

Resolution
Of
The Board of Directors
Of
Beech Mountain Lakes Association
In
Drums Pennsylvania
Adopting Policy for Variances

Adopted January 28, 2003

The Association pursuant to Pennsylvania Law has adopted the following resolution, at a regular meeting of the Board of Directors.

RECITALS:

(A) The Beech Mountain Lakes Protective Covenants, Declarations, and Rules and Regulations, from here on referred to as the "Documents", describe how a property may be used and developed within the community.

(B) The Architectural Control Committee, from here on referred to as the ACC, Under Section 12.5: of The Beech Mountain Lakes Protective Covenants Power to grant variances.

The ACC may allow reasonable variances from the provisions of this Declaration or a Community Declaration if literal application thereof results in an unnecessary hardship, if such variance is in conformity with the general intent of this Declaration or Community Declaration and if the granting of such variance will not be materially detrimental or injurious to other owners.

The Beech Mountain Lakes Association community is in need of a uniform policy for the granting or denial of variances.

(C) The Association is charged with certain responsibilities regarding the care, maintenance, service, and preservation of the Common Areas within Beech Mountain Lakes Association in Drums Pennsylvania.

(D) Under Section 4.2 Operation and Management: paragraph 3
The entity which holds title to a Common Area shall have the sole and exclusive right and duty to manage and operate the Common Areas which it owns, including, with out limiting the generality of the foregoing, the right:

- (a) to maintain, repair, replace or restore all of the improvements and landscaping within such Common Areas;*
- (b) to promulgate amend and rescind from time to time general policies and guidelines governing the use of such Common Areas;*
- (c) to regulate the use of such Common Areas and establish a use or users fee schedule for each such facility;*

(E) Under Section 6.14: Of the Documents: Representation.

The Association shall have the power and right to represent the interest of all of the owners in connection with claims and disputes affecting the Common Areas or any Community Common Area for which it has the responsibility for maintenance and operation. Without limiting the foregoing. The Association shall have the power to settle warranty disputes or other disputes between the Association, the Owners and the Declarant affecting construction, use or enjoyment of the Common Areas and Community Common Areas for which it has the responsibility for maintenance and operation, and any such settlement shall be final and shall bind all of the owners.

(F) The Board of Directors and the Architectural Control Committee wish to adopt a uniform policy for the evaluation and granting of variances.

(G) This policy shall include:

- (1) application for variance.
- (2) criteria for "hardship" variance.
- (3) public notification and public hearing.
- (4) notification of applicant regarding decisions on variance.
- (5) appeal of ACC decisions.
- (6) variance involving common areas and the Board of Directors roll.

The Board of Directors of the Association and the ACC desire to adopt a uniform policy for the evaluation, granting, or denial of variances.

NOW, THEREFORE, BE IT RESOLVED that the ASSOCIATION does hereby adopt the following policy for variances.

Variance Policy

1. **Application:** All applications for variance must be in writing and submitted to the ACC. Application shall include the following information:

- (a). Reason that variance is needed.
- (b). Plat plans and design plan that shows area and reason for variance e.g.:
construction in setback.
- (c). Materials list.
- (d). Work Schedule
- (e). Application fee of \$100.00 which shall be nonrefundable for any reason.

2. **Criteria for granting variance:** The ACC may grant a variance, provided that all of the following findings are made where relevant in a given case:

(1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the Documents.

(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Documents and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(3) That such unnecessary hardship has not been created by the appellant.

(4) That the variance, if authorized, will not alter the essential character of the neighborhood in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the welfare of the Association.

(5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

(a) In granting any variance, the ACC may attach such reasonable conditions and safeguards, as it may deem necessary to implement the purposes of this policy and enforcement of the Documents.¹

3. **Public Notification and Public Hearing:**

(a). Notification of application for variance shall be given to all property owners within a one hundred and fifty (150) foot radius of the property for which the variance has been applied. The ACC shall define those properties which are located within the 150 foot radius of the variance/exception property, and shall provide the applicant with the names and addresses of the owners for these properties as they are recorded in the office of the association. The Applicant shall be responsible for contacting the owners of the named properties via certified mail return receipt. If the applicant can show proof of return receipt or proof of undeliverable or returned mail. The requirements of notification shall be deemed satisfied. Notification shall be given no less than fourteen (14) days prior to the date of the first meeting held by the ACC for the purpose of reviewing the variance application. Notification shall include the address of the property for which the variance is being applied, the reason for the variance, and the date of the ACC meeting at which the application will be reviewed.

