoning variance requests, the Planning Commission makes a written recommendation to the Board of Supervisors, who in turn hear an applicant's presentation, in their capacity as the legislative branch of local government and in turn make a written recommendation to the East Goshen Zoning Hearing Board, which functions as the judicial branch of local government, whereupon the Zoning Hearing Board decides to grant or deny said use and/or dimensional zoning variance applications, which are also appealable to the Court of Common Pleas of Chester County.

Dimensional Variance Criteria:

In dimensional variance applications, the applicant is seeking relief from area or bulk regulations specified in the East Goshen Zoning Ordinance. Dimensional

variances consist of requests for relief from set-backs, height and impervious cover regulations, and any other regulation or Code requirement that is dimensional by nature. When addressing dimensional variance requests, the Planning Commission considers and applies five (5) criteria otherwise specified in Section 910.2 of the Municipalities Planning Code, which are also utilized by the East Goshen Zoning Hearing Board, as well as the Courts to determine whether an applicant has met its burden of proof to warrant granting relief. The five (5) dimensional variance criteria consist of the following:

1. Whether there are any unique physical conditions or circumstances relating or attributable to the subject property itself;
2. Whether the property cannot be developed in strict conformity with the Zoning Ordinance because of the unique physical conditions or circumstances;
3. Whether the hardship has not been self created or induced by the applicant;
4. Whether the granting of the dimensional variance relief requested will alter the essential character of the neighborhood or zoning district, or be detrimental to adjacent properties or to public health generally;
5. Whether the scope and extent of the Dimensional variance would be the minimum required to afford relief and would be the minimum modification possible to the dimensional regulation at issue.

Use Variance Criteria:

Applicant's seeking a Use Variance for a property have a higher burden of proof to substantiate a Use Variance Application, as said Applications have the inherent effect of modifying the Zoning Use regulations, a function usually reserved for and within the exclusive purview of the Board of Supervisors, in their legislative capacity. Often, applicants coming before the Planning Commission with Use Variance Applications

argue that their property cannot be used for any of the purposes for which the property is zoned, thereby warranting their seeking relief from the Zoning Hearing Board for a change in the property use.

In order for an applicant to establish a use hardship, the applicant has the more difficult burden of proving the following:

a) The physical features of the property preclude the ability to use the property for a permitted purpose; or

b) It would be prohibitively expensive to conform the property for a permitted use; or

c) The property has no value for any purpose permitted by the Zoning Ordinance.

In formulating a recommendation to the Board of Supervisors, the Planning Commission considers Use Variance Applications strictly in evaluating whether an applicant is entitled to the exceptional relief of a Use Variance. Thus, the Planning Commission will tend to recommend denial of a Use Variance where the property at issue involves large tracts of land, since the Zoning classification of properties in the Township falls within the purview of the Board of Supervisors, in their legislative capacity. In addition, the Planning Commission examines the motivating factor of an applicant to determine whether there is ample evidence of hardship, which was not self induced. In addition, the Planning Commission also considers whether a proposed commercial or apartment Use Variance would constitute an intensification of a use sought in a residential zoning district, especially where it is determined that the property cannot be adapted to any of the permissible uses allowed by the Zoning Ordinance.

De Minimis Dimensional Variance Requests:

Frequently, the Planning Commission receives dimensional variance applications where the applicant cannot satisfy the area and bulk ordinance requirements for set

backs by a matter of feet or inches and thus, seeks a “De Minimis Variance.” The term originates from Roman Law from the Latin phrase: “De minimis non curat lex,” which means: “The law is not concerned with trifles.”

De Minimis Dimensional Variance Applications consist of minor, relatively insignificant or slight variations which are being sought from the rigid adherence to Zoning Ordinances which would not adversely affect the public welfare or public policy concerns inherent in the East Goshen Ordinance. A typical De Minimis Variance Application consists of a situation where the applicant was off by several feet or inches from a required rear, front or side yard set back. The alternatives were to either deny any use of the building or require removal of a part of the structure, which would be excessively costly in the context of a mere “trifling” shortfall. Thus, the Planning Commission can consider recommending granting of a Dimensional Variance as “De Minimis,” even though the hardship was self created.

In a De Minimis Variance Application context, the applicant does not have to satisfy the usual variance criteria, but the relief must be minor, be insignificant and its granting must not go counter to public policy concerns inherent in the East Goshen Zoning Regulations. Essentially, the minor relief being sought by an Applicant in a De Minimis Dimensional Variance Application is vitally critical to the applicant as a property owner but of virtually no significance to the municipality as to be practically meaningless and irrelevant with respect to Township’s regulatory function. De Minimis Variances apply only to Dimensional Variances and are inapplicable to Use Variances. Defining what is De Minimis is essentially done on a case by case basis and not by any rigid rule of physical measurement, whatsoever. Where an applicant is seeking to have a dimensional zoning variance, the De Minimis concept is not limited to a mechanical

application of percentages. The requested dimensional variance must be very small in an absolute sense.

The Planning Commission consists of seven (7) East Goshen residents appointed by the Board of Supervisors, each serving alternating four (4) year terms.

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