¹ Adapted from Bisel's Pennsylvania Municipal Lawsource Darrell M. Zaslow, Esq., 1998; pp.136-137

(b). The ACC shall post a 24"x 20" sign made up of yellow background and black lettering on the property for which the variance has been applied and within clear site of the road. This posting shall note that a variance has been applied for and specify the variance applied for.

(c). Meetings for the purpose of reviewing variance applications held by the ACC shall be open to all members in good standing of the Association. Support or opposition testimony may be offered by members in good standing and shall be heard by the ACC.

(d). The ACC shall take and record minutes of all meetings held and testimony given in regard to variance applications.

4. **Notification of Decision**: The ACC shall act within thirty (30) days after all required information has been submitted. The ACC shall retain one copy of submitted material and return the other copy. All notices to applicants shall be in writing. Any disapproval shall specify the reason therefore. The approval of the ACC of plans and specifications shall not be a waiver by the ACC of its right to object to any of the features or elements contained in any subsequent plans or specifications submitted for approval. Failure of the ACC to act upon an application within thirty (30) days shall constitute approval of an application.

5. **Appeals**: Any Owner shall have the right to appeal to the Board from any adverse decision of the ACC within thirty (30) days after the giving of a written notice of disapproval, and the Board shall have authority to confirm or reverse the decision of the ACC.

6. **Variance Involving Common Areas**: Shall be deemed a special exception. Under Section 6.14: Representation and section 4.2 Operation and Management: paragraph 3, of the Documents the Association has the right and the duty to regulate and control the use of common areas for the mutual enjoyment, benefit and use of all members of the Association.

Therefore when a variance involving the use of Common areas is requested:

(a). The ACC shall review the application to determine that all criteria has been met as set forth in numbers 1,2, and 3 of this policy.

(b). When the ACC has determined that the conditions set forth in numbers 1,2, and 3 have been met the application and minutes of all meetings regarding the application shall be forwarded to the Board of Directors for review.

(c). The Board shall review the application, and minutes to determine if a special exception is needed by the following criteria:

(1) That because of physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Documents and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(2) That such unnecessary hardship has not been created by the appellant.

(3) That the special exception, if authorized, will not alter the essential character of the neighborhood in which the property is located, nor substantially or permanently impair the appropriate common use, enjoyment, nor be detrimental to the welfare of the Association and its members.

(4) That the exception, if authorized, will represent the minimum that will afford relief and will represent the least modification possible of the regulation in issue.

(a) In granting any exception, the Board may attach such reasonable conditions and safeguards, as it may deem necessary to implement the purposes of this policy and enforcement of the Documents.

(d). The Board shall have the right to hold further meetings for the purpose of gathering further information from the applicant or public as it deems necessary.

(e). Notification of meetings:

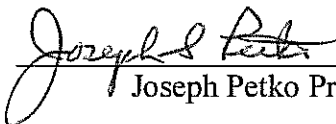
(1) Notification of application for variance shall be given to all property owners within a one hundred and fifty (150) foot radius of the property for which the special exception has been applied. The ACC shall define those properties, which are located within the 150-foot radius of the variance/exception property, and shall provide the applicant with the names and addresses of the owners for these properties as they are recorded in the office of the association. The Applicant shall be responsible for contacting the owners of the named properties via certified mail return receipt. If the applicant can show proof of return receipt proof of undeliverable or returned mail notification the requirements of notification shall be deemed satisfied. Notification shall be given no less than fourteen (14) days prior to the date of the meeting to be held by the Board for the purpose of reviewing the application. Notification shall include the address of the property for which the special exception is being applied, the reason for the exception, and the date of the Board meeting at which the application will be reviewed.

(f). **Notification of Decision:** The Board shall act within Forty- five (45) days after all required information has been submitted. All notices to applicants shall be in writing. Any disapproval shall specify the reason therefore. The approval of the Board of plans and specifications shall not be a waiver by the Board of its right to object to any of the features or elements contained in any subsequent plans or specifications submitted for approval. Failure of the Board to act upon an application within Forty- five (45) days shall constitute approval of an application. The decision of the Board is final and shall be binding to all members of the association

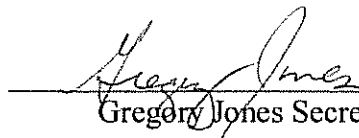
7. Nothing in this policy shall be interpreted to negate any other portion of the Documents of the Association.

8. Effective Date. The afore mentioned policy shall be effective the first day of the month after the execution of this resolution.

IN WITNESS WHEREOF, the undersigned have executed this Resolution the 28th day of January , 2003.



Joseph Petko President



Gregory Jones Secretary